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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 | Bloomberg LP |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TRP\_1>

Bloomberg thanks ESMA for the opportunity to comment on its draft guidelines on the transfer of data between trade repositories. We strongly support the central objective of ensuring the competitive TR environment underpinning EMIR is guaranteed. Guidelines around porting play a key role in facilitating this and we support overall ESMA’s approach to these guidelines. Given the importance of porting we have provided some suggestions on proposed guideline 20 aimed at further strengthening the framework.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We strongly support the proposed guideline as ESMA rightly points out that if fees were set so high as to dis-incentivise transferring from one TR to another then this could lead to the foreclosure of the industry or prevent innovation and specialisation. This would be to the detriment of both market participants, who are required to use the services of TRs, and regulators given the key role TRs play in helping them monitor and respond to financial stability risks in derivatives markets.

We would therefore encourage ESMA to consider the issue more broadly and also take into account pricing structures that could potentially be designed to trigger clauses to claw back benefits or favourable terms which a TR participant previously enjoyed until they decided to transfer to a new TR. Even if the actual fees charged for transferring the data are cost related and do not attempt to charge for future missed profits - thereby satisfying the letter of the proposed guideline - structures employing penalty or clawback clauses would clearly be inconsistent with the spirit of the guideline and would mitigate its effectiveness.

To ensure a balance, which recognises on the one hand that old TRs incur costs when transferring data to new TRs and which on the other hand supports a properly functioning TR environment overall, ESMA in our view should:

(i) maintain its proposal that old TRs may justifiably charge cost related fees for transferring data to a new TR;

(ii) maintain its view that new TRs may introduce discounts or rebates to attract customers as this recognises the potential role such arrangements may play in offsetting fees which participants incur for transferring to a new TR;

(ii) build further on explanatory paragraph 74 and the associated guideline and provide guidance that pricing structures must not attempt to apply any mechanism that directly or indirectly attempts to penalise TR participants for transferring to another TR.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRP\_28>