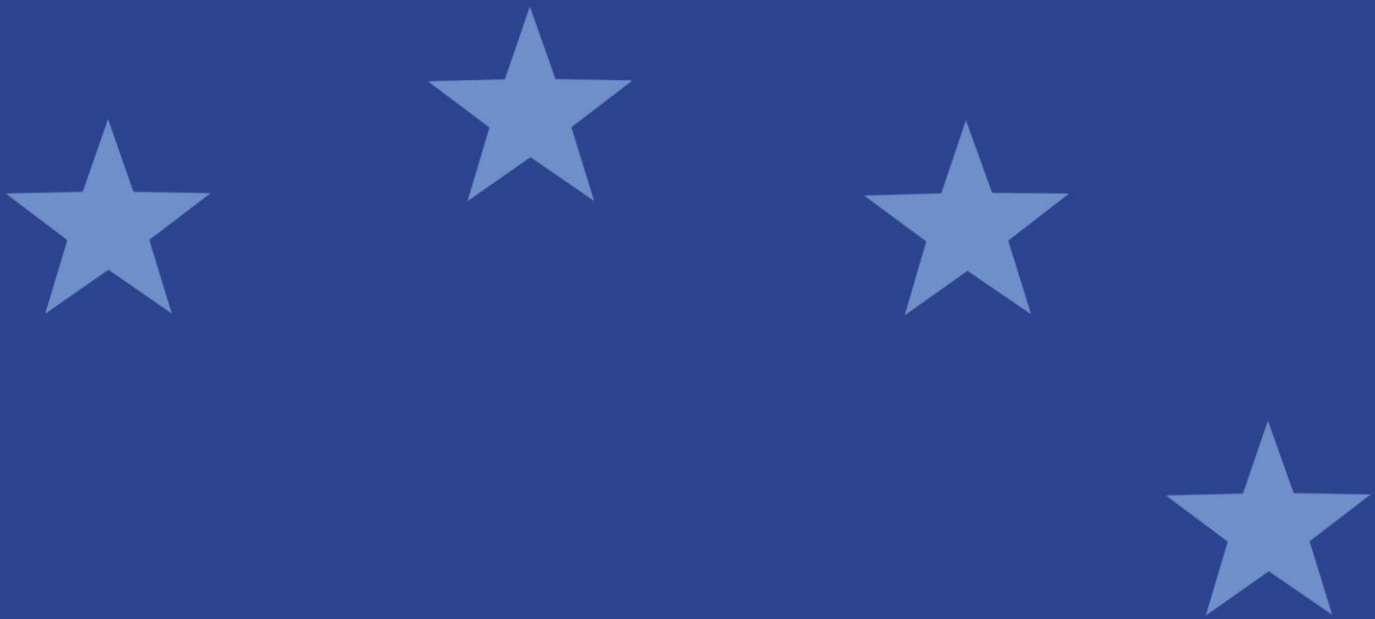




European Securities and
Markets Authority

Consultation Paper

ESMA's Guidelines on transfer of data between TRs



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **31 March 2017**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 under the heading [Legal Notice](#).

Who should read this paper

This consultation paper may be specifically of interest to trade repositories, reporting counterparties, reporting entities and CCPs as well as of interest to trade associations.

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1 Executive Summary

Reasons for publication

The purpose of these Guidelines is threefold. First of all, they aim at ensuring that the competitive TR environment underpinning EMIR is guaranteed. Furthermore, these Guidelines set out the basis to ensure high quality data available to authorities, including the aggregations carried out by TRs, even in those cases where the TR participant changes the TR to which their derivatives are reported. Finally, the Guidelines establish a consistent and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.

In addition, to ensure consistent implementation across TRs, ESMA better specifies the expected compliance with the requirement for the transfer of reporting flow in the case of withdrawal of registration of a TR included in Article 79(3) of EMIR.

Contents

The present report contains nine sections. Section 1 refers to the Executive Summary of the report. Section 2 establishes the scope of the Guidelines, while Section 3 outlines the legal framework under which these guidelines are prepared. Section 4 provides the relevant concepts and terms used in the Guidelines. Section 5 indicates the status quo and Section 6 sets out the purpose of the Guidelines. Section 7 establishes the general condition for data transfer. Sections 8 and 9 establish the specificities of data transfer in the general case or where there is an upcoming withdrawal of registration. Finally, Sections 10 and 11 set out the protocols for data transfer in the two relevant cases. Section 12 contains the summary of the proposed Guidelines and Section 13 includes the summary of the questions posed by ESMA.

Next Steps

ESMA will consider the feedback it receives to this consultation in Q1 2017 and expects to publish a final report of these Guidelines by end of Q2/ beginning of Q3 of 2017.



Acronyms and definitions used

CCP	Central Counterparty
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
EU	European Union
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MMSR	Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets
NCA	National Competent Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
RTS	Regulatory Technical Standards
SFTR	Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
TR	Trade repository
UTI	Unique Transaction Identifier



XML

Extensible Mark-up Language

XSD

XML Schema Definition



2 Scope

Who?

1. The adopted guidelines will apply to counterparties to derivatives and CCPs which report derivatives under Article 9 of Regulation (EU) No 648/2012 (EMIR), and to trade repositories (TRs) registered or recognised by ESMA.

What?

2. The adopted guidelines will apply in relation to:
 - a. The reporting without duplication of details of derivatives by counterparties and CCPs under Article 9(1) of EMIR,
 - b. The transfer of derivatives data between trade repositories at the request of the counterparties to a derivative, or the entity reporting on their behalf, or in the situation covered by Article 79(3) of EMIR, and
 - c. The record keeping of details of derivatives under Article 80(3) of EMIR.

3 Legal framework

3. As mentioned above, the guidelines that ESMA is proposing are providing additional clarification for the entities subject to the EMIR reporting requirements and the TRs on how to ensure compliance at all time with the following EMIR provisions:
 - a. Article 9(1) of EMIR which provides that “Counterparties and CCPs shall ensure that the details of their derivative contracts are reported without duplication”,
 - b. Article 80(3) of EMIR which provides that “A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.”, and
 - c. Article 79(3) of EMIR which provides that “A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.”
 - d. Article 16(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) which provides that "The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants."

4 Glossary of concepts and terms

4. All the terms that are used in EMIR, in the RTS and ITS on reporting¹, in the Q&As and in these guidelines are used with the same meaning.
5. Furthermore, for the purpose of these guidelines, ESMA defines the following concepts that would be used to better illustrate the different situations that might take place.
6. Report submitting entity (RSE, hereinafter) which is one of the counterparty fields of the amended technical standards on reporting² should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:
 - a. Reports only its side of derivatives contract, in which case it would coincide with the reporting counterparty of the contract
 - b. Reports only derivatives where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, and
 - c. Reports derivatives where it might be or might not be one of the counterparties.
7. TR participant³ is an entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR with at least one registered or recognised TR. The TR participant may be an RSE, or a reporting counterparty or a CCP, that has a “view-only” access to a TR.
8. “Old TR” means a TR to which a TR participant was reporting or to which the trades of a TR participant were reported by an RSE under Article 9 of EMIR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.
9. “New TR” means a TR to which a TR participant has started or intends to start reporting derivatives under Article 9 of EMIR, although initially that entity was reporting, either directly or through an RSE, to the old TR.
10. “Transfer” or “transfer (of details) of derivatives” means an act or process of moving the records of the derivatives from the old TR to the new TR.

¹ COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L52. OJ 23.2.2013, p.1

COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, L352, OJ 21.12.2012, p. 20

² [https://www.esma.europa.eu/system/files/force/library/2015/11/2015-esma-1645 - final_report_emir_article_9_rts_its.pdf](https://www.esma.europa.eu/system/files/force/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf)

³ Some TRs might further specify the types of TR participants such as reporting, general reporting, non-reporting, etc. participants. These sub-categories are transparent from the perspective of these guidelines.

11. “Portability” means the possibility to transfer records relating to details of derivatives reported under Article 9 of EMIR from the old TR to the new TR, as those are defined in these guidelines.
 12. “Terminated trades” means derivatives trades which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “C”.
 13. “Compressed trades” means a set of derivatives trades between a pair of counterparties which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “Z”. In most cases the compressed trades give rise to one or several new trades, which are identified as “resulting from compression”.
 14. “Matured trades” means derivatives trades which are reported to a TR and at a given point in time have reached their contractually-agreed maturity date.
 15. “Errored trades” means derivatives trades which are reported to a TR as a result of a mistake. They are identified with action type “E”.
 16. “Outstanding trades” or “outstanding derivatives” are those derivatives, including CCP-cleared derivatives, which are reported to a TR and at a given point in time have not matured and are neither terminated, errored or compressed.
- Q1. Are there any other definitions related to the reporting of derivatives under Article 9 of EMIR that would need to be taken into account?**

5 Status quo

17. EMIR establishes a multi-TR reporting environment. RSEs have been reporting under Article 9 of EMIR the details of exchange traded or over-the-counter derivative contracts to any of the six registered TR under EMIR. DTCC Derivatives Repository Ltd (DDRL), UnaVista Ltd, ICE Trade Vault Europe Ltd (ICE TVEL) and CME Trade Repository Ltd (CME TR) are all established in the UK; Regis TR S.A. (Regis TR) which is established in Luxembourg; and Krajowy Depozyt Papierów Wartościowych S.A. (KDPW) which is established in Poland. As mentioned in paragraph 94 of ESMA’s 2015 annual report and 2016 work plan⁴, ESMA is examining two further applications for registration.
18. One of the priorities for ESMA is to ensure high quality data is available to the authorities to allow them to fulfil their responsibilities and mandates. ESMA is aware that portability, if not properly conducted, can affect negatively the quality of the data available to authorities.

⁴ https://www.esma.europa.eu/sites/default/files/library/2016-234_esma_2015_annual_report_on_supervision_and_2016_work_plan.pdf

19. Reporting counterparties do not have an obligation to continue reporting to the same TR indefinitely, given there is competition between TRs. Likewise, it cannot be assumed that all existing and future TRs will continue to operate indefinitely, since there can be TRs that might in the future cease their operations. There are several situations in the market place that are currently observed by ESMA and National Competent Authorities supervising reporting entities (NCAs) when TR participants decide to change the TR to which they report.
20. These changes of TR, depending on how they are conducted, can be currently performed in different manners. A few examples are provided in the following paragraphs.
21. In the first case, the TR participant leaves its reports at the old TR and re-reports them to the new TR. All the lifecycle events pertaining to the derivatives trades are then submitted to the new TR. The old TR keeps the records as they were at the point in time at which the participant decided to change TR. Some issues with the fees charged by the old TR to the TR participant might arise (e.g. for maintaining outstanding transactions).
22. In the second case, the TR participant submits reports with Action type “Error” to the old TR⁵ with regards to the derivatives that it intends to report to the new TR. The TR participant then re-reports the relevant derivatives to the new TR. While in some instances this is made simultaneously, it might not necessarily always be done in such manner.
23. In the third case, the TR participant submits reports with Action type “Cancel” to the old TR⁶ with regards to the derivatives that it intends to report to the new TR. The TR participant then re-reports the relevant derivatives to the new TR. While in some instances this is made simultaneously, it might not necessarily always be done in such manner.
24. The aforementioned situations lead to the following breaches with respect to EMIR rules and issues with data quality:
 - a. In all three cases there is duplication of reporting, i.e. the same trade is reported twice by the same counterparty, thus breaching Article 9(1) of EMIR.
 - b. In all three cases, until the trades at the old TR are terminated, a given entity or its counterparty might erroneously be considered as having larger exposures than other entities, which are in fact the ones that have the actual risk. In general, the resulting increase in the volume of reported derivatives would signal potential systemic risk to the relevant authorities, which would as a result be misled by erroneous reporting, thus

⁵ Action type “Error” is used under EMIR to report that the derivatives contract was reported in mistake and never took place.

⁶ Action type “Cancel” is used under EMIR to report the early termination, i.e. termination before the previously agreed maturity date of the derivatives contract

contravening one of the primary objectives of TR reporting, i.e. detection of systemic risk.

- c. In all three cases, if the old TR decides not to keep derivatives reported by TR participants which no longer report to it for at least 10 years, there is a potential breach of the recordkeeping obligation under Article 80(3) of EMIR.
 - d. In all three cases, the re-reporting by the TR participant to the new TR might not include the full details of the derivatives or of all their relevant lifecycle events thus posing an additional problem on the record-keeping by the new TR, which would be in possession of position information and not of the actual transaction information.
 - e. In all three cases the performance of inter-TR reconciliation for the derivatives reported to different TRs would be significantly hindered, if not rendered impossible, as the TRs would not know with which TR to reconcile records.
25. Furthermore, the lack of a clear process on portability between TRs undermines the competitive framework under EMIR. In particular, the absence of a clear process to transfer transactions and the lack of clarity on the consequences for the participants that wish to transfer their positions to another TR, might force the latter to be “locked” at the old TR and not able to make use of the advantages of having a competitive TR landscape, such as more competitive prices and a better service offering.
26. Finally, ESMA is aware that the lack of clear rules on portability also poses problems when the TR landscape is experiencing changes, i.e. either where new TRs are registered or where the registration from a TR is withdrawn. In the latter case, it remains unclear how the TR participants need to deal with such situations without breaching their reporting obligations under Article 9 of EMIR. Similarly, it is essential to clarify how the record keeping obligation in Article 80(3) of EMIR would be ensured.

Q2. Do you agree with the analysis in the previous paragraphs and the need to provide clarity on a standardised manner to conduct portability? What other challenges are experienced by entities wishing to switch the TR to which they report?

Q3. What other issues related to transfer of data that impact the quality of the data available to authorities are observed? Please elaborate on the reasons for your response.

6 Purpose

27. The purpose of these guidelines therefore is threefold:
- a. Ensure that the competitive TR environment underpinning EMIR is guaranteed, and that TR participants can benefit from the multi-TR environment,

- b. Ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change.
 - c. Ensure that there is a consistent and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.
28. The need to transfer data to another TR may arise for different reasons. The guidelines on which ESMA is consulting therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary basis and under normal market conditions. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.
29. The proposed guidelines establish high-level principles that would need to be followed by the TR participants, e.g. RSE, counterparties and CCPs, on the one hand, and the TRs on the other. Those principles are complemented by specific procedures, included in sections 10 and 11 of this consultation paper, to be followed in order to ensure the timely and robust transfer of details of derivatives.

7 Conditions of transfer of data

30. The following subsections include the reference to the general conditions relating to the transfer of data.
31. There are also certain very specific aspects of the data transfers which would depend on whether a TR whose registration is to be withdrawn is involved or not. Those aspects would relate to (i) the timeliness of the data transfer, (ii) the recordkeeping of the data subject to transfer, (iii) the timeline of the communications and (iv) the applicable fees.
32. The following Guidelines apply in case the transfer takes place between two TRs which continue in operation: Guideline 1 to Guideline 20.
33. The following Guidelines apply in case of withdrawal of registration of a TR: Guideline 1 to Guideline 12 and Guideline 21 to Guideline 27.

7.1 Entities involved in the transfer

34. The TRs are the market infrastructures which underpin the EMIR reporting and have central function in ensuring the accurate record-keeping required under EMIR as well as the appropriate access to data by the authorities.
35. Furthermore, to ensure the achievement of the objectives included in Section 6, there is the need to establish a controlled and fully traceable process with the minimum number of error-prone links or stages. Therefore, ESMA considers that the transfer of data should

be carried out only by the old TR and the new TRs (i.e. not by the TR participant) following the principles outlined in the following sections.

36. The TR participant should not re-report any trades subject to the transfer to the new TR, neither send any report to the old TR in order to cancel them.

Guideline 1. The transfer of data should be carried out only by the old TR and the new TR. The TR participant should not re-report any trades subject to the transfer to the new TR, neither send any report to the old TR in order to cancel them.

- Q4. Do you agree with the proposal that only the TRs should carry out the transfer of data? Please elaborate on the reasons for your response.**

7.2 Migration plan

37. It is essential to ensure seamless, complete and accurate transfer of data from the old TR to the new TR. The transfer of data should be carried out in accordance with a migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data. Some of the additional aspects to be taken into account as part of the migration plan are detailed in the following subsections. The migration plan would allow all the involved entities to better control the process of data transfer.

38. The migration plan is prepared by the relevant TRs, as further detailed in these Guidelines, and is agreed with the respective TR participants.

Guideline 2. The transfer of data should be carried out by the TRs in accordance with a mutually agreed migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data.

- Q5. Do you agree with the proposed approach regarding migration plan? Please elaborate on the reason for your response.**

7.2.1 Content of the migration plan

Guideline 3. The migration plan should contain at least the following information:

- i. The scope of the data transfer (e.g. the TR participant(s), trades involved, etc.)
- ii. Detailed roles and responsibilities of the involved entities
- iii. Timeline and relevant milestones for the transfer
- iv. The controls required to ensure the confidentiality of the transferred data (e.g. type of encryption used)
- v. The controls required to ensure the integrity and accuracy of the transferred data (e.g. cryptographic checksums and hashing algorithms)
- vi. The controls required to ensure continuity of operations
- vii. Any other information that will facilitate and secure the smooth transfer of data.

Q6. Do you agree with the information to be included in the migration plan? What other aspects need to be taken into account? Please elaborate on the reasons for your response.

7.3 Format of the data

39. ESMA has undertaken a substantial work to ensure the harmonisation and standardisation of the reporting requirements by counterparties and the provision of data to authorities for EMIR, MIFID II/MIFIR, SFTR and MAR.
40. Under the amendments of Article 4 and 5 of Commission Delegated Regulation 151/2013 (amended RTS on operational standards for data access)⁷, ESMA has already proposed that the TRs use XML format and a template developed in accordance with ISO 20022 methodology to provide access to data to authorities. The same XML templates are already used for access to data through the ESMA's TRACE project. Their use would:
 - a. Ensure consistent and harmonised provision of the data and eliminate any potential barriers to entry stemming from the use of proprietary formats,

⁷ https://www.esma.europa.eu/system/files_force/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf?download=1

- b. Reduce processing costs for both the old and the new TR, and
 - c. Preserve the quality of the data subject to transfer
41. As a result, ESMA proposes that the format of the files to transfer data from the old TR to the new TR should be the XML format and template defined in the amended RTS on operational standards for data access.

Guideline 4. TRs should transfer data to each other by using the XML format and template defined in the amended RTS on operational standards for data access.

Q7. Do you agree with the use of xml format and a template developed in accordance with ISO 20022 methodology as the one already used to provide access to data to authorities? Please elaborate on the reasons for your response.

7.4 Secure machine-to-machine connection

42. In similar way, as described in section 7.3, ESMA proposes to leverage on the harmonisation and standardisation work done so far and the available infrastructures.
43. For the purpose of performing the inter-TR reconciliation process, the TRs currently exchange on a daily basis data via SFTP connections. The amended RTS on operational standards for data access establishes the same type of transfer protocol for access to data by authorities.
44. Furthermore, ESMA understands that the volumes of data to be transferred between TRs for the purposes of portability would be lower than or equal to the daily volumes provided to authorities and certainly similar to the ones related to the inter-TR reconciliation process. ESMA acknowledges that the portability transfers would be much less frequent however.
45. To contain the costs, ESMA understands that to the extent possible the TRs should use the existing infrastructure but scheduling the data transfers, for instance, in the “valley” timeslots of the inter-TR reconciliation process.

Guideline 5. The TRs should use secure machine-to-machine protocols, including the SSH File Transfer Protocol, to transfer data between each other.

Q8. Do you agree with the proposed transfer protocol? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

7.5 Data security

46. Also under the amendments of Article 4 and 5 of the amended RTS on operational standards to data access, ESMA proposed that the TRs use electronic signature and

data encryption protocols, when providing access to or making available the data to the authorities.

47. Furthermore, ESMA indicated that those signatures and data encryption protocols should be sufficient to maintain the confidentiality, integrity and protection of data and should not impede the timely provision of data to authorities neither should pose any type of barrier to the access to data. ESMA considers that the transfer of data between the TRs should be organised in a similar manner as the provision of data indicated in the amended RTS on operational standards on data access.

Guideline 6. The TRs should use advanced encryption protocols and should exchange the relevant public keys with their peers. To ensure the seamless functioning of data encryption, the TRs should test well in advance that they are able to encrypt and decrypt each one's data files.

Q9. Do you agree with the proposed encryption process? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

7.6 Data completeness

48. ESMA believes that it is essential that the completeness of the data subject to transfer is verified. However, this would inevitably require additional time for both the old TR, the TR participant and the new TR to complete the transfer of data. All three entities should agree on the number of derivatives and of records to be transferred.
49. ESMA understands that the reporting counterparties, as part of their due diligence processes and obligation under EMIR, are verifying on an on-going basis the details of derivatives that they, or the TR participant, report to the TR with the data that the TR records in its database⁸. Given that all the TRs have in place end-of-day feedback mechanisms and reports at least to the direct TR participants, ESMA understands that the reporting counterparties should be in position to carry out such verification. This is a key determinant to streamline the process of verification of data completeness.
50. In terms of the verification of the number of outstanding trades, and of the corresponding lifecycle events, that will be transferred, ESMA considers that the old TR should calculate these numbers and TR participant(s) should sign them off⁹. While the TR should also calculate the numbers of the non-outstanding trades and corresponding lifecycle events, it might not be possible to sign them off, as many counterparties could have switched their TR participant or gone out of business.

⁸ As per Article 9.2 EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract."

⁹ Sign off is the process to approve or acknowledge something by or as if by a signature



Guideline 7. The old TR should calculate the number of derivatives trades and the number of corresponding lifecycle events that will be transferred to the new TR and the TR participant should sign off the numbers related to outstanding trades.

Q10. Do you agree with the proposal to ensure completeness of the data subject to transfer? Please elaborate on the reasons for your response.

7.6.1 Identification of trades subject to transfer

51. The trades and all respective records at the TR that are subject to data transfer should be identified with the IDs of the two counterparties of the trade and the Trade ID. While the identification of the transactions should be carried out only by these three data fields, all the relevant details such as the valuation and collateral data pertaining to the derivatives should be included in the transfer.

Guideline 8. The TR participant should identify the derivatives subject to transfer only with the IDs of the two counterparties and the Trade ID. In the files that will be transferred, the old TR should include all the relevant details such as the valuation and collateral data pertaining to the derivatives.

Q11. Do you agree with the proposal to identify the data subject to transfer? Please elaborate on the reasons for your response.

7.7 Data integrity

52. It is of utmost importance to ensure the integrity of the data that is transferred. This is particularly important with regards to the transfer of data on outstanding trades, given that this data will be used for calculation of risk exposures and of general aggregated positions.

Guideline 9. For every file generated and transferred, the old TR should generate and include in the data transfer a cryptographic checksum according to a mutually agreed hashing algorithm.

Q12. Do you agree with the aforementioned proposal to ensure the integrity of data? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

7.8 Data availability

53. Another critical aspect related to the data subject to transfer is its availability to TR participants, the relevant counterparties and to the NCAs.

54. The relevant TRs should ensure the availability of data to authorities and to TR participants at the earliest opportunity. Until the transfer of all the relevant files is completed, the data on derivatives should be sent to the old TR and made available to the authorities in accordance with Article 81 of EMIR.
55. The transfer of data should only impact the TRs involved and the relevant TR participants, however it should have no effects on the quality of the data accessed by the authorities.

Guideline 10. The relevant TRs should ensure the availability of data to authorities and to TR participants at the earliest opportunity. Until the transfer of all the relevant files subject to the transfer is completed, the data on outstanding derivatives should be reported to the old TR and made available to the relevant authorities.

Q13. Do you agree with the proposed approach on data availability? What other aspects should be taken into account? Please elaborate on the reasons for your response.

7.9 Fees

7.9.1 Transfer of data

56. ESMA considers that the transfer of data in the general case, i.e. when both the old and the new TR continue in operation, follows a different logic from the transfer of data when one of the TRs has its registration withdrawn, hence both situations should be treated differently.
57. The basic difference stems from the fact that in the general case, it is the TR participant the one that triggers the data transfer, whereas in the case of transfer due to withdrawal of registration, the process is triggered by the withdrawal of registration, hence it is outside the discretion of the TR participant. Both cases are explained in detail in sections 8.6 and 9.7 of these Guidelines.

7.9.2 Recordkeeping of non-outstanding trades up to 10 years

58. Given that, under Article 80(3) of EMIR there is a requirement for the TRs to keep records of derivatives for at least 10 years after the termination of the derivative, the old TR should not charge fees after the transfer is completed. The main reasons to support this is that (i) the obligation for recordkeeping is required by EMIR and is not subject to the discretion of the counterparties and (ii) the TR would no longer have a contractual relationship with the TR participant. In case the TRs consider however that the record-keeping of derivatives for at least 10 years after the termination of the contract results in additional costs, those costs would need to be considered as part of the ordinary costs of reporting or maintaining the records of derivatives.



Guideline 11. Following the transfer of records of a TR participant to another TR, the old TR should not charge any specific fees for the recordkeeping of non-outstanding derivatives.

Q14. Do you agree with the proposed approach regarding fees for to non-outstanding derivatives? Please elaborate on the reasons for your response.

7.10 Prioritisation of data to be transferred

59. All the relevant data that is in the scope of the migration plan should be transferred. However, ESMA considers that a certain waterfall needs to be put in place to ensure the seamless continuation of operation and reporting by the TR participant. As mentioned previously, it is essential that the availability of data to authorities is ensured and that the calculation of exposures and aggregations is made on a continuous basis.

Guideline 12. In case all the data cannot be transferred in a single instance, the following waterfall regarding the order in which the data should be transferred should be followed:

- i. The latest state of the outstanding trades received, i.e. the “trade state”
- ii. The reports related to lifecycle events applicable to the outstanding trades
- iii. All terminated, compressed and matured trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.
- iv. All errored trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.

Q15. Do you agree with the proposed waterfall approach? What additional aspects need to be taken into account? Please elaborate on the reason for your response.

8 Transfer of data requested by a TR participant

8.1 Scope of the data

60. The data to be transferred in the general case, i.e. the one requested by the TR participant and where the registration of the old TR is not withdrawn nor in the process to be withdrawn, should comprise all outstanding trades, as well as any related lifecycle events, such as modifications, valuations, etc. of the TR participant or where the TR participant is an RSE, the trades of the clients of the TR participant that have confirmed their acceptance to transfer trades to another TR. The trades should be identified as per section 7.6.1.

Guideline 13. In case a non-reporting participant of the TR decides to stay with the old TR, their records should be stripped from those that are transferred. It will be then the obligation of the non-reporting TR participant to find a reporting participant or to change its status.

Guideline 14. In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, the scope of the data should comprise at least:

- i. all outstanding trades of the TR participant or where the TR participant is an RSE, the trades of the clients of the TR participant that have confirmed their acceptance to transfer trades to another TR, and
- ii. any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding trades.

Q16. Do you agree with the scope of the data subject to transfer in the general case? Please elaborate on the reasons for your response.

8.2 Initiation of the process

61. The TR participant that is willing to switch TR should request the new TR to initiate the transfer of its reporting. The TR participant should notify also the old TR.

62. Once the TR participant requests the transfer of the relevant trades identified as per section 7.6.1, the process described in Annex I General procedure for migration of data should be followed so as to ensure that the transfer of data is performed as established in section 7.

Guideline 15. In the case of transfer of data requested by a TR participant, the process described in Annex I General procedure for migration of data should be followed by the TR participant, the old and the new TR.

Q17. Do you agree with the proposed sequence relating to the transfer in the general case? Please elaborate on the reasons for your response.

8.3 Communications to authorities

63. Given that one of the objectives of EMIR is to ensure the direct and immediate access to data by authorities, it is important that they are kept up to date with respect to the TRs used by the relevant TR participants. While currently there is no such notification when the reporting to a given TR was established, the authorities have already built some understanding of the TRs used by their supervised entities. The relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting should be notified by the old TR of the expected date of the transfer.

64. As soon as the outstanding trades of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant.

Guideline 16. In the case of transfer of data requested by a TR participant, the old TR should notify the relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting of the expected date of the transfer. As soon as the outstanding trades of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant.

Q18. Do you agree with the communications in the case of transfer requested by the TR participant? Please elaborate on the reason for your response

8.4 Timeliness of the data transfer

65. In principle, the data transfer should be performed on a non-working day (for example a weekend) and it should be the same for removing trades from one TR and uploading to the new TR. Depending on the volume of records to be transferred, however, the two TRs might agree on carrying it out on a working day.

Guideline 17. The transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day. The old and the new TR can however agree on carrying it out on a working day depending on the expected volume of the transfer.

66. As soon as the communication referred to in paragraph 64 is made, the TR participant should ensure that it is not reporting to the old TR. The TR participant should further

report to the new TR the relevant lifecycle events and position data relating to the transferred trades.

Guideline 18. As soon as the transfer of outstanding trades is confirmed by the new TR, the TR participant should report only to the new TR the relevant lifecycle events and position data relating to the transferred trades.

8.5 Recordkeeping of the transferred data

67. In the general case of data transfers, the old TR should isolate and keep safely, for at least 3 months after completion of the transfer, all transferred files together with their cryptographic checksums. This will allow carrying out any potential data quality confirmation by ESMA or by the NCAs.
68. The timely retrieval of data should be ensured. The maximum allowable time should not exceed 7 calendar days.
69. As long as the transferred data is kept by the old TR, it should apply the same recordkeeping policies, procedures and safeguards to the transferred data as prescribed by EMIR for the rest of data reported.

Guideline 19. In the case of transfer of data requested by a TR participant, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of data, for at least three months and should ensure the timely retrieval of data in no more than seven calendar days.

Q19. Do you agree with the proposed recordkeeping of transferred data? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

8.6 Fees in the case of transfer requested by a TR participant

70. Where TRs decide to include in their fee structures fees for transfer of data to another TR, those fees should be cost-related, as required under Article 78(8) of EMIR and should be included in the fee schedule of the TR, which is made public.
71. Furthermore, the fees should not be set so high so as to disincentivise TR participants from transferring their trades to another TR as this could lead to the foreclosure of the industry or prevent innovation and specialisation.
72. While, on the one hand, ESMA considers that a fee on the transfer might potentially disincentivise portability, on the other hand ESMA understands that there is a cost related to the transfer of data that will be borne by old TR.

73. As mentioned in the previous paragraphs in case a TR decides to include in their fee structures fees for transfer of data to another TR, those fees should be cost-related, as required under Article 78(8) of EMIR and should be included in the fee schedule of the TR, which is made public. The TRs should follow their respective internal procedures for notifications to ESMA.
74. Particularly with regards to the cost-relatedness of the fees related to the transfer of data the old TRs should not charge fees for *lucrum cessans*, i.e. the missed profits. If charged, the fees should relate specifically to the costs necessary to carry out the data transfer.
75. Some other TRs might decide to introduce discounts or rebates to attract customers. Similarly, ESMA understands that the cost-relatedness of any discount or rebate should be duly justified prior to its application, as required under Article 78(8) of EMIR.

Guideline 20. Any fees charged by the old or the new TR in the case of transfer requested by the TR participant should be cost-related, non-discriminatory and included in the fee schedule of the relevant TR, which is made public.

Q20. Do you agree with the proposed approach for fees in the case of transfer of data at the request of a TR participant? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

9 Transfer of data in the case of withdrawal of registration

9.1 Scope of the data to be transferred in the case of withdrawal

76. The data to be transferred in the case of withdrawal of registration of a TR should comprise:
 - a. All outstanding trades, as well as any related lifecycle events, such as modifications, valuations, etc.
 - b. All terminated, compressed and matured trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.
 - c. All errored trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.
77. However, to ensure the seamless and timely reestablishment of the reporting, the general principles relating to prioritisation of data to be transferred detailed in section 7.10. The transfer of the rest of the trades should commence only when it is clear that this would not impact the transfer of outstanding trades.

Guideline 21. The transfer of data in the case of withdrawal of registration of a TR should comprise all the derivatives reported to the TR. The priority set out in Guideline 12 should be followed.

Q21. Do you agree with the scope of the data subject to transfer in the case of withdrawal of registration? Please elaborate on the reasons for your response.

9.2 Migration plan as part of the wind-down plan

78. The withdrawal of registration of a TR would require the performance of several tasks to wind down all the services and processes at the TR. In that case the migration plan(s) referred to in section 7.2 of the Guidelines would be part of the TR's wind-down plan. This would ensure that before the cessation of activities the reporting flows and data are successfully redirected.

Guideline 22. Where the data transfer is related to the withdrawal of registration of a TR, the migration plan(s) should be included as part of the wind-down plan presented by the TR.

Q22. In the case of transfer of data due to withdrawal of registration, do you agree with the proposal to include the migration plans as parts of the wind-down plan? Please elaborate on the reasons for your response.

9.3 Withdrawal of registration requested by the TR - Article 71(1)(a) of EMIR

79. Article 71(1)(a) of EMIR envisages the possibility that a withdrawal of registration is requested by the TR, i.e. the TR "expressly renounces the registration". There is a further situation in that sub-paragraph of EMIR related to the lack of provision of services by the TR in the preceding six months, however ESMA considers that in that case there is no practical need to treat that situation separately.

80. Stemming from the requirement under Article 79(3) of EMIR, when the process for withdrawal of registration under Article 71(1)(a) of EMIR is triggered, as part of the request, the old TR should present a wind-down plan that includes the new TR or TRs to which the reports referred to in section 9.1 would be transferred.

81. The TR should also notify ESMA and all the TR participants of its intentions to request withdrawal of registration at least 6 months in advance of the intended date of cessation of operations. Where the TR participants, e.g. RSE, the counterparties or CCPs request to move to different TRs, the TR should seek to accommodate each specific request for transfer, including the ones made by non-reporting TR participants.

82. When transferring the derivatives trades, the TRs should follow the protocol included in Annex II - Procedure for migration in case of withdrawal of registration.

83. In the case of withdrawal of registration under Article 71(1)(a) of EMIR, the old TR should prove that the transfer to the new TR or TRs was completed by the date on which ESMA adopts the decision to withdraw its registration.

9.4 Withdrawal of registration not requested by the TR

84. Articles 71(1)(b)-(c) of EMIR provide that ESMA shall withdraw the registration of a TR where the TR (b) obtained the registration by making false statement of by any other irregular means, and (c) no longer meets the conditions under which it was registered. Article 73(1)(d) of EMIR provides that in case ESMA finds out that a TR has committed one of the infringements listed in Annex I of EMIR, it shall, as a last resort, withdraw the registration of the TR. ESMA understands that the aforementioned situations should be treated in the same way.
85. Stemming from the requirement under Article 79(3) of EMIR, when the process for withdrawal of registration is triggered, ESMA will require the TR to present a wind-down plan that includes the new TR or TRs to which the data referred to in paragraph 76 is proposed to be transferred.
86. The main purpose for ESMA is to ensure that the old TR transfers the data in a timely manner so that the reporting of data and the calculation of risk exposures can be made seamlessly and securely.
87. In case either (i) the old TR does not provide to ESMA the TR or TRs to which the data will be transferred or (ii) the TR or TRs which are contacted by the old TR refuse to accept the data and the subsequent data flow, ESMA should determine the TR or TRs that would receive the data. It is worth mentioning that a similar approach, i.e. appointment of an entity, is envisaged in the EC proposal for Recovery and resolution of CCPs¹⁰.
88. An entity designated by ESMA to receive a data transfer in the context of Article 79(3) of EMIR may refuse to do so only based on objective criteria related to risks on the confidentiality, integrity and availability of data already recorded by that TR. This should be related only to the volume of data to be transferred and the additional reporting flow.
89. The new TR(s) should notify the participants of the old TR about their appointment and should proceed with the preparation of the relevant migration plans. All the general conditions of data transfer that are included in Section 7 should be followed. In the hypothetical case that a TR participant disagrees with the designated TR, that TR participant would be able to transfer its records to a TR of its choice as described in section 8.

¹⁰ http://ec.europa.eu/finance/financial-markets/docs/ccp/161128-ccp-proposal_en.pdf

90. The Protocol included in Annex II - Procedure for migration in case of withdrawal of registration should be followed.
91. In the case of withdrawal of registration under Article 71(1)(b)-(c) of EMIR, the old TR should prove that the transfer to the new TR or TRs was completed by the date on which ESMA adopts the decision to withdraw its registration. ESMA may also request confirmation by the new TR or TRs.

Guideline 23. Where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex II - Procedure for migration in case of withdrawal of registration should be followed by the TR participant, the old TR and the new TR. The old TR, i.e. the one whose registration is to be withdrawn should prove that all the transfers have been successful.

Q23. Do you agree with the proposed sequence relating to the transfer of data in both situations related to withdrawal of registration of a TR? Please elaborate on the reasons for your response.

9.5 Communication to authorities

92. Given that one of the objectives of EMIR is to ensure the direct and immediate access to data by authorities, it is important that they are kept up to date with respect to the TRs used by the relevant TR participants. While currently there is no such notification when the reporting to a given TR was established, the authorities have already built some understanding of the TRs used by their supervised entities.
93. In the case of withdrawal of registration requested by the TR, the TR should notify ESMA of its request of withdrawal of registration at least 6 months in advance of the intended date of cessation of operations. The relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting should be notified by the old TR of the expected date of the transfer.

Guideline 24. A TR should notify ESMA at least six months in advance of the intended date of cessation of operations and should then immediately notify the TR participants and the relevant NCAs.

94. In the case of withdrawal of registration not requested by the TR, it will be ESMA notifying the authorities.
95. As soon as the outstanding trades of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant. The TR participant can then establish the reporting to the new TR.

Guideline 25. Once the transfer has been completed, the new TR should confirm it to the relevant NCAs.

Q24. Do you agree with the proposed notifications in those cases related to withdrawal of registration of a TR? Please elaborate on the reasons for your response.

9.6 Recordkeeping of the transferred data

96. In the case of withdrawal of registration, the old TR should keep the transferred data available –and not delete them– for data quality confirmations until the date of actual cessation of operations. It is important that the timely retrieval of data in more than seven calendar days is ensured by the old TR.
97. At the date of actual cessation of operations, the old TR will perform a secure data destruction/deletion ensuring that data could not be undeleted or recovered after that date.
98. The secure data destruction/deletion will be done in accordance with leading practices and the most reliable techniques available at the specific time of the data destruction.

Guideline 26. In the case of withdrawal of registration, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of data, until the date of actual cessation of operations and should ensure the timely retrieval of data in no more than seven calendar days. At the date of actual cessation of operations, the old TR should perform a secure destruction/deletion, in accordance with leading practices and most reliable techniques available, ensuring that data could not be undeleted or recovered after that date.

Q25. Do you agree with the proposal regarding the recordkeeping of transferred records by the old TR in the case of withdrawal of registration? Please elaborate on the reasons for your response.

9.7 Fees in the cases of withdrawal of registration

99. The withdrawal of registration would require the redirection of reporting flows and the transfer of data to other TR(s). Since the moment in which the process of withdrawal of registration is triggered, i.e. following the communication referred in section 9.5, the transfer would be considered as part of the wind-down of the TR. It would need to be included in the relevant migration plans prepared by the old TR.
100. As mentioned earlier the withdrawal of registration would require different actions to be taken and most importantly, it is outside the discretion of the TR participants. The old TR would no longer be operational and more importantly, the cessation operations could



introduce some temporary frictions in the market. The new TR or TR would receive business without any particular effort on their side either.

101. Therefore, the specificity of the case and the protection of those TR participants, and the entities on whose behalf they report, that are forced to change TRs, would require that no fees are charged by either TR.

Guideline 27. In the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data.

Q26. Do you agree with the proposed approach for fees in the case of transfer of data due to withdrawal of registration of a TR? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

10 Annex I - General procedure for migration of data

<p>A. Planning and preparation</p>
<p>After signing the relevant contractual agreement with the new TR, the TR participant should identify as per section 7.6.1 the trades that it will be transferring.</p> <p>The new TR should prepare the migration plan as referred to in section 7.2 and the TR participant signs it off.</p>
<p>The new TR communicates to and agrees with the old TR the migration plan elaborated in accordance with Section 7.2.</p> <p>The new TR notifies by email the relevant authorities about the transfer.</p>
<p>The old TR determines and agrees with TR participant the following aggregate information regarding the trades of the TR participant subject to transfer:</p> <ul style="list-style-type: none"> • The total number of outstanding trades • The total number of reports relating to lifecycle event of these trades • The total number of records relating to terminated, compressed and matured trades (in case those are transferred) • The total number of records relating to errored trades (in case those are transferred)
<p>The TR participant should confirm the accuracy of the information with its own records¹¹. In case there is a mismatch, the old TR and the TR participant should try to reconcile their records and agree on the final list of trade reports that will be migrated.</p> <p>The TR participant should notify this information to the new TR.</p>
<p>B. Execution of transfer</p>
<p>Once the number of trades and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with the format included in section 7.3. and the relevant generic principles.</p>
<p>The old and new TRs execute the migration plan. The old TR should transfer the files generated to the new TR which acknowledges the file transfer.</p> <p>In case the volume of files is manageable, the old TR should transfer at the same time the outstanding trades file(s) as well as the corresponding lifecycle activity file(s).</p> <p>In case the volume of files does not allow the simultaneous transfer, the prioritisation included in section 7.10 should be followed.</p>

¹¹ As per Article 9.2 EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract." In the case of reporting participant that reports on behalf of others, it should use also their records.

In this respect outstanding should be transferred within a predetermined weekend while lifecycle events at the earliest opportunity within the next calendar week.
C. Verification of the data transferred
<p>The new TR should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding trades received, i.e. the “trade state” ○ The total number of outstanding trades ○ The total number of records relating to lifecycle events corresponding to the outstanding trades ○ The total number of records relating to terminated, compressed and matured trades ○ The total number of records relating to errored trades
The TR participant should confirm the accuracy of the information with its own records ¹² . In case there is a mismatch, the TR participant and the two TRs are reconciling their records until an agreement is achieved.
D. Final notifications
The new TR should inform all the TRs that the reporting participant has switched to it. This information should be used to facilitate the reconciliation process for the relevant trades which have been migrated to the new TR.
The new TR should inform the relevant NCA(s) and ESMA about the finalisation of the transfer of data of the TR participant and identify the types of trades involved.
E. Recordkeeping and secure data deletion
The old TR should remove the migrated outstanding trades from any data aggregations.
The old TR should maintain the data transferred for as long as prescribed by the general principles and according to EMIR requirements as before the transfer.
The old TR will destroy/delete the transferred data when this is permitted by following the relevant general principles for secure deletion/destruction.

Q27. Do you agree with the sequence of the process of transfer of data in the general case? What other aspects and milestones need to be included? Please elaborate on the reasons for your response.

¹² As per Article 9.2 EMIR “Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.” In the case of reporting participant that reports on behalf of others, it should use also their records.

11 Annex II - Procedure for migration in case of withdrawal of registration

<p>A. Initial notifications</p> <p>(Voluntary withdrawal) The TR notifies ESMA, TR participants, other involved TRs and NCAs of its request to withdraw its registration at least six months in advance of the intended date of cessation of operations (in case withdrawal is requested by the TR).</p> <p>Or</p> <p>(Non-voluntary withdrawal) ESMA notifies the new TR(s) and the NCAs that the former should receive data originally reported to the old TR (in case withdrawal is not requested by the TR)</p>
<p>B. Planning and preparation</p> <p>The old TR prepares the migration plan, as detailed in section 7.2, and submit it to ESMA and the new TR(s). ESMA and the other involved TRs raise any potential objections or concerns and after resolving them all parties agree on the migration plan details.</p> <p>The old TR identifies as per section 7.6.1 the trades subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the trades subject to transfer per TR:</p> <ul style="list-style-type: none"> ○ The total number of outstanding trades ○ The total number of records relating to lifecycle events corresponding to the outstanding trades ○ The total number of records relating to terminated, compressed and matured trades ○ The total number of records relating to errored trades
<p>C. Execution of transfer</p> <p>Once the number of trades and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with the format included in section 7.3. and the relevant applicable general principles.</p> <p>The old TR executes the migration plan. Generated files are transferred from the old TR to the new TR(s) which acknowledge each transfer.</p> <p>The prioritisation of trades and records included in Section 7.10 is followed.</p> <p>If possible, outstanding trades should be transferred during and within a weekend, while corresponding lifecycle events and valuations/collaterals at the earliest opportunity and no later than the week after.</p> <p>If not possible, then outstanding trades should be segmented, per TR participant, to two or more batches to be transferred during consequent weekends. The corresponding lifecycle events per batch should be transferred at the earliest opportunity and no later than the end of the week that follows the transfer of the relevant outstanding trades batch.</p>

<p>The remaining trades should be transferred as soon as possible within a month after the conclusion of the transfer of outstanding trades.</p> <p>Any issues identified and progress made are reported regularly to ESMA in a timely manner.</p>
<p>D. Verification of data transfer</p>
<p>The new TR(s) should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding trades received, i.e. the “trade state” ○ The total number of outstanding trades ○ The total number of records relating to lifecycle events corresponding to the outstanding trades ○ The total number of records relating to terminated, compressed and matured trades ○ The total number of records relating to errored trades
<p>The new TRs should notify ESMA and the old TR of the result of the verification. In case of verification failure, the root cause is investigated by both parties (old and new TRs) and the transfer process is repeated until the data transfer is successful.</p>
<p>E. Final notifications</p>
<p>The new TRs should notify the relevant TR participants, all the remaining TRs and the respective NCAs (by email) of the successful conclusion of the transfer.</p>
<p>F. Recordkeeping and secure data deletion</p>
<p>The old TR should maintain the data transferred for as long as detailed in section 9.6 and according to EMIR requirements as before the transfer.</p>
<p>The old TR should destroy/delete the transferred data when this is permitted and following the relevant principles for secure deletion/destruction included in section 9.6.</p>

Q28. Do you agree with the sequence of the process of transfer of data in case of withdrawal of registration? What other aspects and milestones need to be included? Please elaborate on the reasons for your response.

12 Guidelines

Guideline 1. The transfer of data should be carried out only by the old TR and the new TR. The TR participant should not re-report any trades subject to the transfer to the new TR, neither send any report to the old TR in order to cancel them.

Guideline 2. The transfer of data should be carried out by the TRs in accordance with a mutually agreed migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data.

Guideline 3. The migration plan should contain at least the following information:

- i. The scope of the data transfer (e.g. the TR participant(s), trades involved, etc.)*
- ii. Detailed roles and responsibilities of the involved entities*
- iii. Timeline and relevant milestones for the transfer*
- iv. The controls required to ensure the confidentiality of the transferred data (e.g. type of encryption used)*
- v. The controls required to ensure the integrity and accuracy of the transferred data (e.g. cryptographic checksums and hashing algorithms)*
- vi. The controls required to ensure continuity of operations*
- vii. Any other information that will facilitate and secure the smooth transfer of data.*

Guideline 4. TRs should transfer data to each other by using the XML format and template defined in the amended RTS on operational standards for data access.

Guideline 5. The TRs should use secure machine-to-machine protocols, including the SSH File Transfer Protocol, to transfer data between each other.

Guideline 6. The TRs should use advanced encryption protocols and should exchange the relevant public keys with their peers. To ensure the seamless functioning of data encryption, the TRs should test well in advance that they are able to encrypt and decrypt each one's data files.

Guideline 7. The old TR should calculate the number of derivatives trades and the number of corresponding lifecycle events that will be transferred to the new TR and the TR participant should sign off the numbers related to outstanding trades.

Guideline 8. The TR participant should identify the derivatives subject to transfer only with the IDs of the two counterparties and the Trade ID. In the files that will be transferred, the old TR should include all the relevant details such as the valuation and collateral data pertaining to the derivatives.

Guideline 9. For every file generated and transferred, the old TR should generate and include in the data transfer a cryptographic checksum according to a mutually agreed hashing algorithm.

Guideline 10. The relevant TRs should ensure the availability of data to authorities and to TR participants at the earliest opportunity. Until the transfer of all the relevant files subject to the transfer is completed, the data on outstanding derivatives should be reported to the old TR and made available to the relevant authorities.

Guideline 11. *Following the transfer of records of a TR participant to another TR, the old TR should not charge any specific fees for the recordkeeping of non-outstanding derivatives.*

Guideline 12. *In case all the data cannot be transferred in a single instance, the following waterfall regarding the order in which the data should be transferred should be followed:*

- i. The latest state of the outstanding trades received, i.e. the “trade state”*
- ii. The reports related to lifecycle events applicable to the outstanding trades*
- iii. All terminated, compressed and matured trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.*
- iv. All errored trades that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.*

Guideline 13. *In case a non-reporting participant of the TR decides to stay with the old TR, their records should be stripped from those that are transferred. It will be then the obligation of the non-reporting TR participant to find a reporting participant or to change its status.*

Guideline 14. *In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, the scope of the data should comprise at least:*

- i. all outstanding trades of the TR participant or where the TR participant is an RSE, the trades of the clients of the TR participant that have confirmed their acceptance to transfer trades to another TR, and*
- ii. any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding trades.*

Guideline 15. *In the case of transfer of data requested by a TR participant, the process described in Annex I General procedure for migration of data should be followed by the TR participant, the old and the new TR.*

Guideline 16. *In the case of transfer of data requested by a TR participant, the old TR should notify the relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting of the expected date of the transfer. As soon as the outstanding trades of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant.*

Guideline 17. *The transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day. The old and the new TR can however agree on carrying it out on a working day depending on the expected volume of the transfer.*

Guideline 18. *As soon as the transfer of outstanding trades is confirmed by the new TR, the TR participant should report only to the new TR the relevant lifecycle events and position data relating to the transferred trades.*

Guideline 19. *In the case of transfer of data requested by a TR participant, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of data, for at least three months and should ensure the timely retrieval of data in no more than seven calendar days.*

Guideline 20. *Any fees charged by the old or the new TR in the case of transfer requested by the TR participant should be cost-related, non-discriminatory and included in the fee schedule of the relevant TR, which is made public.*

Guideline 21. *The transfer of data in the case of withdrawal of registration of a TR should comprise all the derivatives reported to the TR. The priority set out in Guideline 12 should be followed.*

Guideline 22. *Where the data transfer is related to the withdrawal of registration of a TR, the migration plan(s) should be included as part of the wind-down plan presented by the TR.*

Guideline 23. *Where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex II - Procedure for migration in case of withdrawal of registration should be followed by the TR participant, the old TR and the new TR. The old TR, i.e. the one whose registration is to be withdrawn should prove that all the transfers have been successful.*

Guideline 24. *A TR should notify ESMA at least six months in advance of the intended date of cessation of operations and should then immediately notify the TR participants and the relevant NCAs.*

Guideline 25. *Once the transfer has been completed, the new TR should confirm it to the relevant NCAs.*

Guideline 26. *In the case of withdrawal of registration, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of data, until the date of actual cessation of operations and should ensure the timely retrieval of data in no more than seven calendar days. At the date of actual cessation of operations, the old TR should perform a secure destruction/deletion, in accordance with leading practices and most reliable techniques available, ensuring that data could not be undeleted or recovered after that date.*

Guideline 27. *In the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data.*

13 Summary of questions

- Q1.** *Are there any other definitions related to the reporting of derivatives under Article 9 of EMIR that would need to be taken into account?*
- Q2.** *Do you agree with the analysis in the previous paragraphs and the need to provide clarity on a standardised manner to conduct portability? What other challenges are experienced by entities wishing to switch the TR to which they report?*
- Q3.** *What other issues related to transfer of data that impact the quality of the data available to authorities are observed? Please elaborate on the reasons for your response.*
- Q4.** *Do you agree with the proposal that only the TRs should carry out the transfer of data? Please elaborate on the reasons for your response.*
- Q5.** *Do you agree with the proposed approach regarding migration plan? Please elaborate on the reason for your response.*
- Q6.** *Do you agree with the information to be included in the migration plan? What other aspects need to be taken into account? Please elaborate on the reasons for your response.*
- Q7.** *Do you agree with the use of xml format and a template developed in accordance with ISO 20022 methodology as the one already used to provide access to data to authorities? Please elaborate on the reasons for your response.*
- Q8.** *Do you agree with the proposed transfer protocol? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.*
- Q9.** *Do you agree with the proposed encryption process? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.*
- Q10.** *Do you agree with the proposal to ensure completeness of the data subject to transfer? Please elaborate on the reasons for your response.*
- Q11.** *Do you agree with the proposal to identify the data subject to transfer? Please elaborate on the reasons for your response.*
- Q12.** *Do you agree with the aforementioned proposal to ensure the integrity of data? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.*
- Q13.** *Do you agree with the proposed approach on data availability? What other aspects should be taken into account? Please elaborate on the reasons for your response.*
- Q14.** *Do you agree with the proposed approach regarding fees for to non-outstanding derivatives? Please elaborate on the reasons for your response.*
- Q15.** *Do you agree with the proposed waterfall approach? What additional aspects need to be taken into account? Please elaborate on the reason for your response.*

Q16. Do you agree with the scope of the data subject to transfer in the general case? Please elaborate on the reasons for your response.

Q17. Do you agree with the proposed sequence relating to the transfer in the general case? Please elaborate on the reasons for your response.

Q18. Do you agree with the communications in the case of transfer requested by the TR participant? Please elaborate on the reason for your response

Q19. Do you agree with the proposed recordkeeping of transferred data? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

Q20. Do you agree with the proposed approach for fees in the case of transfer of data at the request of a TR participant? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

Q21. Do you agree with the scope of the data subject to transfer in the case of withdrawal of registration? Please elaborate on the reasons for your response.

Q22. In the case of transfer of data due to withdrawal of registration, do you agree with the proposal to include the migration plans as parts of the wind-down plan? Please elaborate on the reasons for your response.

Q23. Do you agree with the proposed sequence relating to the transfer of data in both situations related to withdrawal of registration of a TR? Please elaborate on the reasons for your response.

Q24. Do you agree with the proposed notifications in those cases related to withdrawal of registration of a TR? Please elaborate on the reasons for your response.

Q25. Do you agree with the proposal regarding the recordkeeping of transferred records by the old TR in the case of withdrawal of registration? Please elaborate on the reasons for your response.

Q26. Do you agree with the proposed approach for fees in the case of transfer of data due to withdrawal of registration of a TR? What additional aspects need to be taken into account? Please elaborate on the reasons for your response.

Q27. Do you agree with the sequence of the process of transfer of data in the general case? What other aspects and milestones need to be included? Please elaborate on the reasons for your response.

Q28. Do you agree with the sequence of the process of transfer of data in case of withdrawal of registration? What other aspects and milestones need to be included? Please elaborate on the reasons for your response.