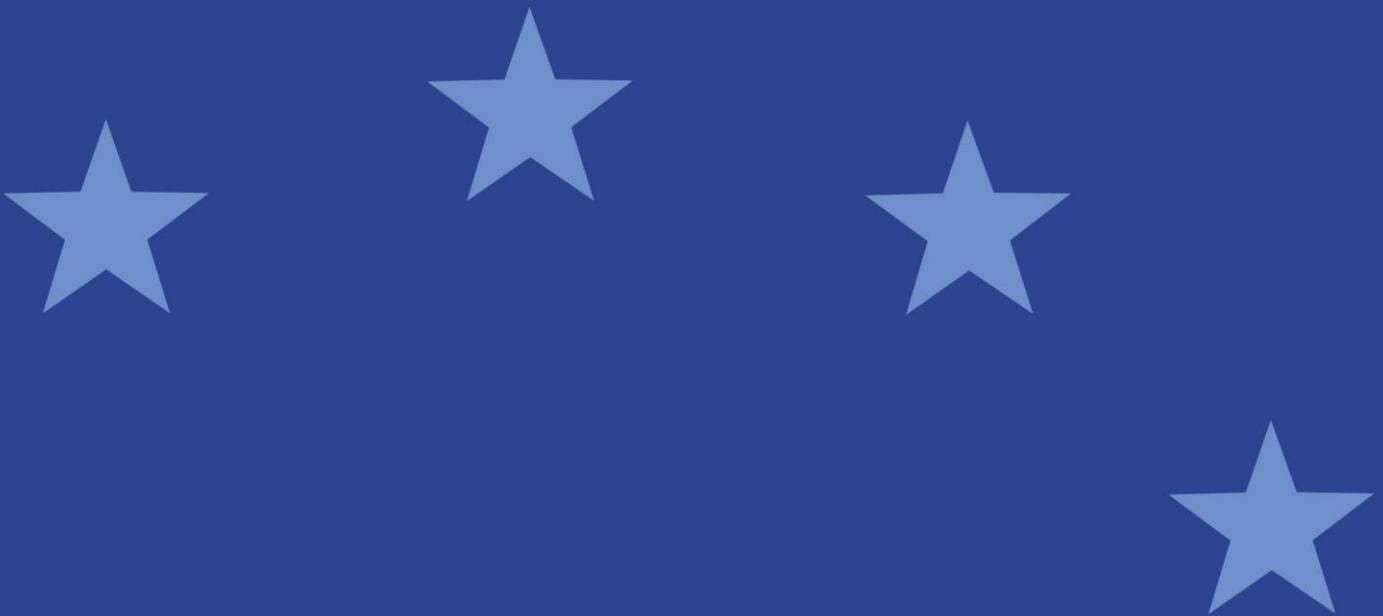




European Securities and
Markets Authority

Reply form for the Addendum Consultation Paper on MiFID II/MiFIR



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Addendum Consultation Paper on MiFID II/MiFIR, published on the ESMA website.

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_CP_TR_ORK_CS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

Naming protocol

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

ESMA_CP_TR_ORK_CS_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_CP_TR_ORK_CS_XXXX_REPLYFORM or

ESMA_CP_TR_ORK_CS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **23 March 2016**.

All contributions should be submitted online at <https://www.esma.europa.eu/> under the heading ‘Your input/Consultations’.



Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_TR_ORK_CS_1>

The Investment Association represents the UK asset management industry. Our members manage over £5 trillion in the UK of assets on behalf of UK, European and international clients, both retail and institutional. Collectively, our members make up the second-largest asset management industry in the world.

We welcome the opportunity to respond to the consultation paper and provide feedback on the proposed guidelines insofar as they impact our members.

Overall, we welcome the Guidelines and the much-needed clarity they provide on various issues. We believe this approach and the supporting illustrations of the various scenarios will be much more valuable to firms than the alternative Q&A approach, in which the answers themselves are often open to interpretation.

We believe ESMA has made an excellent start, but also propose a number of further clarifications and scenarios through our responses to the various consultation questions, as well as suggesting a small number of corrections. We have also raised a small number of points with regard to the proposed validation rules for transaction reporting, which have been included in our response to Q4 at the suggestion of the FCA.

Note that we have not responded to any of the questions in Chapter 2, as this association does not represent operators of trading venues.

One overarching comment on the general presentation of Chapter 1 is that we believe the XML representations should be moved to an appendix with appropriate cross-references from the main text and that the various section/paragraph headings be in bold type. The XML representations will benefit only a proportion of users of the Guidance and make it very difficult to navigate the text - we believe moving them to an appendix would improve the readability of the document considerably.

Finally, we would welcome an indication as to how ESMA plans to respond in a timely manner to issues that may only come to light during implementation of the final Guidelines.

If you have any questions concerning our responses below or require any further information, please do not hesitate to contact us as follows:

Chapter 1 (transaction reporting) David Broadway (david.broadway@theia.org)

Chapter 3 (clock synchronisation) Adrian Hood (adrian.hood@theia.org)

<ESMA_COMMENT_CP_TR_ORK_CS_1>

Q1: Are there any other scenarios which you think should be covered?

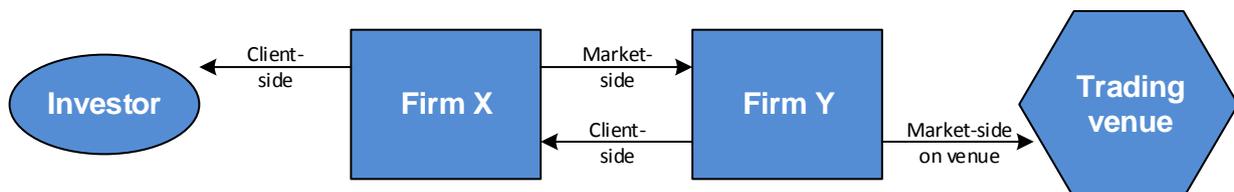
<ESMA_QUESTION_CP_TR_ORK_CS_1>

We believe an additional scenario is necessary to illustrate the footnote on page 11 regarding the venue, when one firm is trading on a venue as MTCH or AOTC and therefore reports both the market-side and client-side of the transaction in a single report, and the other is trading AOTC so is also reporting both sides at the same time. According to the example on page 109 (albeit the illustration there shows firms Y and Z both trading MTCH) we believe the market facing firm in this instance would report the MIC of the venue on which it executed the trade, while the other would report XOFF in accordance with the guidance on chains in section 1.1.3 and reporting of the venue in chains in section 1.1.4.1.

Our understanding is that the venue field would match only where the two counterparties faced each other across the venue, known to each other or anonymously.

Further to the above, there are various references in the Guidelines to reports of the "market-side" and "client-side" of a transaction. However, as noted above there are many reports which span both sides and it is unclear as to whether these reports should be considered to be on one side or the other, or both. We believe the use of these terms and their intended application when the firm is reporting a transaction undertaken in a MTCH and AOTC capacity should be explained.

Firms are often confused by the phrase "market side transactions executed on a trading venue" (or similar); we would therefore welcome confirmation in the Guidelines that this refers only to the market-side report of a firm that faces the venue directly, as follows:



<ESMA_QUESTION_CP_TR_ORK_CS_1>

Q2: Are there any areas in Part I covered above that require further clarity? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_2>

Block and allocation

We recognise from various of the examples provided in Parts II and III that whenever an investment firm allocates an aggregated transaction across several clients it will be required to report the block trade (to INTC) as well as the individual allocations. As this is a fundamental expectation that is not immediately apparent from the RTS, we believe it would be helpful to address this as a general principle in this part.

Use of the "internal client account" (INTC)

We believe it would be helpful to note somewhere in the Guidelines that the apparent movement through the internal client ('INTC') may be entirely notional for the purposes of reporting, and does not indicate or suggest that a discretionary portfolio manager actually maintains such a client or that ownership of the instrument passes through its hands in any way.

We note that section 1.3.5 indicates that INTC shall not be used when one or more executions are undertaken for a single client. We do not, however, see anything in the RTS that prevents this and, indeed, note that the definitions of Fields 8 and 16 state:



"'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively."

The "s" in parenthesis indicates that circumstances may exist when there may only be one client and we would respectfully suggest, therefore, that the stance taken in section 1.3.5 is inconsistent with the RTS.

We believe that being able to report using INTC when allocating to a single client, both when there are single or multiple executions on the market side, could offer the opportunity for firms to economise on their systems builds by avoiding the need for logic to determine whether or not INTC is to be used. We therefore ask that the proposed guidance in section 1.3.5 be altered to align with the RTS and afford firms this opportunity.

Transmission

We note that the sub-heading in Table 2 of Annex I to the RTS, which refers to populating Field 25 only in certain circumstances, is missing from the proposed validation rules. Moreover, we note that this field is completed in all examples in which it is shown in the Guidelines and understand from this that Field 25 is intended to be a mandatory field and that ESMA believes it should be populated with "TRUE" in any case where the reporting firm placed the order with another entity for execution.

However, the RTS state clearly that Field 25 shall be populated with "TRUE" only by a *transmitting firm*; and we believe a firm can only be a transmitting firm if it seeks to satisfy the conditions of Article 4. We therefore believe "TRUE" would not be a valid entry unless the reporting firm had tried and failed to transmit the transaction details in accordance with Article 4. Accordingly, we believe this field should be "FALSE" in all other cases, including where the reporting firm places an order with another firm for execution, but chooses not to take advantage of Article 4.

We believe that various sections/examples should be amended to reflect this, as follows:

- 1.1.3.2
- 1.3.8.1 (unless to illustrate that either of firms X or Y has tried and failed to meet the conditions of Article 4)
- 1.3.8.3
- 1.3.9.1
- 1.3.9.2

<ESMA_QUESTION_CP_TR_ORK_CS_2>

Q3: Are there any other situations on reportable transactions or exclusions from transactions where you require further clarity?

<ESMA_QUESTION_CP_TR_ORK_CS_3>

Securities financing transactions

We welcome the clarification provided in section 1.1.7.1 with regard to securities financing transactions, especially in Example 2, which reflects the common position of Investment Association members.

However, it is also possible for a MiFID investment firm to execute an SFT as agent for a client that is located in a third country with a counterparty that is also located in a third country. In these circumstances, neither counterparty will be subject to Regulation (EU) 2015/2365 so the transaction will not be reported under that regulation, but not due to the exemption in Article 2(2) of that regulation. We therefore ask that the Guidelines clarify whether or not the MiFID investment firm would be required to submit a transaction report and, if so, using which indicator in Field 65.

Exercises



We believe the use of bullets in Example 8 on Page 27 is confusing - they refer to two contrasting scenarios that both do not give rise to a reporting obligation, rather than two features of the same scenario as suggested by the bullets.

<ESMA_QUESTION_CP_TR_ORK_CS_3>

Q4: Are there any specific areas covered by the mechanics section where you require further clarity? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_4>

Delegation of reporting to third parties

With regard to section 1.1.8.2, we are aware of the questions that have been raised concerning the possibility or not to delegate the submission of transaction reports to a third party other than an ARM or the venue concerned.

We believe strongly that the principle should be upheld that a firm can delegate any activity as long as it retains ultimate responsibility for any actions or omissions of the delegate, and with due respect to those that have raised concern would suggest that while Article 26(7) might be interpreted to dictate that only the firm itself, an ARM or a venue might be able to submit a report *to a competent authority*, it does not prevent an executing entity appointing a third party to prepare and submit reports to an ARM. The executing entity would be held accountable for any errors or omissions of the third party.

Message formats

We understand that ARMs will be able to accept transaction reports by means other than the ISO 20022 messages that are being developed for this purpose and that Article 1(2) therefore applies only to reports submitted to the competent authorities. We recommend that this be confirmed in the Guidelines.

ARM services

In addition, we ask for guidance on the extent to which ARMs will be able to filter out reports relating to non-reportable instruments and enrich and/or reformat the data submitted to them by an investment firm under the derogation provided in the third paragraph of Article 26(7) of MiFIR.

Validation rules

We would make the following observations concerning the proposed validation rules:

- Row 88 (Field 25): We believe column D should be blank
- Rows 89-91 (Field 26): In addition, Field 26 should not be present if Field 25 is 'true' or Field 27 is present
- Rows 92-94 (Field 27): Similarly, Field 27 should not be present if Field 25 is 'true' or Field 26 is present
- Row 102 (Field 29): We believe the rule would apply also if Field 29 were 'MTCH'
- Row 203 (Field 59): In our response to Q13, we identify circumstances where that there may not be an individual or algorithm responsible to the decision as to the execution of a particular transaction and offer three potential reporting solutions in such circumstances, one of which is that Field 59 be left blank. This would require the field to be made optional.

Number formats

The formatting of decimal numbers is defined in Table 1 of Annex I to the RTS, where it indicates the convention used in Table 2 to specify to the length and fraction digits of the field, and requires that numbers shall be rounded, not truncated. According to the convention the lengths and number of fraction digits indicated for each field are the maximum permitted - no minima are prescribed.

We note that ESMA quotes average prices in different illustrations with differing numbers of fraction digits (for example 13 on page 100 and 7 on page 137). We believe it would be helpful for there to be an explanation in the preamble (pages 8-10) that the number of fraction digits in any example is not intended to convey any expectation that investment firms would report using the same number of fraction digits in similar circumstances to those illustrated.

OTC post-trade indicator

In the absence of a question in which to comment on Block 9, we would say here that we believe Example 3 on page 61 is confusing. As presented, both the description and the table give the impression in the first instance that that Firm Y is trading for Client A. On closer inspection, however, we believe A is actually the client of X. This being the case, we recommend that the first sentence of the description be revised to read:

"Firm X, acting on behalf of Client A, executes a transaction by buying an equity instrument from Firm Y."

We further recommend that the columns in the table for Firm X and Firm Y be reversed to align with the chain from Firm Y as the seller, to Client A as the buyer. In addition, we recommend that the buyer and seller fields be added to the table, illustrating the chain philosophy described in section 1.1.3. It would then become far more apparent why Client A does not report the OTC post-trade indicator.

<ESMA_QUESTION_CP_TR_ORK_CS_4>

Q5: Do you require further clarity on the content of Article 1 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_5>

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Q6: Do you require further clarity on the content of Article 2 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_6>

Collateral transfers

We do not believe it is intended that firms should report the transfers of instruments for the purposes of exchanging collateral, which are of negligible risk from a market abuse perspective, but understand that there is uncertainty as to which of the exemptions under Article 2(5) such transfers would apply. We would suggest, as the exchange of collateral would be for the purposes of mitigating the risk of a transaction failing to settle, that this might be offered specifically as an example of the application of Article 2(5)(b).

Transactions in investment fund units

A very specific example is provided on page 27 to illustrate circumstances in which investment fund transactions would and would not be reportable. Although this may happen somewhere in Europe, we do not believe it depicts a widely used approach and would suggest that a more common scenario, of greater interest to a wider audience, would be where an investment firm buys (or sells) units in an investment fund with or through the fund manager or administrator. We therefore ask that an additional example be added as follows:

"An investment firm buys units in an investment fund, which may or may not be an ETF, directly from the manager or administrator of the fund at a price determined according to the prospectus of the fund. The transaction constitutes a creation of units so is not reportable by the investment firm. Similarly, if the transaction were a sale by the investment firm under the same conditions, this would constitute a redemption of the units and would not be reportable."

<ESMA_QUESTION_CP_TR_ORK_CS_6>

Q7: Do you require further clarity on the content of Article 3 of RTS 22? Please elaborate.



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Q8: Do you require further clarity on the content of Article 4 of RTS 22? Please elaborate.

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Q9: Do you require further clarity on the content of Article 5 of RTS 22? Please elaborate.

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Q10: Do you require further clarity on the content of Article 6 of RTS 22? Please elaborate.

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Q11: Do you require further clarity on the content of Article 7 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_11>
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Q12: Do you require further clarity on the content of Article 8 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_12>
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Q13: Do you require further clarity on the content of Article 9 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_13>

There are many instances where a firm that undertakes discretionary portfolio management is either is directed by a client or subject to a policy decision to send its orders to a specific third party for execution. As such, no-one within the firm makes an execution decision with regard to a particular trade. We note, however, that Field 59 is intended to be mandatory according to the proposed validation table. It seems to us that there are three possible solutions to this:

(a) the field is made optional and populated only when an individual or algorithm within the firm is responsible for the execution of the actual transaction that is being reported;

(b) the field remains mandatory and is populated by default with the identifier of the person that made the investment decision; or

(c) the field remains mandatory, but is populated with a unique identifier that the firm has assigned to evidence it has captured of the direction or decision.

We believe options (a) and (b) would be less helpful to competent authorities when investigating transactions, as they would provide no or misleading information as to how the execution decision was made.



In contrast, option (c) would lead competent authorities immediately to consider what lay behind the reference, but would require clarification in the Guidelines that the evidence to which it referred would be deemed *for these purposes* to fall within the definition of "computer algorithm" as the term is used in the RTS.

We ask that ESMA considers this scenario and either confirms the approach we suggest above or otherwise clarifies how it would expect firms to report in these circumstances.

<ESMA_QUESTION_CP_TR_ORK_CS_13>

Q14: Do you require further clarity on the content of Article 10 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_14>

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<ESMA_QUESTION_CP_TR_ORK_CS_14>

Q15: Do you require further clarity on the content of Article 11 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_15>

It has been suggested to us that a firm undertaking discretionary portfolio management may be expected to identify situations when it has sold an instrument for a client's portfolio and the client is then short by virtue of independent action by the client or another discretionary manager. It would be wholly impractical for a firm acting under a discretionary mandate to refer to the client every time it makes an investment decision to sell an instrument from their portfolio.

We do not believe the texts of Article 26(2) of MiFIR; the Article 2(1)(b) of Regulation (EU) 236/2012 to which it refers; or Article 11 itself would preclude an interpretation whereby a discretionary portfolio manager was required to consider only the portfolio(s) it were managing for the purposes of populating Field 62. Moreover, when a firm is acting under a discretionary mandate, information with regard to short selling would be relevant for market abuse purposes only in this regard. We therefore urge ESMA to confirm through the Guidelines that this is indeed the intention.

If this is not the case, note that the firm would not necessarily know if a client employed more than one portfolio manager and certainly not the instruments that were held in that other portfolio. It therefore would not know whether or not it had sold short even if it had done so in the portfolio for which it was responsible.

We note that firms are left to refer back to Article 26 of MiFID to determine the scope of Article 11 in terms of the type of short sale that must be reported. Specifically, we understand that Article 2(1)(b) of Regulation (EU) 236/2012 limits this to physical short sales (ie. it does not extend to synthetic or future positions created by the use of derivatives). Given that this is not articulated again in the RTS, we believe it would be helpful to draw attention to this scope in the Guidelines.

<ESMA_QUESTION_CP_TR_ORK_CS_15>

Q16: Do you require further clarity on the content of Article 12 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_16>

We would welcome further clarification concerning the types of transaction that should be linked using Field 40. For example, we understand that program trades to simultaneously sell and/or buy a range of instruments would not be considered a "complex" trade for these purposes, in contrast with a package trade executed at a single price or a swap derivative.



In the case of a swap, we would welcome clarification concerning the situation of an FX swap where the near leg would otherwise be a spot trade and, therefore, not a financial instrument on its own.
<ESMA_QUESTION_CP_TR_ORK_CS_16>

Q17: Do you require further clarity on the content of Article 13 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_17>
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Q18: Do you require further clarity on the content of Article 14 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_18>
We would welcome clarification as to the whether or not a branch of a third country entity, when trading in a Member State as a MiFID-authorised firm, would need to consider the reporting implications of activities undertaken by other branches of the same entity in other third countries, and in what circumstances.
<ESMA_QUESTION_CP_TR_ORK_CS_18>

Q19: Do you require further clarity on the content of Article 15 of RTS 22? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_19>
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Q20: Do you require further clarity on the content of Article 16 of RTS 22? Please elaborate.

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Q21: Do you require further clarity or examples for population of the fields covered in Block 1? Please elaborate.

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Q22: Do you require further clarity or examples for population of the fields covered in Block 2? Please elaborate.

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Q23: Do you require further clarity or examples for population of the fields covered in Block 3? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_23>

It is common for portfolio management firms in one jurisdiction to act as global trading desks for affiliate entities located in other jurisdictions. We believe that in such circumstances, for example where a UK firm is executing a purchase for a US affiliate entity that made the investment decision, the UK firm would report the US entity as the buyer and omit the decision maker fields (the US entity having made its own investment decision). Equally, where a UK firm undertakes the portfolio management and passes a purchase order to an affiliate entity in the US, it would report the US entity as the seller.

We have provided examples in our response to Q38 to illustrate how we believe the various fields would be populated.

<ESMA_QUESTION_CP_TR_ORK_CS_23>

Q24: Do you require further clarity or examples for population of the fields covered in Block 4? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_24>

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Q25: Do you require further clarity or examples for population of the fields covered in Block 5? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_25>

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Q26: Do you require further clarity or examples for population of the fields covered in Block 7? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_26>

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<ESMA_QUESTION_CP_TR_ORK_CS_26>

Q27: Do you require further clarity or examples for population of the fields covered in Block 8? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_27>

Further to our response to Q15, where we note that a discretionary portfolio management firm would not know what positions were being managed by another discretionary manager for the same client, we would welcome clarity here as to whether the firm should always report "NTAV" in Field 62 unless it knew for certain that it managed the client's entire portfolio, or report "SELL" or "SESH" according only to its own portfolio management activity for that client.

We note that reference is made in both section 1.2.8 and in the validation rules to the use of a code 'UNDI' when an investment firm does not know when the client is selling short, but this is not a valid code according to the RTS, which prescribe the code 'NTAV' for this purpose. We presume this is an error in the consultation, which will be corrected in the final version.

<ESMA_QUESTION_CP_TR_ORK_CS_27>

Q28: Do you require further clarity or examples for population of the fields covered in Block 10? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_28>

We would suggest that use of the same designation "D" in the example provided in section 1.2.10.1 for both the firm and the client is ambiguous - it suggests that some other relationship exists between the two. We therefore recommend that the firm be identified by a letter towards the end of the alphabet per the convention used elsewhere in the Guidelines.

<ESMA_QUESTION_CP_TR_ORK_CS_28>

Q29: Do you require further clarity or examples for population of the fields covered in Block 11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_29>

It is quite possible that a firm's batch processes may result in an incorrect report being cancelled and re-processed in the same batch of reports as the original report, with no guarantee that these events will be received in the same order. We note that the ISO 20022 Message Definition Report includes technical data fields that would enable the distinction of the new report from the original report, but the MDR also states that these are for use only by competent authorities and shall not be populated by reporting entities.

It is not clear how ESMA expects this differentiation to be made when, according to the example provided in section 1.2.11.3, the TRN would be the same for both "NEWT" reports and it is possible that the corrected report may arrive before the original incorrect version.

We do not, in fact, believe the RTS prescribe that the TRN should be re-used. To the contrary, the field definition for Field 3 in Table 2 of Annex I states that the TRN shall be "...unique to the executing firm for each transaction report" (not the transaction itself). As such, we would argue that this *requires* assignment of a new TRN to the corrected report.

We understand that most Investment Associations members' systems, and we suspect those of other firms, assign a new TRN currently when reporting the corrected version of a transaction. We believe the systems changes required to follow the proposed guidance would be costly for firms; bring no material benefits to competent authorities; and, as noted above, be inconsistent with the RTS.

<ESMA_QUESTION_CP_TR_ORK_CS_29>

Q30: Do you require further clarity or examples for population of the fields covered in Block 12? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_30>

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Q31: Do you require further clarity or examples for the scenarios in section 1.3.1? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_31>

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Q32: Do you require further clarity or examples for the scenarios in section 1.3.2? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_32>

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<ESMA_QUESTION_CP_TR_ORK_CS_32>

Q33: Do you require further clarity or examples for the scenarios in section 1.3.3? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_33>

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Q34: Do you require further clarity or examples for the scenarios in section 1.3.4? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_34>

Although we accept that a firm executing a transaction on a venue as matched principal must always report the client for whom it is trading and not use the internal client account (INTC), we do not agree with the suggestion in section 1.3.4.3 that the same is true when the firm is trading on an any other capacity". Where the client is another investment firm with a reporting obligation it would be unnecessarily burdensome for the client firm to establish in each case that the order has been completed through multiple fills and capture the details of each fill for the sole purpose of reporting (the transactions are usually confirmed at the order level, with individual fills being advised for information only and not by all brokers).

As we note in our response to Q4, the internal client account is a notional construct and does not infer that the instrument necessarily passes through the firm as a principal. We do not believe the RTS require the stance taken by ESMA, and believe that a broker should be permitted to report multiple fills to the internal client account and then report a single aggregated transaction with the client. As you will also see from our response to Q2, we believe ESMA's stance on allocations to a single client is inconsistent with the RTS.

The paragraph at the top of page 90 refers to the time the clients become owners of the instrument, but relates to an illustration in which they are selling. For clarity, the table and text should address a common scenario of either a buy or a sell.

<ESMA_QUESTION_CP_TR_ORK_CS_34>

Q35: Do you require further clarity or examples for the scenarios in section 1.3.5? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_35>

As noted in our response to Q2 we believe the stance taken in section 1.3.5 in relation to allocations to a single client is inconsistent with the RTS, which do envisage this possibility.

We note that Scenario 1 on pages 102 through 105 depicts a situation where Firm X allocates the aggregated fills on day 1 in equal proportions to Client A and Client B. We do not believe this reflects the typical allocation policies of firms, which would be to allocate on a pro-rata basis according to the orders for the client, ie. quantities of 200 and 300 respectively to Client A and Client B on each day. We recommend that the tables on pages 102 and 104 be amended to reflect this more usual policy.

<ESMA_QUESTION_CP_TR_ORK_CS_35>

Q36: Do you require further clarity or examples for the scenarios in sections 1.3.6 and 1.3.7? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_36>

In addition to the example provided in section 1.3.7, we would propose an additional scenario covering a more typical chain whereby Firm X makes a decision under a discretionary mandate from Investor 1 and places an order with Firm Y to buy an instrument. Firm Y executes the order on Trading Venue M as a

matched principal. There is no transmission agreement in place between the two firms. We believe the reports of each party would appear as follows:

N	FIELD	Report of Firm Y Values	Report of Firm X Values
3	Trading venue transaction identification code	'1234'	
4	Executing entity identification code	[LEI] of firm Y	[LEI] of firm X
7	Buyer identification code	[LEI] of firm X	[LEI] of Investor 1
16	Seller identification code	{LEI} of CCP for trading venue M	[LEI] of firm Y
25	Transmission of order indicator	'false'	'false' ** see note below **
26	Transmitting firm identification code for the buyer		
27	Transmitting identification code for the seller		
28	Trading date time	'2017-07-01T13:40:23.467Z'	'2017-07-01T13:40:23Z'
29	Trading capacity	'MTCH'	'AOTC'
33	Price	'32.5'	'32.5'
34	Price Currency	'EUR'	'EUR'
36	Venue	Segment {MIC} of trading venue M	'XOFF'
57	Investment decision within firm		{NATIONAL_ID} of Trader 1
59	Execution within firm	'ALGO12345'	{NATIONAL_ID} of Trader 2

** Note: please see our response to Q2, in which we suggest that according to the RTS 'true' should be used only where Firm X attempted, but failed, to satisfy the conditions of Article 4.

We believe it would be helpful to add a note highlighting that Firm Y does not look beyond Firm X to the investor and reports Firm X as the buyer. Conversely, Firm X does not look beyond Firm Y to the venue and reports the venue as 'XOFF'

<ESMA_QUESTION_CP_TR_ORK_CS_36>

Q37: Do you require further clarity or examples for the scenarios in section 1.3.8? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_37>

We note that on page 132 the example provided in section 1.3.8.4 shows the "Transmission of order indicator" incorrectly as Field 27 instead of Field 25.

<ESMA_QUESTION_CP_TR_ORK_CS_37>

Q38: Do you require further clarity or examples for the scenario in section 1.3.9? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_38>

We note that the example provided in section 1.3.9.1 shows the trading time in Field 28 for Report 4 incorrectly as 14:25:40Z instead of 14:25:30Z.

In addition, the table of fields suggests that Field 57 would be populated in the block level reports (1 and 2) as well as with the allocations. We do not believe this can be correct, as the investment decisions are likely to have been made by different individuals for the different clients. In addition, the executing trader is unlikely to be either of those individuals.

Taking into account all of the above, we believe the table should in fact be presented as follows:

N	FIELD	Report 1 Values	Report 2 Values	Report 3 Values	Report 4 Values
3	Trading venue transaction identification code				
4	Executing entity identification code	[LEI] of firm X			
7	Buyer identification code	'INTC'	'INTC'	[LEI] of client A	[LEI] of client B
12	Buyer decision maker code			[LEI] of firm X	[LEI] of firm X
16	Seller identification code	[LEI] of firm Y	[LEI] of firm Y	'INTC'	'INTC'
21	Seller decision maker code				
25	Transmission of order indicator	'false' ** see note below **			
26	Transmitting firm identification code for the buyer				
27	Transmitting identification code for the seller				
28	Trading date time	'2016-06-24T14:25:30Z'	'2016-06-24T15:55:40Z'	'2016-06-24T14:25:30Z'	'2016-06-24T14:25:30Z'
29	Trading capacity	'AOTC'	'AOTC'	'AOTC'	'AOTC'
30	Quantity	'350'	'250'	'400'	'200'
33	Price	'30'	'32.5'	'31.0416667'	'31.0416667'
34	Price Currency	'EUR'	'EUR'	'EUR'	'EUR'
36	Venue	'XOFF'	'XOFF'	'XOFF'	'XOFF'
57	Investment decision within firm			[National ID] of Trader 1	[National ID] of Trader 2
59	Execution within firm	[National ID] of Trader 3			

** Note: please see our response to Q2, in which we suggest that according to the RTS 'true' should be used only where Firm X attempted, but failed, to satisfy the conditions of Article 4.

As noted in our response to Q2, we believe it would be helpful to add a note somewhere in the Guidelines that the apparent movement through the internal client ('INTC') may be entirely notional for the purposes of reporting, and does not indicate or suggest that a discretionary portfolio manager actually maintains such a client or that ownership of the instrument passes through its hands in any way.

Trading time

Notwithstanding the definition of Field 28 in the RTS with regard to transactions not executed in a trading venue, we assume that Firm X, being a discretionary manager and placing the order with Firm Y, would be permitted to consume and report the trading date and time as advised by Firm Y by voice or electronic execution message. We should be grateful if the Guidelines could confirm this.

We raise this point here in the absence of a question in which to comment on Block 6.

Scenarios to reflect trading relationships with buy-side firms

Further to our response to Q23, we propose the inclusion of two additional scenarios that are relevant specifically to discretionary management firms, as follows:

Scenario 1

Firm X is a UK investment firm and makes an investment decision under a discretionary mandate to purchase a reportable instrument for Client A. Instead of placing the order with a broker directly, however, the firm's trader passes the order to its affiliate Firm Y for execution. Firm Y is a separate legal entity located in the US. How shall Firm X report?

N	Field	Report 1 Values
4	Executing entity identification code	{LEI} of firm X
7	Buyer identification code	{LEI} of client A
12	Buyer decision maker code	{LEI} of firm X
16	Seller identification code	{LEI} of Firm Y
21	Seller decision maker code	
29	Trading capacity	'AOTC'
36	Venue	'XOFF'
57	Investment decision within firm	[National ID] of Trader 1
59	Execution within firm	[National ID] of Trader 2

Firm X is not required to look beyond its immediate counterparty, so reports its US affiliate as the seller.

Firm Y does not report as it is not a MiFID investment firm.

Scenario 2

Firm Y is a US discretionary manager that makes an investment decision under a discretionary mandate to purchase a reportable instrument for its client. Instead of placing the order with a broker directly, however, the firm's trader passes the order to its affiliate Firm X for execution. Firm X is a MiFID investment firm located in the UK that undertakes discretionary management as well as providing a global trading desk for various affiliate entities firms around the world. Firm X executes the trade with broker Firm Z. How shall Firm X report?

N	Field	Report 1 Values
4	Executing entity identification code	{LEI} of firm X

7	Buyer identification code	{LEI} of Firm Y
12	Buyer decision maker code	
16	Seller identification code	{LEI} of Firm Z
21	Seller decision maker code	
29	Trading capacity	'AOTC'
36	Venue	'XOFF'
57	Investment decision within firm	
59	Execution within firm	[National ID] of Trader 2

Firm X is not required to look beyond its immediate client, so reports its US affiliate as the buyer.

Firm Y does not report as it is not a MiFID investment firm.
<ESMA_QUESTION_CP_TR_ORK_CS_38>

Q39: Do you require further clarity or examples for the scenario in section 1.3.10? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_39>

We believe it would be helpful to provide the illustration below of the reporting by the DEA provider and DEA client. In order to emphasise the point that DEA does not alter change the reporting of the two firms, this repeats the example we have proposed in our response to Q36 except in this case Firm Y is the DEA provider and Firm X the DEA client:

N	FIELD	Report of Firm Y (DEA provider) Values	Report of Firm X (DEA client) Values
3	Trading venue transaction identification code	'1234'	
4	Executing entity identification code	[LEI] of firm Y	[LEI] of firm X
7	Buyer identification code	[LEI] of firm X	[LEI] of Investor 1
16	Seller identification code	{LEI} of CCP for trading venue M	[LEI] of firm Y
28	Trading date time	'2017-07-01T13:40:23.467Z'	'2017-07-01T13:40:23Z'
29	Trading capacity	'MTCH'	'AOTC'
33	Price	'32.5'	'32.5'
34	Price Currency	'EUR'	'EUR'
36	Venue	Segment {MIC} of trading venue M	'XOFF'
57	Investment decision within firm		{NATIONAL_ID} of Trader 1
59	Execution within firm	'ALGO12345'	{NATIONAL_ID} of Trader 2

In addition, we ask for the inclusion somewhere of a contrasting scenario whereby Firm X, as a discretionary portfolio management firm executes a purchase order for the portfolio of its client (Investor 1) directly on Trading Venue M. We believe that most commonly this would be an MTF operating a request for quotes system where the response requires human intervention and Firm X can see that the responding counterparty is Firm Y. In this scenario, we believe the report of Firm X would look as follows:

N	FIELD	Report of Firm X (DEA client) Values
3	Trading venue transaction identification code	'1234'
4	Executing entity identification code	[LEI] of firm X
7	Buyer identification code	[LEI] of Investor 1
16	Seller identification code	[LEI] of firm Y
28	Trading date time	'2017-07-01T13:40:23Z'
29	Trading capacity	'AOTC'
33	Price	'32.5'
34	Price Currency	'EUR'
36	Venue	Segment {MIC} of trading venue M
57	Investment decision within firm	{NATIONAL_ID} of Trader 1
59	Execution within firm	{NATIONAL_ID} of Trader 2

<ESMA_QUESTION_CP_TR_ORK_CS_39>

Q40: Do you require further clarity or examples for the scenario in section 1.3.11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_40>

Give-up for clearing

We recommend that the text in section 1.3.11.2 makes it clear that Firm X shall report only the original execution and not the subsequent give-up to the other broker.

Novations

We appreciate that novations for the purposes of moving a trade into clearing are out of scope for transaction reporting. However, derivatives contracts are also sometimes novated as a means for one counterparty to unwind their position when that are able to find another that is willing to step in. It is not clear how such an event would be reported and we would welcome guidance as to what ESMA would expect to see in these circumstances.

<ESMA_QUESTION_CP_TR_ORK_CS_40>

Q41: Do you require further clarity or examples for the scenarios in sections 1.3.12 and 1.3.13? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_41>

We note that the example provided in section 1.3.13 considers only the initial acquisition of the bonds by the central bank, but we presume that in the case of a repo the far leg of the transaction, whereby the



bonds are returned to Firm X, would be reported at the same time. We ask that the illustration be expanded in order to clarify this.

<ESMA_QUESTION_CP_TR_ORK_CS_41>

Q42: Are there any other equity or equity like instruments scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_42>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_42>

Q43: Are there any other bonds or other form of securitised debt scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_43>

Q44: Are there any other options scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_44>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_44>

Q45: Are there any other contract for difference or spreadbet scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_45>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_45>

Q46: Are there any other credit default swaps scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_46>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_46>

Q47: Are there any other swap scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_47>

We believe there should be some scenarios depicting FX swaps under different circumstances and would propose the following two:

Scenario 1

An FX swap is executed on an organised trading platform outside the Union. The instrument is not available to trade on an EEA platform, but the currency pair can be traded spot on an EEA trading venue and has an ISIN for that purpose.

The transaction is not reportable as the swap instrument it is not available to trade on an EEA venue. It is not reportable by virtue of the admission of the currency pair to trade spot on an EEA venue with an ISIN, as spot FX is not a financial instrument as defined in Section C of Annex I to Directive 2014/65/EU (MiFID II).



Scenario 2

Firm X executes a one-month FX swap on behalf of its Client A with Firm Y on an EEA trading venue. The near leg would be a spot to sell GBP for USD

We would expect each leg of the swap to be reported separately and linked using the Complex Trade Component ID. Although the near leg is spot, it would still be reported as a component of the swap.

We would welcome an illustration as to how ESMA would expect the trade economics (and any relevant additional fields to be reported in the following tables to be completed from the perspectives of Firm X and Firm Y for the near and far legs of the swap. The buyer and seller fields will depend on the currency pair and which is delivered.

<ESMA_QUESTION_CP_TR_ORK_CS_47>

Q48: Are there any other commodities based derivatives scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_48>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_48>

Q49: Are there any other strategy trades scenarios which require further clarification?

<ESMA_QUESTION_CP_TR_ORK_CS_49>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_49>

Q50: Is the difference between aggregated orders and pending allocations sufficiently clear?

<ESMA_QUESTION_CP_TR_ORK_CS_50>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_50>

Q51: Do you require further clarity on the proposals made in sections 2.1 to 2.11? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_51>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_51>

Q52: Do you agree require further clarity on the proposals made in section 2.12? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_52>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_52>

Q53: Do you require further clarity on the proposals made in section 2.13? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_53>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_53>

Q54: Are there any further clarifications required on the concept of ‘reportable event’? If yes, please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_54>

We note that ESMA recognise, in the first paragraph of section 3.1 that the clock synchronisation requirements apply only to trading venues and their members/participants. This restriction should be reflected in any guidelines produced.

For example, reportable event type 2 refers to field 28 of RTS 22 under Article 26 of Regulation (EU) No 600/2014. Field 28 refers to RTS 25 on clock synchronisation applying when a transaction is executed on a trading venue, but, specifically, not when the transaction is not executed on a trading venue. For transactions not executed on a trading venue, while the time should be reported to the nearest second, RTS 25 would not apply.

Also, reportable event type 3 includes record keeping stemming from Article 25(1) of Regulation (EU) No 600/2014 and Article 16(6) of Directive 2014/65/EU. Both of these capture many investment firms which are neither members nor participants of trading venues. As such, the clock synchronisation requirements, under RTS 25, should not be applied to them.

Any final guidelines should make it clear that RTS clock synchronisation requirements and standards would only be required of operators of trading venues and their members or participants.

<ESMA_QUESTION_CP_TR_ORK_CS_54>

Q55: Is it sufficiently clear at what point OTC transactions shall be time-stamped? If not, please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_55>

The ‘specific guidance on time-stamping’, which I presume is the proposed guideline, simply seems to be applying the standards already set out in Field 28 of RTS 22

I would comment that the first paragraph of the proposed guidance may be better worded as: ‘According to the ESMA guidelines, transaction reporting of the trading time under Article 26 of MiFIR is considered to be a reportable event’, to reflect Reportable Event type 2. It should also reference Field 28 of RTS 22, not of RTS 2/3.

It may be better to use the phrase ‘transactions executed other than on a trading venue’, rather than ‘transaction not executed on a trading venue’, to avoid any risk of ambiguity.

<ESMA_QUESTION_CP_TR_ORK_CS_55>

Q56: Do you require further clarity on the content of Article 4 of RTS 25? Please elaborate.

<ESMA_QUESTION_CP_TR_ORK_CS_56>

The clarity provided by the proposed ESMA Guidelines, that satellite systems are an acceptable time source as long as any offset from UTC is accounted for, is appreciated. This should be spelled out, equally clearly, in the final Guidelines.

<ESMA_QUESTION_CP_TR_ORK_CS_56>

Q57: Do you agree with the proposals made in sections 3.2 to 3.4? Please elaborate. Are there any further clarifications required?

<ESMA_QUESTION_CP_TR_ORK_CS_57>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_TR_ORK_CS_57>

