



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](http://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>

EEX Group welcomes the opportunity to contribute to the recent consultation on Guidelines on transaction reporting, reference data, order record keeping and clock synchronisation. We appreciate the possibility to comment on the technical specifications drafted by ESMA and to support the Authority in its efforts to promote the consistent and harmonised application of the implementing provisions. We consider a harmonised interpretation and application of provisions across jurisdictions as indispensable for the adequate implementation of the revised Markets in Financial Instruments Directive (MiFID) as well as the encompassing Regulation (MiFIR).

Before commenting on the questions in more detail, we would like to emphasize some key aspects in this Consultation Paper which we deem to be of particular relevance. Our introductory comments follow the sequence of the questions as displayed in the consultation document. Where references to the associated RTS are made we refer to these provisions according to the draft versions submitted by ESMA in September last year.

As a general ex-ante remark on the transaction reporting part of the Guidelines, it is in most cases **not clear when the Investment Firm is impacted directly and when the Approved Reporting Mechanism (ARM) is impacted directly**. We would appreciate further clarification by ESMA here. Furthermore, we need to point out that **some validations generally proposed by ESMA may not be performed by an ARM** in case it is not the only Service Provider for Transaction Reporting for one investment firm, and thus might not have the complete picture across affiliated transaction reports by that investment firm. We have provided detailed comments to the Validation Rules at the end of Q4 and within Q42 to Q48.

EEX Group would like to express severe concerns towards ideas on **using ISINs at a series level**. It appears that many of the issues and problems arising from such suggestions are not known. While costs are always a huge factor, we would like to provide examples of issues, complexities and unresolved aspects and alongside cost considerations to demonstrate that ISIN, hardly manageable on the financial instrument level are not sensible on a series level. **ESMA refers to financial instruments as a basis, to our comparable scope of exchange products, not on a series level**. This understanding is further substantiated by the fact that the reference data as finally proposed by ESMA do not include any 'version' of series, and rightly so. **Neither does RTS 23 reflect that series data can change during its lifetime. This reflects the typical behavior of cash market instruments, not derivatives contracts**. Therefore, no modification request is foreseen in the reference data of the regulation. **Which further emphasizes the fact that legislators and regulators have understood the difference between cash market related instruments and derivatives contracts**. Please refer to our responses on Q3 and Q4 for a more elaborate argumentation.

Beyond the actual scope of this Consultation Paper, there are three additional aspects which we would like to raise ESMA's attention to.

We consider the role of a submitter in the context of RTS 13 to be of particular relevance for the adequate implementation of the new provisions. **For the sake of proportionality and market efficiency, reporting chains including submitters who are allowed to complete and submit transaction reports on behalf of an IF – under the correct contractual agreement - should not be prohibited by regulators**.

Furthermore, we would like to emphasize the need of **further clarification regarding the technical dependencies between the Authorized Reporting Mechanism (ARM) in MiFIR and a Trade Repository (TR) authorized by ESMA and providing services for MiFIR reporting**. As stated in Art. 26.7 MiFIR, when a transaction is reported by an Authorized Reporting Mechanism (ARM), which is also authorized as a Trade Repository (TR), certain fields that have already been reported under EMIR reporting obligation and are transmitted to the competent authority by the TR, should not need to be reported again.



On the other hand, EMIR regulation states that an operational independency must prevail between EMIR reporting services and the provision of any additional ancillary services provided by TRs. In order to comply with the affirmation stated in Art. 26 MiFIR, the TR and the ARM services must share some components of the infrastructure so as it is able to handle the MIFIR-enriched reports and split the data related to EMIR to the one related to MIFIR and complete the message/reports to be made available to the relevant competent authority. Should the above understanding breaches the operational separation between EMIR reporting services and those provided by the TR as an ARM under MIFIR, the possibility to avoid double reporting of those trades subject to both regulations may not be fulfilled if, at least, a minimum interaction to identify those trades or an enhancement of the data reported to the EMIR database is not permitted.

Thirdly, EEX Group believes that RTS 23 Table 2 on the classification of commodity derivatives does not provide for an exhaustive list of “Further Sub Products” with regard to natural gas and hence does not allow us to classify our commodity derivatives correctly.

For Base product: NRGY’ –‘Energy and Sub product 'NGAS’ -Natural Gas, the options for Further Sub product are:

'GASP’ -GASPOOL

'LNGG’ -LNG

'NBPG’ -NBP

'NCGG’ –NCG and

'TTFG’ –TTF

Except for LNG, these are geographical delivery areas, which is not in line with the construction of the other Further Sub products. It should differentiate between LNG and our “regular” non-LNG, regardless of where it is supposed to be delivered. Another options would be to add an “OTHR” category, as had been done for the other Sub Products.

<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>

**General comments**

In general, EEX Group strongly appreciates the practical reporting examples provided by ESMA in the context of RTS 22, including the technical components of the XML code. We deem these Guidelines to be a good basis for a successful implementation of a new transaction reporting regime within Europe. We would like to point out that the more practical examples are being provided by ESMA - even for unusual reporting cases - the better the preparation for correct reporting may be accomplished..

<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>

**General remark**

In general, EEX Group would like to point out that as regards the transaction reporting part of the ESMA Guidelines, it is not always clear to the reader when the topics are directly being addressed to the investment firm or to the ARM. For more clarity and the avoidance of doubts we would like to propose to ESMA to make clear distinctions between the requirements directly facing the investment firm and the requirements directly facing the ARM.

**ID of natural persons**

Furthermore, EEX Group would appreciate further clarification regarding to the requirements of identification of natural persons as mentioned in section 1.1.5.1 for the case, that neither the ID card nor the passport from a natural person is available. How should the responsible investment firm fill in the transaction report, and how should the ARM used by the investment firm validate and process the transaction report in case the investment firm is not in the position to deliver the required data?

**Examples**

In general, there seems to be some confusion regarding the transaction reporting events mentioned in Section 1.1.1:

It is stated "... that a collective view of the transaction reports reported with the investment firm as the executing entity accurately reflects all changes in its position ...". This is not possible according to our understanding since position-changing transactions like clearing, splits, allotments are excluded. We therefore ask ESMA to amend the example accordingly.

In general, it is still not completely clear when to fill 'trading capacity with 'matched principal' or 'any other capacity'. We therefore ask ESMA to provide further clarification.

<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>

Yes, EEX Group asks to provide clarity on the following situations:

**Account Transfers**

In section 1.1.6.1 it is mentioned that "transfers from an account held by a client to a joint account where the client is one of the joint holders is reportable." Could ESMA kindly clarify if this also covers the scenario of transfer from a joint account where the client is one of the holders to an individual account and from one joint account to another where the client is a joint holder on both?

**Usage of ISINs at a series level**

EEX Group would like to express its **serious concerns about ideas of using ISINs at a series level**. Apart from the issues that will arise from having ISINs as the sole option for identifying Exchange-Traded Derivatives (ETDs) (i.e. higher costs for trading venues and operational difficulties, while not containing information about the products and markets products are traded in), we are even more concerned about the idea of using the ISIN at a series level, hence, a more granular level than the financial instrument. We would like to provide examples of issues, complexities and unresolved aspects alongside cost considerations to demonstrate that ISIN - hardly manageable on the financial instrument level - are even less sensible on a series level.

**For the basis of financial instruments, ESMA rightly refers to our comparable scope of exchange products, not to a series level.** This understanding is further substantiated by the fact that the reference data as finally proposed by ESMA do not include any 'version' of series. Neither does RTS 23 reflect that series data can change during its lifetime. This reflects the typical behaviour of cash market instruments and not derivatives contracts. Therefore, no modification request is foreseen in the reference data of the regulation. This confirms that policy-makers have understood the difference between cash market related instruments and derivatives contracts.

Despite that for exchanges it is clear that ISINs on a series level have not been the intention when drafting the technical standards, we hereby would like to provide some examples of issues that will arise when thinking of introducing ISINs on a series level.

#### **Concrete concerns related to introducing a series ISIN:**

- An ISIN is not product specific. It does not provide any identification of the underlying product as such, which is a pre-requisite to understand data related to derivatives.
- In the light of transparency calculation, we find the definition of financial instruments being bound to the product scope, e.g. DAX futures or ESX futures. This at least seems to be supported by the majority of RTS and how instrument as a definition is used in the description of task assigned to investment firms or trading venues. It would be odd that the interpretation of instrument would change depending on which RTS is the baseline. Only RTS 23 would define instrument on a series level and not on the product level as in the rest of the RTS at hand.
- It is unclear how ISIN can be used for non-standard spreads in futures where various expiries can be combined.
- ESMA would like to receive historical data, which means exchanges need to request ex post ISINs for already expired series. As a result of such a request for ISINs on the series level, a possible negative result would be that one series gets two different ISINs assigned, due to this ex post request. This is the case because of the interaction with the private third party service provider. In Germany, for example, WM might have assigned a series ISIN for their own merit, and for some this could be possible, but not for complex derivatives contracts. It is not possible to receive a reasonable picture without considerable effort for all parties involved.
- In regards to complex instruments specifically, these are not reflected adequately; the order books for complex instruments are generated on the fly and deleted, if there is no open interest at the end of the day. This leads to the fact that one complex instrument gets an ISIN today and a different one tomorrow, the day after and so on.
- In case of Germany, WM does not have any indication on strike version or expiries, only a rudimentary set is available, one on one relation of the exchange and WM's data is not guaranteed.
- Another crucial issue is that exchanges under public law would be dependent on private service providers to have availability on such ISINs. There are no fall back scenarios for ISIN generation in case the service provider cannot make available the private service.
- In regards to the cost discussion, it needs to be differentiated between the sheer generation of ISINs of such service providers and how these ISINs are made available, means used for dissemination.
- Transposing the interpretation of having series ISINs into the commodity derivatives segment for instance, would mean that a considerable amount of series ISINs will have to be obtained on a daily basis. With regard to electricity trading, for instance, new maturities are created for each day, week, weekend, month, quarter and year. In addition, all of the instruments exist for both base and peak load. This means that for one single product, e.g. German Phelix Futures, 970 series

ISINs have to be obtained per year. Depending on the price of an ISIN, this translates into significant additional costs, a high operational burden and the loss of independence for energy trading venues.

- The same goes for transposing this interpretation of having series ISINs into the OTC segment, e.g. FX. This would result in having an ISIN for each trade price in a given currency pair as one could take the price a substitute for the execution price of an option and the settlement like overnight or tomorrow as an expiry date. This would lead to a very large amount of useless ISIN codes which do not relate anyhow directly to an underlying product.
- Accordingly this should be changed and even the reference data could be collected using the ISIN as a descriptor, but on a product level not on a series level. Series information can be provided using either the full instrument name or the details fields that are also part of the reference data set for NCAs and ESMA.

Related to the issue of ISINs, we would also like to raise are **concerns about the idea of ESMA to require trading venues to have the same ISIN for contracts that are being considered to be the same**. Which definition would exactly apply with regard to “same” is unclear. However and more importantly, we do not see a legal basis for ESMA to impose this obligation on trading venues. Neither Level 1, nor Level 2 make reference to such an obligation. Should trading venues share ISINs, then this would require considerable coordination between trading venues at moments where immediate action is needed. A system that enables trading venues to cooperate will have to be established.

The obligation would only add up to the operational difficulties that would already rise from the obligation of having to obtain an ISIN. Moreover, it will require a considerable set-up for regulators and ESMA to monitor which trading venues are using which ISINs.

<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>

**I General comments to Q 4**

#### **Definition of “transactions reaching the NCA”**

EEX Group would prefer a clear definition of “reach” in the section 1.1.8.4 “Transactions shall reach the home competent authority...”. Could we assume that ESMA would send an acknowledgement message once the report has been technically received and format has been accepted, or would ESMA consider “reach” to cover the second step including the report has passed full business validations of the respective NCA as well. A clarification of this matter would be highly appreciated.

#### **Submission of reports**

ESMA lines out that it is left to each NCAs discretion to prescribe detailed technical procedures and schedules for the submission of reports. While we appreciate the different set-up of NCAs as regards their technical infrastructure, we would like to suggest, however, that, wherever possible, same procedures and standards should be applied as well as across regulators. Please see as well our comments in the next point below.

#### **Feedback files from NCAs**

For market efficiency purposes it would be helpful if ESMA could define a standardised and ideally harmonized format and structure across the EU for the feedback files from the NCAs.

#### **Comments as regards RTS 13**

While we appreciate that the ESMA L3 Guidelines might not be the right place for the following comments, we still would like to make use of this consultation to comment on RTS 13 nevertheless.



In RTS 13 ESMA foresees the possibility to use third parties as “submitters” between the investment firm (with the duty to transaction report) and the ARM. It is, however, not clarified in RTS 13 though either, what exactly the term “submitting” encompasses in detail. From a practical point of view and in the spirit of market efficiency, the submitter should ideally be able both to augment a report as well as to submit the report for further processing.

It is our understanding that the EU Commission is currently reconsidering ESMA's proposal of RTS 13 including the question of what exactly may be / should be understood as “submitting”. There is a significant risk, that even plain data submission – which in practice forms part of many technical outsourcing contracts today e.g. in the case of trading – will not be allowed anymore under MiFID II. This, however, would have negative effects to industry as a whole. Not allowing for “reporting chains” would be clearly detrimental to market efficiency with a harsh impact especially on small firms, e.g. a German Sparkasse or a Volksbank, who would then have to directly connect to an ARM themselves instead of using their current submitters. Furthermore, NCAs would have to connect directly to many more entities (ARMs) than currently accounted for.

**For the sake of proportionality and market efficiency reporting chains including submitters who are allowed to complete and submit transaction reports on behalf of an investment firm – under the correct contractual agreement - should not be prohibited by regulators.**

While MiFIR Art 26 clearly states that the reporting responsibilities remain with the investment firm for the transactions reported, with the ARM covering certain responsibilities as well, any investment firm could and certainly would enter into a (partial) outsourcing contract with a submitter defining all necessary responsibilities between parties.

Therefore, the concept of a submitting firm should be retained (RTS 13 9 2.) while the role of a submitter should be further clarified, either within the L2 text, or within in the ESMA L3 Guidelines. It should be clarified that a submitter is allowed to complete a transaction report besides submitting it (without the necessity to become an ARM).

Such a set-up would allow for an efficient transposition of transaction reporting requirements, while leaving clarification of the respective responsibilities and liabilities to contractual arrangements between the parties.

## **II Validation rules**

### **Validation of cancellations and new reports**

Regarding validation rules, we deem it impossible that an ARM should guarantee that a submitted report is a new one, or validate a cancellation as one referring to a previous trade if it is not made fully clear to the ARM if the client has submitted the initial report via another ARM or not (Field 2 of the validation rules). This could only be validated by the ARM in case the investment firm would indicate in an additional data field if they had used another reporting channel for the initial transaction report or not. And even in this case the validation can only be properly conducted in case the original report had been submitted to the respective ARM in question before.

### **Validation of Transactions executed on a Third Country Trading Venue**

Field 37 of the validation rules protocol mentions this field should only be populated for the market side of a transaction executed on a trading venue or organized trading platform that is outside of the European Union. We deem this to be impossible as the ARM would not be in the position to check for this, unless the investment firm submits exactly this information.

### **Validations in context of CFI code**

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high

risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

#### **Usage of ISINs at a series level**

**COPY FROM PAGE 7 and 8.**

<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>

##### **Application of ISO 20022**

EEX Group would like to point out that it is of utmost importance that not only regulators but also market participants do require sufficient lead time for technical implementations. In this context, it is important that any open questions, especially as regards technical implementation are being clarified as soon as possible. The following important questions are still open: a) by when will the ISO 20022 standard assumingly be finalised to include all MiFIR fields? And b) will any future changes to the report data fields or the format be applicable only once the ISO 20022 standard is updated accordingly? It should be strictly avoided that the industry has to adapt.

##### **Application of character codes**

Furthermore, we would appreciate clarification if spaces and other characters like hyphen, apostrophe are being allowed, while per the RTS 22 at least commas need to be allowed.

Solely for clarification purposes we would like to point out that in the attachment *DRAFT10auth.016.001.01\_ESMA\_restrictions.xlsx* character set restrictions are being defined which are not adhered to in the examples. E.g. for *First Name* only characters are allowed: "[A-Z,\p{IsLatin-1Supplement}\p{IsLatinExtended-A}]" but in the example on page 40 the First Name is written as "JOSE, LUIS".

<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>

No answer.

<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>

No answer.

<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>

**List of obvious errors or omissions**

EEX Group would appreciate further clarification in the context of order transmission. Article 4 (1) lit. c in RTS 22 mentions the validation of "obvious errors and omissions" by the receiving firm before the submission of a transaction report.

Does ESMA expect that the receiving firm applies the same validations and plausibility checks as an ARM/NCA? We would strongly appreciate a clarification of this question and ideally an exhaustive list what is being considered as obvious errors and omissions.

<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>

No answer.

<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>

**ID of natural person / Contact**

EEX Group would appreciate further clarification as well regarding to the requirements of identification of natural persons for the case, that neither the ID card nor the passport from a natural person is available at the Investment firm. How should the responsible investment firm fill the transaction report, and how should the ARM used by the investment firm validate and process the transaction report in case the Investment Firm is not in the position to deliver the required data? Please see the same comment in our answer to Q2.

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>



No answer.

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>

**Transaction Reporting by Trading Venues**

With regard to transaction reporting according to Article 26 (5) of Regulation (EU) No 600/2014 it would be most helpful if the ESMA Guidelines could be more detailed.

We would appreciate if each of the current scenarios where a trading venue is involved would be adapted including the information which of the transactions needs to be reported by the trading venue in case "Firm X/Y/Z" would not be an investment firm. E.g. for scenario 1.3.8.3: Which of the transactions need to be reported by the Trading Venue in case firm Z is not an investment firm? Currently, our assumption is that only transaction '1234' needs to be reported by the trading venue.

**Notification to the NCA**

Art 15.2 of RTS 22 states that when a trading venue or investment firm becomes aware of any error or omission within a transaction report submitted to a Competent Authority, a prompt notification of the Competent Authority is required. We would appreciate ESMA's clarification as regards by which means this notification is to be transmitted and within which time period?

<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>

**Exception rule for most relevant market**

As regards the mechanics for reporting as outlined by ESMA under topic 1.1.8. we would appreciate further clarification as regards how an exception rule for the most relevant market should look like if the market of a member state in which the financial instrument was first admitted to trading or traded on a trading venue does not trade this instrument anymore.

<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>

Yes, EEX Group would appreciate more clarity on the examples referring to a new "SCHEME NAME", which is not covered in the actual RTS 22. Is this an additional field to be provided and is it also valid for RTS 24 in the relevant section? It would be assumed that an alignment will be established between the two RTS.

It is also assumed that Art 6 and Art 7 always require the first- and surname, date of birth and additionally the investment decision ID.

<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>

No answer.

<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>

No answer.

<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>

EEX Group would appreciate receiving an additional example as regards a firm performing delegated reporting. Unless, there is a final decision agreed on a political level, we would like to see an example including a scenario where a firm is performing delegated reporting which would include the reporting of the client side as well, not only the market side.

<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>



Yes, EEX Group would appreciate receiving further clarity. It is unclear who is a 'person primarily responsible for the execution'.

<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>

**Application and availabilities of MIC codes**

For the avoidance of any doubts, EEX Group asks ESMA to clarify certain assumptions in the context with the example displayed under 1.2.7.2.

ESMA states that the trading venue identification code in this example does not apply as the trade has not been executed on a trading venue. We would appreciate a confirmation that the OTF mentioned in 1.2.7.2 is not considered a trading venue because it is outside the EEA and that OTFs inside the EEA will have to provide a trading venue transaction identification code. In this context, please confirm as well that ESMA will provide actual lists as regards the applicable MIC codes for all Trading Venues in the EEA via their website or any other means.

<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>

No answer.

<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>

**Branch Fields**

Yes, EEX Group would appreciate receiving further clarity. According to Article 14. 4 of RTS 22, for investment firms the branch fields should always be populated. In this context, it is unclear, why in 1.2.10.1 field 58 is left empty instead of being populated with the country code of the head office. May we ask to provide clear guidance, which types of firms have to populate fields 8, 17, 37, 58 and 60 and in which cases.

<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>

No answer.

<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>

No answer.

<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>  
No answer  
<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>  
No answer.  
<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>  
No answer.  
<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>  
No answer.  
<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>  
No answer  
<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>  
No answer.  
<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>

**Transmission flag**

Yes, EEX Group asks for further clarification. The examples provided by ESMA in section 1.3.8. are not fully clear regarding the treatment of the transmission flag. In this respect, it should be clarified that field 25 "transmission of order indicator" is not determining if the conditions for transmission are met, but only if the reporting party itself has transmitted an order.



It would be most helpful, if ESMA could provide more examples in this area and fully clarify the use of the transmission indicator.

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>

**Aggregation of Orders by the IF**

ESMA has provided an example under 1.3.12.3 where a Firm is aggregating orders from several clients: The trading venue should not have to report transactions 6868690, 6868691 and 6868692. Those transactions do not take place at the trading venue and it does not have information about them.

<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>

**CFI Code**

EEX Group states that in general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

No answer.

<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>

**Underlying Index**

EEX Group would appreciate further clarification with regard to the following aspect. We are missing an example that shows how a transaction report has to fill field 49. Could ESMA please provide guidance on how field 49 "Term of the underlying index" needs to be filled?

**Validation Rules**

Please see as well our comments to Q4

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

**Validation Rules**

Please see as well our comments to Q4

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

**Validation Rules**

Please see as well our comments to Q4

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

**Validation Rules**

Please see as well our comments to Q4

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high



risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

**For clarification**

EEX Group would appreciate receiving further clarification on the following aspect. May we ask if in example 1.4.3.8 field 46 “price multiplier” should rather refer to the number of futures per barrier option instead of the number of tonnes per future?

Furthermore, could ESMA clarify as well if certificates and warrants on commodities are being considered to fall into the asset class of commodity derivatives (e.g. DE000DZZZCH9, Aluminium)?

**Classification of Commodity Derivatives**

EEX Group believes that RTS 23 Table 2 on the classification of commodity derivatives does not provide for an exhaustive list of “Further Sub Products” with regard to natural gas and hence does not allow us to classify our commodity derivatives correctly.

For Base product: NRGY’ –Energy and Sub product 'NGAS' -Natural Gas, the options for Further Sub product are:

'GASP' -GASPOOL

'LNGG' -LNG

'NBPG' -NBP

'NCGG' –NCG and

'TTFG' –TTF

Except for LNG, these are geographical delivery areas, which is not in line with the construction of the other Further Sub products. It should differentiate between LNG and our “regular” non-LNG, regardless of where it is supposed to be delivered. Another options would be to add an “OTHR” category, as had been done for the other Sub Products.

**Validation Rules**

Please see as well our comments to Q4

In general, in the attachment "validation\_rules.xlsx" many validations are based on the CFI code (Field 43) although the CFI code is an optional field. Taking the CFI code from the ESMA instrument list is a high risk since it might be populated too late on the ESMA website and even if not delayed, it could potentially be incorrect leading to multiple rejections.

<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>

No answer.

<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>

No answer.

<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>

No answer

<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>

No answer

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>

No answer.

<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>

.No answer”

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_57>