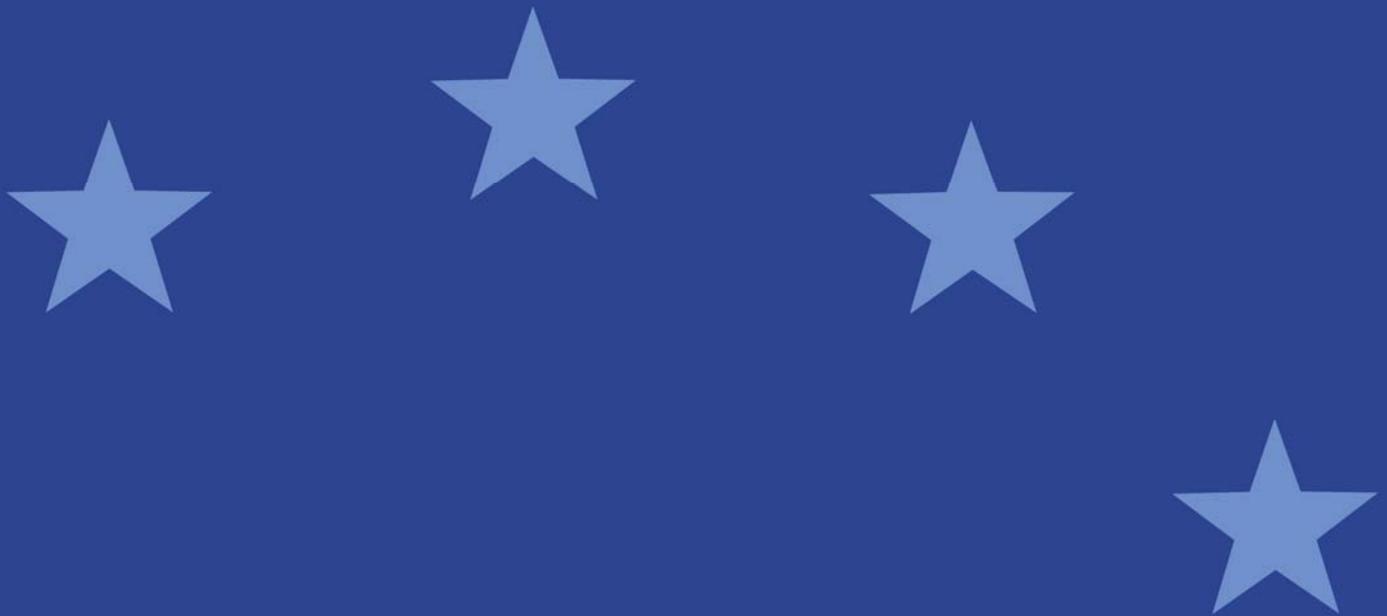




European Securities and  
Markets Authority

# Final Report

**Draft technical standards on data to be made publicly available by TRs  
under Article 81 of EMIR**





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# 1 Executive Summary

## Reasons for publication

Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (EMIR) requires ESMA to develop draft regulatory technical standards specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published by trade repositories.

Aggregate position data made available to the public has experienced several problems related to the comparison and aggregation of data across trade repositories. Following a public consultation, ESMA is setting out several additional requirements to better specify and enhance the data made publicly available by trade repositories and to allow the publication of certain aggregate figures for market participants that are required by EU regulations such as MiFID II and the Benchmarks Regulation.

## Contents

This document presents the summary of feedback to ESMA consultative proposals and the requirements related to the publication of data by trade repositories. Those refer to (i) calculation of market activity and outstanding volumes for on venue and off-venue traded derivatives, (ii) the avoidance of double counting across trade repositories, (iii) the details of aggregations for commodity derivatives and derivatives using benchmarks, as well as (iv) the general technical aspects of publication of aggregate data.

## Next Steps

The draft amendments to the regulatory technical standards under Article 81(5) EMIR with regards to aggregate position data are submitted to the European Commission for endorsement. In accordance with Article 10 of Regulation EU No 1095/2010, the European Commission has to decide whether to endorse the draft technical standards within 3 months.

**Acronyms and definitions used**

BMR	Benchmarks Regulation - Regulation (EU) No 2016/1011 on benchmarks
CM	Clearing Member
CCP	Central Counterparty
CSD	Central Securities Depository
CPMI	Committee on Payments and Market Infrastructures
CPSS	Committee on Payment and Settlement Systems
ECB	European Central Bank
EEA	European Economic Area
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
ETD	Exchange-traded derivative
EU	European Union
FSB	Financial Stability Board
IOSCO	International Organisation of Securities Commissions
ISIN	International Securities Identification Number
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MIC	Market identifier code
MiFID	Markets in Financial Instruments Directive 2014/65/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
NCA	National Competent Authority



OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
RTS	Regulatory Technical Standards
RTS 20	Commission delegated regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business
RTS 23	Commission delegated regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities
SFTR	Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
SMSG	Securities and Markets Stakeholder Group
TR	Trade repository
UTI	Unique Transaction Identifier
XML	Extensible Mark-up Language

## 2 Review of the EMIR Technical Standards on data to be made publicly available

### 2.1 Background

1. Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, CCPs and trade repositories (EMIR) requires ESMA to develop draft regulatory technical standards specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published as well as operational standards required in order to aggregate and compare data across repositories and for the relevant authorities to have access to information as necessary.
2. ESMA fulfilled this mandate in September 2012 and submitted those drafts to the Commission, which became the Commission Delegated Regulation (EU) No. 151/2013 (RTS, hereafter).
3. The RTS consisted of a definition of the data (i) to be made publicly available on a weekly basis by the trade repositories (TRs, hereunder), (ii) the access levels for EEA and third country authorities, as well as (iii) a brief reference to the use of communication procedures, standards for messaging and reference data used at international level without specifying or prescribing standards to be used.
4. This Final report focuses on the amendments to the RTS concerning the aggregate position data to be made publicly available by the TRs under EMIR and specifies the relevant operational standards to compare and aggregate this type of data across TRs. The final report leverages on the feedback received to the public consultation undertaken between mid-December and mid-February.
5. At the time of drafting the current RTS (2011-2012), there were still a number of discussions at international level on the aggregation of data across TRs. The final report from CPSS-IOSCO on “OTC derivatives data reporting and aggregation requirements”<sup>1</sup> was published in January 2012, while the “FSB Feasibility Study on Aggregation of OTC Derivatives Trade Repository Data”<sup>2</sup> did not start until early 2014 and the publication of the final Study took place only in September 2014. Therefore, ESMA decided to keep the wording of the RTS sufficiently flexible to accommodate further developments of international standards.
6. The standards for data to be made publicly available were an area where ESMA could not build on lessons learnt. The practical implementation of EMIR reporting and the experience gained so far has shown several shortcomings and limitations that need to

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<sup>1</sup> <http://www.bis.org/cpmi/publ/d100.pdf>

<sup>2</sup> [http://www.financialstabilityboard.org/wp-content/uploads/r\\_140919.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_140919.pdf)

be addressed so that the data published by the trade repositories under EMIR can be better used by the general public.

7. Due to non-standard, sometimes insufficient tools and functionalities provided by TRs, the public needed to spend considerable time accessing the websites of the different TRs, downloading files in TR-customised formats published with different frequencies, translating them into a common one, and finally trying to aggregate it across all the TRs. These are all overly manual processes. As a result, the EMIR public data was difficult to use and the transparency of derivatives towards the general public was not achieved.
8. As part of its supervisory actions, ESMA discussed and agreed with the TRs the implementation of several practical aspects to overcome some of the aforementioned issues and to increase the value for the public of the EMIR aggregated data. Following this initiative, common templates were adopted and data started becoming more comparable.
9. In the meantime, several other EU regulations are requiring entities to assess their activities with regards to derivatives concluded in the EU. Three years after the start of the reporting obligation the TRs have gained considerable experience with regards to derivatives data and have demonstrated being able to put in place complex reporting and data processing systems. From that perspective, and taking into account that EMIR reporting comprises both exchange-trade derivatives and OTC derivatives, ESMA understands that the TRs are in a privileged position to provide the most comprehensive derivatives data aggregation in the EU. Expanding and making more granular the information that TRs publish appears necessary to make a better use of the stream of data reaching TRs and to provide the best possible aggregated data that EU financial markets need for functioning under the current regulatory framework.

## 2.2 Trading activity on commodity derivatives under MiFID

10. Article 2 of draft RTS 20 under Directive 2014/65/EU<sup>3</sup> (MiFID II, hereinafter) requires the assessment of the size of the trading activity in commodity derivatives, emission allowances and derivatives of persons performing activities under MiFID II in order to assess the application of certain exemptions. In that regard, ESMA sees additional benefits from providing aggregation of the different types of commodities derivatives concluded in the EU.
11. Article 2(1)(j) of MiFID II grants persons performing MiFID II activities in commodity derivatives, emission allowances and derivatives thereof an exemption if their activities are ancillary to their main business. Article 2(4) of MiFID II requires such persons to compare the size of their trading activity in commodity derivatives, emission allowances and derivatives thereof to the overall market trading activity in a particular asset class over a certain period of time (the trading activity test).

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<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0065&from=FR>

12. The asset classes and the relevant thresholds per asset class have been further specified by ESMA in RTS 20.
13. Persons wanting to benefit from the MiFID II exemption in Article 2(1)(j) of MIFID therefore have to execute a test where they compare their own trading to the total trading in the EU market based on eight distinct asset classes.

## 2.3 Benchmarks Regulation

14. Regulation (EU) 2016/1011<sup>4</sup> of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, (BMR, hereinafter) was published on 29 June 2016.
15. BMR requires the establishment of appropriate measurement for measuring the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds for the purposes of assessing benchmarks under the thresholds in Article 20(1) and Article 24(1)(a) of BMR. Depending on the nature of the benchmark the assessment is performed either by the European Commission, by the relevant competent authorities or by the administrators.
16. Under Article 20(1) of BMR, the European Commission “shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish and review at least every two years a list of benchmarks provided by administrators located within the Union which are critical benchmarks, provided that one of the following conditions is fulfilled: the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable (...).”
17. Furthermore, under Article 20(6) of BMR it is provided that the Commission shall be empowered to adopt delegated acts in accordance with Article 49 BMR in order to specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in Article 20(1) of BMR and in point (a) of Article 24(1) of BMR.
18. Article 24(1)(a) of BMR provides that “a benchmark which does not fulfil any of the conditions laid down in Article 20(1) is significant when it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average

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<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=en>

value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months”

19. Under Article 24(2) of BMR the European Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to review the calculation method used to determine the threshold referred to in point (a) of Article 24 (1) of BMR “in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold. Such review shall take place at least every two years as from 1 January 2018.
20. Finally, under BMR it is provided that an administrator shall immediately notify its competent authority when its significant benchmark falls below the threshold mentioned in point (a) of Article 24(1) of BMR.
21. On 11 February 2016, ESMA received a request from the European Commission for technical advice on possible delegated acts<sup>5</sup> under the BMR on the appropriate measurement of the nominal amount of financial instruments other than derivatives, the notional amount of derivatives, and the net asset value of investment funds. ESMA consulted on the appropriateness of using EMIR TR data for the measurement of the notional amount of derivatives. Market participants were generally in favour of using EMIR TR data highlighting the importance of the use of existing regulatory framework and not creating new burden on users. However, their main concern related to the non-availability of the data to benchmarks administrators. ESMA has considered in its consultation paper the merit of broadening the regime for publicly available TR data which was generally welcomed by market participants. Further, in order to facilitate data aggregations and links between the different types of benchmarks used, ESMA has included in its final report on the technical advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indices. However, co-legislators have not envisaged a specific mechanism to measure and publish the total use of a specific benchmark. Absent this publication, it would be difficult if not impossible to conduct the measurement of the conditions mentioned above. ESMA considers that TR regulated data constitutes the best alternative for these calculations.

## 2.4 Areas with proposed amendments to the RTS

22. While it was not an original objective of EMIR to provide granular aggregate position data to the public, ESMA understands that establishing a comprehensive framework for data aggregation is essential to achieve the objectives for derivatives transparency set out by the G20 in September 2009. While defining the data aggregations per class of derivative to be performed, ESMA leverages on its experience with granular derivatives data and

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<sup>5</sup> The mandate for the technical advice is publicly available: [http://ec.europa.eu/finance/securities/docs/benchmarks/160211-mandate-esma-request\\_en.pdf](http://ec.europa.eu/finance/securities/docs/benchmarks/160211-mandate-esma-request_en.pdf)

also ensures that the details published would allow for the comparison and aggregation of data across TRs.

23. Under Article 2(6) of EMIR, a class of derivative is defined as “a subset of derivatives sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional amount.” Furthermore, it is specified that “Derivatives belonging to the same class may have different maturities.” In that respect, while drafting the initial requirements for data aggregation under Article 1 of RTS, ESMA referred only to the lowest level of granularity, i.e. the asset class of a derivatives without further specifying the rest of elements. In this final report, ESMA is further specifying those elements for derivatives in the commodities asset class and for derivatives that use indices.
24. Furthermore, as mentioned in sections 2.2 and 2.3, there are two EU regulations, in particular MiFID II and BMR, which require the use of EU aggregate derivatives data for different purposes.
25. As discussed in the Consultation paper, in the absence of TR data, the entities subject to both regulations would need to run complex processes to compile the data across all the different venues and post-trade providers. Clearly this process would not be error-free and it is highly possible that there will be different figures obtained by each entity. From the perspective of the supervisory authorities such situation would significantly hamper the fulfilment of their duties. Should the authorities be required to recreate the aggregations from the derivatives data to which they have access, it will be impossible to compare the results, since every authority has different access levels based on its responsibilities and mandates. In case it would be for ESMA to perform these aggregations, such task would be overly burdensome and, most importantly, ESMA would lack the direct contact with the reporting entities should any amendments to the underlying data be needed.
26. ESMA therefore proposed the use of TRs, as they play a pivotal role in the EU derivatives reporting regime, they already serve a public purpose of providing derivatives data to competent authorities and being a central market infrastructure established to improve the transparency of derivatives markets, they are naturally placed to play this role.
27. ESMA acknowledges that there is still some work to be done with regards to the quality of the data reported to TRs. Furthermore, ESMA also noted the dynamic nature of the rules on derivatives reporting which is influenced, among others, by the appearance of new derivative products, the breadth of the existing ones, the granularity of the details to be reported and by the international work on the standardisation of data reporting<sup>6</sup>. The rules on aggregate position data leverage on the rules on reporting and by default might need to be updated whenever necessary to ensure alignment with the reporting rules.

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<sup>6</sup> At this stage, CPMI-IOSCO has three work streams on data harmonisation, namely UTI, UPI and critical data elements, which would need to be incorporated to the EU reporting rules when finalised

28. While the quality of the aggregate position data published by the TRs is dependent on the quality of the data reported, ESMA is also certain that the publication of aggregate data by TRs would facilitate to detect additional data quality issues which can be seen more easily at aggregate level, namely over and under-reporting, incorrect identification of the side of the trade or erroneous classification of derivatives, etc.
29. In the Final report on Draft technical standards on access to data and aggregation and comparison of data across TR under Article 81 of EMIR<sup>7</sup>, ESMA defined the operational standards for aggregation and comparison of transaction data across TRs. In order to ensure that the end users are able to aggregate and compare the aggregate position data published by the TRs, ESMA is also establishing in this final report the general rules for making the data available and as well as the specific rules to perform aggregations at the level of the individual TRs by defining the following aspects:
- a. the frequency and timeliness of publication
  - b. the general technical aspects of aggregation for the purposes of publication
  - c. the details of aggregations for the purposes of benchmarks' thresholds
  - d. the details of aggregations for the purposes of trading size of commodity derivatives
30. ESMA has considered also the feedback received on the consultation on publication of aggregate data under Regulation 2015/2365<sup>8</sup>.
31. Finally, should drastic changes on the reporting logic under Article 9 EMIR take place as part of the EMIR Review process, the proposed aggregation logic might need to be amended and adapted.

### **3 Avoidance of double counting of cleared transactions for the purposes of calculation of aggregate market volumes**

32. The reporting of cleared transaction is provided in Article 2 of Commission Delegated Regulation 148/2013<sup>9</sup> (current RTS on reporting) and it is further clarified in several ESMA EMIR Q&As<sup>10</sup>. Furthermore, the Q&As clarification were incorporated into Article 2 as amended by Commission Delegated Regulation 2017/104<sup>11</sup> (Amended TS on

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<sup>7</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-issues-amended-rules-access-aggregation-and-comparison-data-across-trade>

<sup>8</sup> <https://www.esma.europa.eu/press-news/consultations/consultation-draft-rtts-and-its-under-sftr-and-amendments-related-emir-rtts>

<sup>9</sup> COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L52. OJ 23.2.2013, p.1

<sup>10</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_qa\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf)

<sup>11</sup> COMMISSION DELEGATED REGULATION (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L17, OJ 21.1.2017, p.1

- reporting). In particular, “where a contract is both concluded on a trading venue and cleared on the same day, only the contracts resulting from clearing shall be reported”.
33. The reporting technique for exchange-trade derivatives (ETDs) is addressed in a specific section of the ESMA EMIR Q&As, where two possible scenarios are depicted. While essential to determine the risk exposures between the different entities in the clearing chain, the reporting logic results in additional number of transactions which, for the purposes of market volume and size, need to be addressed.
  34. Similarly, in the case of the OTC transactions, the reporting of the clearing by the CCPs, while allowing for swift identification of exposures, practically duplicates the actual volume of transactions.
  35. The current reporting logic under EMIR does not allow to accurately distinguishing in all cases between the trades where the CM is clearing for its clients from those where it is clearing trades concluded on its own account.
  36. To ensure high quality data and to address risks of misreporting or potential omission of information, ESMA has included in its ESMA EMIR Q&As guidance that when one of the counterparties to a derivatives contract has several roles in the derivatives transaction, the identification of that entity should be included in each of the relevant fields – “Broker ID”, “Beneficiary ID”, “Report submitting entity ID”, “Clearing member ID”, “CCP ID”.
  37. Last, but not least, the accuracy and correctness of the aggregation performed by the TRs is dependent on (i) how the TRs have implemented the ESMA’s requirements and (ii) how the counterparties have reported the data. In case one of those is not accurate enough, the actual number would neither be. Particularly in the case of the commodity derivatives, in order to allow the TRs to perform consistent and comparable aggregations, it is of utmost importance that the counterparties populate correctly and only with monetary value the field “Notional”.
  38. Furthermore, based on the questions received from respondents on the population of “Notional” in certain cases, ESMA would refer the respondents to Article 3a of the Amended RTS on reporting, as well as OTC Q&A 3, 9 and 14 and TR Q&As 1, 34, 35 and 41 of the ESMA EMIR Q&A. The Q&As cover different cases such as those referring to:
    - a. Trade-at-settlement derivatives which do not have a price at the time of the reporting, in which case as clarified in the ESMA EMIR Q&A, the notional amount should be evaluated using the price of the underlying asset at the time the aggregation of the OTC derivatives. This will also ensure consistency with the way calculation for clearing thresholds is made.
    - b. Derivatives where the price/rate is expressed in percentage, in which case a monetary value of Notional should be reported and therefore taken for the purpose of aggregation.

## 3.1 ETDs

### 3.1.1 Scope of the data

#### 3.1.1.1 Determination of Clearing-member-to-client volumes

39. Usually ETD are cleared shortly after their conclusion, hence under the amended RTS on reporting it is provided that ETDs are reported only in their cleared form. There are potentially some instances where the clearing might not take place immediately. It remains unclear whether trades in the scope of EMIR concluded on venues outside the EU are reported in a consistent manner with the ones concluded on EU venues.
40. ESMA is also aware that at the level of each CM, at least three separate types of accounts, e.g. own trading, omnibus client, segregated client, need to be kept in order to allow for the correct operational and regulatory treatment of risks and positions. Therefore, the netting at the level of CCP is carried out per each of the separate accounts of the CM. The derivatives trades concluded by the CM on own account may face the CCP directly or may be also versus one of its clients.
41. Therefore, in the Consultation Paper ESMA proposed that, to avoid missing some trades and given the central role of the CM in ETDs, only the transactions where the CM participates should be taken into account. To that extent, the transactions concluded by the CM with counterparties which are not CCPs, i.e. with the CM's clients, would need to be taken fully for the purposes of calculation of the trading activity. Furthermore, ESMA proposed in the Consultation paper that when the TRs aggregate ETDs for the purposes of calculating market activity, they include the trades where (a) the field "Venue of execution" is not populated with "XXXX" or "XOFF", (b) where neither counterparty is a CCP and (c) where (i) under Option 1 the reporting counterparty is identified as a clearing member or (ii) under Option 2, either of the counterparties is also identified as CM for the transaction.
42. Given that in some of the cases, the CM might not be reporting, because it is not subject to the reporting obligation under Article 9, ESMA indicated that the final decision on the scope of data for aggregation will be taken based on the feedback received on this aspect.
43. With regards to the achievement of more accurate aggregation of ETD volumes, the respondents expressed mixed preferences with regards to the two options. They were in favour of the option that considers all trades where CM is on either side of ETDs, as they believed that option 1 is subject to some level of inaccuracy for the cases when at least one of the CMs is not established in the EEA and, therefore, not subject to EMIR reporting, as there would be no reports. Those respondents in favour of option 1 instead, were arguing that taking into account both legs would lead to duplication due to the inclusion of the same UTI twice as well as the case of the back-off client leg.

### 3.1.1.2 Determination of Clearing-member-to-CCP volumes

44. Furthermore, it still remains unclear how to add to the trades described in the previous section the ones that are directly concluded between the CM and the CCP and which are not stemming from potentially netted positions of the CM clients. In the Consultation Paper ESMA suggested two options.
45. Under Option 1, ESMA proposed to use the field “Transaction reference number”, which is labelled “Report tracking number” in the amended RTS on reporting. While this would have been ESMA’s preferred option, given that the field was originally meant to ensure the uniqueness of ETD executions independently of the risk exposures, ESMA is aware that this field is currently not populated in a consistent way. Any potential aggregation based on this field might produce results which are not accurate.
46. Option 2 would be to use “Beneficiary” field instead of the field “Transaction reference number” field. In those cases, where there are trades between the CM and the CCP, the CM would need to identify whether it is the beneficiary or whether the beneficiaries are its clients. Given that the netting between own trades and client trades is not possible under EMIR, the ETD trades relevant for the purposes of aggregation would be clearly identified.
47. The feedback received coincided with ESMA’s analysis about the quality of the data reported. While the respondents were more supportive of the use of “Beneficiary ID” as a field allowing for a more accurate aggregation of ETD volumes between the CM and the CCP, they noted several deficiencies.
48. Some respondents argued that there is confusion in the market how the field “Beneficiary ID” should be populated. It stems by the fact that while in the RTS the party subject to the rights and obligations arising from the contract is also the beneficiary, in an ETD trading scenario the RTS definition also suggests that there are occasions where the beneficiary of the contract is not a counterparty. Furthermore, some concerns were expressed about the practicality of the approach which might be overly burdensome on CMs and clients to provide the information on the report. Some also mentioned that this would require an amendment to the currently prescribed reporting logic for that field.
49. Nevertheless, the market participants consider the other option, i.e. Transaction reference number/Report tracking number, as burdensome for aggregation given the potentially unlimited amount of TRN that can be reported and because it is not being populated consistently across the market.
50. Furthermore, ESMA inquired on the suitability of the TR data as a source for calculation of market volumes in the EU. Some respondents considered as more accurate the data published by the trading venues. The rationale was that the model currently used which could affect the representation of trades executed, make it difficult to aggregate, and compare data across different models. In addition, according to those, counterparties still struggle to report ETD transactions on time, accurately and consistently. A further clarification was suggested by some respondents to: (i) improve the aggregations by also

excluding any 'N' or 'P' record that is subsequently 'errored' out with an action type 'E'  
(ii) the aggregation of the action type should be applied in combination with field Report Level being 'T'. ESMA agrees with both suggestions though recognises the difficulty of the one related to the errored trades.

51. Based on the feedback received, ESMA explored the possibility to use only derivatives concluded between the CM and the CCP where the field "Venue of execution" is populated with a valid MIC and the field Compressed is populated with "N", thus covering only derivative trades, but not positions. The way forward is detailed in section 3.3.

### 3.1.2 Aggregation proposal<sup>12</sup>

52. The current rules on reporting require the counterparties to report their new derivatives trades, ETD executions included, with action type "N". The logic is explained in detail in ESMA EMIR Q&A 17, as well as in the EMIR ETD Q&As. Under the amended TS on reporting, the counterparties would be allowed to report their original executions also with action type "P". The subsequent reporting of CCP cleared positions remains unaffected.
53. Given that for the purposes of assessing market activity, what is important is the actual transaction volume and not where the risks stand, it is essential that the TRs include all the underlying transactions between CM and its clients that are reported with action type "N" under the current rules on reporting or with action types "N" or "P" and where the field "Level" is populated with "T" (for Trade) under the amended TS on reporting.
54. The ETDs identified as "Position" should be excluded from the calculations of aggregate positions that refer to market volumes, as they contain netted transactions
55. For the purposes of assessing ETD volumes, after classifying the trades among the categories defined in paragraph 107 and performing the necessary adjustments detailed in that paragraph, ESMA proposed that the TRs would need to divide by 2 the relevant aggregate positions. This mechanism would cater for the actual duplication of the reporting of a single execution on the derivatives venue which is transformed into simultaneous buy and sell transactions versus the CCP. As mentioned in paragraph 32, this logic was introduced to be able to capture the risks in the clearing chain.
56. The feedback received from the respondents was mixed. Part of them fully supported ESMA's proposal to divide by 2 the resulting aggregations in order to avoid the duplication of trading volume of ETDs. In addition, those provided the following suggestions:
  - c. Some problems of double or multiple counting of contracts have been flagged;

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<sup>12</sup>Among others, the aggregation proposal would rely on the correct reporting by counterparties of the details of the derivatives

- d. Further clarification about the case in which a non-EEA counterparty is involved in the trade.

57. The rest argued that, the approach of dividing by 2 is not appropriate in the case of transactions on both EEA and third country venues unless the other side of the transaction is also an EEA entity. In that case, dividing by 2, would not be accurate as some CCPs and counterparties do not have a reporting obligation. ESMA agrees that this is a drawback of the approach, however at this stage the impact is considered as reduced compared with the actual value added of providing the aggregations.

### 3.2 OTC and XOFF transactions

58. Differently to the ETDs, where the actual counterparties of the derivative are not in contact with each other, in the case of the OTC derivatives there is usually an original bilateral transaction which is subsequently sent for clearing. Hence, in the case of the OTC transactions it is expected that by taking only the original bilateral trades, the TRs would be able to accurately calculate the volume of market activity.

59. In the Consultation paper, ESMA indicated that this can be done by including in the aggregations only the non-cleared trades, i.e. those where the field "Venue of execution" is populated with "XXXX" and where the field "Cleared" is populated with "No".

60. Furthermore, ESMA mentioned that the derivatives where the field "Venue of execution" is populated with XOFF are expected to work in similar way as the OTC trades, with the only practical difference that the XOFF would be expected to be cleared in all cases. Therefore, the TRs should include in the aggregations only the pre-cleared trades, i.e. those where the field "Venue of execution" is populated with "XOFF" and where the field "Cleared" is populated with "No". To avoid double counting, only the records with action type "N" should be included.

61. The feedback received from the respondents was split. Part of them expressed mixed preference in favour of ESMA's proposal, encouraging ESMA to include OTC/XOFF trades cleared at the moment of the execution and reported originally with action type "N" and field 'Cleared' populated with 'Y' (without bilateral state before clearing) to provide an accurate OTC volume. ESMA points out in that particular case to the amended RTS on reporting where reporting in their cleared form is only possible for the cleared trades that are concluded on a trading venue. Therefore, all the "OTC/XOFF" trades should be reported in their original non-cleared form prior to their reporting in cleared form.

62. As part of the feedback, ESMA received further suggestions regarding the aspects discussed in the following paragraphs.

63. Respondents requested ESMA to provide further granularity separating the overall trading activity in each class by on-venue and off-venue transactions and cleared and

uncleared transactions. At this stage, the instruments can be grouped into (i) transactions on trading venues (RMs and MTFs)<sup>13</sup>; (ii) transactions executed off-venue.

64. In addition the following scenarios were requested to be taken into account: (i) transactions executed between two self-clearing members; (ii) transactions executed between one self-clearing member and a client of another clearing member; (iii) transactions executed between two clients. ESMA points out that these situations are not expected to be reported by the entities in a manner different from the one established by the reporting rules, i.e. there is an original bilateral transaction which is subsequently sent to clearing. ESMA understands that from the moment in which the derivative is accepted by the CM, it becomes cleared. Therefore the trades between the CM and its clients will be reported as such.
65. Furthermore, ESMA was requested to not limit the aggregations to only those trades where field “Cleared” is populated with “No”. The issue is related to those trades, which are executed off-facility but immediately cleared, as they are reported with the Venue of Execution as “XXXX” and the field “Cleared” is populated with “Yes”. ESMA understands that an initial derivatives trade needs to be reported. A reporting of only cleared trades is not compliant with the rules and thus subject to potential sanction.
66. A last point from the feedback requested that CFDs and spreadbets reported with action type “P” are included in volume aggregations, which are similar to ETDs.

### 3.3 Way forward

67. Based on the feedback included in sections 3.1 and 3.2, ESMA proposes to change the aggregation logic and to establish two aggregation logic, one for (i) on-venue traded derivatives and, another one for (ii) off-venue traded derivatives, which includes XXXX and XOFF. The aggregation should be performed as detailed in the following sub-sections.

#### 3.3.1 On-venue traded derivatives

68. Consistent with the guidance on reporting, the amended TS on reporting and the feedback received, ESMA understands that all the derivatives concluded on trading venues, such as RM, MTFs and OTFs, will be reported in their cleared form. Until the new rules enter into force the TR should aggregate the derivatives with action type “New” where the field “Venue of execution” is populated with a valid MIC code different from XXXX and XOFF.
69. Consistent with the rules on UTI generation, ESMA prefers that where possible the reports made by the CM are the ones taken into account for aggregation purposes. On the basis of the feedback provided, ESMA proposes to adopt the following rule – to include in the aggregation the derivatives where the CM is established in the EEA and it

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<sup>13</sup> After implementation of the revised technical standards on reporting this category would include also OTFs

is the reporting counterparty and the derivatives where the CM is not established in the EEA and is the other counterparty. This would ensure that all the trades between CM and their immediate clients are taken into account for the purposes of determining trading volumes. ESMA has amended accordingly the draft RTS. Furthermore, only the trades that are concluded between the CM and the CCP where the field Venue of execution is populated with valid MIC code different from XXXX and XOFF need to be added.

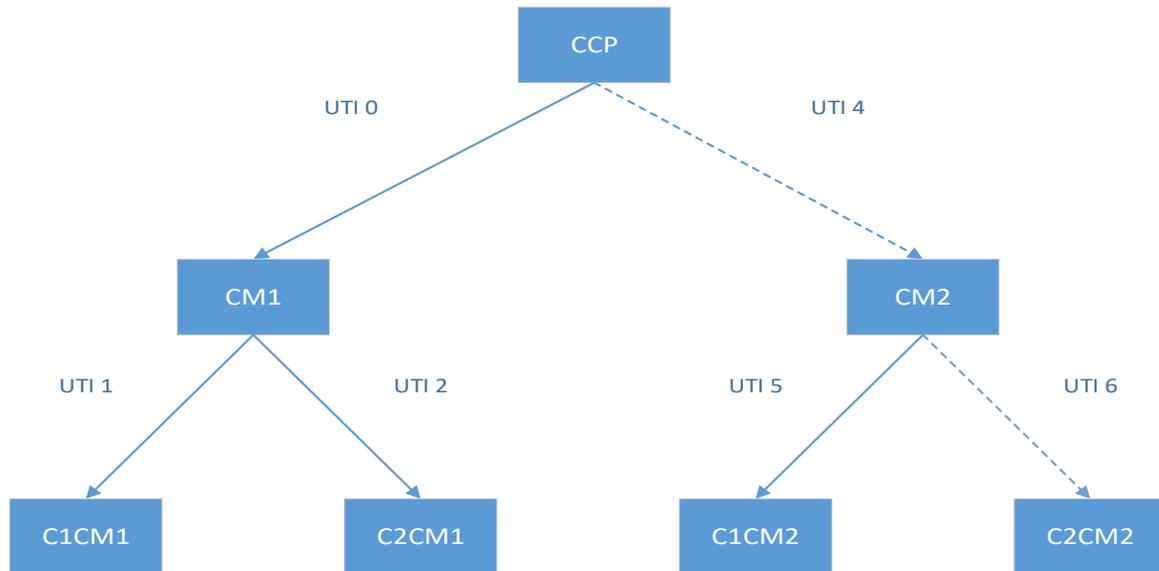


Table 1.

CPTY ID	ID OTHR CPTY	B/S SIDE	TRADE ID	VENUE	NOTIONAL	Compression
C1CM1	CM1	B	UTI1	AAAA	200	N
<b>CM1</b>	<b>C1CM1</b>	<b>S</b>	<b>UTI1</b>	<b>AAAA</b>	<b>200</b>	<b>N</b>
C2CM1	CM1	S	UTI2	BBBB	100	N
<b>CM1</b>	<b>C2CM1</b>	<b>B</b>	<b>UTI2</b>	<b>BBBB</b>	<b>100</b>	<b>N</b>
<b>C1CM2</b>	<b>CM2</b>	<b>S</b>	<b>UTI5</b>	<b>AAAA</b>	<b>200</b>	<b>N</b>
CM1	CCP	B	UTI0	CCCC	100	N
<b>CCP</b>	<b>CM1</b>	<b>S</b>	<b>UTI0</b>	<b>CCCC</b>	<b>100</b>	<b>N</b>
<b>CCP</b>	<b>CM2</b>	<b>B</b>	<b>UTI4</b>	<b>DDDD</b>	<b>100</b>	<b>N</b>
CM1	CCP	B	PUTI1		50	Y
CCP	CM1	S	PUTI1		50	Y
CM2	CCP	S	PUTI2		40	Y
CCP	CM2	B	PUTI2		40	Y

CM1 is a clearing member established in the Union  
 CM2 is a clearing member established outside the Union  
 C1CM1 is a client of CM1 established in the Union  
 C2CM1 is a client of CM1 established in the Union  
 C1CM2 is a client of CM2 established in the Union  
 C2CM2 is a client of CM2 not established in the Union

70. For the purposes of assessing on-venue volumes, after classifying the trades among the categories defined in paragraph 107 and performing the necessary adjustments detailed in that paragraph, ESMA proposed that the TRs would need to divide by 2 the relevant aggregate positions. This mechanism would cater for the actual duplication of the reporting of a single execution on the derivatives venue which is transformed into simultaneous buy and sell transactions versus the CCP. No comments were received on this proposal.

### 3.3.2 Off-venue traded derivatives

71. In order to establish a homogeneous and sound framework for aggregating more accurately OTC derivative volume of market activity, ESMA proposes to take into account only the original bilateral OTC and XOFF trades:
  - e. For swaps, options, swaptions, FRAs and forwards, i.e. those that are reported with action type "N", field "Level" is populated with "T" and field "Compression" is populated with "N".
  - f. For CFDs and spreadbets those that are reported with action types either "N" and "P", field "Level" is populated with "T" and field "Compression" is populated with "N".
72. To sum up, this practice, would allow TRs to avoid the double counting of the trades and capture correctly the off-venue activity.

## 4 General aspects of data aggregation

### 4.1 Market activity and outstanding derivatives

73. As explained in section 3.3, given the reporting logic established under EMIR, the publication of aggregate volumes of market activity requires the TRs to carry out certain adjustments in order to remove double-counting, both in the case of on-venue and off-venue derivatives.
74. Outstanding derivatives are also known as open interest. The definition of outstanding derivative is contained in the draft amended RTS on operational standards for data comparison and aggregation and refer to those derivatives, including CCP-cleared derivatives that have not reached maturity, neither have been terminated, errored nor been submitted as part of a position.
75. In the case of the on-venue derivatives, ESMA understands that similar adjustment as for market activity has to be done. This is due to the fact that all on-venue derivatives are cleared. From this perspective, only the CCP-cleared positions where an EEA CCP is the reporting counterparty and a non-EEA CCP is the other counterparty should be taken into account. As in the case of market activity, the resulting amount needs to be divided by two to remove the double-counting stemming from CCP interposing between buyer and seller.

76. In the case of off-venue traded derivatives, there are two types of outstanding trades. The non-cleared ones and the cleared ones. The non-cleared ones should be computed as they are, i.e. all the derivatives that have not reached maturity, neither have been terminated, errored nor be submitted as part of a position. In the case of the cleared ones, only the derivatives where only the derivatives where an EEA CCP is the reporting counterparty and a non-EEA CCP is the other counterparty should be taken into account. As in the case of on-venue outstanding trades, the resulting amount needs to be divided by two to remove the double-counting stemming from CCP interposing between buyer and seller. At this stage, there is very little room for netting, hence this approach would produce reliable aggregation.

## **4.2 Frequency and timeliness of the publication of data**

77. The frequency of publication of data is one of the aspects where harmonisation is required. At the start of the reporting obligation under EMIR, some TRs published data on weekly basis, some others on a daily basis. This led to non-comparable figures.
78. In order to overcome this hurdle in data aggregation, ESMA proposed the publication by TRs of aggregate data on a weekly basis. The respondents agreed unanimously with the proposal.
79. Therefore, each TR should publish data aggregated in accordance with the criteria set out in section 4.3 by Tuesday noon the following week. The data should take into account all derivatives reported as of 23:59:59 UTC on the previous Friday.
80. For the purposes of weekly reporting aggregates, the data should include all derivatives trades reported between Saturday 00:00:00 UTC and Friday 23:59:59 UTC both inclusive with action type “N” and with action “P” in accordance with the methodology outlined in section 3.3.
81. When providing aggregates on the outstanding trades, those would be the ones that remain outstanding as of Friday 23:59:59 UTC.

## **4.3 Operational standards for aggregation and comparison of aggregate public data**

- 4.3.1 Scope of the data to be taken into account for the purposes of general aggregations at asset class and contract type level
82. When performing the general data aggregations, in the consultation Paper, ESMA proposed that the TRs should take into account all derivatives reported to them under Article 9 EMIR as appropriate. In particular, when providing information on market activity, i.e. volumes of derivatives concluded, the TRs should exclude derivatives reported at position level, i.e. those where field “Compression” is reported as “Y” or where

under the amended TS on reporting the field “Level” of the derivative is reported as “Position”.

83. However, when providing aggregate data on outstanding trades, the TRs should include the derivatives that are reported at position level, i.e. those that are reported with the field “Compression” populated with “Y” or where under the amended TS on reporting the field “Level” of the derivative is reported as “Position”. For that purpose, each TRs should ensure that when performing data aggregations, it does not count twice the derivatives trades and the subsequently reported cleared positions. However, when TRs are required to perform specific aggregations at class of derivatives level, as those outlined in sections 5.2 and 6.2.2, the TRs should take due account of the specificities of the aggregations for those trades.
84. TRs should provide aggregate data per asset class for trades reported in the previous week and for outstanding trades as of the relevant cut-off time defined.
85. In addition, further to the specification how to perform aggregation depending on the contract type of derivatives, it follows that the public aggregates would need to include a break-down per contract type. This type of information is already published by several non-EU TRs.

#### 4.3.1.1 Correction of mistakes

86. ESMA pointed out in the Consultation paper that it expects that the TRs include in their internal procedures a reference to a process which allows them to correct in timely manner any mistakes on the aggregate position data that are being detected. The mistakes can both relate to the data reported and then corrected by the reporting counterparties and to errors in the actual aggregations. Several useful suggestions were received on this aspect:
  - a. ESMA to draft precise rules about the correction of historical reported public data proving that have been reported inaccurately. The final objective is to avoid a scenario where the public data is under constant revision.
  - b. To correctly incorporate data corrections into public aggregates to achieve transparency towards users. It should be specified: (i) timeliness and frequency of the regular provision of corrected files with EMIR public data; (ii) the process by which data users shall be informed about significant data corrections; (iii) the procedure for publishing ad-hoc data corrections.
  - c. Clarify how TRs shall ensure that positions and transactions reported and eligible at the same date could be linked to avoid duplicates in aggregations.
87. However, ESMA believes that these precisions are relevant for the implementation of the provisions in the technical standards rather than for the technical standards itself and stands ready to provide the necessary guidance following the endorsement of the amended technical standards.

88. Furthermore, some respondents indicated that TRs are not positioned to be interpreting the accuracy of the data reported by their clients besides the performance of logical validations that are imposed prior to a trade being considered “reported.” While the counterparties are the only ones in possession of the complete information, the TRs are in possession of the complete reporting log of a given derivatives contract and are therefore able to show any correction to the data that have been reported after the publication of an aggregate and therefore allow for its correction.
89. In light of the feedback received, ESMA included a requirement in the final draft RTS for TRs to ensure that the data published by the TRs allows for correction of mistakes and ensures that accurate time series can be kept.

#### 4.3.1.2 Treatment of outliers and soft checks

90. In the Consultation Paper, ESMA suggested that TRs should strive to ensure that the data published is of sufficient quality to allow for meaningful aggregations across TRs. As part of the obligations to ensure accuracy of data and compliance with the reporting requirements under Article 19 of RTS 150/2013, a TR should require the reporting counterparties to amend data which is apparently wrong. For instance, the TRs could put in place soft checks for identifying outliers. The soft checks could be calibrated for specific products, currencies, etc. Standard deviations on normal and log-normal distributions could be used. Given the breadth of derivatives, ESMA noted in the Consultation paper that identifying outliers is not a straight-forward task, hence ESMA would welcome any specific feedback on this aspect.
91. In addition, ESMA pointed out that it is important that the TRs ensure that when outliers are removed from the aggregate position data, this is clearly represented and suggested two potential alternatives. On the one hand, the TRs could publish two different aggregations – one with removed outliers (cleansed data aggregation) and another one without them (raw data aggregation). Alternatively, the TRs could publish only cleansed data aggregation.
92. Regarding products and currencies, the respondents provided the following feedback:
- a. For the purpose of identifying the same outliers, the notional value should be used as key determinant by TRs in order to enhance the data quality.
  - b. To use the following field in the calibration of outliers identification procedure: (i) “Asset class”; (ii) “Contract type”; (iii) “Notional currency 1”; (iv) “Venue of execution”; (v) “Compression”; (vi) “Cleared”, (vii) “Floating rate of leg 1” and “Floating date of leg 2”; (viii) “Floating rate reference period leg 1” and “Floating rate reference period leg 2”. For comparability of data between TRs, algorithms for outlier detection and respective thresholds should be harmonized between TRs and made public by ESMA. From the point of view, it is essential to have access to both the original and cleansed data aggregation.

93. Some respondents however questioned the power of TRs to require reporting counterparties to amend data. As mentioned earlier, ESMA understands that the TRs are required to ensure the compliance of the data with the EMIR requirements, therefore they can perform certain soft checks on the data.
94. Based on the feedback received, ESMA included in the final draft RTS a requirement for the TRs to have in place a procedure for soft check and removal data that is evidently wrong, and to publish a raw aggregation and a cleansed data aggregation.

#### 4.3.1.3 Accounting for reconciliation status

95. Regarding the scope of the data to be reconciled, ESMA also explored to what extent the reconciliation status of derivatives could be taken into account. ESMA's preferred approach would be to include only reconciled data in the aggregated positions calculated under Article 81(5) of EMIR, as this would increase the quality and the reliability of public data. However, ESMA is concerned that the current level of data quality and the high number of non-reconciled transaction (also linked to UTI issues) might not allow for the publication of significant amount of data reported by the counterparties.
96. Concerning the reconciliation status, a majority of the respondents was against the ESMA's proposal to include only reconciled trades, as this would provide inaccurate view of the size of the market. The rest supported it, specifically when it related to fields such as "Asset class", "Contract type" or "Notional" or to dual-sided trades. On that basis, ESMA proposes that, at this stage, TRs do not take into account the reconciliation status of the derivatives for the purpose of aggregations.

#### 4.3.2 Types of aggregations per venue of execution

97. When performing aggregations, the TRs should aggregate separately the derivatives taking into account the type of venue of execution where those are concluded. The practice has showed that aggregating OTC and ETD trades as well as exchange traded and traded off exchange derivatives has little value from the perspective of a public user.
98. Pursuant to the conclusions outlined in sections 3.2 and 3.3, off-venue trades are those for which the field "Venue of execution" is populated with XXXX and XOFF. On-venue trades are those for which field "Venue of execution" is populated with a MIC code as per ISO 10383, different from XXXX and XOFF. Those MIC that are included in the MIFID Database and pertaining to EEA trading venues should be included in the "EEA Venue" aggregation. The rest of MICs should be included in the "non-EEA Venue" aggregation.
99. In that respect and in order to allow for sufficiently granular data, ESMA proposes that the TRs publish data classifying the trades based on the common data field "Venue of execution" as follows:
  - a. Off-venue derivatives where the field "Venue of execution" is populated with "XXXX", classified as OTC

- b. Off-venue derivatives where the field “Venue of execution” is populated with “XOFF”, classified as XOFF
  - c. On-venue derivatives where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located in the Union, classified as EEA MIC
  - d. On venue derivatives where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located outside the Union, classified as non-EEA MIC
100. There was a general agreement with the proposal, however one of the respondents suggested that TRs publish more granular aggregates, in particular providing a separate aggregate for every MIC code.
101. ESMA understands that at this stage, the aforementioned categories in paragraph 99 will be providing enough value for the general public without requiring additional effort from the TRs, neither making the data public data unmanageable nor extremely granular thus raising confidentiality considerations.

#### 4.3.3 Types of quantitative aggregations

102. Currently the TRs are providing aggregate data on the derivatives reported to them and on the outstanding derivatives.
103. In the Consultation paper, ESMA proposed and respondents broadly agreed that the aggregate data to be provided includes the following types of aggregation:
- a. By notional, by aggregating the absolute value reported in common data field “Notional”<sup>14</sup>
  - b. By value, by aggregating the absolute value of the amount reported in counterparty data field “Value of the contract”. In case both counterparties have reported to the same TR, the TR should take only the value reported by the seller of the derivative.
  - c. By number of contracts, by aggregating the value reported in common data field “Quantity”, except in the case of spreadbets, where the quantity should be taken as equal to 1.
  - d. By number of transactions, by aggregating the unique transactions between two counterparties.

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<sup>14</sup> The counterparties should report the data in accordance with the guidance provided in ESMA EMIR Q&A 41.

104. Assuming that the reporting counterparties have reported the data on their derivatives and CCP cleared positions as per the guidance included in ESMA EMIR Q&A 41, the TRs would simply need to add the relevant notional amounts reported.
105. Concerning other aggregation or additional aspect to be taken into account by ESMA in the analysis, one respondents suggested to consider whether aggregate notional is relevant for futures and options and, similarly, whether number of contracts is suitable for instruments such as swaps and forwards. While ESMA understands that in the case of swaps and forwards the number of trades is equal to the number of contracts, there is little value to change the aggregation requirements. Instead the TRs could simply repeat the same figure.

#### 4.3.4 Avoidance of double counting across TRs

106. Furthermore, to avoid the possible double counting of derivatives across TRs, TRs should provide separate aggregation per derivatives where (i) both counterparties report to the same TR, i.e. Dual-sided trades, (ii) only one counterparty reports to the TR and the other counterparty also has reporting obligation under EMIR, i.e. single-sided EEA and (iii) only one counterparty reports to the TR and the other has no reporting obligation under EMIR, i.e. single-sided non-EEA.
107. ESMA considers that given that most of the cleared trades are also reported twice, it might be useful to include as additional more granular level aggregation between cleared and non-cleared derivatives.
108. The quantitative aggregates for all dual-sided trades should be calculated as described in paragraphs 102 and 104 and then should be halved to show the actual aggregate per unique UTI. The aggregates for the different types of single-sided trades should be performed as defined in paragraphs 102 and 104.
109. Regarding the categories suggested by ESMA to include additional granularity between cleared and non-cleared derivatives, the feedback was overall supporting ESMA's proposal. Therefore, ESMA, in order to avoid any possible double counting across TRs, proposes to keep the proposed categories as they provide higher level of between cleared and non-cleared trades.

#### 4.3.5 Accessibility of public data

110. The accessibility of data should be without restrictions or conditions and downloadable or at least enabled to copy. ESMA understands that the data should be available for the public for at least 104 weeks. This would allow the relevant users to have access to aggregate information for the last 2 years.
111. The majority of the respondents agreed on ESMA's proposal to keep publicly data available for 2 years mainly to provide more transparency and because the queries from the industry tend to be predominantly on the last 12-18 months of data. Therefore, there is no need to store such data for a longer period.

112. ESMA, in light of the feedback received, proposes to allow the relevant users to have access to aggregate information for the last 2 years without restrictions or conditions and downloadable or at least enabled copy.

#### 4.3.6 Format and presentation of public data

113. The form in which public data is reported so far by TRs is presented in pivoted tables. ESMA considers that for the purpose of facilitating the usage for the public a tabular form of report may be more convenient for the purpose of aggregating data from different TRs.
114. Given the wider target public, ESMA considers that it is not necessary to include a requirement for publication in xml schema defined in accordance with ISO 20022.
115. The feedback supported the use of tabular form. It is stemming by the providing of a more simple approach, which facilitate additional data analysis and calculation by data users, hence ESMA maintains its proposal.

#### 4.3.7 Conversion rates

116. As indicated in the Consultation paper, ESMA expects that the public aggregate reports are presented in Euros. For the purpose of currency conversion, the relevant exchange rates published by the ECB as of the reference date of the provided figures (i.e. Friday) should be used. For the avoidance of doubt, the exchange rate should be used as published, taking into account all the digits after the decimal mark.
117. The aforementioned standardised conversion will allow for the aggregation and comparison of data across trade repositories.

#### 4.3.8 Legacy trades

118. Some of the trades which are part of aggregations were reported prior to the establishment of harmonised data validations and the entry into force of the amended EMIR RTS and ITS on reporting. Therefore, it is possible that for some of those trades a TR might not be able to accurately classify or even aggregate them.
119. ESMA therefore indicated in the Consultation paper that the TRs should provide the aggregate data based on the best use that they can make of the data reported to them. In case for some of the aggregations, particularly those referring to outstanding trades, it results impossible for a TR to classify certain reports, then those should be labelled as "Other".
120. The feedback was overall supportive of the proposal to classify and populate certain aggregations of outstanding trades with 'Other'. While certain issues were flagged, no better solution was proposed.
121. ESMA proposes to take into account the relevant guidance provided with regards to the reporting of modifications to trades reported prior to the entry into force of the amended

EMIR RTS on reporting. ESMA will be further monitoring the evolution of category “Other” as it is expected to decline over time.

#### 4.3.9 Publication of the aggregation methodology

122. ESMA’s proposal that the TRs publish the methodology for calculation together with the figures was supported. ESMA points out that the methodology should be based on the requirements set out in the technical standards.

## 5 Aggregation on commodity derivatives

### 5.1 Aggregation requirement

123. In order to apply the RTS on ancillary under MiFID II, as explained in section 2.2, market participants, NCAs and ESMA would need to know the market size in terms of notional value traded in the EU, including both on venue and OTC trading, for each of the classes of commodity derivatives mentioned in RTS 20. Given the granular and comprehensive derivatives data that TRs collect and their specialization on data management and processing, ESMA indicated in the Consultation paper that they are best placed to publish statistics on the total trading per each class of commodity derivatives. NCAs would not have access to the necessary information to publish market sizes at the EU level and any other alternative to collect and aggregate this information would create an unnecessary burden and a duplication of costs.
124. Article 2(1) of the draft RTS 20 establishes thresholds for the assessment of trading activity on the following classes of commodity derivatives:
  - a. metals;
  - b. oil and oil products;
  - c. coal;
  - d. gas;
  - e. power;
  - f. agricultural products;
  - g. other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU;
  - h. emission allowances or derivatives thereof.
125. It is further stated in RTS 20 that “the overall market trading activity in each of the asset classes shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person

located in a Member State is a party and of any other contract within that asset class that is traded on a trading venue located in a Member State.”

126. Finally, the calculation of the size of the trading activities shall be undertaken annually on the basis of a simple average of the trading activities carried out in the three annual calculation periods preceding the date of calculation. The calculation of the size of trading activities and capital shall commence with trading activities carried out as of 1 January 2016 and takes the full calendar year..

## 5.2 Commodity derivatives aggregation proposal

127. The proposal in the Consultation Paper required trade repositories to aggregate and publish aggregate position data for eight classes of commodity derivatives to enable any person wanting to benefit from the MiFID II exemption to identify the total market size from the publications of the various trade repositories and to consequently perform the calculations of their own trading size against those total market sizes to determine whether they are in breach of any of the thresholds set in the draft RTS 20.
128. ESMA notes that the market size aggregate produced by TRs would exclude all those trades where two non-EU counterparties conclude a commodity derivative trade in the EU. Nevertheless, at this stage, the EMIR aggregations are considered as the most reliable data on overall market size available.

### 5.2.1 Scope of the data

129. Regarding the potential issues with identifying correctly the data to be included in the commodity derivatives aggregations most of the requests made by the respondents related to greater clarity on reporting rules and in particular the ones related to categorisation of the commodities products, the reporting of notional values and of intragroup transactions. ESMA would like to indicate that the current rules and amended rules on reporting and the additional guidance provided through Q&As is addressing those.
130. Therefore, in light of the feedback received, ESMA proposes to keep its original proposal which is detailed in the following paragraphs.
131. The TRs should include in this aggregation only records on commodity derivatives. Under the current TS on reporting, the commodity derivatives are identified either with CO in common data field Product ID 1 in the case of OTC derivatives or with CFI codes (O\*\*T\*\* or FC\*\*\*\*) for ETD. Under the amended TS on reporting the commodity derivatives would be reported with value “Commodity” in the common data field “Asset class”. The relevant classes of commodity derivatives are defined as follows:
- a. metals – “commodity base” field reported as ‘ME’.
  - b. oil products – “commodity details” reported with ‘OI’

- c. coal – “commodity details” reported with ‘CO’
  - d. gas – “commodity details” reported with ‘NG’
  - e. power – “commodity details” reported with ‘EL’ or ‘IE’
  - f. agricultural products – “commodity base” reported with ‘AG’
  - g. other commodities including freight and C10 – “commodity base” reported with ‘FR’ or ‘IN’ or ‘EX’ or ‘OT’ or “commodity details” reported with ‘WE’
  - h. derivatives on emission allowances – “commodity details” reported with ‘EM’.
132. Given they may not be representative of actual trading activity, ESMA has decided, on balance, that the intragroup transactions need to be removed from the calculations, i.e. trades reported with Common data field 38 “Intragroup” reported with “Y”. To avoid double counting, the TRs should include the records that correspond to the criteria defined in section 3.3 of this Final report.

## 5.2.2 Aggregations to be performed

133. To allow entities to assess their trading activity against each of the thresholds, ESMA proposed and respondents unanimously agreed that the TRs provide aggregate for all the commodity derivatives in the eight classes of commodity derivatives as reported in the relevant commodity derivatives data fields, namely common data fields 45 and 46 of the current EMIR TS on reporting 65 and 66 of the amended EMIR TS on reporting and as detailed in paragraph 131 of this final report.
134. The aggregations per class of commodity derivatives are separate and should be provided by the TRs in addition to the aggregations at the level of the relevant commodities derivatives which use indices which are discussed in section 6 of this final report.
135. When performing the aggregations related to market activity, the TRs would need to take into account the types of breakdowns included in sections 4.3.2, and 4.3.4. More importantly, for the purposes of this aggregation, the transactions concluded on non-EEA venues should be provided in a separate aggregation. This classification of the venues located outside the EEA is independent from the fact whether the venue is covered by an equivalence decision of the Commission or not. However, regarding the aggregations in section 4.3.3, ESMA understands that those should be performed only at the level of reported transactions. The aggregate positions per each class of commodity derivatives should cover only the aggregation per “Notional” and per “Number of transactions”, as defined in section 4.3.3.
136. Given the high-level aggregation to be performed, it is not expected that there are any potential confidentiality issues around the publication of the aggregates.

137. ESMA understands that the TRs already possess the data necessary to perform the aforementioned calculations. ESMA is also aware that most of the underlying data quality issues related to EMIR reporting are being gradually addressed. ESMA takes into account the requirement under Article 80 of EMIR providing that TRs should maintain the records of derivatives for at least 10 years after the termination of the derivative contract. From that perspective, ESMA would expect that the TRs would be able to aggregate the data in accordance with the proposals outlined in this section.
138. Concerning the potential issues that could prevent TRs from performing aggregation on classes of commodity derivatives on historical data reported before the date of application of the amended TS, the industry agreed that there might be issues with the data reported prior to the Level 2 validations, i.e. prior to November 2015, therefore those trades might not be captured in the aggregations. ESMA takes note of this situation, however understands that the data reported after those dates is suitable for aggregation. The only missing value in the current reporting rules is the one relating to category 'OT' for field "Commodity Base", nevertheless ESMA understands that the TRs could include an aggregate equal to zero for any trades reported prior to 1 November 2017.
139. Following the performance of the quantitative data aggregations as detailed in this section, each trade repository should publish an aggregate number of the relevant aggregate positions per class of commodity derivative, which can be them easily aggregated across repositories.

### 5.2.3 Frequency of publication

140. As mentioned in section 5.1, the entities need to assess their trading activity on an annual basis starting from 1 January 2016.
141. With regard to frequency of publication of the commodity derivatives aggregation in the Consultation paper ESMA consulted on several alternatives. On the one hand, the publication can be made on a weekly basis as defined in section 4.1 of this final report. On the other hand, a lower frequency can be allowed, although the data published should comprise all the transactions in the relevant period as per the criteria specified in the previous sections.
142. If a weekly frequency is established, then the TRs would need to keep in an easily accessible way aggregate data of at least the last 104 weeks. Regardless of the publication of data, the TRs would be required to keep an easily accessible form aggregate data that cover at least two years of activity.
143. As the vast majority of the respondents expressed its preference in favour of a weekly basis, ESMA adopts this approach.

## 6 Aggregation of derivatives for the purposes of measurement of the reference value of a benchmark under Benchmarks Regulation

### 6.1 Aggregation requirements

144. In the Consultation paper, ESMA explained that BMR sets three categories of benchmarks that will be subject to different requirements according to their size and nature. Benchmarks used as a reference for financial instruments or financial contracts or for the determination of the performance of investment funds will be categorised mainly on the basis of the following criteria:

- i. if they have a total value of at least €500bn on the basis of all the range of maturities or tenors of the benchmark, where applicable, or they have a total value of €400 bn on the basis of all the range of maturities or tenors of the benchmark, where applicable, and meet some additional conditions, they will be deemed to be “critical benchmarks”<sup>15</sup>;
- j. if they have a total average value of at least €50bn on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months, they will be deemed to be “significant benchmarks”;
- k. if they have a total average value below €50bn, they will be deemed “non-significant benchmarks”.

145. As stated in Article 24(3) and Article 26(2) of the BMR, an administrator has to notify its competent authority when its significant / non-significant benchmark falls below / above the threshold of €50bn. Furthermore, the national authorities would need to supervise the assessments made by the administrators and the European Commission would have to adopt the relevant implementing acts to establish a list of critical benchmarks. Article 3(1)(16) of the BMR defines a financial instrument as any of the instruments listed in Section C of Annex I to MiFID II for which a request for admission to trading on a trading venue has been made or which are traded on a trading venue or via a systematic internaliser (SI).

146. For the purpose of the mandate to assess benchmarks under the relevant quantitative thresholds referred in Article 20(1) and Article 24(1)(a) of BMR, ESMA was requested by the European Commission to provide technical advice on the appropriate measurement of:

- a. the nominal amount of financial instruments other than derivatives;

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<sup>15</sup> According to Article 3(1)(25) of the BMR, regulated-data benchmarks (as defined under Article 3(1)(24)) are excluded from the category of critical benchmarks.

- b. the notional amount of derivatives; and
  - c. the net asset value of investment funds.
147. For all these three elements, the measurement would include both the direct case and the case of the indirect reference to a benchmark within a combination of benchmarks. The indirect case relates to the nominal amount of the financial instrument / notional amount of the derivative / net asset value of the investment fund referencing to a single benchmark (within a combination of benchmarks) which is being assessed as critical or significant.
148. The issue of determining these measures should be considered together with the availability of the data needed for the calculation. ESMA completed an overview of the current and upcoming European legislation that could be considered as input data for the measurement of the reference value of a benchmark. From that perspective, the notional of a derivative as defined under the current RTS on reporting and under the amended TS on reporting is fulfilling the requirements for the measurement of the reference value of a benchmark.
149. Whereas the competent authorities would have access to this data, the main concern is related to the non-availability of these data to benchmarks' administrators. Therefore, ESMA proposes to extend the current public data published by trade repositories on their websites or online portals to a breakdown of the aggregate open positions per index and a breakdown of aggregate transactions volumes per index.
150. Some transactions in the scope of BMR might be concluded on venues or SI that are not identified currently with a MIC code. Under RTS 23 on reference data under MiFID II/MiFIR (RTS 23, hereinafter), the SIs would need to identify themselves also with a MIC code. However, under the amended TS on reporting, the counterparties are not required to report the MIC of the SI, therefore this part of the market activity would not be included in the aggregations.
151. Furthermore, as indicated in paragraph 21 in order to facilitate data aggregations and links between the different types of indices used, ESMA included in its final report on the technical advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indices.

## **6.2 Aggregation proposal for derivatives that reference indexes**

### **6.2.1 Scope of the data**

152. The data to be taken into account for the purposes of this aggregation is the one defined in section 3.3.1. of this final report together with the one relating to XOFF in section 3.3.2.
153. The aggregations on indices could only be performed once the amended TS on reporting become applicable, i.e. from 1 November 2017 onwards. The derivative trades to be included in this aggregation should be those where Common data field 7 under the

amended EMIR ITS on reporting “Underlying Identification type” is populated with “X” for index or where common data fields “Floating rate of leg 1” or “Floating rate of leg 2” are populated. ESMA considers that would uniquely identify all the derivatives that reference indices. This would include:

- a. Equity derivatives, in particular those using stock market indices, dividend indices ,
  - b. Credit derivatives, in particular credit default swaps on indices or total return swaps<sup>16</sup>
  - c. Commodity derivatives on indices
  - d. Interest rate derivatives, such as interest rate swaps or derivatives where the underlying is a bond index,
  - e. Currency derivatives, where the underlying is a currency index
  - f. Any of the above derivatives in the scope of BMR where one of legs is a floating rate
154. When performing the data aggregations for the purposes of measurement of benchmarks, the trade repositories should make use of the derivatives traded or admitted to trading on trading venues or systematic internalisers that reported to them by the counterparties under the amended TS standards on reporting under Article 9 of EMIR and the reference data to be published by ESMA under RTS 23.
155. Concerning other types of derivatives that need to be taken into account to provide more comprehensive aggregations of derivatives than reference indexes, the respondents asked to consider including :
- a. Off-venue transactions in addition to the on-venue ones
  - b. To consider three tier structures such as spreadbets on options and equity index and swaptions.
156. ESMA takes due note of the responses. As a result, ESMA agrees that three-tier structures and off-venue transactions should be taken into account when they fall under the scope of BMR, i.e. when they refer to financial instrument as any of the instruments listed in Section C of Annex I to MiFID II for which a request for admission to trading on a trading venue has been made or which are traded on a trading venue or via a SI. In addition the off-venue traded derivatives should also be included in case they refer to instruments admitted to trading on a trading venue.

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<sup>16</sup> It is worth mentioning that total return swaps would have also an underlying equity index

## 6.2.2 Aggregations to be performed

### 6.2.2.1 Aggregation of derivatives trades where an interest rate index is used

157. A trade repository should provide aggregate data per each index used. The index could be used either as a floating rate of a derivative contract or as an underlying.
158. In the case of floating rates, ESMA has already provided a closed list of values to be reported, hence the identification and aggregation of floating rate interest rate derivatives is facilitated. This still leaves open the question on updates of the values included in that list. The proposed way forward for data updates would be made in accordance with the governance structure of ISO 20022 messages, which is outlined in paragraph 169.
159. From the perspective of index used as underlying, the trade repository should identify in advance the relevant ISINs issued for indices so that it can easily perform aggregations at index level. This can be done by making use of the reference data provided in RTS 23. The objective is that, by using the reference data, the TRs identify and link all the ISINs that refer to the same index in order to prepare and calculate all the relevant aggregations for that index.
160. For the purposes of interest rate indices, ESMA has included in RTS 23 the same list of allowable values as the one provided for in Common data fields 55 and 58 under the amended ITS on reporting under EMIR.
161. It is important that, when establishing the relevant links for the purposes of data aggregations, the TRs validate the data used to identify the relevant derivative using an index. This would ensure that the subsequent aggregations are correctly performed.
162. As mentioned in paragraph 144, in the case of derivatives using interest rate indices, the aggregations should be made across all the maturities and tenors of the same interest rate index. Hence it would not be necessary that TRs aggregate the data per each maturity or tenor. In that case the TRs are expected to present the data identifying separately each index. This aggregation would be different from the one on non-interest rate indexes where the aggregation should be at the level of each ISIN.
163. Given the existing requirements under BMR, ESMA proposed and the respondents agreed that the aggregate position data per each index should cover only the aggregation per “Notional” and per “Number of transactions”, as defined in sections 4.3.3 and 6.2.2.4 .
164. Some of the practical issues concerning data aggregation on interest rate indexes raised by the market participants are as follows:
  - a. The “Underlying Index name” field in the RTS 23 can be populated with freetext. This cause significant issues with classification and aggregation for those not included in the {INDEX} list of RTS 23. Those fields will not be validated in any way, that it would only be possible for ISIN or the close list of indexes defined in RTS 23.

- b. There would be a significant increase of monetary and human resources costs to build out the necessary connection to consume and store static reference data for ETD transactions due to the numerous ISINs will need to be generated.

165. ESMA also acknowledged the issue related to treatment of the name of the indices, however the TRs are expected to perform the data aggregations by taking into account the inherent limitation of the underlying data. Under RTS 23 ESMA will be publishing the information in XML in accordance with ISO 20022, hence it is expected that TRs could use this data. The additional cost aspect is discussed in the cost-benefit analysis.
166. Based on the feedback received, ESMA maintains the proposals for TRs to publish aggregate position data per interest rate index as identified in fields “Underling identification”, “Floating rate of leg 1” or “Floating rate of leg 2”.

#### 6.2.2.2 Aggregation of derivative trades where a non-interest rate index is used

167. In the case of the non-interest rate indexes, ESMA understands that at this stage this applies only when indices are used as underlyings<sup>17</sup>. The amended EMIR TS on reporting provide that the index is identified either with (i) an ISO 6166 code, i.e. an ISIN or a (ii) full name of the index as assigned by the index provider. Under RTS 23 the entities are required to choose among the values in the closed list or use a free text to report this information. As mentioned earlier, ESMA included in its final advice under Article 20(1) and Article 24(1)(a) of BMR a recommendation to request the benchmark administrators to obtain an ISIN for all their indexes.
168. ESMA understands that the definition and requirements currently included in RTS 23 under MiFID II, though comprehensive, might not be sufficient to fully ensure unique and unambiguous identification of the derivatives. There is still a possibility that the benchmark administrators are not providing reference data in a consistent way. ESMA understands that this might lead to some practical problems for data aggregation, however it is in the best interest of these entities to report correctly and uniformly the names of the relevant indices. In particular, this would affect:

#### 6.2.2.3 Identification and linking of derivatives using non-interest rate indexes

169. It is worth mentioning that RTS 23 requires reporting to be made in ISO 20022 template. For the purpose of ISO 20022 messaging standards, certain maintenance functions are performed as part of the general governance. In this regard, in the Consultation paper, ESMA pointed out that gradually a comprehensive data catalogue or data dictionary with all the indexes used in the EU could be built. This would ensure the consistent reporting of the relevant reference data by the entities and it will ensure the unique and unambiguous identification and linking of data by TRs.

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<sup>17</sup> None of the other reporting fields under EMIR refers to indexes

170. Given that the accuracy and consistency of reference data is dependent on the data reported, ESMA indicated in the consultation paper that, subject to the implementation of the recommendation to obtain an ISIN for each index, the benchmark administrators should contribute to the building of data catalogue by identifying consistently the indexes. This approach would ensure the production of free of cost data catalogue with the most relevant indexes, however the time to complete the data catalogue might be somehow extensive, which might lead to practical difficulties for competent authorities and benchmark administrators to assess timely and correctly the information.
171. Concerning the feasibility of the approach proposed by ESMA, further to the standardisation which is already embedded in the ISO 20022 XML under RTS 23, the respondents were supportive of the objective, however they pointed out some practical aspects:
- a. Difficulty to obtain ISIN as many indexes used as benchmarks are not tradable securities or financial instruments.
  - b. Need to set up of a reference database to serve as benchmark aggregations to be updated on daily bases. However, significant costs are associated to build up the system and its maintenance.
172. In addition one respondent indicated appetite for greater granularity on CDS in particular the trading activity in index CDS to be divided by (i) type of index and (ii) index series. ESMA however understands that the aggregations per benchmark should be as granular as BMR requires them to be. Any further granularity is more relevant for authorities. However ESMA agrees that in the particular case of credit derivatives, the notional amount used for calculation should be adjusted by the index factor reported in Common data field 89 in the amended EMIR TS on reporting.

#### 6.2.2.4 General aspects on aggregation of derivatives that reference indices

173. ESMA is also aware that there are certain instances where a basket of indices is traded as relevant underlying of a derivative. In that case the current TS on reporting do not allow the identification of the individual components, however the amended TS on reporting would allow such identification. In its final advice under BMR, ESMA expressed its view that to the extent a trade repository could identify the weightings of the components, those should be used as they are. In case the weightings are not available, ESMA has included in its final advice under BMR that the weightings of the components should be equal. The data reported under EMIR does not allow for identification of weightings. One of the respondents indicated that if the individual components of a basket are to be reported separated by a dash "-", this field would have the same characteristics as a free text field and therefore the aggregations would not be feasible.
174. Furthermore, Article 81(5) EMIR provides that the draft regulatory technical standards shall aim to ensure that the information published by the TRs is not capable of identifying a party to any contract. In order to fulfil this confidentiality requirement and not allow the identification of individual parties, in the Consultation paper ESMA proposed that the

breakdown per index to be published should take place only for derivatives transactions on indexes where the aggregate notional amount is at least 5 billion and where there are at least 6 different counterparties, i.e. entities with different LEIs involved. In case there are less than 6 different counterparties that have concluded derivatives transactions in the scope of this aggregation, but the aggregate notional amount is above, the trade repository should include the aggregate figure together with other aggregations that have similar characteristics in a bucket called “Other”.

175. The feedback was overall supportive to set out a limit of 5 billion EUR per index and TR, where there are at least 6 different counterparties to trades as it would cover most confidentiality issues. One respondent however encouraged ESMA to take into account the commodity benchmark limit of 100 million euros of total notional value of the financial instrument referencing that benchmark. Some respondents pointed out that by establishing a category “other” some time series information can be lost.
176. The trade repository should be able to publish an aggregate number of the relevant aggregate positions for derivatives that reference indexes, where the field “Venue of execution” is populated with “XOFF” and an “EEA MIC”, as those are defined in section 4.3.2.
177. Following the performance of the quantitative data aggregations as detailed in sections 3.3.1, 4.3.2 and 4.3.3, the trade repository should be able to publish also an aggregate number of the relevant aggregate positions for each index, which can be them easily aggregated across repositories. Further to the feedback received, ESMA confirms that the single aggregate figure per index and a TR, shall include an index that is part of a basket as described in paragraph 173.

### 6.2.3 Frequency of publication

178. While the NCAs and the benchmark administrators would need to assess the significance of the index over six months period, ESMA understands that it will be sufficient to provide the aggregate data with the same frequency as the rest of aggregations are provided, as detailed in section 4.1.

## 7 Annexes

### 7.1 Annex I

#### **Legislative mandate to develop draft technical standards**

##### Article 81(5)

In order to ensure consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 and 3 as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.

## **Annex II Opinion of Securities and Markets Stakeholder Group**

In accordance with Article 10 of Regulation (EU) No 1095/2010 ESMA requested the opinion of the ESMA Securities and Markets Stakeholder Group. The SMSG opted not to provide an opinion.

## 7.2 Annex III

### Draft regulatory technical standards on trade repositories

#### COMMISSION DELEGATED REGULATION (EU) .../...

of [ ]

#### **Amending Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and in particular Article 81 (5) thereof,

Whereas:

- (1) The application of Commission Delegated Regulation (EU) No 151/2013 with regards to aggregate position data has demonstrated that the lack of specific standards for data publication, aggregation and comparison leads to structural deficiencies. The lack of standardised data, uniform frequency and a standardised format has impeded the use of public data.
- (2) In order to remedy those impediments, it is necessary to amend Delegated Regulation (EU) No 151/2013 to better specify the operational framework for publication of aggregate data and comparison of data across trade repositories by further detailing the operational standards required to aggregate and compare aggregate position data across trade repositories.
- (3) Given the double sided reporting obligation under Regulation 648/2012 and the interposition of several parties such as brokers and clearing members between the counterparty and the CCP, it is key to ensure that the market activity in derivatives traded both on venue and off venue is correctly identified and aggregated in order to allow the general public to understand the functioning of the derivatives markets.
- (4) The aggregate position data to be published under this Regulation follows the definition of class of derivatives under Article 2(6) of Regulation 648/2012. Further to the break-

downs per asset class and contract type, additional detail per type of venue of execution, reporting and cleared status have been included.

- (5) The aggregate position data published with regards to commodity derivatives should be of sufficient good quality so as to allow the relevant entities to perform an assessment of their trading activity in each of the eight classes of commodities derivatives with regards to the thresholds provided under Commission delegated regulation (EU) 2017/592
- (6) The aggregate position data published with regards to derivatives that reference indexes should be of sufficient good quality so as to allow the benchmark administrators to perform assessment of the criticality or significance of the index in accordance with the thresholds provided under Regulation (EU) 2016/1011.
- (7) To ensure quality of the aggregate position data that is published, It is essential that the trade repository is able to identify and address deficiencies in the aggregate position data resulting from abnormal values, errors in reporting and errors in aggregation.
- (8) The criteria based on which data should be aggregated should allow the general public to understand the functioning of the derivatives markets without undermining the confidentiality of the data reported to trade repositories.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (10) In accordance with Article 10 of Regulation (EU) No 1095/2010<sup>18</sup>, ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits. These public consultations allowed ESMA to obtain views of the relevant authorities and the members of the European System of Central Banks (ESCB) which were presented by the ECB. In addition, ESMA requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION

#### *Article 1*

#### **Amendments to Commission Delegated Regulation (EU) No 151/2013**

- (1) Article 1 is replaced as follows:

#### **General requirements on publication of aggregate position data**

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<sup>18</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority European Securities and Markets Authority (OJ L 331, 15.12.2010, p. 84).

1. A trade repository shall publish aggregate position data on its website on a weekly basis no later than Tuesday noon UTC on the derivatives reported by 23:59:59 UTC inclusive of the previous Friday..
2. A trade repository shall publish aggregate position data per each of the following contract types:
  - a. Financial contracts for difference, where field “Contract type” is populated with “CD”;
  - b. Forward rate agreements, where field “Contract type” is populated with “FR”;
  - c. Futures, where field “Contract type” is populated with “FU”;
  - d. Forwards, where field “Contract type” is populated with “FW”;
  - e. Option, where field “Contract type” is populated with “OP”;
  - f. Spreadbet, where field “Contract type” is populated with “SB”;
  - g. Swap, where field “Contract type” is populated with “SW”;
  - h. Swaption, where field “Contract type” is populated with “ST”; and
  - i. Other, where field “Contract type” is populated with “OT”.
3. A trade repository shall publish aggregate position data per each of the following asset classes:
  - a. Commodity and emission allowances, where field “Asset class” is populated with “CO”;
  - b. Credit, where field “Asset class” is populated with “CR”;
  - c. Currency, where field “Asset class” is populated with “CU”;;
  - d. Equity, where field “Asset class” is populated with “EQ”;
  - e. Interest rate, where field “Asset class” is populated with “CO”; and,
  - f. Other, only for trades reported prior to 1 November 2017
4. A trade repository shall publish aggregate position data on the basis of the type of venue of execution of each derivative in accordance with the following break-down:
  - a. Derivatives where the field “Venue of execution” is populated with “XXXX”
  - b. Derivatives where the field “Venue of execution” is populated with “XOFF”

- c. Derivatives where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located in the Union
  - d. Derivatives where the field “Venue of execution” is populated with MIC code, in accordance with ISO 10383, pertaining to a venue located outside the Union
5. A trade repository shall publish aggregate position data in accordance with the following reporting statuses:
  - a. Dual-sided, where both counterparties have reporting obligation under EMIR and both have reported to the trade repository;
  - b. Single-sided EEA, where both counterparties have reporting obligation under EMIR and only one have reported to the trade repository; and
  - c. Single-sided non-EEA, where only one of the counterparties has reporting obligation under EMIR.
6. A trade repository shall publish aggregate position data in accordance with the status of the derivative based on field “Cleared”.
7. A trade repository shall aggregate data for all derivatives where field “Action type” in Table 2 of the Annex of Commission Implementing Regulation (EU) No 1247/2012, is reported either as “N” or as “P” between 00:00:00 UTC of Saturday and 23:59:59 UTC of Friday both inclusive in accordance with the following criteria:
  - a. Derivatives where
    - i. The field “Venue of execution” is reported with a MIC code different from XXXX or XOFF,
    - ii. The LEI reported in field “Reporting Counterparty ID” is the same as the LEI reported in field “Clearing member ID” for clearing members established in the Union or the LEI reported in field “ID of the other Counterparty” is the same as the LEI reported in field “Clearing member ID”, for clearing members not established in the Union, and
    - iii. The field “Compression” is populated with “N”, for reports before the date of application of the amended technical standards on reporting, and in addition field “Level” is populated with “T” for reports after the date of application of the amended Commission Implementing Regulation (EU) No 1247/2012”]
  - b. Derivatives where
    - i. The field “Venue of execution” is reported with a MIC code “XOFF” or “XXXX”,

- ii. The field “Compression” is populated with “N”, for reports before the date of application of the amended technical standards on reporting, and in addition field “Level” is populated with “T” for reports after the date of application of the amended Commission Implementing Regulation (EU) No 1247/2012”]

When aggregating data as defined under point a, a trade repository shall divide all the relevant aggregate figures by two.

8. A trade repository shall aggregate data of all derivatives that have not matured or which have not been the subject of a report with Action type “E”, “C”, “P” or “Z” as referred to in field 93 in Table 2 of the Annex to Commission Implementing Regulation (EU) No 1247/2012, as of 23:59:59 UTC of Friday inclusive, in accordance with the following criteria:

- a. Derivatives where

- i. field “Venue of execution” is not reported with a MIC code different from XXXX or XOFF, and
- ii. the LEI reported in field “Reporting Counterparty ID” is the same as the LEI reported in field “CCP ID” for CCPs established in the Union or the LEI reported in field “ID of the other Counterparty” is the same as the LEI reported in field “CCP”, for CCPs not established in the Union.

- b. Derivatives where

- i. field “Venue of execution” is reported with “XXXX” or “XOFF”;
- ii. field “Cleared” is reported as “Yes”.

- c. Derivatives where

- i. field “Venue of execution” is reported with “XXXX” or “XOFF”;
- ii. field “Cleared” is reported as “No”.

When aggregating data as defined under points a and b , the trade repository shall divide all the relevant aggregate figures by two.

9. A trade repository shall publish aggregate position data per each of the break-downs included in paragraphs 2 to 6 calculated by:

- a. Aggregating the absolute value of field “Notional”;
- b. Aggregating the number of derivative transactions, counting the unique Trade IDs between two counterparties;

- c. Aggregating the number of the derivative contracts, based on field “Quantity”, except in the case of spreadbets where the number of contracts should be considered as equal to 1;
- d. Aggregating the absolute value of field “Value of the contract” only for the derivatives that have not matured or which have not been the subject of a report with action types “E”, “C”, “P” or “Z”.

For derivatives, where the field “Venue of execution” is populated with XOFF or XXXX, and the aggregate position is categorised as dual-sided, a trade repository shall divide the resulting aggregate figure by two.

10. A trade repository shall include in the aggregate position data under this Article, derivatives reported where the common data field “Intragroup” of Commission Implementing Regulation (EU) No 1247/2012 is reported as “Yes”.
11. A trade repository shall have in place a procedure to identify abnormal values relating to the aggregate position data
12. A trade repository shall have in place a procedure to perform and notify corrections of the aggregate position data, including those stemming from reports with action type “E” and to publish the original and corrected data aggregations.
13. A trade repository shall publish all aggregate data in euro and shall use the exchange rates published in the ECB website as of the previous Friday.
14. A trade repository shall publish aggregate position data in tabular form as detailed in Table A of the Annex to this RTS and shall keep in its website in an easily accessible form aggregate position data for the previous 104 weeks.

#### *Article 1a*

#### **Publication of data on commodity derivatives**

1. A trade repository shall aggregate data on volumes for classes of commodity derivatives in accordance with paragraph 7 of Article 1 as per each of the following details reported in common data *fields 65 and 66 of the amended Commission Implementing Regulation (EU) No 1247/2012*
  - a. Metals, where “commodity base” field is reported as ‘ME’.
  - b. oil products – “commodity details” reported with ‘OI’
  - c. coal – “commodity details” reported with ‘CO’
  - d. gas – “commodity details” reported with ‘NG’

- e. power – “commodity details” reported with ‘EL’ or ‘IE’
  - f. agricultural products – “commodity base” reported with ‘AG’
  - g. other commodities including freight and C10 – “commodity base” reported with ‘FR’ or ‘IN’ or ‘EX’ or ‘OT’ or “commodity details” reported with ‘WE’
  - h. derivatives on emission allowances – “commodity details” reported with ‘EM’.
2. When publishing aggregate position data under paragraph 1, a trade repository shall exclude all reports where the common data field “Intragroup” of Table 2 of the Annex to Commission Implementing Regulation (EU) No 1247/2012 is reported as “Yes”.
  3. A trade repository shall publish aggregate data under paragraph 1 in accordance with the requirements established in paragraphs 1 to 6, points a and b of paragraph 9, and paragraphs 11 to 14 of Article 1 and taking due account of paragraph 4 of this Article.
  4. After performing the aggregations in paragraphs 2 and 3, a trade repository shall also publish a total aggregate notional per each commodity derivatives asset class, as defined in paragraph 1.
  5. A trade repository shall publish aggregate data under this Article in tabular form as detailed in Table B of the annex to this RTS.
  6. When publishing the aggregations under this Article for the first time, a trade repository shall include all the relevant aggregations starting from 1 January 2018 or the relevant first date of the reference period determined pursuant to Article 4 of Regulation 2017/592.

#### *Article 1b*

#### **Publication of data on derivatives that reference indices**

1. A trade repository shall publish aggregate position data for derivative contracts referencing indices in accordance with the criteria included in paragraph 7 of Article 1, where the fields “Underlying identification” or in the “Floating rate of leg 1” or “Floating rate of leg 2” are populated with indices.
2. Where two or more indices are reported in field “Underlying identification” of a derivative under paragraph 1 and a trade repository can identify the weightings of the components, those weightings should be used as they are reported, otherwise the notional of that derivative shall be divided by the number of the different indices used.
3. A trade repository shall publish aggregate position data under paragraph 1 in accordance with the requirements established in paragraphs 1 to 6, points a and b of paragraph 9, and paragraphs 10 to 14 of Article 1 and taking due account of paragraph 2 of this Article.
4. After performing the aggregations of position data in paragraph 3, a trade repository shall also publish the total aggregate notional for each index, as identified in fields “Underlying

identification” or in the “Floating rate of leg 1” or “Floating rate of leg 2”, only where the aggregate notional amount is greater than 5 billion EUR and there are at least six different counterparties that have concluded the relevant derivative contracts.

5. A trade repository shall publish under category “Other” total aggregate position data on all the derivatives that reference an index and do not fulfil the requirements under paragraph 4.
6. A trade repository shall publish aggregate data under this Article in tabular form as detailed in Table C of the annex to this RTS.

## *Article 2*

### **Entry into force and application**

This Regulation shall enter into force and apply on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Notwithstanding the first paragraph, Article 1b shall apply from the entry into force of Commission Delegated Regulation under Article 20(1) and Article 24(1)(a) of Regulation 2016/1011]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

[For the Commission

The President]

[On behalf of the President]

<b>Table A. Aggregation per asset class</b>											
<b>Date</b>	<b>TR</b>	<b>Aggregation Type</b>	<b>Venue type</b>	<b>Reporting type</b>	<b>Cleared</b>	<b>Asset class</b>	<b>Contract type</b>	<b>Aggregate Notional</b>	<b>Aggregate Value</b>	<b>Aggregate No transactions</b>	<b>Aggregate No contracts</b>
20161007	EU TR	Reported	XXXX	Dual-sided	Yes	Commodities	CD	...	...	...	...
...	...	Outstanding	XOFF	Single-sided EEA	No	Credit	FR	...	...	...	...
...	...	...	EEA MIC	Single-sided non-EEA	...	Currency	FU	...	...	...	...
...	...	...	non-EEA MIC	...	...	Equity	FW	...	...	...	...
...	...	...	...	...	...	Interest	OP	...	...	...	...
...	...	...	...	...	...	...	SB	...	...	...	...
...	...	...	...	...	...	...	SW	...	...	...	...
...	...	...	...	...	...	...	ST	...	...	...	...
...	...	...	...	...	...	...	OT	...	...	...	...

<b>Table B Aggregation per commodities derivatives class</b>									
<b>Date</b>	<b>TR</b>	<b>Aggregation Type</b>	<b>Venue type</b>	<b>Reporting type</b>	<b>Asset class</b>	<b>Contract type</b>	<b>Commodity class</b>	<b>Aggregate Notional</b>	<b>Aggregate No transactions</b>
20161007	EU TR	Reported	XXXX	Dual sided	Commodities	CD	Metals	...	...
...	...	...	XOFF	Single-sided EEA	...	FR	Oil	...	...
...	...	...	EEA MIC	Single-sided non-EEA	...	FU	Coal	...	...
...	...	...	non-EEA MIC	...	...	FW	Gas	...	...
...	...	...	...	...	...	OP	Power	...	...
...	...	...	...	...	...	SB	Agricultural	...	...
...	...	...	...	...	...	SW	Other commodities	...	...
...	...	...	...	...	...	ST	Emission allowances	...	...
...	...	...	...	...	...	OT	...	...	...

**Table C. Aggregation per derivative using indexes**

Date	TR	Aggregation Type	Venue type	Reporting type	Asset class	Contract type	Index ID	Index name	Aggregate Notional	Aggregate No transactions
20161007	EU TR	Reported	XXXX	Dual sided	Commodities	CD	XXXIBOR	...	...	...
...	...	....	XOFF	Single-sided EEA	Credit	FR	ISIN	...	...	...
...	...	...	EEA MIC non-EEA MIC	Single-sided non-EEA	Currency	FU	...	...	...	...
...	...	...	...	...	Equity	FW	...	...	...	...
...	...	...	...	...	Interest	OP	...	...	...	...
...	...	...	...	...	...	SB	...	...	...	...
...	...	...	...	...	...	SW	...	...	...	...
...	...	...	...	...	...	ST	...	...	...	...
...	...	...	...	...	...	OT	...	...	...	...

## 7.3 Annex IV

### Cost-benefit analysis

ESMA's choices in this review are of a pure technical nature and do not imply strategic decisions or policy choices.

ESMA's options are limited to the approach it took to drafting these particular regulatory technical standards and the need to ensure harmonised and standardised aggregate data and to provide greater value of the data which is reported under EMIR.

The main policy decisions have already been analysed and published by the European Commission taken under the secondary legislation, i.e. EMIR.

The impact of such policy decisions has already been taken into account when drafting the technical standards on reporting to trade repositories, including the ones being amended, and may be found under the following link:

<http://www.esma.europa.eu/system/files/2012-379.pdf>

As mentioned in sections 2.2 and 2.3, there are two EU regulations, in particular MiFID II and BMR, which require the use of EU aggregate derivatives data for different incumbent entities. In one case, MiFID II provides that market participants assess their trading volumes in certain classes of commodity derivatives. In the other case, BMR establishes that index providers assess the significance of their respective indexes vis-à-vis a threshold established in the BMR. In the absence of TR data these entities would need to run complex and costly processes to compile the data across all the different venues and post-trade providers. Clearly this process would not be error-free and it is highly possible that there will be different figures obtained by each entity. This would run contrary to the objectives of the regulations and would create unlevelled playing field.

From the perspective of the supervisory authorities such situation would significantly hamper the fulfilment of their duties. In case the authorities are required to recreate the aggregations from the derivatives data to which they have access, it will be impossible to compare the results, since every authority have different access levels based on its responsibilities and mandates. In case it would be for ESMA to perform these aggregations, such task would be overly burdensome and, most importantly, ESMA would lack the direct contact with the reporting entities should any amendments to the underlying data be needed. TRs result a natural choice in this regard as they play pivotal role in the EU derivatives reporting regime.

Last, but not least, an enhanced public data provided by the TRs shows the benefits of the EMIR reporting framework where private market infrastructures were tasked to become repositories of transactions and to give access to data to the authorities, but also to the general public. The key point in choosing trade repositories instead of public bodies was the inherent flexibility of private entities, the potential scalability of their systems and also the relevant know-how in data processing.



ESMA understands that the main costs attached to the changes required in this RTS will be borne by Trade Repositories and authorities. However no precise estimates were received in the process of consultation.