



European Securities and  
Markets Authority

## Reply form for the Addendum Consultation Paper on MiFID II/MiFIR



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Addendum Consultation Paper on MiFID II/MiFIR, published on the ESMA website.

### **Instructions**

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

### **Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CP\_TR\_ORK\_CS\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_CP\_TR\_ORK\_CS\_XXXX\_REPLYFORM or

ESMA\_CP\_TR\_ORK\_CS\_XXXX\_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

### **Deadline**

Responses must reach us by **23 March 2016**.

All contributions should be submitted online at <https://www.esma.europa.eu/> under the heading 'Your input/Consultations'.



### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_CP\_TR\_ORK\_CS\_1>

The European Association of Co-operative Banks (EACB) represents, promotes and defends the common interests of its 31 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation.

Co-operative banks play a major role in the financial and economic system. Their resilience during the crisis made co-operative banks a key driving force in the economic recovery. With 4,200 locally operating banks and 68,000 outlets, they serve 205 million customers, mainly consumers, SMEs and communities.

Europe's co-operative banks represent 78 million members and 860,000 employees and have an average market share of about 20%.

The EACB welcomes the ESMA Consultation Paper on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation and the opportunity to participate in the relevant work stream. Please find below the EACB response to some of the consultation Questions.

<ESMA\_COMMENT\_CP\_TR\_ORK\_CS\_1>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1>

Yes. The EACB would have the following comments:

The definition of "matched principal trading" in Art. 4 (1) (38) MiFID II is clear as such, but requires - at least for markets where "matched principal trading" is not a standard term for a particular market practice- further explanations.

Two examples:

- Example 1: Customer gives the order, the investment firm executes itself the order for the customer on the trading venue (without first trading on its own account and then selling OTC to the customer). The trading capacity of the investment firm is "matched principal" or OTC?
- Example 2: Customer gives the order, the investment firm executes itself the order for the customer through a counterparty Bank, over the counter (without first trading on its own account and then selling them OTC to customers). The trading capacity of the investment firm is "matched principal" or OTC?

Moreover, we would like further guidance on how to interpret the relation of the "one for one" -requirement and any aggregation.

Two specific examples (from the point of view of an investment firm X):

- Example 1: An asset manager acting under discretionary mandate buys bonds for clients A and B from the investment firm X as a single aggregated order. Order complies with the conditions for transmission under Article 4 of RTS 22. Investment firm X buys the bonds as a single transaction from another investment firm Y. After the order is filled, the bonds are allocated to clients A and B on market price. The client side transactions (and settlements) happen directly between the investment firm X and clients A and B. Could this be considered a trade under the matched principal capacity under any circumstances? After all, firm X never exposes itself to market risk and the prices and amounts match (but not on "one for one" basis).
- Example 2: Client A submits an order to buy 100 financial instruments to investment firm X. Investment firm X then executes the transaction with two different counterparties: investment firm Y (40 instruments) and investment firm Z (60 instruments). We would assume that this would result in two rows in the transaction report of the firm X with matched principal capacity (Client A vs. Investment Firm Y, 40 instruments, 'MTCH', X executing; *and* Client A vs. Investment Firm Z, 60 instruments, 'MTCH', X executing, respectively). Is this correct?

In general, we would appreciate further clarification regarding the distinction between "trading capacity", "matched principal trading" and "any other capacity" and in particular by way of a few examples.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_2>

Yes, the EACB would like to raise the following points:

a) Securities Financing Transactions (SFT)

The EACB would be strongly against the proposed reporting requirement for SFTs between credit institutions and central banks. This approach totally disregards recital 12 of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (SFTR) which provides that members of the European System of Central Banks (ESCB) should be exempted from the obligation to report any securities financing transactions to trade repositories. Recital 12 SFTR further provides: "However, in order to ensure that regulators and supervisors obtain a proper overview of the risks linked to SFTs concluded by the entities they regulate or supervise, the relevant authorities and the members of the ESCB should cooperate closely. Such cooperation should enable regulators and supervisors to fulfil their respective responsibilities and mandates. Such cooperation should be confidential, and conditional on a justified request from the relevant competent authorities, and should only be provided with a view to enabling those authorities to fulfil their respective responsibilities having due regard to the principles and requirements of the independence of central banks and the performance by them of their functions as monetary authorities, including the performance of monetary, foreign exchange and financial stability policy operations which members of the ESCB are legally empowered to pursue. The members of the ESCB should be able to refuse to provide information where the transactions are entered into by them in the performance of their functions as monetary authorities. They should notify the requesting authority of any such refusal together with the justification therefor."

For this reason, SFT not reporting under SFTR should also not be reported under Art. 26 MiFIR.

b) Creation or redemption of a fund by the administrator of the fund

We assume that previous statement of ESMA in its Final report of September (1464/2015) concerning creation/redemption of funds are still valid. In particular in that Report it is stated:

"33. Several respondents argued that the exemption for creation and redemption of an exchange traded fund by the administrator of the fund should be extended to all funds where the asset management company determines the (fixed) issue price or redemption price. ESMA agrees to this proposal and therefore the exclusion has been broadened accordingly.

34. A few respondents requested clarification around inter-group activity and the reference to internal transactions in Article 3(3)(f) of the draft RTS arguing that transactions between different firms with different LEIs within the same group should be reportable but that transactions between branches within the same legal entity should not be, citing consistency with EMIR. They assumed that this was what the phrase internal transfers was trying to capture but requested it be made clearer in the RTS.

35. ESMA confirms that transactions between different firms with different LEIs within the same group are reportable and that transactions between branches within the same legal entity are not reportable. Any transfers between clients are reportable under the general definition of transaction. Purely internal transfers within a firm for operational reasons where there is no change of position for the firm or client are not included in the definition of transaction and are not reportable. Since these requirements are all covered by other provisions ESMA has deleted this exclusion that was set out in Article 3(3)(f)."

We would kindly ask for a confirmation that the statements in the Consultation Paper ESMA/2015/1909 solely represent further clarifications and that all previous statements of ESMA are still valid.

We understand that all transactions that involve the creation or redemption of a fund and take place in a chain (e.g. customer – investment firm - .... – fund administrator) are not subject to transaction reporting.

c) Procedure to identify natural persons

It is crucial to ensure correct and accurate customer identification of individuals. The remarks included in chapter 1.1.5. disregard that Draft RTS 22 for customer identification of individuals entails an unnecessarily complex procedure (32 country-specific requirements for the registration; up to 3 priority levels for each country, variable codes such as identity card number). ESMA disregards that previously investment firms were required to hold a very small amount the now required data on customer identification. For example, currently there is no requirement of a system-side recording of customer identification, including the expiration date. Consequently, contrary to Chapter 1.1.5 it is not possible for those institutions that have so far made no system-side recording of the customer ID or the relevant expiration date to monitor the expiration date of the customer identification for the existing customers.

Moreover, credit institutions are not in a position to ensure a correct and accurate customer identification of individuals because the fulfilment of the requirements is not solely in their hands. Rather, they are dependent on the willingness of their clients. Whether the customer give the information according to the specifications can not always be verified by the institution.

Other errors can not be ruled out because for the Transaction Reporting a completely new, complex identification system has been established alongside the existing diverse European or national identification obligations (for example the requirements under the Anti-Money Laundering Directive).

Moreover, we would like to note the following:

We would like to clarify if a new CONCAT should be generated when a customer changes his/her surname (e.g. in case of marriage).

Moreover, the list of "removing prefixes" in surnames must be final, otherwise a programming of alarm systems would not be possible.

Moreover, the proposed conversion of letters with umlauts or the letter "ß" is not necessary since the following scheme is already used in the master data system:

Ä, ä -> Ae, ae;  
Ö, ö -> Oe, oe;  
Ü, ü -> Ue, ue;  
ß -> ss.

Once a name has been recorded in this way, it is no longer possible to reconstruct the original spelling. We therefore propose that the conversion of the first and last name for reporting purposes is done in a similar way to the master data systems scheme for the conversion (Ä, ä -> Ae, ae; Ö, ö -> Oe, oe, Ü, ü -> Ue, ue ; ß -> ss).

#### d) Differences/ inconsistencies in the fields between Draft RTS 22 and the Guidelines

In a number of fields there are differences and inconsistencies between Draft RTS 22 and the Guidelines. It is of utmost importance to ensure consistency in that regards. This is currently not guaranteed in the following cases:

- Field 4: Diverse content in the column "Content to be reported."
- Field 5: Diverse content in the description field
- Field 33: In the Guidelines the entry "DECIMAL 18/17" is added; this is missing in Draft RTS 22
- Field 51: In the Guidelines the entry "DECIMAL 18/17" is added; this is missing in Draft RTS 22
- Field 61: In the Guidelines the entry "LRGS" is missing while it is provided in Draft RTS 22.
- Field 62: In the Guidelines the entry "NTAV" has been replaced by "UNDI".

- Field 63: In the Guidelines there are newly entries i.e. "RPRI", "DUPL", "TNCP", "TPAC" and "XFPH". At the same time the entries "NPFT", "RFPT", "NLIQ", "OILQ", "PRIC" and "ALGO" provided for in the Draft RTS 22 are missing.
- Field 65: Diverse content in the column "Content to be reported."

e) Granularity requirements for reporting of time

It should be clear which method is to be used for the granularity requirements regarding time. According to the examples in Chapters 1.2.7.1, 1.2.7.2, 1.2.7.3, 1.3.5.1 and 3.2 in Field 28 "Trading date time" an hour in the day is reported. The rounding method (commercial or cut-off) applied is not recognisable, in the examples used because the sample times result in the same results using both methods.

This should be clarified. We would propose to select the "cut-off method". This should be specified in Chapter 1.2.6 of the Guidelines.

f) Process to switch from old Mifid 1 reporting regime to MIFIR Transaction reporting:

We would request guidance to prepare for the transition phase between old MiFID I reporting regime and the new MIFIR Transaction reporting environment.

We would propose to go with the "big bang" approach, 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 the first reporting date of the new regime, considering running two systems in parallel will entail a fairly high cost base to the industry but so to the regulators. We tend to believe the 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.

h) ARM-authorisation requirements Draft RTS 13

The issue of the scope of the ARM-authorisation requirements Draft RTS 13 is not addressed in the consultation paper. However, it has a high practical significance. It should be explicitly clarified that only the company, which has the reporting obligation to transmit the message to the supervisory authority, must have the ARM status. The need for authorisation for other members of a reporting chain as ARM would be totally disproportionate and unnecessary.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_2>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_3>

1. Again, the EACB would be strongly against the proposed reporting requirement for SFTs between credit institutions and central banks. This approach totally disregards recital 12 of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (SFTR) which provides that members of the European System of Central Banks (ESCB) should be exempted from the obligation to report any securities financing transactions to trade repositories. Recital 12 SFTR further provides: " However, in order to ensure that regulators and supervisors obtain a proper overview of the risks linked to SFTs concluded by the entities they regulate or supervise, the relevant authorities and the members of the ESCB should cooperate closely. Such cooperation should enable regulators and supervisors to fulfil their respective responsibilities and mandates. Such cooperation should be confidential, and conditional on a justified request from the relevant competent authorities, and should only be provided with a view to enabling those authorities to fulfil their respective responsibilities having due regard to the principles and requirements of the independence of central banks and the performance by them of their functions as monetary authorities, including the performance of monetary, foreign exchange and financial stability policy operations which members of the ESCB are legally empowered to pursue. The



members of the ESCB should be able to refuse to provide information where the transactions are entered into by them in the performance of their functions as monetary authorities. They should notify the requesting authority of any such refusal together with the justification therefor."

For this reason, SFT not reporting under SFTR should also not be reported under Art. 26 MiFIR.

We therefore propose a general exemption for the reporting obligation for SFTs.

2. The statement under 1.1.6.2 that transfers of financial instruments between funds or portfolios are notifiable, is too general. There is a need for more detailed explanation.

3. We would like to clarify whether units of investment funds are to be considered as reportable instruments when a market participant that is not the administrator of the fund (e.g. a broker) lists the fund on a trading venue (i.e. the administrator of the funds does not list the fund on a trading venue).

4. Furthermore we would appreciate further clarification concerning delivery/payment transactions. The following two examples should demonstrate the complexity of these transactions.

Context:

- Bank A buys (by order of a customer) a reportable financial instrument from Bank B (which has the financial instrument on own stock); both banks agree on "delivery versus payment" via clearing party C
- Bank A has no direct connection to clearing party C and therefore mandates Bank A2 with the settlement; Bank A2 is instructed by Bank A with "receive against payment"
- Bank A2 sends this order to clearing party C
- Bank B has no direct connection to clearing party C and therefore mandates Bank B2 with the settlement; Bank B2 is instructed by Bank B with "delivery versus payment"
- Bank B2 sends this order to clearing party C

Transactions:

- Clearing Party C settles two transactions: "receive versus payment" with Bank A2 and "delivery versus payment" with Bank B2
- Bank A2 settles a transaction "receive versus payment" for Bank A with booking against clearing party C
- Bank A settles a buy transaction for its customer with Bank B being the counterparty; booking is done against Bank A2
- Bank B2 settles a transaction "delivery versus payment" for Bank B with booking against clearing party C
- Bank B settles a sell transaction (against its own stock) with Bank A being the counterparty; booking is done against Bank B2.

In another example, client X could buy a reportable financial instrument from client Y and no banks are involved in the deal. However, the customers agree on settlement via their banks A and B. Bank A is instructed by customer X with "receive versus payment" and Bank B is instructed by customer Y with "delivery versus payment". The following proceeding with Banks A2/B2 and clearing party C would be as in the example above.

We kindly ask you to provide guidelines on which parties have to file transaction reports and how the key fields (e.g. buyer/seller) in these reports shall be populated.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_3>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_4>

The EACB would like to clarify whether it is possible that transaction reports are submitted by data processing centres (not registered as ARMs) on behalf of investment firms, considering that in this case the data processing centre (which is a separate legal entity) would only technically "produce" the transaction report for the investment firm and then submit it to the competent authority.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_4>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_5>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_5>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_6>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_6>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_7>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_7>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_8>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_8>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_9>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_9>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_10>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_10>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_11>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_11>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_12>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_12>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_13>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_13>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_14>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_14>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_15>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_15>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_16>

Regarding "complex trades" the EACB would ask for the following clarifications:

1. We would like clarification regarding which "Life Cycle Events" of "complex trades" should be reported and how will the amendments be reported.

The Guidelines should clarify that only the affected components must be reported. A new reporting of all components, including those which are not affected, should, in our view, not be necessary.

2. In the revision of the reporting requirements pursuant to Art. 9 of EMIR a field "complex trade component ID" is provided. We assume that the respective field is to be

treated exactly the same both in MiFID II and EMIR and ask for appropriate clarification in that regard.

3. We would like to see a clarification on how the Transaction Reference Number of a single leg of a “complex trade” has to be filled. We would suggest that each single leg would have its own unique Transaction Reference Number.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_16>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_17>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_17>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_18>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_18>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_19>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_19>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_20>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_20>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_21>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_21>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_22>

The EACB would call for 2 clarification as per below:

1. We would like to clarify whether simple authorised signatories would also need to be included in the field "decision maker" e.g. in case a son has the authorisation to place orders for his mother's securities account without him being joint account owner would the son's details need to be populated in a transaction initiated by him?
2. Moreover, the example "Decision maker is a trustee for a trust" (page 45/46 f.) raises the question, why in a trust, which has its own legal personality and therefore its LEI, its representative individually would need to be identified under "Buyer / Seller decision maker" regardless of the fact that not every one of them is necessarily involved in the "investment decision" regarding the reportable transaction with. We suggest that only the LEI should have to be reported.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_22>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_23>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_23>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_24>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_24>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_25>

Yes, the EACB would ask for the following clarifications:

1. We would like to clarify whether field 59 "execution within the firm" would have to be populated even if no human intervention in relation to the execution of an order has taken place, for example when a customer placed an order via online banking and there was no intervention for the order routing. In situations where a client order is submitted directly to a trading venue by client actions (e.g. online banking service, including online trading for retail clients) we do not see why and how Field 59 would be populated. Practically, even though the order is processed through and within the investment firm's systems, no intervention of any kind takes place (excl. error situations, limit checks etc.), and the order ends up in the trading venue solely as a result of client actions. From our point of view there should be a possibility to leave this field blank. We would like to clarify whether field 59 needs to be populated on every transaction report, as the guidelines consultation paper seem to suggest, and if so then we would welcome some guidance as to how this should be interpreted. A limit check in the order flow could hardly be described an algorithm, and no person within the investment firm directly interferes with these orders.
2. In addition to aforementioned case, we would appreciate examples to shed some light on how to draw the line between algorithmic or trader executions overall, for example when trader uses Smart Order Routing systems or similar.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_25>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_26>  
Yes. Please check point d).of our response to Q2.  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_26>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_27>  
Regarding the "short selling flag" it should be clarified that the according to Art. 11 (2) of Draft RTS 22 the credit institution is obliged to determine on a "best effort" basis whether the customer is selling short . For this purpose, the credit institution must make appropriate organisational arrangements, for example an agreement with their client in the form general terms and conditions. the customer. This corresponds to our understanding of the requirement in point 1.2.8, according to which "a firm shall request the client to disclose".

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_27>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_28>  
Yes, we would ask for the following clarifications:  
1. Example 3 in section 1.2.9.1 (page 61) refers to liquid financial instruments. The waiver referred to in Article 4(1)(b)(ii) of MiFIR is for illiquid instruments, however. The wording in this example needs to be adjusted as follows: "The transaction is executed under a 'negotiated transactions in **illiquid** financial instruments' waiver in accordance with article 4(1)(b)(ii) of Regulation (EU/600/2014)."  
2. In example 2 in section 1.2.9.1 (page 60), field 63 (OTC post-trade indicator) is populated in both reports, with both X and Y entering "LRGS". Post-trade transparency rules only require the seller to make public the details of a transaction. We believe it would make sense to have a similar rule for transaction reporting. Otherwise reports may differ considering that this is not a mandatory field.  
3. 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 of a short selling as the investment firm will never be in a position to know from its own records whether or a not a client is selling short as clients may hold positions in financial instruments with various depot bank or investment firms

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_28>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_29>  
With regard to the Status of transaction reports we would like to clarify whether it is correct to assume that "CANC" shall only be used when a transaction report which was already accepted by the competent authority has been cancelled or altered.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_29>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_30>

Under point 1.2.12, only the cases of "increase in notional" and "decrease in notional" are presented. We assume that "early terminations" or "partial terminations" do trigger a reporting obligation. Therefore, examples for early terminations and partial terminations should be added. For "early terminations" we would suggest to report a message as a "decrease in notional" to zero.

In general, it is not clear how and which "life cycle events" would need to be reported.

According to the instruction at the top of page 76 ("the original transaction report should not be cancelled"), it should be clarified that all modifications and not just those affecting the notional field should be reported as a new transaction without reference to the old transaction. In this case, the old report should not be cancelled, since the cancellation of a report is only to be made in the event of a correction of an error. This approach should apply to all non-constant trade parameters (life cycle events): e.g. redemption structure), a retroactive change in maturity, an increase in the level of an interest rate cap, or changes to fixed rates for an interest-rate swap. - meaning that the initially valid parameter is reported upon conclusion and at the report of a "life cycle event" the at the time valid trade parameter.

In general, the Guidelines should specify that in case there are several modifications within the course of one day only the latest one needs to be reported.

Moreover, in the example in 1.2.12.1, the up-front payment [Field 42] shows positive value in report of both investment firms. We would appreciate an example of an interest rate swap including an upfront payment. We are trying to better understand when to show negative value in transactions with upfront payments. In the case of a CDS, our interpretation is that had the protection buyer received the payment, a negative amount should have been reported. But how does that translate to interest rate swaps? In EMIR reporting the up-front payment (positive or negative) is always considered from the reporting party's point of view, irrespective of the buyer/seller. In our point of view, aligning the field definitions, such as this one, with EMIR reporting should be a priority.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_30>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_31>

Yes, the EACB would like to note the following:

1. The proposed method of reporting transfers of securities is not logical. According to the examples provided in sections 1.3.1.1 and 1.3.1.2, the depository banks with their LEI are to be reported as the counterparty to the transfer. The banks are neither buyers nor sellers, however. We believe it would make better sense to populate the fields with "INTC" instead and would suggest amending the examples accordingly.

2. Point 1.3.1.2 presents an example of a book-entry transfer (page 80). It is noted that the reported times may differ slightly. In practice these deviations -which are inherent to the nature of this reporting- are regular. These deviations can be of several hours, but in some cases even several days as a transmission from one investment firm to another can be time consuming (particularly in cross-border custody). The two parties have no

knowledge of what the time the other party indicates. We therefore propose to amend this by simply indicating that there may be differences in the times specified.

3. When transfers take place in a chain (e.g. client A – investment firm 1 – investment firm 2 – investment firm 3 – client B), we assume that the next person in the chain can be reported as buyer/seller (e.g. if client A sells the instrument, we as investment firm 1 would report investment firm 2 as a buyer). We would like confirmation that this understanding is correct.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_31>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_32>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_32>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_33>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_33>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_34>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_34>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_35>

Yes, we would ask for the following clarifications:

1. We would like clarification on how report an execution of a client order (possibly grouped from several end clients) that extends overnight when acting as an agent (e.g. warehousing) should be reported. These executions are usually due to very large orders, or illiquid instruments.

2. We would ask you to elaborate the logic behind using the timestamp of the first market side fill for 'any other trading capacity' on the client side transaction reports, and then using timestamp of the last market side fill (or later) when dealing on own account. We would also appreciate any examples to further clarify the issue. We consider that using the same methodology in both cases would be the most appropriate approach.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_35>



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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_36>

It is not clear why firm X should populate field 29 with "DEAL" in the example in section 1.3.7 (pages 108-109). We consider that the correct entry should be "MTCH" or "AOTC", not "DEAL", and would suggest amending the example accordingly.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_36>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_37>

The would like to note the following:

1. The concept for reporting transmissions is not logical, in our view. Field 25 is supposed to be populated with "true" if the conditions for transmission are not met. This will inevitably give rise to erroneous entries. The conditions for transmission are not met in the example in section 1.3.7 either, yet here field 25 is populated with "false" in all four reports. The example in section 1.3.8.1 is also inconsistent, because field 25 in Z's report is populated with "false" although the heading says that the conditions for transmission are not met.
2. We believe it would make more sense to use "true" in cases where the conditions for transmission are met and "false" for cases where the conditions are not met. We strongly recommend changing the reporting procedure accordingly.
3. The fields in the example in page 133 (section 1.3.8.4 (page 133) have not been populated correctly. Field 25 (transmission of order indicator) should read "true". Field 27 (transmitting firm ID code for the seller) should remain empty since no transmission occurs for client B.
4. The fields in the example in page 128 (section 1.3.8.4) also seem to not have been populated correctly. In field 7 B In the rightmost column (Report by firm Y), we believe that the buyer identification code should the Buyer be "LEI of firm Z" instead of "LEI of firm X". Please would ask to change the example accordingly or explain the rational.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_37>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_38>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_38>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_39>

The EACB believes this section should include an example showing how fields are to be populated when DEA is involved.

In particular we would ask for an elaboration of the population of the execution within firm [Field 59] from the DEA provider point of view when client is trading using DEA. We would like to see trading situations including both retail client and investment firm as DEA client. The latter preferably with both complying and not complying with the transmission as set out in Article 4 of RTS 22.

In addition, would we would like a clarification on whether there would be any difference in transaction reporting, when retail customer uses online trading system (within basic online banking service), or DEA?.

The final paragraph says that the DEA provider and DEA client should both populate field 57 (investment decision with the firm) and field 59 (execution within the firm) from their own perspective. Since a DEA provider is only acting as a provider of infrastructure, it cannot populate field 57: it does not make any decision. It should be clarified that field 57 only has to be populated by the DEA client.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_39>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_40>

Yes, the EACB would like to note the following:

1. The guidance on reporting give ups is too generic. For most scenarios, moreover, no concrete examples are provided showing how fields should be populated. It is not clear from the description of the scenarios which financial instruments are involved. Further clarification needs to be provided, as well as charts. A distinction should be made between different types of instruments, such as listed derivatives, shares or bonds.
2. We would like to point out that, in the scenario described in section 1.3.11.2, firm X does not know the client and consequently cannot identify this entity.
3. If field 29 is populated with "DEAL", the validation rules require a decision maker to be identified as well. This runs counter to Article 8(1) of draft RTS 22. We therefore see a need to delete this combination from the validation rules.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_40>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_41>

As we already stated above in our responses to Q.2. & Q3 we are strongly opposed to the proposed requirement to report securities financing transactions between financial institutions and central banks. This requirement disregards Recital 12 of Regulation (EU) 2015/2365, which states that transactions with members of the European System of Central Banks (ESCB) should be exempted from the obligation to report SFTs to trade repositories (see also our reply to Q3).

Should the requirement to report these transactions under Article 26 of MiFIR nevertheless be retained, section 1.3.13 would need to include specific examples of reporting repos and securities lending showing, among other things, how to populate fields.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_41>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_42>

The EACB sees a need to include an example showing how to populate fields in a scenario where several underlying instruments are involved.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_42>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_43>

Reporting field 35 "net amount" refers to "debt instruments". We would ask for a definition of "debt instruments" in this context.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_43>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_44>

It should be made clear that the "strike price currency" field does not need to be populated if the strike does not take the form of a currency (e.g. with FX options, caps, floors). It should also be made clear that the "price currency" field will remain empty if it cannot logically be populated with a single currency (e.g. if currency derivatives are involved).

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_44>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_45>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_45>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_46>

No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_46>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_47>

The guidelines should explain how to report float-to-float interest rate swaps (basis swaps) and forward rate agreements (FRAs). In particular, the question arises as to whether transactions of this kind should be split into two reports, as with equity swap contracts, or whether one report is sufficient.

We would also appreciate an example clarifying which field should show the spread.

Moreover, we would ask a clarification on whether it is possible that some interest rate or currency instruments currently traded on a trading venue would cause some OTC swap products to become reportable. We would appreciate any examples or further guidance on this as we feel that the rules for figuring out the reportable instruments in the OTC (IR, FX, commodities) space contain a lot of room for interpretation.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_47>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_48>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_48>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_49>  
Yes. The guidelines should explain how to report venue-traded FX options and strategies such as straddles and strangles.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_49>

**Q50: Is the difference between aggregated orders and pending allocations sufficiently clear?**

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_50>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_50>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_51>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_51>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_52>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_52>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_53>  
No response for the moment

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_53>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_54>

It would be helpful if ESMA could confirm that reportable events effectively mean venue order activity and transactions as applicable to all operators of trading venues and their members or participants. For the purposes of RTS 25, this would mean that clock synchronisation requirements would not apply outside of orders, gateways and executions.

- For orders, the time recorded should be the time the order leaves the member firm gateway for submission (to the trading venue).

- For transactions or executions, the time recorded should be that of the market execution, as returned by the trading venue.

We would also suggest designing the requirements in such a way that, for "events affecting the orders", systems have to be synchronised to within 100ms of UTC provided that the system is required to have a time-stamp granularity of 1ms. This will ensure that behaviour indicative of market abuse can be detected. Outside high frequency algorithmic trading, however, it would be unreasonable and disproportionate to require orders to be time-stamped with a maximum divergence of 1ms. Nor would it be technically feasible since the Network Time Protocol (NTP) commonly used by normal operating systems works with an algorithm providing for a minimum divergence of 1ms. Clock synchronisation using NTP typically produces a standard divergence of between 10 and 50ms. A maximum deviation of 100 ms would be appropriate and at the same time practicable.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_54>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_55>

Article 26, point b, states: "For transactions not executed on a trading venue (i.e. OTC transactions), RTS 22 states that the date and time in the transaction report shall be 'when the parties agree the content of the following fields: quantity, price, currency fields 31, 34 and 44, instrument identification code, instrument classification and direct underlying instrument code, where applicable.'"

The timestamp requirement for OTC Transactions is also referenced in RTS 22 (annex 1, field 28 Trading date time) which says "...For transactions not executed on a trading venue the time reported shall be at least to the nearest second."

We cannot understand how ESMA expects OTC transactions to be reported to the nearest second without backdating of the trade: It is not feasible to enter a trade within one second of agreement when done manually.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_55>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_56>

Yes, the EACB would like the following clarifications:

1. Example 3 in section 3.2 makes reference (page 263 on the top) to the granularity requirements specified in Article 50 of MiFID II and draft RTS 25. It is not totally clear which fields should be populated, since the annex of draft RTS 25 in Tables 1 and 2 differentiates between trading venues on the one hand and their members or participants on the other. Field 28 can only be reasonably be populated at most on the basis of the granularity of the trading venue on which the transaction was executed. If, for example, a firm uses a high frequency algorithmic trading technique on a trading venue whose gateway-to-gateway latency time is more than one millisecond on, there would be a divergence of granularity. The trading venue would confirm the execution of the transaction to its member with

millisecond-level timing accuracy, while the member would have to populate field 28 with microsecond accuracy.

We therefore consider that it is necessary to clarify that the population of field 28 cannot exceed the level of time accuracy applicable to the trading venue.

2. Moreover, we would like to know if ESMA intends to publish standards for monitoring and reporting that we must adhere to for the accuracy requirement, such as frequency of checks and log/report submission, format of reports etc.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_56>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_57>

No response for the moment.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_57>