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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

|  |  |
| --- | --- |
| Name of the company / organisation | London Stock Exchange Group |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? | ☐ |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TRP\_1>

***London Stock Exchange Group (“LSEG”) is pleased to provide feedback on the ESMA Guidelines on transfer of data between TRs. The LSEG response reflects the views of both a Trade Repository (UnaVista Ltd) and a Trade Repository participant (LCH Clearnet) – both multi-asset and multi-jurisdictional entities within our Group. As such, the response strikes a balance and offers a pragmatic view, which we believe would be welcome by the majority of the market participants.***

*EU Transparency Register: 550494915045-08*

*Contact: Ms. Beata Sivak –* *BSivak@lseg.com**, Mr. David Nowell – DNowell@lseg.com*

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LSEG and its UnaVista TR have been active participants in the EMIR trade reporting market. We observe that the competitive nature of this market has been impeded by the lack of standardised processes for switching TRs. The lack of standardisation leads to (i) reluctance of TR participants to switch providers and to (ii) potential regulatory risk to the TRs who enable such switch.

LSEG has historically been a strong supporter of the Open Access principle, now enshrined in MiFID II. We believe that customer’s choice and ability to switch providers has an overall positive impact, as it leads to lower trading prices, reduced spreads, faster and more resilient technology, and a fundamental rebalancing of the relationship between the providers of infrastructure and its users.

Therefore, we welcome and support ESMA’s initiative to publish guidelines on transfer of data between TRs. However, we believe that the processes suggested in the Guidelines, which place the onus of data transfer solely on the TRs, are not the most efficient and effective approach. Below we detail the reasons and potential impact of the switch being executed without TR participant’s involvement:

* Loss of data to the regulators: as witnessed in the TRACE project, the mandated ISO 20022 XSD results in significant loss of data due to inability of translating old, pre-EMIR Level 2 records into the new format.
* Decrease in reconciliations and pairing rates: since the Old TR will have to break pairing matches for any data transferred over, any records that are not possible to translate into the XSD will either have to stay active in the Old TR (which contradicts the client’s intent to switch) or be forever lost to the reconciliations process.
* Duplication of data sharing process: Requiring TRs to develop a new ISO 201002 data sharing process, in addition to existing inter-TR reconciliation data exchange, places undue burden on the TRs with no benefits to the clients or the regulators. Asking TRs to automate the initial transfer replicates a capacity that the TR participant has to develop in order to switch TRs.
* Disproportional burden on the Old TR: The proposed process has a minimal impact on the New TR, but requires the Old TR to absorb the substantial burden of the switch, while losing corresponding revenue. We believe that placing the data transfer on the TR participants would encourage a level playing field among the TRs, inspire competition, innovation and client offerings.

LSEG recommendation: ESMA should consider placing the responsibility of data transfer on the TR participant and introducing new action type along with effective date for porting. We believe that requiring the client to mark records in the Old TR using a new action type and re-loading those records to the New TR in the New TR’s format, using a new action type, is a more accurate and effective way of transferring the data.

We would like to propose the following process:

1. Based on new action type sent by the TR participant, the Old TR should internally mark off-boarded trades/positions with an off-boarded date/time at a trade/position level.
2. The Old TR should not delete any data so that the client can be easily re-onboarded, if required. Only open trades/positions should be off-boarded.
3. The TR participant should re-report their open trades/positions to the New TR with new porting action type and same effective date.
4. The TR participant should ensure that the re-reported trades are compliant with the current level of EMIR validation rules.
5. The TR participant should ensure that the re-reported trades/positions are compatible with the format required by the onboarding TR.
6. The New TR should mark the re-reported trades/positions as onboarded with an onboarding date/time at the trade/position level. This can take the form yyyy-mm-dd.
7. The Old TR needs to break any matches.
8. The Old TR should notify the other TRs of the trades that have been off-boarded by using the Inter-TR Flag in the Trade Data. The Inter-TR flag should have a value of ‘X’.
9. The Old TR should exclude off-boarded trades/positions from their:
	1. public aggregation statistics
	2. requested list files
	3. trade data details files
	4. pairing and matching process
	5. ESMA/NCA bound statistics/reports

Finally, we fully support the processes and controls that ESMA proposes in case of voluntary or imposed TR registration withdrawal but would like to introduce a time window for the remaining TRs to compete for the business of the Old TR.

<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>

OTC derivative cleared transactions can be the result of a physically settled Swaption exercise, this case is not covered under the current list of action types and would therefore come under “new” (RTS/ITS table 2, new field number 93.

<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>

Current lack of standardised portability processes results in compliance uncertainty which hinders proper functioning of the TR market. Currently, firms wishing to switch and TRs participating in the process inevitably breach one of the EMIR principles (for example: no duplication or no re-use of UTIs or meaning of action type ‘Error’) in order to accomplish the desired outcome.

Field entry rules remain open to interpretation – different TRs occasionally require that a given trade is reported differently. This leads to reconciliation breaks today and would present a barrier to the smooth transfer of data from one TR to another because data in one TR will potentially be deemed invalid when entered another TR.

As an example in the Credit space, certain Clearing Members populate the “Price/Rate” field with the price of the bilateral trade whereas others populate a dummy value in this field, interpreting that there is no execution price between a Clearing Member and his clearing house. However the information regarding the fixed coupon rate is central to understanding the economics of a CDS position and therefore certain counterparties populate the “Fixed rate of leg 1” field which is an Interest rates section field. A fixed coupon field does not exist either in the new credit section 2.j . In such cases, the industry as a whole seeks to find compromise enabling consistency in reporting to the benefit of ESMA.

However such compromises may not always be found, yielding situations where different TRs will not all have the same rules for populating the fields, leading to reporting breaks amongst trade counterparties.

<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>

Firms looking to leave the Old TR face a number of challenges, their options are:

* Lift and pour ALL the trades/positions and associated records from the Old TR to the New TR. Setting aside the quantity of the data required for transfer, firms have to trust that the Old TR will no longer provide the data to regulators, include them in aggregations, break the pairing in the inter-TR process, adjust all statistics and reports. Failure by the Old TR to do so will severely impact the quality of the data available both to the public and the regulators by the combination of Old and New TRs.
* Error or Cancel and pour open trades/positions as New. Erroring trades impacts all the counterparties who cannot re-use the errored UTI. Cancel has a specific business meaning (for example early termination or novation) which does not reflect the act of moving records. Reporting trades as new marks them as late versus the execution time stamp.

In both cases, there is no synchronised process of breaking the existing and re-establishing new paring in the inter-TR reconciliation process. There is no standardised approach for the Old TR to exclude off- boarded trades/positions from:

* + public aggregation statistics
	+ requested list files
	+ trade data details files
	+ pairing and matching process
	+ ESMA/NCA bound statistics/reports

<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>

We believe that the processes suggested in the Guidelines, which place the onus of data transfer solely on the TRs, are not the most efficient and effective approach. Below we detail the reasons and potential impact of the switch being executed without TR participant’s involvement:

* Loss of data to the regulators: as witnessed in the TRACE project, the mandated ISO 20022 XSD results in significant loss of data due to inability of translating old, pre-EMIR Level 2 records into the new format.
* Decrease in reconciliations and pairing rates: since the Old TR will have to break pairing matches for any data transferred over, any records that are not possible to translate into the XSD will either have to stay active in the Old TR (which contradicts the client’s intent to switch) or be forever lost to the reconciliations process.
* Duplication of data sharing process: Requiring TRs to develop a new ISO 201002 data sharing process, in addition to existing inter-TR reconciliation data exchange, places undue burden on the TRs with no benefits to the clients or the regulators. Asking TRs to automate the initial transfer replicates a capacity that the TR participant has to develop in order to switch TRs.
* Disproportional burden on the Old TR: The proposed process has a minimal impact on the New TR, but requires the Old TR to absorb the substantial burden of the switch, while losing corresponding revenue. We believe that placing the data transfer on the TR participants would encourage a level playing field among the TRs, inspire competition, innovation and client offerings.

LSEG recommendation: ESMA should consider placing the responsibility of data transfer on the TR participant and introducing new action type along with effective date for porting.

* TR participant involvement: We believe that requiring the TR participant to mark records in the Old TR using a new action type and re-loading those records to the New TR in the New TR’s format, using a new action type, is a more accurate and effective way of transferring the data.
* **Staggered migration**: A specific action type for transfers would offer reporting parties flexibility in how they manage their transfers, notably it would enable counterparties to process staggered migrations and manage the format/population entry rules at their own pace thus ensuring greater data consistency and lessening the dependency on the Old TR.
* **Multiple TRs**: To our understanding, a TR participant may be using more than one TR on a continuous basis, for example different TRs may be used for different asset classes. Therefore, also during the transfer process period, the TR participant should be allowed to manage relationships with two or more TRs.

<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 support the concept of a standardised migration plan that includes an agreed to timeline along with description of responsibilities and duties of all involved parties, including the TR participant to ensure the timely, complete and accurate transfer of data. A standard migration plan template that is prescribed by ESMA, agreed to and adhered to by all TRs would provide the best way to remove any compliance risk associated with switching TRs.

We believe that minimum standards should be defined in order to ensure that the burden of the transfer itself is not a deterrent to envisaging migrating TRs (i.e. a situation where the transferor - Old TR - imposes very unsatisfactory timelines). With reference to answer to Q4, creating dependencies with the Old TR is *de facto* a hindrance to building a competitive environment and staggered migrations would solve this.

<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>

We believe that the migration plan should also explicitly detail responsibilities of the Old TR (effective date removal of impacted records from file extracts, statistics, aggregations, breaking of pairing etc.) and the New TR (effective date inclusion of impacted trades in all of the above, re-posting for reconciliations, etc.)

<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>

As detailed in Q4, we believe that transfer of data between TRs in not necessary as it replicates the capabilities that the client has to develop, will result in data loss due to strict XSD standards and will negatively impact the reconciliation process.

We believe that requiring the client to mark records in the Old TR using a new, dedicated action type (for porting) and re-loading those records to the New TR, in that TR’s format using a dedicated, new action type to identify ported trades is a much more accurate, competitive and effective way of transferring records while ensuring no adverse impacts to data quality or competitive landscape envisioned by ESMA.

<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>

As detailed in Q4, we believe that transfer of data between TRs in not necessary as it replicates the capabilities that the client has to develop, will result in data loss due to strict XSD standards and will negatively impact the reconciliation process.

We believe that requiring the client to mark records in the Old TR using a new, dedicated action type (for porting) and re-loading those records to the New TR, in that TR’s format using a dedicated, new action type to identify ported trades is a much more accurate, competitive and effective way of transferring records while ensuring no adverse impacts to data quality or competitive landscape envisioned by ESMA

<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>

Regardless of whether ESMA places the data transfer responsibility with the TRs or the TR participant, we agree that appropriate data security, completeness and identification processes should be part of the standardised migration plan discussed in Q5.

<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>

Regardless of whether ESMA places the data transfer responsibility with the TRs or the TR participant, we agree that appropriate data security, completeness and identification processes should be part of the standardised migration plan discussed in Q5.

<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>

Regardless of whether ESMA places the data transfer responsibility with the TRs or the TR participant, we agree that appropriate data security, completeness and identification processes should be part of the standardised migration plan discussed in Q5.

<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>

Regardless of whether ESMA places the data transfer responsibility with the TRs or the TR participant, we agree that appropriate data security, completeness and identification processes should be part of the standardised migration plan discussed in Q5.

<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 agree that until the data transfer is complete and signed-off, the responsibility for collecting and providing the data remains with the Old TR. We believe mutually agreed to ‘porting effective date’ should also be used by both New and Old TR to adjust data requests, statistics and aggregations as required

From the operational perspective, we believe that so long as there is no duplication of records, a staggered approach should be possible as well, i.e. transfer is not effected in one single operation.

We are of the understanding that trade counterparty could maintain relationships with several TRs. In fact, once the decision to migrate TRs has been taken, the counterparty should be able to report all new transactions to the New TR ahead of migrating the data.

<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 agree that the Old TR should not charge fees but because the proposed direct TR record transfer will result in some records left in the Old TR (as they will not fit the new XSD), we do not see that as a practical scenario. Requiring the TR participant to re-report ALL ported trades to the New TR, in that TRs format, effectively removes the burden of orphaned trades from the Old TR removing any need for it to charge fees.

<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 agree with the prioritisation; however we do not see the need to transfer any data other than the latest state of the outstanding trades and positions as all the other records and lifecycle events should be available and already accessed by the regulators from the Old TR.

<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>

We believe that there is no need to transfer any data other than the latest state of the outstanding trades and positions. This is because all the other records and lifecycle events should be available and already accessed by the regulators from the Old TR

<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 agree that the New TR, Old TR and TR participant should be involved, but we believe the process should be mainly a responsibility of the TR participant.

<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 believe that since the commercial benefit of the transfer is borne by the New TR, it is the New TR that should provide the necessary NCA notifications of the data transfer. Receiving the same information from the Old TR does not provide the NCAs any additional information.

<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>

Requiring the TR participant to simply mark the transferred records in the Old TR with a dedicated ‘ported’ action type and effective date would completely remove this requirement an could be a preferred option for all market participants.

<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 agree with the proposed wording in principle, but recognize it might be onerous for the TR to provide evidence that the transfer costs are truly cost-related only. The loss of a major client for a TR would mechanically raise the breakeven point as there are many fixed costs related to managing a TR.

Additionally, we believe the proposed process potentially requires the TR participant to maintain commercial relationship with the Old TR, for the records that could not be transferred to a New TR. We reiterate that requiring the TR participant to carry on the data transfer instead would remove the need for any Old TR data transfer fees.

<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>

We agree that in case of cease of registration all records within the 10 year limit should be transferred.

<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>

We agree that a migration plan should be drafted as part of withdrawal of registration.

<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 believe that direct and immediate access to TR data by all parties is a fundamental EMIR principle and as such we support the proposed sequence of data transfer related to withdrawal of registration of TRs. However, as the TRs operate in a competitive market, we believe that ESMA should allow for remaining TRs to have a chance to actively bid for the business of the TR whose registration is being withdrawn.

<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 do not see the reason for notifying the NCAs of TR transfer, as they should be accessing data in a harmonised matter, regardless of which TR has it. However if NCAs require notification, we concur it should be the responsibility of the New TR.

<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>

We agree that once all data transfer processes have been completed and the NCAs are able to access the data in the remaining TRs, the Old TR should perform a destructions/deletion exercise as part of cessation of operations process.

<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 agree that the New TR should not charge for data transfer activity, i.e. the TR participants does not incur the cost twice. However the New TR will bear the commercial and operational costs of processing all the new data, and it should be able to recover those costs though the regular BAU fees, subject to competitive market pressures of securing the new business.

<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>

While we agree with the planning, notification and verification steps of the process, we do not agree with the direct data transfer between the TRs. Instead, we believe that the TR participant is best placed to carry on that process.

<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>

While we agree with the planning, notification and verification steps of the process, we would appreciate if ESMA considered including a time window allowing the remaining TRs to competitively bid for the Old TR business.

<ESMA\_QUESTION\_TRP\_28>