

EFAMA'S REPLY TO ESMA'S CONSULTATION PAPER ON MiFIR REVIEW REPORT ON THE OBLIGATIONS TO REPORT TRANSACTIONS AND REFERENCE DATA

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INTRODUCTION

We disagree with an extension of its scope to UCITS' and AIFs' management companies to the scope of the reporting requirements imposed by MiFIR, Art. 26. This extension would be in breach of the principle of proportionality, as:

- it would apply to none-core activities of UCITS and AIFS and would only identify only a few (if any) market activities to report,
- ESMA does not demonstrate the existence of market abuses detected,
- ESMA and NCAs can already associate the transactions with the decision makers in most cases (notably through the reporting provided by trading venues under MiFIR, Art. 26 para. 5),
- Contrary to ESMA views, introducing MiFIR reporting for UCITS management companies and AIFM would not create a level playing field. Market participants have the free choice to operate either as investment firm or in consideration of the requirements for UCITS' or AIFs' management companies. Licenses and requirements are different and market participants can switch licenses at any time but each model has specificities,
- extending the scope of Art. 26 MiFIR would create disadvantages in comparison to UK UCITS Management Companies when applying for portfolio management mandates outside EU-27.

Considering the cornerstone's role of the principle of proportionality in EU legislation, should ESMA envisage to impose additional reporting to UCITS' and AIFs' management companies, those implementing burden must be minimised. In that perspective and rather than amending Art. 26 of MiFIR, we suggest introducing two new reporting fields, which could deliver ESMA's required information but with a much lower burden to the financial industry. For that same effect, we encourage ESMA to take into account alternatives which could reduce the reporting burden for market participants such as HTRM¹. Our proposed approach can be adopted with respect to EMIR, SFTR and MiFIR.

We also remind ESMA of the compulsory need to identify all financial instruments with ISINs, even if they were bespoke transactions like some derivatives transactions.

¹ See our [position paper on Hybrid Transaction Reporting Mechanism](#) applicable to EMIR reporting.

QUESTIONS

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

First and foremost, one level 2's text should not interfere in the level 1's of another legislation, especially if the latter is a European financial success. Should a regulator wish to alter the reporting duties imposed on UCITS and or AIFs or AIFMs, those changes should be discussed primarily through dedicated consultations on those legislations.

Second, providing transactions reports as suggested by ESMA will induce critical challenges for UCITS/AIF managers, as:

- Investment Firms are covering a vast variety of financial institutions, including banks and credit institutions, that have a different purpose and resources than UCITS or AIFs,
- there is no unlevel playing field between the Investment firms and the UCITS/AIF managers because they should be compared: the provision of the MIFID services defined under Article 4(2) of MIFID II represent core services for the Investment firms whereas the same services are non-core services for the UCITS/AIF managers. Even if the same services can be provided by both, they do not obey to the same legal setup, especially the licensing regime.

We add that the non-core services as defined respectively in AIFMD and UCITS regulations rarely conducts to transactions submitted to reporting under Article 26 of MIFIR (i.e. investment advice). Moreover, the cost of these reports are already included in the fees paid to the Investment firms that execute the transactions.

- these proposed additional requirements will not prevent from market abuse, while this risk is widely invoked by ESMA in support of its request. We do not understand why "Such information-details of the decision-maker- is essential for the purpose of market abuse surveillance". The market abuse risk is covered already by MAR which requires internal devices to prevent this abuse. The decision maker is not aimed to benefit from any market abuse as its role consists in taking investment decisions when managing an investment fund in order to maximize the performance of such fund. We do not see how this type of decision could be a concrete case of market abuse, knowing that ESMA does not give any example of such abuse.

In light of the above explanations, we consider that, where an Investment firm faces an UCITS/AIF managers, acting as the operator of an investment fund, the relevant reporting field should exclusively be populated by the Investment firm with the LEI of its clients, the investment fund. Where UCITS/AIF managers represent individual clients, for obvious confidentiality reasons, the field should be populated by the LEI of the UCITS/AIF management company.

Indeed, to provide MiFIR transaction reports as expected by ESMA to ESMA and the NCAs as described in the current consultation would create significant and complex challenges/hurdles for UCITS/AIF managers.

In addition, we remind ESMA (and to a lesser extend the European Commission and the Co-Legislators) that ESMA must comply with the principle of proportionality which is set out in Art. 5 para. 1 and 4 of The Treaty on European Union. For European institutions Protocol No 2 further clarifies the application of the principle of proportionality. Draft legislative acts, which include proposals from the COM (Art. 3 of Protocol 2) shall take account of the need for any burden falling upon [...] economic operators and citizens, to be minimised and commensurate with the objective to be achieved (Art. 5 of Protocol 2).

In order to comply with the principle of proportionality, first of all, there must be a **need for any burden** falling upon economic operators and citizens. Only if there is a need for any burden, such **is to be minimised** and must **commensurate with the objective to be achieved**.

Recital 32 of Regulation (EU) No 600/2014 states that:

“The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms.”

1) Addition burden

We do not share ESMA’s view that there is a need for putting additional reporting burden aimed to fall on AIFM and UCITS management companies.

In the context of Art. 26 MiFIR, the additional reporting applied on economic operators seems to be justified by the need to enable competent authorities

- to detect and investigate potential cases of market abuse and obtain “missing information concerning the activity of AIFMs/UCITS management companies” (para. 13 of the CP);
- to monitor the fair and orderly functioning of markets;
- to monitor the activities of investment firms.

Remembering that the activities subject to ESMA’s scrutiny in this consultation are asset managers’ non-core services, we wish to insist on several important elements:

a) Potential cases of market abuse

i) Non-core services of AIFM

- “Investment advice” does not trigger reporting requirements under Art. 26 MiFIR, as it is not deemed a transaction under Commission Delegated Regulation (EU) 2017/590 (“RTS-22”).
- “Safe-keeping and administration in relation to shares or units of collective investment undertakings” would only open a very limited scope for reports under Art. 26 MiFIR. It is a very rare case that AIFM safe-keep and administrate fund units and only movements from a client account to another client would be reported under Art. 26 MiFIR as:
- Movements not resulting in a change of ownership are carved out (cf. No. 5.6.1 of ESMA’s Guidelines ESMA/2016/1452).
- Acquisitions or disposals that are solely a result of custodial activity are also carved out from the reporting requirements (Art. 2 para. 5 (d) of Commission Delegated Regulation (EU) 2017/590).
- RTS-22 (Art. 2 para. 5 (g) of Commission Delegated Regulation (EU) 2017/590) furthermore carves out the creation or redemption of units of a collective investment undertaking by the administrator of the collective investment undertaking.
- “Reception and transmission of orders in relation to financial instruments” is again a non-core activity. In theory it may result in reports under Art. 26 MiFIR, if required. However, this activity is picked up by AIFM not very often, if at all.

In conclusion, the requested new reporting could identify a limited number of transactions analyse, triggered by two non-core activities of AIFM. Implementation costs are high and the requirement are not proportionate to the regulatory benefit.

ii) Non-core services of UCITS management companies

As far as ESMA refers to the non-core services of investment advice and safe-keeping and administration in relation to units of collective investment undertakings, we refer to our answers with regards to AIFMs.

ESMA also refers to the *“management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary client-by client basis, where such portfolios include one or more of the instruments listed in Annex I Section C to Directive 2004/39/EC”*. Such an activity - provided by a licensed Manager under MiFID – generally triggers reporting obligation under Art. 26 MiFIR. However, we do not agree with ESMA’s assessment summarised in para. 12 of the CP and deny the need for additional reporting by UCITS management companies:

- Here again, ESMA does not provide concrete numbers supporting its demand for an extension of the scope of Art. 26 of MiFIR,
- We consider that legislative regime imposed on asset managers (in particular rules on conduct) and regulated funds such as UCITS funds has proved to be robust in that respect and that any new regime imposed by MiFID would create duplicative or counterproductive active measures,
- Most of the transactions are taking place on trading venues. As set out in Art. 26 para. 5 of MiFIR and further described on page 170 of ESMA’s Guidelines, trading venues have to populate all the details that a firm not being subject to Art. 26 MiFIR would have to report if it were subject to MiFIR. Against this background, we believe that ESMA and NCAs should already have today a detailed knowledge of the ongoing transactions, thanks to EMIR reporting, SFTR reporting or MAR reporting to only name infrastructure, non-product related, legislations. Taking into account the experiences gained from such reporting, it is difficult to understand why ESMA’s demand for an extension of the scope of Art. 26 of MiFIR has not been justified with numbers of cases where ESMA or NCAs have detected market abuse out of that rich data basis,
- A market abuse is unlikely to happen in investment funds (UCITS/AIFs) as they are among the most strictly regulated and transparent financial products. In addition, fund management companies (UCITS/AIF) report data for each fund or share class to different NCAs at regular intervals. There are regulatory fund reporting (UCITS, AIFM and reporting to the National Central Bank), transaction reporting (EMIR, SFTR), reporting to institutional investors (CRR, Solvency II), annual tax returns as well as numbers of special reports and ad hoc queries by regulators on risks,
- In addition, UCITS management companies are already obliged to report relevant data like the identity of the decision maker via the trading venue when trading on it.

In conclusion and with respect to UCITS, changes to the scope of Art. 26 of MiFIR would multiply reports, also compared with the changes envisaged for AIFs. Therefore, and as mentioned above, the implementation costs are high and the requirement are not proportionate to the regulatory benefit.

iii) Monitor fair and orderly functioning of markets

According to the Report by the Technical Committee of IOSCO dated May 1999, objectives and Principles of Securities Regulation which were adopted by the IOSCO Executive Committee in September 1998 identify the three core objectives of securities regulation as: (1) the protection of investors; (2) ensuring

that **markets are fair**, efficient and transparent; and (3) the reduction of systemic risk. On page 4 of the report, IOSCO states:

*“Regulators in all markets acknowledge that investors want fair, honest and orderly markets. Thus, the integrity of the markets is an important matter of public interest and regulators should take actions that promote these objectives of fair and efficient capital markets. The IOSCO Principles expand upon these objectives to develop the following more detailed principles regarding orderly and transparent markets, **prohibition of unfair trading practices**, identification and management of risks, and effective clearing and settlement.”*

IOSCO names unfair or fraudulent behaviour, conflict of interest, sales conduct, criteria for access and market participant conduct as examples of conduct that could lead to illicit behaviour or that need to be monitored.

Where recital 32 of Regulation (EU) No 600/2014 refers to the purpose of Art. 26 MiFIR, that details of transactions in financial instruments should be reported to competent authorities to enable them to monitor fair and orderly functioning of markets.

ESMA does not provide numbers of cases where it has determined unfair trading practices of AIFM and UCITS management companies. Taking into account the purpose of Art. 26 MiFIR we do not see the need for putting additional burden on UCITS management company.

b) Political demand by ESMA and BREXIT

ESMA refers to a level playing field for market participants (para. 14 of the CP). For the reasons given above, we understand this as a political demand rather than a demand that originates from the purpose of Art. 26 of MiFIR.

In addition, we do not share ESMA's political view:

- Similar services provided by investment firms and AIFM / UCITS management companies are core activities for investment firms but only non-core activities of AIFM / UCITS management companies.
- Market participants and their legal setup are different. However every market participant has made its choice to either provide its services as investment firm or as AIFM / UCITS management company. Having been licensed as investment firm must come along with advantages those companies would not obtain if being licensed as AIFM / UCITS management company – otherwise they would switch authorisation, which is possible at any time. It is not an unlevel market field, if market participants are free in selecting their regulatory setup.

We would also like to point out that Brexit will create a unlevel playing field if UCITS/AIF managers should become subject to the reporting obligation on Art. 26 MiFIR. According to the UK Withdrawal Act, UK made MiFIR part of its national regulation based on a Statutory Instruments. Any amendment of the EU-27 MiFIR that occurs at least beyond the Transition Period will not become part of UK MiFIR.

UK-Asset Managers licensed under AIFMD/UCITS Directive would be able to offer their services to Third Country clients at lower costs than asset managers operating from the EU27. Differing from UK asset managers, EU UCITS/AIFM managers would have to consider the costs for transaction reporting.

For the reasons given, we do not share ESMA's assumption that there should be a level playing field in respect to investment firms licensed under MiFID with regulated funds and their asset managers. It is in the discretion of the investment firms to decide if they apply for a license under MiFID or a license under

the AIFMD/UCITS Directive. This counts for both EU27 investment firms and UK-investment firms. For the reason given, we do not see an unlevel playing field now but fear that the amendments proposed by ESMA will create an unlevel playing field.

2) Alternative solutions.

As mentioned in the beginning of this response to Question 1, we believe that the principle of proportionality should remain a cornerstone to European legislations and implementing acts. Should ESMA envisage to impose additional reporting, burden is to be minimised.

ESMA has pointed out in the CP (para. 12) that the details of the decision maker that is making the decision to acquire/sell the given financial instrument may not be available in the existing transaction reports and that such information is essential for the purpose of market abuse.

However, when referring to a potential “regulatory gap” and the “missing information concerning the activity of AIFMs/UCITS management companies” (para. 13 of the CP), we believe that the information is already available, notably via the UCITS and AIFMD required reporting. Therefore, we do not agree with ESMA’s assessment regarding a need for an extension of the reporting requirement of MiFIR, Art. 26 to regulated funds and their management companies.

Should ESMA insist in obtaining additional information related to the identification of decision maker of a transaction, we consider that it is not necessary to amend Article 26 of MiFIR. This objective can be achieved either by just adding two more data fields to be populated by investment firms or thanks to the HTRM:

a) Additional fields:

- Additional reporting field “End of Chain (EOC)”:

This field should be populated by an investment firm only, where it faces a person that is currently reported as Buyer / Seller but that acts as agent or broker on behalf of a third party without being an investment firm. Facing such counterpart, the investment firm shall populate the EOC-Field with the LEI. Under the directive on settlement finality in payment and securities settlement systems², only defined market participants are part of a system and, therefore, are the sole ones that should be subject to financial investments under investment activities. This information should already be available at least in cases of agency because an agent must name the person represented in order to not becoming liable itself under the transaction aimed for its client. Furthermore, retrieving that information is part of the investment firms KYC-Process and the fulfilment of existing AML-requirements.

If the investment firm faces an AIFM or UCITS management company, acting as the operator of the relevant investment fund, the EOC-Field would be populated with the LEI of such investment fund (which has already been considered as buyer / seller).

If the operator of an investment fund has outsourced the portfolio management to the AIFM or UCITS management company, the EOC-Field would be required to be populated with the LEI of such investment fund (which has already been considered as buyer / seller).

Where the AIFM or UCITS management company represents an individual client, the EOC-Field is to be populated by the LEI. In such case current reports made by investment firms would only

² Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, Art. 1 and Art. 2, (1) and (2).

show the AIFM or UCITS management company. The proposed EOC-Field would also close this information gap for NCAs.

- Additional Reporting field “Decision Maker of Non-Investment Firm”

Also this field should be populated by an investment firm only, where it faces a Buyer / Seller that is not an investment firm.

If the EOC-Field is completed with a value, the field “Decision Maker of Non-Investment Firm” shall be completed with the LEI provided by the Buyer / Seller with respect to the applicable decision maker.

That means, in case of a completed EOC-Field, this could be either the LEI already reported as EOC or if the investment decision has been made by a differing person (e.g. at the agent), the LEI of that person. If the Buyer / Seller (who is not an investment firm) reported by the investment firm is unable or not willing to determine the decision maker within the remaining chain, the investment firm shall report the value “UNKNOWN”. Receiving that value may trigger further investigations by the relevant NCA.

Where the investment firm faces an AIFM or UCITS management company that represents a client, the above applies as well: the LEI already reported as EOC shall be reported via the “Decision Maker of Non-Investment Firm” field or if the investment decision has been made by the AIFM or UCITS management company acting as agent of that client.

For the avoidance of doubt, in cases where the client only recommends an investment or asks the AIFM or UCITS management company to consider a potential transaction, the final decision is made by the AIFM or UCITS management company.

- Chiffres

AIFM or UCITS management companies should not be required to transmit the individuals’ identities. In addition, it may have the legitimate interest in not providing the LEI (in order to keep business secrets). Since they are not obliged under Art. 26 MiFIR, they cannot make their own report. Their position is similar to an investment firm that has to decide between a transmission or an own report – just with the difference of not having the choice.

Therefore, it should be possible for AIFM or UCITS management companies not being an investment firm to determine a chiffre instead while providing ESMA or the NCA with a list that includes the relevant identifiers represented by the chiffres. In order to being able to being able to differ between LEI and chiffres, chiffres should start with “###” and should not contain more than 35 letters and numbers (like the maximum lengths of National ID’s) including the three hash keys.

The alternative approach we have suggested pull off the objective to be achieved, as it would:

- close “information gaps” allowing for a better market abuse surveillance,
- reduce the implementation and the reporting burden for AIFM or UCITS management companies significantly (compared to ESMA’s current approach), as they would only have to provide their counterparty with two values rather than implementing the whole MiFIR reporting regime.
- guarantee level playing field with regards to obtaining international mandates
- expediate the implementation phase.

b) HTMR

Apart from this, we encourage ESMA to evaluate how alternative approaches like in particular HTRM, which has been presented to ESMA by EFAMA when responding to the EMIR REFIT Consultation, can be adopted with respect to EMIR, SFTR and MiFIR in order to reduce reporting burden for market participants.

To summarise, the alternative approaches that we suggest would minimise the burden falling upon economic operators and citizens and would commensurate with the objective to be achieved without amending the wording of Art. 26 MiFIR.

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

On the one hand, we support ESMA extending reference data reporting, transaction reporting, and transparency to include derivatives traded with an SI.

One analysis³ found that ~95% of off-venue trading activity in interest rate OTC derivatives is currently not considered ToTV. This may mean that up to EUR 800 billion per week in trading volume in EUR interest rate swaps alone is missing from the transparency and transaction reporting framework. These are highly liquid, centrally cleared instruments that are completely exempted from post-trade transparency. We see no policy justification for the current status quo. We note that, based on feedback to the ESMA non-equity transparency consultation, this view is shared by a broad and diverse coalition of market participants, with exception of SIs.

Including derivatives traded with an SI will (a) level the playing field between SIs and trading venues, (b) establish a more comprehensive post-trade transparency regime that will deliver meaningful benefits to end investors and support the implementation of a post-trade consolidated tape, (c) improve the ability of NCAs to effectively oversee derivatives markets in the EU, (d) increase harmonisation with other jurisdictions, and (e) bring some clarity to the scope of reportable OTC derivative transactions (which has been very difficult to assess with ToTV criteria so far).

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

On the other hand, however, a major concern is that market participants currently do not receive product identifiers such as ISINs from SIs and therefore have trouble reporting transactions to the regulator. For this reason, we recommend level 1 is reviewed to provide new obligation for SIs to share with counterparts the product ISIN when facing them as an SI (which does not seem to represent additional burden for SIs since the ISIN should anyway be created for their own report to the regulator). Also, we recommend that ESMA is mandated to produce a market “golden source” of SIs, which would be very helpful for market participants to identify whether or not the transaction should be reported to the regulator in the first place.

Finally, market participants still have some issues on how to populate reports for the more complex OTC products – current regulatory guidance is not granular enough. Therefore, ESMA should release updated validation details/ updated market guidelines on how to populate reports to the regulator for the more complex OTC products.

³ See the research on the [possible solutions to the MiFID II data gaps](#).

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

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

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

We strongly support Option 1.

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

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

Regarding paragraph 75, it is good to clarify the generation of TVTIC. We hope that the market operators would be unambiguously obliged to deliver the TVTIC to market participants in its final form, so that the code is ready to be used in transaction reporting. Currently some venues deliver TVTIC values which need to be further handled (concatenated, filled, trimmed etc) by reporting entities. This type of process is prone to errors and misunderstanding and leads to matching breaks when NCAs analyse the data.

Regarding paragraph 76, while we understand the benefits of the proposed new code, we feel that implementation would be very complex. Current systems are not designed to create such codes.

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

We understand the benefits of the proposed code, however we do see serious difficulties. First, transmitting such a code through the entire chain obviously requires system and interface changes with all Investment Firms' concerned. It should be noted that if there is a break in transmitting this code, this will affect the entire chain from that point forward, and back-delivering the code later on would require all affected firms to correct their reporting afterwards.

Second, a transmission chain may include the use of the INTC technical account. When several market executions are allocated, through INTC, to several IF's next in the transmission chain, situations will occur where several of these new codes need to be transmitted with one transaction all the way through the chain. For these situations, the technical field for this code should be either very long (hundreds of

characters) or repeatable. In either case this will most likely lead to complex and unclear situations, both with implementation and when NCA's try to make use of this data.

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

We would like to have clarification on how category b clients would be reported; if a client is treated as professional on request e.g. for a specific transaction, should the client be categorised as b for that transaction, and c (retail) for other transactions? The way current reporting systems are set up, it is usually not possible to treat a client differently in reporting for different transactions. Depending on ESMA's approach on the question above, we see a challenge here if a client needs to be categorised differently for different transactions.

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

The first option (option a) would be most appropriate. In the current situation it is already challenging to acquire this information accurately from clients, so the feasibility of option b is questionable.

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

We have several concerns regarding the proposed approach.

First, many IF's have already invested substantial resources to ensure timely and accurate reporting. With this proposal, some IF's would be able to avoid similar investments and benefit from the investments of other IF's, who might also be competitors. On the other hand, the proposed obligation may be misused since the proposal does not specify who can take advantage of the arrangement; even larger transmitting firms completely capable of reporting themselves might choose to put the reporting burden on another firm.

Second, Obligating receiving firms to report on behalf of transmitting firms also puts an additional burden on the receiving firms in that they might need to make further investments in their systems to accommodate receiving all the necessary information from the transmitting firm. It is possible that the receiving firm's reporting systems have not been designed to handle all of the decision making scenarios, or different national identification formats for natural persons, that the transmitting firm needs to report. Hence the receiving firm would bear all the costs of further system development, while the transmitting firm would be the one to benefit.

Last, ESMA themselves mentioned in the consultation that some of these smaller entities have had data quality issues. How does ESMA plan to ensure that, was the proposal to be accepted, the data quality issues would not affect the receiving firm? Who will be responsible for incomplete data in these cases?

The proposed obligation might make larger firms reluctant to receive smaller firms' orders at all, since they would want to avoid the described problems.

As an alternative solution, the transmitting firms who have these issues should make the necessary investments themselves to be able to report.

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

In case a receiving firm includes in its report the information provided to it by the transmitting firm, the responsibilities regarding the completeness and accuracy need to be clarified. What action is the receiving firm required to take to make sure that data received from the transmitting firm is complete and accurate? In case there are errors in the receiving firm's reporting, but these errors stem from the transmitting firm, the transmitting firm should bear some of the responsibility for the errors.

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

If further alignment of MiFIR and EMIR is really wanted, it would be possible to further develop EMIR reporting requirements to simply include those data fields that are necessary to make EMIR reports sufficient for transaction reporting purposes. Reporting the additional fields could e.g. be dependent on whether a CP is an IF, so that non-IF's would not face an unnecessary burden in their EMIR reporting. There is a similar alignment between EMIR and REMIT, and the EMIR fields for energy derivatives stem largely from REMIT requirements.

A similar approach could be taken with EMIR and MiFIR.

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

We support the current level of granularity applied to ISINs.

We nevertheless insist on the compulsory need to identify all financial instruments with ISINs, even if they were bespoke transactions like some derivatives transactions.

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

ESMA should mandate the use of LEI, UTI, ISIN and CFI as primary identifiers.



About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 60 Corporate Members and 24 Associate Members. At end Q2 2020, total net assets of European investment funds reached EUR 17.1 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and 29,100 AIFs (Alternative Investment Funds). Including discretionary mandates, third-party regulated asset managers managed EUR 24.9 trillion in Europe at end Q2 2020

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