

Response Form to the Consultation Paper

MiFIR review report on the obligations to report transactions and reference data

Responding to this paper

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

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

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

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

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

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CP_TRRF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_TRRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TRRF_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation paper on MiFIR review report on the obligations to report transactions and reference data").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from

us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper?

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

General information about respondent

Name of the company / organisation	International Capital Market Association
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_TRRF_1>

ICMA views the problem that ESMA is trying to solve through this CP is the reduction of overlap between MAR and MiFIR regulations. In addition, the better linking up of the technology between the market abuse and MiFIR transparency teams. ESMA hopes this better MAR/MIFIR technology link will assist market functioning.

However, ICMA members believe that ESMA risks undermining these laudable aims of much of this consultation. ICMA members question whether the benefit of an expanded scope (potentially creating excess unusable data [see paragraph 43 of the consultation paper]) is for the financial community. It is unclear if this is a case of market resilience, liquidity and efficiency benefiting from the burden, complexity and cost of implementation. Or, if this is solely burden, complexity and cost of implementation without benefit to the industry participants.

Notwithstanding, ICMA is pleased to respond to ESMA's consultation on transaction reporting and reference data. This is a complicated consultation paper requiring detailed complex answers. Given the time allotted for this CP, ICMA members decided to focus on questions concerning transparency, market structure impacts, scope of instruments (TOTV) and reference data.

<ESMA_COMMENT_CP_TRRF_1>

Questions

Q1 : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_1>

Q2 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_2>

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<ESMA_QUESTION_TRRF_2>

Q3 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_3>

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<ESMA_QUESTION_TRRF_3>

Q4 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_4>

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<ESMA_QUESTION_TRRF_4>

Q5 : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA_QUESTION_TRRF_5>

ICMA recognises the central role that instrument reference data plays in enabling NCAs to monitor financial markets, and more broadly in allowing investors to faithfully trace financial instruments. However, the proposal to expand the TOTV scope threatens to further undermine an already overly-complex reporting regime. The existing TOTV-scope is understood and has been implemented by all industry participants. Challenges undoubtedly exist in transparency, transaction and reference data reporting regimes under MiFIR, but these are the natural consequence of any new and ambitious regulatory reporting regime. To attempt to address these by further expanding the existing reporting parameters will undermine all industry participants (both regulators and end-investors) ability to utilise the significant publicly available data that MiFID II has provided.

New MiFID II reporting obligations coincided with the issuance of ISINs for derivative instruments. In our view, the methodology implemented for the generation of these is fundamentally flawed, and one of the primary causes of the unnecessary complexity that hinders market participants ability to efficiently utilise public information. Millions of new derivative ISINs have been created for iterations of essentially the same products. The consequences of this are manifested in overly complex transparency (RTS 2), execution metric (RTS 27), transaction reporting (RTS 22), and instrument reference data (RTS 23) submissions.

An example of the unnecessary complexity can be seen in the commonly traded 5 year maturity Fixed-Float EUR Interest Rate Swap. Rather than issuing a single fixed ISIN to represent this one product, new ISINs are issued each new trading day to reflect the shift in product maturity by one calendar day. This results in a liquid derivative product, subject to the DTO, being incredibly complex to trace for simple measures such as trading volumes or changes in pricing levels. Such fundamental flaws in the numbering generation process are amplified across maturity buckets, currencies, asset and subasset classes, resulting in a regime which undermines one of the central purposes of MiFID II to make financial markets less opaque.

The priority of ESMA should be to require ANNA-DSB to reassess the ISIN generation model, utilising the expertise of all industry participants to improve the existing process. Without addressing these basic product identifiers, any subsequent efforts to improve the existing reporting regimes will prove impossible.

Extending the existing TOTV regime to incorporate 'SI-only' instruments would potentially overwhelm reporting routines that are already undermined by excess data. ESMA appears to recognise this in paragraph 43, where reference is made to 'without bringing pure bespoke OTC transactions into the scope', but the implication of broadening the TOTV concept is that these instruments will automatically be included.

Cost vs Benefit: In general, ICMA members question what the benefit of this additional scope is for the financial community. It is not clear that this is a case of market resilience, liquidity and efficiency benefiting from the burden, complexity and cost of implementation.

Furthermore, while the industry and regulators focus on simplification and economic recovery initiatives, the proposals found in this ESMA consultation are significantly moving in the opposite direction.

Addressing ESMA's proposals more granularly, ESMA does not seem to present any analysis of the instruments or asset classes scope targeted / impacted by this proposal. As per the example shown in paragraph 46, it is clear that the proposal is aiming at IRS. However, the proposal is unclear if targetting:

1. All non-TOTV Interest Rates Derivatives, including "Other IR Derivatives" for which ISIN templates most probably do not exist, or only IRS
2. Non-TOTV FX Derivatives, including "Other FX Derivatives" for which ISIN templates most probably do not exist
3. Non-TOTV "Other Credit Derivatives" for which ISIN templates most probably do not exist
4. Non-TOTV Commodity Derivatives

The same lack of clarity exists when considering scope. Particularly concerning

- Non-TPTV structured notes, which fall into the category of Medium Term Notes and asset class Bonds.

Further analysis is required for possible cases of:

- Non-TOTV convertible bonds
- Non-TOTV securitised derivatives

It is important to note that all those instruments are not classified as OTC derivatives and that their ISIN are defined in ANNA, not in ANNA DSB. In ANNA, there would need be further analysis to see if it is possible to create ISINs "on the fly", like in ANNA DSB.

Proposed alternatives

The narrow interpretation of TOTV should be kept.

Instead of extending the scope of instruments under MiFIR reporting (duplicating with EMIR), in RTS-2, RTS-22 and RTS-23, and instead of extending the size of the unnecessary ISIN factory for non-TOTV derivatives, we should focus on

- data quality improvement on the current scope of instruments,
- simplification and streamlining of the regulatory reporting requirements
- accessibility of the transparency data,
- set-up of the bond consolidated tape,
- and, above all, the understanding of the market and any relevant data.

ICMA would like to work with regulators to simplify data request and help market participants to comply with requirements.

ICMA also reiterates our belief in a phased-approach for everything that ESMA is attempting to build.

- While MiFIR is not even 3 years old and covers all types of bonds and derivatives, regulators keep attempting immense oversized changes.

<ESMA_QUESTION_TRRF_5>

Q6 : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA_QUESTION_TRRF_6>

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<ESMA_QUESTION_TRRF_6>

Q7 : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA_QUESTION_TRRF_7>

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<ESMA_QUESTION_TRRF_7>

Q8 : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_8>

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<ESMA_QUESTION_TRRF_8>

Q9 : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA_QUESTION_TRRF_9>

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<ESMA_QUESTION_TRRF_9>

Q10 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_10>

ICMA members do not foresee any challenges with the outlined approach.

<ESMA_QUESTION_TRRF_10>

Q11 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_11>

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ICMA members do not foresee any challenges with the outlined approach.

<ESMA_QUESTION_TRRF_11>

Q12 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_12>

ICMA members do not foresee any challenges with the outlined approach.

<ESMA_QUESTION_TRRF_12>

Q13 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_13>

ICMA members strongly disagree with this proposal.

Scope of instruments: non-TOTV + all TOTV

While paragraph 65 referring to the section “4.1 Concept of TOTV” indicates that ESMA is targeting derivatives (or only IRS?), the amendment of Article 27 suggested in paragraph 66 would lead to the Article 27 / RTS-23 to apply to all financial instruments of all asset classes, including shares, bonds, ETDs and all OTC derivatives.

In other words, ESMA is proposing that SIs:

- Create and report ISINs and related instrument reference data for non-TOTV instruments / “newly defined TOTV instruments” (scope still unclear, as per ICMA’s answer in Q5)
- **Report ISINs and related instrument reference data for all existing TOTV instruments, already reported by TV, across all financial instrument for all asset classes.**

Multiplication of identical reporting

This latter point would create a tremendous multiplication of the same reporting of TOTV ISINs and related instrument reference data.

Multiplying the reporting / feed of the same instrument reference data could also be another source of possible reporting errors and reconciliations in RTS-23.

Most probably, this new requirement will turn into another dependency for the RTS-22 Transaction Reporting, as

- NCAs will set-up a new “RTS-22 acceptance check” on the presence of ISIN and SI MIC in FIRDS for non-TOTV instruments.
- This “RTS-22 acceptance check” will further be impacted by the timing challenge of RTS-23 being End of Day, with publication in D+1 in ESMA FIRDS. For IF submitting their RTS-22 real-time or end of day, potentially all trades might be rejected and will require re-submission.

By opposition, the set-up for TV is much different in the way that they make instruments available to trade on their platform, days or weeks before a trade takes place (e.g. the IRS 10Y start date in 3 months, on 20 Feb 2021). IF, because of the vast scope of instruments that they can potentially trade off-venue (any bond or any custom derivatives) will not create and report “all ISINs” in advance.

Finally, ICMA questions what the value of a common identifier / ISIN is if every TV and IF has to report it together with related instrument reference data.

Instead of multiplying the reporting / feed of the same instrument reference data (200 TVs, 100+ SI reporting the same ISIN and related instrument reference data), we would recommend to feed that reference data directly from the instrument reference data golden sources, without passing through TV and IF. See ICMA’s comments on Alternative Proposals further below.

Cost vs Benefit: In general, ICMA members question what the benefit of this additional scope is for the financial community. It is not clear that this is a case of market resilience, liquidity and efficiency benefiting from the burden, complexity and cost of implementation.

Misconception of market structure

ICMA would like to remind ESMA that SIs are not TVs.

- Instead, investment firms (IF) / market participants.
- IF should not have the same obligations as TV.
- IF should not report any reference data to ESMA FIRDS (RTS-23).

Loss of anonymity of Post-Trade Transparency

This RTS-23 reporting for TOTV instruments by liquidity providers may cause issues in terms of loss of anonymity of Post-Trade Transparency. Which, in turn, means **increase of hedging risk, reduction of market liquidity, increase of prices.**

For example, assume that a liquidity provider trades a TOTV illiquid instrument (e.g. emerging market bond) off-venue / OTC / voice during the day. For the purpose of Post-Trade Transparency, the trade will be submitted immediately to an APA.

- In MiFID 2, the trade will be made public after deferrals in volume omission (D+2, W+4) or weekly aggregation (Next Tuesday, W+4) because illiquid, anonymously on the APA.
- In MiFID Refit, the trade might even be made public real-time with volume omission, anonymously on the APA.

Now, if we add an RTS-23 reporting for the instrument reference data of this TOTV illiquid instrument by this liquidity provider, at the end of the day, this instrument reference data / ISIN, together with the SI MIC (and LEI depending on the instrument type) of this liquidity provider, will be made public on ESMA FIRDS on Day+1.

Therefore,

- from Day+1 at 8am, any individual or firm can see a new ISIN, LEI, SI MIC of the liquidity provider from ESMA FIRDS – and know that this specific IF has taken / sold a position in this TOTV illiquid instrument.
- In MiFID 2,
 - either from Day+2 before 19h00 (volume omission), any individual or firm can pull the ISIN and price of the trade from the APA – and match this info with the identity of the liquidity provider.
 - or from the “Next Tuesday” before 09h00, assuming there has been 2 trades in the previous week, any individual or firm can pull the ISIN, quantity and weighted average price of the trade from the APA – and match this info with the identity(ies) of the liquidity provider(s) (1 or more firms, depending on the number of trades).
- In MiFID Refit, with the ESMA proposal of real-time transparency of all prices with volume omission, from Day+1 at 8am, any individual or firm can pull the trade details (ISIN, quantity, price) from the APA and the ISIN, LEI, SI MIC of the liquidity provider from ESMA FIRDS.

In case of illiquid instruments,

- just the knowledge that a trade has happened can make the whole market liquidity of that instrument disappear (the other 2 or 3 market-makers withdraw their quotes, at least temporarily).
- knowing the price of the trade can also allow you to deduct the size of the position (large quantities lead to wider bid/offer generally, unless markets are rallying).

Now, if we add the identity of the liquidity provider to the above information, it makes hedging more complicated and complex.

- If all market participants know that you have a large position in an instrument and that you want to decrease that position, market participants will use that information to their advantage and offer you a very low price (they know that you “have to sell” to hedge yourself).
- The direct impact of this will be a loss of money for the liquidity provider (the price of the instrument moved rapidly between the moment of the first trade and the moment of the hedge).

- And next time, given the increased risk, the liquidity offered will be in much lower and the prices higher.

This example is an illustration that market participants / IF are not market operators / TV and should not bear the same reporting obligations as market operators / TV.

- Market participants / liquidity takers invest their money (e.g. pensions, governments or corporates borrowing), take a position and a risk to obtain a return. The availability of liquidity and at good prices is a key factor in their investment strategies / decisions.
- Market participants / liquidity providers take a position to offer this liquidity. The ability to hedge that position by the liquidity provider is the key factor in the provision of this liquidity and the prices levels.
- Market operators do not participate in the market, do not invest their funds, do not offer liquidity, do not take positions, do not take a risk and do not hedge.

This brings into play, there is no concept of 'level playing field' between market operators and market participants. Instead, the pursuit of a 'level playing field' is:

- On the one hand, between market operators themselves
- On the other hand, between market participants or potential market participants executing on- and/or off-venue.

Decreasing the level of anonymity in the Post-Trade Transparency will have a direct impact on market liquidity and competitiveness of firms within the EU market.

- Liquidity takers, investors will invest in other markets, other products, other countries.
- This will also have a direct impact on government and corporates borrowing capacity in the EU (e.g. foreign investors may invest elsewhere).

One could argue that this whole argument could be negated if all liquidity providers were sending all instrument reference data, on a daily basis, as per ESMA proposal in paragraph 71. But, as our answer in Q14-15, this set-up should be avoided for many reasons: multiplication of reporting of identical data, loss of rationale of the existence of unique identifiers and golden sources, costly solution with no benefits for the financial community.

Alternative Proposals

Instead of multiplying duplicate feed of instrument data reference, we should focus on

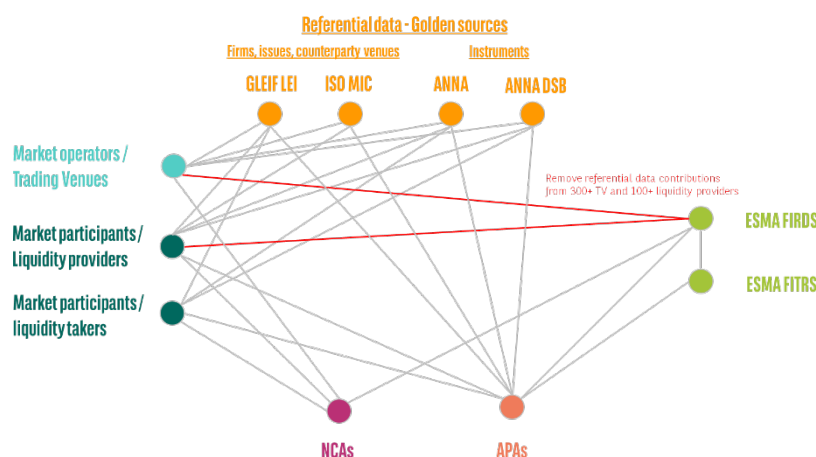
- data quality improvement on the current scope of instruments,
- simplification and streamlining of the regulatory reporting requirements
- accessibility of the transparency data,
- set-up of the consolidated tape,
- and, above all, the understanding of the market.

Some ideas, to be analysed further:

- **Simplification of the whole regulatory reporting framework: using golden sources.**

Diagram: Instrument reference data reporting – contribution by all TV and Liquidity Providers

Referential data reporting – contributions by all TV and LP



Source: BNP Paribas

Avoid duplication / multiplication of reporting the same reference data.

- Avoid every TV to report each the same instrument reference data
- Avoid every liquidity provider to report each the same instrument reference data

This is prone to error for TV, for all IF and for regulators.

Instead market participants should use golden sources, with everyone connecting to those golden sources to retrieve the right instrument reference data.

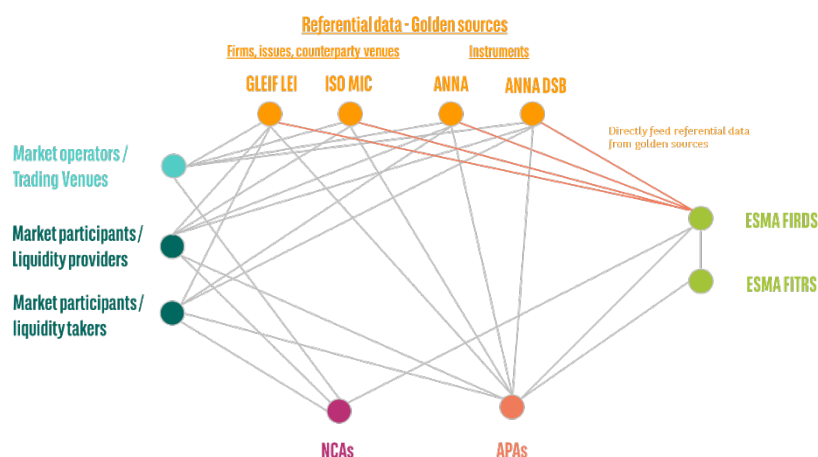
- Simplification
- No duplication / multiplication of reporting of the same data
- Reduction of redundant connections / feed
- Reduction of errors (RTS-23, RTS-22, RTS-2 to ESMA, Transparency calculations)
- Data quality improvement (RTS-23, RTS-22, RTS-2 to ESMA, Transparency calculations)
- Strong cost savings for all parties

The golden sources to which regulators, TV and IF can each connect are:

- GLEIF for LEI (LEI for firms, being counterparties in a trade or instrument issuers)
- ANNA for ISIN and CFI
- ANNA DSB for ISIN of OTC derivatives and CFI
- ISO for MIC (for TV identifiers)

Diagram: Instrument reference data reporting – everyone using golden sources

Referential data reporting – everyone using golden sources



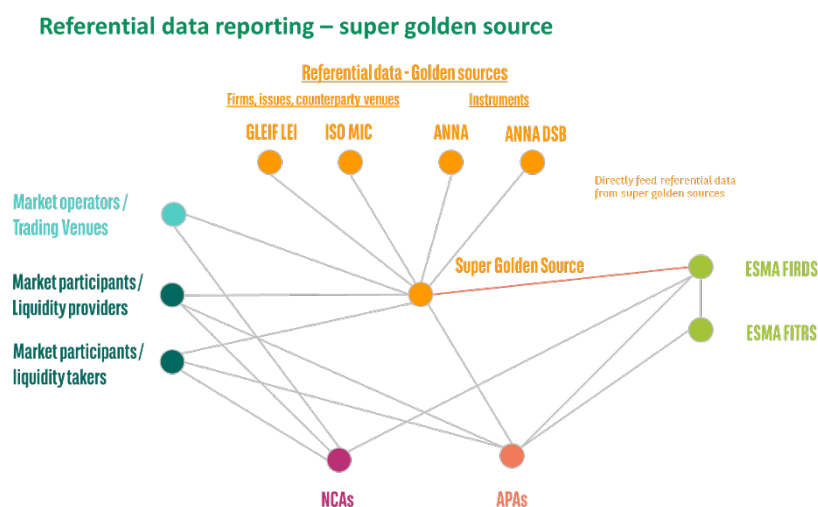
Source: BNP Paribas

- **Simplification of the whole regulatory reporting framework: a consolidated reference data provider (CRDP) or super golden source**

All the same as the first proposal but with the set-up of a CRDP, as a “super golden source”, instead of ESMA connecting to multiple golden sources.

A bit like a consolidated tape provider but for instrument reference data. Or this could be the same entity.

Diagram: Instrument reference data reporting – super golden source



Source: BNP Paribas

<ESMA_QUESTION_TRRF_13>

Q14 : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA_QUESTION_TRRF_14>

Regarding SIs, they do not operate on the basis of 'defined lists'. SIs are liquidity providers and not trading venues or 'market operators'. Furthermore, proposing SIs report reference data on every quote, in an asset class such as bonds which is quote based, is not operationally achievable.

In the case of regulated markets, they send a new file every day. However, this is based on where the instruments are admitted to trading, not for bond instruments that are actually traded.

In the case of trading venues, they do not operate on the basis of defined lists.

Regarding quote-based reference data for either MTFs/OTFs or SIs, this is unachievable.

<ESMA_QUESTION_TRRF_14>

Q15 : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_15>

ICMA strongly disagrees with this proposal on both an operational and cost/benefit basis. ICMA understands this is the majority of industry view.

In more detail, submitting delta files (updates on new instruments or changes to instruments – CFIs, coupons etc and corrections) is a very established process adding only few instruments to FIRDS on a daily basis by secondary market MTFs. It is operationally disproportionate to submit daily a list of (in some cases between 90,000 and 140,000) ISINs. Terminating instruments is a FIRDS activity that has not been very well published by ESMA. Many trading venues are not aware of the related benefits to DATNQU zero-volume reporting completeness. Bond trading venues have gone through extensive exercises to terminate instruments that are not trading. Since November 2018, the number of bonds of the Top 10 trading venues has halved from over 600,000 to under 300,000 in ESMA's completeness indicators.

An alternative approach would be to encourage the use of “terminations” by ESMA sending reminder files, as they do in other reporting areas, to trading venues who do not terminate instruments that have passed their maturity or expiry date. ICMA believes that only sending delta files combined with being reminded by ESMA via appropriate reminder files would significantly improve the issue ESMA is concerned about.

Furthermore, ICMA would like to point out, our understanding is that SIs are not ‘market operators’. Therefore, point 70 in the consultation; “In order to ensure a level playing field among ‘market operators’, ESMA consider that the requirement of daily submission should be extended to TVs and SIs that do not operate on the basis of a defined list.” should be clarified and corrected. SIs are not market operators; they are liquidity providers. As such, should not be required to provide reference data on a daily basis, or indeed on a delta file basis.

ICMA believes If both trading venues and liquidity providers, such as SIs, were obliged to provide reference data on a daily basis, this would be a complex and costly exercise, with no benefit to industry participants and would defeat the goals of legislators to simplify MiFID II/R.

<ESMA_QUESTION_TRRF_15>

Q16 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_16>

The scope of the reference data should pertain to only TOTV and trading venues, not SIs. As SIs are liquidity providers and not trading venues or ‘market operators’.

<ESMA_QUESTION_TRRF_16>

Q17 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_17>

Whether the regulation is MAR or MiFIR, the reference data that is sent to ESMA should be for instruments that are TOTV and should apply only to trading venues and not SIs. This will align MAR with MiFIR.

<ESMA_QUESTION_TRRF_17>

Q18 : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_18>

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<ESMA_QUESTION_TRRF_18>

Q19 : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_19>

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<ESMA_QUESTION_TRRF_19>

Q20 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_20>

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<ESMA_QUESTION_TRRF_20>

Q21 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_21>

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<ESMA_QUESTION_TRRF_21>

**Q22 : Which of the two approaches do you consider the most appropriate?
Please explain for which reasons.**

<ESMA_QUESTION_TRRF_22>

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<ESMA_QUESTION_TRRF_22>

**Q23 : Do you foresee any challenges with the outlined approaches? If yes,
please explain and provide alternative proposals.**

<ESMA_QUESTION_TRRF_23>

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<ESMA_QUESTION_TRRF_23>

**Q24 : Do you foresee any challenges with the outlined approach to pre-trade
waivers? If yes, please explain and provide alternative proposals.**

<ESMA_QUESTION_TRRF_24>

There is no clear understanding of the benefit for the industry of indicating a pre-trade waiver for SIs. The instruments that benefit from a waiver are listed within the NCA that granted the waiver in the first place. Therefore, ICMA is of the opinion that this proposal is counterproductive as it will be very costly for the industry to produce with not benefits for market participants.

<ESMA_QUESTION_TRRF_24>

Q25 : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA_QUESTION_TRRF_25>

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<ESMA_QUESTION_TRRF_25>

Q26 : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_26>

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<ESMA_QUESTION_TRRF_26>

Q27 : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA_QUESTION_TRRF_27>

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<ESMA_QUESTION_TRRF_27>

Q28 : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA_QUESTION_TRRF_28>

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<ESMA_QUESTION_TRRF_28>

Q29 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_29>

Besides achieving better alignment with the EMIR reporting regime, the MiFIR review should also address remaining inconsistencies with SFTR reporting. In particular, we would encourage ESMA to reconsider the treatment of SFTs concluded with EU central banks (ESCB members) which are currently reportable under MiFIR.

Article 2(5)(a) of the Delegated Regulation (EU) 2017/590 specifies that SFTs (as defined in SFTR) do not fall under the definition of a transaction and are therefore exempt from MiFIR reporting obligations. However, counterintuitively, this exemption does not apply to SFTs concluded with EU central banks, which are brought back into scope through the penultimate paragraph of article 2(5). In our view, this approach is inconsistent and should be reconsidered for the following reasons:

- **Reporting SFTs under MiFIR is inconsistent with SFTR:** SFTR was designed as the only applicable reporting framework for SFTs. SFTR article 2(3) explicitly exempts SFTs with EU central banks from reporting. This has been a conscious political decision which pre-dated the drafting of the MiFIR technical standards, supposedly reflecting the fact that the details of these trades are known to central banks and can thus, if needed, be easily made available to all relevant national authorities. Whether or not these trades are reportable should have been a consideration under SFTR (and could potentially be reconsidered in the context of the SFTR review), but this is not a question that should have been addressed in MiFIR, an entirely different reporting regime with a different purpose (the logic explained by ESMA in paragraphs 106-107 equally applies to SFTR).
- **The MiFIR framework is not appropriate for reporting SFTs:** SFTR was designed specifically to capture repos and other SFTs, taking into account their unique structure and features. MiFIR was not. The logic of MiFIR reporting therefore raises numerous issues. ICMA developed a [proposed reporting approach](#) for SFTs under MiFIR which was submitted to ESMA in November 2019 and circumvents some of the practical problems. However, the resulting report is still far from meaningful given the fundamental logical problems with the rules, which mean that SFTs simply do not fit the relevant reporting template. To name just one example, the reporting deadline under MiFIR requires reporting by T+1 in all cases, while SFTR allows in certain cases reporting by S+1, taking into account the fact that collateral is often only allocated upon settlement and can therefore only be reported at that time. In short, MiFIR reporting does not accurately capture the fundamentals of SFTs and therefore **does not provide**

meaningful information to regulators. Of course, it also only captures a small subset of the overall market.

- From an industry perspective, building logic to allow firms to exclude a small number of SFTs and report these under an entirely different regime has been cumbersome and costly to implement and continues to be problematic, especially given the inappropriate design of the MiFIR rules. In short, this obligation has already caused **disproportionate costs for no significant benefit** in terms of increased transparency and should therefore be revoked.

In conclusion, ICMA recommends redrafting article 2(5) to exclude all types of SFTs from MiFIR reporting. More specifically, we suggest deleting the penultimate paragraph of article 2(5) of Regulation (EU) 2017/590.

<ESMA_QUESTION_TRRF_29>

Q30 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_30>

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Q31 : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA_QUESTION_TRRF_31>

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Q32 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_32>

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Q33 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_33>

First, ICMA members would like to clarify that SIs are not trading venues or 'market operators' they are liquidity providers and therefore not in scope for issuance/listing.

Secondly, issuer LEIs have proved very difficult for trading venues to ascertain. The relationship is not between MTFs or OTFs and the issuer. It is with the banks distributing the new issuer. This is a known challenge

However, if an issuer wants to 'list' on a RM, the issuer will provide the RM with an LEI as part of the listing process. There are however some identifiable challenges with RMs acquiring LEIs in order to list on the RM. as evidenced by the difficulty of getting LEIs for non-European issuers for international bonds listed on EU platforms. Another issue is to find LEI for issuers that listed perpetual bonds and that don't exist anymore (notably some foreign countries).

Alternative proposal 1: ICMA's view is that the issuer LEI field should be optional for secondary market trading and not mandatory. The view is if this field were to be made mandatory, it could incentivise execution outside the EU.

Alternative proposal 2: A solution could be that the National Numbering agencies publish not only ISIN but CFI and FISN and Issuer LEI. A link between ANNA (ASB and DSB) and FIRDS (the appropriate level of interaction) could assist ESMA in acquiring the relevant LEIs and reduce industry costs and technology burdens.

Alternative proposal 3: In addition, a link between ESMA and GLEIF would also allow ESMA to obtain LEIs. Basically, proposals 2 and 3 connect ESMA to the industry 'golden sources'.

The alternative proposals mentioned all reduce errors and promote MiFID II/R simplification, a recent aim of legislators.

Please refer to question 13 diagrams for more clarification.

<ESMA_QUESTION_TRRF_33>