

24 March 2016

ESMA Consultation on guidelines on transaction reporting, reference data, order record keeping & clock synchronisation

AMAFI and AFTI's contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.

AFTI (French Association of Securities Professionals) is the leading Association in France and in the European Union representing the post-trade businesses. AFTI gathers more than 100 members active in the post-trade industry, mainly: custodians/depositaries, investment firms, market infrastructures, issuers.

Before responding to the specific questions of the ESMA consultation document, AMAFI and AFTI would like to point it out the following general comments.

I. – GENERAL COMMENTS

Given the evolution of the transaction reporting mechanism which involves both entities which execute orders and entities which receive and transmit orders or are discretionary portfolio managers, **AMAFI and AFTI have chosen to make a common answer** to ESMA's consultation paper (CP) on Guidelines on transaction reporting and reference data.

AMAFI and AFTI would like to thank ESMA for this consultation which is of the utmost importance for public confidence in the financial markets, and which implies a common understanding of the rules related to these mechanisms within the industry and National Competent Authorities (NCA). We would like to point out the quality of the CP.

Having said that we consider that there are some areas where further clarification is needed and others where we do not fully share ESMA's proposed guidelines. We would like to stress the following ones.

Trading capacity

For equities at least, there is a need to take into account the way client orders are executed in the French market. Actually it is based on agency trading with the use of a weighted-average trading price. This cannot be considered as trading in “matched principal trading capacity” (MTCH) and should be clarified in the definition of “trading in an “any other trading capacity” (AOTC).

We also highlight that the requirement of “simultaneous” execution for the matched principal trading capacity is virtually unrealistic to satisfy, not least due to order aggregations by the broker. We invite ESMA to provide some more nuance.

Chains

Investment firms that do not comply with the transmission conditions sets out in article 4 of RTS 22

In this situation, the guidelines should specify what the fields which are not applicable for the investment firm which transmits the orders.

Transmitting firm with no transaction reporting obligation

The guidelines should clarify the situation when the transmitting firm is not subject to the transaction reporting obligation either when it is an EEA asset management company or a non EEA firm. In particular it should be clearly stated that, in this situation, the receiving firm shall only populate the fields related to article 4.2. (d) (e) (f) (g) (h) (i) of RTS 22 only when the information are transmitted by the firm.

Moreover, given the various statuses of asset management companies in the EEA (in some jurisdiction they are subject to the transaction reporting obligation, in other they are not), it would be very useful that ESMA provide the industry with the applicable rule country by country.

Reportable transactions

Transfers and custodial activity

Art. 2(5)(b) and Art. 2(5)(d) of ESMA RTS 22 exclude post-trade activities, notably custodial activities, from the definition of a transaction. At the same time, Art. 3(1)(v) of ESMA RTS 22 defines transfers of securities between accounts as an execution of a transaction. While we acknowledge that RTS 22 has not yet been finalized, we stress that this is an important inconsistency and call upon ESMA to first redress it in the RTS 22 and then to propose suitable guidelines accordingly.

If the intention of ESMA is to capture instructions to transfer securities initiated by investors, it should be made unequivocally clear that meant here are transfers following an investment decision by an investor, and not **any** transfers made by the custodian in its books or by a settlement agent in a CSD. In such case it should be clear that the entity taking the investment decision should be responsible for reporting the transfer and not the custodian or settlement agent.

In the same vein, we point to the need to ensure consistency with the level 1 text. Art. 26(1) MiFIR requires the reporting of **executed transactions**, and Art. 26(4) MiFIR requires the reporting of **orders transferred**. Since an instruction to transfer securities at the level of the custodian/settlement agent is not a transaction, therefore executing the instructions is not an execution. Transfer instructions are not orders either. Transmission of orders occurs **before** execution, while custodian activities logically only take place **after** an execution has already taken place. What's more, not all transfers result from transactions and the custodians are not able to distinguish between transfer instructions that follow from reportable events (i.e. result from execution of transactions in the scope of transaction reporting) and those that do not.

As a matter of principle, we consider that events giving rise to the transaction reporting obligation under MiFIR should be strictly bound to a transaction, and not to settlement instructions or transfer instructions, or any other post-trade or administrative events. This requires the definition of a transaction to be clear. The purpose of MiFIR transaction reporting is the prevention of market abuse. Events that result in the change of property of securities do not necessarily follow from transactions and, hence are not susceptible to be part of abusive market practices.

Particularly, we disagree that the notion of change of ownership as such, i.e. resulting or not from a market transaction should be dragged into the spectrum of MiFIR transaction reporting. We wish to point out that an EU Transparency Directive 2004/109/EC has the purpose to monitor concentrations of large shareholdings, and that its objectives are distinct from the objectives of the reporting under MiFIR.

Securities financing transactions

The Securities financing transaction regulation (SFTR) has just been adopted by the European co-legislators. Transactions carried out between an investment firm and a central bank (member of ESCB) is exempted from reporting under SFTR. We consider that in the interest of consistency and legal certainty, the transaction reporting obligation under MiFIR should respect the intent of the SFTR exemption.

Furthermore, for all transactions reportable under SFTR, we wish to obtain a regulatory relief from reporting obligation under MiFIR should the start of the reporting obligation under SFTR and under MiFIR not overlap.

Corporate events

We agree with the examples provided by ESMA in the CP on corporate events. We therefore consider that the guidelines should comprise more examples and we provide ESMA with a more exhaustive analysis which could usefully be incorporated in the CP.

Trading scenarios

The guidelines should comprise scenarios on block/allocation.

Reporting of different types of instruments

If we generally agree with ESMA's proposals, there are nevertheless situations where ESMA's some modifications are needed. For instance equity swaps or strategy trades.

Average price

We have a concern regarding the reporting at an average price in the case where the Article 4 is not met. We believe that there might be an inconstancy between the "1.1.3 Chains" chapter and the "1.3.4 One order for one client executed in multiple transactions" one or at least a lack of clarity that deserves to be fixed. A mean to avoid any ambiguity could be to make a slightly change in the text page 88 by précisant that the transmitting firm could report at an average price if it has been confirmed at an average price.

II. – RESPONSES TO THE ESMA SPECIFIC QUESTIONS.

Q1: Are there any other scenarios which you think should be covered?

We are surprised by the three trading capacities proposed by ESMA.

On the one hand, ESMA introduces a capacity “Trading in a matched principal trading capacity” (MTCH) and provides us with an example (1.1.2. 2) of a transaction which takes place on a trading venue. We do not understand what kind of situation this example could represent in reality.

Actually due to the requirement for both sides to be executed simultaneously in a MTCH trading capacity it is our opinion that such capacity could only be used when an investment firm interposes itself between two clients so that there will be a one to one relation and both transactions are fully executed in one shot. Such requirement will thus exclude all the cases where the investment firm is between one client and a trading venue. Indeed assuming that the financial instrument is not a liquid one it is likely that the order will be partially executed at different times in the day (for example at 9:30:42, 9:35:03 and 14:06:27). Obviously the client will be confirmed at an average price not before the order is executed for the whole quantity so that there will be no simultaneity anymore.

According to our analysis, match principal trading capacity could only be used when an investment firm interposes itself between two clients in such a way that it is never exposed to market risks.

We would like ESMA to confirm this interpretation.

On the other hand, ESMA proposes to put in place an “any other capacity” for activities that do not come under the definition of own account trading or matched principal trading. AOTC comprises the agency capacity.

We would like to stress that in France, for equity at least, agency trading is the main way to execute client’s orders. In many circumstances, one order for one client is executed in multiple transactions and the client receives a weighted-average trading price. In this situation the investment firms first registers the market transactions in a “technical account” and then registers the transaction in the client account at the weighted-average trading price.

We would like to ensure that this situation fulfil the definition of agency capacity for reporting purposes.

Therefore we suggest that the following sentence should be introduced in paragraph 1.2.1.3: **“AOTC can be used when investment firms, acting with an agency capacity and execute client orders at a weighted-average trading price”**.

On a more technical aspect, we would like ESMA to confirm that intra group transactions are to be reported with the “Deal” capacity.

Q2: Are there any areas in Part I covered above that require further clarity? Please elaborate.

Chains

The concept of the chain for reporting purposes requires further clarifications, such as:

- a) Investment firms that do not comply with the transmission conditions sets out in article 4 of RTS 22

In this situation, the guidelines should specify what fields are not applicable for the investment firm which transmits orders. Our analysis is that we do not have to populate at least the fields 57, 58, 61, 63 contained in table.

- b) Transmitting firm with no transaction reporting obligation

The guidelines should precise the situation when the transmitting firm is not subject to the transaction reporting obligation either when it is an EEA asset management company or a non EEA firm. In particular it should be clearly stated that, in this situation, the receiving firm shall only populate the fields related to article 4.2. (d) (e) (f) (g) (h) (i) of RTS 22 only when the information are transmitted by the firm..

Moreover, given the various status of asset management companies in the EEA (in some jurisdiction they are subject to the transaction reporting obligation, in other they are not and it seems that there will be differences between MIF 1 and MIF 2 in some countries), it would be very useful that ESMA provide the industry with the applicable rule country by country.

1.1.5 (Identifiers for parties)

The guidelines state that:

*« Given identifiers of natural persons are among the details of the report pertaining to a given transaction, the requirement to report correct and accurate details equally applies to a natural person identifiers. In order to ensure fulfillment of this requirement, investment firms **could** among others:*

- *Ask the natural person to prove the correctness and validity of the identifier by providing official documents*
- *Monitor the expiry date of a non persistent identifier and ask the natural person to provide the new identifier after the expiry date was reached.”*

We would like ESMA to precise what does “could” mean in these circumstances.

For all reference to the name, name(s) , or surname, family name, in the RTS 22 or the guidelines consultation paper, we believe that the “birth name” should be used instead of surnames, name(s) or family name which may change depending on life’s circumstances like wedding, divorce , or usage and could also depend on customs and practices of other countries.

This is utmost relevant for countries that have elected the contact principle for the identification of natural people. “Birth name” is stronger than “surname” to identify a natural person.

Q3: Are there any other situations on reportable transactions or exclusions from transactions where you require further clarity?

1.1.6.2 Transfers

See our response on Q6, Q7 and Q31 below.

In line with our preliminary explanations in the introductory part, we stress that the reporting obligation of transfers should not rely on custodian banks/settlement agents but on the entity taking the decision to instruct a transfer. Custodians executing delivery instructions are not able to distinguish between instructions following from events giving rise to the reporting obligations and those that do not.

We consider it a matter of principle that events giving rise to the transaction reporting obligation under MiFIR should be strictly bound to a transaction and rest on the party executing the transaction, and not to a settlement/delivery instruction or transfer instructions, or any other post-trade or administrative events. The purpose of MiFIR transaction reporting is the prevention of market abuse. Events that result in the change of property of securities do not necessarily follow from transactions and hence do not participate in the price formation process, hence are not susceptible to be part of abusive market practices. We suggest that there should be a clear and unambiguous definition of a transaction in order to have a clear and unambiguous way of determining when transaction reporting obligations arise and for which entities. ESMA correctly excluded from transaction reporting some post-trade or corporate actions/administrative events but maintain some of them in the scope of the reporting obligation. We would welcome more consistency in this respect.

We, notably disagree that the notion of change of ownership as such, i.e. resulting or not from a market transaction, should be dragged into the spectrum of MiFIR transaction reporting. We wish to point out that an EU Transparency Directive 2004/109/EC has the purpose to monitor concentrations of large shareholdings, and that its objectives are distinct from the objectives of the reporting under MiFIR.

1.1.7 Exclusion from reporting

Securities financing transactions

The Securities financing transaction regulation (SFTR) has just been adopted by the European co-legislators. Transactions, carried out between an investment firm and a central bank (member of ESCB), are exempted from reporting under SFTR. We consider that in the interest of consistency and legal certainty, the transaction reporting obligation under MiFIR should respect the intent of the SFTR exemption.

Furthermore, for all transactions reportable under SFTR, we wish to obtain a regulatory relief from reporting obligation under MiFIR should the start of the reporting obligation under SFTR and under MiFIR not overlap.

Collateral transfers

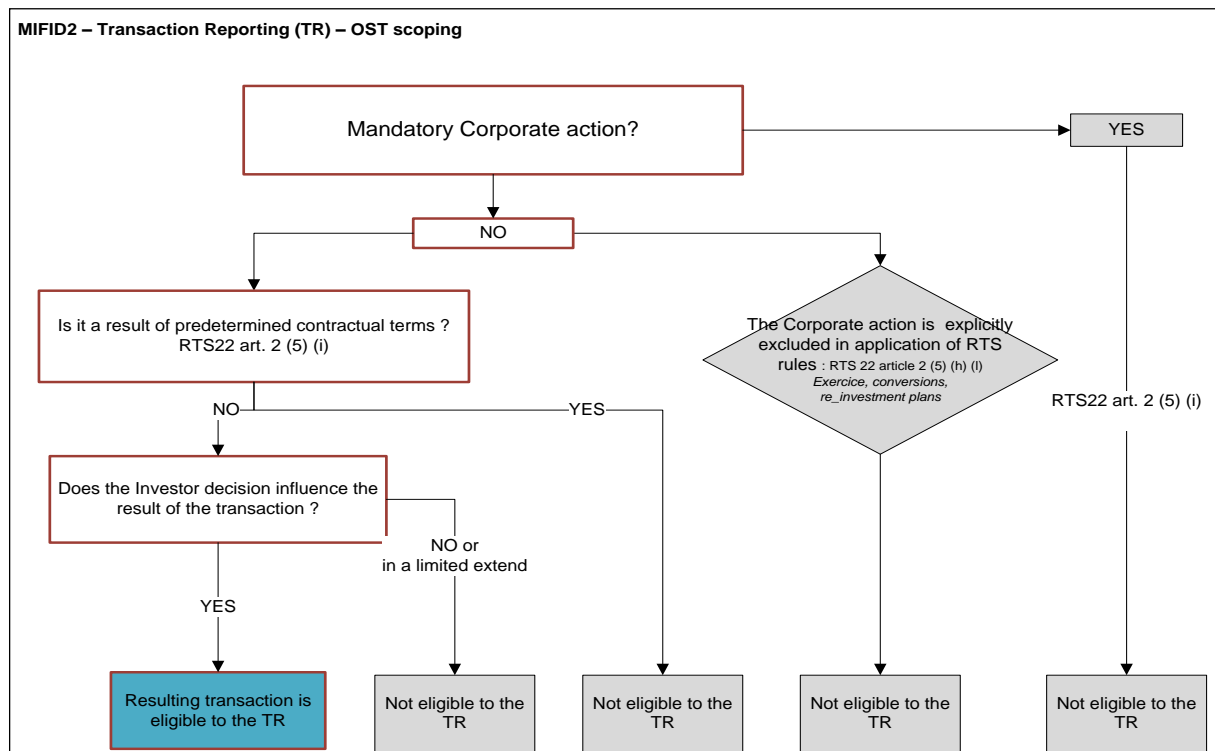
We assume collateral transfers (transfer of securities covering the settlement of initial or variation margin) are out of the scope of the definition of a transaction for RTS 22 as per Article 2 5 (b) : we do not consider these as “transactions” as there is no “acquisition” or “disposal”.

Subscription or redemption of fund investment units or shares by the administrator of the fund

We would like to obtain a confirmation from ESMA that acquisitions and disposals of fund units at the Net Asset Value (thus without a genuine price formation process) through fund dealing platforms (which are not trading venues in the sense of MiFID) are considered as subscriptions and redemptions of these funds, and are thus not reportable.

Exercise and conversion- Corporate events

We agree with the examples provided by ESMA in the CP on corporate events. We therefore consider that the guidelines should comprise more examples and be more exhaustive. We have carried out an analysis based on our understanding of transaction reporting obligation for corporate events (see the chart below) and listed corporate events (according to the Swift definition) that are or are not subject to the reporting transaction regime. We suggest ESMA to incorporate the analysis and the list in the guidelines.



CAEV code	Swift definition	Eligible for transaction reporting
COOP	Company option	NO
DVOP	Dividend option	NO
DVOP	Dividend option	NO
DVOP	Dividend option	NO
DVSC	Scrip dividend/ payment	NO
EXOF	Exchange	NO
EXOF CHOS	Exchange	NO
EXRI	Call on intermediate securities	NO
EXWA	Warrant exercise	NO
PRIO	Priority issue	NO
TEND	Tender/acquisition/ takeover/ purchase offer/ buyback	NO
BIDS	Repurchase offer/issuer bid/reverse rights	NO
BPUT	Put redemption	NO
CLSA	Class action/proposed settlement	NO
CONS	Consent	NO
DRIP	Dividend reinvestment	NO
DTCH	Dutch auction	YES
ODLT	Odd lot sale/purchase	YES
OTHR	Other event	YES
NOOF	Non-Official Offer	YES

Meaning of the CAEV code subject to reporting obligation

DTCH : Dutch auction : an action by a party wishing to acquire a security. Holders of the security are invited to make an offer to sell, within a specific price range. The acquiring party will buy from the holder with lowest

ODLT : Odd lot sale/purchase : sale to or purchase of odd-lots to/from the issuing company, initiated either by the holder of the security or through an offer made by the issuer.

OTHR : Other event Used for any Events that would not be processed by the present codes

NOOF : Non-Official Offer Offers that are not supervised or regulated by an official entity and being offer by a party ie Broker Operation mostly eligible in the US market, also eligible to Euroclear bank.

Q4: Are there any specific areas covered by the mechanics section where you require further clarity? Please elaborate.

a) On the need for an ARM

ESMA should provide further clarity for the use of Approved Reporting Mechanisms (ARM). In particular, we ask ESMA to consider the case of a group comprising several legal entities all required to report. It is likely that for operational and financial reasons all the transactions are handled in a single IT system.

We wish to obtain a confirmation that **central reporting solutions** of an investment firm that most globally operating investment firms have built at the central level for their legal entities within their group should NOT be considered as a third party solution requiring any entity to obtain an ARM status:

- ✓ Investment Firms might have several legal entities in the group sharing common IT systems/functionality
- ✓ Transaction data is segregated – each entity can only access own data, but the systems are common systems (might for instance also include risk systems– collateral systems)
- ✓ Referential data is kept in inhouse databases or through access to external referential databases
- ✓ Reporting infrastructure is integrated in the common IT infrastructure and fed by /linked to the central IT systems.
- ✓ This infrastructure is common to the group
- ✓ The output reports are segregated and specific for each entity of the group (example for report A entity A is reporting party and submitting party – for report B, entity B is reporting party and submitting party). Each entity is responsible of its own reporting.
- ✓ The channeling of the outbound reports is specific for the reporting/submitting entity (example: we might report directly to NCA for entity A – through AMR X for entity B – through ARM Y and X for entity C).

b) On the scope of reportable financial instruments

Determination of what instruments are in scope for transaction reporting is the Firms' responsibility. ESMA will have a machine readable list of instruments for which all the data and attributes will be searchable but we understand this list is not the golden source for determining eligibility since venues might submit reference data during the day, and it would take 1-2 days for this information to be processed and to appear on the list of instruments.

Following scenario can occur:

- ✓ On 02/02/2017 at 10:15 Firm X buys OTC an equity call option on DE0000000001 with Firm Y as counterparty.
- ✓ At this stage the option is not traded on the venue.
- ✓ Firm X reports immediately, and the report would be the following :

n	field name	report by Firm X	Comment
2	transaction reference number	45678	
3	trading venue transaction number		
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of Firm X}	
16	Seller identification code	{LEI of Firm Y}	
30	Quantity	10000000	
28	Trading date time	2017-02-02-T10:15:30Z	
33	Price	10	
34	Price Currency	EUR	
36	Venue	XXXX	
38	Up-front payment		
39	Up-front payment currency		
41	Instrument identification code		
42	Instrument full name	equity call on DE0000000001	
43	Instrument classification	OCESPS	
44	Notional currency 1		
44	Notional currency 2		
46	Price multiplier	1	
47	Underlying instrument code	DE0000000001	
48	Underlying index name		
49	Term of the underlying index		
55	Expiry date	15/07/2017	
56	Delivery type	CASH	
61	waiver indicator		
63	post-trade indicator		

- ✓ At 12:00 the same option is quoted on venue ABCD (EEA venue, an OTF) and this venue will thus require ISIN for the product and submit the relevant reference data to the NCA.
- ✓ We understand Firm X report is correct, even should Firm X report be submitted on T+1 - since the trading time occurs prior to the request for quote on venue ABCD.
- ✓ But what would happen should the OTC transaction take place PM on the same day : we suppose the report coming from X will still be valid since the reference data on the trading day still did not show that instrument, and X traded off venue.
- ✓ Should X trade on venue, or should the reference data is published on the ESMA site, we agree Firm X should report as follows:

n	field name	report by Firm X	Comment
2	transaction reference number	45678	
3	trading venue transaction number		
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of Firm X}	
16	Seller identification code	{LEI of Firm Y}	
30	Quantity	10000000	
28	Trading date time	2017-02-02-T18:15:30Z	
33	Price	10	
34	Price Currency	EUR	
36	Venue	XOFF	
38	Up-front payment		
39	Up-front payment currency		
41	Instrument identification code	AB0000000001	
42	Instrument full name		
43	Instrument classification		
44	Notional currency 1		
44	Notional currency 2		
46	Price multiplier		
47	Underlying instrument code		
48	Underlying index name		
49	Term of the underlying index		
55	Expiry date		
56	Delivery type		
61	waiver indicator		
63	post-trade indicator		

Q5: Do you require further clarity on the content of Article 1 of RTS 22? Please elaborate.

There is no need of further clarity.

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

a) Firms that are submitted to the reporting requirement

As written in Article 2, the RTS is for the purposes of Article 26 of Regulation 600/2014 (MIFIR) which applies (according to its article 1) to investment firms, credit institutions when providing investment services and / or performing investment activities and to market operators. Moreover article 26 of MIFIR applies to investment firms which execute transactions.

Therefore the reporting obligation should not apply when the investment firm offers only ancillary services to its clients, notably the safekeeping and administration of financial instruments which is an ancillary service or when the investment firm acts under a contract of mandate given by an issuer since the issuer itself is not subject to MIFID2.

We believe that for the sake of clarity this should be stated in the RTS. At the moment only the (c) of article 2(5) introduces an exemption for custody but not covers all the case (see point b) below). Should such amendment be unfeasible then it would be highly appreciated to have these exemptions explicitly described in the ESMA's guidelines.

b) Custodial activity

Article 2(5)(d) of RTS 22 stated that “*an acquisition or disposal that is solely a result of a custodial activity*” is excluded from the definition of what constitute a transaction that shall be reported. According to the final report (ESMA/2015/1464 pages 364 & 365), pure custodial activity is limited to cases where there is no change in beneficial ownership meaning that each change of beneficial ownership in the books of a custodian shall be reported. We strongly contest this approach, as such definition raises question within the securities services industry.

At the level of principles, we re-iterate that events giving raise to the transaction reporting obligation under MiFIR should be strictly bound to a transaction, and not to a settlement/delivery instruction or transfer instructions, or any other post-trade or administrative events. The purpose of MiFIR transaction reporting is the prevention of market abuse. Events that result in the change of property of securities do not necessarily follow from transactions and hence do not participate in the price formation process, hence are not susceptible to be part of abusive market practices. We suggest that there should be **a clear and unambiguous definition of a transaction** in order to have a clear and unambiguous way of determining when transaction reporting obligations arise and for which entities.

At the practical level, in most of the cases where a transaction is concluded between two parties, the agreement will lead to a change of beneficial ownership in the books of a custodian through internal or external settlement, thus requiring a custodian to declare each movement as soon as the beneficiary has changed. This would result in custodians having to declare almost the entirety of their activities, but more importantly it would lead to double reporting or reporting of information that does not correctly reflect the transaction at the origin of the transfer.

To illustrate our concern we have imagined what would happen in several cases based on OTC and on exchange transactions between two parties with the custodian (Z) required to declare the movement of financial instruments from one account to another one within its books (internal) or within the books of a CSD (as an example of external movement). We have voluntary focused our examples on the case where the settlement is done in the books of the custodian to highlight that even in such hypothesis there will be unintended consequences.

Examples:

- ✓ Where only one of the counter-parties of the transaction is required to declare
- ✓ Where none of the counterparties are required to declare
- ✓ With a settlement in another currency (e.g. USD) is done separately (directly between the US banks)
- ✓ Where the OTC transaction is in fact a REPO transaction (not to be declared under MiFIR)
- ✓ Where the transaction is in fact an on-exchange one (thus declared by the executing entity)

In no case the reporting done by the custodian will be correct, being either duplicated, reporting wrong counterparties, not accurate or incomplete:

Custodians only manage settlement instructions (instructions to receive / deliver financial instruments; against cash or free of payment). At the custody level the transaction level data has been replaced by the instruction: transaction price has been replaced by a net amount or, should the cash leg be paid independently, the net amount will be zero, hence from the point of view of the custodian the movement of financial instruments will be viewed as for free.

Also, the custodian will just know the first entity in the custody chain going upstream from it to the party to the transaction.

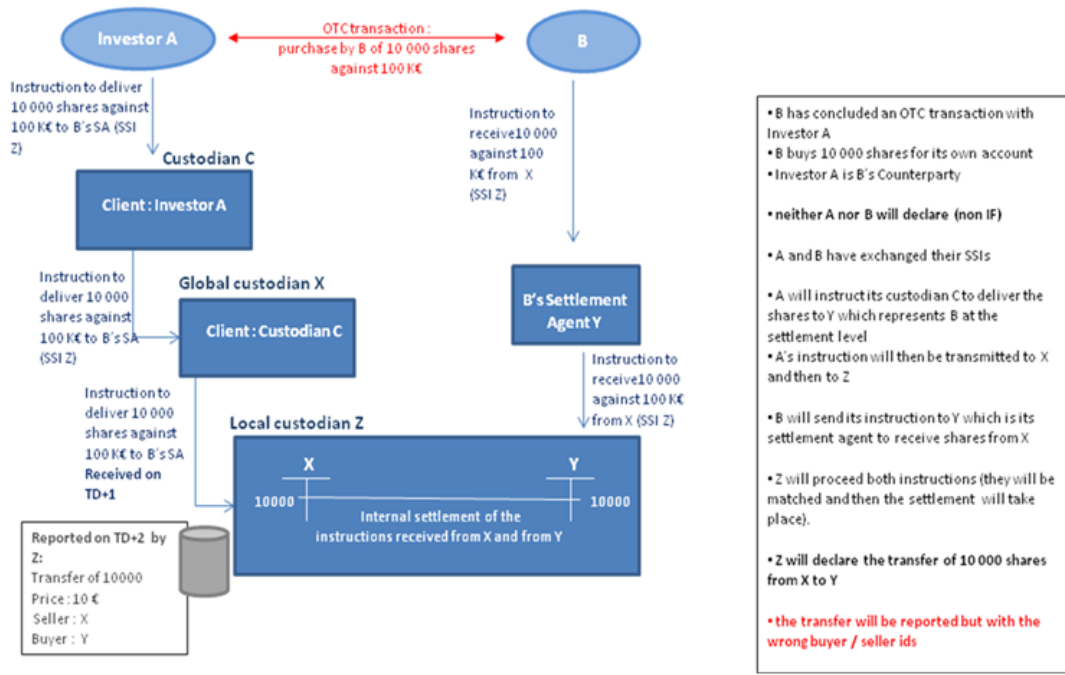
Therefore we ask ESMA to amend the article 2(5)(d).

This could be done via the following wording:

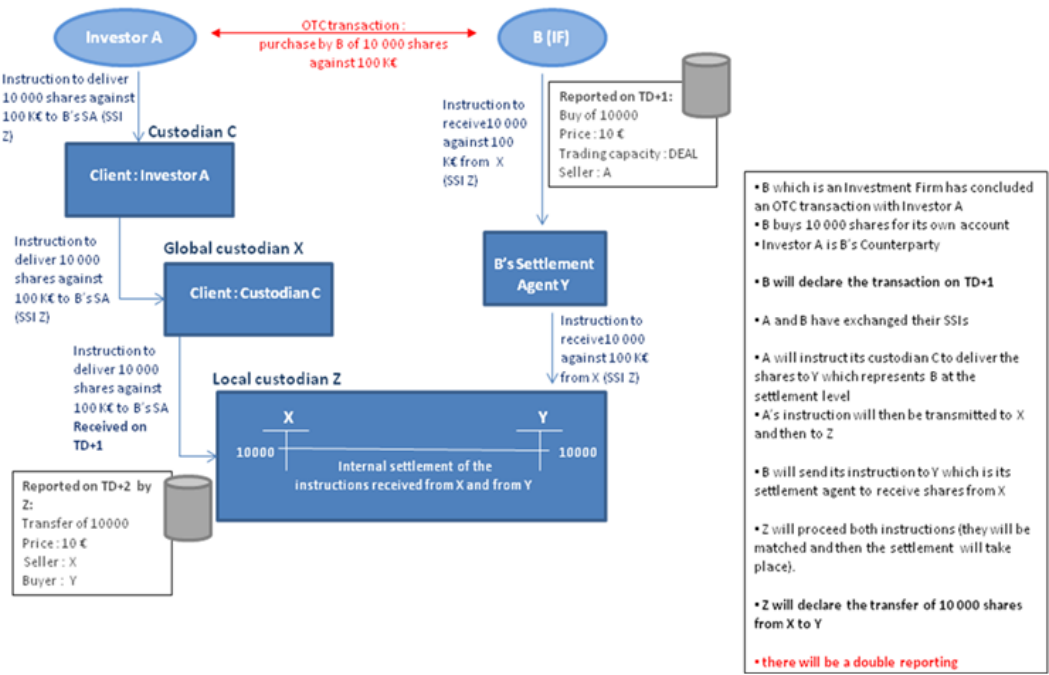
5. *A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include:*
.../...
(d) any instruction given to a custodian to receive or deliver financial instruments;

More generally we suggest that there should be a clear and unambiguous definition of a transaction in order to have a clear and unambiguous way of determining when transaction reporting obligations arise and for which entities. ESMA correctly excluded from transaction reporting some post-trade or corporate actions/administrative events but not others. We would welcome more consistency in this respect.

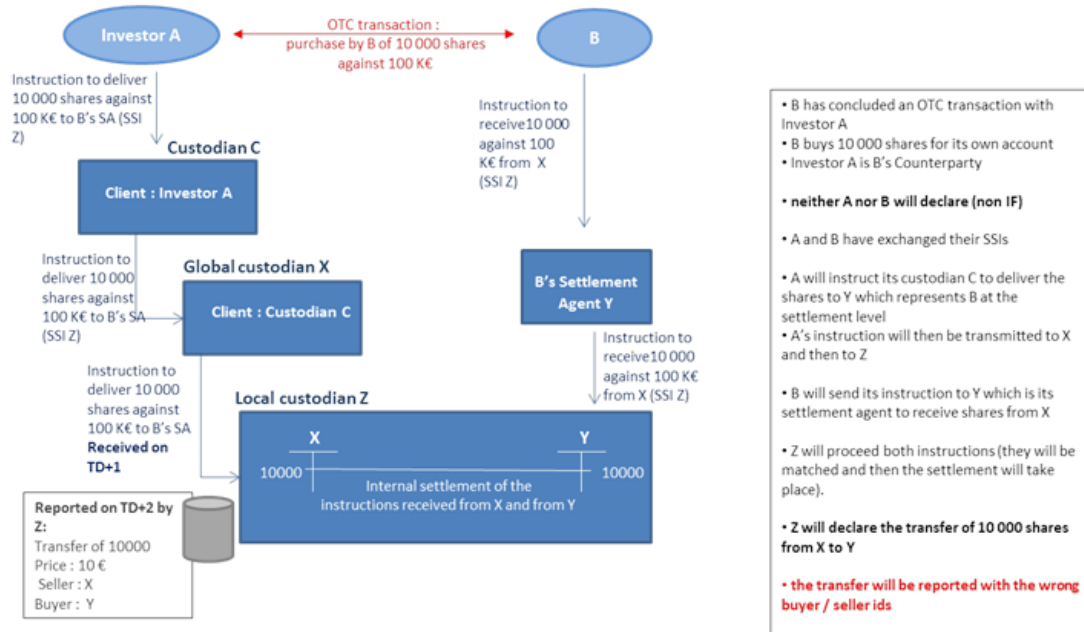
OTC transaction in € - internal settlement – A & B are not IF



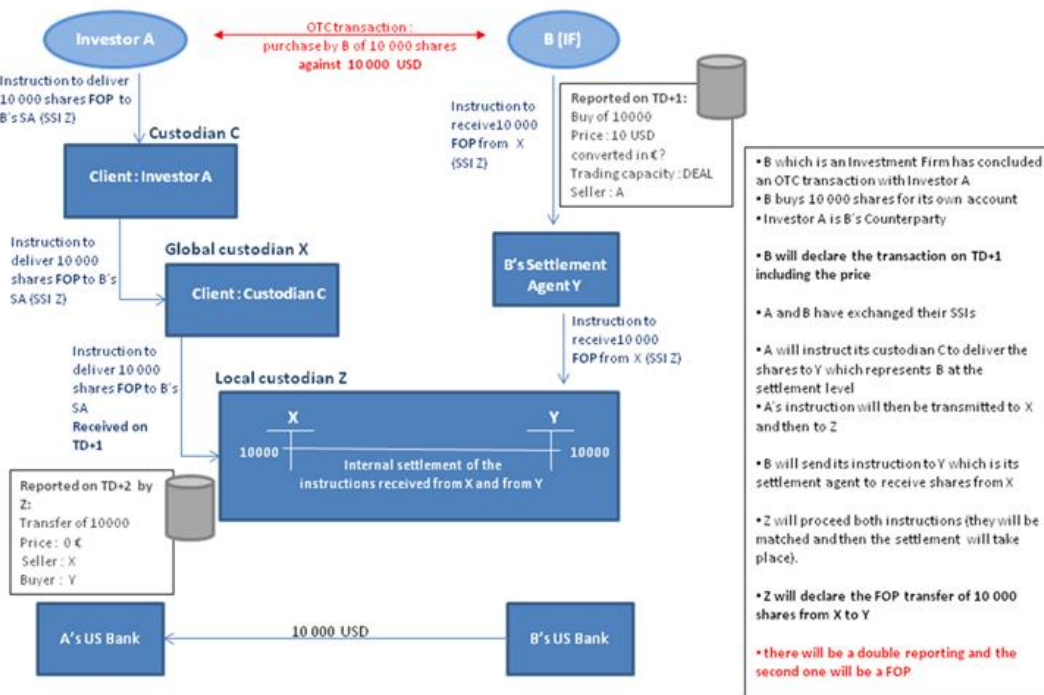
OTC transaction in € - internal settlement – B is an IF



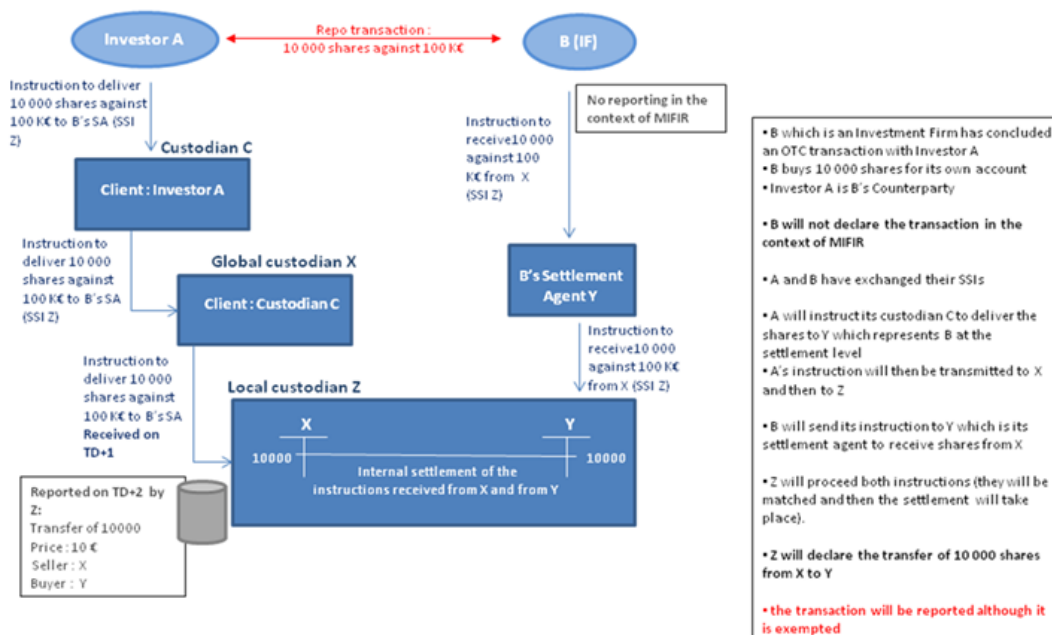
OTC transaction in € - internal settlement – A & B are not IF



OTC transaction in USD – internal settlement – B is an IF



REPO Transaction – internal settlement - B is an IF



c) General comments

More generally we suggest that there should be a **clear and unambiguous definition of a transaction** in order to have a clear and unambiguous way of determining when transaction reporting obligations arise and for which entities. ESMA correctly excluded from transaction reporting some post-trade or corporate actions/administrative events but not others. We would welcome more consistency in this respect.

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

Art. 2(5)(b) and Art. 2(5)(d) of ESMA RTS 22 exclude post-trade activities, notably custodial activities, from the definition of a transaction. At the same time, Art. 3(1)(v) of ESMA RTS 22 defines transfers of securities between accounts as an execution of a transaction. While we acknowledge that RTS 22 has not yet been finalized, we stress that this is an important inconsistency and call upon ESMA to first redress it in the RTS 22 and then to propose suitable guidelines accordingly.

If the intention of ESMA is to capture instructions to transfer securities initiated by investors, it should be made unequivocally clear in Art. 3 of RTS 22 that meant here are transfers following an investment decision by an investor, and not **any** transfers made by a custodian in its books or by a settlement agent in a CSD. Consequently, any reporting obligation of such transfers should rest on the originators of the transfer – understood as counterparties, and the agreement to transfer should be understood as a transaction.

As rightly described in examples 1.3.1.1 and 1.3.1.2 the starting point is Client A that wants to transfer financial instruments to Client B. We can assume that both A and B agree such transfer. In other words they conclude a transaction between them. Our strong reservation is that trying to catch pure OTC transactions by requiring custodians to report any transfer (internal or external) as soon as there is a change of beneficial owner will result in the need for custodians to report almost the entirety of their activities, as well as in double reporting, reporting of erroneous or incomplete information and thus distorting the view of the market.

We re-iterate that, as a matter of principle, events giving raise to the transaction reporting obligation under MiFIR should be strictly bound to an execution of a transaction or to a transfer of an order. Since an instruction to transfer securities at the level of the custodian/settlement agent is not a transaction, therefore executing the instructions is **not an execution**. Transfer instructions are not orders either. Transmission of orders occurs **before** execution, while custodian activities logically only take place **after** an execution has already taken place

Moreover, we disagree that the notion of change of ownership as such, i.e. resulting or not from a market transaction should be dragged into the spectrum of MiFIR transaction reporting. We wish to point out that an EU Transparency Directive 2004/109/EC has the purpose to monitor concentrations of large shareholdings, and that its objectives are distinct from the objectives of the reporting under MiFIR.

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

Could ESMA provide guidance for the following scenario?

- ✓ Fund manager X sends an order to investment firm Y to buy 500 shares. The order is a block order with 2 underlying clients: client A for 200 and client B for 300. A and B, both funds, are legal entities.
- ✓ Firm Y accepts the block order and transmits it to Firm Z without the allocation details.
- ✓ Firm Z executes the order on Venue M. Later that day and after having received the execution details from Firm X, Firm Y provides the allocation details (split between A and B) to Firm Z. Having obtained the allocation details from Y, Z books its trades against A and B.

Our questions are:

- ✓ Whom do firms Y and Z have to report as a client/counterparty at the time of transmission/execution?
- ✓ Should the report be amended and how once the allocation details become known to Y and to Z? (Reporting at block level or client level? Is INTC to be used somewhere? Which timestamps should be used - execution time or allocation booking time?)

Could ESMA elaborate also for the following 2 variations of the above scenario?

- ✓ Variation 1: Firm X send 2 separate orders to Firm Y on the same security. 1 order of 200 for fund A and 1 order of 300 for fund B. Firm Y groups both orders into a block and sends the aggregate order without allocation details to Firm Z for execution. What follows is identical to the initial scenario.

- ✓ Variation 2: Firm X sends an order to Firm Y to buy 200 shares for fund A. Another firm W also sends an order to Firm X to buy 300 of the same security for fund B. Firm Y groups both orders into a block and sends the aggregate order without allocation details to Firm Z for execution. What follows is identical to the initial scenario.

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

There is no need of further clarity.

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

There is no need of further clarity.

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

How to guarantee consistency between MiFIR and bank secrecy laws?

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

There is no need of further clarity.

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

There is no need of further clarity.

Q14: Do you require further clarity on the content of Article 10 of RTS 22? Please elaborate.

There is no need of further clarity.

Q15: Do you require further clarity on the content of Article 11 of RTS 22? Please elaborate.

There is no need of further clarity.

Q16: Do you require further clarity on the content of Article 12 of RTS 22? Please elaborate.

There is no need of further clarity.

Q17: Do you require further clarity on the content of Article 13 of RTS 22? Please elaborate.

There is no need of further clarity.

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

There is no need of further clarity.

Q19: Do you require further clarity on the content of Article 15 of RTS 22? Please elaborate.

There is no need of further clarity.

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

There is no need of further clarity.

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

Question on Part II 1.2.1 block 1 buyer/seller identification

- ✓ Portfolio manager X, either subject to transaction reporting under MiFIR or not, makes investment decision to buy a security for a collective investment portfolio which is **not** a legal entity and sends an order to an investment firm Y. From the point of view of Y and for the purpose of transaction reports submitted by Y, who is the buyer: Firm X or the FCP? Can the answer be different depending on whether X is subject to the transaction reporting requirement or not?
- ✓ Must Y report fields 12 to 15? And if yes how these fields shall be populated?
- ✓ Same questions but with a portfolio which is a legal entity
- ✓ We'd like to have separate answers for X transmitting successfully and for X transmitting unsuccessfully in the case where X is subject to the reporting requirement

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

Decision Maker field : we would like further clarity concerning what can be considered as entering in the scope of a “power of representation”, apart from a power of attorney.

Is it necessary for the “power of representation” to be given directly by the client to the Decision Maker (as in a power of attorney) or do we also have to include delegations resulting from court proceedings (like a guardianship or conservatorship) as well as minor’s accounts ?

Q23: Do you require further clarity or examples for population of the fields covered in Block 3? Please elaborate.

There is no need of further clarity.

Q24: Do you require further clarity or examples for population of the fields covered in Block 4? Please elaborate.

There is no need of further clarity

Q25: Do you require further clarity or examples for population of the fields covered in Block 5? Please elaborate.

There is no need of further clarity.

Q26: Do you require further clarity or examples for population of the fields covered in Block 7? Please elaborate.

There is no need of further clarity.

Q27: Do you require further clarity or examples for population of the fields covered in Block 8? Please elaborate.

The CP indicates to put “INDI” in field 62 whenever the short selling information is not disclosed by the client, while the RTS says “NTAV”. We understand that it is a mistake and that the field 62 shall be populated by “NATV”

Q28: Do you require further clarity or examples for population of the fields covered in Block 10? Please elaborate.

Question on Part II 1.2.9 Block 9 commodity derivative indicators:

For the field “commodity derivative indicator” (example 2.9.2) our understanding is this field is only applicable to entities that are a commodity house that is reducing risk in an objectively measurable way. So we would populate with “true” if a client that is a commodity house passes through this information – in all other cases it would be “false”.

Q29: Do you require further clarity or examples for population of the fields covered in Block 11? Please elaborate.

We would like ESMA to provide guidelines on the following situation: If a transaction is booked and then cancelled (intraday) in between 2 transaction reports (so the transaction has not yet been reported in a previous transaction report). Given that the cancellation is known at the time of producing the next report, should the transaction and related cancellation be booked in the next report or should nothing be booked?

We have the same question where the transaction was amended in the market rather than cancelled. We understand the use of the ‘CANC’ status in field 1 in the case of an erroneous report (report contains wrong information or non reportable transaction). However it’s less clear how to report a cancellation or an amendment in the market and how to populate field 1 and maybe also ‘CANC’ or ‘AMND’ in field 63. Typically, should the cancellation be reported as a new trade (field 1 = “NEWT”)? Could you provide such scenarios, once with a cancelation and an amendment of a transaction that has not yet been reported and also another with a cancelation and an amendment after the cancelled/amended trade was reported.

Q30: Do you require further clarity or examples for population of the fields covered in Block 12? Please elaborate.

We consider that in the example of notional increase (1.2.12.1), up-front payment field number should be 38 and not 42.

Q31: Do you require further clarity or examples for the scenarios in section 1.3.1? Please elaborate.

According to the two examples given in 1.3.1, the reporting should be done by the investment firm X where X seems to be the client’s custodian. We disagree with ESMA approach and strongly oppose that the reporting obligation of transfers (internal as well as external) should rely on custodian banks, for the following reasons:

Firstly, this requirement is done on the ground of a wrong assumption that the custodial activity (and its associated exemption) is limited to movements with no change of beneficiary, resulting in any other movement having to be declared. In line with our arguments in the introductory part, in Q6 and in Q7, this will lead to custodians having to report almost the entirety of their activities, and would result in double reporting and to incorrect reporting, and result in a total distortion of the view of the market.

Secondly, these two examples seem to assume that the custodian can distinguish transfer instructions resulting from reportable events from other transfer instructions. We have previously explained that this is not the case. More importantly, at the level of the custodian a number of crucial data that has to be reported is unavailable, notably:

- ✓ is delivery linked to an order executed by a broker on a TV
- ✓ the quantity of the instruction is the same as the one at the trading level
- ✓ the instruction corresponds to an aggregation of multiple transactions all related to the client
- ✓ the instruction likely corresponds to a net of multiple transactions all related to the client
- ✓ the client is the end client or represents several different clients and therefore maybe several different types of underlying transactions (some already reported other not yet)
- ✓ there is a real change of beneficiary
- ✓ the underlying transaction is a security financial collateral arrangement (thus the transfer is without any change of ownership)
- ✓ the underlying transaction is a lending of securities (thus not to be declared as an SFT)
- ✓ the related underlying transaction, in case the delivery is free of payment, is a free one or if the cash is paid outside the system (for example, because the CSD's SSS do not admit the currency agreed at the trading level : a US client that sold French shares on Euronext and wanted to be paid in USD); at the trading level such question could not exist, at the trading it is clear if the transaction is against cash or not....

Reporting transfers at the level of custody will lead to the following undesirable consequences:

- ✓ Double reporting: Since the detection of "real transfers" will be unfeasible, there is a risk that the custodian declares a settlement instruction as a transfer where the underlying transaction was between the final client and a broker and thus has already been declared by the broker itself. Unlike the investment firm that receives and transmits to another investment firm for execution (meaning having a role at the trading level) the custodian intervenes after and won't have any relation with the investment firm that executed the order and which is primarily responsible for the reporting
- ✓ Belated reporting: the custodian will declare the transfer at the latest one day after its execution (thus the day after the settlement of the transfer) although since the settlement instruction was the consequence of an order executed on the market to be declared the day after the execution; the NCA will receive two declarations it won't be able to match.

Thirdly, according to the examples provided in the Consultation Paper, X which is the custodian either executes the transfer (page 78) or receives an instruction that will be executed (page 79). Treating this as a reportable execution of a transaction is ill-conceived, since according to Art. 2(5)(d) of RTS 22 an instruction to transfer securities at the level of the custodian/settlement agent is not a transaction, therefore executing the instructions is not an execution. There seems to be confusion between the notion of an execution a transaction and settling a transaction, and we stress that custodians merely settle and not execute, and that logically they only intervene **after** a transaction has already taken place.

Indeed at the custodian level we are definitively in the “post-trade” part, after the conclusion of the transaction, even a pure OTC one, a place where it is not about “execution” anymore. In line with our above explanations, requiring the custodian to report the execution of the transfer means that the details included in the report will correspond to the instruction itself rather than the underlying transaction.

Q32: Do you require further clarity or examples for the scenarios in section 1.3.2? Please elaborate.

There is no need of further clarity.

Q33: Do you require further clarity or examples for the scenarios in section 1.3.3? Please elaborate.

There is no need of further clarity.

Q34: Do you require further clarity or examples for the scenarios in section 1.3.4? Please elaborate.

1.3.4.2; one order / multiple transactions – matched principal basis

We will be very interested by having the same example (one order – multiple transactions) with client A being confirmed at an average price and A having also transaction reporting obligations. As stated page 18 – 1.1.3 – A’s report shall reflect the execution that has been confirmed.

In the additional example, A would have been confirmed for 500 instruments at 99.40 SEK. So A should report the same level of granularity adding the identity of the buyer.

1.3.4.3; one order / multiple transactions – “any other” basis

As said above, ESMA stated, page 18 § 1.1.3, that “ *The fact that a firm is part of a chain makes no difference to its reporting obligations **except that its transaction reports shall reflect the execution that has been confirmed to it by the firm that has fulfilled its order***”. In the same time, page 88, ESMA wrote that “*The firm can submit the average price information in the separate confirmation to the client. **If the client is a firm with transaction reporting obligations, then it shall also transaction report the market executions rather than an average price transaction***”. Is it not a contradictory?

To avoid any ambiguity we would like to suggest ESMA to complete this last sentence: “*The firm can submit the average price information in the separate confirmation to the client. If the client is a firm with transaction reporting obligations, then it shall also transaction report the market executions rather than an average price transaction **except where the client has been confirmed at an average price***”.

Besides for the sake of clarity we believe that the guidelines should at least include the same case (one order – multiple transactions) but with client A being confirmed at an average price and A having also transaction reporting obligations.

Moreover and in order to be certain about the reportable granularity we'd like to know for each Firm in the chain who should report what in the following scenario:

- ✓ Client A sends an order to buy 1000 shares S to Firm X. Firm X transmits a quantity of 700 to Firm Y for execution.
- ✓ Firm Y executes the 700 in 2 market orders: 1 market order of 500 achieved in 3 fills (150+180+170) on venue M and 1 market order of 200 achieved one shot on venue N.
- ✓ Firm Y confirms to X for 500 at an average price and for 200 and also forwards the details of the fills for the first market execution.
- ✓ The same day Firm X sends the remaining 300 to another investment firm Z, who executes in one shot on venue O and sends back the execution details.
- ✓ Firm X confirms to A for 500 (average price), 200 and 300. X, Y and Z act in AOTC capacity and none complies with the transmission conditions under article 4.
- ✓ Client A is also in the obligation to report.

As per our understanding of the above statement, we would report like this:

- ✓ Regardless of whether or not Firm X provided an average price for the full quantity of 1000 (average of the 3 Market executions), client A reports 3 market executions, but not the individual fills of the 1st execution. For the first market execution the timestamp of the 1st fill is reported.
- ✓ Regardless of whether or not Firm Y provided an average price for the quantity of 700 (average of the 2 Market executions), Firm X reports 3 market executions, but not the individual fills of the 1st execution. For the first market execution the timestamp of the 1st fill is reported.
- ✓ Firm Y reports 2 market executions, but not the individual fills of the 1st execution. For the first market execution the timestamp of the 1st fill is reported.
- ✓ Firm Z reports the 3rd market execution.

Please note this is scenario follows a different logic than the multi-client scenario 2 under Part III 1.3.5.2 d), where 2 market allocations are grouped with an average price on the client side report with the use of INTC. We understand from this example that the ban on average price reporting is only valid for single client executions.

Finally we will be very interested in knowing how to report in the following scenario, which is slightly different from the others above:

- ✓ Firm X (the transmitting firm) receives an order to buy 1000 shares from Client A and sends it to Firm Y for execution.
- ✓ Firm Y executes the order on trading venue M. The execution is done in 3 fills (500+300+200).
- ✓ Firm Y sends the market executions to Firm X.
- ✓ Firm X confirms the transaction to Client A at an average price.

Could ESMA confirm the level of granularity expected (one transaction at an average price or several market executions) assuming that each intermediary in the chain will have to report (conditions for transmission as per Article 4 are not met. We understand that where Client A is also submitted to the reporting obligation and has been confirmed by the receiving firm at an average price, it can report at average price.

Q35: Do you require further clarity or examples for the scenarios in section 1.3.5? Please elaborate.

Short selling information

In a transmission chain, Firm X is an investment management company managing several collective investment funds and discretionary mandates. Firm X sends a block order to Firm Y and includes short selling information for transmission purposes. Should the short selling information be fund per fund or at block level? If at block level, how to handle cases where some participating funds in the block order are short selling and others are not?

Q36: Do you require further clarity or examples for the scenarios in sections 1.3.6 and 1.3.7? Please elaborate.

RTS 22 specifies: “*Field 25 shall **only be populated** for transaction reports by **transmitting firms** where the conditions for transmission as set out in Article 4 are not met.*”

In addition, section 1.1.2.4 states: “*Investment firms dealing on **own account** or on a **matched principal** trading basis are acting directly themselves and **cannot transmit** orders as any orders they submit to another firm are their own orders rather than being transmission of an order received from a client or resulting from a decision to acquire or dispose of a financial instrument for a client under a discretionary mandate.*”

So we understand that firms dealing on own account or in a matched principal capacity should not populate field 25 because they cannot transmit and field 25 should only be populated by transmitting firms.

However in the example under 1.3.7 it is mentioned “*Field 25: None of the firms have transmitted orders as they are all dealing on own account or matched principal capacity and therefore they all populate this field with ‘false’.*”

So we would like to obtain a confirmation when field 25 should be left empty and when populated with ‘false’.

Q37: Do you require further clarity or examples for the scenarios in section 1.3.8? Please elaborate.

As stated in our answer to Q2 there is a need for further clarification.

Example 1.3.8.1 describes the case with a chain of intermediaries where conditions for transmission as per Article 4 are not met. As far as there are at least two firms that shall report one of our main concerns is to know exactly which fields have to be populated and by whom (either the transmitting firm or the executing broker or both). Example in pages 112/113 focuses on some fields. But since, as written page 10, “*fields that are not specifically mentioned in an example cannot be assumed to be irrelevant*” we ask ESMA to give a comprehensive list of fields that are relevant for the transmitting firm and those that are related to the executing broker.

Moreover, we would like ESMA to precise the following points.

Under 1.3.8.1:

- ✓ A Dutch firm X sends a buy order on behalf of Investor A under discretionary mandate to French firm Y. Trader Y1 of firm Y decides to accept the order from firm X and decides to send the order (electronically) to German firm Z with the explicit instruction to have the order executed automatically by a particular algorithm « algo-Z » of firm Z.
- ✓ The algorithm executes the order on venue M. Note the algo Z is developed, maintained and ran by Firm Z.
- ✓ None of the firms complies with transmission requirements under article 4. Firm X, Y and Z operate in AOTC capacity.
- ✓ Firm Z is member of venue M but Firm Y is not.

Our understanding is that, just like if Y would use DEA provided by Z (see e.g. under 1.3.10) and regardless of whether Firm Y passes parameters for the algo to Firm Z along with the order, Firm Y will report Z in field 16 (seller). Firm Y is transmitting and not using the algo. Firm Z is using its algo, be it upon instruction from Firm Y. The report by Firm Y looks like this (some fields only):

Field	Value	comment
3 venue transaction ID		Firm Y did not execute on a venue but transmitted, so no venue Id must be reported
7 buyer	LEI of X	
16 seller	LEI of Z	Firm Y does not need to look behind Firm Z
36 venue	XOFF	Firm Y did not execute on a venue but transmitted
37 country of membership		Firm Y did not execute on a venue
57 investment decision		Firm Y did not make any investment decision and there's no successful transmission
58 country investment decision		Firm Y did not make any investment decision
59 execution within Firm	National ID of Y1	The algo was used by Firm Z, not Firm Y
60 country execution	FR	

Under 1.3.8.2

Fields to be provided by the transmitting firm for reporting purposes to be reported by the receiving firm require further clarification. We'd like ESMA to draw a clear and exhaustive list of those fields taking into account the following inconsistencies:

- ✓ It is illogical to require from the transmitting firm to provide any transaction level information such as the (execution) price and (execution) quantity, or any other information that is unknown to the transmitting firm at the time of order transmission. If the intention is that the transmitting firm provides the **ordered** quantity and the **limit** price, which are necessary for order transmission but not for transmitted order reporting, then this should be clearly stated.

- ✓ The list of fields required to be provided by the transmitting firm, as in Art. 4(2) RTS and on page 115-116 of the present consultation, does not correspond to the fields marked in green in the consultation example chart p. 116-117. For instance, “price” and “instrument ID” are not marked green. “Quantity” is not in the examples at all. Any other fields?

Under Part III 1.3.8.2 Conditions for transmission met by all transmitting firms :

- ✓ May we consider that fields 62 and 64 in the second example under 1.3.8.2 “Receiving firm acting in a matched principal/any other capacity” (page 121) should be highlighted in green, by analogy to the previous example?

Under 1.3.8.3

- ✓ “Conditions for transmission as per Article 4 are met only by some transmitting firms in the chain » (investor 1 sends order to firm X who doesn’t meet requirements of article 4. X passes order to firm Y who transmits the order to firm Z who executes. Y complies with article 4) if X passes some information on to Y (e.g. short sell flag), should Y report any information provided by X (e.g. 62 short selling indicator = ‘true’) or is it all or none, meaning that from the moment X doesn’t comply with article 4 and reports, Y should ignore the information provided by X and report all fields from own records (e.g. field 62 = ‘false
- ✓ Page 128: why is the report by firm Y indicating Firm X is being the buyer in field 7? Isn’t firm Z the buyer?
- ✓ Page 133: why are some fields of the right column green and is field 27 populated in that same right column while the corresponding transaction of client B doesn’t comply with transmission conditions?

Q38: Do you require further clarity or examples for the scenario in section 1.3.9? Please elaborate.

1.3.9: Investment firm acting under a discretionary mandate for multiple clients without meeting transmission conditions.

We would like ESMA to provide guidelines for firm Y (the broker):

- ✓ In the cases as described
- ✓ If the case where X is not required to report (X is not an investment firm) – see additional cases we can suggest

Moreover we would like ESMA to precise in example 1.3.9.2, where the executing broker confirms the completed transaction to X, that the description of the reporting is the same should the broker Y be in a AOTC or DEAL trading capacity. Although it is clearly explained page 18 that “*The fact that a firm is part of a chain makes no difference to its reporting obligations except that its transaction reports shall reflect the execution that has been confirmed to it by the firm that has fulfilled its order*”, we believe that such point deserves to be clearly stated also in this example.

Example 1

Entities concerned

- ✓ **X**: Asset Manager - X is not an Investment Firm
- ✓ **Y**: Broker
- ✓ Funds **Fd1** and **Fd2**: clients of X (undertaking management)
- ✓ Investor **I** (natural person): client of X (portfolio management)

The transactions

- ✓ X transmits to Y an aggregated order to buy 120 000 shares
- ✓ The allocation (that remains at X level) is:
 - 50 000 shares for Fd1
 - 65 000 shares for Fd2
 - 5 000 shares for I
- ✓ Y receives a single order and transmits it to the market (under the AOTC trading capacity)
- ✓ The order is executed in three times:
 - 55 000 at 11€
 - 37 500 at 11,50 €
 - 5 000 at 11,30 €
- ✓ Y confirms the complete transaction to X (120 000 shares at an average price of 11,225 €)

The reporting

- ✓ X is not an Investment Firm so shall not report
- ✓ The reporting is done only by Y
 - How does Y report?
 - How should the item Buyer be populated? With the LEI of X (since X is the client of Y)?

Example 2

Entities concerned

- ✓ X: Asset Manager - X is not an Investment Firm
- ✓ Y: Broker
- ✓ Z1: Distributor – Z1 is a Credit Institution and is not an Investment Firm
- ✓ Z2: Distributor – Z2 is an Investment Firm
- ✓ Investor I1 : Retail Client of X (portfolio management) and client of Z1 (custody)
- ✓ Investor J1 : Retail Client of X (portfolio management) and client of Z1 (custody)
- ✓ Investor I2 : Retail Client of Z2 (with a delegation of the portfolio management by Z2 to X)
- ✓ Investor J2 : Retail Client of Z2 (with a delegation of the portfolio management by Z2 to X)

The transactions

- ✓ X transmits to Y an aggregated order to buy 100 000 shares
- ✓ The allocation (that remains at X level) is:
 - 30 000 shares for I1
 - 35 000 shares for I2
 - 15 000 shares for J1
 - 20 000 shares for J2
- ✓ Y receives a single order and transmits it to the market (under the AOTC trading capacity)
- ✓ The order is executed in three times:
 - 40 000 at 11€
 - 27 500 at 11,50 €
 - 32 500 at 11,30 €
- ✓ Y confirms the complete transaction to X (100 000 shares at an average price of 11,235 €)
- ✓ X transmits a settlement instruction to Z1 for the aggregated transaction into a single CSD account with the re-allocation into clients' accounts (I1 & J1, I2 & J2) and a settlement instruction to Z2 with the re-allocation into I2 & J2 accounts.
- ✓ Z1 instructs Z2 on the settlement of I2 & J2 transactions and instructs the CSD (SSS) on the global quantity of the aggregated transaction

The reporting

- ✓ X is not an Investment Firm so shall not report
- ✓ Z1 is not an Investment Firm and so shall not report for its client (I1 & J1)
- ✓ Z2 is an Investment Firm, not acting as RTO, but offering Portfolio Management services and so shall report for its clients (I2 & J2)
- ✓ A reporting is done by Y
- ✓ How does Y report?
- ✓ How does Z2 report?
- ✓ How are the following fields populated :
 - 3 Trading venue transaction identification code
 - 4 Executing entity identification code
 - 6 Submitting entity identification code
 - 7 Buyer identification code
 - 9 Buyer - first name(s)
 - 10 Buyer - surname(s)
 - 11 Buyer - date of birth
 - 12 Buyer decision maker code
 - 25 Transmission of order indicator
 - 26 Transmitting identification code (for the buyer)
 - 27 Transmitting identification code (for the seller)
 - 28 Trading date time
 - 29 Trading capacity
 - 36 Venue
 - 57 Investment decision within firm
 - 59 Execution within firm

Q39: Do you require further clarity or examples for the scenario in section 1.3.10? Please elaborate.

1.3.10 : Direct Electronic Access (DEA)

The DEA provider should populate field 59 from its own records. Since there's no manual intervention by the DEA provider, should an identifier of the DEA system be reported by the DEA provider is if it was a trading algo? What is the transaction doesn't go through the DEA provider system (sponsored access)? We would like ESMA to clarify these points.

Q40: Do you require further clarity or examples for the scenario in section 1.3.11? Please elaborate.

There is no need of further clarity.

Q41: Do you require further clarity or examples for the scenarios in sections 1.3.12 and 1.3.13? Please elaborate.

There is no need of further clarity.

Q42: Are there any other equity or equity like instruments scenarios which require further clarification?

There is no need of further clarity.

Q43: Are there any other bonds or other form of securitised debt scenarios which require further clarification?

There is no need of further clarity.

Q44: Are there any other options scenarios which require further clarification?

There is no need of further clarity.

Q45: Are there any other contract for difference or spreadbet scenarios which require further clarification?

There is no need of further clarity.

Q46: Are there any other credit default swaps scenarios which require further clarification?

For CDS we would like ESMA to precise what should be populated in the price field 32: is it the negotiated/implicit rate or the contractual coupon rate used for premium calculation?

The same question applies to all standardised instruments where an upfront payment compensates for the difference between contract rate (coupon) and market rate at the moment of the transaction

Q47: Are there any other swap scenarios which require further clarification?

1.4.3.7.b equity swap traded on a trading platform outside the Union.

We do not agree with the representation of equity swaps (examples a to f) since we see the equity swap as an instrument as such – and breaking it down into the level of the legs would mean the reporting does not happen at instrument level any more.

Definitions:

A transaction may be an execution of a trade in a **derivative product** (i.e. option, swap, etc. with specific details). This derivative product may be composed of:

- ✓ one “leg” (e.g. a commodity forward where both parties agree to buy/sell a specific underlier at a certain price at a certain date in the future, or an option where one party has the right to buy or sell at a future date)
- ✓ multiple (2 or more) “legs” (e.g. an equity swap where the pay-off of return of an equity underlier is set against a floating interest rate accrual for a period) – those legs can be arranged to interact in many ways to accrue according to the same schedule and value at the same moment in time, or can be sequential, or can trigger each-other (an example is an interest rate swaption where there is an option to enter into a swap in future under certain criteria (e.g. a rate being above a reference strike rate))

But importantly, this derivative product is one consolidated infrangibly product

- ✓ There is one single order and execution
- ✓ Some of the legs might not be MIFIR instruments – and as such not reportable. ESMA and competent authorities would have a wrong view on the product
- ✓ The (combination of) multiple legs cannot be handled separately (changing attributes on one of the legs cannot be done without affecting the other legs attributes) and a party cannot exit one of the legs independent of the other
- ✓ The premium/price at inception is for the derivative product and valuations are for the derivative product as prices and valuations for the individual legs do not exist
- ✓ These products are confirmed on one legal agreement for the derivative product (typically on very standardised document templates and recognised as a specific contract type under ISDA documentation and the Derivatives Taxonomy)
- ✓ Any payment/premium/up-front fee is for all legs combined together for the derivatives product

In our view an equity swap is – as explained above- 1 single derivatives product, and should be reported as such (like the CFD which is in fact also a kind of equity swap, and like the credit derivative swap and interest rates swap traded on a venue that ESMA requires to be reported as 1), so no need to link them in the reports.

We do understand ESMA / NCA requirement to have a good view on which party receives / delivers the underlying and that this requirement drives the request to report on a leg by leg basis, but we think this can be catered for differently – allowing Firms to submit 1 report (reflecting the fact the product was traded as 1 product, with 1 price, premium and trade reference).

We think this can be done the following way:

The field “underlying instrument code” (field 47) where we populate ISIN – and the field “underlying index name” (field 48) should be repeatable fields (example in case of basket we need to report all the constituents of the basket that is traded on venues). Our proposal is to include in these fields the underlying for both legs, and to add a +/- sign in order to show whether the reporting party buys or sells the underlier – not taking into account the fact whether he is buyer/seller on the transaction: just the view of the reporting party re the legs (similar to the way the confirmation is drafted).

For example a ‘equity swap with 1 equity leg (p 169) the report for Firm X would be assuming there is an upfront payment of 120000 USD – X pays.

We keep the ESMA rule for buyer/seller: X buys the swap as X receives the equity underlying

We think the notional currency for this equity swap traded on US venue would be USD and not EUR – so we changed this. We have put the spread in % in the price field – that would allow NCA to have a better understanding of the product (apart from seeing the spread in the name). Price multiplier on these instruments would be 1 (we changed that).

As a result, we propose the following report:

n	field name	report by Firm X	Comment
2	transaction reference number	123452	we typically would have 1 trade ref for both legs
3	trading venue transaction number		blank here - but we would trade the swap as 1 on a venue
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of Firm X}	
16	Seller identification code	{LEI of Firm Y}	
30	Quantity	1000000	crf field 46
33	Price	0.05%	we would suggest to put the spread in % in the price field
34	Price Currency		
36	Venue	XUSA	
38	Up-front payment	120000	X buys and pays - so amount is positive
39	Up-front payment currency	USD	
40	Complex trade component id		
41	Instrument identification code		
42	Instrument full name	'BAYER EQS LIBOR3M+0.05% SEP 15'	
43	Instrument classification	SESPXC	
44	Notional currency 1	USD	
46	Price multiplier	1	we would expect price multiplier 1 for derivatives
47	Underlying instrument code	+DE000BAY0017	shows Firm X receives the price movement on Bayer
48	Underlying index name	-LIBO	shows Firm X pays LIBOR +0.05% (we assume no ISIN for LIBOR - should there be ISIN we would put that ISIN in previous field also with the - sign)
49	Term of the underlying index	3MNTH'	
55	Expiry date	31/12/2017	
56	Delivery type	CASH	
61	waiver indicator		
63	post-trade indicator		

This method works on all the examples – we can provide more details

FX swap

We would like ESMA to provide guidelines on FX swaps.

Q48: Are there any other commodities based derivatives scenarios which require further clarification?

Q49: Are there any other strategy trades scenarios which require further clarification?

Further definitions: A number of individual derivatives products may be combined/bundled together into **packaged transactions** (“packages”, “structures”, “and trading strategies”).

These “packages” can:

- ✓ become very standardised trading strategies e.g. straddles/strangles – which are combinations of put and call option derivative products: the straddle package can be executed on a trading venue platform as a package without requesting execution of the individual components, and there is a standardised confirmation that allows the product to be confirmed electronically
- ✓ remain very bespoke and tailored to a client’s specific risk management needs

To reiterate: the “packages” are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components without the other, the premium/price at inception is for the “package” and the valuation is for the “package”.

We understand ESMA expects us to report at the level of the MIFIR instrument, and these packages are combinations of instruments. These are the type of trades we would “link” by means of the complex trading strategies.

Example: long straddle involves purchasing, both a call option and a put option with same strike and expiry. Suppose Firm X buys a long straddle on the share DE0000000001 – strike 40 / expiry 14/03/2018 with Firm Y as a counterparty. These options do not list on a venue, and the straddle is done OTC. Firm X would link both transactions using a complex trade component identifier.

n	field name	report by Firm X call option	report by Firm X put option	Comment
2	transaction reference number	4567801	4567802	
3	trading venue transaction number			
4	Executing entity identification code	{LEI of Firm X}	{LEI of Firm X}	
7	Buyer identification code	{LEI of Firm X}	{LEI of Firm X}	
16	Seller identification code	{LEI of Firm Y}	{LEI of Firm Y}	
30	Quantity	1000	1000	
28	Trading date time	2017-02-02-T18:15:30Z	2017-02-02-T18:15:30Z	
33	Price	10	10	is the price for the straddle
34	Price Currency	EUR	EUR	
36	Venue	XXXX	XXXX	
38	Up-front payment			
39	Up-front payment currency			
40	Complex trade component id	12345	12345	
41	Instrument identification code			
42	Instrument full name	OTC call option on DE0000000001 strike 40	OTC put option on DE0000000001 strike 40	
43	Instrument classification	OCESPS	OCESPS	
44	Notional currency 1			
44	Notional currency 2			
46	Price multiplier			
47	Underlying instrument code	DE0000000001	DE0000000001	
48	Underlying index name			
49	Term of the underlying index			
55	Expiry date	14/03/2018	14/03/2018	
56	Delivery type	CASH	CASH	
61	waiver indicator			
63	post-trade indicator			

Question is what would happen if the package is traded on a venue – would the package then have an ISIN or would both instruments still have to be reported separately?

Other question is how to report the package should the package be done off venue, but the underlying instruments be tradable on a venue (and have ISIN) as this could lead to rejection of the report (XXXX in venue field – but instruments have an ISIN and fields 42-56 are blank).

A **basis trade** is a trading strategy where a trader buys/sells a security or commodity and sells/buys a related derivative – we do not see this as a “package” as this is basically 2 different transactions in 2 different products (e.g. one derivative product and one acquisition of a related security) where the counterparty on both products can be different – and where there might not be a one to one relation in terms of size /timing - between the derivative product transaction and the transaction(s) in the underlying security.

We would not “link” those transactions together as they exist separately, and as such we do not agree with the example given in the Guidelines.

Q50: Is the difference between aggregated orders and pending allocations sufficiently clear?

We haven't looked at this question.

Q51: Do you require further clarity on the proposals made in sections 2.1 to 2.11? Please elaborate.

We haven't looked at this question.

Q52: Do you agree require further clarity on the proposals made in section 2.12? Please elaborate.

We haven't looked at this question.

Q53: Do you require further clarity on the proposals made in section 2.13? Please elaborate.

We haven't looked at this question.

Q54: Are there any further clarifications required on the concept of 'reportable event'? If yes, please elaborate.

We haven't looked at this question.

Q55: Is it sufficiently clear at what point OTC transactions shall be time-stamped? If not, please elaborate.

Our understanding is that, for Firms not operating a trading venue, any event reportable under the post trade transparency or transaction reporting requirements as well as events that should be kept record of should be timestamped as per requirements under MiFIR Art. 50, if and only if they're executed on or under the rules of a trading venue on which the Firm is member or participant. This excludes OTC trades, including executions concluded by a third party in an order transmission chain even if the third party executed the trade on a trading venue on which the Firm is a member or participant (the transmission is considered to be OTC). Any such excluded trades should be timestamped with the granularity of 1 second.

As per technical standards recommending to recast Art. 7 of Regulation 1287/2006 on implementing MiFID, recordable events include orders received from clients. Such inbound client orders are often restructured (aggregated or split) before transmission or execution, sometimes in many parts. Given that, at the time of reception, it's unknown whether the order will be executed partially or completely on a venue or not and also how it will be executed with respect to the various options listed in Table 2 of Annex of RTS 25, it's ambiguous how we should determine applicability of MiFIR Art 50 (1) and the correct granularity for client orders. The way we see things is that inbound client orders are received OTC / off venue and are not affected by Art 50 (1) and should therefore be recorded with a precision of

1 second or better. When transmitting or submitting the orders for execution, granularity will apply to those outbound orders depending on the venue (trading venue or not) and execution mode as per Table 2 of Annex of RTS 25,

For clock synchronization purposes, where a receiving firm executes a trade on a venue on behalf of a transmitting firm, would that transaction be considered to be OTC from the point of view of the transmitting firm, just like it is for the purposes of transaction reporting (use of 'XOFF')? Yet, is it correct that, if the transmitting firm is not a member of the venue, clock synchronisation under article 50 doesn't apply.

For trades transmitted by voice as part of an execution chain, should the transmitting firm acting in agency capacity (AOTC capacity) have exactly the same timestamp for the execution as the receiving firm who executed the order for the transmitting firm or may there be some reasonable divergence? In other words should the transmitting and receiving firm agree on the timestamp at the time the execution is reported back to the transmitting firm by the receiving firm?

For the purpose of MiFIR Art 50 (1), is a transaction in a non standardised instrument (e.g. CDS or IRS with broken dates and custom coupon rates), executed on an MTF through an RFQ mechanism considered as OTC?

Q56: Do you require further clarity on the content of Article 4 of RTS 25? Please elaborate.

We haven't looked at this question.

Q57: Do you agree with the proposals made in sections 3.2 to 3.4? Please elaborate. Are there any further clarifications required?

We haven't looked at this question.

