

EVIA Response to ESMA CP; MiFIR review report on the obligations to report transactions and reference data; 20 November 2020

Preface

European Venues and Intermediaries Association ["EVIA"] members operate a significant number of MTFs and OTFs across the EU and UK. They do not operate markets in cash equities and nor do they operate any Systematic Internalisers ["SIs"]. Mindful that much of this report and consultation is directed at cash products and at the scope of SIs, we emphasise that our answers are therefore solely in respect of non-equity trading venues.

In respect of reference data and reporting, we also urge ESMA to utilise the MOUs currently in place to harmonise and exchange data with the UK to offset any duplicate reporting requirements that may otherwise arise from Brexit, and also therefore maintain the emphasis on data quality and indeed to the progress towards Digital Regulatory Reporting ["DRR"]

Answers to 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.

No Response.

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

EVIA does not see significant challenges. As the operators of a significant number of MTFs and OTFs, indeed EVIA members do not have any members of their trading venues but refer to users and market participants. Clearly whilst the terms "firm", "member" and "client" are inappropriate, the suggested use of "participant" and "user" is a suitable approach.

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

EVIA does not see significant challenges and welcomes any moves with the objective of a reduction in duplicative reporting. Clearly the situation as it stands in respect of Brexit will lead to significant duplicative reporting by trading venues in respect of the activity of market participants hitherto holding their own reporting obligation. We think that ESMA should and could have set out a proposed MOU approach to mitigate this potential increase in the same reports, which will serve no purposeful outcome.

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

<ESMA_QUESTION_TRRF_4>

EVIA concurs that the approach seems practical in terms of harmonising outcomes from the most efficient reporting process. We believe that the onset of Digital Regulatory Reporting will make such data sharing and nomination largely redundant, and therefore advocate for the

adoption only of principles. Again, we add that the situation as it stands in respect of Brexit will lead to significant duplicative reporting by trading venues in respect of the activity of market participants hitherto holding their own reporting obligation. This could be solved by a similar approach.

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.

EVIA members do not operate any Systematic Internalisers.

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.

EVIA members do not operate any Systematic Internalisers.

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.

EVIA members do not operate any Systematic Internalisers.

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.

EVIA notes that the term "benchmark" as defined under the BMR is a very specific definition, which turns on the benchmark statements and methodologies set out for each specified index or family of such. Therefore, the substitution envisaged ought to better define the scope and reach of the reporting obligation. However, until the ESMA register provides for a regularly updated list of such in scope benchmarks, we foresee significant challenges in market participants understanding the application of the substituted obligation. Furthermore, the proposed stays concerning the adoption of third country benchmarks until the start of 2026 likely compounds this opacity. Therefore, it may be more appropriate to consider a guideline in this stead rather than a rule.

Wholesale trading venues often arrange packages and baskets. It remains unclear whether these would be reported differently should they be negotiated with reference to a spread or index formalised in the ISDA Definitions Annex and therefore possibly a benchmark, or whether they are better treated as a series of components. Currently the benefits from the approach suggested do not appear to outweigh the change process and uncertainties inherent.

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.

As EVIA members operate trading venues, we do not have an opinion on the three outcomes. Since any advantages to the options 1, and 2 are not immediately apparent until both DRR and

the cryptoassets regimes are more advanced, we note that option 3 t is the closest to the status quo. We also ask whether the first two options would bring bilateral foreign exchange spot and cash money market transactions more broadly into the scope of reporting, which it would appear could constitute an unintended consequence.

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

As set out EVIA does not foresee difficulties by adding the term, “or traded on a trading venue” and harmonising the approach across the categories of trading venues.

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

The approach appears arcane, over complex and needs to be specified as applying only to cash equities. Whilst we note that EVIA members are not involved in cash equities nor therefore in the primary listings markets as such, consideration should be given to the impact on wider fixed income if more broadly applied. Forwards on financial instruments are derivatives, yet the approach suggested may add a second set of reference data on the same instrument if treated as pre-issued cash. Furthermore, ridged reference data rules when applied to the “When Issued” phase of bond markets may hinder agility to make changes and encourage liquidity to form away from trading venues.

Requiring permission would appear to bind ties between the issuer and the trading venue which obviates competition and choice; perhaps encouraging parallel lookalike liquidity pools to be constructed (although it may be helpful in the narrow case of equities listings). The approach adds frictions for overseas issuers in cash markets whilst in respect of many money markets and derivatives there is no issuer.

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

In all cases other than cash instruments with specified issuers established in the EU then the approach suggested offers challenges and complications. The provision in Article 27 should be more narrowly defined accordingly, together with the nature of any request and its ratification by the trading venue.

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

EVIA members do not operate any Systematic Internalisers.

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

In respect of Trading Venues only, EVIA appreciates the objectives but notes that member MTFs and OTFs generally do not operate on the basis of a defined list of instruments as they can trade any new instrument any day. Outside the set of well-defined cash instruments there have been difficulties with the application of the variable instrument characteristics into a single ISIN, and

the defined list concept. The approach would make sense for a liquid set of cash instruments only. Otherwise, for wider financial instruments and especially derivatives, it requires an RTS2 based approach deploying extensible UTIs and the effective categorisation of instruments.

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

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

EVIA does not have any objections.

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

EVIA does not have any objections if this simplifies the body of legislation. We do however reiterate that we believe MAR rightly has a wider application than MiFIR, and therefore care should be minded when subordinating.

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

EVIA believes that the TVTIC as a concept is unhelpful and ill defined. TVTIC should be replaced by the Unique Trade Identifier at the soonest and no further measures taken in respect of it. EVIA also notes that ESMA's proposal for an additional code appears similar to the "Report Tracking Number", under SFTR which would link all transaction reports relating to the same execution. We currently deem the conflagration of UTI and RTN under SFTR not to be a success and therefore urge caution here, since it may solely add cost and complexity by dint of not being well researched, trialled and understood.

In general, the suggested approach by ESMA suggests only a singular and readily definable cash product traded entirely in the Union. These are not the markets that EVIA members operate.

Additionally, how this would work for complex packages and cross-border arrangements is not clear. Rather we would urge ESMA to seek to achieve these linking objectives as UPIs and UTIs are widely adopted and DRR becomes normal due process.

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.

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Additionally, how this would work for complex packages and cross-border arrangements is not clear. Rather we would urge ESMA to seek to achieve these linking objectives as UPIs and UTIs are widely adopted and DRR becomes normal due process.

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

EVIA supports the replacement of the term's "client" by "parties" and in general this fits with the uniform transition to "market participant."

EVIA does not support the provision of the client category, this information is not primary, is not constant and is not uniform. Rather it should be derived independently from the market participant identification by those ingesting the data. It would only add to complicate the process and should be articulated by DRR.

We do not support any changes to PII data until any ISO standard to provide for the pseudonymity of such data, currently in draft, becomes formalised and the cross-border aspects of data provision and data sharing, particularly in respect of both data controllers and third countries is clearer.

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

<ESMA_QUESTION_TRRF_21>

EVIA does not foresee any challenges to this proposal.

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

EVIA supports the removal of this information from transaction reporting the most appropriate given the general unsuitable application of SSR to non-equities markets.

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

EVIA does not foresee any challenges to this removal.

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

EVIA members only operate trading venues.

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.

EVIA members only operate trading venues.

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

No Response.

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

As EVIA trading Venues only have wholesale [ECP, PC] market participants the substance of the question is generally not applicable. However, in operating trading venues as investment firms, wherein orders and matched are submitted onto trading venues, we would suggest additional phrase, " ... or directly onto a trading venue."

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

EVIA concurs that there is no need to review these provisions.

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

EVIA does not see any challenges at this stage with the outlined proposal.

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

EVIA believes that the harmonisation of reporting standards and identifiers both between regulations and cross-border between regimes is of paramount importance for global wholesale markets. Clearly DRR projects will become a prime driver in these respects, but the regulatory frameworks also need to adapt and to adopt the accepted global standards. We therefore endorse that the UPI replace the TVTIC and should be reported for all financial instrument and related transactions. The UPI should replace the ISIN or the latter merge into the former.

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?

EVI A believes that the ISIN approach as deployed under MiFID2 to date has been costly, obscured transparency objectives and otherwise ineffective. There are large numbers of ISINs, many multiple ISINs for the same instruments, no extensibility for packages and a deal of confusion at the MiFIR perimeters. These stem mainly from an RTS 23 approach rather than a generic classification via RTS 2 and CFI constructions.

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

EVI A supports the outlined approach and does not see any greater challenges than with any other.

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

EVI A emphasises that where there are instruments admitted onto trading venues that have issuers and those issuers have LEIs then the approach is helpful. Clearly this is not always the case. Most non-cash instruments do not have issuers, some have pertinent optionality and many non-EU issuers do not have LEIs. Both conditionality and a waterfall approach needs to exist to encompass the plurality required within the standardisation necessary.