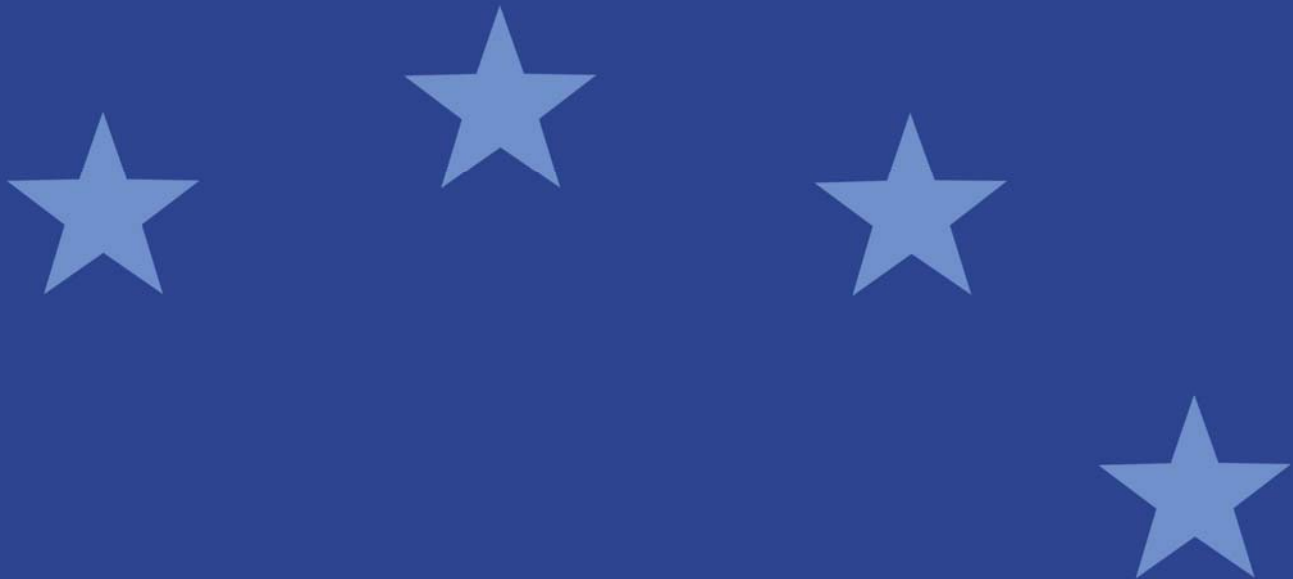


## Reply form for the Addendum Consultation Paper on MiFID II/MiFIR



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Addendum Consultation Paper on MiFID II/MiFIR, published on the ESMA website.

### *Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

### **Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CP\_TR\_ORK\_CS\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_CP\_TR\_ORK\_CS\_XXXX\_REPLYFORM or

ESMA\_CP\_TR\_ORK\_CS\_XXXX\_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

### **Deadline**

Responses must reach us by **23 March 2016**.

All contributions should be submitted online at <https://www.esma.europa.eu/> under the heading 'Your input/Consultations'.



### ***Publication of responses***

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

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_CP\_TR\_ORK\_CS\_1>

The International Swaps and Derivatives Association (ISDA\*) and its members would like to commend ESMA for the provision of this guidelines document. In our view it will be an invaluable resource to aid the smooth implementation of the requirements detailed in the regulatory technical standards for transaction reporting, reference data, order record keeping & clock synchronisation. We very much look forward to developing the document further in the future so that it is a complete guide to the requirements down to a technical level which allows uniform implementation for investment firms across the Union impacted by MiFID II / MiFIR.

For the most part our feedback on the content of the draft guidelines document is overwhelmingly positive. The use of examples and scenarios to illustrate approaches to take to meet requirements is in our view the most sensible and efficient way to communicate ESMA's preferences.

Where the draft guidelines document is perhaps lacking, in the view of ISDA's members, is in product scope, with in our view, insufficient coverage of derivatives which do not have a security as an underlier, such as some commodity derivatives, interest rate derivatives and FX derivatives. Throughout our response we call for and provide more examples of such products which we look forward to seeing in future versions of the document. Further to that, ISDA's members are ready to work with ESMA further to provide more detailed examples and scenarios if ESMA is receptive. However, we are cognisant that key questions remain as to the extent to which these derivatives are in scope for MiFID II / MiFIR, as well as the impact of the design, by an ISO study group, of an identification system for such derivatives via the ISIN standard which does not exist today for such instruments, we note these two facts in the response. We expect that more detailed scenario analysis and examples will be possible when these two major issues are resolved in coming months.

With regard to the validations of the transaction reports we include examples which are to merely illustrate the product scope/ instrument identification issues at hand – as alluded to above, the work the ISO study group is carrying out has only begun and decisions about the exact structure of the metadata and attributes which will be contained in the ISIN remain to be finalised. This most readily has an impact on RTS 22 where certain attributes on the transaction report are expected to be redundant if an ISIN identifies an instrument. This may not be the case. Ideally an amendment could be made to the text from table 2 of Annex I in RTS 22 to cater for all possible outcomes of this ISO work but if not, we expect ESMA should be able to, via the guidelines document, provide exceptions to the statement in table 2 for fields 41-56 which can then be effected via the validation rules at a later date, when the final ISIN solution for derivative products is clear. ISDA stands ready to assist in design of those rules when the time comes.

Additionally, we would like support the comments made by Financial products Markup Language ("FpML"), regarding some of the underlying assumptions of this consultation paper. This paper's XML snippets are based on a draft standard that ESMA plans to submit for review and ratification under the ISO 20022 process. We believe that it is inappropriate to publish draft guidelines based on a proposed international standard when the standard is still in the business justification stage, and has not yet undergone any formal review. While we appreciate that the examples that are provided are useful to understand the intent of the proposed standard, these should be provided in support of the proposed ISO 20022 standard, not as draft regulatory guidelines with legal effect. Until the ISO standard has been at least published for final approval under the ISO process, the regulatory guidelines should refer to the standard but not provide the specifics as these still are under review. Doing so risks creating the perception that ESMA sees the ISO process as merely a formality for approving ESMA's work, rather than as a true international standards development process. Even though there is a disclaimer in the guidelines that the messages are subject to the ISO governance framework, publishing guidelines based on messages that have not been reviewed risks undermining the credibility of the ISO process.

Finally, we would like to reiterate ISDA and our members' readiness to work with ESMA to further develop the guidelines document, as it will be crucial to the implementation of the regulatory technical standards



for transaction reporting, reference data, order record keeping & clock synchronisation. We look forward to hearing from you and seeing the next iteration of these guidelines.

*\* Since 1985, the International Swaps and Derivatives Association has worked to make the global derivatives markets safer and more efficient.*

*ISDA's pioneering work in developing the ISDA Master Agreement and a wide range of related documentation materials, and in ensuring the enforceability of their netting and collateral provisions, has helped to significantly reduce credit and legal risk. The Association has been a leader in promoting sound risk management practices and processes, and engages constructively with policymakers and legislators around the world to advance the understanding and treatment of derivatives as a risk management tool.*

*Today, ISDA has over 850 member institutions from 67 countries. These members comprise of 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.*

*ISDA's work in three key areas – reducing counterparty credit risk, increasing transparency, and improving the industry's operational infrastructure – show the strong commitment of the Association toward its primary goals; to build robust, stable financial markets and a strong financial regulatory framework.*

<ESMA\_COMMENT\_CP\_TR\_ORK\_CS\_1>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1>

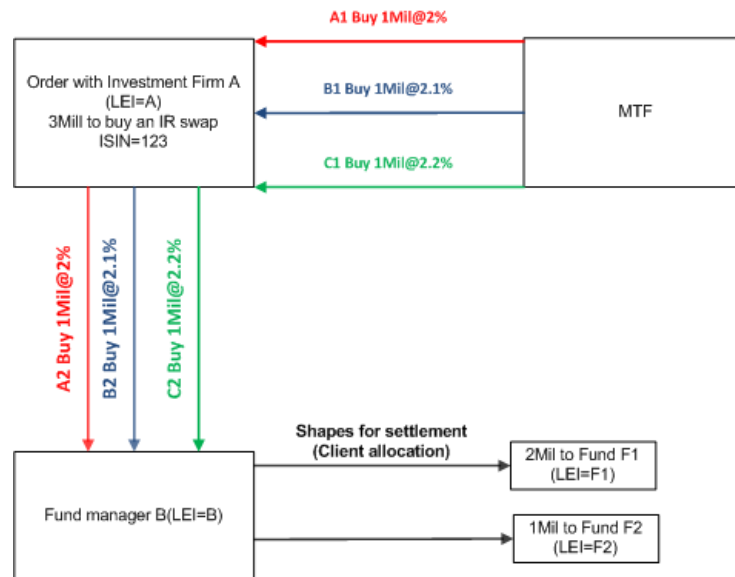
Firstly, regarding the statement from page 11 of the guidelines document consultation paper (paragraph 3 under 1.1.1): “content for the following fields (describing the common objective elements of the transaction concluded between the two investment firms) shall match in the respective equivalent reports of each of the two investment firms: venue, trading date time, quantity, quantity currency, price, price currency, up-front payment, up-front payment currency, and instrument details, where relevant”

Whilst we appreciate that the expectation from the NCA’s is that the transaction reports from parties to the same transaction should contain the same details, our understanding is that there are no ‘matching requirements’ similar to EMIR under MiFID II/MiFIR.

**Scenarios**

An example scenario illustrating when the legal entity of the client that will own the instrument settlement is different to the entity which gives the executing broker the order is shown below:

**Figure 1 transaction execution by fund manager on behalf of funds**



The simplest part at the top of *Figure 1* involves the 3 transaction reports with the MTF venue, one report for each trade with Trading Capacity=MTCH, Seller=Venue MIC and Buyer LEI=B. When the client allocation instructions are received and the ultimate beneficiary’s LEI is different to the one originally received at execution (for Fund manager B)

Does Investment Firm A need to do anything? E.g. send additional reports populated with:

Trading Capacity ‘AOTC’ reports for both allocations between Firm B and Fund F1 & F2

Buyer Decision Maker code = LEI B

Trade date/time = time of allocation

If the onus of sending transaction reports for the client allocation is with the Fund manager, how will they do that if they have to report per execution? What is going to be the Trading capacity AOTC/MTCH? In examples throughout the guidelines document comparison of what different parties in the chain will report is useful so where ESMA has shown the report for each party to the transaction points are better illustrated.

ISDA's members assume that allocations to the underlying funds are not reportable (by the investment firm, the fund manager may report these client allocations), as funds are not treated as counterparties to the execution with the investment firm only to clearing. Cleared allocations are post execution events and as such reportable under EMIR and not MiFID II / MiFIR. Our understanding in this regard is that if per *Figure 1* an investment firm A has done three separate transactions of 1 million on an MTF for a client fund manager who is executing transactions for funds it manages. Then investment firm will send three transaction reports for each of the 1 million transactions A2, B2 and C2 against LEI of the fund manager as the buyer, any further allocations of the total 3 million of notional across the swaps done by the client into the funds are not expected to be reported by investment firm A. We would welcome such an example to be provided in the guidelines document which illustrates this for all investment firms and fund managers to understand their reporting obligation.

#### Trading capacity

With regard to determination of the Trading Capacity as DEAL or MTCH, ISDA's members assume firms will classify their own business model according to their arrangement with their clients based on such things as whether there is an equal and opposite trade to the transaction which happens or by assessment of the use of balance sheet by firms to effect the trade. This is a sensible approach which avoids the need for exhaustive scenarios which would still be subject to interpretation.

Furthermore, we welcome the clarity of guidance that everything else is given the trading capacity AOTC if it cannot be classed as MTCH or DEAL also avoiding cumbersome examples which may not be exhaustive.

#### Reporting arrangements

With regard to arrangements for delivering Transaction Reports to National Competent Authorities (NCAs), ISDA's members would like to clarify some important points around the mechanics for reporting which ESMA should clarify in the guidelines document.

MiFIR Article 26 states:

*7. The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.*

*Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.*

*By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.*

Recital 13 of RTS 13 states:

*An investment firm which has transaction reporting obligations, known as a 'reporting firm', may choose to use a third party to submit transaction reports on its behalf to an ARM, that is a 'submitting firm'.*



Considering the above text, ISDA's members working assumption is that the submitting firm does not need to register as an Approved Reporting Mechanism (ARM) as the submitting firm takes no responsibility for failures in the completeness, accuracy or timely submission of the transaction reports, this responsibility remains with the investment firm while they outsource the process. Therefore the submitting firm can never be an ARM under the definition of an ARM's responsibilities.

Similarly, in other common reporting arrangements where a central shared system is used for Transaction Reporting by a number of entities within the same group, no party within the group would ever be expected to register as an ARM, as the entities retain responsibility for their reporting to their NCA (possibly via an ARM if necessary). Indeed, to determine the entity which should become an ARM might be very difficult for investment firms within a group to do as it is a shared IT infrastructure rather than a distinct entity. Firms believe this arrangement fits within the parameters of Article 26(7) MiFIR where they submit their Transaction Reports using shared reporting technology to a registered ARM and also reflects current industry practice under MiFID I and also other EU legislation such as EMIR.

Some diagrams below in *Figure 4 Three possible transaction reporting arrangements* and *Figure 5 Real world transaction reporting scenario* illustrate some of these potential arrangements for which clarity should be provided so there is no ambiguity regarding the requirements to register as an ARM.



Figure 2 Three possible transaction reporting arrangements

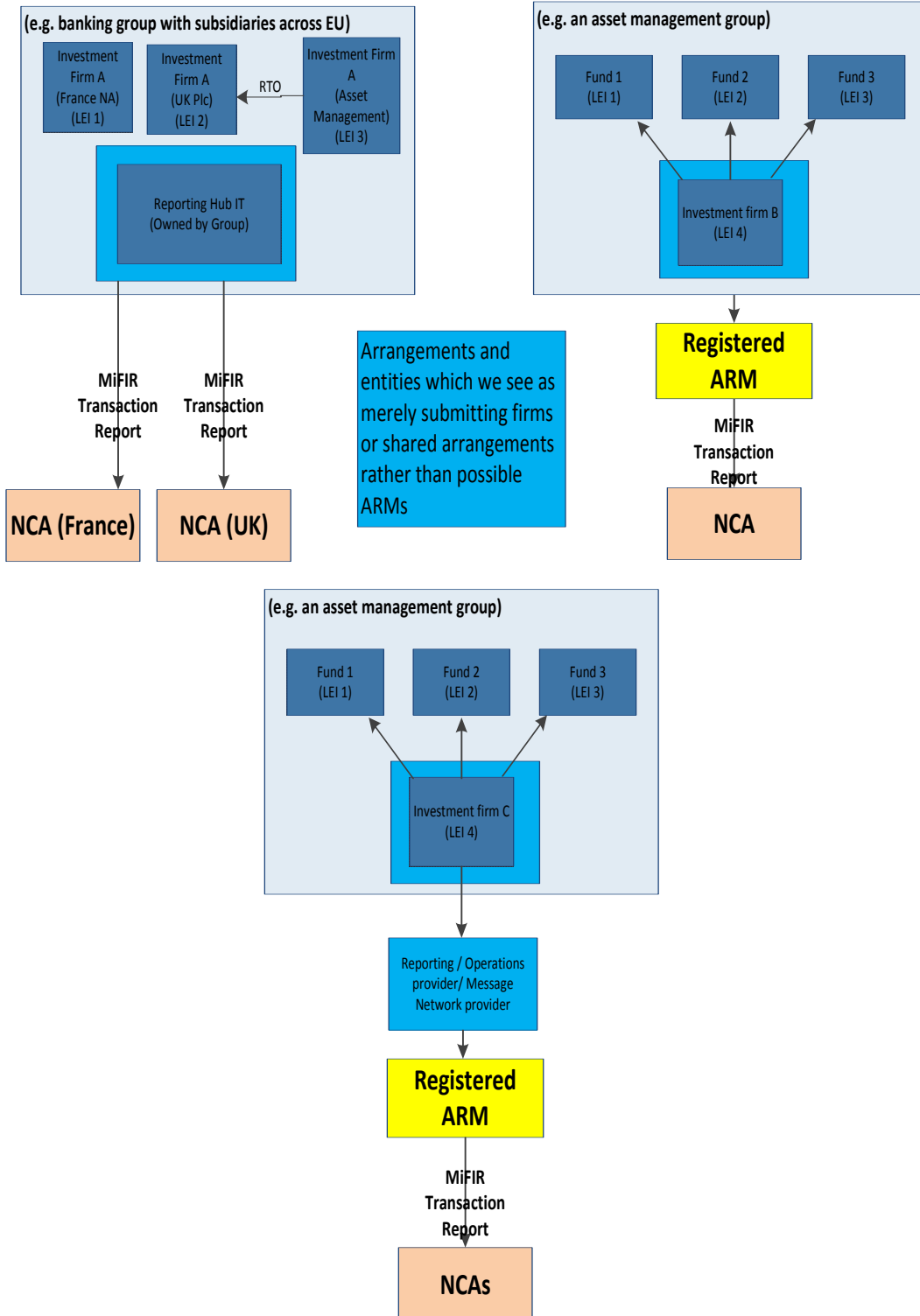
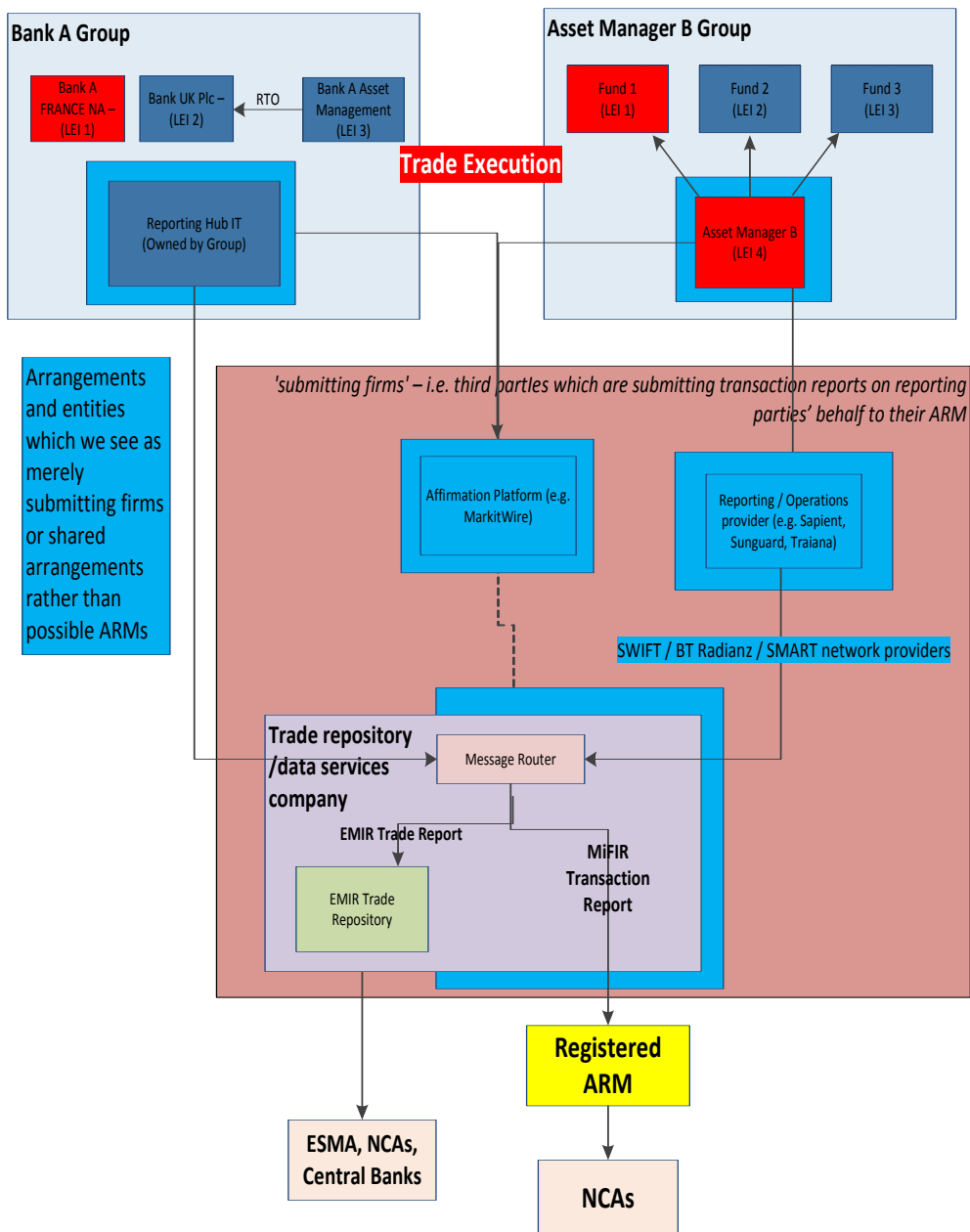


Figure 3 Real world transaction reporting scenario

The diagram below shows a presentation of an expected real world data flow for the reporting of a transaction executed between a bank and asset manager – it is ISDA’s members assumption that only one entity needs to register as an ARM. Both parties to the transaction have internal technology shared by entities within the same group which send data outside the group to companies to which they have outsourced some post trade activities and who will route the data for them to their chosen ARM. The sole responsibility for reporting remains with the parties to the transaction until the transaction report data enters the ARM. At this point the ARM is responsible “for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM”.





<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_1>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_2>

Section 1.1.4 includes in the definition of an *Execution of a transaction on a trading venue* - “the transaction was executed outside the trading platform of the venue, but is subject to the rules of that venue, is executed in compliance with those rules, whereby the price was negotiated among the parties to the transaction and accepted by the trading venue.” ISDA’s members would be grateful if an example could be included that demonstrates how Negotiated Transactions should be reported, specifically showing how the Buyer, Seller, Venue and execution time fields should be populated.

Our assumption is that negotiated transactions: which are trade done off venue are reported in the same manner as those executed on a venue but with *Waiver Indicator* indicating negotiated (i.e. taking value NLIQ or OILQ) and timestamp and other economic values fed to venue rather than generated on the venue at execution.

It is worth noting generally here something which might be an implementation issue for future discussion, whilst firms appreciate that there is no formal requirement for the Trading Venues to provide the MIC codes or the Waiver information (under RTS 22) firms would very much appreciate ESMA’s help in encouraging the Trading Venues to provide this information and other required data for Transaction Reports to the investment firms in standard ways.

Section 1.1.5 advises Investment firms to reach out to clients who are natural persons as their identifiers reach expiry if using non persistent identifiers – ISDA’s members would like to highlight that this would be a very onerous task to undertake and might discourage reporting of such non-persistent identifiers if such a burdensome task is associated with their use. Likewise guidance from ESMA on what to do when legal entity clients or counterparties do not have the requisite identifier {LEI} for Transaction Reporting.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_2>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_3>

The examples in sections 1.1.6 and 1.1.7 powerfully illustrate what might be reportable and what is not. For the most part ISDA’s members think the examples in the draft guidelines have cleared up understanding of what transactions are reportable and what are not. We would like to thank ESMA for taking this approach in the guidelines document.

With reference to section 1.1.6, example 14 discusses allotment rights and the allocation and receipt of such rights being non-reportable. If an investment firm trades an allotment rights line, for example nil paid rights or fully paid rights, is the trading of the rights entitlement reportable? ISDA’s members’ current assumption is that it is if admitted to a Trading Venue.

With reference to section 1.1.7.1, ISDA’s members very much welcome the clarifications provided for securities financing transactions and the Securities Financing Transactions Regulation (SFTR). The examples clearly illustrate what is in and out of scope and we really welcome this approach. However, further to example 3, ISDA members are working under the assumption that the securities financing transactions which would be reportable under SFTR, but for an exemption under SFTR, will therefore become reportable under MiFIDII/MIFIR and that such Transaction reporting of these SFTR exempt securities financing transactions can only commence once SFTR enters into force i.e. when SFTR reporting begins such



Transaction reporting for securities financing transactions between a Central Bank and an Investment firm will also begin and shall have Field 65, Annex 1, table 2, RTS 22 set to true only from that point.

Prior to those Security Financing Transactions being reportable ISDA's members would welcome examples in the MiFIR transaction reporting guidelines document showing how to report attributes required under MiFIR. Particularly worked examples of how to report: a) any eligible triparty trades, in which the collateral is unknown pre-settlement, b) the sale and repurchase of a term repo transaction, c) whether any consideration should be made when booking a single leg repo transaction (either booking just the sale or repurchase of an Open transaction?

ISDA's members would be grateful if an additional example could be included to show that a transaction in a wholesale energy product traded on an Organised Trading Facility (OTF) that is physically settled is not a reportable transaction in accordance with Annex I, Section C *Financial instruments*, (6) of Directive 2014/65/EU (MiFIDII).

An example in this section which affirms ISDA's members assumption that transfers of collateral made up of MiFIDII financial instruments are not included in the definition of a transaction would be very much welcome. ESMA's May 2014 discussion paper on MiFIR expressly states that movements of financial instruments as collateral are not intended to be deemed to constitute a transaction for Transaction Reporting. Similarly, Article 12(d) of RTS 2 omits such activity from the definition of a transaction for its purposes, stating:

"The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

...

(d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a central counterparty."

It's not clear why such collateral movements have been omitted from the list of exemptions in Article 2(5) of RTS 22 but we assume it should be there or is not deemed to constitute a transaction under RTS 22 as the activity is not subject to market abuse as transfer of collateral is post execution activity, whereby the price forming event has already occurred prior to this and has already been reported. ISDA's members feel an example showing that such activity is not a transaction for the purposes on RTS 22 in the guidelines document would suffice to make this clear to all parties.

ISDA's members would welcome an example showing the Transaction Reporting expectations for activity related to a position which is the result of the novation of a transaction from one party to another. The reason for this is as follows, while novations of transactions are excluded from Transaction Reporting (per Article 2 5 (e)) there is a suggestion in the second paragraph of Section 1.1.1\* that the total position in a financial instrument which has been reported via Transaction Reports is still important to ESMA. Transaction Reporting of transaction which are the result of increases and decreases to a position which was novated will be an exception to this as the initial transaction report which instigated the position would not be reportable.

(\*As clarified in Recital 11 and further specified in Article 15(5) of RTS 22, an investment firm shall therefore ensure that a collective view of the transaction reports reported with the investment firm as the executing entity accurately reflects all changes in its position and in the position of its clients in the financial instruments concerned as at the time the transactions were executed.")

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_3>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_4>



With regard to arrangements for delivering Transaction Reports to National Competent Authorities (NCAs), ISDA's members would like to clarify some important points around the mechanics for reporting which ESMA should clarify in the guidelines document.

MiFIR Article 26 states:

7. *The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.*

*Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.*

*By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to Article 66(4) of Directive 2014/65/EU the ARM or trading venue shall be responsible for those failures.*

Recital 13 of RTS 13 states:

*An investment firm which has transaction reporting obligations, known as a 'reporting firm', may choose to use a third party to submit transaction reports on its behalf to an ARM, that is a 'submitting firm'.*

Considering the above text, ISDA's members working assumption is that the submitting firm does not need to register as an Approved Reporting Mechanism (ARM) as the submitting firm takes no responsibility for failures in the completeness, accuracy or timely submission of the transaction reports, this responsibility remains with the investment firm while they outsource the process. Therefore the submitting firm can never be an ARM under the definition of an ARM's responsibilities.

Similarly, in other common reporting arrangements where a central shared system is used for Transaction Reporting by a number of entities within the same group, no party within the group would ever be expected to register as an ARM, as the entities retain responsibility for their reporting to their NCA (possibly via an ARM if necessary). Indeed, to determine the entity which should become an ARM might be very difficult for investment firms within a group to do as it is a shared IT infrastructure rather than a distinct entity. Firms believe this arrangement fits within the parameters of Article 26(7) MiFIR where they submit their Transaction Reports using shared reporting technology to a registered ARM and also reflects current industry practice under MiFID I and also other EU legislation such as EMIR.

Some diagrams below in *Figure 4 Three possible transaction reporting arrangements* and *Figure 5 Real world transaction reporting scenario* illustrate some of these potential arrangements for which clarity should be provided so there is no ambiguity regarding the requirements to register as an ARM.

Figure 4 Three possible transaction reporting arrangements

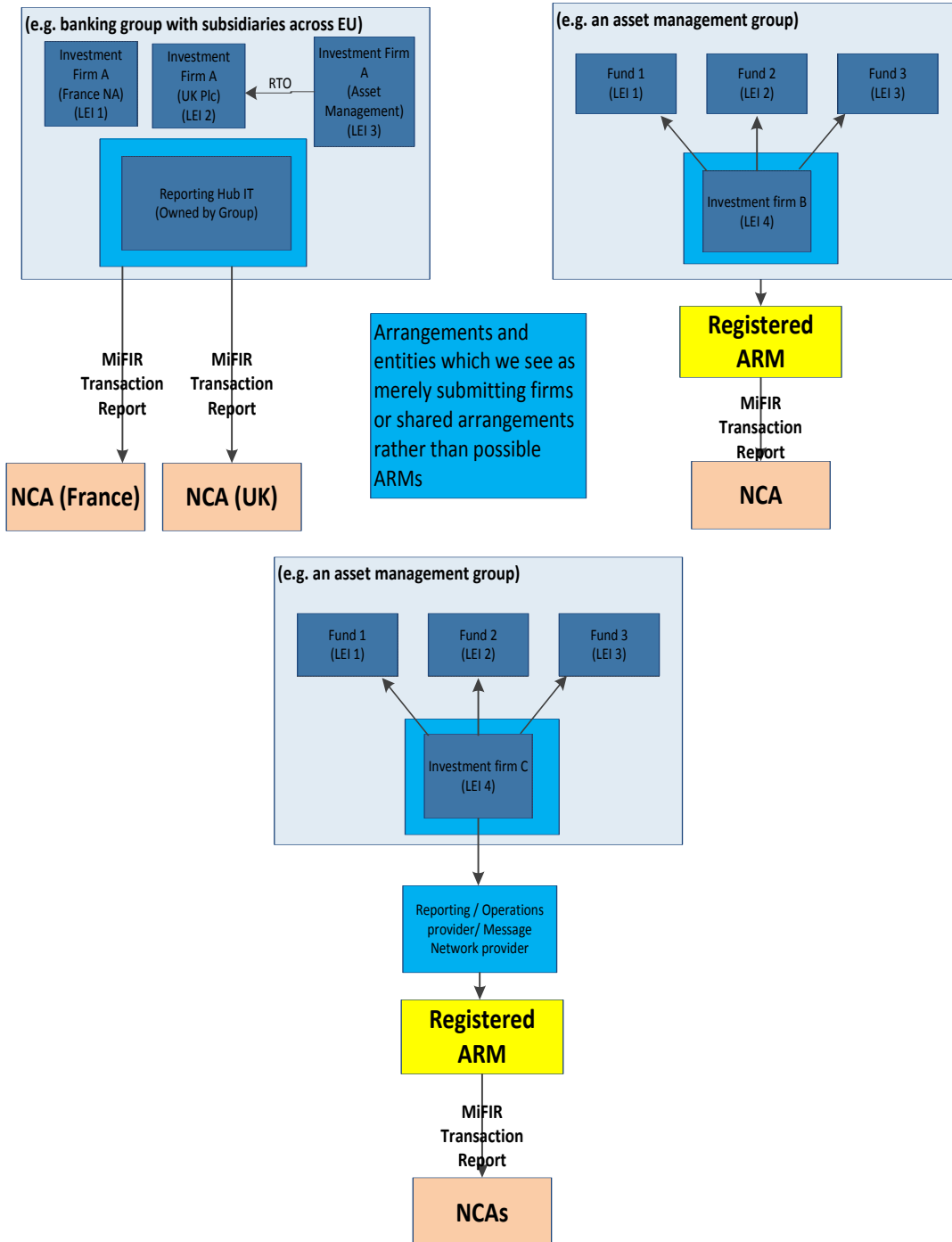
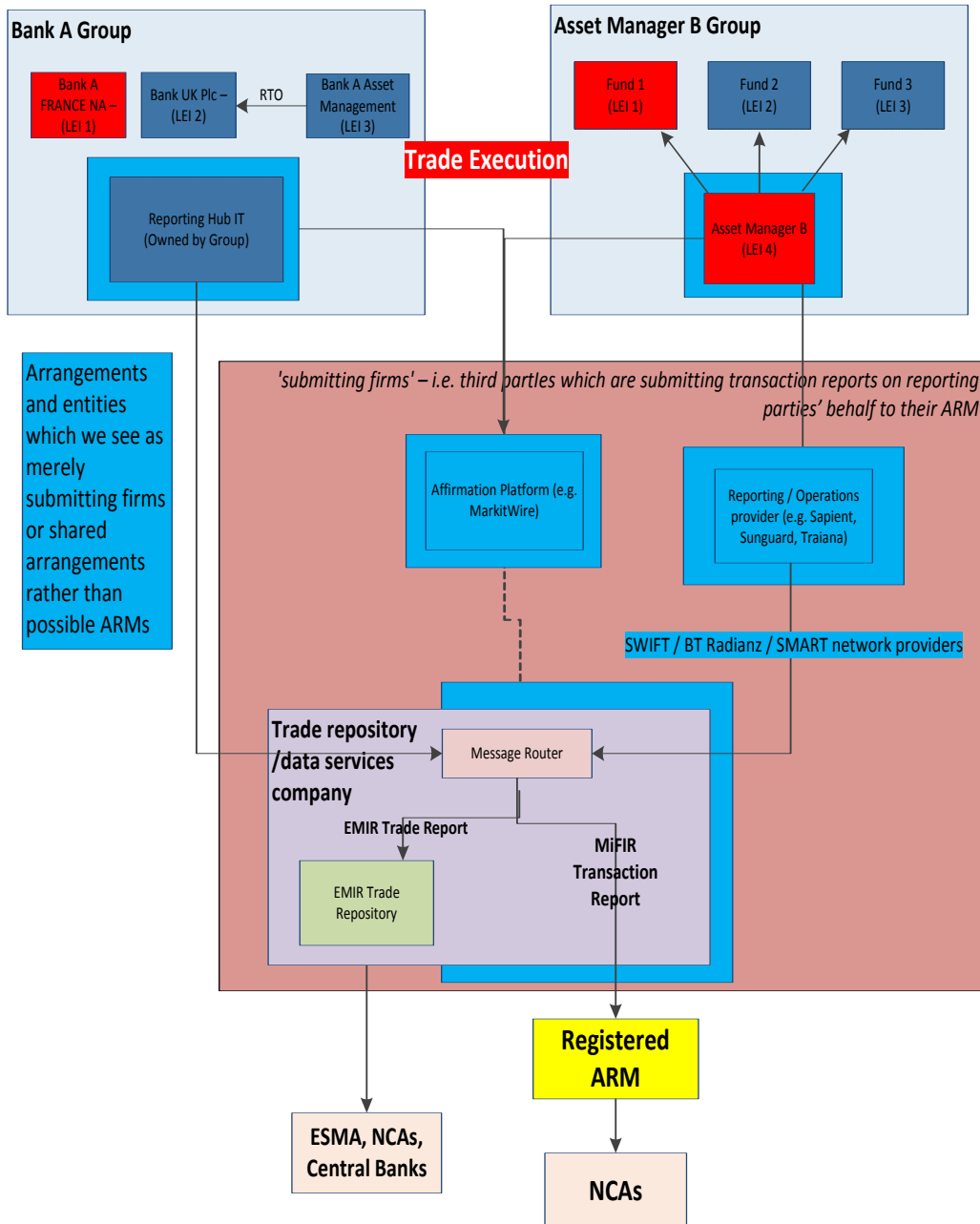


Figure 5 Real world transaction reporting scenario

The diagram below shows a presentation of an expected real world data flow for the reporting of a transaction executed between a bank and asset manager – it is ISDA’s members assumption that only one entity needs to register as an ARM. Both parties to the transaction have internal technology shared by entities within the same group which send data outside the group to companies to which they have outsourced some post trade activities and who will route the data for them to their chosen ARM. The sole responsibility for reporting remains with the parties to the transaction until the transaction report data enters the ARM. At this point the ARM is responsible “for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM”.



Regarding Section 1.1.8.5, the processing and validation of reports received by NCAs, we welcome the clarity provided, particularly the explanation that reference data checks will be made using the reference data for the day of execution. There may be more implementation issues around such validation specifications to be addressed at a later date but this level of detail at this stage is very welcome by ISDA's members and we commend ESMA for this approach.

With specific reference to one of the validation rules for field 41 Instrument identification code and field 47 underlying instrument code have the following validation instructions. "The check digit of the ISIN code should be valid according to the algorithm of ISIN validation. In order to validate this digit, see [http://en.wikipedia.org/wiki/International\\_Securities\\_Identifying\\_Number](http://en.wikipedia.org/wiki/International_Securities_Identifying_Number)". ISDA's members would like to note that given the open source nature of Wiki, firms would welcome an alternative validation source. We would also caution that considerable work needs to be done to develop ISINs for derivative products and ISDA is engaged in this work. The outcome of this work may have an impact on the structure of the ISINs or introduce exceptions to such a validation of the ISIN value. It is also worth noting an internal inconsistency in the guidelines document at this juncture related to the ISIN validation. This is with respect to the examples which split out swap products into separate legs to be reported individually. If such an approach is desired most legs will not have an ISIN as for example an interest rate leg would not have an ISIN as the leg is not a product and would not be an instrument which is traded on a trading venue, therefore a report of such a leg would fail this validation. We will address this problem elsewhere by providing an alternative approach to reporting swaps which does not decant the legs of a swap into separate reports which would be validated individually.

ISDA's members would also like to share another assumption here from our reading of the guidelines document – if a transaction "A" is executed at 0900 off trading venue in an instrument 1 which is not traded on a trading venue, but where the underlying is admitted to trading, it would be reported at T+1 as follows:

- a) without an ISIN value for *41.Instrument Identification Code*
- b) with *36.Venue = XXXX*
- c) with values provided for 42-56 as there is no ISIN available

This is irrespective of whether at 0930 on the same day the same instrument 1 was itself then admitted to trading on a trading venue (and an ISIN obtained and instrument reference data sent to ESMA for this instrument).

Then, if a similar transaction "B" was executed at 0945 in the same instrument 1 again off the trading venue, which remember is now available to trade on venue it would be reported at T+1 as follows:

- a) with an ISIN value for *41.Instrument Identification Code*
- b) with *36.Venue = XOFF*
- c) no values provided for 42-56
- d)

Is this correct or would transaction report for "B" still be valid if it took the same approach as the transaction reporting of transaction "A"? Will the venue and Instrument identification information be available to correctly determine the right approach to take in reporting transaction B? ISDA's members believe that it would be preferable if transactions A and B can choose to report using either approach while in the period of time to T+1 the reference data is established correctly at the NCAs and ESMA.

Another possible issue regarding the validation which has been spotted by ISDA's members is as follows: Specifically related to use of Transmission of an Order (RTO), please can ESMA clarify how the 'investment decision within the firm' field should be populated in the case of a successful transmission of order? RTS 22 indicates that this field should be populated with the information received from the transmitting firm however the validation rule CON-571 indicates that Investment decision identifier should be blank in both the market side and client side reports where the firm deals on a matched principal capacity or an any other capacity unless the decision maker field is populated with the LEI of the executing firm. It does





not specify any rules where RTO has been satisfied and the firm is trading as either 'matched principal' or any 'other capacity'.

ISDA's members understand that NCA's will allow direct reporting to their infrastructure. There are some obvious follow on implementation questions from this which may impact investment firms in countries with less experience from MiFID I, namely:

Will all NCA's allow direct reporting?

Can ESMA coordinate and publish each NCA's plans to have these facilities in place to allow firms adequate time to take this into account for their project build plans?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_4>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_5>

ISDA's members note that throughout the examples in guidelines document we observe the equity swap to be reportable on a leg by leg basis (in comparison though (p 161) CFD, CDS and IRS are to be reported as 1 report – we also note there is no example of an FX swap which we will request/suggest in response to the consultation).

We do note that ESMA is open to further considerations on this format however, so it is important at this stage to provide ISDA's comments and ideas for the best practice in response to the consultation on the guidelines: "It should be noted that the reporting logic and the use of the complex ID field for the cases from b to g above may be subject to further considerations."

Some definitions first:

1. A transaction may be an execution of a trade in derivatives product (i.e. option, swap, etc. with specific details)
- 2.

This product may be composed of:

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

But this derivative product is one consolidated unbreakable product

- There is one single order and execution
- The (combination of) legs cannot be handled separately (renegotiation of one of the legs affects the product as such) and a party cannot exit one of the legs independent of the other
- The premium/price at inception is for the derivative product and the valuation is for the product as the single legs are not priced at a leg by leg basis
- These products are confirmed on one legal agreement
- Any payment/ premium/ up-front fee is for both legs combined together

(NB: in common industry jargon the only exception to this payment approach might be the FX swap product where the components of the swap are forward "legs" swapping one currency for another currency



(this may also be viewed as a combination of forward products and could be seen as a packaged transactions per 2.) and these near and far legs are settled separately – but even in this case the confirmation message and settlement message are 1 and the same message)

2. A number of individual derivatives products may be combined / bundled together into packaged transactions (structures, trading strategies).

These “packages” can

- become standardized trading strategies (example straddle/strangle – which are combinations of puts and calls: the package can be traded on a trading venue platform, and there is a standardized confirmation that allows the product to be confirmed electronically.
- be very bespoke and tailored to a client’s needs

Again: the “packages” are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components, the premium/price at inception is for the “package” and the valuation is for the “package”.

Some firms may book the more standardized products as one derivative transaction – while others might book at individual component/ product level (but “link” the individual products in order to show them as a “package” for purposes of performing post trade activity in tandem.)

At the end of 2014, ISDA ran a survey to understand how the standardized trading strategies were reported / booked. 71% of the respondents indicated they reported the way they booked, and 55% reported the individual components.

3. A basis trade is a trading activity where a trader buys/sells a security or commodity and sells/buys its related derivative – we do not see this as a “package” as this are basically 2 different transactions in 2 different products where the counterparty on both products can be different – and where there might not be a 1 to 1 relation between the derivatives transaction and the transaction(s) in the underlying security. (NB a basis swap is a swap in which one side pays a floating rate while the other side pays another alternative floating rate.)

In Part IV – Reporting of different types of instruments p 154-194, and more precisely on p 169 -186 equity swap: Are all examples to be reported on a leg by leg basis? Namely:

- o 1 equity leg and 1 rate leg
- o 2 equity/index legs (on trading platform that is not EEA and a pure OTC)
- o TRS in OTC
- o equity basket against rate swap
- o 2 equity baskets

Reporting on leg by leg basis would mean providing 2 full reports (all fields completed) – with both legs needing separate trade identifiers, but still “linked” using the same “complex trade component id” (field 40)

As explained above, the equity swap is a derivatives product that indeed has multiple legs, but that is traded, and would be booked as 1 transaction in 1 individual derivative product. As such, reporting parties will not be able to report correctly on a leg by leg basis without making some assumptions, extrapolations or duplications of data to fill in all required fields on both reports. ISDA’s members believe such products should be reported on one transaction report only.

Issues specifically related to the required fields:

- o Field 2 – transaction reference number: for EMIR such equity swap products are reported using 1 UTI – there is no transaction identifier at the level of the leg

- o Field 3 transaction venue identification code: if the transaction would be done on a venue (Bloomberg for instance), the derivative product would trade as an equity swap and have only one transaction venue transaction identification per order
- o Field 61 the “waiver indicator” and 63 “OTC post-trade indicator” fields: should this be done on a venue the order/ execution would be on the swap, not on the legs so the same issue persists
- o Field 33 “price”: would be the price for the swap, there is no premium on a leg by leg basis
- o Field 38 “up-front payment”: should there be one will have the same issue as Field 33
- o Should the swap be traded on an EEA venue and have an identifier (ISIN) it would not be mentioned on the reports if the swap were to be broken into parts (it is assumed that if an ISIN available the reporting should be on one report and much information required on report becomes redundant {and contained in the ISIN})
- o The quantity for the swap should be the same in most cases on each of the legs – but that might not be the case if the proportions of the legs are not the same
- o Reporting of increase/decrease on those swaps will also become very complex.

It is ISDA’s members view that an equity swap, as explained above, is 1 single derivative product, and should be reported as such (like the CFD which is in fact also a kind of equity swap, and like the credit derivative swap and interest rates swap that ESMA illustrates to be reported as 1).

We understand that ESMA and NCAs want to be able to see the direction of the performance of an equity instrument to see which party to a transaction may gain from its positive or negative performance. We think this can be done in an alternative way without splitting out the legs.

One possible suggestion might be as follows:

*PLEASE NOTE BELOW IS PRESENTED FOR ILLUSTRATIVE PURPOSES. IT IS ONE IDEA GENERATED IN DISCUSSION OF ISDA’S WORKING GROUP ON THIS MATTER– ANY BEST PRACTICE OR SOLUTION ESMA DECIDES UPON WILL NEED WIDER INDUSTRY REVIEW AND APPROVAL DUE TO THE NATURE OF THE DIFFERENT PARTIES AND TECHNOLOGY STANDARDS IMPACTED.*

The fields “Underlying instrument code” (field 47 - where firms provide an ISIN if the underlying is an instrument), “underlying index name” (field 48) and “Term of the underlying index” (field 49) should be repeatable fields catering for multiple underlyings. Then when there is a swap product which is swapping the performance of two instruments, two indices or an instrument for an index it is possible to report this on one Transaction Report template. The next piece of information required by ESMA and NCAs is the direction of the swap. This could be achieved for example by adding a plus + or minus - sign in order to show whether the reporting party is long or short each of the underlyings’ performance – not taking into account the fact whether he is buyer/seller on the swap transaction. In fact, as has been repeated by ISDA’s members in response to consultation process around Transaction Reporting, the buyer/seller is not really relevant for a swap product– but we understand ESMA’s determination to have a standard template and are endeavouring to work the buyer and seller fields into the reporting solution for these products.

This example approach could work for swaps where the buyer/seller rules ESMA dictates (in table 2 of Annex I of RTS 22) are not clearly defined (like for example A below) and for which splitting the transaction into smaller parts is impossible as it is one unbreakable product (as described per 1. above).

Furthermore, this example approach would allow us to have a similar trade representation for any equity swap traded OTC, on an EEA venue or on a non EEA venue (reading the guidelines document for these products in their current form, ESMA would expect an equity swap admitted to trading on EEA venue transaction reported on 1 report (as it will have an ISIN on the ESMA list) while it is suggested in the guidelines document then that all other equity swaps would be on leg by leg basis as they do not have an ISIN which pertains to the swap so the legs should be separated out – this is not very consistent and will be complex to reconcile or do any event reporting).

#### **EXAMPLE A**

Equity swap (two equity legs) traded on a trading platform outside the Union (instrument is not available in

the ESMA list) - Investment firm X buys an equity swap on a trading platform outside of the Union and therefore the swap is not available on the ESMA list. The underlying equity indices on each leg of the equity swap contain financial instruments which are admitted to trading on a regulated market.

**Swap contract:** ISIN of the swap contract is US000DAX000X and the notional amount subject to the swap agreement is EUR 1,000,000. The contract expires on 25 June 2016 and is settled in cash. The CFI code for an equity swap is SESPXC. Investment firm X will receive the performance of the DAX (leg 1) and pay the performance of the IBEX (leg 2). The venue code for the equity swap is XUSA and the venue uses a central counterparty. The instrument full name is a free text field to be populated by the reporting firm: DAX EQS IBEX 35 JUN 16. We assume no premium at inception, and no ISIN for LIBOR index

**Equity leg (leg 1):** the underlying is DAX Index (ISIN DE0008469008)

The reference value of the DAX Index is 11,473.13 units and the price is nominated in basis points. The nominal amount corresponds approximately to 87 times the DAX value.

**Equity leg (leg 2):** the other underlying is IBEX 35 Index (ISIN ES0SI0000005)

The reference value of the IBEX35 Index is 11308.40 and the price is nominated in basis points. The nominal amount corresponds approximately to 88 times the IBEX value.

[The tables below are from the perspective of the investment firm X only]

**Table 1 Example Swap contact split into two separate legs for reporting following ESMA example approach**

N	Field name	Report #1 Values	Report #2 Values
4	Executing entity identification code	{LEI of Firm X}	{LEI of Firm X}
7	Buyer identification code	{LEI of Firm X}	{LEI of CCP}
16	Seller identification code	{LEI of CCP}	{LEI of Firm X}
30	Quantity	'1'	'1'
33	Price	'11473.13'	'11308.40'
34	Price currency		
36	Venue	{Segment MIC of the non-EEA trading Venue}	{Segment MIC of the non-EEA trading Venue}
40	Complex trade component id	'STRAT12013'	'STRAT12013'
41	Instrument identification code	{Swap ISIN}	{Swap ISIN}
42	Instrument full name	'DAX EQS IBEX 35 JUN 16'	'DAX EQS IBEX 35 JUN 16'
43	Instrument classification	{CFI code}	{CFI code}
44	Notional currency 1	'EUR'	'EUR'
46	Price multiplier	'1000000'	1000000'
47	Underlying instrument code	{DAX Index ISIN - Leg 1}	{IBEX Index ISIN - Leg 2}
48	Underlying index name	DAX Index	IBEX Index
55	Expiry date	'2016-06-25'	'2016-06-25'
56	Delivery type	'CASH'	'CASH'

As outlined in this example we are endeavouring to report the transaction on one transaction report. Following ESMA's logic for *buyer* and *seller identification code* in table 2 of Annex I of RTS 22 (the "logic") is problematic for this type of contract (and explains ESMA's attempt to find an alternative solution by splitting out each leg onto a different report). This is actually a basis swap (the logic only seems to expect float v float interest rate swaps) but in this case the basis swap is swapping equity index performance for equity index performance and both indices are valued at the same time at the money (so there is actually no basis or differential – apart from the starting difference in price which for equity indices could be quite volatile and easily misinterpreted – and requires knowledge of the initial prices) – no premium is exchanging hands and there is no fixed rate payer – extending the basis swap logic to the difference in reference prices for example may suggest to have X as "seller" as at inception based on the reference price for the indices (DAX is higher than IBEX in example), X could "receive" the difference in starting prices. Though in the example report from the guidelines document in *Table 1* it is clear X receives the DAX and pays the IBEX. So it is clear why ESMA presented a different approach separating the legs onto different transaction reports.

As we have explained above this is not the correct way to represent trades and will end in many problems for trade representation. The simplest solution is still to explicitly indicate who is paying and receiving each leg but only on one transaction report. As suggested, one idea for how this could be achieved is by repeating the underlying and giving it a sign to reflect whether the Executing Entity is long or short the underlying. Such an approach will work for all types of swaps.

*Table 2* shows the same example reported according to this idea for a swap which is not listed as available or traded on a trading venue in the EEA (so instrument reference data is also submitted for the instrument).

**Error! Reference source not found.** shows the case if the instrument is listed on an EEA venue, the trade representation on the report would be similar (except the fields 42-56 would be blank). We would ask ESMA to validate that this matches what ESMA expects in this case as there are no such examples in the guidelines document.

**Table 2**

instrument lists on non EEA venue and is cleared			
n	field name	report by Firm X	Comment
2	transaction reference number	123452	we typically would have 1 trade ref for both legs
3	trading venue transaction number		blank here - but we would trade the swap as 1 on a venue
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of CCP}	
16	Seller identification code	{LEI of Firm X}	
30	Quantity	1000000	crf field 46
33	Price		
34	Price Currency		
36	Venue	XUSA	
38	Up-front payment		
39	Up-front payment currency		
40	Complex trade component id		
41	Instrument identification code	US000DAX000X	
42	Instrument full name	DAX EQS IBEX 35 JUN 16	
43	Instrument classification	SESPXC	
44	Notional currency 1	EUR	
46	Price multiplier	1	we would expect price multiplier 1 for derivatives
47	Underlying instrument code	+DE0008469008 / -ES0SI0000005	shows Firm X receives the performance on DAX and pays on IBEX - repeatable field
48	Underlying index name		we should not mention the INDEX name as we have ISIN for the index
49	Term of the underlying index		
55	Expiry date	25/06/2016	
56	Delivery type	CASH	
61	waiver indicator		
63	post-trade indicator		

**Table 3**

instrument lists on EEA venue			
n	field name	report by Firm X	Comment
2	transaction reference number	123452	we typically would have 1 trade ref for both legs
3	trading venue transaction number	abcde	blank here - but we would trade the swap as 1 on a venue
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of CCP}	
16	Seller identification code	{LEI of Firm X}	
30	Quantity	1000000	crf field 46
33	Price		
34	Price Currency		
36	Venue	XEEA	
38	Up-front payment		
39	Up-front payment currency		
40	Complex trade component id		
41	Instrument identification code	US000DAX000X	
42	Instrument full name		42-56 are blank as listed on EEA venue
43	Instrument classification		
44	Notional currency 1		
46	Price multiplier		
47	Underlying instrument code		
48	Underlying index name		
49	Term of the underlying index		
55	Expiry date		
56	Delivery type		
61	waiver indicator	ILQD	
63	post-trade indicator	ILDQ	

#### Instrument Details –“ISIN or fields 42-56”

Per the examples so far, Article 1 of RTS 22 mandates use of the data fields per Annex 1 Table 2 for transaction reporting. ISDA's members would like to highlight an issue which might be a concern for ESMA regarding instrument details and the format in which this information is provided. The banner above field 42 states **“Fields 42-56 are not applicable where: transactions are executed on a trading venue or with an investment firm acting as a SI; or field 41 is populated with an ISIN that exists on the reference data list from ESMA”**

While this seems like a sensible approach it is concerning for the following reason: it could be inferred that ESMA expects those attributes found in fields 42-56 to be contained in the metadata of the ISIN and only explicitly reported if there is no ISIN. We do not believe this is ESMA's intention. It is important to note also that the attributes of the ISIN will be decided by ISO for different products and a study group is currently devising the best approach for applying the ISIN standard for derivative products. Any suggestion that all the attributes 42-56 will be contained in the ISIN metadata is premature as such decisions have not been made for the vast majority of products and ESMA should allow flexibility here to respect the outcome of that ISO work on ISINs for derivatives which is currently taking place.

Take for example the following fields, field 51-Strike Price, field 54-Maturity Date and field 55-Expiry Date, these fields may be transaction level data which would not be contained in the instrument reference metadata envisioned by ISO for the ISINs for many derivative products. It is noted that all three example fields have qualifying statements in the Annex of RTS 22 to say where the field “is not applicable the field shall not be populated”. This is a positive artefact but in addition to such values not being available as reference data in lieu of an ISIN, the converse also needs to be catered for in the tables i.e. an ISIN may be provided in field 41-*Instrument identification code* and additionally some of these other fields 42-56 should also be available to provide values pertaining to transaction level data.

Consider two example products, an interest rate swap and an FX option. Both OTC products will almost certainly be listed on some MiFID II / MiFIR trading venue after MiFID II comes into force.

In the case of the interest rate swap the instrument identification ISIN for such a product will almost certainly not include the maturity date as an attribute. That would be transaction level data – where by the ISIN may describe every other part of the swap but to fully understand the economics of the transaction other information such as the notional amount, the effective date and the maturity date are held separately and additional to the ISIN.

Similarly, if there was a different ISIN for every strike price quoted for every FX option for every currency pair the universe of ISINs for this OTC product would likely be very unwieldy if not unimaginable (considering the minute tick size typical in FX markets), for this reason strike price will almost certainly be separate from the product level attributes of an FX option, which would be contained in the ISIN metadata. So to fully describe the economics of the transaction the ISIN would be needed and additionally the strike price and notional amounts would be needed too.

The above examples are merely to illustrate the issue at hand – as alluded to above, the work ISO is carrying out has only begun and decisions about the exact structure of the metadata and attributes which will be contained in the ISIN remain to be finalised. Ideally an amendment could be made to the quoted text from table 2 of Annex I in RTS 22 to cater for all possible outcomes but if not we expect ESMA should be able to, via the guidelines document, provide exceptions to the statement in table 2 for these fields (41-56) which can then be effected via the validation rules at a later date, when the final ISIN solution for derivative products is clear.

#### Quantity and price multiplier fields for derivatives

ISDA's members' assumption which aligns with typical best practice approach to trade representations under other reporting regimes is that the price multiplier would always be 1 for OTC derivatives and the product or contract attributes (which might be related to that ISIN for that product if it were made available



for trading on a trading venue) would mimic this and not include notional as an attribute of the ISIN/product nor would lot size (other than 1) be a feature or attribute. There may be exceptions to this, but those questions are for the ISO study group which is developing a solution for ISIN for derivatives, to answer. So for transaction reporting it is ISDA's members' assumption that for almost all such derivatives, and in the absence of any alternative fields on table 2 of Annex I of RTS 22, the notional amount will be indicated in the quantity field and the price multiplier will be 1.

### Product Scope

For the purpose of understanding when to report a transaction, reporting parties will need to know when a financial instrument which they have executed a trade in, is or is not an in scope MiFID II/MiFIR instrument. The technicalities and timing considerations of obtaining ISINs for an instrument and delivering instrument reference data to an NCA for listing on ESMA's website can be explored with other implementation issues. At this stage key questions around the scope of instruments subject to transaction reporting remain and this is the focus for ISDA's members at this stage before product specific issues around timing and nature of reference data required can be addressed.

The key instrument scope questions which ISDA's members see in relation to transaction reporting are as follows:

- Firstly, can ESMA confirm the NCAs will determine whether something is traded on a venue or not (as RTS 2 presumes a given scope and level 1 does not ask ESMA to opine on this question)? If so, then we presume the NCAs will furnish ESMA with the necessary lists of instruments which they have received from trading venues and systematic internalisers which send instrument reference data.
- What is this population of instrument traded on a venue going to include? ISDA's members assume the determination may be different depending on the type of venue (RM, MTF or OTF).
- Will only executed transactions in an instrument trigger it having been traded on a venue and subject to RTS 23?
- How should an off venue transaction in an instrument be assessed to determine if it is in scope for transaction reporting or not? (This question is key when considering the next question.)
- What situations will FX, commodity and IR derivatives which are not executed on a trading venue be in scope for transaction reporting (i.e. if their underlying is not an on venue instrument but similar products will likely be traded on a trading venue in the Union)?
- When making an assessment of the instrument as to whether it is in scope or not to what degree should a derivative be comparable with another in scope instrument?  
(NB: There are no FX derivatives in the examples of the guidelines document – ESMA should provide some examples of all asset classes which are likely to be in scope including FX derivatives).

Take two simple example transactions to illustrate these last two questions,

#### Vanilla fixed v float interest rate (IR) swap

Start date 01/02/16

Maturity date 01/02/19

Party A pays EUR - EURIBOR 6 month rate

Floating rate payments: 01/08/16, 01/02/17, 01/08/17, 01/02/18, 01/08/18 and 01/02/19.

Party B pays 2%

Fixed rate payments: 01/08/16, 01/02/17, 01/08/17, 01/02/18, 01/08/18, and 01/02/19.

Day count fraction Actual/360

Notional EUR 1,000,000

#### Vanilla FX option



Trade date 01/02/16  
Expiry date 01/02/19  
GBPUSD contract  
Strike: GBP/USD 2.00  
Notional amounts: GBP 1,000,000/USD 2,000,000

Assuming that an instrument must at least match on currency/currency pair (a EUR, b GBPUSD) and type (a Vanilla fixed v float IR swap, b Vanilla FX option):

- o To what extent should an instrument be comparable for other attributes like tenor (time from start date to Maturity date or expiry date), maturity date, Strike etc. to be determined as being the same as an instrument which already trades on a Trading Venue (exists on the ESMA database of instruments)?
- o If an instrument does match on all those attributes but also has some additional features should it be thought of as identical also?

**ISDA's members know, and appreciate, these questions are closely linked to the ISO work on ISINs for derivatives, and believe that the right expertise is found in those working groups to advise on the most sensible solution to the questions above, but want to make it clear they remain unanswered in the context of the MiFID II / MiFIR requirements to the knowledge of ISDA's members.**

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_5>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_6>

ESMA has made a statement in this consultation paper that competent authorities require an accurate and holistic view of transactions that are in scope and ISDA's members want to provide accurate reports of such transactions. The definition of transaction is incredibly wide and member firms appreciate and welcome any detailed guidance around transaction scenarios to assist them in this determination. The examples given in this paper are helpful and we agree with the analysis provided for the most part.

However RTS 22 states that "the meaning of transaction for reporting purposes should be broad and not exhaustively defined" which may leave firms in a dilemma as they must give complete and accurate reports of transactions as quickly as possible which requires absolute certainty about what a transaction is. ISDA's members look forward to seeing more clarity from ESMA regarding the wider product scope questions for OTC derivatives and future OTF traded instruments which may trigger further questions about the definition of a transaction.

An example in this section 1.1.7.1 which affirms ISDA's members assumption that transfers of collateral made up of MiFIDII financial instruments are not included in the definition of a transaction would be very much welcome. ESMA's May 2014 discussion paper on MiFIR expressly states that movements of financial instruments as collateral are not intended to be deemed to constitute a transaction for Transaction Reporting. Similarly, Article 12(d) of RTS 2 omits such activity from the definition of a transaction for its purposes, stating:

"The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

...

(d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a central counterparty."

It's not clear why such collateral movements have been omitted from the list of exemptions in Article 2(5) of RTS 22 but we assume it should be there or is not deemed to constitute a transaction under RTS 22 as the activity is not subject to market abuse as transfer of collateral is post execution activity, whereby the price forming event has already occurred prior to this and has already been reported. ISDA's members



feel an example showing that such activity is not a transaction for the purposes on RTS 22 in the guidelines document would suffice to make this clear to all parties.

Again with reference to section 1.1.7.1, ISDA's members very much welcome the clarifications provided for securities financing transactions and the Securities Financing Transactions Regulation (SFTR). The examples clearly illustrate what is in and out of scope and we really welcome this approach. However, further to example 3, ISDA members are working under the assumption that the securities financing transactions which would be reportable under SFTR, but for an exemption under SFTR, will therefore become reportable under MiFIDII/MiFIR and that such Transaction reporting of these SFTR exempt securities financing transactions can only commence once SFTR enters into force i.e. when SFTR reporting begins such Transaction reporting for securities financing transactions between a Central Bank and an Investment firm will also begin and shall have Field 65, Annex 1, table 2, RTS 22 set to true only from that point.

ISDA's members would welcome an example showing the Transaction Reporting expectations for activity related to a position which is the result of the novation of a transaction from one party to another. The reason for this is as follows, while novations of transactions are excluded from Transaction Reporting (per Article 25 (e)) there is a suggestion in the second paragraph of Section 1.1.1\* that the total position in a financial instrument which has been reported via Transaction Reports is still important to ESMA. Transaction Reporting of transaction which are the result of increases and decreases to a position which was novated will be an exception to this as the initial transaction report which instigated the position would not be reportable.

(\*“As clarified in Recital 11 and further specified in Article 15(5) of RTS 22, an investment firm shall therefore ensure that a collective view of the transaction reports reported with the investment firm as the executing entity accurately reflects all changes in its position and in the position of its clients in the financial instruments concerned as at the time the transactions were executed.”)

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_6>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_7>

ISDA's members assume that transfers of collateral made up of MiFIDII financial instruments is not included in the definition of the execution of a transaction. ESMA's May 2014 discussion paper on MiFIR expressly states that movements of financial instruments as collateral are not intended to be deemed to constitute a transaction for Transaction Reporting. Similarly, Article 12(d) of RTS 2 omits such activity from the definition of a transaction for its purposes, stating:

“The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

...

(d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a central counterparty.”

It's not clear why such collateral movements have been omitted from the list of exemptions in Article 2(5) of RTS 22 but we assume it should be there or is not deemed to constitute a transaction under RTS 22 as the activity is not subject to market abuse as transfer of collateral is post execution activity, whereby the price forming event has already occurred prior to this and has already been reported.

ISDA's members feel an example showing that such activity is not a transaction for the purposes on RTS 22 in the guidelines document would suffice to make this clear to all parties.



<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_7>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_8>

With regard to the potential to offer a reporting service to direct clients, if Transmission of Order (RTO) reporting is only possible for counterparties acting under the power of representation, how are provider firms to support direct clients wishing to outsource their reporting? Under MiFIDII/MiFIR are there any additional requirements, over and above the outsourcing requirements, to provide for this?

Specifically related to use of RTO, please can ESMA clarify how the 'investment decision within the firm' field should be populated in the case of a successful transmission of order? RTS 22 indicates that this field should be populated with the information received from the transmitting firm however the validation rule CON-571 indicates that Investment decision identifier should be blank in both the market side and client side reports where the firm deals on a matched principal capacity or an any other capacity unless the decision maker field is populated with the LEI of the executing firm. It does not specify any rules where RTO has been satisfied and the firm is trading as either 'matched principal' or any 'other capacity'.

In addition to the above the example 1.3.8.2 pg 115 appears to be blank with an explanation on pg 119 that the client side of the report is populated from the information received by the transmitting firm and is blank as the decision was made by Representative 1 rather than by a person in Firm X.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_8>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_9>

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<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_9>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_10>

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<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_10>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_11>

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<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_11>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_12>

Identifying a primary individual Investment Decision maker for the firm is a new concept for ISDA members. The current text doesn't not have sufficient detail for ISDA members to fully interpret the population of this field which could lead to inconsistency among the individual ISDA members. A further clarification required is if the Investment Decision maker be static data for example head trader on a desk or should it be a dynamic identifier.



In relation to Direct Electronic Access (DEA) trades, it is ISDA's members understanding that even though the investment firm is only providing its infrastructure to the client who makes the decision and executes the trade independently of any trader at the investment firm, the details of the person who gave authorisation within the investment firm for the client to trade with the DEA will be provided for the investment decision and execution within the firm.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_12>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_13>

In relation to Direct Electronic Access (DEA) trades, it is ISDA's members understanding that even though the investment firm is only providing its infrastructure to the client who makes the decision and executes the trade independently of any trader at the investment firm, the details of the person who gave authorisation within the investment firm for the client to trade with the DEA will be provided for the investment decision and execution within the firm.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_13>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_14>

Whilst there is no formal requirement for the venues to provide the MIC code or the Waiver information (under RTS 22) firms would very much appreciate the ESMA's help in encouraging the venues to provide this information to the investment firms.

Related to the above issue is the scenario when an investment firm must transaction report for a transaction where they did not perform post trade transparency reporting and do not have the waiver information (e.g. if you are buyer of the instrument) – what should the investment firm report for waiver information in that scenario?

Finally, it should be noted that the complex routing arrangements and logic which trading venues have mean that obtaining the correct MIC code for a transaction is even more important – the venue may route an execution to another venue entity for a variety of reasons and the investment firm may only be aware after execution so assumptions about the correct MIC code to use are also difficult to make.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_14>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_15>

The Consultation paper suggests that firms need to report the short selling indicator at the point of execution and not at end of day or T+1. Concerns have been raised that the cost of implementing real time live position calculations will be disproportionately high compared to the benefits achieved from the field. Concerns have also been raised around the expectation on firms to link the population of this field with their disclosures under the Short Selling Regulation ("SSR") due to the significant practical difficulties of capturing whether a client is short selling at the time an order is received.

ISDA's members would like to note that the approaches and timings of the requirements for transaction reporting and the SSR are different and this may have an impact on the accuracy and informational substance of the SSR flag on transaction reports.

It also our understanding that the scope of the Short Selling Regulation is limited to shares and sovereign bonds only as specified under level 1 text, some of the examples in the guidelines document may be erroneously suggesting other asset classes and products could be subject to the regulation. We expect these are drafting errors which can be tidied up in the next version of the guidelines document. We also note that RTS 22 states that if the short selling information is not available this should be reported as NTAV whereas in draft guidelines document the same scenario is reported as UNDI. We would be grateful to ESMA if they can identify which is the correct value to be used in such a situation and subsequently update this in the next version of the guidelines document also. ISDA's members assumption is that 'making best effort' when ascertaining if a client is short, means that information received from a client related to the short sale designation of their transaction can be assumed as correct by the investment firm trading with the client and the investment firm is not expected to carry out any further validations other than asking the client to provide the information.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_15>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_16>

ISDA's members note that ESMA is open to further considerations on the trade representation approach to take when transaction reporting different products and packages, so it is important at this stage to provide ISDA's comments and ideas for the best practice in response to the consultation on the guidelines: "It should be noted that the reporting logic and the use of the complex ID field for the cases from b to g above may be subject to further considerations."

Some definitions first:

1. A transaction may be an execution of a trade in derivatives product (i.e. option, swap, etc. with specific details)

This product may be composed of:

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

But this derivative product is one consolidated unbreakable product

- There is one single order and execution
- The (combination of) legs cannot be handled separately (renegotiation of one of the legs affects the product as such) and a party cannot exit one of the legs independent of the other
- The premium/price at inception is for the derivative product and the valuation is for the product as the single legs are not priced at a leg by leg basis
- These products are confirmed on one legal agreement
- Any payment/ premium/ up-front fee is for both legs combined together

(NB: in common industry jargon the only exception to this payment approach might be the FX swap product where the components of the swap are forward "legs" swapping one currency for another currency (this may also be viewed as a combination of forward products and could be seen as a packaged transactions per 2.) and these near and far legs are settled separately – but even in this case the confirmation message and settlement message are 1 and the same message)

2. A number of individual derivatives products may be combined / bundled together into packaged transactions (structures, trading strategies).

These "packages" can



- become standardized trading strategies (example straddle/strangle – which are combinations of puts and calls: the package can be traded on a trading venue platform, and there is a standardized confirmation that allows the product to be confirmed electronically.

- be very bespoke and tailored to a client's needs

Again: the “packages” are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components, the premium/price at inception is for the “package” and the valuation is for the “package”.

Some firms may book the more standardized products as one derivative transaction – while others might book at individual component/ product level (but “link” the individual products in order to show them as a “package” for purposes of performing post trade activity in tandem.)

At the end of 2014, ISDA ran a survey to understand how the standardized trading strategies were reported / booked. 71% of the respondents indicated they reported the way they booked, and 55% reported the individual components.

3. A basis trade is a trading activity where a trader buys/sells a security or commodity and sells/buys its related derivative – we do not see this as a “package” as this are basically 2 different transactions in 2 different products where the counterparty on both products can be different – and where there might not be a 1 to 1 relation between the derivatives transaction and the transaction(s) in the underlying security. (NB a basis swap is a swap in which one side pays a floating rate while the other side pays another alternative floating rate.)

It is ISDA's members assumption then that if a packaged transaction (per 2.) can be broken down to component products level it should be broken down and reported as the individual component products and the transaction reports for each product will be linked together with the complex trade component ID. While a product (per 1.) should be reported on one transaction report where possible. Furthermore, this concept is intrinsically linked to the instrument identification question – if there is an ISIN available for an instrument it is ISDA's members assumption that a transaction in such an instrument may be reported as one transaction report whereas if a packaged transaction can be represented as a combination of instruments each with their own ISIN then that package may be reported with a transaction report for each component transaction in each instrument for which there is an ISIN.

Special cases of the above approach arise when component instruments of a package or underlying instruments of an instrument in a particular transaction are not all fully in scope for MiFIR Transaction Reporting. Please consider the following examples and ISDA's member's assumptions about how they would be reported (assume an Investment firm is party to the transaction and instruments are only listed or quoted on a trading venue as mentioned):

- A. A package transaction which involves a US government bond instrument and a EUR/USD forward. The US government bond instrument is not in scope for MiFIR while the forward is identical to a EUR/USD forward listed on an EEA MTF.
  - a. A transaction report will only be sent for the EUR/USD forward component of the package
- B. A package transaction which is made up of a call option on a solely US listed share and another call option on a solely UK listed share.
  - b. A transaction report will only be sent for the option on the UK share component of the package
- C. An option on a basket containing the same US and UK shares from example B
  - c. A transaction report will only be sent for option on a basket but the only underlier ISIN shown will be that of the ISIN for the UK share.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_16>

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



<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_17>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_17>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_18>

ISDA's members would welcome further examples which illustrate the correct way to populate this block for the following 5 scenarios:

Scenario 1:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore.  
Firm X is dealing on own account and sells a reportable financial instrument to Client A  
A salesperson in the Singapore branch takes the order from client A.  
A trader in London branch executes the transaction.

Scenario 2:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore.  
Firm X is dealing on own account and sells a reportable financial instrument to Client A  
A salesperson in the London branch takes the order from client A.  
A trader in the head office in New York executes the transaction.

Scenario 3:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore.  
Firm X is dealing on own account and buys a reportable financial instrument on the Philadelphia Stock Exchange  
A trader in the London branch makes the investment decision.  
A trader in the head office in New York executes the transaction on using the firm's membership to access the venue.

Scenario 4:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore.  
A trader in the head office in New York executes a transaction on a trading venue using the branch membership of London branch to access the venue.

Scenario 5:

Firm X is an EEA investment firm with a non-EEA branch in Singapore.  
A trader in Singapore trades a MiFID instrument on behalf of the Singapore branch.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_18>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_19>

ISDA's members understand that NCA's will allow direct reporting to their infrastructure. There are some obvious follow on implementation questions from this which may impact investment firms in countries with less experience from MiFIDI, namely:

Will all NCA's allow direct reporting?

Can ESMA coordinate and publish each NCA's plans to have these facilities in place to allow firms adequate time to take this into account for their project build plans?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_19>



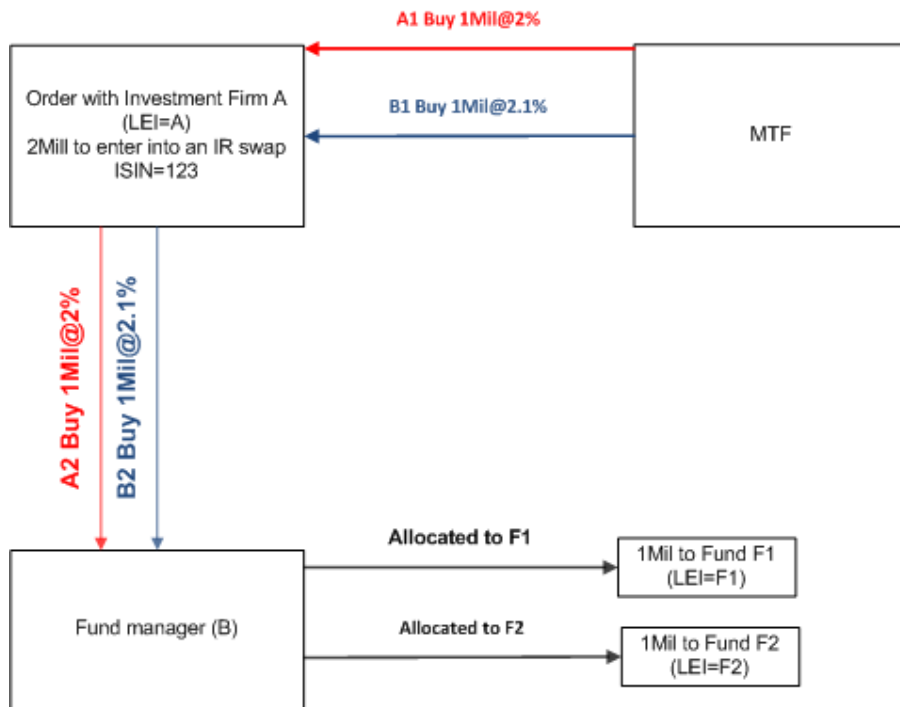
**Q20: Do you require further clarity on the content of Article 16 of RTS 22? Please elaborate.**

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_20>  
 TYPE YOUR TEXT HERE  
 <ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_20>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_21>

Figure 6 Fund manager executes transactions for funds it manages



The first paragraph (of section 1.2.1) specifies that the investment firm is not expected to look behind their client to try to determine the ultimate client. Furthermore Investment firms shall report their direct client. Our assumption is therefore, that where the fund manager is facing an investment firm, the fund manager and not the underlying fund is reported as the Buyer or Seller.

ISDA's members have further assumed that allocations to the underlying funds are not reportable (by the investment firm, the fund manager may report these client allocations), as funds are not treated as counterparties to the execution with the investment firm only to clearing. Cleared allocations are post execution events and as such reportable under EMIR and not MiFID II / MiFIR. Our understanding in this regard is that if per *Figure 6* an investment firm A has done two separate transactions of 1 million on an MTF for a client fund manager who is executing transactions for funds it manages. Then investment firm will send two transaction reports for each of the 1 million transactions A2 and B2 against LEI of the fund manager as the buyer, any further allocations of the 2 million of notional done by the client into the funds are not expected to be reported by investment firm A.

That said, and in addition to the above, ISDA's members would like to note that there has been ambiguity in the guidance received from certain national competent authorities regarding which is the correct buyer/seller in such fund and fund manager scenarios. Taking the example in *Figure 6* some NCAs have advised that the fund manager B would be the buyer on the two transactions of 1 million while others think the funds F1 and F2 are. ISDA's members understand this may be due to national laws regarding the legal entity status of fund managers and funds and would welcome ESMA working to resolve these discrepancies in interpretation by providing such a scenario in the guidelines document and clearly stating the expected approach. **It is important for ISDA's members that there is a consistent implementation of the transaction reporting requirements across the region, for this reason and to the extent possible we would welcome ESMA's efforts to address this.**

Also, please confirm that having reported the LEI of the Fund Manager in #7 or #17, that the natural persons fields #9, #10 and #11 or #18, #19 and #20 respectively are not required to be populated.

ISDA's members are unclear when to use INTC – we understand it is for reporting the buyer or seller if an aggregated client account is being used before the instruments are allocated to the client – similarly, it may be that in the scenario when the allocations are unknown by the fund manager that they can report the execution as INTC until the allocations are confirmed? Examples for ESMA's expectations for use of this value would be welcome.

As mentioned in response to ESMA's consultations previously, swap products are not always easily classified into buyer/seller determinations. ESMA's approach to splitting out legs of swaps and reporting them separately will not work (not least as such an approach would not pass the report validations).

With regard to Equity swaps:

ISDA's members note that throughout the examples in guidelines document we observe the equity swap to be reportable on a leg by leg basis (in comparison though (p 161) CFD, CDS and IRS are to be reported as 1 report – we also note there is no example of an FX swap which we request is addressed).

We do note that ESMA is open to further considerations on this format however, so it is important at this stage to provide ISDA's comments and ideas for the best practice in response to the consultation on the guidelines: "It should be noted that the reporting logic and the use of the complex ID field for the cases from b to g above may be subject to further considerations."

Some definitions first:

1. A transaction may be an execution of a trade in derivatives product (i.e. option, swap, etc. with specific details)

This product may be composed of:

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

But this derivative product is one consolidated unbreakable product:

- There is one single order and execution
- The (combination of) legs cannot be handled separately (renegotiation of one of the legs affects the product as such) and a party cannot exit one of the legs independent of the other
- The premium/price at inception is for the derivative product and the valuation is for the product as the single legs are not priced at a leg by leg basis
- These products are confirmed on one legal agreement
- Any payment/ premium/ up-front fee is for both legs combined together

(NB: in common industry jargon the only exception to this payment approach might be the FX swap product where the components of the swap are forward "legs" swapping one currency for another currency

(this may also be viewed as a combination of forward products and could be seen as a packaged transactions per 2.) and these near and far legs are settled separately – but even in this case the confirmation message and settlement message are 1 and the same message)

2. A number of individual derivatives products may be combined / bundled together into packaged transactions (structures, trading strategies).

These “packages” can

- become standardized trading strategies (example straddle/strangle – which are combinations of puts and calls: the package can be traded on a trading venue platform, and there is a standardized confirmation that allows the product to be confirmed electronically.

- be very bespoke and tailored to a client's needs

Again: the “packages” are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components, the premium/price at inception is for the “package” and the valuation is for the “package”.

Some firms may book the more standardized products as one derivative transaction – while others might book at individual component/ product level (but “link” the individual products in order to show them as a “package” for purposes of performing post trade activity in tandem.)

In Part IV – Reporting of different types of instruments p 154-194, and more precisely on p 169 -186 equity swap: Are all examples to be reported on a leg by leg basis? Namely:

- o 1 equity leg and 1 rate leg
- o 2 equity/index legs (on trading platform that is not EEA and a pure OTC)
- o TRS in OTC
- o equity basket against rate swap
- o 2 equity baskets

Reporting on leg by leg basis would mean providing 2 full reports (all fields completed) – with both legs needing separate trade identifiers, but still “linked” using the same “complex trade component id” (field 40)

As explained above, the equity swap is a derivatives product that indeed has multiple legs, but that is traded, and would be booked as 1 transaction in 1 individual derivative product. As such, reporting parties will not be able to report correctly on a leg by leg basis without making some assumptions, extrapolations or duplications of data to fill in all required fields on both reports.

Issues specifically related to the required fields:

- o Field 2 – transaction reference number: for EMIR such equity swap products are reported using 1 UTI – there is no transaction identifier at the level of the leg
- o Field 3 transaction venue identification code: if the transaction would be done on a venue (Bloomberg for instance), the derivative product would trade as an equity swap and have only one transaction venue transaction identification per order
- o Field 61 the “waiver indicator” and 63 “OTC post-trade indicator” fields: should this be done on a venue the order/ execution would be on the swap, not on the legs so the same issue persists
- o Field 33 “price”: would be the price for the swap, there is no premium on a leg by leg basis
- o Field 38 “up-front payment”: should there be one will have the same issue as Field 33
- o Should the swap be traded on an EEA venue and have an identifier (ISIN) it would not be mentioned on the reports if the swap were to be broken into parts (it is assumed that if an ISIN available the reporting should be on one report and much information required on report becomes redundant {and contained in the ISIN})
- o The quantity for the swap should be the same in most cases on each of the legs – but that might not be the case if the proportions of the legs are not the same

- o Reporting of increase/decrease on those swaps will also become very complex.

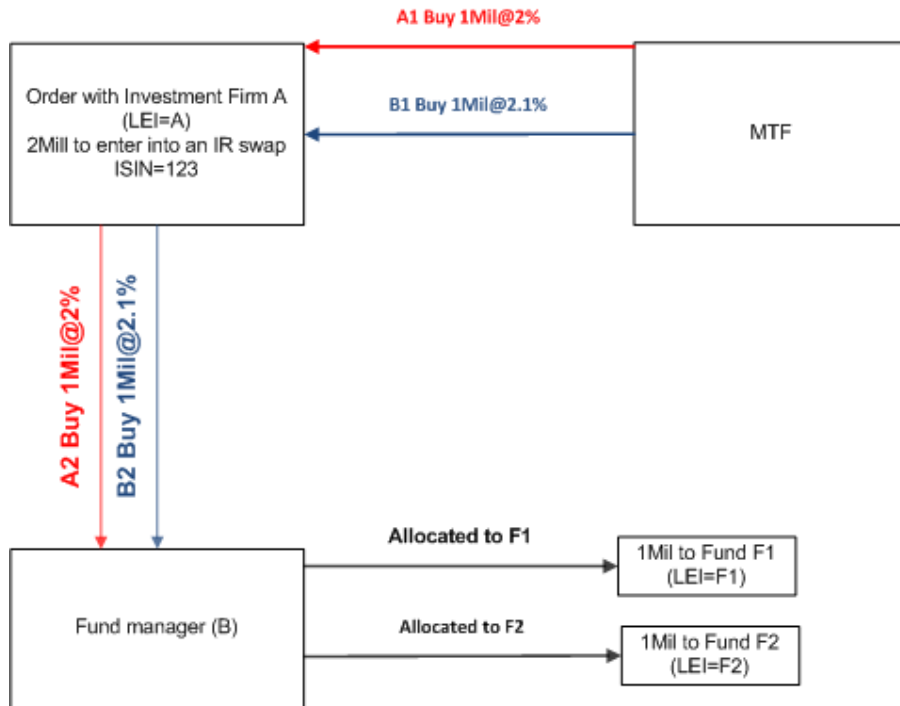
It is ISDA's members view that an equity swap, as explained above, is 1 single derivative product, and should be reported as such (like the CFD which is in fact also a kind of equity swap, and like the credit derivative swap and interest rates swap that ESMA illustrates to be reported as 1).

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_21>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_22>

**Figure 7 Fund manager executes transactions for funds it manages**



The first paragraph (of section 1.2.1) specifies that the investment firm is not expected to look behind their client to try to determine the ultimate client. Furthermore Investment firms shall report their direct client. Our assumption is therefore, that where the fund manager is facing an investment firm, the fund manager and not the underlying fund is reported as the Buyer or Seller.

ISDA's members have further assumed that allocations to the underlying funds are not reportable (by the investment firm, the fund manager may report these client allocations), as funds are not treated as counterparties to the execution with the investment firm only to clearing. Cleared allocations are post execution events and as such reportable under EMIR and not MiFID II / MiFIR. Our understanding in this regard is that if per *Figure 7* an investment firm A has done two separate transactions of 1 million on an MTF for a client fund manager who is executing transactions for funds it manages. Then investment firm will send two transaction reports for each of the 1 million transactions A2 and B2 against LEI of the fund manager as the buyer, any further allocations of the 2 million of notional done by the client into the funds are not expected to be reported by investment firm A.



That said, and in addition to the above, ISDA's members would like to note that there has been ambiguity in the guidance received from certain national competent authorities regarding which is the correct buyer/seller in such fund and fund manager scenarios. Taking the example in *Figure 6* some NCAs have advised that the fund manager B would be the buyer on the two transactions of 1 million while others think the funds F1 and F2 are. ISDA's members understand this may be due to national laws regarding the legal entity status of fund managers and funds and would welcome ESMA working to resolve these discrepancies in interpretation by providing such a scenario in the guidelines document and clearly stating the expected approach. **It is important for ISDA's members that there is a consistent implementation of the transaction reporting requirements across the region, for this reason and to the extent possible we would welcome ESMA's efforts to address this.**

The second paragraph specifies that the investment decision maker is the person that has been granted authority to act for the client. It is therefore our assumption, that where the Fund Manager has been granted power of representation for an underlying fund, the fund manager shall be reported as the decision maker.

Please confirm that for field #12 (buyer decision maker code) and field #21 (seller decision maker code), if an investment firm has executed a transaction for a client that is acting under a power of representation, that the investment firm shall report the decision maker with the LEI of the fund manager and not the underlying fund.

Furthermore, please confirm that having reported the LEI of the Fund Manager in #12 or #21, that the natural persons fields #13, #14 and #15 or #22, #23 and #24 respectively are not required to be populated

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_22>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_23>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_24>

An example around principles behind Investment Decision maker sales/trader relationship with client. If Sales takes order from client, trader prices it, sales agrees with client and books trade in desks book. Who is primarily responsible for the investment decision, sales that has relationship with client or trader who determines the price or the owner of the book who manages the risk of the trade?

Principles around if no specific person is involved. Client use venue/Investment Firm A platform to request trade, trade is automatically priced and executed and booked into a desks book. Who is Investment decision maker, client relationship, price provider, head of desk?

In addition to the above questions an example showing a scenario where the Investment Decision maker and the person responsible for execution are different as the examples infer they are the same.

In relation to Direct Electronic Access (DEA) trades, it is ISDA's members understanding that even though the investment firm is only providing its infrastructure to the client who makes the decision and executes the trade independently of any trader at the investment firm, the details of the person who gave authorisation within the investment firm for the client to trade with the DEA will be provided for the investment decision and execution within the firm.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_24>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_25>

In relation to Direct Electronic Access (DEA) trades, it is ISDA's members understanding that even though the investment firm is only providing its infrastructure to the client who makes the decision and executes the trade independently of any trader at the investment firm, the details of the person who gave authorisation within the investment firm for the client to trade with the DEA will be provided for the investment decision and execution within the firm.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_25>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_26>

Section# 1.2.7.2 – Trading Platform outside of union: Example should explicitly state that the instrument traded on a platform outside of a union is either a valid MIFID instrument or its underlier is. Otherwise it reads that instruments on platforms outside of the union are in scope.

Whilst there is no formal requirement for the venues to provide the MIC code or the Waiver information (under RTS 22) firms would very much appreciate the ESMA's help in encouraging the venues to provide this information to the investment firms. It should also be noted that the complex routing arrangements and logic which trading venues have mean that obtaining the correct MIC code for a transaction is even more important – the venue may route an execution to another venue entity for a variety of reasons and the investment firm may only be aware after execution so assumptions about the correct MIC code to use are also difficult to make.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_26>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_27>

ISDA's members note that RTS 22 states that if the short selling information is not available this should be reported as NTAV whereas in the guidelines document the same scenario is reported as UNDI. We would be grateful to ESMA if they can identify which is the correct value to be used in such a situation and subsequent update this in the final guidelines document.

Q27.5 Block 9 (no question related to this block).

We assume a typo in this section, is the intention to mean public trade reporting (in Red) instead of transaction reporting. Can ESMA confirm that if a firm hasn't public trade reported (for post trade transparency under RTS 2) a field because either venue has or the seller of the trade has instead, the firm is still required to determine and report these fields?

- 1.2.9.1 Waiver indicator and post-trade indicator

Fields 61 and 63 shall be populated where a trade report has been made or shall have been made regardless of whether the executing investment firm made the transaction report itself or the report was made by its counterparty or the trading venue.



When an investment firm must transaction report for a transaction where they did not perform post trade transparency reporting and do not have the waiver information (e.g. if you are buyer of the instrument) – what should the investment firm report for waiver information in that scenario?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_27>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_28>

ISDA's members would welcome further examples which illustrate the correct way to populate this block for the following 5 scenarios:

Scenario 1:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore. Firm X is dealing on own account and sells a reportable financial instrument to Client A. A salesperson in the Singapore branch takes the order from client A. A trader in London branch executes the transaction.

Scenario 2:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore. Firm X is dealing on own account and sells a reportable financial instrument to Client A. A salesperson in the London branch takes the order from client A. A trader in the head office in New York executes the transaction.

Scenario 3:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore. Firm X is dealing on own account and buys a reportable financial instrument on the Philadelphia Stock Exchange. A trader in the London branch makes the investment decision. A trader in the head office in New York executes the transaction on using the firm's membership to access the venue.

Scenario 4:

Firm X is a Third country firm with its head office in New York and branches in London and Singapore. A trader in the head office in New York executes a transaction on a trading venue using the branch membership of London branch to access the venue.

Scenario 5:

Firm X is an EEA investment firm with a non-EEA branch in Singapore. A trader in Singapore trades a MiFID instrument on behalf of the Singapore branch.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_28>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_29>

“Transaction reference numbers shall be unique to the executing firm for each transaction report and shall not be re-used even where the original transaction report is cancelled, except where the original transaction report is being corrected in which case the same transaction reference number shall be used for the replacement report as for the original report that it is being amended (see 1.2.11.3).”





Please confirm that, in the event, a transaction report is corrected, and an error is found on the corrected transaction that an additional CANC and NEWT trade will be allowed with the original transaction reference number? I.e. there will be 3 new (NEWT) transaction reports with the same Transaction reference number.

For example, will the transactions marked below in **red** be accepted?

NEWT ABCDEF123

CANC ABCDEF123

NEWT ABCDEF123 (which is the first correction – the transaction report contains all the data of the original NEWT but for the erroneous data which is replaced with corrected data)

**CANC ABCDEF123**

**NEWT ABCDEF123** (which is the second correction – the transaction report contains all the data of the second NEWT transaction report but for the erroneous data which is replaced with corrected data)

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_29>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_30>

ISDA's members would welcome clarity on use of the up-front payment field, RTS 22 states that the up-front payment content to be reported is 'Monetary value of any up-front payment received or paid by the seller. Where the seller receives the up-front payment, the value populated is positive. Where the seller pays the up-front payment, the value populated is negative'

In example 1.2.12.2 a decrease in notional, the seller is firm Y and the buyer is firm X. The payment is received by firm X so we would expect the notional to be negative but the example shows the payment as a positive value.

Further to that the validation rules contradictorily states that 'The format of the reported value should be decimal number of max 18 digits out of which max 5 are fraction digits in case of monetary or nominal value (non-negative)'

Key question: Please can ESMA clarify whether this field should always be a positive value?

Increase in notional example -

Over the counter equity option where underlying equity instrument component is available on a trading venue. This is a bespoke option where the notional is 10,000,000 and the premium is 1,000.

ISDA's members assumption which aligns with typical best practice approach to trade representations under other reporting regimes is that the price multiplier would always be 1 for OTC derivatives and the product or contract attributes (which might be related to that ISIN for that product if it were made available for trading on a trading venue) would mimic this and not include notional as an attribute of the ISIN/product nor would lot size (other than 1) be a feature or attribute. There may be exceptions to this but those questions are for the ISO study group which is developing a solution for ISIN for derivatives to answer. At this stage ISDA's members would like to confirm the following logic for reporting an increase in notional. So for transaction reporting it is ISDA's members' assumption that for almost all such derivatives and in the absence of any alternative fields on table 2 of Annex I of RTS 22 the notional amount will be indicated in the quantity field and the price multiplier will be 1.

Original Transaction Report

Quantity – 10,000,000

Price – 1,000

Price multiplier - 1

If, there is an increase in notional on this Option where the notional is increased to 12,000,000, and the premium is thus increased to 1,200 can you please advise how this should be reported? Is the delta reported for price and price multiplier, i.e. 200 and 2,000,000 respectively?

Transaction Report which effects the increase in notional of the position

Quantity – 2,000,000

Price – 200

Price multiplier - 1

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_30>



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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_31>

ISDA's members welcome the examples and believe they clearly illustrate what is required for the example transactions. However would appreciate confirmation that the Price Currency field should be blank where a value of NOAP is populated in the Price field

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_31>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_32>

ISDA's members welcome the examples and believe they clearly illustrate what is required for the example transactions. However, what should the trading capacity be in this example, it seems it would be AOTC or MATCH (as there is only one report)?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_32>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_33>

"If client A is an investment firm then it shall also report by identifying firm X as the seller." – should this say..... "Identifying firm Y". It would help if the guidelines document had client A's transaction report also. ISDA's members would appreciate an example under 1.3.3.2 for how client A should report. We assume that if client A is an investment firm and is also required to report, it would report firm Y as the seller and not firm X as indicated in the example.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_33>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_34>

ISDA's members welcome the examples and believe they clearly illustrate what is required for the example transactions. However, for the example in 1.3.4.2 (Firm X deals on a matched principal basis), what should firms do when receiving multiple allocations? Should there be a report for each fund allocation to multiple funds by a fund manager who executes block trade (assume the fund manager is client A in this example).

ISDA's members have assumed that allocations to the underlying funds are not reportable (by the investment firm, the fund manager may report these client allocations), as funds are not treated as counterparties to the execution with the investment firm only to clearing. Cleared allocations are post execution events and as such reportable under EMIR and not MiFID II / MiFIR. Our understanding in this regard is that if per an investment firm X has done two separate transactions of 100 and 200 on an MTF for a client A fund manager who is executing transactions for funds it manages. Then investment firm will send two transaction reports for each of the 100 and 200 against LEI of client A of the fund manager as the buyer, any further allocations of the 500 done by the client A into the funds are not expected to be reported by investment firm X.

That said, and in addition to the above, ISDA's members would like to note that there has been ambiguity in the guidance received from certain national competent authorities regarding which is the correct buyer/seller in such fund and fund manager scenarios. ISDA's members understand this may be due to



national laws regarding the legal entity status of fund managers and funds and would welcome ESMA working to resolve these discrepancies in interpretation by providing such a scenario in the guidelines document and clearly stating the expected approach. **It is important for ISDA's members that there is a consistent implementation of the transaction reporting requirements across the region, for this reason and to the extent possible we would welcome ESMA's efforts to address this.**

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_34>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_35>

On page 90 it states: "The trading price and date and time shall be identical in all three transaction reports. The trading price and date and time shall be the market price and date and time of the market execution." ISDA's members would like to note on trading date and time at this juncture regarding the trading date and time for OTC derivatives. The flexible approach taken by ESMA in section III of the guidelines document (page 261) is commended by ISDA's members. However, while the listing of attributes which would be expected to be agreed at deal done/execution time i.e. "content of the following fields" is helpful approach towards a definition ISDA's members would be concerned about multiple interpretations of how the content should be represented leading to delays in agreeing this content. ISDA's members assume the intention here is not to define another timestamp which is quite separate from the common understanding of the execution or deal done time. The content of the fields mentioned in the text may only be agreed on a post trade recap, or later still, not until the trade is legally confirmed, so formally tying the time to be recorded to those pieces of information should be avoided in our view.

The population of trades which are not furnished with a centrally generated time stamp for the execution time is relatively small as it is assumed all transactions executed on a Trading Venue will be reported with a timestamp aligned, subject to permitted divergence, to the one generated on the trading venue (RM, MTF or OTF). Development of a common understanding of what would be a sufficiently precise *deal done* or *execution* timestamp for the remaining voice brokered off venue population is something which the industry must work on for a number of regulatory requirements in Europe and globally. ISDA's members, across a number of working groups in response to an array of regulatory requirements are trying to answer this question and will share any proposals with ESMA at a later date.

ISDA's members would welcome ESMA addressing the fund manager and fund allocations in tandem with use of the INTC value for buyer and seller when an aggregated client account is used by an investment firm for interim housing of instruments before allocating to the investment firm's clients. ESMA indicates that INTC is for use for client aggregated accounts in the examples. It is easy to extend and conflagrate this with the scenario where an investment firm's client is executing a transaction for a number of entities it manages. ISDA's members do not believe these client allocations (to the client's funds) should be transaction reported by the investment firm but would welcome clarity that they should not be, and that INTC is solely for use of the investment firm in its own arrangements to execute its clients' transactions (which would be a fund manager in this fund manager and fund case).

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_35>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_36>

Is it correct to assume that if you have successful transmission the price has to be successfully transmitted? The transmission of the order flow would be from client up the chain to the investment firm but the price (which they are required to transmit) is from the market price which would be from the top of the chain at the market (trading venue). If it is a limit price put on the order which suffices as a price for transmission this makes more sense – clarity on what price to use (or will suffice) would be welcome. I.e. can the investment firm correct the price for the transmitting firm to put in the final executed price or does the

client have to obtain the executed price then retransmit the order to fulfil order transmission for transaction reporting?

Some minor questions on examples:

Page 121 – field 62 and 64 should be green also?

Page 128 – field 7 report of firm Y - Buyer should be firm Z?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_36>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_37>

“If instead firm Z is acting in ‘any other capacity’ its reports will be exactly the same except that the trading capacity will be reported as ‘AOTC’.”

Can this scenario be explained as our understanding is if Firm Z is acting in ‘any other capacity’ they can’t be executing a market side transaction against the venue, in which case another party should be between firm Z and the venue. Please confirm in detail what the above statement means and if our interpretation is correct or not.

The examples in 1.3.8.2 and 1.3.8.3 suggest commodity trades are in scope for short selling regulation given that field is populated for 2 examples. This is an error in the example we assume.

1.3.8.2 – Example first states it relates to selling shares, then states on a commodity instrument. The short sell fields and commodity derivative indicator both have values given one field is exclusively for equities/ sovereign debt and the other field exclusively for commodities products this must be an error.

1.3.8.3 – The second example (P127) in this section states it is a commodity instrument example but short sell indicator is populated.

Further to the above, ISDA’s members would be grateful if ESMA can address some other errors:-

The trading venue as the description indicates that it is trading venue A but the diagram refers to venue M. Why are fields 57 and 58 are not populated with the information received under the Transmission of Order agreement?

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_37>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_38>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_39>

In relation to Direct Electronic Access (DEA) trades, it is ISDA’s members understanding that even though the investment firm is only providing its infrastructure to the client who makes the decision and executes the trade independently of any trader at the investment firm, the details of the person who gave authorisation within the investment firm for the client to trade with the DEA will be provided for the investment decision and execution within the firm.

To affirm ISDA’s members’ understanding, examples should be provided in the guidelines document as to how DEA transaction reports should be completed, specifically including trading capacity (field 29), buyer/seller (fields 7 & 16), decision makers (fields 12 & 21), executing entity (field 4), country of branch (fields 8 and 17) and investment decision maker / execution (fields 57 & 59) and (field 36) venue.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_39>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_40>

ISDA's members would appreciate an example of how the transaction reports should be completed for the Give up scenarios specifically including the buyer / seller / execution time and venue fields

ISDA's members would appreciate confirmation on what should appear in the execution time field for example 1.3.11.5

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_40>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_41>

With reference to section 1.1.7.1, ISDA's members very much welcome the clarifications provided for securities financing transactions and the Securities Financing Transactions Regulation (SFTR). The examples clearly illustrate what is in and out of scope and we really welcome this approach. However, further to example 3, ISDA members are working under the assumption that the securities financing transactions which would be reportable under SFTR, but for an exemption under SFTR, will therefore become reportable under MiFIDII/MiFIR and that such Transaction reporting of these SFTR exempt securities financing transactions can only commence once SFTR enters into force i.e. when SFTR reporting begins such Transaction reporting for securities financing transactions between a Central Bank and an Investment firm will also begin and shall have Field 65, Annex 1, table 2, RTS 22 set to true only from that point.

Prior to those Security Financing Transactions being reportable ISDA's members would welcome examples in the MiFIR transaction reporting guidelines document showing how to report attributes required under MiFIR. Particularly worked examples of how to report: a) any eligible triparty trades, in which the collateral is unknown pre-settlement, b) the sale and repurchase of a term repo transaction, c) whether any consideration should be made when booking a single leg repo transaction (either booking just the sale or repurchase of an Open transaction?)

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_41>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_42>

For the purpose of understanding when to report a transaction, reporting parties will need to know when a financial instrument which they have executed a trade in, is or is not an in scope MiFID II/MiFIR instrument. The technicalities and timing considerations of obtaining ISINs for an instrument and delivering instrument reference data to an NCA for listing on ESMA's website can be explored with other implementation issues. At this stage key questions around the scope of instruments subject to transaction reporting remain and this is the focus for ISDA's members at this stage before product specific issues around timing and nature of reference data required can be addressed.

The key instrument scope questions which ISDA's members see in relation to transaction reporting are as follows:

- Firstly, can ESMA confirm the NCAs will determine whether something is traded on a venue or not (as RTS 2 presumes a given scope and level 1 does not ask ESMA to opine on this question)? If so, then we presume the NCAs will furnish ESMA with the necessary lists of instruments which they have received from trading venues and systematic internalisers which send instrument reference data.
- What is this population of instrument traded on a venue going to include? ISDA's members assume the determination may be different depending on the type of venue (RM, MTF or OTF).

- Will only executed transactions in an instrument trigger it having been traded on a venue and subject to RTS 23?
- How should an off venue transaction in an instrument be assessed to determine if it is in scope for transaction reporting or not? (This question is key when considering the next question.)
- What situations will FX, commodity and IR derivatives which are not executed on a trading venue be in scope for transaction reporting (i.e. if their underlying is not an on venue instrument but similar products will likely be traded on a trading venue in the Union)?
- When making an assessment of the instrument as to whether it is in scope or not to what degree should a derivative be comparable with another in scope instrument?  
(NB: There are no FX derivatives in the examples of the guidelines document – ESMA should provide some examples of all asset classes which are likely to be in scope including FX derivatives).

Take two simple example transactions to illustrate these last two questions,

Vanilla fixed v float interest rate (IR) swap

Start date 01/02/16

Maturity date 01/02/19

Party A pays EUR - EURIBOR 6 month rate

Floating rate payments: 01/08/16, 01/02/17, 01/08/17, 01/02/18, 01/08/18 and 01/02/19.

Party B pays 2%

Fixed rate payments: 01/08/16, 01/02/17, 01/08/17, 01/02/18, 01/08/18, and 01/02/19.

Day count fraction Actual/360

Notional EUR 1,000,000

Vanilla FX option

Trade date 01/02/16

Expiry date 01/02/19

GBPUSD contract

Strike: GBP/USD 2.00

Notional amounts: GBP 1,000,000/USD 2,000,000

Assuming that an instrument must at least match on currency/currency pair (a EUR, b GBPUSD) and type (a Vanilla fixed v float IR swap, b Vanilla FX option):

- To what extent should an instrument be comparable for other attributes like tenor (time from start date to Maturity date or expiry date), maturity date, Strike etc. to be determined as being the same as an instrument which already trades on a Trading Venue (exists on the ESMA database of instruments)?
- If an instrument does match on all those attributes but also has some additional features should it be thought of as identical also?

**ISDA's members know, and appreciate, these questions are closely linked to the ISO work on ISINs for derivatives, and believe that the right expertise is found in those working groups to advise on the most sensible solution to the questions above, but want to make it clear they remain unanswered in the context of the MiFID II / MiFIR requirements to the knowledge of ISDA's members.**

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_42>



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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_43>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_43>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_44>  
ISDA's members would like to see more scenarios in respect to reporting FX products, such as FX options. In particular in regards to Option type field. The buyer of the option if Forex market buys call in one currency and put in another in currency pair. Another field which is not evidently clear is how to populate FX Option price on a transaction report. As per field definition for option that should be premium as per unit of the underlying instrument. This will not apply for OTC products so should firms report absolute monetary value of the premium paid by the buyer (that would be ISDA's members assumption here)? In other regulatory reporting (EMIR) the strike price is often reported in the price field. A disambiguation and clarity across the regimes for such crucial economic fields would be welcome in the guidelines document and ISDA would be very willing to work on best practice on such a project if ESMA were willing to endorse the output of this work in the relevant guidelines documents and Q&A for derivatives.  
To reiterate, there is only one example in the guidelines document related to FX asset class (a spread bet on FRA). To help understand how FX products are going to be represented an FX option example on an in scope venue should be presented.  
Generally, ISDA's members would be grateful for examples to show how non-equity options, futures, swaps, relating interest rates should be transaction reported.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_44>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_45>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_45>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_46>  
If the CDS in the example is one derivative contract – why is the quantity being reported not equal to 1? Rather, in the example, the Quantity is to be reported as 1,000,000. Some more clarity is needed in choice of value for quantity across all products.  
ISDA's members assumption which aligns with typical best practice approach to trade representations under other reporting regimes is that the price multiplier would always be 1 for OTC derivatives and the product or contract attributes (which might be related to that ISIN for that product if it were made available for trading on a trading venue) would mimic this and not include notional as an attribute of the ISIN/product nor would lot size (other than 1) be a feature or attribute. There may be exceptions to this but those questions are for the ISO study group which is developing a solution for ISIN for derivatives to answer. At this stage ISDA's members would like to confirm the following logic for reporting an increase in notional. So for transaction reporting it is ISDA's members' assumption that for almost all such derivatives and in the absence of any alternative fields on table 2 of Annex I of RTS 22 the notional amount will be indicated in the quantity field and the price multiplier will be 1.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_46>



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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_47>

ISDA's members note that throughout the examples in guidelines document we observe the equity swap to be reportable on a leg by leg basis (in comparison though (p 161) CFD, CDS and IRS are to be reported as 1 report – we also note there is no example of an FX swap which we will request/suggest in response to the consultation).

We do note that ESMA is open to further considerations on this format however, so it is important at this stage to provide ISDA's comments and ideas for the best practice in response to the consultation on the guidelines: "It should be noted that the reporting logic and the use of the complex ID field for the cases from b to g above may be subject to further considerations."

Some definitions first:

1. A transaction may be an execution of a trade in derivatives product (i.e. option, swap, etc. with specific details)

This product may be composed of:

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

But this derivative product is one consolidated unbreakable product

- There is one single order and execution
- The (combination of) legs cannot be handled separately (renegotiation of one of the legs affects the product as such) and a party cannot exit one of the legs independent of the other
- The premium/price at inception is for the derivative product and the valuation is for the product as the single legs are not priced at a leg by leg basis
- These products are confirmed on one legal agreement
- Any payment/ premium/ up-front fee is for both legs combined together

(NB: in common industry jargon the only exception to this payment approach might be the FX swap product where the components of the swap are forward "legs" swapping one currency for another currency (this may also be viewed as a combination of forward products and could be seen as a packaged transactions per 2.) and these near and far legs are settled separately – but even in this case the confirmation message and settlement message are 1 and the same message)

2. A number of individual derivatives products may be combined / bundled together into packaged transactions (structures, trading strategies).

These "packages" can

- become standardized trading strategies (example straddle/strangle – which are combinations of puts and calls: the package can be traded on a trading venue platform, and there is a standardized confirmation that allows the product to be confirmed electronically.
- be very bespoke and tailored to a client's needs

Again: the "packages" are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components, the premium/price at inception is for the "package" and the valuation is for the "package".

Some firms may book the more standardized products as one derivative transaction – while others might book at individual component/ product level (but "link" the individual products in order to show them as a "package" for purposes of performing post trade activity in tandem.)

At the end of 2014, ISDA ran a survey to understand how the standardized trading strategies were reported / booked. 71% of the respondents indicated they reported the way they booked, and 55% reported the individual components.

3. A basis trade is a trading activity where a trader buys/sells a security or commodity and sells/buys its related derivative – we do not see this as a "package" as this are basically 2 different transactions in 2 different products where the counterparty on both products can be different – and where there might not be a 1 to 1 relation between the derivatives transaction and the transaction(s) in the underlying security.

(NB a basis swap is a swap in which one side pays a floating rate while the other side pays another alternative floating rate.)

In Part IV – Reporting of different types of instruments p 154-194, and more precisely on p 169 -186 equity swap: Are all examples to be reported on a leg by leg basis? Namely:

- o 1 equity leg and 1 rate leg
- o 2 equity/index legs (on trading platform that is not EEA and a pure OTC)
- o TRS in OTC
- o equity basket against rate swap
- o 2 equity baskets

Reporting on leg by leg basis would mean providing 2 full reports (all fields completed) – with both legs needing separate trade identifiers, but still “linked” using the same “complex trade component id” (field 40) As explained above, the equity swap is a derivatives product that indeed has multiple legs, but that is traded, and would be booked as 1 transaction in 1 individual derivative product. As such, reporting parties will not be able to report correctly on a leg by leg basis without making some assumptions, extrapolations or duplications of data to fill in all required fields on both reports. ISDA’s members believe such products should be reported on one transaction report only.

Issues specifically related to the required fields:

- o Field 2 – transaction reference number: for EMIR such equity swap products are reported using 1 UTI – there is no transaction identifier at the level of the leg
- o Field 3 transaction venue identification code: if the transaction would be done on a venue (Bloomberg for instance), the derivative product would trade as an equity swap and have only one transaction venue transaction identification per order
- o Field 61 the “waiver indicator” and 63 “OTC post-trade indicator” fields: should this be done on a venue the order/ execution would be on the swap, not on the legs so the same issue persists
- o Field 33 “price”: would be the price for the swap, there is no premium on a leg by leg basis
- o Field 38 “up-front payment”: should there be one will have the same issue as Field 33
- o Should the swap be traded on an EEA venue and have an identifier (ISIN) it would not be mentioned on the reports if the swap were to be broken into parts (it is assumed that if an ISIN available the reporting should be on one report and much information required on report becomes redundant {and contained in the ISIN})
- o The quantity for the swap should be the same in most cases on each of the legs – but that might not be the case if the proportions of the legs are not the same
- o Reporting of increase/decrease on those swaps will also become very complex.

It is ISDA’s members view that an equity swap, as explained above, is 1 single derivative product, and should be reported as such (like the CFD which is in fact also a kind of equity swap, and like the credit derivative swap and interest rates swap that ESMA illustrates to be reported as 1).

We understand that ESMA and NCAs want to be able to see the direction of the performance of an equity instrument to see which party to a transaction may gain from its positive or negative performance. We think this can be done in an alternative way without splitting out the legs.

One possible suggestion might be as follows:

*PLEASE NOTE BELOW IS PRESENTED FOR ILLUSTRATIVE PURPOSES. IT IS ONE IDEA GENERATED IN DISCUSSION OF ISDA’S WORKING GROUP ON THIS MATTER– ANY BEST PRACTICE OR SOLUTION ESMA DECIDES UPON WILL NEED WIDER INDUSTRY REVIEW AND APPROVAL DUE TO THE NATURE OF THE DIFFERENT PARTIES AND TECHNOLOGY STANDARDS IMPACTED.*

The fields “Underlying instrument code” (field 47 - where firms provide an ISIN if the underlying is an instrument), “underlying index name” (field 48) and “Term of the underlying index” (field 49) should be repeatable fields catering for multiple underlyings. Then when there is a swap product which is swapping the performance of two instruments, two indices or an instrument for an index it is possible to report this on one Transaction Report template. The next piece of information required by ESMA and NCAs is the direction of the swap. This could be achieved for example by adding a plus + or minus - sign in order to show whether the reporting party is long or short each of the underlyings’ performance – not taking into account the fact whether he is buyer/seller on the swap transaction. In fact, as has been repeated by ISDA’s mem-



bers in response to consultation process around Transaction Reporting, the buyer/seller is not really relevant for a swap product– but we understand ESMA’s determination to have a standard template and are endeavouring to work the buyer and seller fields into the reporting solution for these products.

This example approach could work for swaps where the buyer/seller rules ESMA dictates (in table 2 of Annex I of RTS 22) are not clearly defined (like for example A below) and for which splitting the transaction into smaller parts is impossible as it is one unbreakable product (as described per 1. above).

Furthermore, this example approach would allow us to have a similar trade representation for any equity swap traded OTC, on an EEA venue or on a non EEA venue (reading the guidelines document for these products in their current form, ESMA would expect an equity swap admitted to trading on EEA venue transaction reported on 1 report (as it will have an ISIN on the ESMA list) while it is suggested in the guidelines document then that all other equity swaps would be on leg by leg basis as they do not have an ISIN which pertains to the swap so the legs should be separated out – this is not very consistent and will be complex to reconcile or do any event reporting).

**EXAMPLE A**

Equity swap (two equity legs) traded on a trading platform outside the Union (instrument is not available in the ESMA list) - Investment firm X buys an equity swap on a trading platform outside of the Union and therefore the swap is not available on the ESMA list. The underlying equity indices on each leg of the equity swap contain financial instruments which are admitted to trading on a regulated market.

**Swap contract:** ISIN of the swap contract is US000DAX000X and the notional amount subject to the swap agreement is EUR 1,000,000. The contract expires on 25 June 2016 and is settled in cash. The CFI code for an equity swap is SESPXC. Investment firm X will receive the performance of the DAX (leg 1) and pay the performance of the IBEX (leg 2). The venue code for the equity swap is XUSA and the venue uses a central counterparty. The instrument full name is a free text field to be populated by the reporting firm: DAX EQS IBEX 35 JUN 16. We assume no premium at inception, and no ISIN for LIBOR index

**Equity leg (leg 1):** the underlying is DAX Index (ISIN DE0008469008)

The reference value of the DAX Index is 11,473.13 units and the price is nominated in basis points. The nominal amount corresponds approximately to 87 times the DAX value.

**Equity leg (leg 2):** the other underlying is IBEX 35 Index (ISIN ES0S10000005)

The reference value of the IBEX35 Index is 11308.40 and the price is nominated in basis points. The nominal amount corresponds approximately to 88 times the IBEX value.

[The tables below are from the perspective of the investment firm X only]

**Table 4 Example Swap contact split into two separate legs for reporting following ESMA example**

N	Field name	Report #1 Values	Report #2 Values
4	Executing entity identification code	{LEI of Firm X}	{LEI of Firm X}
7	Buyer identification code	{LEI of Firm X}	{LEI of CCP}
16	Seller identification code	{LEI of CCP}	{LEI of Firm X}
30	Quantity	'1'	'1'
33	Price	'11473.13'	'11308.40'
34	Price currency		
36	Venue	{Segment MIC of the non-EEA trading Venue}	{Segment MIC of the non-EEA trading Venue}
40	Complex trade component id	'STRAT12013'	'STRAT12013'
41	Instrument identification code	{Swap ISIN}	{Swap ISIN}
42	Instrument full name	'DAX EQS IBEX 35 JUN 16'	'DAX EQS IBEX 35 JUN 16'
43	Instrument classification	{CFI code}	{CFI code}
44	Notional currency 1	'EUR'	'EUR'
46	Price multiplier	'1000000'	1000000'
47	Underlying instrument code	{DAX Index ISIN - Leg 1}	{IBEX Index ISIN - Leg 2}
48	Underlying index name	DAX Index	IBEX Index
55	Expiry date	'2016-06-25'	'2016-06-25'
56	Delivery type	'CASH'	'CASH'

As outlined in this example we are endeavouring to report the transaction on one transaction report. Following ESMA's logic for *buyer* and *seller identification code* in table 2 of Annex I of RTS 22 (the "logic") is problematic for this type of contract (and explains ESMA's attempt to find an alternative solution by splitting out each leg onto a different report). This is actually a basis swap (the logic only seems to expect float v float interest rate swaps) but in this case the basis swap is swapping equity index performance for equity index performance and both indices are valued at the same time at the money (so there is actually no basis or differential – apart from the starting difference in price which for equity indices could be quite volatile and easily misinterpreted – and requires knowledge of the initial prices) – no premium is exchanging hands and there is no fixed rate payer – extending the basis swap logic to the difference in reference prices for example may suggest to have X as "seller" as at inception based on the reference price for the indices (DAX is higher than IBEX in example), X could "receive" the difference in starting prices. Though in the example report from the guidelines document in *Table 1* it is clear X receives the DAX and pays the IBEX. So it is clear why ESMA presented a different approach separating the legs onto different transaction reports.

As we have explained above this is not the correct way to represent trades and will end in many problems for trade representation. The simplest solution is still to explicitly indicate who is paying and receiving each leg but only on one transaction report. As suggested, one idea for how this could be achieved is by repeating the underlying and giving it a sign to reflect whether the Executing Entity is long or short the underlying. Such an approach will work for all types of swaps.

*Table 2* shows the same example reported according to this idea for a swap which is not listed as available or traded on a trading venue in the EEA (so instrument reference data is also submitted for the instrument).



**Error! Reference source not found.** shows the case if the instrument is list on an EEA venue, the trade representation on the report would be similar (except the fields 42-56 would be blank). We would ask ESMA to validate that this matches what ESMA expects in this case as are no such examples in the guidelines document.

**Table 5**

instrument lists on non EEA venue and is cleared			
n	field name	report by Firm X	Comment
2	transaction reference number	123452	we typically would have 1 trade ref for both legs
3	trading venue transaction number		blank here - but we would trade the swap as 1 on a venue
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of CCP}	
16	Seller identification code	{LEI of Firm X}	
30	Quantity	1000000	crf field 46
33	Price		
34	Price Currency		
36	Venue	XUSA	
38	Up-front payment		
39	Up-front payment currency		
40	Complex trade component id		
41	Instrument identification code	US000DAX000X	
42	Instrument full name	DAX EQS IBEX 35 JUN 16	
43	Instrument classification	SESPXC	
44	Notional currency 1	EUR	
46	Price multiplier	1	we would expect price multiplier 1 for derivatives
47	Underlying instrument code	+DE0008469008 / -ES0SI0000005	shows Firm X receives the performance on DAX and pays on IBEX - repeatable field
48	Underlying index name		we should not mention the INDEX name as we have ISIN for the index
49	Term of the underlying index		
55	Expiry date	25/06/2016	
56	Delivery type	CASH	
61	waiver indicator		
63	post-trade indicator		

**Table 6**

instrument lists on EEA venue			
n	field name	report by Firm X	Comment
2	transaction reference number	123452	we typically would have 1 trade ref for both legs
3	trading venue transaction number	abcde	blank here - but we would trade the swap as 1 on a venue
4	Executing entity identification code	{LEI of Firm X}	
7	Buyer identification code	{LEI of CCP}	
16	Seller identification code	{LEI of Firm X}	
30	Quantity	1000000	crf field 46
33	Price		
34	Price Currency		
36	Venue	XEEA	
38	Up-front payment		
39	Up-front payment currency		
40	Complex trade component id		
41	Instrument identification code	US000DAX000X	
42	Instrument full name		42-56 are blank as listed on EEA venue
43	Instrument classification		
44	Notional currency 1		
46	Price multiplier		
47	Underlying instrument code		
48	Underlying index name		
49	Term of the underlying index		
55	Expiry date		
56	Delivery type		
61	waiver indicator	ILQD	
63	post-trade indicator	ILDQ	

Quantity field for notional amount





56

Delivery type

'CASH'

Note – in some interpretations the near leg of the FX Swap might be seen as a FX spot transaction and deemed not reportable so that only the forward leg of the Swap is reportable so the complex trade component id is left blank – this is not in line with ISDA’s members’ assumptions nor industry best practice.

*FX Swap traded on an organised trading platform outside the Union (non-EEA venue) where forward leg is not available for trading on an EEA organised trading facility*

An EEA investment firm trades an FX Swap (EUR/SGD) of one month maturity on an organised platform outside the EEA. Because this is a minor currency pair the far leg (forward) has not been standardised and made available on a trading venue nor had an ISIN issued and hence is not deemed as traded on a trading venue inside the EEA, this trade is not reportable. Only the EUR leg would be reported as an FX forward if at all.

Some points/questions which arise from this example:

1. Major/minor currency split in *reportability* (minor currency FX forwards may not be standardised and on a trading venue). So Major currency Swaps/Fwds may end up being reportable and minor currencies not.
2. If an investment firms trade on a non-EEA trading platform with a non-EEA counterparty, only you have a reporting responsibility.
3. Spot legs of Swaps should be reportable meaning that for standard FX Swaps both legs should be reported and linked with a complex trade component id even if some parties interpret the near leg to be a spot instrument.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_47>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_48>

There is only one example showing how a commodities trade is to be represented and this is on a vanilla commodity. To help understand further Commodities representation can we have a swap on Commodity Index product where at least one constituent of the index is an in scope Mifid instrument.

Below we present an example commodity trade, would like to confirm that this type of trade is in scope and population of instrument related fields. The trade is a Swap on a Commodity Index trade.

Points to note:

1. The trade is OTC as the swap is not listed on an EEA venue so has no ISIN
2. The Index is S&P GSCI, a global commodity index, which has no ISIN at the moment and cannot be directly traded. It contains a mixture of commodities some traded on EEA venues e.g. LME Copper and therefore the trade is in scope
3. Given the underlying is an index without an ISIN and is not directly tradable Field 47 is not applicable. The ISINs of the in scope index underliers (e.g. LME Copper) are not listed here
4. The name of the Index is populated here in Field 48
5. Term is not relevant for this Index so Field 49 is not populated

41	Instrument identification code	<b>&lt;NA&gt;</b> (note 1)
<b>Fields 42-56 are not applicable where: transactions are executed on a trading venue or with an investment firm acting as a SI; or field 41 is</b>		

populated with an ISIN that exists on the reference data list from ESMA		
42	Instrument full name	S&P GSCI Index Swap
43	Instrument classification	CFI Code
44	Notional currency 1	USD
45	Notional currency 2	<NA>
46	Price multiplier	1
47	Underlying instrument code	<NA> (3)
48	Underlying index name	S&P GSCI (4)
49	Term of the underlying index	<NA>

Further to the above example provided, ISDA's members would be grateful to have examples as to how options, futures, swaps, forwards relating to commodities should be transaction reported.

In relation to commodity indicator field if we would appreciate for ESMA to provide clarification on the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities (12(a) of Article 57)

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_48>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_49>

ISDA's members note that ESMA is open to further considerations on the trade representation approach to take when transaction reporting different products and packages, so it is important at this stage to provide ISDA's comments and ideas for the best practice in response to the consultation on the guidelines: "It should be noted that the reporting logic and the use of the complex ID field for the cases from b to g above may be subject to further considerations."

Some definitions first:

1. A transaction may be an execution of a trade in derivatives product (i.e. option, swap, etc. with specific details)

This product may be composed of:

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

But this derivative product is one consolidated unbreakable product

- There is one single order and execution
- The (combination of) legs cannot be handled separately (renegotiation of one of the legs affects the product as such) and a party cannot exit one of the legs independent of the other
- The premium/price at inception is for the derivative product and the valuation is for the product as the single legs are not priced at a leg by leg basis





- These products are confirmed on one legal agreement
- Any payment/ premium/ up-front fee is for both legs combined together

(NB: in common industry jargon the only exception to this payment approach might be the FX swap product where the components of the swap are forward “legs” swapping one currency for another currency (this may also be viewed as a combination of forward products and could be seen as a packaged transactions per 2.) and these near and far legs are settled separately – but even in this case the confirmation message and settlement message are 1 and the same message)

2. A number of individual derivatives products may be combined / bundled together into packaged transactions (structures, trading strategies).

These “packages” can

- become standardized trading strategies (example straddle/strangle – which are combinations of puts and calls: the package can be traded on a trading venue platform, and there is a standardized confirmation that allows the product to be confirmed electronically.
- be very bespoke and tailored to a client’s needs

Again: the “packages” are traded as 1 executed transaction, the individual components cannot be handled separately or a party cannot typically exit one of the components, the premium/price at inception is for the “package” and the valuation is for the “package”.

Some firms may book the more standardized products as one derivative transaction – while others might book at individual component/ product level (but “link” the individual products in order to show them as a “package” for purposes of performing post trade activity in tandem.)

At the end of 2014, ISDA ran a survey to understand how the standardized trading strategies were reported / booked. 71% of the respondents indicated they reported the way they booked, and 55% reported the individual components.

3. A basis trade is a trading activity where a trader buys/sells a security or commodity and sells/buys its related derivative – we do not see this as a “package” as this are basically 2 different transactions in 2 different products where the counterparty on both products can be different – and where there might not be a 1 to 1 relation between the derivatives transaction and the transaction(s) in the underlying security. (NB a basis swap is a swap in which one side pays a floating rate while the other side pays another alternative floating rate.)

It is ISDA’s members assumption then that if a packaged transaction (per 2.) can be broken down to component products level it should be broken down and reported as the individual component products and the transaction reports for each product will be linked together with the complex trade component ID. While a product (per 1.) should be reported on one transaction report where possible. Furthermore, this concept is intrinsically linked to the instrument identification question – if there is an ISIN available for an instrument it is ISDA’s members assumption that a transaction in such an instrument may be reported as one transaction report whereas if a packaged transaction can be represented as a combination of instruments each with their own ISIN then that package may be reported with a transaction report for each component transaction in each instrument for which there is an ISIN.

Special cases of the above approach arise when component instruments of a package or underlying instruments of an instrument in a particular transaction are not all fully in scope for MiFIR Transaction Reporting. Please consider the following examples and ISDA’s member’s assumptions about how they would be reported (assume an Investment firm is party to the transaction and instruments are only listed or quoted on a trading venue as mentioned):

- D. A package transaction which involves a US government bond instrument and a EUR/USD forward. The US government bond instrument is not in scope for MiFIR while the forward is identical to a EUR/USD forward listed on an EEA MTF.
  - a. A transaction report will only be sent for the EUR/USD forward component of the package
- E. A package transaction which is made up of a call option on a solely US listed share and another call option on a solely UK listed share.
  - c. A transaction report will only be sent for the option on the UK share component of the package
- F. An option on a basket containing the same US and UK shares from example B
  - d. A transaction report will only be sent for option on a basket but the only underlier ISIN shown will be that of the ISIN for the UK share.

Finally, another example of a package/strategy similar to a swap is given below, a structured product. Often such products will be securitised with an ISIN which should be straight forward to report but if the components are only in scope or if such a product is traded OTC it may be useful to address such an example in the guidelines document.

#### Structured Product

##### A Mixed Deposit Bond Return with Index Link

Capital Used	Return	Term
40%	Fixed Rate of 1%	Term of 2 years
30%	Conditional Interest linked to Euro Stoxx 50	Term of 4 years
30%	Auto call bond paying 2% unless Euro Stoxx 50 goes above strike level	Term of 5 years, callable from 2 years

If an amount of 100,000 is transacted on this structured product 40,000 earns a fixed rate of 1% over the first year. 30,000 earns the full interest related to the Euro Stoxx 50 but is also 100% guaranteed at a minimum. The remaining 30,000 is invested in a callable bond, where a transferable security passes to the client. Will this entire structure or some component be reportable? How to report such products may be something to address in the next version of the guidelines document.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_49>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_50>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_51>



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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_52>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_52>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_53>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_53>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_54>  
ISDA’s members have the following question about the definitions used, where there is reference made to “trading time” is this equivalent to execution time? For example, RTS 1 defines Trading date and time as “Date and time when the transaction was executed.”

Generally though ISDA’s members support the view of the FIX trading community’s clock synchronisation expert group’s response to this question:

No, we do not believe further clarification from ESMA is required. We are pleased ESMA has taken the approach that reportable events are functional or business events, as opposed to technical events, such as when a message enters or leaves a switch, which would be unworkable. A functional approach enables the reporting entity to determine how to apply the timestamp to reportable events, provided this is done consistently and is appropriately documented.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_54>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_55>  
The flexible approach taken by ESMA is commended by ISDA’s members. However, while the listing of attributes which would be expected to be agreed at deal done/execution time i.e. “content of the following fields” is helpful approach towards a definition ISDA’s members would be concerned about multiple interpretations of how the content should be represented leading to delays in agreeing this content. ISDA’s members assume the intention here is not to define another timestamp which is quite separate from the common understanding of the execution or deal done time. The content of the fields mentioned in the text may only be agreed on a post trade recap, or later still, not until the trade is legally confirmed, so formally tying the time to be recorded to those pieces of information should be avoided in our view.

The population of trades which are not furnished with a centrally generated time stamp for the execution time is relatively small as it is assumed all transactions executed on a Trading Venue will be reported with a timestamp aligned, subject to permitted divergence, to the one generated on the trading venue (RM, MTF or OTF). Development of a common understanding of what would be a sufficiently precise *deal done* or *execution* timestamp for the remaining voice brokered off venue population is something which the industry must work on for a number of regulatory requirements in Europe and globally. ISDA’s members, across a number of working groups in response to an array of regulatory requirements are trying to answer this question and will share any proposals with ESMA at a later date.



<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_55>

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

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_56>

ISDA's members support the view of the FIX trading community's clock synchronisation expert group's response to this question:

No, we do not require ESMA to provide further clarity. We support ESMA's approach of not being overly prescriptive in terms of establishing a system of traceability to UTC. We are pleased to see that ESMA's approach allows flexibility in implementation, avoiding any mandatory external validation, while focused on the demonstration of sound engineering principles such as measurement and monitoring to evidence good practice. This allows firms of all sizes to choose either in-house or external services, as best fits their needs.

<ESMA\_QUESTION\_CP\_TR\_ORK\_CS\_56>

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

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

Yes, we broadly agree with the proposals in sections 3.2 to 3.4.

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