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| 31 January 2017 |

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| Reply form for the Consultation Paper on ESMA’s Guidelines on transfer of data between TRs  |
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| Date: 31 January 2017 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on ESMA’s Guidelines on transfer of data between TRs (TRP), published on the ESMA website.

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_TRP\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_TRP\_XXXX\_REPLYFORM or

ESMA\_TRP\_XXXX\_ANNEX1

***Deadline***

Responses must reach us by **31 March 2017.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

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

***Data protection***

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

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Amundi |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TRP\_1>

Amundi is the leading asset manager in Europe and will join the top 10 worldwide after completion of its merger with Pioneer. Assets under management will then reach about 1.3 trillion €. The current presence of Amundi in 30 different countries servicing 100 million retail clients and 1000 institutional clients will be further diversified and reinforced . Amundi is fully dedicated to provide efficient investment solutions tailored to the needs of its clients.

Amundi supports the development of regulations that enhance market stability allowing a better financing of economic activities and, hence, sustaining growth and employment. We are proud that asset management, as an industry, participate to this objective through channelling savings towards productive investment. We protect investors interests through an efficient risk management that enables clients to adjust their financial investments to the risk level they are able to face and to optimise the corresponding return. In this general framework, we consider that the establishment of Trade Repositories (TRs) under EMIR and afterwards SFTR is a positive step towards transparency and public confidence in derivatives and techniques of efficient portfolio management (EPM).

We are not satisfied, though, that there is fragmentation not only among market venues but also among different TRs. We do insist that a global comprehensive view of the market is essential in order to properly assess risks at a macro level. It is a concern not only for regulators but also for asset managers who receive money from clients who want their assets to be protected against market disruptions. We think that the question of transfer of data between TRs should be examined not only under the two aspects developed in the proposed guidelines (when a client moves to a new TR or when ESMA withdraws the agreement of a TR) but also as part of the creation of a central TR that would concentrate all the data reported to the existing 6 TRs. We even question the interest of having several TRs and suggest that a non for profit organism would be sensible a solution.

Otherwise, our main concern when reading the proposed guidelines is that we do not see much in them about the client of a TR Participant. It is our position since we use delegation to a TR participant to report on listed and complex derivatives . We act as TR participant and reporting party for vanilla OTC derivatives. We consider that we are part of the chain and should be recognised as such whatever our status. We ask for receiving advance information and clear explanation of the migration plan and being offered the capacity to choose the new TR we want to use, irrespective of the fact that we are TR participant or client of a TR participant.

<ESMA\_COMMENT\_TRP\_1>

1. [Are there any other definitions related to the reporting of derivatives under Article 9 of EMIR that would need to be taken into account?](#_Toc471395657)

<ESMA\_QUESTION\_TRP\_1>

We are not very clear about the position where we stand when we **delegate reporting** to TR. Such is the case at Amundi with transactions on listed derivatives and non-vanilla OTC derivatives. Conversely, Amundi directly reports transactions on plain vanilla OTC derivatives. Whether the client who delegates is considered as a TR participant is not totally clear. It should not. But uncertainty comes from the concept of “view only” service that is part of the definition of TR participant and from the fact that even in case of delegation we provide information (typically LEI of the funds) when on-boarding with a new TR.

<ESMA\_QUESTION\_TRP\_1>

1. [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?](#_Toc471395658)

<ESMA\_QUESTION\_TRP\_2>

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<ESMA\_QUESTION\_TRP\_2>

1. [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.](#_Toc471395659)

<ESMA\_QUESTION\_TRP\_3>

We think that ESMA should focus on the question of TRs which, following Brexit for example, will no longer be based in the EU and will lose their local agreement. We also think that the scenario of a merger of TRs cannot be analysed as a simple withdrawal of one license and the continuation of the other one. If the merging entities are not in the same country and the absorbing one is based in a third country, a specific procedure should be determined.

<ESMA\_QUESTION\_TRP\_3>

1. [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.](#_Toc471395660)

<ESMA\_QUESTION\_TRP\_4>

The proposal that TRs conduct the transfer without the intervention of the TR participants implies a complete information to the participants and total transparency especially about the cut-off time. It should be clarified and determined beforehand that the trades will be reported to the new TR as of such cut-off time. There is no room for operational delay or imprecision.

<ESMA\_QUESTION\_TRP\_4>

1. [Do you agree with the proposed approach regarding migration plan? Please elaborate on the reason for your response.](#_Toc471395661)

<ESMA\_QUESTION\_TRP\_5>

We think that TR participants must be part of the migration plan and validate it sufficiently early to circulate the information to their own clients.

<ESMA\_QUESTION\_TRP\_5>

1. [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.](#_Toc471395662)

<ESMA\_QUESTION\_TRP\_6>

The information of the participants and their end clients which are concerned should be part of the list of items in guideline 3.

<ESMA\_QUESTION\_TRP\_6>

1. [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.](#_Toc471395663)

<ESMA\_QUESTION\_TRP\_7>

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<ESMA\_QUESTION\_TRP\_7>

1. [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.](#_Toc471395664)

<ESMA\_QUESTION\_TRP\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRP\_8>

1. [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.](#_Toc471395665)

<ESMA\_QUESTION\_TRP\_9>

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<ESMA\_QUESTION\_TRP\_9>

1. [Do you agree with the proposal to ensure completeness of the data subject to transfer? Please elaborate on the reasons for your response.](#_Toc471395666)

<ESMA\_QUESTION\_TRP\_10>

 Guideline 7 explicitly requires that the TR participant “sign off” the number of trades and lifecycle events of outstanding trades that will be transferred. It means that TR participants have to be totally involved in the process and it should be expressed in the preceding guidelines (particularly 2 and 3 about the migration plan). This imposes a new duty on TR participants and questions their ability to do it. ESMA suggests in §49 that the ”reporting counterparty” will effectively do the job. The reporting counterparty is not always the TR participant, notably in case of delegation, and that creates an uncertainty on the tools that will be available to reconcile data. We fear that the guidelines do not consider the case of a reporting counterparty not being the TR participant, and not being able to access the tools and formats of the TR in order to easily reconcile figures.

<ESMA\_QUESTION\_TRP\_10>

1. [Do you agree with the proposal to identify the data subject to transfer? Please elaborate on the reasons for your response.](#_Toc471395667)

<ESMA\_QUESTION\_TRP\_11>

The blurred definition of TR participant does not help in understanding what will effectively happen in case TR reporting is delegated. <ESMA\_QUESTION\_TRP\_11>

1. [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.](#_Toc471395668)

<ESMA\_QUESTION\_TRP\_12>

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<ESMA\_QUESTION\_TRP\_12>

1. [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.](#_Toc471395669)

<ESMA\_QUESTION\_TRP\_13>

We consider that guideline10 is not sufficiently explicit on the fact that a cut-off time must be determined and that the transferring TR must give the final “GO” once the transfer is finalised. From that moment reporting process will change and migration will be completed.

<ESMA\_QUESTION\_TRP\_13>

1. [Do you agree with the proposed approach regarding fees for to non-outstanding derivatives? Please elaborate on the reasons for your response.](#_Toc471395670)

<ESMA\_QUESTION\_TRP\_14>

We support the provision of guideline 11 that forbids the old TR to charge for record keeping of non-outstanding, and not transferred, derivatives. It is the only way to ensure that portability will be possible and to allow new comers to develop as TRs.

<ESMA\_QUESTION\_TRP\_14>

1. [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.](#_Toc471395671)

<ESMA\_QUESTION\_TRP\_15>

We would prefer that guideline 12 start with a clear statement that the objective is, on a best effort basis, to make one unique transfer and avoid splitting in different tranches. We further encourage TRs to try and merge the first 2 steps (i) an (ii) and transfer trades and lifecycle events of the same trades at the same time. We believe that the reconciliation of transferred data will be far better if there is no delay between these 2 sets of data.

<ESMA\_QUESTION\_TRP\_15>

1. [Do you agree with the scope of the data subject to transfer in the general case? Please elaborate on the reasons for your response.](#_Toc471395672)

<ESMA\_QUESTION\_TRP\_16>

These 2 guidelines, 13 and 14, explicitly refer to the case of counterparties which are clients of a TR participant. We think that their case should be examined in other sections of the consultation paper. We agree with the proposal to allow clients to opt out of the transfer decided by the TR participant they use.

<ESMA\_QUESTION\_TRP\_16>

1. [Do you agree with the proposed sequence relating to the transfer in the general case? Please elaborate on the reasons for your response.](#_Toc471395673)

<ESMA\_QUESTION\_TRP\_17>

 We note two apparent inconsistencies in guideline 15, annex I included. It foresees that the new TR prepares the migration plan when guideline 2 asks all concerned TRs to collaborate. In annex I, the new TR should notify the date for the transfer to the authorities when guidelines 16 requires the old TR to do so.

<ESMA\_QUESTION\_TRP\_17>

1. [Do you agree with the communications in the case of transfer requested by the TR participant? Please elaborate on the reason for your response](#_Toc471395674)

<ESMA\_QUESTION\_TRP\_18>

We think that since counterparties are the most concerned entities they should be immediately and totally informed even if they are not TR participants. Guideline 16 does not require the new TR to confirm to counterparties that the transfer has been achieved. There is an asymmetry with the information circulated before the transfer by the old TR and we consider that it is not justified.

<ESMA\_QUESTION\_TRP\_18>

1. [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.](#_Toc471395675)

<ESMA\_QUESTION\_TRP\_19>

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<ESMA\_QUESTION\_TRP\_19>

1. [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.](#_Toc471395676)

<ESMA\_QUESTION\_TRP\_20>

Yes we agree with the approach whereby transfer fees, if any, must be cost–related and made public in the fee schedule of the TRs. We think that it would be helpful to mention that the cost that is used for the determination of the cost-related fees could include a charge for the record keeping of non-outstanding transactions that are not transferred (explicitly mentioned in guideline 11).

<ESMA\_QUESTION\_TRP\_20>

1. [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.](#_Toc471395677)

<ESMA\_QUESTION\_TRP\_21>

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<ESMA\_QUESTION\_TRP\_21>

1. [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.](#_Toc471395678)

<ESMA\_QUESTION\_TRP\_22>

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<ESMA\_QUESTION\_TRP\_22>

1. [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.](#_Toc471395679)

<ESMA\_QUESTION\_TRP\_23>

We like the point made at the end of §89 that a TR participant may refuse its trades to be transferred to the new TR chosen either by the old TR or the ESMA. It allows TR participants and their clients to keep some liberty of choice and we believe that it is of utmost importance. Consequently, we would recommend for the sake of clarity, that guideline 23 explicitly mention the exception to the stated rule that TR Participants will follow the procedure defined in annex 2 in case they do not intend to transfer to the new TR designated in this procedure. It can easily be made through the addition of a sentence in guideline 23 : “*In case a TR does not intend to transfer part or all its outstanding transactions to the foreseen TR, it should organise for a transfer to another TR ahead of the planned final transfer*.”

<ESMA\_QUESTION\_TRP\_23>

1. [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.](#_Toc471395680)

<ESMA\_QUESTION\_TRP\_24>

We think that it is necessary in guideline 24 as well to reaffirm the possibility for transfers to other TRs than the new TR(s) proposed by the old TR to be organised in the 6 month period of preparation. These transfers should be considered as part of the migration plan in order to allow for a smooth and centralised process and avoid repetition of small successive transfers, client by client.

<ESMA\_QUESTION\_TRP\_24>

1. [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.](#_Toc471395681)

<ESMA\_QUESTION\_TRP\_25>

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<ESMA\_QUESTION\_TRP\_25>

1. [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.](#_Toc471395682)

<ESMA\_QUESTION\_TRP\_26>

We totally agree with the ban on fees being charged to users for transfer and wind down of the old TR. We consider that authorities should ensure that TRs have sufficient own capital to wind down over a period of 3 months.

<ESMA\_QUESTION\_TRP\_26>

1. [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.](#_Toc471395683)

<ESMA\_QUESTION\_TRP\_27>

We see 2 apparent inconsistencies in annex I. It foresees that the new TR prepares the migration plan when guideline 2 asks all concerned TRs to proceed. The new TR should notify the date for the transfer to the authorities when guidelines 16 requires the old TR to do so.

<ESMA\_QUESTION\_TRP\_27>

1. [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.](#_Toc471395684)

<ESMA\_QUESTION\_TRP\_28>

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<ESMA\_QUESTION\_TRP\_28>