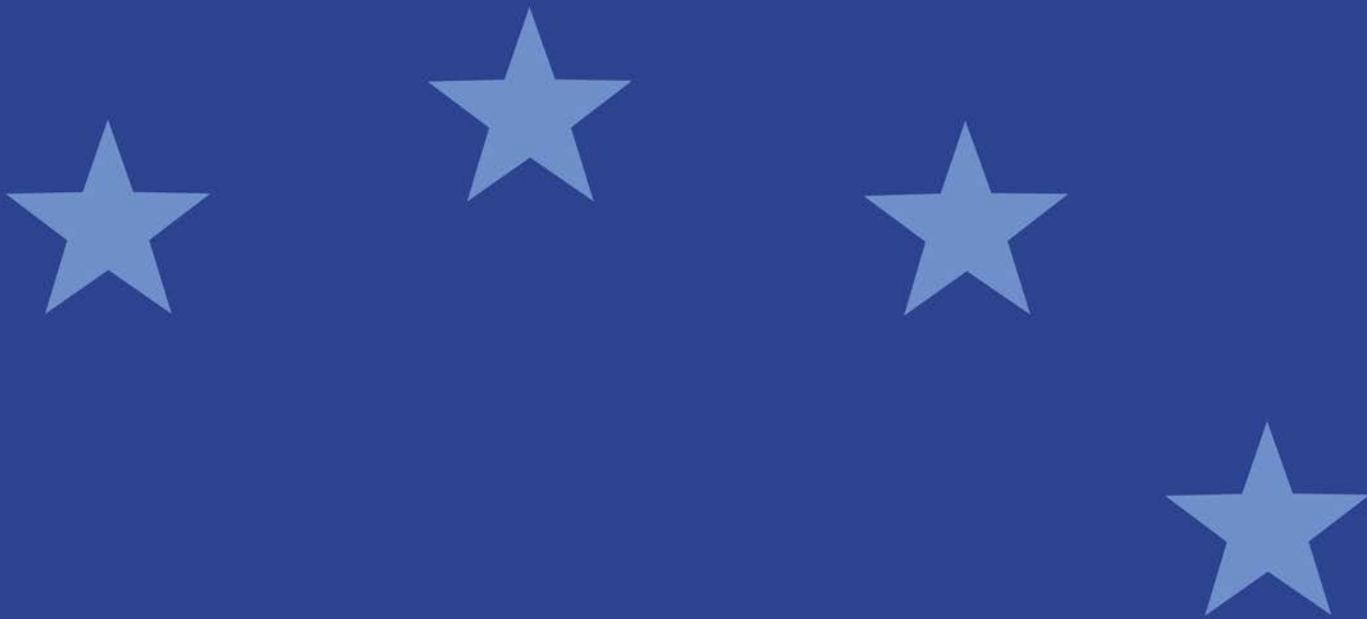


Response Form to the Consultation Paper

**Technical standards on reporting, data quality, data access and registration of
Trade Repositories under EMIR REFIT**



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. 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 **19 June 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_TSTR_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_TSTR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TSTR_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 on MiFIR report on Systematic Internalisers in non-equity instruments").
6. If you wish to provide comments on the definitions, formats, allowable values or reconciliation tolerances for the specific reporting fields, please use for that purpose the additional response form in excel format.

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 publically 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

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties of derivatives, central counterparties (CCPs) and trade repositories (TRs), as well as from all the authorities having access to the TR data.

General information about respondent

Name of the company / organisation	International Swaps and Derivatives Association (ISDA)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_TSTR_1>

The International Swaps and Derivatives Association, Inc. (“**ISDA**” or “**we**”) appreciates the opportunity to provide comments to the European Securities and Markets Authority (“**ESMA**”) Consultation Paper ‘Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR Refit’ (“**Consultation Paper**” or “**CP**”).

ISDA supports ESMA’s proposals to harmonise EMIR with global CPMI-IOSCO reporting data elements, streamline reporting, and provide additional clarification on reporting requirements. We believe that the overall effect of the proposals within the Consultation Paper will lead to improved data quality, accuracy and completeness of trade data reported to ESMA. However, we would like to take this opportunity to highlight several key areas which we hope ESMA will consider prior to publishing the final report and submit the draft technical standards to the European Commission.

Use of ISINs and CFI Codes: We fully support the introduction of UPIs for the reporting of OTC derivatives, but believe this should be instead of, not as well as, reporting ISINs and CFI Codes. ISINs have been designed to be an instrument identification and are not necessarily best suited as a product identification for trade reporting where multiple ISINs will be assigned for economically comparable products. The information available from CFI Codes can be derived from the UPI, so reporting a CFI Code in addition to the UPI does not appear to be necessary. Finally, the UPI has been developed specifically to

fulfil the need for a global standard of product identifier, therefore in order for EMIR to remain consistent with comparable global reporting regimes, we argue that only the UPI should be reported as a product identifier.

Reporting format: We do not believe that the format in which counterparties report to TRs should be mandated (with the consultation paper proposing ISO 20022 as the reporting format), and instead existing flexibility of format that counterparties currently have should be maintained. We acknowledge that ISO 20022 is a useful general purpose data dictionary, but this does not immediately translate into a universal single language message set across all domains, where single data elements may have multiple definitions based on the user build. Implementing ISO 20022 for a particular purpose (e.g. reporting to a particular regime), does not provide a firm with a ready-made “drop-in” solution for the firm to use ISO 20022 for other purposes.

Reconciliations: While there is a significant increase in the number of reconcilable fields, the majority of these fields are transactional data that would be expected to have been agreed between the counterparties anyway and so there is an expectation they should match. However, some of the proposed reconcilable fields cannot be expected to match either because there may not be a value available to report or because the proposed tolerance level is too narrow. Therefore, we encourage ESMA to consider removing the reconciliation requirements for several fields and we also propose that ESMA retain the flexibility to adjust field reconciliations if required as opposed to incorporate the rules within the technical standards themselves.

Reporting of outstanding trades: We understand the benefits of re-reporting all outstanding trades under the new technical standards and are in favour to this approach. However, we strongly argue that counterparties are granted a period of six months following the start date in which to re-report outstanding trades. During this period we would welcome an understanding that National Competent Authorities (NCAs) will not prioritise supervisory actions in relation to the reporting of such outstanding trades.

Implementation period: ISDA agrees with an 18 month implementation period proposed by the consultation paper, although this period should be conditional on (i) the ISO 20022 standard (if mandated) being fully developed and available before the start of the implementation period and (ii) the validation rules are published at or prior to the start of the implementation period. Until these elements are finalised and available, market participants are limited as to the development of reporting systems and processes.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 74 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

<ESMA_COMMENT_TSTR_1>

Questions

Q1 : Do you see any other challenges with the information to be provided by NFC- to FC which should be addressed? In particular, do you foresee any challenges related to the FC being aware of the changes in the NFC status?

<ESMA_QUESTION_TSTR_1>

The consultation paper (CP) captures the data points an NFC- would need to provide to their FCs. However, paragraph 8 suggests that for some fields, an NFC- would provide the data on a trade-by-trade basis, and this is further clarified within the EMIR Q&A question TR Question 54 (a). Both parties are likely to find the exchange of NFC- entity data for every trade to be impractical and potentially unfeasible to consistently support. Instead, the data an FC requires from their NFC- client would likely be provided upfront, most likely in the form of a written agreement or a procedures document. This agreement would set out what NFC- values would be consistently populated for the relevant fields.

Therefore, in order to simplify the exchange of NFC- data and avoid additional steps when executing a trade, we propose that an NFC- entity should be permitted – for example, via a written agreement and/or procedural document – to agree standard values the FC will report in the fields for which the FC requires client data.

The FC will assume these pre-agreed values will be applicable for every trade unless the NFC- client advises otherwise, in which case the FC would be expected to report as per the NFC- clients instructions for that trade. Any such notification should be made directly to the FC, and if the NFC- entity uses a data service provider, the NFC- should ensure the service provider informs the FC of the notification accordingly.

In regards to the fields identified within paragraph 8, where an FC will require data from the NFC- client, we question whether data is required for the field 'Clearing Member'. NFC- entities are not required to clear so an FC would presumably not need data for this field. If there are scenarios when the Clearing Member field is to be populated, we request whether examples can be provided to assist with our understanding of the reporting requirement.

The recently published EMIR Q&A provides additional clarity on how to proceed when the classification of an NFC changes between plus and minus (TR question 54 (c)). We have identified additional points for clarification when an NFC changes classification, along with our interpretation:

- 1) When an NFC- is reclassified as an NFC+, it is assumed that all open positions do not need to be re-reported to reflect the 'plus' status.
- 2) Where an NFC- is reclassified as an NFC+, but does not inform the FC, it is assumed the NFC+ is liable for any duplicative reporting which may occur as a result.

<ESMA_QUESTION_TSTR_1>

Q2 : Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.

<ESMA_QUESTION_TSTR_2>

Paragraph 14 confirms this reporting requirement applies to OTC contacts only. However, the EMIR definition of OTC derivative contacts is such that futures and options executed on a non-equivalent third country exchange could be considered an OTC derivative rather than an ETD. This could therefore lead to some FCs deciding to carve out a subset of their ETD business to report on behalf of NFC- clients. Historically, market participants have reported such contracts as ETD trades rather than OTC derivatives, and this is broadly expected to continue. However, inconsistent interpretation of the rules within the industry will increase the potential for over and/or under reporting and enhance the burden faced by NFC- counterparties where, depending on their reading of the text, certain FCs will take action to report some, or all, ETD contracts on behalf of their FC- counterparty while others will deem this activity to be out of scope.

In order to avoid inconsistency amongst market participants, we request the technical standards provide clarification as to whether futures and options executed on a non-equivalent third country exchange are captured within the scope of the amendment made by EMIR Refit, whereby the FC is liable to report OTC derivatives on behalf of NFC- clients.

Furthermore, if such trades are captured within the scope of the EMIR Refit requirement, clear guidance would be required as to how such trades would be reported using OTC derivative terms.

<ESMA_QUESTION_TSTR_2>

Q3 : Do you need any further clarifications regarding the scenario in which the FC and NFC- report to two different TRs?

<ESMA_QUESTION_TSTR_3>

It is understood that the consultation paper specifies that the guidelines on portability are to be used for transferring trades between TRs.

We would like to note though, that the portability guidelines were created to support the transfer of full portfolios of trades between TRs rather than the 'partial porting' of a sub-set of an NFC- entities trade portfolio to potentially multiple TRs. This has raised some questions and challenges to be addressed. These include:

Initiating the porting of trades – NFC- to FC. It is our understanding that the NFC- entity is required to start the porting process. While the FC may also need to inform their TR of the trades being ported over, unless the FC is a member of the TR used by the NFC- entity, the FC cannot initiate the porting of trades.

It is less clear as to whether the FC needs to sign the portability agreement, or whether this only needs to be signed by the NFC- and the two TRs involved. If the FC also needs to sign the agreement, separate forms will be required for confidentiality reasons. In order to reduce the burden on NFC- entities, we propose that FCs do not sign the portability agreement so that only a single form is required.

Initiating the porting of trades – FC to NFC- or NFC+. There will be scenarios where trades will be transferred from, rather than to, the FCs TR. For example, if an NFC- entity chooses to start reporting for itself or if an NFC- is reclassified as an NFC+, the open trades on the FCs TR will need to be transferred to the NFC- / NFC+ TR. For this type of transfer to take place, the FC would presumably need to start the transfer process by notifying its TR, but it is not clear what action or approval the NFC entity would need to take.

In light of these two above points, we would welcome clarification on which party initiates the process of transferring trades between TRs (both to and from the FCs TR), as well as any actions the other counterparty may need to take, such as providing acknowledgement that the transfer is to take place or signing of the portability agreement.

Alternative method to transfer trades between TRs. We appreciate the portability guidelines provides transparency as to the full lifecycle of NFC- trades. However, as mentioned above, the portability guidelines were not developed to support partial porting and so TRs have had to take steps to support this requirement while aiming to keep the burden to NFC- and FC entities to a minimum. At the time of writing (post-effective date for the EMIR Refit requirement), not all TRs are in a position to support partial porting, although temporary work-arounds and/or permanent solutions are being developed. Looking into the future, we would encourage alternative means for transferring trades to be considered. For example, an NFC- entity could exit positions from their TR, while the FC reports the same positions into their TR, but both the 'exit' and 'new' reports are tagged and linked with some sort of 'tracking ID'. This should be a unique ID agreed between the two counterparties, and although the details of such a process would need due consideration to implement effectively and without undue burden on either party, this would provide transparency as to what trades have been transferred between TRs due to the FC / NFC- reporting requirements, i.e. the trades with a Tracking ID, against what trades are genuine exit and New trade events, i.e. trades without a Tracking ID. Ideally, the creation of a tracking id, or an alternative method of linking transferred trades, would be developed via a joint initiative between ESMA and the industry to help establish an effective and workable solution.

<ESMA_QUESTION_TSTR_3>

Q4 : Are there any other aspects related to the allocation of responsibility of reporting that should be covered in the technical standards? If so, please clarify which and how they should be addressed.

<ESMA_QUESTION_TSTR_4>

Paragraph 15 notes that the NFC- entity is responsible for renewing their LEI in order for the FC to successfully report. In case of non-renewal of the LEI by the NFC- entity, the FC could face challenges such as the potential recurrence of reports being rejected by the TR, and complications in managing the change of reporting processes if the status of the NFC- changes to NFC+ (or vice versa). The EMIR Q&A expands on the responsibilities of an NFC- entity within TR question 54 (b), clarifying the NFC- is liable for their own LEI, although FCs should liaise with NFC- clients to assist with the timely renewal of LEIs. It would be welcomed if the technical

standards were to incorporate clarification that the NFC- should ensure that its LEI is correct and valid.

Although not covered within the CP or the EMIR Q&A, according to Recital 19 and Article 9.1.b to 9.1.d of EMIR REFIT, our understanding is that the fund manager is responsible, and legally liable for reporting on behalf of UCITS, AIF and IORP. It is also our understanding that according to Recital 6 of EMIR REFIT, AIFs and UCITSs can be classified as NFC- entities. Where this is the case, and where the AIF/UCITS faces an FC, it is important to clarify which party is liable for reporting, i.e. (i) the FC counterparty or (ii) the NFC- fund manager. Our assumption is that it is the fund manager would be liable to report on behalf of the AIF / UCITS, and the FC would not be required to report.

<ESMA_QUESTION_TSTR_4>

Q5 : Do you see any other challenges with the information by NFC- to FC of their decision to perform the reporting of OTC derivatives which should be addressed?

<ESMA_QUESTION_TSTR_5>

A timeline of 5 working days for an NFC- to inform an FC of their intention to report themselves is considered to be too short. The process of an NFC- entity getting set up to report for themselves, and to agree with the FC the portfolio of trades to transfer, can in itself take several weeks.

Therefore, rather than set a fixed timeframe of how much notice an NFC- should provide to an FC that they intend to self-report, we propose that not until:

- i. the NFC- has fully on-boarded to the TR they will use for reporting, and
- ii. the portfolio of trades to transfer between TRs (where applicable) has been agreed with the FC, can a date be set from when the NFC- entity will commence self-reporting

Paragraph 22 states “NFC- may decide to partially perform the reporting of certain OTC derivative contracts.” If NFC- entities want to report some, but not all, of their trades themselves, this must first be clearly communicated and bilaterally agreed between the NFC- and FC upfront. It is not feasible for an NFC- to unilaterally decide whether it will report certain OTC trades itself.

Please note, the above point assumes that where the CP refers to “partially perform the reporting” in paragraph 22, it means that the NFC- may want to report trades for specific asset classes or for products, and that the FC reports all remaining contacts.

<ESMA_QUESTION_TSTR_5>

Q6 : Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.

<ESMA_QUESTION_TSTR_6>

Agreed. No additional comments.

<ESMA_QUESTION_TSTR_6>

Q7 : Do you see any issues with the approach outlined above? Do you see any other challenges with the delegation of reporting which should be addressed?

<ESMA_QUESTION_TSTR_7>

It should not be problematic for the Report submitting entity ID to be a mandatory field and there are no objections to this.

We do however, wish to comment on the information that the report submitting entity is to provide to the reporting counterparty. Paragraph 32 states “the report submitting entity should ensure that the reporting counterparties are informed about relevant TR data processing results and relevant reporting or data quality issues should any arise.” This would put additional burden on both parties and we oppose such a proposal.

The reason this will create additional burden to both counterparties is because the party providing the delegated reporting service (the ‘delegatee’), will be required to send Submission and Position reports to the delegating counterparty (the ‘delegator’). The delegator party will therefore receive separate submission and position reports from each counterparty that it has a delegated reporting relationship with. As these reports may be sent in different formats, the delegator party may need to put in place procedures to consume and process multiple reports sent in various formats.

We prefer a simpler process where the delegator counterparty on-boards to the relevant TR (as is currently the case). This will allow the delegator to view all of its trades in a single Submission Report and single Position Report, regardless of how many counterparties are submitting trade data on its behalf.

<ESMA_QUESTION_TSTR_7>

Q8 : Which errors or omissions in reporting should, in your view, be notified to the competent authorities? Do you see any major challenges with such notifications to be provided to the competent authorities? If yes, please clarify your concerns.

<ESMA_QUESTION_TSTR_8>

There is no objection with the principle of notifying competent authorities of reporting errors or omissions.

It is our view that only material errors or omissions would be notified to NCAs, while non-material errors that can be expected to be captured within the reconciliation reports and statistics, would be processed via use of Action Type “R”. In addition, we would expect the NCA to grant the reporting counterparty adequate time to identify a solution and put in place a roadmap to correct the errors and/or omissions.

<ESMA_QUESTION_TSTR_8>

Q9 : Do you see any issues with the approach outlined above? Do you see any other challenges with the reconciliation of trades which should be addressed?

<ESMA_QUESTION_TSTR_9>

As has been observed with current reporting requirements (both for EMIR and other jurisdictions), if there is ambiguity within the rules as to how a field should be

reported, the two counterparties may report different values for a given field, but both sets of data complies with the technical standards and validation rules. In such instances, while it is reasonable to expect that counterparties will work towards resolving the reconciliation breaks, the “successful reconciliation of both sides of reported derivative contract” may not be easily achieved.

In order to attain consistent reporting of data, the rules should be presented to allow only one way in which to interpret them. For example, if the technical standards were to be presented in a machine readable / machine executable format (as well as being written in natural language), there would be only one way in which to interpret and implement the rules.

Please see the response to question 11 for additional details on how the EMIR rules can be represented in a machine readable / machine executable format.

<ESMA_QUESTION_TSTR_9>

Q10 : Do you see any other data quality issues which should be addressed?

<ESMA_QUESTION_TSTR_10>

The validation rules are a significant factor in understanding the requirements and market participants rely on these rules when developing their reporting processes. The validation rules clarify whether a field is mandatory, conditional or optional, and help to ensure there are no ambiguities or potential data quality issues in the requirements. Therefore, in the absence of the proposed validation rules, it is difficult to provide a full and complete response to some of the questions.

<ESMA_QUESTION_TSTR_10>

Q11 : Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format would you propose and what would be the benefits of the alternative approach?

<ESMA_QUESTION_TSTR_11>

We believe that mandating the use of ISO 20022 for regulatory reporting from market participants to trade repositories at this time will result in significant costs for market participants, without demonstrable benefits to regulatory oversight.

The ISO20022 toolkit

ISO 20022 is a toolkit which can be used for each build, but builds must start from scratch for each use. An analogy would be that the effort, labour and costs of building company websites cannot be reduced just because the companies are using the same development tools and understand CSS, Java, and HTML. There is little reusability of previous builds, since builds are purpose-specific. ISO 20022 is essentially a toolkit.

Moreover, there is little value and higher costs in taking a satisfactorily functional website built in CSS, Java, and HTML, and recreating the same website just for the purpose of coding it in Python. If ISO 20022 were to be mandated for EMIR reporting, this is representative of what would be required – institutions using FpML or CSV for example, would be required to rebuild in ISO 20022.

ISO 20022 does not provide as comprehensive a model of derivative products as FpML. ISO 20022 is a useful general purpose data dictionary, but this does not immediately translate into a universal single language message set across all domains. Single data elements may have multiple definitions based on the user build, so ISO 20022 does not inherently provide native interoperability or a naturally extensible base.

In summary, implementing ISO 20022 for a particular purpose (e.g. reporting to a particular regime), does not provide a firm with a ready-made “drop-in” solution for the firm to use ISO 20022 for other purposes.

Interoperability

It should also be noted that just because two builds are created in ISO 20022, it does not necessarily follow that the two will be interoperable. Only if each was built with the express purpose of interoperating could they do so easily. As such, what is already in place for MiFIR in regards to ISO 20022 will not necessarily transfer across to EMIR (or any other jurisdiction). This is a consideration when thinking about the differing levels of technological capability and sophistication of the users within scope for EMIR reporting.

Pros, Cons and cost considerations:

Below, we have listed the potential costs of mandating ISO 20022 for consideration:

Costs

- There will be significant development effort for each market participant to recode and rebuild regulatory reporting to use ISO 20022. Market participants have spent billions of euros developing existing reporting mechanisms, and any change is likely to result in a significant additional expenditure, likely at an equal or greater cost, comparable in scale to the original effort.
- There will also be significant implementation effort for TRs to handle reporting data in a new format.
- Because this would be a “build new” scenario, any lessons learned, errors corrected, or patches performed to get to the current high level of efficiency would likely occur again, setting back quality and accuracy by years.
- There is significant risk of inconsistent reporting between market participants, as each firm needs to decide how to map complex derivative products to the flat ISO 20022 format, which is likely to results in costs to the industry, to TRs, ESMA and to NCAs in resolving these issues.

In addition, a single format for reporting on a wide variety of trade types only provides consistency if the rules for mapping from the wide variety of complex derivatives products are clearly defined. In other words, it is not sufficient to define the reporting format - it is much more important to define the mapping rules to the format for different products. FpML, for example, already has a single consistent way of reporting each trade type.

One of the existing challenges with ISO 20022 is that different trade repositories have different, inconsistent ways to map to the format; this is an indication that ISO 20022 XML does not have a sufficiently clear and rigorous definition of how to map from a complex product feature to the simpler, flat reporting format. Increasing the number of data sources using ISO 20022 is likely to exacerbate rather than reduce this problem.

Delegating this responsibility (of mapping from derivatives products to flat reporting) to market participants risks that each market participant will develop a different interpretation of how to map from complex derivatives product definitions to simple, flat ISO 20022 fields.

While consolidating all reporting into a single format appears to be a cure, in practice it is unlikely to solve the issues that are more important to regulators. Thus overall, it is unclear that using ISO 20022 will generate any improvement in reporting consistency compared to the status quo; instead it is likely to result in a reduction in reporting consistency, at least in the short term, until issues and inconsistencies between reporting party implementations are identified and resolved.

Because of these reasons, we do not believe that it is appropriate to mandate the ISO 20022 message scheme reporting to TRs. If a message format is mandated at any stage (whether it be ISO 20022 or otherwise), we strongly encourage industry participation during the message definition process and stand ready to assist ESMA to that end.

ISDA Common Domain Model ("CDM")

Regulatory authorities and industry participants can benefit from assessing new technology and utilising technological solutions to help ease the burden of implementation, drive consistency of reporting, and reduce costs.

The CDM, as an open-source mechanism to build centralised implementation for reporting requirements, has the capacity to perform a wide range of functions which are advantageous for regulatory reporting. We outline several, in the following paragraphs, which demonstrate how CDM can facilitate implementation and consistency of reporting.

The CDM, as a standardised method of electronic data transmission which can be used both inbound and outbound, can eliminate the need for any "translations" performed by the TR, accommodate multiple messaging formats, and would be able to be programmed to incorporate different global standards, such as ISO and CPMI IOSCO, in a way that is seamless to the user.

In addition, the CDM has the potential to:

- consistently project and map to all ISO standards, including the ISO 20022 message scheme and data dictionary from market participants' internal systems
- enable multiple messaging formats, including XML, FpML, and CSV, to be employed seamlessly, regardless of user
- deploy the global harmonisation data elements, definitions and flows once for common use
- apply best practices that have been developed by multiple trade associations and used across the industry.

Further, the CDM has the ability to establish consistent interpretation of each reporting rule and data point, and provides a vehicle to implement such consistent interpretation. The implementation can be presented as open-source machine readable and executable code available to every market participant, or can be referenced in the building of institutional reporting solutions.

ISDA would welcome an opportunity to discuss each point above in greater detail with ESMA and to further describe how the CDM could facilitate more efficient reporting for market participants and could improve the integrity of the data reported.
<ESMA_QUESTION_TSTR_11>

Q12 : Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

<ESMA_QUESTION_TSTR_12>

See answer to Question 11.

<ESMA_QUESTION_TSTR_12>

Q13 : Do you expect difficulties with the proposed allocation of responsibility for generating the UTI?

<ESMA_QUESTION_TSTR_13>

Generally we agree with the UTI proposals, although we have several comments in regards to UTI generation.

1. Additional clarity is requested for what is defined by 'Is the transaction cleared' (the first step of the UTI generation flowchart). For example, can the transaction be cleared within any jurisdictions or can it only be cleared within the EU?
2. The second step of the flowchart asks whether the transaction has been centrally executed by a 'trading venue'. The CPMI-IOSCO UTI standard, and also CFTC, refer to 'trading platform'.

We assume that ‘trading venue’ and ‘trading platform’ have the same meaning for UTI generation, (and so trading platforms not considered EEA trading venues would be able to generate the UTI), but it would be beneficial to have this clarified and preferably the same terms are used across jurisdictions.

3. Step three – ‘Is the transaction cross-jurisdictional – is in line with the CPMI-IOSCO UTI standard and we are supportive of it remaining as one of the UTI generation steps. However, there are known problems with this step as a counterparty may not know what jurisdictions the other counterparty is in scope to report for. Therefore, while it is sensible to keep UTI generation for EMIR in line with the CDE¹ and other global jurisdictions, there may be times where this step does not work as intended, but there is no obvious way to overcome this.
4. Although the CPMI-IOSCO UTI standards proposes that a TR can generate the UTI (in certain circumstances), and this is reflected as the final point of step 3 of the UTI generating party flowchart in the consultation paper, the primary purpose of TRs is to consume, validate and reconcile trade data, as opposed to generating data themselves which is then to be consumed by their users. It would also require counterparties to know which TR the other counterparty reports to, which would require additional reference data to be set and maintained by the submitting parties. As such, we recommend that TRs should not be identified as UTI generators.

Overall, the UTI generation logic follows CDE guidance, but the effectiveness of these guidelines will only be fully realised if other global regulations apply the same definitions and steps. It is therefore important for global regulations to be aligned as close as possible in order to achieve a single global UTI.

<ESMA_QUESTION_TSTR_13>

Q14 : Is any further guidance needed with respect to the generation and exchange of the UTI for derivatives reported at position level?

<ESMA_QUESTION_TSTR_14>

It is our understanding that OTC trades would only be reported at trade level and not position level. Therefore, ISDA will not provide comment for this question.

<ESMA_QUESTION_TSTR_14>

¹ <https://www.bis.org/cpmi/publ/d175.pdf>

Q15 : Is it clear which entity should generate the UTI for the derivatives that are executed bilaterally and brought under the rules of the market ('XOFF')? Are there any other scenarios where it may be unclear whether a derivative is considered to be "centrally executed"? Please list all such specific scenarios and propose relevant clarifications in this respect.

<ESMA_QUESTION_TSTR_15>

No additional clarification requested.

<ESMA_QUESTION_TSTR_15>

Q16 : Should the hierarchy on UTI generation responsibility include further rules on how to proceed when the responsibility for generating the UTI is allocated to an entity (e.g. trading venue or a CCP) from a jurisdiction that has not implemented the UTI guidance?

<ESMA_QUESTION_TSTR_16>

As referred to in the answer to question 13, we would welcome clarification as to how the UTI generation logic is to be interpreted for transactions cleared on non-EU CCPs, and whether the definition of a 'trading venue' is the same as a 'trading platform'.

Additionally, in order for a global UTI to be fully effective, all global reporting regimes should follow the same definitions for UTI generation. As more jurisdictions adopt the CPMI IOSCO UTI it may be necessary to adjust the UTI generation logic (for example in regards to the cross-jurisdictional generating party determination). Therefore, we recommend that ESMA retains the flexibility to make changes to EMIR UTI logic without needing to rely on Level 1 changes.

<ESMA_QUESTION_TSTR_16>

Q17 : Should the hierarchy on UTI generation responsibility include more explicit rules for the case of the delegated reporting? If so, propose a draft rule and its placement within the flowchart.

<ESMA_QUESTION_TSTR_17>

No additional clarification required.

<ESMA_QUESTION_TSTR_17>

Q18 : Which policy option presented in the flowchart do you prefer? Please elaborate on the reasons why in your reply.

<ESMA_QUESTION_TSTR_18>

Our preference is for Option 1.

As well as this being more aligned with the CDE guidelines compared to Option 2, we believe that Option 1 provides an unambiguous way to define which party will generate the UTI.

<ESMA_QUESTION_TSTR_18>

Q19 : Is the additional clarification concerning the sorting of the alphanumerical strings needed? If so, which should method of sorting should be considered?

<ESMA_QUESTION_TSTR_19>

As per the answer to question 18, our preference is for Option 1 and therefore the sorting of alphanumerical strings would not be required.

<ESMA_QUESTION_TSTR_19>

Q20 : Are there any other rules that should be added to the hierarchy on UTI generation responsibility? To the extent that such rules are not contradictory to the global UTI guidance, please provide specific proposals and motivate why they would facilitate the generation and/or exchange of the UTIs.

<ESMA_QUESTION_TSTR_20>

No additional rules are proposed. As referred to in the answer to question 13, it is important that global regulators work towards harmonised regulations for the generation and use of UTIs, in order to achieve a single and effective global UTI. Therefore, any other rules that may be introduced to the hierarchy on UTI generation responsibility should be done in unison with global regulators.

<ESMA_QUESTION_TSTR_20>

Q21 : Do you support including more specific rules provision on the timing of the UTI generation? If so, do you prefer a fixed deadline or a timeframe depending on the time of conclusion of the derivative? In either case, please specify what would be in your view the optimal deadline/timeframe. Please elaborate on the reasons why in your response.

<ESMA_QUESTION_TSTR_21>

We acknowledge that in order for a trade to be successfully reported within T+1, the UTI generating party must generate and communicate the UTI with their counterparty in good time. While this is largely unproblematic for trades that are executed on a trading platform, cleared trade or where there is electronic confirmation, it is not always possible to meet a T+1 timeframe when the UTI is exchanged via a paper confirmation. This is particularly the case for more complex trades where the confirmation can take longer than T+1 to draft. The current industry processes for the communication of UTIs are not able to consistently meet a fixed timeline, and mandating the timeline in the ITS will not by itself change that. Mandating how and/or when UTIs are to be exchanged, e.g. at the point of execution, would make it more likely that UTIs will be communicated within a given timeframe, but implementing such a requirement into the technical standards would be a significant change to existing industry wide practices.

<ESMA_QUESTION_TSTR_21>

Q22 : Do you expect issues around defining when you will need to use a new UTI and when the existing UTI should be used in the report? Are there specific cases that need to be dealt with?

<ESMA_QUESTION_TSTR_22>

The requirements of when to use a new UTI are clear.

<ESMA_QUESTION_TSTR_22>

Q23 : Do you expect any challenges related to the proposed format and/or structure of the UTI? If yes, please elaborate on what challenges you foresee.

<ESMA_QUESTION_TSTR_23>

The format is in line with CPMI-IOSCO guidelines and no challenges are expected for the generation of UTI's post-start date.

In respect to existing UTIs, the CPMI-IOSCO technical guidance 'Harmonisation of the Unique Transaction Identifier' states that existing UTIs should not need to be changed or updated following the implementation of new technical standards. For the avoidance of doubt, we would appreciate clarification that as per the CPMI-IOSCO guidelines, existing UTI's would not be impacted by the new technical standards.

We do note however, that for the purposes of EMIR reporting, the 'backwards compatibility' of existing UTIs would need to consider requirements in regards to some scenarios such as the porting of trades between TRs where the UTI is in the existing format.

<ESMA_QUESTION_TSTR_23>

Q24 : Do you have any comments concerning the use of ISINs as product identifiers under EMIR for the derivatives that are admitted to trading or traded on a trading venue or a systematic internaliser?

<ESMA_QUESTION_TSTR_24>

We believe that the proposed mix of ISINs (when traded on a trading venue) and UPI (for all other contacts) could be simplified, and the UPI alone would be sufficient as a product identifier.

While we acknowledge that ISINs are a relatively established form of identification within MiFID II, they have been designed as instrument identification and are not necessarily best suited for product identification in respect of trade reporting. Multiple ISINs will be assigned for economically comparable products, resulting in many more unique identifications being represented on reports than there are products being executed. Furthermore, while incorporating ISINs would bring alignment between EMIR and MiFID II reporting, there is arguably more value to be gained if EMIR is consistent with comparable global reporting regimes, where the UPI has been developed specifically to fulfil the need for a global standard.

We would also question whether CFI Codes are required within EMIR reports given that the CFI code can be derived from the UPI, (and indeed from the ISIN). Essentially, the CFI code would not provide additional information if the UPI (or ISIN) is reported.

<ESMA_QUESTION_TSTR_24>

Q25 : Do you have any comments concerning the use of UPIs as product identifiers under EMIR? Should in your view UPI be used to identify all derivatives or only those that are not identified with ISIN under MiFIR? ?

<ESMA_QUESTION_TSTR_25>

For OTC contacts, the preference is for only the UPI to be reported, with neither ISINs or CFI Codes to be reported in addition to the UPI. This will reduce risk of conflict between UPI, ISIN and/or CFI, provide the key product information required for reporting, and avoid duplicative information being included within the EMIR reports.

<ESMA_QUESTION_TSTR_25>

Q26 : Do you agree with the assessment of the advantages and disadvantages of the supplementary reporting of some reference data? Are there any other aspects that should be considered?

<ESMA_QUESTION_TSTR_26>

Where reference data can be easily obtained via a UPI, we believe it is sensible that such data does not need to be included separately within the reports submitted for EMIR. Any supplementary reference data which cannot be derived using the UPI should be included within the EMIR reports.

<ESMA_QUESTION_TSTR_26>

Q27 : Some of the instruments' characteristics that are expected to be captured by the future UPI reference data are already being reported under EMIR, meaning that they have already been implemented in the counterparties' reporting systems. If this data or its subset were continued to be required in trade reports under EMIR, what would be the cost of compliance with this requirement (low/moderate/high)? Please provide justification for your assessment. Would you have any reservations with regard to reporting of data elements that would be covered by the UPI reference data?

<ESMA_QUESTION_TSTR_27>

Continuing to report reference data which is currently required under EMIR should not be problematic in itself, although if such data is available via the UPI there should not be a need to also include within EMIR reports. The data that forms the characteristics of a UPI should be considered the authoritative reference data and so to report such data in separate EMIR fields would be to submit the same data twice and risk submitting conflicting values.

<ESMA_QUESTION_TSTR_27>

Q28 : Do you foresee any issues in relation to inclusion in the new reporting standard that the LEI of the reporting counterparty should be duly renewed and maintained according to the terms of, any of the endorsed LOUs (Local Operating Units) of the Global Legal Entity Identifier System?

<ESMA_QUESTION_TSTR_28>

LEIs are an integral part of reporting and each counterparty should be held liable to renew and maintain its LEI.

The non-renewal of LEIs leads to transactions being rejected by TRs and so to minimise the risk of LEIs lapsing, LOUs could perhaps consider providing membership that enables the automatic renewal of LEIs.

<ESMA_QUESTION_TSTR_28>

Q29 : Do you foresee any challenges related to the availability of LEIs for any of the entities included in the Article 3 of the draft ITS on reporting?

<ESMA_QUESTION_TSTR_29>

We do not foresee any challenges with the entities listed.

<ESMA_QUESTION_TSTR_29>

Q30 : Do you have any comments concerning ESMA approach to inclusion of CDEs into EMIR reporting requirements?

<ESMA_QUESTION_TSTR_30>

The adoption of CDE fields is welcomed, but the definitions of such fields must not diverge from the CDE standards. To apply a different definition to a CDE field would go against the principles and benefits of adopting CDE standards.

<ESMA_QUESTION_TSTR_30>

Q31 : Is the list of Action types and Event types complete? Is it clear when each of the categories should be used?

<ESMA_QUESTION_TSTR_31>

The list of Action Types and Event Types are complete, although we do not believe 'Collateral' is required as an Action Type and there are some terms we request additional clarification for.

Collateral action type

Collateral values are reported in Table 3 with the only Table 2 collateral fields being 'Collateral portfolio indicator' and 'Collateral portfolio code'. Our view is that a change to the collateral code would be reported with an action type of 'Modify' and not 'Collateral'. Therefore, we do not believe 'Collateral' needs to be included as an action type.

Additional clarification:

Action Types

'Termination' – This replaces the current action type 'Early Termination', but the precise meaning of 'termination' could be made clearer. The CFTC definition for 'Early Termination' under Event Type could be potentially be used i.e. "Termination of an existing swap transaction prior to scheduled termination or maturity date".

'Revive' – See the response to question 37 for more details.

Event Types

'Step-in' – The definition is clear, but the name of the event type is misleading as it suggests it is only to be used by the stepping-in party. We propose to rename this event type as 'Novation'.

'PTRR' – The assumption is that if the Event Type is reported as 'PTRR', it will be mandatory to also report the PTRR ID. However, without the validation rules this cannot be known for sure.

'Clearing' – We request the definition is more precise as to when to use this Event Type. For example, when a trade is executed and cleared on the same day, only the cleared trade is reportable, so is it correct to only report the event type 'clearing' for the initial submission of the cleared trade? Additionally, Table 6 shows that 'clearing' can be used when a termination is submitted. Would this be used on trades which are not cleared on trade date, but subsequently cleared, e.g. a counterparty clears existing trades or a product becomes eligible for clearing?

'Exercise' – The precise meaning of 'exercise' is unclear; it could refer to a partial termination or to be used when reporting the underlying instrument following execution of an option/swaption, e.g. use Exercise event type when reporting the underlying swap following the execution of a swaption and/or the termination of the swaption contract itself. Table 6 suggests in the case of Swaptions, both the underlying swap and the termination would be reported as 'Exercise', but additional clarity on how to apply this event type would be welcomed.

'Inclusion in position' – CfDs are generally considered to be OTC contracts. Therefore we suggest that the definition for Inclusion in position should remove "CfD" and refer to "ETD" only.

<ESMA_QUESTION_TSTR_31>

Q32 : Is it clear what is the impact of the specific Action Types on the status of the trade, i.e. when the trade is considered outstanding or non-outstanding?

<ESMA_QUESTION_TSTR_32>

Yes

<ESMA_QUESTION_TSTR_32>

Q33 : Is it clear what are the possible sequences of Action Types based on the Figure 1?

<ESMA_QUESTION_TSTR_33>

Yes. See the response to question 37 for more detail in regards to Revive.

<ESMA_QUESTION_TSTR_33>

Q34 : Are the possible combinations of Action type and Event type determined correctly? Is their applicability at trade and/or position level determined correctly?

<ESMA_QUESTION_TSTR_34>

Yes. This new concept of Action Type and Event Type combinations is welcomed as this provides more clarity on the reason why an Action Type has been reported.

<ESMA_QUESTION_TSTR_34>

Q35 : Is the approach to reporting Compression sufficiently clear? If not, please explain what should be further clarified or propose alternatives.

<ESMA_QUESTION_TSTR_35>

Generally, the approach for reporting Compression is understood, although the full scope of 'PTRR' could be clarified further. For example, 'rebalancing' (as mentioned in paragraph 318) is not an industry defined term and therefore a definition of 'rebalancing' should be included within the technical standards, along with any additional actions which would be considered in scope for PTRR, in order for there to be a common interpretation and implementation of such post-trade risk reduction events.

As mentioned in the answer to question 31, the assumption is that if the Event Type is 'PTRR', it will be mandatory to also report the PTRR ID, but without the validation rules this cannot be known for sure.

<ESMA_QUESTION_TSTR_35>

Q36 : Do you agree with the proposal to include two separate action types for the provision of information related to the valuation of the contract and one related to margins?

<ESMA_QUESTION_TSTR_36>

We do not believe that Collateral should be an action type (see the answer to question 31). We agree that Valuation should be a separate action type.

<ESMA_QUESTION_TSTR_36>

Q37 : Do you agree with the proposal to include the Action Type "Revive"? Are there any further instances where this Action Type could be used? Are there any potential difficulties in relation to this approach?

<ESMA_QUESTION_TSTR_37>

Revive is a welcome addition to the Action Types.

However, Figure 1 shows that Modify, Correct, Valuation and Collateral action types can be submitted for Terminated positions and under current EMIR reporting, the submission of a Modify or Correct action type for a terminated position would put that position back to an outstanding status. With this being the case, there would presumably be no need to use Revive on a terminated trade to move it back to an outstanding status.

Therefore, it is our understanding that under the new proposed technical standards, Revive will be the only action type that can move the status of a trade from terminated to outstanding. Furthermore, the only scenario where action types Modify and Correct would be used on a terminated trade if such action types are reported late, i.e. a Modify or Correct should have been reported before the Early Termination event.

Assuming the above assumption is correct, this would be a move away from current EMIR reporting processes and while we do not object to this change, it would be beneficial for the technical standards to clearly express why action types Modify, Correct, Valuation and Collateral would be used for a terminated trade and that such action types would not change the status of the trade.

<ESMA_QUESTION_TSTR_37>

Q38 : Is the approach to reporting at position level sufficiently clear? If not, please explain what should be further clarified?

<ESMA_QUESTION_TSTR_38>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_38>

Q39 : Are all reportable details (as set out in the Annex to the draft RTS on details of the reports to be reported to TRs under EMIR (Annex IV)) available for reporting at position level? If not, please clarify which data elements and why.

<ESMA_QUESTION_TSTR_39>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_39>

Q40 : Are there any products other than derivatives concluded on a venue and CfDs that may need to be reported at position level?

<ESMA_QUESTION_TSTR_40>

We are of the view that only ETD trades are to be reported at position level. All OTC derivative trades are to be reported at trade level only.

Furthermore, it is also our view that CfDs are OTC products and therefore would only be reported at trade level.

Under current EMIR reporting, the majority of CfD trades are reported at trade level, but there are a number of market participants that do report these products at position level which creates a non-insubstantial number of reconciliation breaks.

Therefore, in order to establish an industry standard for reporting CfDs, we propose that the technical standards specify that CfDs are only to be reported at trade level – in line with all other OTC derivative products.

<ESMA_QUESTION_TSTR_40>

Q41 : Do you have any general comments regarding the proposed representation of the reporting requirements in the table of fields? Please use the separate excel table to provide comments on the specific fields in the table.

<ESMA_QUESTION_TSTR_41>

The creation of a separate Table for margin, and moving some of the data elements currently in Table 1 to Table 2 is a positive change and we are supportive of this proposal.

<ESMA_QUESTION_TSTR_41>

Q42 : Is the proposed definition adequate? Can you think of any cases where further clarification would be needed or further problems might be expected? What would you expect to be reported as effective date when the trade is not confirmed?

<ESMA_QUESTION_TSTR_42>

The definition for Effective Date is adequate and we welcome that it adopts the CDE definition.

Linking the Effective date to the confirmation should not be an issue as the same trade booking data source will generally be used to populate both the confirmation and the Effective Date field within the EMIR report. Therefore the Effective Date on the confirmation and the value submitted on the EMIR report should always be the same regardless of whether the confirmation has been issued prior to reporting.

There is value in the technical standards providing additional clarity of how to report Effective Date for novations. This is a scenario that historically has resulted in some ambiguity of what to report for Effective Date, so establishing clear requirements should limit the amount of reconciliation breaks for novation trades. It would also be beneficial to clarify that where an effective date is not specified in the terms of the contract, the execution date should be used. However, any such clarification for these two points should be as a footnote to the definition and the technical standard definition itself should remain aligned to the CDE.

<ESMA_QUESTION_TSTR_42>

Q43 : Is the proposed definition adequate? Can you think of any cases where further clarification would be needed, or further problems might be expected? What would you expect to be reported as maturity date when the trade is not confirmed?

<ESMA_QUESTION_TSTR_43>

The definition for Expiration Date is adequate and we welcome adoption of the CDE definition.

As with Effective Date (question 42) we do not foresee any issue with reporting the Expiration Date prior to the trade being confirmed.

<ESMA_QUESTION_TSTR_43>

Q44 : Do you agree with the proposed definition? Are there any other aspects that should be covered in the technical standards?

<ESMA_QUESTION_TSTR_44>

Agree with the proposed definition. No additional comments.

<ESMA_QUESTION_TSTR_44>

Q45 : Do you agree with the proposed definition? Are there any other aspects that should be covered in the technical standards?

<ESMA_QUESTION_TSTR_45>

Agree with the proposed definition. No additional comments.

<ESMA_QUESTION_TSTR_45>

Q46 : Do you foresee any difficulties with the reporting of Event date? Please flag these difficulties if you see them.

<ESMA_QUESTION_TSTR_46>

While there are benefits aligning Event Date in EMIR with the equivalent field in SFTR, it would be more beneficial to align the date with the CFTC reporting requirements as the two regimes cover more similar products. However, while CFTC

asks for an Event timestamp, the EMIR definition for date only (and not time) is preferable.

The implementation of Event Date for SFTR has not been simple, therefore more information and/or examples of how to implement this field would be welcomed.

<ESMA_QUESTION_TSTR_46>

Q47 : In relation to the format of the “client code”, do you foresee any difficulties with reporting using the structure and format of the code as recommended in the CDE guidance? If you do, please specify the challenges.

<ESMA_QUESTION_TSTR_47>

The preference for the format of the ‘client code’ is to follow the CDE as closely as possible. We do not foresee major reporting difficulties using this structure and format.

<ESMA_QUESTION_TSTR_47>

Q48 : Alternatively, would you prefer to replace the internal client codes with national identification number as defined in MIFIR transaction reporting? Please specify the advantages and disadvantages of both alternatives.

<ESMA_QUESTION_TSTR_48>

As expressed in the answer to question 47, the preference is to follow the CDE where possible. Therefore, we would prefer not to use a national identification number for the internal client code.

<ESMA_QUESTION_TSTR_48>

Q49 : Do you agree on the proposal to include this process in the draft RTS on procedures for ensuring data quality?

<ESMA_QUESTION_TSTR_49>

The proposed procedures for ensuring data quality is in line with the current process. However, as a longer term solution, we would suggest the GLEIF should become the primary source for identifying and consuming changes to LEIs. The GLEIF maintains the centralised industry record of LEI data and this database is updated each time an LEI changes. Therefore it would arguably be quicker and more efficient if market participants consume LEI changes directly from the GLEIF rather than from TRs, enabling such updates to be reflected almost immediately for open positions whilst utilise pre-existing and commonly used data feeds.

Any such move towards a GLEIF driven process for communicating and consuming changes to LEIs would require global coordination, and subsequent changes to controls and the legal structure would also need to be considered. This is therefore not an initiative that can be achieved for EMIR alone, but would be a long term process to be carried out across global reporting jurisdictions. Until any such global approach is agreed, the current process should remain unchanged.

<ESMA_QUESTION_TSTR_49>

Q50 : Do you agree that one month is the good timespan between the notification by the counterparty to the TR the corporate restructuring event and the actual update of the LEI by the TR?

<ESMA_QUESTION_TSTR_50>

One month is a reasonable timeframe, but please see the answer to question 49 where we propose an alternative long term approach.

<ESMA_QUESTION_TSTR_50>

Q51 : Do you agree on the fact that transactions that have already been terminated at the date when the TR is updating the LEIs should be included in the process?

<ESMA_QUESTION_TSTR_51>

This is agreed, but please see the answer to question 49 where we propose an alternative long term approach.

<ESMA_QUESTION_TSTR_51>

Q52 : In the case of transactions where an impacted entity is identified in any role other than the reporting counterparty (e.g. Counterparty 2, Broker etc), when the TRs should inform the reporting counterparties of the change in the identifier of that entity?

<ESMA_QUESTION_TSTR_52>

Please see the answer to question 49 where we propose an alternative long term approach. This proposal would help address the question of which party informs of an LEI change.

<ESMA_QUESTION_TSTR_52>

Q53 : Which entity should identify all transactions that should be amended due to a partial modification of the identifier of an entity?

<ESMA_QUESTION_TSTR_53>

Please see the answer to question 49 where we propose an alternative long term approach. This would help address the question of which party informs of an LEI change.

<ESMA_QUESTION_TSTR_53>

Q54 : In cases where the counterparty is not responsible and legally liable for reporting transactions, which entity should be in charge of notifying the TR and what should be the related requirements between the counterparty itself and the entity who is responsible and legally liable for the reporting?

<ESMA_QUESTION_TSTR_54>

We support Option 1, where the counterparty affected by the event should be responsible. We also agree that the counterparty should be permitted to delegate this requirement. However, in order to avoid a situation where a counterparty may not inform the TR, (potentially though inconsistent interpretation and application of the requirement), we request additional clarity is provided as to what responsibilities counterparties have, along with guidance on how the process is expected to be applied.

The reason we do not support Option 2 is because it will be more complicated to support and is likely to result in multiple firms notifying TRs about the same LEI change.

<ESMA_QUESTION_TSTR_54>

Q55 : Do you see any other challenges related to LEI updates due to mergers and acquisitions, other corporate restructuring events or where the identifier of the counterparty has to be updated from BIC (or other code) to LEI because the entity has obtained the LEI?

<ESMA_QUESTION_TSTR_55>

No other challenges noted.

<ESMA_QUESTION_TSTR_55>

Q56 : In relation to the field “Beneficiary ID”, do you have any concerns regarding the elimination of this field? Based on your reporting experience, which trading scenario may be missed if this field is eliminated, with exception of the cases explained in Q&A General Question 1 (c)?

<ESMA_QUESTION_TSTR_56>

No concerns with this field being eliminated.

<ESMA_QUESTION_TSTR_56>

Q57 : In relation to the field “Trading capacity”, do you have any concerns regarding the elimination of this field? Based on your reporting experience, which trading scenario may be missed if this field is eliminated?

<ESMA_QUESTION_TSTR_57>

No concerns with this field being eliminated.

<ESMA_QUESTION_TSTR_57>

Q58 : In relation to the “Direction of trade”, do you foresee any difficulties with the adoption of CDE guidance approach? Please provide a justification for your response.

<ESMA_QUESTION_TSTR_58>

We welcome the adoption of CDE guidance for “Direction of trade”, but make the following observations:

FX products have an exchange of currencies, meaning that each counterparty is both a payer and receiver.

ISDA supports the response made by the Global Foreign Exchange Division (‘GFXD’) of the Global Financial Markets Association (‘GFMA’), that the CDE will need to be complemented by the FX Cash Rule² to ensure that it is clear who is the payer and who is the receiver for the purposes of reporting.

² See [https://www.gfma.org/wp-content/uploads/uploadedFiles/Initiatives/Foreign_Exchange_\(FX\)/FX%20Trade%20Side%20201209%20v0%201.pdf](https://www.gfma.org/wp-content/uploads/uploadedFiles/Initiatives/Foreign_Exchange_(FX)/FX%20Trade%20Side%20201209%20v0%201.pdf)

The CPM-HOSCO CDE technical guidance allows different formats for the reporting of 'Direction'; either as four characters, i.e. BYER, SLLR, MAKE TAKE or as 20 characters, i.e. LEI code. For EMIR reporting, the consultation paper proposes the 4 character format to be used, although the CFTC recently proposed that the 20 character reporting format will be used for their updated reporting standards. Although both formats are consistent with the CDE guidance, we encourage ESMA and the wider regulatory community to agree on a unified approach so that market participants will not have to build two different solutions to report the same information.

<ESMA_QUESTION_TSTR_58>

Q59 : Are there any products for which the direction of the trade cannot be determined according to the rules proposed in the draft technical standards (based on the CDE guidance)? If so, please specify the products and propose what rules should be applied.

<ESMA_QUESTION_TSTR_59>

Other than FX products, we are not aware of any products for which the proposed rules will not apply.

As per the answer to question 58, the counterparties to a FX product will be both payer and receiver. ISDA supports the response made by the GFXD.

<ESMA_QUESTION_TSTR_59>

Q60 : Do you foresee any difficulties with reporting in case the value "Intent to clear" is not included in the list of allowable values for Field « Cleared » ? Please motivate your answer.

<ESMA_QUESTION_TSTR_60>

While the field 'Intent to clear' field often does not need to be reported, (i.e. it would only be reported when an alpha trade is not cleared on the trade date), this is a CDE field and we would prefer for EMIR reporting to remain consistent with CDE in most cases (although we note there are some exceptions covered elsewhere in this response where it is logical not to adopt CDE fields). Therefore, we propose that 'Intent to clear' is retained for EMIR reporting and is aligned with the CDE definition.

<ESMA_QUESTION_TSTR_60>

Q61 : Do you have any other comments concerning the fields related to clearing?

<ESMA_QUESTION_TSTR_61>

No additional comments.

<ESMA_QUESTION_TSTR_61>

Q62 : The timely confirmation requirement applies only to non-cleared OTC contracts. However, under the rules in force, the confirmation timestamp and confirmation means are reported also for ETD derivatives by some counterparties, leading to problems with reconciliation of the reports. ESMA proposes to clarify that the abovementioned fields should be reported only for OTC non-cleared derivatives. Do

you agree with the proposed approach for clarifying the population of the fields “Confirmation timestamp” and “Confirmation means”? Please motivate your response.

<ESMA_QUESTION_TSTR_62>

We agree that the fields Confirmation timestamp and Confirmation means should only be applicable to non-cleared OTC derivative contacts.

<ESMA_QUESTION_TSTR_62>

Q63 : Do you have any comments concerning the fields related to settlement?

<ESMA_QUESTION_TSTR_63>

We welcome the proposals for Settlement and believe this will result in clear requirements for reporting the settlement fields.

<ESMA_QUESTION_TSTR_63>

Q64 : Do you have any comments concerning the proposed way of reporting of the trading venue?

<ESMA_QUESTION_TSTR_64>

We believe the proposals generally provides clear guidance for this requirement, but there are scenarios that are identified in the cross-trade association EMIR best practices³ which could be addressed within the technical standards. In the scenario where two Systematic Internalisers (SIs) face each other, the two counterparties will need to determine which SIs MIC code is to be reported. To ensure both counterparties report the same MIC Code, we propose that when the two counterparties are both SIs, the seller / payer logic should be used to determine which SIs MIC Code to report, i.e. report the MIC code of the counterpart identified as the seller / payer for the trade. Incorporating this into the technical standards will help avoid market participants implementing alternative ways of determining which MIC Code to report.

<ESMA_QUESTION_TSTR_64>

Q65 : Do you foresee any difficulties related to the proposal for reporting the data elements related to the regular payments?

<ESMA_QUESTION_TSTR_65>

No difficulties foreseen. We welcome the adoption of CDE terms.

<ESMA_QUESTION_TSTR_65>

Q66 : Do you agree to leave the valuation fields unchanged? If not, what changes do you propose?

<ESMA_QUESTION_TSTR_66>

We agree with the four valuation fields in the proposed technical standards. This is in line with the CPMI-IOSCO's CDE.

<ESMA_QUESTION_TSTR_66>

³ <https://www.isda.org/a/VuoTE/Industry-Associations-Publish-EMIR-Reporting-Best-Practices.pdf>

Q67 : Do you agree that the contract value is most relevant for authorities when reported as the IFRS 13 Fair Value without applying valuation adjustments?

<ESMA_QUESTION_TSTR_67>

This is consistent with the EMIR Q&A (TR Answer 3b), and we agree with the proposal.

<ESMA_QUESTION_TSTR_67>

Q68 : Do you anticipate practical issues with reporting IFRS 13 Fair Value without applying valuation adjustments? If so, what measures can be taken to address these or what alternative solutions can be considered (that would ensure consistent reporting of valuation by the counterparties)?

<ESMA_QUESTION_TSTR_68>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_68>

Q69 : Is more guidance needed for the determination of the “valuation type”, e.g. similar to the guidance provided in the CDE guidance on page 41-42?

<ESMA_QUESTION_TSTR_69>

No additional guidance is needed at this stage.

<ESMA_QUESTION_TSTR_69>

Q70 : Do you agree that the fields IM/VM Posted/Received fields are provided in with both a pre- and post-haircut value?

<ESMA_QUESTION_TSTR_70>

We agree that both pre- and post-haircut values are reported.

We would like to note though, that haircuts may be applied across both EMIR and non-EMIR reporting activity. Essentially, in a similar way in that paragraph 267 identifies portfolios may include non-derivative instruments, portfolios may also include derivative instruments that are not in scope for EMIR reporting.

<ESMA_QUESTION_TSTR_70>

Q71 : Do you agree to change the format of the collateralisation field to one that is compatible with single sided reporting?

<ESMA_QUESTION_TSTR_71>

Yes, we agree and support this proposal. Global alignment for specification of the collateralisation field is important and, in accordance with the CDE definition, the specification of the collateralisation category should be based on the collateral agreements in place between the parties which then dictates that there is a single way to view the level of required collateralisation.

We also propose that a second Portfolio code is permitted to be reported if applicable. The reason why it should be possible to report two portfolio codes is that IM calculations and VM calculations may be calculated from different portfolios of

trades. Therefore, if only one portfolio code is submitted, it could lead to misinformation being reported. A similar request was submitted by ISDA for the recent CFTC consultation paper.

For these reasons, we would encourage ESMA allow for two portfolio codes to be reported, although this should be optional and not a mandatory requirement.

<ESMA_QUESTION_TSTR_71>

Q72 : Do you agree that the fields “Counterparty rating trigger indicator” and “Counterparty rating threshold indicator” are added?

<ESMA_QUESTION_TSTR_72>

We do not support addition of the “counterparty rating trigger indicator” and the “counterparty rating threshold indicator”. ISDA previously argued against these fields in the response to CPMI and IOSCO in respect of the CDE, as we believe these fields will be difficult for parties to populate accurately and will not provide meaningful information to the authorities.

<ESMA_QUESTION_TSTR_72>

Q73 : Do you agree that a single A rating is the most relevant trigger for the “Counterparty rating threshold indicator” field?

<ESMA_QUESTION_TSTR_73>

As per our answer to question 72, we do not believe the field ‘Counterparty rating threshold indicator’ should be included as an EMIR field.

<ESMA_QUESTION_TSTR_73>

Q74 : Is it possible to separate the value of a collateral portfolio exclusively for derivatives?

<ESMA_QUESTION_TSTR_74>

It is not possible to separate out non-derivative instruments from a collateral portfolio. As mentioned in the answer to question 70, it is also not possible to separate our instruments that are non-EMIR reporting within a collateral portfolio.

<ESMA_QUESTION_TSTR_74>

Q75 : Are there any limitations with regard to ESMA’s proposed adjustments to these EMIR reporting fields? If so please specify what the limitations are and how they could be overcome?

<ESMA_QUESTION_TSTR_75>

The move to CDE fields is welcomed.

Where the CDE guidance allows for optionality as to which the format the value is reported in, we encourage ESMA, along with the wider regulatory community, to adopt the same CDE option to allow for a consistent global reporting standards. For example, under the answer for question 78 below, the consultation paper proposes that Fixed Rate is reported as a percentage, whereas CFTC have recently proposed Fixed Rate should be reported as a decimal. Both are options within the CDE, but in

order to achieve globally harmonised reporting standards, a single cross-jurisdictional approach is encouraged.

Similarly, the answer to question 58 identifies that the CDE format for 'Direction' can be either four characters, i.e. BYER, SLLR, MAKE TAKE or as 20 characters, i.e. LEI code. While the answer to question 83 identifies that the CDE allows for schedules to be reported for fields other than notional amount. In each case, a single cross-jurisdictional format is encouraged to avoid market participants building different solutions to report the same information.

<ESMA_QUESTION_TSTR_75>

Q76 : Do you think that there are other additional fields which would be necessary to fully understand the price of a derivative?

<ESMA_QUESTION_TSTR_76>

No additional fields should be necessary.

<ESMA_QUESTION_TSTR_76>

Q77 : Are there any further pieces of clarification in relation to these fields (beyond the information in the definitions in the annex) which could be added to the amended standards to ensure reporting is done in a consistent manner? If so, please expand on how ESMA can ensure the standards are clear to reporting entities and reduce ambiguity with regard to what should be reported for different fields.

<ESMA_QUESTION_TSTR_77>

Additional clarification is required for FX products to ensure consistent reporting amongst market participants.

ISDA supports the response made by the GFXD, requesting:

- (i) for FX Forwards and Non-Deliverable Forwards, the field "Exchange Rate 1" is populated and field "Forward Exchange Rate" is left blank, and;
- (ii) for populating the Exchange Rate or Strike Price, ESMA either (a) specifies which currency should be the base and which should be the quote, or (b) allows TRs to match reports that have been made under different quote conventions (provided the corresponding exchange rate / strike price are equivalent).

<ESMA_QUESTION_TSTR_77>

Q78 : Do you agree with the clarification in relation to the approach to populating fields which require reference to a fixed rate? If you believe that an alternative approach would be more effective and ensure a consistent approach is followed by reporting counterparties, please explain that approach.

<ESMA_QUESTION_TSTR_78>

Reporting the Fixed Rate as a percentage is in line with one of the two allowable formats as per the CDE guidance. However, in order to achieve more commonality between cross-jurisdiction reporting regimes, we propose the Fixed Rate is to be

reported as a decimal so as to be in line with how CFTC are proposing the Fixed Rate to be reported.

<ESMA_QUESTION_TSTR_78>

Q79 : Should there be any further guidance provided in relation to the population of the 'notional' field on top of the content of the CDE guidance? What should this guidance say? Do you foresee any difficulties with reporting of notional in line with the CDE guidance?

<ESMA_QUESTION_TSTR_79>

We support the GFXD response that for products with more than one notional is to be reported, such as FX products, it would be beneficial to have clear guidance as to the order in which the notional amount values are populated to avoid unnecessary reconciliation breaks.

We propose there should be guidance identifying that the Notional amount and Notional currency fields are populated in alphabetical order by ISO 4217 currency code.

<ESMA_QUESTION_TSTR_79>

Q80 : Is the guidance provided in ESMA Q&A TR 41 clear? Should any further guidance be provided in addition to ESMA Q&A TR 41?

<ESMA_QUESTION_TSTR_80>

No further guidance required.

<ESMA_QUESTION_TSTR_80>

Q81 : Do you foresee any challenges with the interpretation of the EMIR data should the fields "Quantity" and "Price multiplier" be removed? In case these fields are maintained, should there be further clarity as to what should be reported therein? What should this guidance say? Should this guidance be per asset class? Should this guidance distinguish between OTC and ETD derivatives?

<ESMA_QUESTION_TSTR_81>

No issues foreseen with the removal of these two fields.

<ESMA_QUESTION_TSTR_81>

Q82 : Do you foresee any challenges with reporting of the Total notional quantity?

<ESMA_QUESTION_TSTR_82>

No issues foreseen.

<ESMA_QUESTION_TSTR_82>

Q83 : Which of the two described approaches to reporting the notional amount schedules is preferable? Please motivate your view.

<ESMA_QUESTION_TSTR_83>

We encourage cross-jurisdictional alignment where possible and as such we propose that EMIR reporting should align with CFTC reporting on this point. Within ISDAs

response to the CFTCs recent consultation paper for trade reporting, we argued for the notional schedule to be reported upfront.

The notional schedule is part of the contracts economic terms of the contract and so it seems correct to report the information upfront, as well as this being in line with CDE guidelines. However, we believe it is more important for EMIR and CFTC to be aligned as to whether the notional schedule is reporting upfront or the notional amount is updated each time there is a step date. We also propose that if the notional schedule is to be reported, guidance would be required for how TRs reflect the schedules and/or current value within the reports.

We would also like to note that there are other data elements of a contract for which a schedule can be agreed, such as the Fixed Rate, Spread, Strike or Price. The consultation paper only refers to reporting schedules for the notional amount, but ESMA may want to consider whether other schedules can also be reported upfront for other fields.

<ESMA_QUESTION_TSTR_83>

Q84 : Do you foresee challenges in relation to the proposed approach for reporting of Delta? Are there any challenges regarding the reporting of Delta every time there is a valuation update?

<ESMA_QUESTION_TSTR_84>

The proposed guidance is to report the Delta value each time there is a change to the valuation amount. As the valuation amount can change daily, this would likely result in a significant increase in the number of transaction report submissions. With reconciliations to be performed for each submission, the level of processing to be performed each day will rise dramatically.

Additionally, the delta value could be considered protected information and so counterparties may not want to share this information with clients.

Therefore, if the field Delta is to be introduced as a new EMIR field, we believe it must be submitted separate to transaction messages and so may be more suited to be a field within Table 3.

<ESMA_QUESTION_TSTR_84>

Q85 : Do you agree with the proposal for reporting of attachment and detachment point?

<ESMA_QUESTION_TSTR_85>

We agree with this proposal.

<ESMA_QUESTION_TSTR_85>

Q86 : Do you consider that the fields Attachment point and Detachment point serve to report additional data or are applicable to other products than those foreseen in the CDE guidance?

<ESMA_QUESTION_TSTR_86>

We do not see Attachment Point and Detachment Point being applied to products other than CDS tranche transactions.

<ESMA_QUESTION_TSTR_86>

Q87 : Do respondents believe that any of these new fields would be problematic to report? If so, please explain why.

<ESMA_QUESTION_TSTR_87>

We agree with the inclusion of the fields themselves although would like to make the following observations:

- The consultation paper identifies examples when other payment is to be reported – an upfront payment, a termination fee, and principle exchange – but is the expectation that any form of payments that fall outside of the terms of the contract itself are to be reported, i.e. any payments that are not already captured within other EMIR reporting fields?
- Although not listed as a type of payment to be reported as other payments, for clarify we believe that Novation fees should not be reported within the payment fields. Novation fees are agreed between two of the parties involved with a novation and so can be considered sensitive information that should not be made available to other parties involved with that novation.
- It would be beneficial to have clarity as to whether the other payment fields are only to be reported for the reportable event to which the payment relates, or whether once the payment details have been reported the values are to persist on all subsequent events reported for that trade.

<ESMA_QUESTION_TSTR_87>

Q88 : Do you foresee any difficulties related to reporting of the additional fields for package transactions? Please motivate your reply.

<ESMA_QUESTION_TSTR_88>

We welcome the adoption of the CDE fields for package transactions.

However, as mentioned within our answer to question 30, applying CDE fields is only fully effective if the EMIR definitions do not diverge from the CDE guidance. We note that the RTS definition for the field 'Package identifier' differs from the CDE (and CFTC) definition. While some of the EMIR definitions can be read across to the CDE definitions, the CDE states that a package "may include reportable and non-reportable transactions", but this is not specified within the EMIR RTS. We believe that by EMIR not fully adopting the CDE definition for 'Package identifier', there is the risk that transactions will be considered a package trade within one jurisdiction, (e.g. CFTC), but not for another jurisdiction (e.g. EMIR), despite both jurisdictions having otherwise implemented CDE guidance. While we appreciate that the proposed EMIR definition is intended to align with the CDE definition and generally the two appear to achieve the same result, to avoid any potential edge cases where alignment may not

be achieved, we propose the CDE definition of Package identifier is adopted for EMIR.

EMIR reporting also includes the decomposition of package trades, whereby package trades are to be decomposed into their separate components for the purposes of reports, but only when it is possible to report *all* components using the available reporting templates, based on the ISDA Taxonomy 1.0. If any of the components only align to the 'Exotic' or 'Other' taxonomy, then the package should be reported as a single Exotic / Other trade.

Additionally, when reporting values for specific fields, each component report should inherit the values from the package trade where it is meaningful to do so, and the attribution of trade information to each component report, simply for the purposes of reporting, should be avoided. For example, if there is a premium for the package, the total premium amount should be populated on each component report and not divided between the components.

We suggest that such guidance should be incorporated into the EMIR technical standards.

Therefore, we propose:

- i. The updated EMIR technical standards adopt the full CDE definition for Package identifier, rather than align with the MiFIR definition. This will maintain closer harmonisation between EMIR, CFTC and any jurisdictions which may adopt the CDE in the future.
- ii. The updated EMIR technical standards should include details of the decomposition of packages within the RTS.
- iii. We encourage ESMA and CFTC to continue working together to ensure the Package definitions for each jurisdiction are aligned and thereby avoid transactions being reported as a package for one regime, but not the other.

<ESMA_QUESTION_TSTR_88>

Q89 : Do you foresee any difficulties related to the reporting of prior UTI? Please motivate your reply.

<ESMA_QUESTION_TSTR_89>

We agree with the adoption of the field Prior UTI, however we make the following observations:

- i. For trades that are live as of the start date and are therefore to be re-reported in line with the new technical standards, the prior UTI may not always be available. Therefore, we propose that the Prior UTI is not a mandatory field when re-reporting outstanding trades.
- ii. Clarification regarding novations:

- The Stepping-in party is reliant on the Remaining party providing the Prior UTI value. Otherwise it will be unable to report the transaction.
 - A novated trade may not have a prior UTI, e.g. the Stepping-in party is in scope for EMIR, but the original trade between Remaining Party and Stepping-out party was out of scope for EMIR. Therefore, no value is available to report.
 - Pending publication of the validation rules, it is assumed that a Prior UTI may be a mandatory field when Event Type is 'Step-in' (i.e. a Novation). However, if a prior UTI is not available, it may be necessary for a default value to be reported.
- iii. Prior UTI is identified as a reconcilable field, but is essentially old data and not a directly a term of the contract.

Therefore, we propose the following changes to the technical standards:

- **Prior UTI should not be a reconcilable field.** There are scenarios where a prior UTI may not exist for a novated trade, where a Stepping-in party has not been provided with the prior UTI, or for outstanding trades to be reported under the new technical standards after the start date. Therefore, there will be trades where it is impossible to resolve a reconciliation break if Prior UTI is a matching field. Furthermore, while Prior UTI links two trades together to give a more complete picture of a transaction, the value in itself is old data and does not provide systemic risk information of the current open transaction.
- **Only the Remaining Party should be required to populate the Prior UTI.** As mentioned above, a Stepping-in party would not be aware of the prior UTI and so is reliant on the Remaining party providing that information. To avoid the Stepping-in party potentially being unable to successfully report a novation transaction due to not having been provided with the prior UTI, only the Remaining Party should be required to populate the Prior UTI field. If however, the Stepping-in Party is to be required to report the Prior UTI, the technical standards should specify that the Remaining Party is liable to supply the prior UTI value to the Stepping-in Party.
- **A default value should be permitted for Prior UTI.** This will allow for successful reporting of novations where either (i) a prior UTI does not exist or (ii) the Remaining party has not provided the prior UTI to the Stepping-in party (otherwise the Stepping-in party cannot successfully report due to missing data outside of their control).

<ESMA_QUESTION_TSTR_89>

Q90 : Do you foresee any difficulties related to the reporting of PTRR ID? Please motivate your reply. Are you aware of alternative solutions that would enable regulators to link derivatives entering into and resulting from the same post-trade risk reduction event? Please provide details of such solutions.

<ESMA_QUESTION_TSTR_90>

The PTRR ID is not currently a widely used value by market participants, and therefore the consumption and reporting of this ID from PTRR service providers will be a new process for the industry to adopt. We assume that the PTRR ID field will be conditional on the field PTRR set to TRUE. However, we request additional clarification as to when the PTRR ID field must be reported.

<ESMA_QUESTION_TSTR_90>

Q91 : Do you foresee any difficulties related to the generation and reporting of the PTRR ID for cleared derivatives? Please motivate your reply.

<ESMA_QUESTION_TSTR_91>

As with the answer to question 90, this is a new process and so will require industry development.

<ESMA_QUESTION_TSTR_91>

Q92 : Do you see a need for further adjustment of the reporting requirements to allow for effective reporting of PTRR events, in addition to the ones proposed in the section 4.4.11.3?

<ESMA_QUESTION_TSTR_92>

There are a couple points where we request additional clarification.

'Rebalancing' is identified as one of the PTRR event types, but this is not a defined term and without a clear, single, industry wide understanding of what is meant by 'rebalancing', there may be multiple interpretations of the term, resulting in reconciliation breaks. Therefore, we request that a 'rebalancing' event type is defined, potentially with examples, within the technical standards.

A compression event (or potentially other PTRR events) may result in just a cash payment being made rather than a new trade being generated. A cash payment is not a derivative product and cannot be reported. Our assumption is that the Other Payment fields can be used to reflect the payment, but even then, it is unclear whether to (i) report the cash payment as one amount on a single trade, or (ii) to portion the cash payment out across all the trades covered by the PTRR event. For example, five trades are captured within a compression event that results in them all being terminated and a cash payment of EUR 50,000 to be made. Should the full EUR 50,000 be reflected within the Other Payment fields for just one of the terminated trades, or should all five of the terminated trades reflect an Other Payment amount of EUR 10,000?

Therefore, we ask that the technical standards clarify how a cash payment resulting from a PTRR event is to be reported.

<ESMA_QUESTION_TSTR_92>

Q93 : Do you foresee any difficulties related to the reporting of position UTI in the reports pertaining to the derivatives included in a position? Please motivate your reply.

<ESMA_QUESTION_TSTR_93>

It is our view that position reporting only applies to ETD trades. And, as previously mentioned within the answer to question 40, we are of the view that CfDs are OTC products and as such, should be reported at trade level only and not at position level.

<ESMA_QUESTION_TSTR_93>

Q94 : Do you foresee any difficulties related to the reporting of any of the additional data elements related to custom baskets? Please motivate your reply.

<ESMA_QUESTION_TSTR_94>

We believe that it is logical to include these additional CDE fields for custom baskets. However, while we are in favour of these fields being included in the EMIR report, we would like to highlight a couple of points which will result from the addition of these fields.

- Due to the nature of custom baskets, the constituents of baskets can be modified / rebalanced on a regular (sometimes daily) basis, and therefore there will be a marked increase in the number of Modifications being reported for these products.
- Additionally, CFTC have not adopted these same fields and while in general we favour the ESMA approach, we want to highlight this difference between the EMIR and CFTC reporting requirements.

<ESMA_QUESTION_TSTR_94>

Q95 : With regard to reporting of delivery interval times, which alternative do you prefer: (A) reporting in UTC time or (B) reporting in local time? Please provide arguments.

<ESMA_QUESTION_TSTR_95>

Timestamps should remain consistently across all EMIR fields. Therefore, we propose option A of "reporting in UTC time".

<ESMA_QUESTION_TSTR_95>

Q96 : Are you currently reporting derivatives on crypto-assets under EMIR? If so, please describe how they are reported. In particular, please clarify how do you identify and classify these derivatives in the reports under EMIR?

<ESMA_QUESTION_TSTR_96>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_96>

Q97 : Would you see the need to add further reporting details or amend the ones envisaged in the table of fields (see Annex V) in order to enable more accurate, comprehensive and efficient reporting of derivatives on crypto-assets?

<ESMA_QUESTION_TSTR_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_TSTR_97>

Q98 : Do you support the proposal that reports pertaining to the derivatives outstanding on the reporting start date should be updated in order to ensure consistent level of quality of data and limit the operational challenges?

<ESMA_QUESTION_TSTR_98>
We understand the benefits of re-reporting all outstanding derivatives in line with the updated technical standards. However, the scale of this task should not be underestimated and it may not always be possible to populate all of the new fields, (for example, a Prior UTI may not be available, as mentioned in the answer to question 89), and it could potentially be problematic obtaining UPIs for some outstanding trades. Therefore, we would encourage flexibility with when outstanding trades are to be reported and the validation and reconciliation rules that are applied to such trades.
<ESMA_QUESTION_TSTR_98>

Q99 : Do you foresee challenges with the update of reports pertaining to outstanding derivatives in line with the revised requirements? If so, please describe these challenges. In particular, if they relate to some of the newly added or amended reporting fields, please mention these fields.

<ESMA_QUESTION_TSTR_99>
As mentioned within the answer to question 98, it may not be possible to populate some of the new EMIR fields for outstanding trades. Therefore, it may be necessary for validation and reconciliation rules to be relaxed (at least for some fields) for the reporting of outstanding trades.
<ESMA_QUESTION_TSTR_99>

Q100 : Do you think that additional time after the reporting start date should be granted for the counterparties to update the reports pertaining to the outstanding derivatives? If so, how much additional timeline would be required?

<ESMA_QUESTION_TSTR_100>
The volume of open positions and the scale of the task would be too great to process on the start date itself. Furthermore, market participants would prefer reporting under the updated technical standards to be established before re-reporting the pre-existing trades. This 'settling-in' period would also include resolving reconciliation breaks which may well increase in volume for a period of time following implementation. Therefore, we propose that market participants have up to **six months** after the start date to re-report all open trades.
<ESMA_QUESTION_TSTR_100>

Q101 : Do you agree with the proposed timelines for implementation, i.e. 18 months from the entry into force of the technical standards?

<ESMA_QUESTION_TSTR_101>

The working group agree with an 18 month implementation period, but this is conditional on:

- If an ISO 20022 standard is mandated, it will need to be fully developed and available before the start of the implementation period. Please note however, that as per our answer to question 11, we do not believe that it is appropriate to mandate the ISO 20022 message scheme for reporting to TRs.
- The validation rules must be made available upfront of the implementation period.

To help facilitate a smooth implementation, the start date itself should fall on a Monday and avoid December / early January date when market participants will have code freezes in place.

There may need to be some flexibility with the length of the implementation date for the possible scenario that CPMI-IOSCO standards are not live as of the start date, e.g. if the implementation of the UPI standards were to be delayed.

<ESMA_QUESTION_TSTR_101>

Q102 : Do you agree with the proposed framework for verification of data submission? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_102>

We generally agree with the proposed framework with the following exceptions / points:

- Schema validation – As covered within our answer to question 11, we do not believe submissions to TRs should be based on an ISO 20022 schema. There is limited ability to re-use existing ISO 20022 fields from other reporting requirement and new standards would need to be developed for the updated EMIR technical standards. The current flexibility of scheme should be maintained.
- Business rules or content validation – The validation rules are vital to interpreting and implementing the reporting technical standards. These validation rules will ideally be made available as soon as possible and at the latest by the start date of the implementation period.

<ESMA_QUESTION_TSTR_102>

Q103 : Are there any additional aspects that would need to be clarified or specified with regards to the verification of logical integrity of submissions with different Action types such as “Revive”? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_103>

As covered within our answer for question 37, we assume the Action Type 'Revive' is the only way in which to change the status of a terminated trade back to outstanding, and that action types Modify and Correct will no longer re-open a terminated trade (as per current EMIR).

<ESMA_QUESTION_TSTR_103>

Q104 : Do you consider that the proposed procedure will allow the TRs to verify the compliance by the reporting counterparty or the submitting entity with the reporting requirements, and the completeness and correctness of the data reported under Article 9 EMIR? If not, what other aspects should be taken into account? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_104>

We believe the procedures should allow TRs to verify the compliance of reports.

<ESMA_QUESTION_TSTR_104>

Q105 : Are there any additional aspects that would need to be clarified or specified with regards to the updates to the LEI that are to be performed by the TRs? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_105>

While it is considered reasonable for TRs to process LEI changes within 30 days, this is conditional on the TR being in receipt of all the required information. The 30 day period should only commence once the TR has been supplied with all the relevant data.

As was mentioned in our answer to question 49, long term we do not believe it is preferable for TRs to maintain and manage changes to LEIs when the GLEIF is already the central repository for LEIs. We propose that the ideal solution would be for the GLEIF to be the primary industry source for maintaining and updating LEIs, although this would require coordination at a global level and cannot be implemented at an EMIR / jurisdiction level only.

<ESMA_QUESTION_TSTR_105>

Q106 : Are there any other aspects that should be considered with regards to the scope and start of the reconciliation process? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_106>

There appears to be a contradiction in what the consultation paper states:

- Paragraph 364, point c says “derivatives that have expired or that have been terminated more than a month before the date on which the reconciliation process takes place and were not revived should be removed from reconciliation”.
- Paragraph 366, point c says the reconciliation applies to all derivatives where “the derivative (i) has been terminated and not been revived, (ii) has been

cancelled with action type “Error” and not been “Revived”, (iii) has matured, or (iv) has been reported with action type “Position component”.

We understand that only outstanding trades and trades that were terminated within 30 days are in scope to be reconciled, even though paragraph 366 does not seem to apply the 30 day lookback period. We request that this assumption is clarified. We would welcome clarification however, on how a position would be reconciled if one counterparty (Counterparty A) submits a termination event in error, but the position remains at an outstanding status for the other counterparty (Counterparty B), i.e. would the position still be reconcilable for Counterparty A after 30 days due to the same UTI remaining as outstanding as per the Counterparty B submission? If Counterparty A were to then revive the UTI, presumably the trade would once again be in scope for reconciliations.

<ESMA_QUESTION_TSTR_106>

Q107 : Are there any aspects related to the intra-TR reconciliation that need to be clarified? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_107>

No additional clarification required.

<ESMA_QUESTION_TSTR_107>

Q108 : What additional aspects with regards to inter-TR reconciliation will need to be considered? Should additional fields be considered for pairing? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_108>

We believe that pairing should only be based on the UTI and LEI of the two counterparties.

We also believe that there is currently a gap in the overall reconciliation process whereby counterparties do not have visibility of trades that have been alleged against them, for example Company A will currently receive reports for trades it has reported and which remain as unpaired, but it does not have visibility of unpaired trades that have submitted by another entity to a different trade repository which identifies Party A as ‘Counterparty 2’. An ‘alleged trade’ report would only need to provide the UTI rather than full trade details, and it would alert market participants, (Company A in the above example) of where other entities believe they have executed trades against them, but they do not themselves recognise.

We acknowledge that the logistics for TRs to provide such a report is complex, but it would increase the level of oversight of data that counterparties have.

<ESMA_QUESTION_TSTR_108>

Q109 : What other aspects should be considered to ensure the integrity of the number and values of the reconciled derivatives? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_109>

We request further clarification on the details for this proposal. Our understanding is that TRs will exchange the number of reconciliation breaks, but not the details of the breaks.

If this is the case and only the number of breaks are to be exchanged, we are unclear what subsequent action would be expected of TRs and / or counterparties once they are made aware of the breaks.

<ESMA_QUESTION_TSTR_109>

Q110 : What other aspects should be considered to reduce data transformation and format issues in the inter-TR reconciliation process? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_110>

As mentioned in our answer for 11, we do not believe that ISO 20022 should be mandated as the format for reporting to TRs. In order to reduce the risk of data being misreported or transformed incorrectly, we argue that it is of more value to create a comprehensive standard representation of derivative products and their life cycle event based on well-established industry terms and definitions. This would pave the way for machine readable and machine executable rules providing a single, non-ambiguous way of representing and implementing the EMIR reporting requirements.

<ESMA_QUESTION_TSTR_110>

Q111 : What other aspects should be taken into account with regards to the timeline for completion of the inter-TR reconciliation process? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_111>

While there is no objection to the reconciliation process being completed by 18:00 UCT, we would like to note that this is an earlier cut-off time compared to the current processes. Therefore, TRs will need to exchange data and start the reconciliation processes earlier in the day in order to meet the deadline. If any TRs cannot exchange their data in time, such data will not be captured in that days reconciliations.

The management of reconciliation breaks is primarily a manual task and so while there is no strong objection towards the proposed timeline, there would be limited benefit from TRs completing the reconciliation process by 18:00 UCT as opposed to end of day.

Paragraph 381 implies that the 18:00 UCT cut-off applies on T+1, however TRs would generally aim to include all reports submitted that day within the reconciliation, (regardless of whether the reporting entity makes the submission on T or T+1), rather than holdback reconciling submissions until T+1. If submitted trades are to be withheld until T+1 before they are reconciled however, it raises the question of whether this applies to all action types. For example, it may be more logical to reconcile a Correct action type on T rather than T+1.

<ESMA_QUESTION_TSTR_111>

Q112 : Do you agree with the proposed approach to establish tolerances for certain fields? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_112>

We strongly support ESMA having the flexibility to adjust the reconciliation rules and processes outside of the RTS and ITS.

It may not be possible to determine ahead of the reporting start date whether all the reconciliation rules and tolerance levels are appropriate for any given field.

Therefore, we suggest that ESMA should retain flexibility to adjust reconciliation criteria and tolerance levels rather than establish the reconciliation requirements within the technical standards which would require a rule change should it transpire any of the reconciliation requirements are not suitable.

If ESMA were to retain the flexibility to change reconciliation tolerances and criteria, any such adjustments can be put in place much more quickly and easily, benefitting both regulators and market participants alike.

We would caution against a 'one size fits all' approach to applying tolerance levels across multiple fields. A tolerance level of three decimal places (for percentage values), may be suitable for one field, but inappropriate for another. Therefore, we would advocate that tolerance levels should be applied as appropriate on a field by field basis.

Timestamp fields

We propose that the field Confirmation timestamp should not be a reconcilable field. Paper confirmations are generally processed manually with counterparties potentially located in different time zones. As a result, it is highly likely – and often unavoidable – that the two counterparties will execute a confirmation at times greater than an hour apart. Therefore, a one hour tolerance would not be relevant for paper confirmations as it is too short a tolerance period to realistically reflect how they are processed.

Numerical and Percentage value fields

Several of the fields where the numerical tolerance is applied are agreed terms of the contact so there should be a 100% match. Historically, these fields have generally broken for matching purposes due to how more general reporting logic – such as the exchange rate or leg alignment – is applied. ISDA, along with several other trade associations, have established EMIR reporting best practices⁴ to standardise from of the general reporting principles. Addressing some of these best practices items within the new technical standards would help remove a number of the common causes that currently create matching breaks across multiple fields.

<ESMA_QUESTION_TSTR_112>

Q113 : Do you agree with the proposed set of fields? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_113>

We agree that fields which reflect transactional data should be subject to reconciliation, although only where such fields are identified within the validation

⁴ https://www.isda.org/a/5OoTE/EMIR-reporting_Industry-Best-Practices-matrix_March-2020.xlsx

rules as being mandatory or conditional. As the validation rules are not currently available, we cannot provide a conclusive list of fields which we believe should not be subject to reconciliations, but essentially our view is that 'optional' fields should be outside of reconciliation processes.

More specifically there are several fields we believe should not be reconciled regardless of whether or not they are optional fields. These are:

- i. Prior UTI (Table 2, field 3) – We believe there are scenarios where a Prior UTI will not be available. See answer to question 89
- ii. Valuation fields (Table 2, fields 17-20) – see answer to question 114
- iii. Confirmation timestamp (Table 2, field 23) – see answer to question 112
- iv. Master Agreement Type and Master Agreement Version (Table 2, fields 29 and 31) – These are static data values and as such, the same value will be reported across multiple transactions. We believe there is limited benefit reconciling static data values and instead suggest that only transactional data fields should be reconciled.
- v. Delta (Table 2, field 68) – We believe this field should be included on Table 3. See answer to question 84

While we are supportive that transactional data is reconcilable, we take this opportunity to highlight that custom basket trades can be modified daily. Therefore, the field 'Underlying custom basket identification' (Table 2, field 14) will frequently be updated and reconciled. Any differences in how the two Counterparties report the basket components within this field – potentially including the order in which the components are reported – will result in a reconciliation break.

We welcome that the reconciliation of this field will commence two years from the start date as this allows the industry and regulatory authorities time to prepare how this field is reported and reconciled in order to minimise matching breaks.

Our assumption is that trades that are outstanding prior to the reporting start date and are to be re-reported in line with the new technical standards, will have the same reconciliations applied to them. In our answer to question 100, we propose that counterparties have up to six months after the start date to report outstanding trades. As such, there may be an increase in the number of reconciliation breaks during this period as counterparties re-report their outstanding trades at different times during the six months.

Therefore, we request that in addition to counterparties having up to six months after the start date to reporting outstanding trades under the new technical standards, there is a stated expectation that National Competent Authorities (NCAs) should not prioritise supervisory actions in relation to the reporting of the outstanding trades during the six month period.

Finally, we have noted that the reconciliation start dates appear to be applied inconsistently for some groups of fields. All the Fixed Rate of Leg 1 fields are to be reconciled two years after the reporting start date, whereas all except one of the Fixed Rate of Leg 2 fields are to be reconciled as of the start date. We suggest that fields providing comparable data values – such as the Fixed Rate fields – should have the same reconciliation start date.

<ESMA_QUESTION_TSTR_113>

Q114 : Do you foresee any problem in the reconciliation of field “Valuation amount”? How should the valuation amount be reconciled in the case of derivatives which are valued in different currency by the counterparties, such as currency derivatives? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_114>

Valuation amount is an output field as opposed to being an input field. That is to say the valuation amount is based on the contractual data but is not a contractual term of itself. The valuation amount is therefore not a value the two counterparties to a trade would be expected to agree and match on, (as noted in paragraph 258 of the consultation paper).

The point in time when counterparties value contracts may differ, along with the data used to run the calculations, and as such while similar valuation amounts may be calculated by both counterparties, it is very likely they will not match. Paragraph 258 of the consultation paper acknowledges that the reported amounts can be different and states that valuation amounts should not differ ‘markedly’ between the counterparties. However, given the variables of when and how valuation amounts are calculated, we believe that a tolerance of 0.0005% is too narrow to be considered a reasonable or ‘markedly’ different range for the two values reported by the counterparties.

Rather than set a larger tolerance level for valuation amount, and considering that valuation amount is not an agreed term of the contract, we propose that the Valuation fields should not be reconcilable.

Additionally, we believe that once a trade has been reconciled, it should remain at a reconciled status until the transaction data itself changes. The Valuation fields are reported within Table 2 and will be regularly updated (often on a daily basis). Current EMIR reporting allows for valuation updates to be submitted as a separate report to transaction data. Our assumption is that the new technical standards will continue to allow valuation updates to be reported as a separate report, although it is not clear within the consultation paper.

We propose that it should be allowed for valuation reporting to be separate to transaction report (i.e. it should not be necessary to re-report the full Table 2 fields to submit a valuation amount).

<ESMA_QUESTION_TSTR_114>

Q115 : Do you agree with excluding the newly added fields from the first stage of the inter-TR reconciliation process? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_115>

We agree with excluding these fields.

<ESMA_QUESTION_TSTR_115>

Q116 : Do you consider that any additional requirement in relation with the policies and procedures referred to in Article 78(9) EMIR needs to be added to ensure better performance of the data transfer by TRs? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_116>

We do not consider that additional requirements need to be added to the proposals.

We would like to note however that although the porting guidelines were initially produced with the intention of transferring entire trade portfolios and for the counterparty (the TR participant) to also on-board to the new TR, the assumption is that TRs will follow the same guidelines when transferring part of the trade portfolio of an NFC- entity and will not deviate from the basic guidelines.

<ESMA_QUESTION_TSTR_116>

Q117 : Do you agree with the proposed framework for rejection responses? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_117>

We agree with the proposed framework with the exception of mandating messages in ISO 20022 format.

<ESMA_QUESTION_TSTR_117>

Q118 : Do you agree with the proposed framework for reconciliation responses? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_118>

We agree with the proposed framework, although as previously mentioned in the response to question 111, a reconciliation cut-off time of 18:00 UTC will require TRs to start their reconciliation processes earlier in the day and if any TRs were to miss the inter-TR deadlines for exchanging data, such trade data will be missing from the reconciliation responses for that day.

<ESMA_QUESTION_TSTR_118>

Q119 : Do you agree with the suggested reconciliation categories? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_119>

Generally we agree with the suggested reconciliation categories, although there are some points that we believe would benefit from further guidance.

Definition of 'Further modifications' – We request additional clarification on when the reconciliation category 'Further modifications' would be used. An initial reading of the definition for this category is that 'Further modifications' would be used to represent a modification that has been received by a TR after the reconciliation process has commenced, and therefore the reconciliation results for that day will not reflect the most recently submitted trade details.

An example of when 'Further modifications' is to be used would help with our understanding.

We also request for additional clarification as to what steps counterparties would be expected to take when trades are identified as 'Further modification' being "Yes".

Scope of response reports – For the avoidance of doubt, please confirm whether the daily reconciliation response messages will be for (i) all unmatched trades that remain outstanding as of that day, or (ii) only for trades that are submitted for reporting that day.

Format of response reports – We are not clear if the intention is for all response messages to be in XML format. Currently, market participants can receive response messages from TRs in different formats, for example in CSV format. A move to files only being sent in XML format would require significant changes to how the process is currently supported and would not necessarily improve how the data is communicated to the counterparty.

Therefore, we propose that TRs should be able to send reports to counterparties in XML format, but retain flexibility to also send the reports in other formats.

<ESMA_QUESTION_TSTR_119>

Q120 : Are there any relevant aspects related to the application of action type "Revive" that should be considered for the purposes of carrying out the reconciliation process?

<ESMA_QUESTION_TSTR_120>

We believe that the reconciliation reports should accurately capture trades reported with action type 'Revive'.

<ESMA_QUESTION_TSTR_120>

Q121 : Are there any aspects that need to be further specified regarding the end-of-day reports to be provided to reporting counterparties, the entities responsible for reporting and, where relevant, the report submitting entities? Is there any additional information that should be provided to these entities to facilitate their processing of data and improve quality of data? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_121>

As previously mentioned in the answer to question 108, there is a gap in the current reconciliation process whereby counterparties cannot see what trades have been alleged against them. The introduction of an 'Alleged trades' end-of-day report may want to be considered.

Trade repositories would only send end-of-day reports when it is possible to do so. For example, if a trade is submitted by a report submitting entity, but the reporting counterparty itself has not on-boarded to a TR, the TR will not be able to send reports to the report submitting counterparty. Only entities on-boarded to a TR can receive end-of-day reports directly from that TR.

We propose that report submitting entities should only receive the Daily activity report and the Rejection report. This will allow report submitting entities to validate whether

all trade submissions have been successful, but not give them access to the details of the reporting counterparties trade portfolio.

<ESMA_QUESTION_TSTR_121>

Q122 : Especially regarding the abnormal values, please indicate which of the two approaches you prefer and which other aspect should be taken into account. Please detail the reason for your response.

<ESMA_QUESTION_TSTR_122>

The preference is for ESMA to set the threshold levels for the 'abnormal values'. This will avoid a scenario where TRs set different threshold levels resulting in a single trade being considered to be over the threshold level by one TR, but under the threshold level by another.

More generally, the setting of threshold levels is an area where machine learning and/or AI could potentially be utilised. This should lead to more considered and relevant threshold levels being established, and enable the levels to be modified more easily. We would encourage ESMA to work with the industry to determine how best to set the threshold levels so they are applicable and workable within the EMIR reporting requirements.

<ESMA_QUESTION_TSTR_122>

Q123 : Do you believe that there are any other aspects that need to be aligned between the current RTS on registration under SFTR and the ones under EMIR? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_123>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_123>

Q124 : Do you agree with the above proposals for provision of information in the case of extension of registration? Please elaborate on the reasons for your response.

<ESMA_QUESTION_TSTR_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_124>

Q125 : Do you believe that there are any other aspects that need to be covered by the draft ITS on registration under EMIR? Please detail the reasons for your response.

<ESMA_QUESTION_TSTR_125>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TSTR_125>

Q126 : Do you agree with the proposed amendments to the data access requirements with respect to the terms and conditions of data access?

<ESMA_QUESTION_TSTR_126>

We agree with the proposed amendments.

<ESMA_QUESTION_TSTR_126>

Q127 : What other aspects need to be clarified with regards to the definition of elements for the establishment of direct and immediate access to data?

<ESMA_QUESTION_TSTR_127>

There are no other aspects we believe require clarification.

<ESMA_QUESTION_TSTR_127>