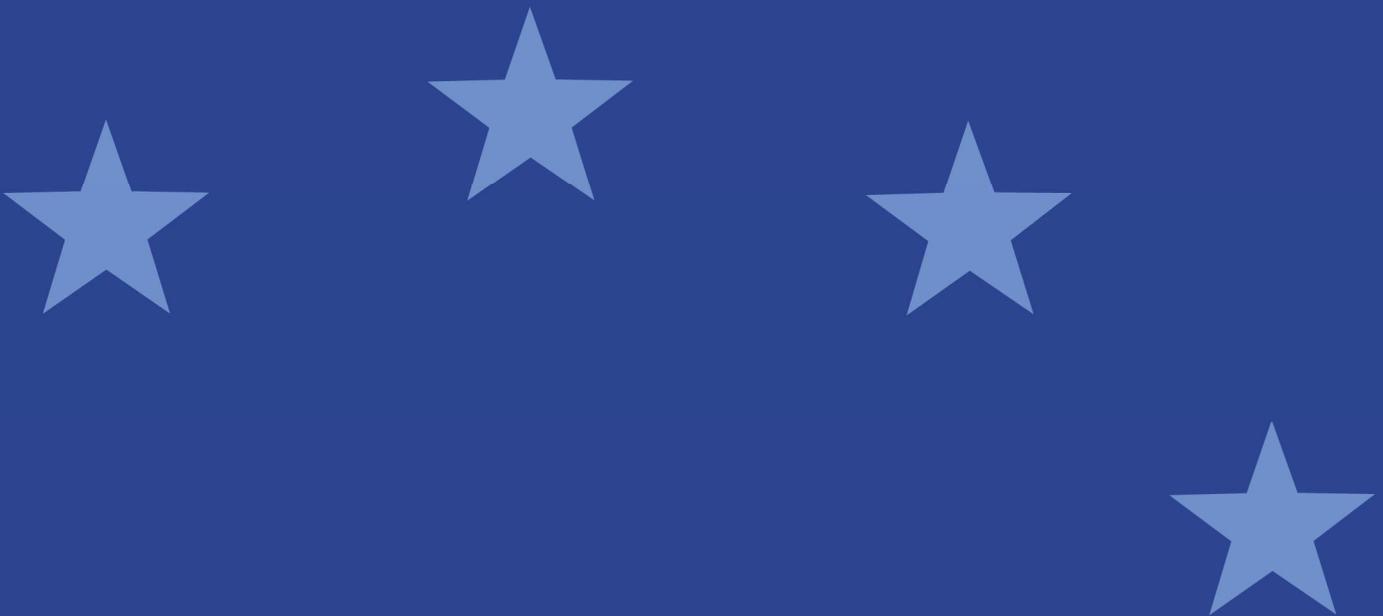




European Securities and
Markets Authority

Call for evidence

Transaction reporting



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions presented below in Chapter V. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale.

ESMA will consider all comments received by **4 June 2012**.

All contributions should be submitted online at www.esma.europa.eu under the heading '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 'Disclaimer'.

Who should read this paper

This paper will be of particular interest to investment firms and market operators, as well as other market participants involved in transaction reporting.



Acronyms used

ESMA	European Securities and Markets Authority
MiFID	Markets in Financial Instruments Directive
CESR	Committee of European Securities Regulators
TREM	Transaction Reporting and Exchange Mechanism

I. Executive summary

Upon coming into force on 1 November 2007, the Markets in Financial Instruments Directive 2004/39/EC (MiFID) established a transaction reporting regime where investment firms submit reports of executed transactions to their competent authorities regarding financial instruments admitted to trading on regulated markets. The reports can be made either by the investment firm itself, a third party acting on its behalf, or by a trade matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. Competent authorities further exchange the reports between themselves for the purpose of trading surveillance and protection of market integrity.

In May 2007, CESR (the predecessor of ESMA) published the Level 3 Guidelines on MiFID transaction reporting (CESR/07-301)¹. The guidelines covered non-technical issues where there was a need for a harmonised approach by national competent authorities: transaction reporting by branches, scope of the transaction reporting obligation and approval of reporting channels. The guidelines were an interim solution in order to avoid disruptions in reporting and supervision systems of competent authorities that existed at the time MiFID entered into force. CESR, therefore, committed to launch a review of the guidelines after some time of experience of full operation of the MiFID transaction reporting regime with a view of producing definitive guidance in this area which would aim at converging practices between national competent authorities.

During the course of 2012 ESMA intends to proceed with the initiative of preparing guidelines on harmonised transaction reporting under MiFID, which will also include, among others, an update of CESR issued guidance on 'How to report transactions on OTC derivative instruments' (CESR/10-661)². In line with its public statement on consultative practices (Ref. ESMA/2011/11)³, ESMA first publishes this call for evidence in order to provide the opportunity to all interested parties to make early submissions on this work stream launched at ESMA's own initiative. The call for evidence will afterwards be followed by the public consultation accompanied by a cost-benefit analysis.

This work is not related to the upcoming changes of the regulatory framework: it is considered necessary to improve the quality of the reporting in the current legal framework and to harmonise existing practices. However, while launching this work, ESMA acknowledges the legislative initiatives on MiFID and the related Regulation currently discussed in the Parliament and the Council. Therefore, the work on guidelines on harmonised transaction reporting will be carried out taking into account the progress of the negotiations. Should there be a significant difference in the content of the guidelines under preparation and the negotiated MiFID/MiFIR or too short of a time gap between the expected publication of the guidelines and the development of implementing measures under MiFID/MiFIR, the work on the guidelines will be moved into future work on implementing measures (e.g. technical standards). Hence, ESMA reserves the right to assess closer to the end of 2012 whether the outcome of this work will be finalised, made public and applicable before MiFID/MiFIR implementing measures come into force or whether any publication is deferred to make it part of future implementing measures.

Next steps

¹ http://www.esma.europa.eu/system/files/07_301.pdf

² http://www.esma.europa.eu/system/files/10_661.pdf

³ http://www.esma.europa.eu/system/files/2011_11.pdf



This call for evidence seeks to collect interested parties' views on what elements ESMA should consider in its work on guidelines on harmonised transaction reporting, as well as opinions on what areas of the OTC derivatives guidelines need to be updated. On the basis of responses received to this call for evidence, ESMA will define its further work on guidelines on harmonised transaction reporting and launch a full public consultation.

II. Background

1. A transaction reporting regime was first introduced into EU law by the Council Directive 93/22/EC of 10 May 1993 on investment services in the securities field. It was then enhanced by the MiFID⁴ in particular taking into consideration the fragmentation of trading venues (notably, with the creation of Multilateral Trading Facilities (MTFs) and Systematic Internalisers (SI)).
2. Under the current EU transaction reporting regime, investment firms report details of transactions executed in relation to financial instruments admitted to trading on regulated markets to their national competent authorities (irrespective of whether the transactions were carried out on those markets). The purpose of transaction reporting is to enable national competent authorities to perform their market supervision mission and, in particular, to monitor the activities of investment firms and to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market. When the competent authority collecting a transaction report in a particular financial instrument is not the one of the most relevant market in terms of liquidity for this financial instrument, the transaction report is forwarded to the competent authority of the most relevant market. This arrangement permits the competent authorities' overview of transactions in those financial instruments and allows them to monitor market abuse. In this respect, it is crucial that a common approach is used by the national competent authorities when it comes to the content of transaction reports.
3. Notwithstanding the initiatives taken by national competent authorities in relation to transaction reporting, the recent experience has shown that there have been some differences in the collection and exchange of supervisory information by national competent authorities. For example, it has been acknowledged that where some national competent authorities would require a specific piece of information as part of the transaction report, some others would obtain the same by other means (e.g. ad hoc requests).
4. Supervisory convergence and the achievement of a single rulebook are at the core of ESMA's mission and in this area, clearly, further convergence can be achieved. ESMA has committed to focus on specific work streams in the course of 2012 in order to further promote a common approach to transaction reporting requirements by national competent authorities. The rationale behind this commitment is to allow the authorities to perform their monitoring tasks and obligations in a more efficient way for the sake of integrity and orderly functioning of financial markets. It also pursues a more coherent and convergent standard for reporting, that will benefit investment firms operating cross-border that report to several supervisors in different countries.

III. Transaction reporting schemes

5. ESMA intends to elaborate guidelines to set up a common approach on harmonised transaction reporting. So far, ESMA has identified 16 common transaction reporting schemes (i.e. schemes that have either been effectively observed in the EU or are considered as workable) and has analysed how they are required to be reported in practice by the different national competent authorities (see the list of schemes and an example of a scheme in Annex 1).

⁴ In particular, Article 25 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and Articles 9 and the following of the Implementing Regulation 1287/2006 of 10 August 2006.

6. The common transaction schemes were established through an extensive mapping exercise between all concerned national competent authorities in order to cover the largest range of possible transaction reporting cases. However, they are only indicative and should not be considered as being exhaustive.
7. More specifically, the schemes were defined by considering different criteria, in particular:
 - the investment firm subject to reporting obligation;
 - whether the transaction is “straightforward” (i.e. between an investment firm and a client or between two investment firms), or whether it is executed through several intermediaries (i.e. through a chain of investment firms);
 - the trading capacity (i.e. principal, agent) of the investment firm(s) involved in the transaction;
 - the role of the investment firm in the transaction (e.g. the firm executing the order, the firm only receiving and transmitting the order to another firm);
 - whether the transaction is executed through a branch;
 - whether the transaction is executed on exchange (i.e. by an investment firm for a client or for another investment firm, or by two investment firms executing a proprietary transaction) or off-exchange (i.e. where the transaction consists in matching two client orders, and where the executing firm is a Systematic Internaliser);
 - in case the transaction is executed through a chain of investment firms, whether the client ID – in those Member States that collect it - is transmitted to the executing firm or retained by the investment firm receiving the order;
 - the status of the client for whom the order is executed (i.e. another MiFID investment firm, a person/entity not being subject to the MiFID transaction reporting requirements such as a natural person, a non-EEA firm);
 - whether the order is broken down to one, two or more transactions;
 - whether the executing firm groups the orders of two or more clients;
 - whether the transaction is executed through the use of a Direct Electronic Access (DEA);
 - whether the transaction is executed pursuant to a give-up agreement and, if affirmative, what type of give-up agreement (e.g. give-up agreement for execution, for clearing);
 - whether the transaction is executed through an investment firm’s smart order routing;
 - whether the firm is required to report or, as the case may be, is exempted under MiFID.
8. The analysis of the reporting practices in relation to the transaction schemes described above and listed in Annex 1 revealed that they were in some instances different depending on particular Member States. Consequently, ESMA is working to determine for each identified transaction scheme:
 - the report(s) to be submitted by the reporting firm(s) to the competent authorities, and

- the precise content of every report, i.e. the reporting firm identification, the trading day, the trading time, the time identifier, the buy/sell indicator, the trading capacity, the instrument identification, the unit price, the price notation, the quantity, the counterparty code, the counterparty code type, the venue identification, the venue code type, the client code and the client code type.

IV. Transactions on OTC derivatives

9. In October 2010, CESR issued guidance on ‘How to report transactions on OTC derivative instruments’ (CESR/10-661)⁵. Reporting OTC derivatives transactions is not mandatory under MiFID, but some Member States have taken advantage of Recital 45 of MiFID to extend the scope of transaction reporting to OTC derivatives instruments where the underlying is an instrument admitted to trading on a regulated market. The CESR guidance sets out common standards for consistent collection of OTC derivatives. It defines and explains, for each derivative type, how the fields of transaction reports should be populated.
10. The experience obtained after implementation of these guidance shows that some of the provisions have proven to be difficult to apply or to be not clear enough. To name a few, reporting of complex derivatives, equity and debt swaps, as well as the scope of reportable changes and events, e.g. early and/or partial terminations.
11. The work stream on guidelines on harmonised transaction reporting shall, therefore, also cover transactions on OTC derivative instruments. In this regard, the CESR guidance on how to report transactions on OTC derivative instruments (Ref. CESR/10-661) shall, where appropriate, be reviewed and supplemented, so as to include any additional transaction schemes being specific to OTC derivatives.

V. Questions

12. ESMA’s objective is to collect interested parties’ views on what elements ESMA should consider in its work on guidelines on harmonised transaction reporting.

Q1 What transaction schemes should ESMA consider in its work on harmonised transaction reporting guidelines? Please explain and justify

Q2 What updates and clarifications need to be introduced to the OTC derivatives reporting guidelines?

Q3 What other aspects of transaction reporting should ESMA consider in its work on harmonised guidelines? Please explain and justify.

⁵ http://www.esma.europa.eu/system/files/10_661.pdf

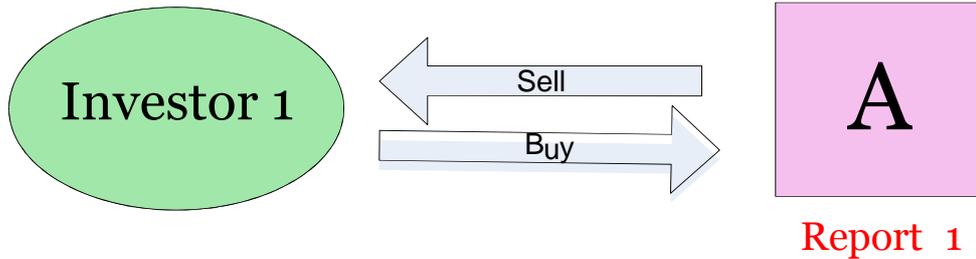
List of transaction reporting schemes

1. Investment firm dealing as principal with an investor (i.e. natural person or non-MiFID firm)
2. Investment firm dealing as principal with another investment firm
3. Investment firm dealing as agent with another investment firm
4. Firm acting off-exchange to match two client orders
5. Firm matching two orders from other investment firms without interposing
6. Systematic Internalisers
7. On-exchange execution of a client order
8. Firm executing a transaction for an EEA investment firm on-exchange
9. Two investment firms executing a proprietary transaction on-exchange
10. Execution of an order through a chain of investment firms
11. Execution of a client order through a branch
12. Order execution through several transactions
13. Grouping of orders
14. Case involving Direct Electronic Access
15. Give-up transactions
16. Case involving Smart Order Routing

Example: Investment firm dealing as principal with an investor

► Description of the case:

- An investor named “Investor 1” who buys the shares.
- An investment firm “A” who deals as principal and sells the shares to Investor 1.



► Proposal for the harmonized reporting:

Data Field Name	Content of report 1
ReportingFirmIdentification	A
TradingDay	2010-11-09
TradingTime	15:32:43
TimeIdentifier	+01
BuySellIndicator	S
TradingCapacity	P
InstrumentIdentification	US5801351017
UnitPrice	32.59
PriceNotation	EUR
Quantity	100
CounterpartyCode	Investor 1
CounterpartyCodeType	Client / Customer
VenueIdentification	XOFF
VenueCodeType	XOFF
ClientCode	
ClientCodeType	