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| Response Form to the Consultation Paper  |
| MiFIR review report on the obligations to report transactions and reference data |

**Responding to this paper**

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

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

ESMA will consider all comments received by **20 November 2020.**

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

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CP\_TRRF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_TRRF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TRRF\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open Consultations” 🡪 “Consultation paper on MiFIR review report on the obligations to report transactions and reference data”).

**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 publicly 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](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | MarketAxess |
| 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\_CP\_TRRF\_1>

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients. MarketAxess welcomes the opportunity to respond to this consultation.

<ESMA\_COMMENT\_CP\_TRRF\_1>

**Questions**

1. : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_1>

MarketAxess response to Q1:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We agree with this proposal based on ESMA’s analysis. We consider UCITS and AIFMD firms, as regulated entities, to be professional market participants. It is conceivable, therefore, that UCITS and AIFMD firms should not have to materially alter their systems and controls to support transaction reporting. This is due to the fact that they already provide the data substantially via the TV and can do the same to an ARM or an NCA directly (as appropriate).

The case is more compelling as UCITS and AIFMD firms are able to conduct MiFID services as contemplated under Article 4(2) of MiFID II but not be subject to the same requirements as those firms that are subject to RTS 22. The proposed change will enable TVs to reduce the burden of their reporting requirements under Art 26(5) MiFIR.

<ESMA\_QUESTION\_TRRF\_1>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_2>

MarketAxess response to Q2:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not foresee challenges with this proposal. It is likely to affect those businesses that have followed the narrow interpretation to date.

<ESMA\_QUESTION\_TRRF\_2>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_3>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_4>

1. : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_5>

1. : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA\_QUESTION\_TRRF\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_6>

1. : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_7>

1. : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_8>

1. : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_9>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_10>

MarketAxess response to Q10:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

MarketAxess does not foresee challenges with the proposal to make the alignment per the outlined approach between MAR and MIFID.

<ESMA\_QUESTION\_TRRF\_10>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_11>

MarketAxess response to Q11:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not foresee challenges on the proposal because non-equity TVs such as ours are not subject to seeking issuer approval per Cases 7-9 on page 44 of ESMA 70-1861941480-56 Q&A on Data Reporting.

We assume that ESMA is aware of this and that is the intention of the word ‘or’ in the text [emphasis added]: “With regard to financial instruments admitted to trading or traded on a trading venue (see above, 4.3.1.) or where the issuer has approved trading of the issued instrument, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.”

If that is not the intention, then we would see considerable challenges for non-equity TVs if issuer approval is required or assumed.

<ESMA\_QUESTION\_TRRF\_11>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_12>

MarketAxess response to Q12:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not foresee challenges on the outlined approach. We would refer you to our response in Q11 which states:

“We do not foresee challenges on the proposal because non-equity TVs such as ours are not subject to seeking issuer approval per Cases 7-9 on page 44 of ESMA 70-1861941480-56 Q&A on Data Reporting.

We assume that ESMA is aware of this and that is the intention of the word ‘or’ in the text [emphasis added]: “With regard to financial instruments admitted to trading or traded on a trading venue (see above, 4.3.1.) or where the issuer has approved trading of the issued instrument, trading venues shall provide competent authorities with identifying reference data for the purposes of transaction reporting under Article 26.”

If that is not the intention, then we would see considerable challenges for non-equity TVs if issuer approval is required or assumed.”

<ESMA\_QUESTION\_TRRF\_12>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_13>

1. : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA\_QUESTION\_TRRF\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_14>

1. : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_15>

MarketAxess response to Q15:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not agree with this proposal and consider it to be a new reporting obligation. The technical uplift to support such a new reporting obligation is significant. The proposal will also penalise those TVs that are efficiently terminating bonds on FIRDS.

We would encourage ESMA to consider sending ‘challenges’ to TVs in the same way as they currently do with FITRS outliers as part of their periodic data accuracy checks.

<ESMA\_QUESTION\_TRRF\_15>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_16>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_17>

1. : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_18>

MarketAxess response to Q18:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

As a policy approach we consider this to be a positive but possibly superfluous approach to monitor the chain of transactions.

We would encourage ESMA to demonstrate what and why there may be a gap. We would also note that that would be a significant technical uplift.

<ESMA\_QUESTION\_TRRF\_18>

1. : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_19>

MarketAxess response to Q19:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

As a policy approach we consider this to be a positive but possibly superfluous approach to monitor the chain of transactions.

We do consider the additional code to be a significant uplift for reporting firms and should not be underestimated. In order to support such as change, we would encourage ESMA demonstrate why there may be a gap.

<ESMA\_QUESTION\_TRRF\_19>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_20>

MarketAxess response to Q20:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not agree with the outlined approach.

In our experience, we have expended significant resources and incurred significant challenges to work with our participants to obtain underlying client LEIs in order to comply with our obligations under Art 26(3) MiFIR.

Not all clients operate in jurisdictions that are familiar with the use or concept of GLEIF or LEIs. Whilst we do the work to determine if the client is a professional client or retail, it is not encapsulated in the LEI and it would require additional challenges to encode this under GLEIF. Those that are not familiar with GLEIF are apt to refuse to trade on EU TVs with negative consequences on EU capital markets as a result.

Furthermore, it should be sufficient that ESMA is aware of the markets in which TVs are authorised (i.e. wholesale, retail or both). ESMA could perhaps focus their attention on TVs that support retail clients if the concern is to protect retail investors. For example, MarketAxess is only authorised to provide services to professional clients, and to find an alternative method to inform the regulator what we already know would be pointless.

<ESMA\_QUESTION\_TRRF\_20>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_21>

MarketAxess response to Q21:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We do not foresee challenges with the outlined approach.

<ESMA\_QUESTION\_TRRF\_21>

1. : Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

<ESMA\_QUESTION\_TRRF\_22>

MarketAxess response to Q22:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

We consider the option under section 91a to be the most appropriate. The current methodology to identify a short sale is not determined at the point of trade and requires additional input at the end of the day (calculation of the net short position). This approach is subject to operational risk and leads to a potentially sub-optimal outcome for ESMA.

The reason for this is connected to the fact that transaction reports may be submitted within T+1 under the current RTS 22 provisions. Thus, even if the transaction report is properly populated with the short sell indicator, it may be too late to take action (such as imposing a short sale ban) to help manage market integrity. On this basis, we would suggest that ESMA simply removes the requirement to provide short selling indicators because it is failing to achieve the policy intention.

There are already other reporting mechanisms in place to assist ESMA and NCAs regarding unusual short selling activity. For example, TVs are already obliged to inform their NCA regarding the use of trading halts, or any unusual or suspicious trading behaviour in relation to market abuse that could be used to determine if a short sale ban is required.

<ESMA\_QUESTION\_TRRF\_22>

1. : Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_23>

1. : Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_24>

1. : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA\_QUESTION\_TRRF\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_25>

1. : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_26>

1. : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA\_QUESTION\_TRRF\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_27>

1. : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA\_QUESTION\_TRRF\_28>

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<ESMA\_QUESTION\_TRRF\_28>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_29>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_30>

1. : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA\_QUESTION\_TRRF\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_31>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TRRF\_32>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_33>

MarketAxess Response to Q33:

MarketAxess is a secondary market operator of cash fixed income instruments for professional clients.

MarketAxess does foresee challenges with the outlined approach for TVs and potentially adverse consequences for EU capital markets. We would note that non-equity instruments do not follow a similar issuance and listing process as equities, and issuers of fixed income instruments are not necessarily concerned about their liquidity in secondary markets.

In our experience, we have contacted approximately 600 issuers of bonds that our participants would like to trade on our MTFs, with a current success rate of 3.7%. It is evident that we have experienced limited success to obtain LEI from issuers due to the lack of incentive on their part and further challenges as set out further below.

Unlike primary market operators, we (as a secondary market operator of fixed income instruments) do not have a business relationship with the issuers whose bonds are available for trading on our TV. Secondly, the number of bond instruments that may be traded on our venue exceed 500,000 covering jurisdictions worldwide such as China, where the use or concept of the LEI is not as prevalent compared to the EU. All of this makes the exercise to obtain a complete set of LEI data challenging.

In the event that a TV is not able to support a bond due to a missing LEI, we would expect activity in that instrument to be pushed onto organised trading venues outside of the EU which are not subject to an analogous requirement. This would be a counterproductive outcome for European markets in terms of maintaining market liquidity, efficiency and transparency.

Our alternative suggestions are the following:

• Consider mandating primary market operators to obtain LEIs of issuers to help achieve ESMA’s policy objective, on the basis they do have established relationships with issuers. This would obviously be a partial solution and not necessarily applicable to bonds outside of the EU.

• Work with National Numbering Agencies (‘NNA’) who are responsible for issuing identification codes for financial instruments already (e.g. CUSIP, ISIN. CFI etc) to also publish LEIs. ESMA could obtain LEIs from the NNA directly rather than a wider network of EU TVs (i.e. a more fragmented source of information).

• ESMA could consider connecting to GLEIF and extract LEIs directly, in the same way that TVs and IFs are conducting currently. This way would easily help ESMA to distinguish if any TVs are reporting an inaccurate LEI if their record is out of synch with GLEIF.

<ESMA\_QUESTION\_TRRF\_33>