



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 Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as the 'WMBA') are the European industry associations for the wholesale intermediation of platform and Over-the-Counter (OTC) markets in financial, energy, commodity and emission markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result, they are classified as Limited Activity and Limited Licence Firms in respect of the current Financial Conduct Authority classification.

The WMBA welcomes the opportunity to respond to the ESMA's consultation paper and are doing so supportive of the general principal of ensuring that its member firms', when operating under their regulated permitted licenses to operate an organised trading venue, do report transactions qualifying under the remit of the obligation under MIFID ii Annex I Section A point

- (2) Execution of client orders on behalf of clients (matched principal activity see Q1) and
- (9) Operation of an MTF and of an OTF – The reporting obligation under Article. 26 (1) MiFIR (5). The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation.

Our detailed comments are noted under the appropriate question. However there are a number of overall issue that we believe ESMA should consider, which involve the cases where the reporting obligation falls upon the organised venue rather than the counterparties to the trade.

The Level 1 text place the obligation on venues to report transactions on behalf of users or participants if these users or participants are not regulated under MIFID 2. This place a significant additional burden on venues. We believe that ESMA should recognise formally the practical difficulties in venues making these reports. These include:

- a. despite venues' best endeavours it may not be possible to collate the necessary information to complete all the detailed fields required in the transaction reports;
- b. data protection legislation in relevant jurisdiction may prevent users or participants supplying the relevant information or to allow it to be used in making transaction reports;
- c. for a non-MIFID firm which has a branch in the EU the branch may be required to report its own transactions however those by offices outside the EU would need to be reported by the venue. This creates potential confusion in who may be required to transaction re-port for a particular client entity.

We believe that ESMA should extend the recognition it has already made of the potential inability for venues to obtain information in relation to the short selling flag to all fields required where venues are required to report on behalf of users or participants. Hence the "UNDI" indicator should be made available for all the detailed fields where a venue is reporting on behalf of a user or participant.

If no consideration is given to the practicalities of obtaining this third party information, either because the users or participants will not or cannot (e.g. for date protection) reasons supply it, then it may lead to venues having to deny legitimate access a proportion of users or participants thereby having a direct impact on markets of reducing liquidity in EU markets and encouraging bifurcation between EU and non-EU markets.

Given the recently articulated opinion of DG FISMA that organised venues within the EU are also available to non-MiFID counterparties within the EU, such as corporates trading in FX options for instance, WMBA underline that it may also be the case that venues are unable to fulfil all the fields even where the counterparties are resident in the



EU because non-financial firms may likely not have the accounts and infrastructure concomitant to becoming authorised in the EU.

In the view of the WMBA, any excessive and disproportionate application of level 1 legislation such as requirements to supply data on behalf of overseas or 'non-MiFID' counterparties would have a deleterious impact on the aims and objectives of developing a Capital Markets Union which embodies inclusiveness, access, disintermediation and competitiveness of the EU traded sector].

<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>

Yes, the WMBA notes that further scenarios should be covered.

We note that in the CP 1.2.2: Trading in matched principal capacity defines this activity where there is no risk taken on by the facilitator who interposes itself between the buyer and seller and there is no change in price. The Consultation Paper has not taken account of other matched principal models, such as the one described below and believe to ensure a consistent approach is applied by other similar models that ESMA provide further clarity on how these transactions should be reported.

Matched Principal - Our members are generally Limited License and Limited Activity firms that act solely as intermediaries in the wholesale financial markets. Our members arrange and operate the multi-lateral venues for most of the wholesale activity across the scope of these markets both in the EU and around the world. The vast majority of the brokerage activities for sovereign, corporate, covered and related bond markets are operated as Matched Principal venues, often in illiquid, yet fast moving and volatile assets where the average ticket sizes are over EUR 20MM for sovereign bonds and over Eur 1MM for corporate bonds.

Under the matched principal broking model, which should not be confused with facilitation, nor 'riskless principal', the organised venue will not only match a bid and offer interests from clients but clearly will also act as the principal in the transaction, however fleeting (i.e. standing between the two counterparties). The wholesale markets broker [IDB] will then have no net position in the relevant security, but will have some net credit risk exposure to the two counterparties until the trades settle.

In the current regime under MiFID, The wholesale markets broker submits transaction reports for each side of the trade separately, which will usually hold a different price and size, often along with concomitant other terms.

In a related market model, it is also commonly the case that the wholesale markets broker utilises a third party to act as the interposing balance sheet supplier. This is termed 'Model B Matched Principal Broking'. WMBA underscores that it is frequently the case that this interposition is performed by a non-EU financial entity.

ESMA should clarify whether intermediated transactions at different prices under this model should be transaction reported as "matched principal" or "other" and if the former the format of reporting needs to be adjusted to facilitate the difference in prices.

We also note that the restriction on only one counterparty on each side in a matched principal transaction should be removed. Matched principal transactions are often concluded with one-to-many or many-to-many "shapes" and the reporting mechanisms need to reflect this.

We note that the ESMA paper is silent on how venues are expected to report when they are acting as a matched principal. We believe that ESMA should clarify by appropriate examples as how it expects such transactions to be reported.

<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>

Yes, the WMBA understands that there are further areas in Part I that require further clarity.



Collection of CONCAT - We support the view that effective data is paramount to detecting market abuse and to monitor the functioning of the markets and investment firm's activities. However the collection of client details as proposed is not plausible if organised venues are to remain open and competitive under MiFID2. Specifically, information from the passport or equivalent identification [first name, surname date of birth and Nationality] supplied by either the executing firm or from the operator of a venue itself using information obtained from the counterparty would place undue burden in obtaining such information in the form and timeframe required.

For instance this will entail the executing intermediary firm or venue operator to obtain client personal details prior to execution of the transaction. Although the direct counterparty firm will be on-boarded as part of the due diligence and the 'know your client,' process, details of the individual traders within the counterparty or within their client chain will not be, particularly where the counterparties and clients may be non-MiFID firms in the EU or firms located outside the EU.

There are also significant obstacles and difficulties that would be presented in maintaining natural persons' identity static data records through time, as the counterparty may cease to trade with the executing firm as a client, and there is no obligation on that client, either inside or outside the EU, to inform the executing firm of moving or ceasing to trade with them.

There are also further specific issues in particular where the counterparty and/or the executing firm is based outside the EU and in particular if based in jurisdiction where personal client records may contravene data protection and privacy laws in a number of jurisdictions

WMBA also underscore that the creation of a sensitive database of personally identifiable information (PII) will present a security risk which will further increase the burden to firms not proportionate to their business risks or objectives. Nor would these requirements contribute in any way to the CMU objectives of creating a competitive infrastructure for global markets where the operation of venues outside the EU perimeter under IOSCO standards do not require such details.

We believe that ESMA should confirm that it will maintain a definitive list of MIFID investment firms so that it is clear to venues for which users or participants they will or will not have a transaction reporting obligation. ESMA should also confirm that such a list will contain the LEI as the standard reference point for the MIFID investment firm.

WMBA does support the ESMA position that there is no on-going obligation on venues to monitor the validity of an LEI for a potential counterparty. The failure, for example, of a client to maintain their LEI is an issue for the client and should impact the ability for a venue to continue to use the LEI as a unique reference point for the client.

At present most participants in EU trading venues or prospective such organised venues do not have LEIs. If LEIs must be used for clients that are not individuals, we believe that ESMA and the European Authorities should prepare a general guide in order to explain how such clients may obtain an LEI and that without it the clients will not be able to access EU venues. We also believe that the restriction to only using LEIs may have the impact of restricting the number of entities who are able to use EU venues with the resultant impact on market volumes and liquidity. Again WMBA would highlight that such disproportionate requirements would run counter to the objectives of CMU within the EU.

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<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>



The WMBA understands that for such reportable transactions, no further clarity is required.
<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>

The WMBA does support ESMA's proposal that when reporting on behalf of a non-MIFID third party, an EU venue can send the transaction report to the competent authority of that venue. We confirm that for the further mechanics of reporting, no more clarity is required

<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>

The WMBA understands that for the data standards and the format for transaction reporting, no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_5>

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

<ESMA_QUESTION_CP_TR_ORK_CS_6>

The WMBA understands that for the, 'Meaning of the Transaction,' no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_6>

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

<ESMA_QUESTION_CP_TR_ORK_CS_7>

The WMBA understands that for the, 'Meaning of the execution of a Transaction,' no further clarity is required for these purposes although we reserve further issues across the broader context of MiFID II around the scope of terms including arrangements, traded on a trading venue and the locus of execution where we see this moving legally into the financial market infrastructures to provide certainty of execution.

<ESMA_QUESTION_CP_TR_ORK_CS_7>

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

<ESMA_QUESTION_CP_TR_ORK_CS_8>

The WMBA understands that for the, 'Transmission of an Order,' no further clarity is required. We do however reserve further issues across the broader context of what constitutes an order on an organised venue against the broader scope of 'Interests' as specified by MiFID II which we see including quotes, indications of interest ['IOIs'] and active such ['A_IOIs'].

<ESMA_QUESTION_CP_TR_ORK_CS_8>

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

<ESMA_QUESTION_CP_TR_ORK_CS_9>

Notwithstanding our comments to questions 1 and 2 outlining the availability of LEIs from counterparties who are either outside the EU or who are not Mifid Firms, the WMBA does not require further clarity on executing firm to be identified by LEI in the transaction report.



<ESMA_QUESTION_CP_TR_ORK_CS_9>

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

<ESMA_QUESTION_CP_TR_ORK_CS_10>

Designation to identify natural person using CONCAT

The WMBA does support the view that effective data is paramount to detecting market abuse and to monitor the functioning of the markets and investment firm's activities. However the collection of client details, for instance from the passport or equivalent by the executing firm or by the organised venue operator would place undue burden in obtaining such information and directly impact the cross border competitiveness of the sector. Specifically, this would entail a requirement only in the EU for the venue operator to maintain a record of all its participants personal identify records prior to execution of the transaction.

There are also potential difficulties and complications around maintaining the client static data should the client cease to trade with the executing firm, and since there is no obligation on the client to inform the executing firm of moving to another firm or ceasing to trade with them.

In particular, we highlight difficulties where the client is based outside the EEA and most especially if based in jurisdiction where personal client records may contravene data protection and privacy laws. The creation of a sensitive database of personally identifiable information (PII) would also present a security and a cyber-security risk which will further increase the burden to firms with no requisite benefit to any party nor the system as a whole.

<ESMA_QUESTION_CP_TR_ORK_CS_10>

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

<ESMA_QUESTION_CP_TR_ORK_CS_11>

Details of the identity of the client and identifier and details of the decision maker

The WMBA does support the view that effective data is paramount to detecting market abuse and to monitor the functioning of the markets and investment firm's activities. However the collection of the granularity of client details and decision maker (specifically from the passport or equivalent to validate accuracy - first name, surname date of birth and nationality) by the executing firm or by the venue operator from the underlying client of the counterparty or in identifying the requisite decision-maker, will place undue burden in obtaining such information and place EU venues at a significant competitive disadvantage.

For instance this will entail for the executing firm or venue operator to maintain a record of all its clients personal identify records prior to execution of the transaction.

There are also potential difficulties and complications around maintaining the client static data should the client cease to trade with the executing firm, and since there is no obligation on the client to inform the executing firm of moving to another firm or ceasing to trade with them.

In particular, we highlight difficulties where the client is based outside the EEA and most especially if based in jurisdiction where personal client records may contravene data protection and privacy laws. The creation of a sensitive database of personally identifiable information (PII) would also present a security and a cyber-security risk which will further increase the burden to firms with no requisite benefit to any party nor the system as a whole.

<ESMA_QUESTION_CP_TR_ORK_CS_11>

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

<ESMA_QUESTION_CP_TR_ORK_CS_12>

Identification of person or computer algorithm responsible for the investment decision

Where the code is required to identify the natural person, the WMBA underscore that it would be disproportionately onerous to apply these details to the venue report. This is because the collection of this detailed and granular set of counterparty, client or market participant details by the organised venue operator from the counterparty or its own client chain would place undue burden to the venue in obtaining such information if it is not available from the original on boarding process.

For instance this will entail for the executing firm or venue operator to maintain a record of all its clients personal identify records prior to execution of the transaction.

There are also potential difficulties and complications around maintaining the client static data should the client cease to trade with the executing firm, and since there is no obligation on the client to inform the executing firm of moving to another firm or ceasing to trade with them.

In particular, we highlight difficulties where the client is based outside the EEA and most especially if based in jurisdiction where personal client records may contravene data protection and privacy laws. The creation of a sensitive database of personally identifiable information (PII) would also present a security and a cyber-security risk which will further increase the burden to firms with no requisite benefit to any party nor the system as a whole.

<ESMA_QUESTION_CP_TR_ORK_CS_12>

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

<ESMA_QUESTION_CP_TR_ORK_CS_13>

Identification of person or computer algorithm responsible for execution of a transaction

The WMBA concurs that in completing Field 59, that no further clarity is required. In the cases where the individual would be an employee of a MiFID investment firm and as such this information should be readily available from the point of employee on-boarding process.

<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>

Designation to identify an applicable waiver

The WMBA concurs that no further clarity is required in selecting the following waiver options on each transaction report: Large in scale, Reference Price, Negotiated (Liquid), Negotiated illiquid. Negotiated (conditions) above specified size and illiquid instrument.

<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>

Designation to identify a short sale

The WMBA firmly welcomes the ability to use the "UNDI" code to populate field 62 where it is unknown whether a sale is in fact a short sale.



The Level 1 text place the obligation on venues to report transactions on behalf of users or participants if these users or participants are not regulated under MIFID 2. This place a significant additional burden on EU venues. We believe that ESMA should recognise formally the practical difficulties in venues making these reports in a ruleset prepared principally with only counterparty reporting under consideration.

These include:

- a. That despite venues' best endeavours it may not be possible to collate the necessary information to complete all the detailed fields required in the transaction reports
- b. That data protection legislation in relevant jurisdiction may prevent users or participants supplying the relevant information or to allow it to be used in making transaction reports
- c. That for a non-MIFID firm which has a branch in the EU the branch may be required to report its own transactions however those by offices outside the EU would need to be reported by the venue. This creates potential confusion in who may be required to transaction re-port for a particular client entity.

Therefore WMBA believe that ESMA should extend the recognition it has already made of the potential inability for venues to obtain information in relation to the short selling flag to all fields required where venues are required to report on behalf of users or participants. Hence the "UNDI" indicator should be made available for all the detailed fields where a venue is reporting on behalf of a user or participant.

If no consideration is given to the practicalities of obtaining this third party information, either because the users or participants will not or cannot (e.g. for date protection) reasons supply it, then it may lead to venues having to deny legitimate access a proportion of users or participants thereby having a direct impact on markets of reducing liquidity in EU markets and encouraging bifurcation between EU and non-EU markets.

<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>

Reporting of an execution for a combination of financial instruments

The WMBA concurs that no further clarity is required.

Where an investment firm executes a transaction in a combination of two or more financial instruments, the investment firm shall report the transaction for each financial instrument separately and shall link those reports by an identifier that is unique at the level of the firm to the group of transaction reports related to that execution as specified in field 40 of Annex I.

<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>

Conditions upon which legal entity identifiers are to be developed, attributed and maintained

The WMBA believes that ESMA should confirm that it will maintain a definitive list of MIFID investment firms so that it is clear to venues for which users or participants they will or will not have a transaction reporting obligation. ESMA should also confirm that such a list will contain the LEI as the standard reference point for the MIFID investment firm.



ESMA should also develop a proportional regime where the counterparties on a venue are not MiFID firms and therefore may likely not be in possession of an LEI and related details normally associated with authorised investment firms.

We support the EMSA position that there is no on-going obligation on venues to monitor the validity of an LEI for a potential counterparty. The failure, for example, of a client to maintain their LEI is an issue for the client and should impact the ability for a venue to continue to use the LEI as a unique reference point for the client.

At present a lot of users of EU venues or prospective venues do not have LEIs. If LEIs must be used for clients that are not individuals, we believe that ESMA and the European Authorities should prepare a general guide in order to explain how such clients may obtain an LEI and that without it the clients will not be able to access EU venues. WMBA also believe that the restriction to only using LEIs may have the impact of restricting the number of entities who are able to use EU venues with the resultant impact on market volumes and liquidity.

<ESMA_QUESTION_CP_TR_ORK_CS_17>

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

<ESMA_QUESTION_CP_TR_ORK_CS_18>

Reporting transactions executed by branches

The WMBA concurs that no further clarity is required.

We do not see any challenges in identifying the branches country code in the transaction report as this will identify the firm who was responsible for the execution of the client order. We understand that trading venues' transaction reporting requirements under Article 26(1) of the Regulation requires transaction reports to be sent to the home competent authority of that venue. This is independent of whether the transaction was executed by the head office of the investment firm venue or by one of its local third country branches, including foreign branches located outside the EU.

<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>

Methods and arrangements for reporting financial transactions

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_19>

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

<ESMA_QUESTION_CP_TR_ORK_CS_20>

Determination of the most relevant market in terms of liquidity

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_20>



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

<ESMA_QUESTION_CP_TR_ORK_CS_21>

Examples provided Block 1: Buyer/Seller identification

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_21>

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

<ESMA_QUESTION_CP_TR_ORK_CS_22>

Examples provided: Block 2: Decision maker for Buyer/Seller

The WMBA concurs that no further clarity is required, although we again stress that for venues, the information required to identify the buyer/seller by the passport or equivalent identification this will be onerous to apply, because of the collection of the granularity of client details to validate accuracy (first name, surname date of birth and nationality,) will place undue burden to obtaining if not part of the initial on-boarding information.

<ESMA_QUESTION_CP_TR_ORK_CS_22>

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>

Examples provided - Block 3: Buyer/Seller specific scenarios

The WMBA concurs that no further clarity is required.

WMBA does again stress that for venues, the information required to identify the buyer/seller by the passport or equivalent identification this will be onerous to apply, because of the collection of the granularity of client details to validate accuracy (first name, surname date of birth and nationality,) will place undue burden to obtaining if not part of the initial on-boarding information.

<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>

Examples provided - Block 4: Investment decision within the firm

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_24>

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>

Examples of Block 5: Execution within the firm

The WMBA concurs that no further clarity is required.



<ESMA_QUESTION_CP_TR_ORK_CS_25>

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>

Examples of Block 7: Reporting Venue

The WMBA concurs that no further clarity is required.

<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>

Examples of Block 8: Short selling flag

The WMBA firmly welcomes the ability to use the “UNDI” code to populate any field, particularly field 62, where it is unknown whether a sale is in fact a short sale. The WMBA agrees that here the short selling information is not made available to the organised venue by the counterparty, field 62 shall be populated with ‘UNDI’, and therefore no further clarity is required notwithstanding our requests for further clarity from ESMA below.

The Level 1 text place the obligation on venues to report transactions on behalf of users or participants if these users or participants are not regulated under MIFID 2. This place a significant additional burden on EU venues. We believe that ESMA should recognise formally the practical difficulties in venues making these reports in a ruleset prepared principally with only counterparty reporting under consideration.

These include:

- a. That despite venues’ best endeavours it may not be possible to collate the necessary information to complete all the detailed fields required in the transaction reports
- b. That data protection legislation in relevant jurisdiction may prevent users or participants supplying the relevant information or to allow it to be used in making transaction reports
- c. That for a non-MIFID firm which has a branch in the EU the branch may be required to report its own transactions however those by offices outside the EU would need to be reported by the venue. This creates potential confusion in who may be required to transaction re-port for a particular client entity.

Therefore WMBA believe that ESMA should extend the recognition it has already made of the potential inability for venues to obtain information in relation to the short selling flag to all fields required where venues are required to report on behalf of users or participants. Hence the “UNDI” indicator should be made available for all the detailed fields where a venue is reporting on behalf of a user or participant.

If no consideration is given to the practicalities of obtaining this third party information, either because the users or participants will not or cannot (e.g. for date protection) reasons supply it, then it may lead to venues having to deny legitimate access a proportion of users or participants thereby having a direct impact on markets of reducing liquidity in EU markets and encouraging bifurcation between EU and non-EU markets.

<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>

Examples of Block 10: Branches

WMBA request ESMA provide further clarity where *'Transactions are executed by EEA branches of non EEA firms'*.

At present a lot of users of EU venues or prospective venues do not have LEIs. If LEIs must be used for clients that are not individuals, we believe that ESMA and the European Authorities should prepare a general guide in order to explain how such clients may obtain an LEI and that without it the clients will not be able to access EU venues.

WMBA also believe that the restriction to only using LEIs may have the impact of restricting the number of entities who are able to use EU venues with the resultant impact on market volumes and liquidity. Clearly the competitiveness and CMU agenda should also be borne in mind by ESMA when considering the requirements on organised venues inside the EU which compete in global market places and liquidity pools for non-equity instruments.

WMBA request that the ESMA clarify that need to identify and report the pre or post trade waivers or deferrals applicable to a transaction should only apply to the reporting organisation when it has relied upon the waiver or deferral.

<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>

Examples provided for – Block 11 Status of transaction reports and corrections

The WMBA does not agree with ESMA that "NEWT" should be used for any replacement or update of a previously submitted transaction report.

Rather, we believe that an "UPDT" code would assist reporting organisations and regulators in understanding the sequence of reporting and action status when a report has been made.

<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>

Examples provided for - Block 12: Change in notional

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_30>

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>

1.3.1- Transfer of securities

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_31>

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>

1.3.2 - Examples provided for Firms acting over the counter to match two client orders

The WMBA concurs that no further clarity is required.

<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>

1.3.3 - Investment firm introducing without interposing

The WMBA concurs that no further clarity is required.

<ESMA_QUESTION_CP_TR_ORK_CS_33>

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>

1.3.4 - One order for one client executed in multiple transactions

The WMBA concurs that no further clarity is required.

<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>

1.3.5 - T Grouping orders

The WMBA, does not agree with ESMA that the timing for grouped orders should be the time of the last trade done dealing on own account but the first trade for “other” capacity trades.

Rather, for organised trading venues making reports, we believe that this will lead to an inconsistent analysis of economic activities solely down to the deemed capacity of the participants in the transaction.

<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>

1.3.6 Chains and transmission

The WMBA concurs that no further clarity is required.

<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>

1.3.8 Transmission of orders in a chain

The WMBA concurs that no further clarity is required.

<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>

1.3.9 Investment firm acting under a discretionary mandate for multiple clients without meeting Transmission conditions (combination of aggregated orders and chains/transmission)

The WMBA concurs that no further clarity is required.

<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>

1.3.10 Direct Electronic Access (DEA)

The WMBA concurs that no further clarity is required, but underscores the revised view of the Commission in recent communications to NCAs that access to organised venues by non-MiFID counterparties not performing HFT, and who are either residing inside or outside the EU is separate to DEA as defined under MiFID II.

From the perspective of venues who do not act as DEA providers, we note that the DEA client has to identify the DEA provider in their transaction report rather than the market as either the buyer (field 7) or seller (field 16) as applicable. The DEA provider and the DEA client have to populate the investment decision within the firm (field 57) and the execution within the firm (field 59) fields from their own perspective. This is the case where no transmission as set out in Article 4 RTS 22 occurs.

<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>

1.3.11 Give ups

The WMBA concurs that no further clarity is required.

<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>



1.3.12 Reporting by a trading venue of a transaction executed through its systems under Article 26(5) of Regulation (EU) No 600/2014

The WMBA concurs that no further clarity is required, it remains clear that under Article 26(5) of Regulation (EU) No 600/2014 trading venues have to transaction report transactions executed through their systems venue by firms that are not investment firms. Please see comments in the introduction which relate to the difficulties that may be faced by venues and therefore the appropriate use of the 'UNDI' symbology

<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>

1.4.1 Identification of financial instruments traded on a trading venue or available on the ESMA list

The WMBA believes that ESMA should confirm that if packages are at some stage recognised as instruments or quasi-instruments in their own right then transaction reporting organisations should have the flexibility for reporting the individual legs or the a single report using the recognised package indicator.

We also request that ESMA ensure that both the transaction and the trade reporting of packages are done using the common 'package flag' (currently unavailable for trade reporting), and are done on the same basis. Concisely, we are concerned that trade reporting may be required to be made as constituent legs, different to the transaction reports.

<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>

1.4.3.2 Bonds or other form of securitised debt

The WMBA concurs that no further clarity is required.

<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>

1.4.3.3 Options

The WMBA concurs that no further clarity is required.

<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>

1.4.3.4 Contract for difference

The WMBA concurs that no further clarity is required.

<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>

1.4.3.6 Credit Default Swap

The WMBA concurs that no further clarity is required.

<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>

1.4.3.7 Swaps

The WMBA concurs that no further clarity is required.

<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>

1.4.3.8 Commodities based derivatives

The WMBA underlines that many commodities based derivatives scenarios involve the packaging of the derivative with the underlying which may usually not be a financial instrument, particularly for instruments excluded by the C6 exemption.

<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>

1.4.3.9 Strategy trades

The WMBA believes that ESMA should confirm that if packages are at some stage recognised as instruments or quasi-instruments in their own right then transaction reporting organisations should have the flexibility for reporting the individual legs or the a single report using the recognised package indicator.

We also request that ESMA ensure that both the transaction and the trade reporting of packages are done using the common 'package flag' (currently unavailable for trade reporting), and are done on the same basis. Concisely, we are concerned that trade reporting may be required to be made as constituent legs, different to the transaction reports.

<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>

2. Order record keeping

The WMBA concurs that no further clarity is required.

<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>

2.8 Liquidity Provision

The WMBA concurs that no further clarity is required and particularly note the definition and role of the (2.9) 'Non-Executing Broker' which may well describe the activities of an OTF or MTF when arranging Blocks for execution on an RM.

Whilst 'Quote requests' are considered to be orders for the purpose of the RTS and shall have to be recorded as such, the WMBA notes that MiFID II refers to the interaction of '*interests*' on organised venues and would welcome guidance from ESMA for the treatment of both A_IOIs and of IOIs.

<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>

2.12 Central Limit Order Book

The WMBA concurs that no further clarity is required.

<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>

2.13 Request for Quote Systems

The WMBA concurs that no further clarity is required.

<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>

Clock Synchronisation – Reportable events

The WMBA, representing firms operating organised trading venues, disagrees with the proportionality required in defining the concept of a 'reportable event.'

Given the accuracy and granularity required, we note that Article 50 of MiFID II refers to the obligation of trading venues and their members and participants to record the date and time of any "reportable event" using an accurate time source, whilst RTS 25 requires timestamps to every 'reportable event', in a transaction's lifecycle to milli-second accuracy and granularity.

Clearly where the underlying markets are not admitting HFT firms and operating such a HFT model under MiFID disclosures, the granularity of the time stamp should be only to the nearest whole second with the system update frequency of the trading venue being standardised at half of a second. It will be important for the markets to form

market wide protocols around the clock frequencies across those markets not stated to be HFT and using methods beyond solely time/price matching in an electronic order book [CLOB markets]. This will be especially true for OTFs and many non-equity MTFs. WMBA would encourage ESMA to deploy guidance to set frequency and clock standards, defined as both system timing limits and system synchronisation frequency, across a framework defined by each of MiFID II granularity categories on one hand and venue matching methodologies on the other. We see this as necessary to set common protocols for the streaming of quotes, of indications and of interests from market participants onto trading venues.

In response to guidelines, WMBA would request that ESMA require the harmonisation of self-attestation of clock standards by EU venues to the public. It is imperative that latencies between gateways are coordinated both between venues and market participants and also across venues in order to offer choice and efficiency. Failure to calibrate these correctly and flexibly, particularly by setting the clock frequencies too high would simply drive business away from MiFID venues and result in more opaque and off venue or outside the EU arranging of markets, directly contrary to the objectives of MiFID.

Further we note that constituent transactions within packages and blocks may occur and cover a longer period up to several hours or even a complete day. Therefore where execution specifies a long period we understand that the certainty of finalisation of the execution should be the recordable point. This may be the end of the day where the transaction was not completed within that calendar date.

<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>

3.2 Time stamp Granularity

The WMBA, does not consider that the guidelines make it sufficiently clear at what point OTC transactions shall be time-stamped.

ESMA states in 1.1.4 that a transaction shall be considered to have been executed on a trading venue only when:

- a. the buying and selling interest of two parties is brought together directly by the trading venue and the price for the transaction was fixed by the trading venue, or
- b. the transaction was executed outside the trading platform of the venue, but is subject to the rules of that venue, is executed in compliance with those rules, whereby the price was negotiated among the parties to the transaction and accepted by the trading venue.

We see these descriptions as both vague and legally discordant with any notions of the certainty of execution when a trade cannot be voided or sent back to the counterparties having failed to settle successfully within the post trade financial market infrastructures.

It also follows from the guidelines that no timestamps are expected during the arranging or negotiation of the interests to form the trade. This becomes further complicated and opaque when packages and multi-legged transactions are considered indeed including those for which legs may be executed across different venues. Therefore the WMBA would commend a proportionate approach whereby should a venue attest to not operating an HFT model, nor admit HFT trading counterparties, then it can use broad judgement to satisfy the considerations ESMA sets out in 'a' and 'b' above.

<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>

Time-stamping for users of a satellite system

No, the WMBA does not agree with the proposals made in Article 4 of RTS 25. MTFs and OTFs offering non-equities will usually employ satellite systems or consequential internet time to coordinate their trading venues. We note that ESMA's proposals in regards to trading venues would pre-suppose that all venues in the EU are entirely concerned with low latency equity markets, which is far from the case in reality. We consequently request that proportionality is adopted for MTFs and OTFs offering markets in non-equities not subject to HFT. These venues should standardise their clock frequencies at a latency of half of one second and synchronise their systems to satellite systems accordingly.

<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>

3.4 Gateway-to-gateway latency

No the WMBA does not agree with the proposals made in sections 3.2 to 3.4. ESMA's proposals in regards to trading venues presuppose that all venues in the EU are entirely and exclusively concerned with offering HFT execution of equities. Clearly this is far from the case in reality, rather MTFs and OTFs offering non-equities will employ different methodologies, usually at lower frequencies which may extend beyond hours and even into days.

Therefore rather than a broad requirement to list multiple gateway-to-gateway latency times for different percentiles, ESMA should first require the venues to attest to offering HFT systems and latencies or not. For the vast majority of non-equity venues, **a standard latency of half of one second** should be set as the default to simplify away from the rather irrelevant and burdensome approach suggested, particularly of dividing latencies into percentiles.

<ESMA_QUESTION_CP_TR_ORK_CS_57>