



European Securities and
Markets Authority

Response Form to the Consultation Paper

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



Responding to this paper

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

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

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

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

Instructions

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

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

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

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

Who should read this paper?

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

General information about respondent

Name of the company / organisation	FIA European Principal Traders Association (FIA EPTA)
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_TRRF_1>

The FIA European Principal Traders Association (FIA EPTA) represents 29 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of instruments, including shares, options, futures, bonds and ETFs.

As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU. Our members are active participants on almost all European exchanges and platforms. Moreover, our members are important sources of liquidity for institutional investors accessing liquidity pools across Europe.

FIA EPTA supports transparent, robust and safe markets with a level playing field and appropriate regulation for market participants. We consistently support the aim of the market structure reforms laid out in MiFID II/MiFIR and welcome the opportunity to respond to this consultation on the obligations to report transactions and reference data.

FIA EPTA members consider that improvements can and should be made to the existing requirements, targeting simplification and reduction of complexity of the reporting regime while ensuring that OTC derivatives are brought into the MiFID II transparency regime to the fullest extent possible.

<ESMA_COMMENT_CP_TRRF_1>



Questions

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

<ESMA_QUESTION_TRRF_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_1>

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

<ESMA_QUESTION_TRRF_2>

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

<ESMA_QUESTION_TRRF_3>

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

<ESMA_QUESTION_TRRF_4>

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<ESMA_QUESTION_TRRF_4>

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

<ESMA_QUESTION_TRRF_5>

FIA EPTA members strongly support ESMA extending reference data reporting, transaction reporting, and transparency to include derivatives traded with an SI.

One analysis found that ~95% of off-venue trading activity in interest rate OTC derivatives is currently not considered ToTV. This may mean that *up to EUR 800 billion per week* in trading volume in EUR interest rate swaps alone is missing from the transparency and transaction reporting framework (<https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/>). These are highly liquid, centrally cleared instruments that are completely exempted from post-trade transparency. We see no policy justification for the current status quo. We note that, based on feedback to the ESMA non-equity transparency consultation, this view is shared by a broad and diverse coalition of market participants, with exception of SIs.

Including derivatives traded with an SI will (a) level the playing field between SIs and trading venues, (b) establish a more comprehensive post-trade transparency regime that will deliver meaningful benefits to end investors and support the implementation of a post-trade consolidated tape, (c) improve the ability of NCAs to effectively oversee derivatives markets in the EU, and (d) increase harmonisation with other jurisdictions.

Solely revising the interpretation of ToTV, with the intent of broadening its scope, would fail to deliver the benefits detailed above, leaving a post-trade transparency regime that maintains an unlevel playing field between trading venues and SIs.

<ESMA_QUESTION_TRRF_5>

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

<ESMA_QUESTION_TRRF_6>

Yes, FIA EPTA members agree that all SIs should be covered, including voluntary SIs. This is particularly important in the derivatives asset classes, where continuing data quality issues mean that the mandatory SI regime fails to capture many firms that are in practice acting as SIs in particular sub-asset classes. Opting-into the SI regime means that a firm is agreeing to comply with the requirements associated with being a registered SI, including any transaction reporting and transparency requirements.

<ESMA_QUESTION_TRRF_6>

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

<ESMA_QUESTION_TRRF_7>

FIA EPTA members strongly support Option 1.

Many investment firms have only opted-in as an SI in derivatives for ToTV instruments. In addition, the mandatory SI regime for derivatives is largely limited to ToTV instruments. As a result, Options 2 and 3 would leave the current status quo largely unchanged, as only ToTV instruments would be covered by transaction reporting and transparency requirements. Only Option 1 will address the current deficiencies and meaningfully increase transparency in derivatives for market participants.

In addition to applying requirements on a sub-asset class level, we recommend specifying that all derivatives subject to the derivatives trading obligation (DTO) are automatically considered ToTV. By definition, these instruments are traded on trading venues and adding this qualitative criteria will ensure that, even if a counterparty is not subject to the DTO, and therefore is permitted to execute the transaction off-venue, that transaction will be subject to transparency and transaction reporting requirements.

<ESMA_QUESTION_TRRF_7>

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

<ESMA_QUESTION_TRRF_8>

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<ESMA_QUESTION_TRRF_8>

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

<ESMA_QUESTION_TRRF_9>

FIA EPTA members are supportive of option 3, i.e. retaining the status quo in relation to reporting trades in financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue. We believe that this the most appropriate option given that there is still a lack of clarity around the reporting scope of trades in such financial instruments at present and therefore it does not make sense to expand the scope of reportable instruments any further at this time. Instead, we believe that a better approach would be to clarify the current reporting requirements more fully by providing more examples where reporting is deemed to be required. This would be helpful in ensuring that a consistent reporting approach is in place across the industry.

<ESMA_QUESTION_TRRF_9>

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

<ESMA_QUESTION_TRRF_10>

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<ESMA_QUESTION_TRRF_10>

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

<ESMA_QUESTION_TRRF_11>

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

<ESMA_QUESTION_TRRF_12>

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

<ESMA_QUESTION_TRRF_13>

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<ESMA_QUESTION_TRRF_13>

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

<ESMA_QUESTION_TRRF_14>

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<ESMA_QUESTION_TRRF_14>

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

<ESMA_QUESTION_TRRF_15>

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

<ESMA_QUESTION_TRRF_16>

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

<ESMA_QUESTION_TRRF_17>

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<ESMA_QUESTION_TRRF_17>

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

<ESMA_QUESTION_TRRF_18>

FIA EPTA members note that the RTS 22 requirement for operators of trading venues to generate and disseminate TVTICs to both the buyer and seller has been met differently by the operators of the trading venues. Some trading venues provide a single field in an execution message that corresponds to the TVTIC whilst others instead publish their methodology for

creating the TVTIC from multiple and do not disseminate the TVTIC itself (for example “*TVTIC = Envir_Flag (1) + SecurityID (20) + TranTime (20) + DealType (1) + MatchStepID (10)*”).

This approach of publishing the methodology rather than the TVTIC itself greatly increases the probability of errors in transaction reporting. Both the overall TVTIC methodology and the individual fields that make up the TVTIC at a trading venue can vary at that trading venue depending on criteria such as asset class or trading interface. The probability of errors is further increased when trading venues change their methodology for generating the TVTIC as has happened several times since the Regulation came into effect. Changes to TVTIC methodology are generally published in trading venue circulars which may not be received or read by all their members.

FIA EPTA members strongly encourage ESMA to stipulate that trading venues publish the actual TVTIC in their execution messages to reduce the complexity around TVTIC and improve the data quality of transaction reporting.

We note that certain venues publish TVTIC as a single code in end of day reports for their members which serves as a helpful reconciliation tool but emphasizes that this is not a substitute for including the actual TVTIC in the execution message which is the primary data capture channel for transaction reporting. We caution that providing TVTIC solely via another channel would again increase complexity and the probability of errors.

This change could be effected by amending RTS Annex 22 Field 3 to read:

*This is a number generated by trading venues and **disseminated in a single field [as a single code] in messages confirming execution details** to both the buying and the selling parties in accordance with Article 12 of [RTS 24 on the maintenance of relevant data relating to orders in financial instruments under Article 25 of Regulation 600/2014 EU].*

Further, FIA EPTA members do **not support the proposal to create an obligation to include a TVTIC in transaction reports relating to trades occurring on a Systematic Internaliser (SI)**.

In many cases the ways in which Trading Venues and SIs interact with their members or clients are distinctly different. Trading venues are predominantly multilateral, accessed electronically through online portals or by sending orders by FIX message and in the case of venues offering Central Counterparties or Matched Principal trading the ultimate counterparty to a trade is anonymised. This places Trading Venues in a unique position with respect to their ability to effectively generate and disseminate identification codes to counterparties trading as members.

Whilst some SIs do provide electronic solutions to their clients it is also the case that trading interactions across less sophisticated mediums including trading chat platforms are captured by the SI regime. The limited scope for quickly and clearly passing additional information to counterparties in these instances would significantly increase the burden to clients and Investment firms operating a SI of generating, disseminating and then consuming these values relative to the existing obligations in place for Trading Venues. For such manual interactions, there is no efficient/failsafe means to communicate a generated TVTIC such that it is accurately captured by the counterparty to the trade. That is to say, this proposal is set up to fail in these instances especially as the TVTIC is a long sequence of characters and it is almost inevitable that there will be a high error rate in communicating it between parties.

It is also possible that, for asset classes not subject to the Share Trading Obligation, this change would create an incentive for firms to trade away from SIs in an OTC capacity with a corresponding potential loss to the pre and post trade transparency provided for these activities. In addition, creating a new reliance on post trade data provided by an Investment Firm's counterparty may result in an increase in the frequency of late bookings, as staff wait to receive the required identifier, and correspondingly of delayed transparency to the market.

Furthermore, a notable core benefit of the existing TVTIC requirement to NCAs is the ability to connect separate transaction reports from Investment Firms trading anonymously on a Trading Venue to identify the end counterparty where this would not be included in the respective transaction reports submitted by these Investment Firms. As SIs act in a bilateral capacity, both parties to the trade will already identify their respective counterparty, rather than the venue CCP or matched principal entity, in any corresponding transaction reports and as such the benefit to the NCA of expanding this obligation to include SIs is significantly diminished. Note that the trades can also be linked as both the SI and the counterparty (in cases where they are aware that they have traded with a SI) will identify the SI's MIC code in the trading venue field of their transaction report.

In addition to the arguments set out above we also do not believe that the proposal can work at all times in practice given the lack of an ESMA register of SIs at an ISIN level. We are aware of divergent approaches across NCAs in terms of the granularity of information that they collect from SIs e.g. some NCAs collect information at an asset class level and some at an ISIN level. Without a central up-to-date public register that details SIs at an ISIN level then it is not possible for counterparties to always be sure when they should be including TVTIC information in their transaction reports in cases where they have traded bilaterally with a counterparty outside a Trading Venue. Outside of this proposal we would advocate the generation of a register at this granular ISIN level such that there is increased transparency on the scope of each SI's business.

<ESMA_QUESTION_TRRF_18>

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

<ESMA_QUESTION_TRRF_19>

FIA EPTA members observe that investment firms are still coming to terms with the reporting of TVTIC for venue membership trades. This has taken some time to bed-in, especially given that different venues have different methods of generating and communicating the TVTIC, e.g., in some cases it requires the member firm to amalgamate several fields from the execution message received from the venue in a certain sequence. The dissemination of the TVTIC by the venue is however aided by the electronic messaging that is in place between the venue and the member firm, i.e., this makes it easier to capture the TVTIC in the member firm's trade capture systems. It is in our view not realistic to think that the TVTIC's (or similar code's) dissemination thereafter down the execution chain would be as straight-forward. This would require significant work within the industry and where the onward transmission of the TVTIC would not be by automated electronic means would also be prone to error that would detract from any benefit gained from being able to link the transaction chain in the proposed manner.

In addition, we would question the feasibility of adding a requirement for MiFID firms to report a transaction identification code and venue code for trades executed on a non-EEA trading venue or with a non-EEA SI under field 3 (TVTIC) and field 36 (venue) respectively. In relation to trades on non-EEA venues, given that they are outside of the scope of MiFID (and as such are not mandated to provide a trade identifier in the MiFID prescribed format) this automatically leads to reporting issues for EEA member firms of such venues e.g., where such a venue does not provide an identifier or where a firm has to make a decision has to be made on deciding which execution reference to report.

In terms of reporting a venue and trade identifier for trades with non-EEA SIs, there is a fundamental problem for EEA firms as reliance would have to be placed on any non-EEA SI to provide this information however they would be under no MiFID obligation to provide it so may resist. A further difficulty would be trying to identify a non-EEA SI given that to our knowledge this concept does not exist in many countries and there would be little or no relevant information on such firms in most countries to double check. Given these practical difficulties we would oppose the extension of the reporting requirements to field 3 and field 36 for such trades on both non-EEA venues and SIs.

<ESMA_QUESTION_TRRF_19>

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

<ESMA_QUESTION_TRRF_20>

FIA EPTA members welcome the introduction of additional clarification to the Level 1 text with respect to the existing obligations to reflect the Decision Maker and to make use of appropriate legal entity and natural person identifiers when identifying parties to a reported transaction.

However, we are not supportive of the proposal to create an additional requirement to represent the categorisation of clients according to Article 24 of Directive 2014/65/EU in transaction reports.

It is our view that this additional information will provide little, if any, additional benefit to NCA's in assisting with the clear policy objective underlying the transaction reporting regime – namely the detection of Market Abusive behaviors - and will only serve to add to the existing level of complexity which reporting firms face when populating transaction reports today.

Furthermore, this addition will come at significant cost to investment firms and NCAs alike, all of whom will be required to make substantial amendments to their current transaction reporting systems and controls to accommodate such a change.

<ESMA_QUESTION_TRRF_20>

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

<ESMA_QUESTION_TRRF_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_21>

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

<ESMA_QUESTION_TRRF_22>

FIA EPTA members strongly support option (a) and the removal of the short sale indicator field from transaction reporting. We would agree with ESMA's conclusion that the end of day net short position calculation set out in the SSR is incompatible with the flagging of short sells on a trade-by-trade basis in MiFID transaction reporting. As ESMA notes the definition of a short-sell in the short selling regulation and its application within MiFIR transaction reporting cannot be reconciled. Compliance with short selling bans can be monitored via the existing requirement to notify significant net short positions to the NCAs and this threshold can be adjusted to reflect changing circumstances, as demonstrated by ESMA in March 2019 when it lowered the reporting threshold as a response to the Covid-19 pandemic.

<ESMA_QUESTION_TRRF_22>

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

<ESMA_QUESTION_TRRF_23>

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<ESMA_QUESTION_TRRF_23>

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

<ESMA_QUESTION_TRRF_24>

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<ESMA_QUESTION_TRRF_24>

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

<ESMA_QUESTION_TRRF_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_25>

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

<ESMA_QUESTION_TRRF_26>

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<ESMA_QUESTION_TRRF_26>

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

<ESMA_QUESTION_TRRF_27>

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

<ESMA_QUESTION_TRRF_28>

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<ESMA_QUESTION_TRRF_28>

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

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<ESMA_QUESTION_TRRF_29>

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

<ESMA_QUESTION_TRRF_30>

FIA EPTA members are supportive of standardization of reporting requirements and the use of standard identifiers. However, we foresee that adding another level of complexity at this stage may not benefit either MiFIR or EMIR reporting regime in particular and therefore would only result in high implementation and maintenance costs with an unclear reward. Therefore, before implementing such a change we suggest a data driven assessment which clearly shows cost benefit analysis.

<ESMA_QUESTION_TRRF_30>

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

<ESMA_QUESTION_TRRF_31>

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<ESMA_QUESTION_TRRF_31>

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

<ESMA_QUESTION_TRRF_32>

No. FIA EPTA members agree with ESMA's approach.

<ESMA_QUESTION_TRRF_32>

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

<ESMA_QUESTION_TRRF_33>

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<ESMA_QUESTION_TRRF_33>