

**Wholesale Markets Brokers' Association and  
London Energy Brokers' Association  
Reply to the ESMA Call for Evidence – Transaction Reporting**

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**1. Wholesale Markets Brokers' Association & London Energy Brokers' Association**

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (referred to in this document as the WMBA) are the European industry associations for the wholesale intermediation of Over-the-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members are Limited Activity firms that act solely as intermediaries in the said wholesale financial markets. As Interdealer Brokers (IDBs), the WMBA members' principal client base is made up of global banks and primary dealers. The replies below to the questions in the paper should be seen in the context of WMBA members acting exclusively as intermediaries and not as own account traders. (Please see [www.wmba.org.uk](http://www.wmba.org.uk) and [www.leba.org.uk](http://www.leba.org.uk) for information about the associations, its members and products.) For this reason, some of the questions in the Consultation Paper are not entirely relevant to WMBA members' activities even though they are to most of their clients. Further, some answers take into account industry views and experience.

Operating as the hub of the global financial market infrastructure, IDBs are MiFID compliant and highly regulated intermediaries by virtue of their regulatory authorisation and from being subject to supervision under CAD as Limited Activity firms. Our members are neutral, independent, and multi-lateral, and provide free, fair and open access to their trading venues for all suitably authorised and regulated market participants. IDBs do not take positions in the markets in which they operate and their collective service as the gateway to the global financial marketplace creates price discovery and significant liquidity. All transactions, whether executed via voice, hybrid or fully electronic means, are immediately captured at the point of trade, are subject to straight-through-processing and are made available for transparent and timely transaction reporting to the relevant regulators.

**2. Introduction**

The members of the WMBA welcome this early opportunity to engage with ESMA by responding to their Call for Evidence in Respect of the Harmonisation of Transaction Reporting. WMBA believes that transaction reporting is not only a core element of MiFID but many other proposed EU Directives and Regulations and, as such, it should be properly addressed. Hence, WMBA look forward to engaging further with ESMA in respect of the formulation of their detailed Level II proposals.

The WMBA feels that besides the specific questions raised by ESMA, there are a number of general fundamental issues in respect of transaction reporting that remain unresolved and, hence, this response is divided into the two distinct parts detailed below.

**3. General Remarks**

- WMBA believes that a standardised and consistent approach to transaction reporting, whether it be under MiFID II, the European Market Infrastructure Regulation (EMIR), the Regulation of Energy Market Integrity and Transparency (REMIT) and the Short Selling Directive (SSR), needs to be implemented. Consequently, WMBA feels that the

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timing of this initiative should be delayed until these documents are at least agreed in dialogue. If ESMA is publishing new standards on transaction reporting with the intention of only covering the transition between MiFID and MiFID II, it could create unnecessary extra regulatory costs for European banks and investment firms.

- Furthermore, WMBA calls on ESMA to avoid duplication of reporting when preparing technical standards on transaction reporting for the above legislation. For example, trades reported to a trade repository which is not a registered ARM, or the energy regulator, should not be reported again to the competent authority. The competent authority should have access to any trade repositories and ACER data.
- WMBA considers that a clear definition of “transaction” is needed for transaction reporting purposes. In the current MiFIR, Article 5 states “transaction means the purchase and sale of financial instruments and excludes specifically securities financing transactions, exercise of options, or of covered warrants, as well as primary markets transactions”; however, this has not been included in MiFID II/MiFIR. Whilst WMBA is aware that this definition will need to be modified to cover the additional scope of regulation, WMBA believes that this definition is still fundamentally sound.
- Under the new regulations, WMBA members will be operating as both MTFs and OTFs in either a matched principal capacity where they execute trades, and in an arranging capacity where they do not (when arranging a trade, WMBA members only introduce clients to one another and do not act as agent for either client). Under the current MiFID transaction reporting rules, there is no requirement to report any trades that are purely arranged by our members (see above). However, WMBA are concerned that Article 23 Paragraph 5 which states “The operator of a regulated market, MTF or OTF shall report details of transactions in instruments traded on their platform which are executed through their systems by a firm which is not subject to this Regulation in accordance with Paragraphs 1 and 3” may, without clarification of the definition of “executed through their system”, result in pure arrangers having to develop systems to transaction report on behalf of their clients.
- WMBA members, acting as wholesale market intermediaries, are concerned about their inability to source the required data in respect of the underlying client (WMBA members would normally only retain records of their immediate client and would not be aware of that client’s underlying client, ie, the end user in a chain). They are also concerned about the cost benefit of reporting this information to the authority (including client category and persons within the investment firm responsible for investment decision or executing the order). WMBA would recommend that this information should not be mandatorily reported but be made available, on request, to the competent authority by each firm within the chain.

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**4. Responses to Questions Raised in the Consultation Paper**

Question 1

- When considering the list of Transaction Reporting Schemes, WMBA consider that “firms matching 2 orders from investment firms” would not currently have a transaction reporting obligation as they are purely **arranging** the trade (i.e. receipt and transmission of orders) and, hence, are not buying or selling the financial instrument under the current MiFID definition.
- WMBA believes that Transaction Reporting Schemes listed in Annex 1 to the Call for Evidence should be rationalised as the majority of schemes are variations on the same theme. WMBA would suggest that ESMA concentrates on the information contained in 2 schemes: *Investment Firms Dealing as Principal* or *Investment Firms Dealing as Agent*. The rationale for this suggestion and the aggregation of the existing remaining 15 categories is provided below:

**a. *Investment Firm dealing as principal with any client (investment firm, natural or non MiFID firm)***

This would also provide a framework for the following:

- i. Investment firm dealing as principal with an investor (i.e. natural person or non MiFID firm)
- ii. Investment firm dealing as principal with another investment firm
- iii. Systematic Internalisers
- iv. On exchange execution of client order
- v. Firm executing a transaction for an EEA investment firm on-exchange
- vi. 2 Investment firms executing a proprietary transaction on-exchange
- vii. Execution through a chain of investment firms
- viii. Order execution through several transactions
- ix. Grouping of orders
- x. Case involving Direct Electronic Access
- xi. Case involving Smart Order Routing
- xii. Give-Up Agreements for clearing and execution

**b. *Investment firms dealing as agent with an investor (investment firm, natural or non MiFID firm)***

This would also provide a framework for the following:

- i. Investment firm dealing as agent with another investment firm
- ii. Firm acting off-exchange to match 2 client orders
- iii. Execution of a client order through a branch

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Whilst considering the information within these 2 schemes, WMBA would suggest that the current FSA approach to transaction reporting using **one** template, which is simple to use, simple to develop and cost effective for firms, should be adopted as the future standard.

However, as with the FSA template, there should be a requirement to complete additional reporting fields, dependent on the complexity of the trade, identifying:

- a. Client side identity (although this should be for immediate underlying client only with further info available on request)
- b. Types of instruments
- c. Type of venue
- d. Linked trades

**5. Contact**

If you require any further information or clarification in respect of transaction reporting please do not hesitate to contact us.

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