



European Securities and
Markets Authority

Final Report

**Guidelines on transaction reporting, order record keeping and clock synchronisation
under MiFID II**



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Executive Summary

Reasons for publication

After the finalisation of the draft regulatory technical standards on transaction reporting, order record keeping and clock synchronisation (RTS 22, 24 and 25¹), ESMA has launched its own initiative work on the supervisory convergence measures on the implementation of these RTSs.

This final report, together with the final Guidelines, reflects the outcome of this work and follows the Consultation Paper² (CP) issued in December 2015.

Contents

This final report sets out the feedback statement to the CP describing how the responses to the consultation were taken into consideration when drafting the final Guidelines, it describes any material changes to the guidelines and explains the reasons for this in light of the feedback received.

In particular, Section 2 focuses on the feedback to the Guidelines on transaction reporting, while Sections 3 and 4 focus on the Guidelines on order record keeping and clock synchronisation, respectively.

¹ESMA draft Technical Standards submitted to the European Commission on 28 September 2015 (ESMA/2015/1464) are available on ESMA website at the following link: <https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464-annex-i-draft-rts-and-its-on-mifid-ii-and-mifir.pdf>

² Consultation Paper on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation (ESMA/2015/1909) is available on ESMA website at the following link: https://www.esma.europa.eu/sites/default/files/library/2015-1909_guidelines_on_transaction_reporting_reference_data_order_record_keeping_and_clock_synchronisation.pdf

1 Introduction

These Guidelines are the result of an extensive consultation exercise with market participants and the public in general. They aim to provide guidance on how to fill transaction reports and comply with record keeping or clock synchronisation obligations. However, the vast set of possible transactions and order activities prevents the possibility of elaborating an exhaustive list of every situation that may arise. Thus, for transaction and order activities that do not perfectly match one of the examples in this document, the entities subject to these Guidelines are expected to have regard to the most relevant guidance in this document when complying with the MiFIR rules on order record keeping and transaction reporting.

Many respondents requested specific examples to cover their specific transaction or order activity. The Guidelines set up general principles and individual blocks of scenarios, which can be adapted by the entities whenever needed to represent their specific situation. Each additional example requested was evaluated to determine whether it could be easily constructed from the existing scenarios or whether there was a benefit in including it in the document. Therefore, not all examples requested by stakeholders were added to the already existing ones.

For the sake of convenience, only the fields that are particularly relevant for one specific scenario are populated in the Guidelines, it goes without saying that all the relevant fields have to be populated when reporting actual transactions.

This document contains the summary of the responses received to the consultation paper and ESMA's reaction to those responses, including the changes that ESMA has introduced accordingly in the guidelines.

2 Transaction reporting

2.1 General principles

2.1.1 Trading capacity

As requested by respondents wording around the trading capacities, namely 'Matched Principal trading' and 'Any other trading capacity', has been added to further clarify their use.

One Association asked how to report for example trades taking place under the so called "lastgeving" model. As those trades are considered to be part of the settlement and clearing process they fall under the exemption in Article 2(5)(b) RTS.

One respondent provided an example when two branches are involved and act in different trading capacities and asked how to report such instances. As there is no concept of transmission of an order between branches, only one report should be sent including the relevant branches.

Due to the size of the final Guidelines ESMA cannot accede to the request to show the entire XML table for each individual reporting scenario.

ESMA confirms that, although National Competent Authorities expect reporting firms to provide the same information on relevant transaction details, there is no explicit requirement to reconcile data like in EMIR.

2.1.2 Transmission

One respondent asked for clarification of the difference between “reception and transmission of orders” (Article 3(1)(i) RTS 22) and “transmission of an order” (Article 4 RTS 22). While the wording seems to be similar, there is a clear definition of “transmission of an order” in Article 4 RTS 22 which sets out criteria when it is considered to take place. This definition also includes the situation where the transmitted order results from an investment firm’s decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients. The reception and transmission of orders in Article 3 RTS 22 refer to receipt of an order from a client and any subsequent transmission which may or may not meet the conditions in Article 4.

2.1.3 Execution of a transaction on a trading venue

The reporting obligation under Article 26(1) of MiFIR only refers to the execution of a transaction and does not further specify under which circumstances this execution shall be considered to have been executed on or outside of a trading venue. The rules in RTS 22 do not contain further specification either; the Venue Field (Field 36) only states that the MIC code shall be used for transactions executed on a trading venue, Systematic Internaliser (SI) or organised trading platform located outside of the Union.

A trading venue is defined in Article 4(1) (24) MiFID II as a regulated market, MTF or OTF, where the purpose of such a trading facility is bringing together the buying and selling interests of multiple third parties.

ESMA has clarified when a transaction should be considered as executed on a trading venue, also taking into consideration OTC Answer 1 of the ESMA EMIR Q&A.

2.1.4 Identifiers for parties

2.1.4.1 Identification of the executing firm

Most respondents informed ESMA that the rules on identification of the executing firms were sufficiently explained and no further clarification was needed.

Some respondents requested clarification on the obligations of trading venues reporting under MiFIR Article 26(5) to identify the executing firm. In light of this feedback, ESMA expanded the relevant section in the Guidelines (see section 2.3.9 of this Report for further details).

2.1.4.2 Identification of clients

Respondents voiced concerns regarding the explicit procedure to obtain a person's full name from the passport. It was claimed to be too rigid and burdensome. Instead, some respondents proposed to align with the existing requirements of anti-money laundering laws, as these were considered sufficient for this purpose. Further, the requirement to monitor the expiry of non-persistent identification papers was considered problematic, and raised several practical problems. ESMA has relaxed the parts that require investment firms to verify names based on passports or any other official identification document to allow for more flexibility on how to verify the information. The requirement to monitor expiry dates of an identifier has been removed.

Moreover, one of the respondents' main concerns relate to the responsibility of trading venues in the event they do not receive the required information. In addition, some respondents were confused regarding the client identification in the case of the transmission of an order through several intermediaries. Some respondents highlighted that the identity of clients is sensitive information and should therefore not be transmitted to potential competitors.

In light of the above comments, ESMA clarified in this section of the Guidelines that the client to be identified in the transaction report is always the immediate client facing the member of the trading venue. Regarding trading venues' responsibility, this section of the Guidelines was complemented in order to make it clear that if trading venues do not receive the required information at the time the order is submitted, they should recover the information and check its validity and consistency by the end of the next trading day at the latest (consistent with the transaction reporting timelines).

2.1.4.3 Identification of natural persons

Several entities expressed concerns in providing personal data where national laws prevent the disclosure of such data. ESMA would like to remind the industry that the identification of the person responsible for the investment decision within the firm is a requirement set out in Level 1. To ensure that the information can be crosschecked against the Buyer and Seller Fields in order to identify potential instances of market abuse (e.g. front running), ESMA believes it is essential to ensure consistency between the identifiers used in the Buyer/Seller Fields and other fields such as the Investment decision within the firm Field.

In addition, a number of concerns in the responses to this question were related to the code to be used and the difficulties linked to the associated documentation (passport, national ID...). Respondents considered a burden obtaining this documentation, keeping and recording it and verifying in each case which identifier to use.

The Guidelines clarify that, according to the RTS 22 and the Annex II where the national identifiers are provided, reporting firms have to strictly follow the priority of the codes chosen by each jurisdiction without using a code that is not foreseen. There are not default identifiers.

Reporting firms are expected to provide this information on their clients from the very beginning of the reporting obligation (no phased in approach is allowed by level 1) and therefore are expected to put in place some measures to obtain this information as soon as possible.

A couple of respondents spotted the lack of clarification regarding the identifier to be used for a person with more than one nationality where none of them are from EEA countries, and ESMA has included a clarification in the Guidelines.

2.1.4.4 Procedure to generate CONCAT

Article 6(1), (4) and (5) in RTS 22 specifies the procedure for constructing the CONCAT identifier, a natural person identifier based on a person's name, birthdate and nationality.

The CONCAT is designed to be as unique as possible. It is expected that a CONCAT for a specific person can be created independently by different Investment Firms in different countries. Therefore, the Guidelines are as specific and simple as possible to ensure that entities construct the same identifier. This process is complicated by the existence of different alphabets, character sets, name conventions, middle names, use of titles and prefixes. The Guidelines contain specific sub-sections to cover each of these issues.

Removing prefixes

In some countries, a high percentage of persons might share a common prefix to their surname. For instance, in the Netherlands, 'van' is commonly preceding the surname. Such common prefixes reduce the expected uniqueness of a CONCAT. Consequently, such prefixes should be removed. However, acknowledging that the list of possible prefixes is excessive and that there is no clear rule for what constitutes a prefix to a surname, the Guidelines define an exhaustive list of prefixes that shall be removed for the purpose of creating the CONCAT; this list is not case sensitive.

The Consultation Paper about the Guidelines contained a set of prefixes to surnames that should be removed prior to CONCAT generation. Respondents requested more prefixes to be included. The list of prefixes has now been expanded.

Transliteration of apostrophes, accents, hyphens, spaces and similar

As a result of the variety of legal characters that are in use, it is necessary to normalise the characters to a common subset for the purpose of creating a CONCAT identifier. The goal is that the resulting identifier shall be easily and uniquely referred to across all European countries regardless of where it was created.

Respondents raised issues with the current transliteration required by the procedure to generate a CONCAT. The current mapping of one-to-one character was breaking some countries' conventions. Some respondents suggested replacing certain character transliterations to more common ones (i.e. ö->oe, instead of ö->o). ESMA emphasises that

this transliteration solely exists to generate a CONCAT identifier, and it is not necessarily supposed to align with any particular country's conventions.

2.1.4.5 First name(s) and surname(s)

The final Guidelines on the population of all fields that require first name(s) or surname(s) have been changed so that transliteration of non-latin characters in use by a EU country is no longer required. Any characters in use by an EU country, including diacritic variants, can be used.

2.1.5 Meaning of transaction

Article 2 on the meaning of transaction of RTS 22 is based on the broad concept of “acquisition” or “disposal” with a specific limited set of instances that are not considered to be transactions for the purpose of Article 26 of MiFIR and, thus, should not be subject to the reporting requirement.

2.1.5.1 Acquisitions and disposals

The definition of transfers was further elaborated.

Some respondents' concerns were related to transfers between accounts from one or several beneficial owners or other related situations that have been clarified in the Guidelines.

Corporate events were mentioned by different respondents, especially those in which some discretion by the investor could take place. These transactions will be reportable since there is an investment decision taken at the point in time of the creation, expiration or redemption.

2.1.5.2 Transaction Reporting Obligation in Changes of Ownership

Several of the consultation responses sought clarification that there was no transaction reporting obligation where there was a change in ownership structure (adding or deleting an account) of the securities account. This section of the Guidelines confirms that a change in ownership structure is transaction reportable.

2.1.5.3 Exclusions from reporting

The section on exclusions was further elaborated.

IPOs and other secondary offerings or placements are subject to reporting, since they are excluded, from the exemption in Article 2(5)(i) of RTS 22. Therefore, no additional example was included to cover this specific case.

On the other hand, ESMA has clarified that payment instructions, custodial activities and clearing and/or settlement activities are excluded. Accordingly, any transfer solely relating to a settlement of securities is considered out of scope. ESMA considered that the final text of the RTS 22 as endorsed by the EC already clarifies the timing of the reporting exemptions for

SFTR transactions, therefore, no further guidance has been provided in the Guidelines. Respondents seemed confused in relation to the exclusion referring to the creation and redemption of a fund questioning to what extent this exemption would only cover ETFs. ESMA clarifies that this applies to creation of a unit of a collective investment undertaking. Creation or redemption of units of funds that are not collective investment undertakings are not reportable as they are not financial instruments. It has been also clarified that this exclusion only applies to the creation/redemption process that takes place with the fund administrator. Respondents requested that all executions that were carried out at the NAV price should be excluded as no market abuse was possible. ESMA confirms that transactions at a NAV price are reportable since they are not included in the exclusion list, so reports are expected from all the reporting firms taking part in a chain (unless the conditions of transmission according to RTS 22 Article 4 are met).

Transfers of collateral

Several respondents requested confirmation that transfers of collateral are excluded from the definition of transaction. ESMA agrees that transfers of collateral should be excluded and therefore an explicit exclusion for transfers of collateral has been proposed to the Commission on 04 May 2016³

Increases and decreases of notional following novations

Some respondents queried whether increases or decreases following a novation are reportable. They advised that, while it was clear that post-trade assignments or novations were clearly excluded from transaction reporting as per Article 2(5)(e) of RTS 22, there is a provision in Article 15(5) of RTS 22 which states that “investment firms shall have arrangements in place to ensure that their transaction reports, when viewed collectively, reflect all changes in their position and in the position of their clients...”. The respondents stated that this provision seemed to suggest that any increases or decreases are reportable since if those increases or decreases were subject to a novation, the information provided to the competent authority would not truly reflect the accurate changes in position since the novation would not be captured.

RTS 22 does not distinguish between increases/decreases of an original contract from increases/decreases of a ‘novated’ contract. ESMA therefore confirms that any increases/decreases are reportable unless they fall under some other exclusion. The rationale for this rule is twofold: firstly, the reporting of increases/decreases does not need to be linked to the previous contract’s status (there is no need to build any cumulative position contrary to EMIR); secondly and, more importantly, what is of interest is the change in position resulting from reportable transactions at the point of trading and not the firm’s or the firm’s client’s actual position. A clarification on this is also provided in the Guidelines’ section on the general approach to reporting.

³ Final Report ESMA/2016/653, available on ESMA [website](#).

2.1.6 Mechanics for reporting

2.1.6.1 Non applicable fields and population of instrument reference data fields

The data validation table included in the Annex to the Guidelines CP has been reviewed to reflect the feedback received from stakeholders. Given the technical nature of the section of the Guidelines related to this topic and the fact that the information provided therein will be included in the technical instructions on transaction reporting available on [ESMA website](#), the Annex with the data validation table has been removed from the Guidelines document.

2.1.6.2 Submission of transaction reports

Feedback from stakeholders related to very specific features concerning the technical submission of data to the relevant CA. ESMA acknowledges that these features will be tailor made and specified by each individual CA and are therefore outside the scope of these Guidelines. These features include, for example, encryption schemes for the transmission of the transaction report XML files and technical procedures for submitting data to CAs. On these features, market participants should direct their queries to the relevant national competent authority.

2.1.6.3 Processing of reports received from submitting entities

Feedback from stakeholders included technical questions on the feedback messages that CAs will provide to the reporting entities after the submission of the reports. Text has been inserted to clarify that when a transaction report is rejected, the feedback message should specify the validation rule that has been performed and the nature of the error. However, it should be noted that more detailed information on this topic will be included in a separate document on transaction reporting technical instructions that will be made public on ESMA's website.

Given the technical nature of the section of the Guidelines related to this topic and the fact that the information provided therein will be included in the technical instructions on transaction reporting available on [ESMA website](#) this section has been removed from the Annex of the Guidelines document.

2.1.6.4 Relevant Competent Authority

Most respondents informed ESMA that the subject on the Relevant Competent Authority was sufficiently explained and no further clarification was needed.

2.2 Blocks

2.2.1 Blocks 1, 2, 3: buyer/seller identification and scenarios; decision maker

The Guidelines have been expanded to provide an answer to the different scenarios proposed by the respondents. The Guidelines specify who to identify in each case (who is expected in the Buyer/Seller identification code Field and who is expected in the respective Buyer/Seller decision maker code Field) and how (i.e. identifiers to be used depending on the business case).

Most of the concerns from the respondents were related to specific situations such as joint accounts, minors, deceased estates, authorised signatories, advisors, investors granting power of attorney or representation or discretionary mandates. Respondents also raised a discrepancy for the proposed reporting of the trustees as the decision makers for trusts arguing that this should not be treated any differently from the general case where the buyer/seller is a legal entity. ESMA clarifies that although the buyer or seller are identified in the reports, the information regarding the person who took the investment decision is of utmost importance for monitoring market abuse activities. However, it should be noted that directors of a firm or persons within the firm authorised to act for the firm are not considered to fall in this scenario insofar as they are considered as part of the firm because they already represent the firm as per the role they play within the firm. Following the same approach, ESMA has changed its proposal about reporting where the buyer/seller is a trust to bring it into line with reporting for a buyer/seller that is a legal entity. There were several questions regarding the reporting of Self Invested Personal Pensions (SIPPS), and ESMA has clarified it is expected that the individual will be identified in the report as buyer/seller.

ESMA regards the client for the purpose of transaction reporting to be the individual and the transaction should be reported in the same way as if the transaction was not part of a SIPP but just for the client's account. Competent authorities are interested in the underlying client for market abuse purposes rather than the owner of the legal title. Since the Investment Firm has all the information on the client, this situation is distinguished from situations such as trusts where an Investment Firm does not have the details of the underlying client(s) and is not required to look through the trust.

As for transaction reporting generally, the decision maker will depend on who actually made the investment decision. If the Investment Firm is acting for the client under a discretionary mandate it should report itself as the decision maker and if the individual made the investment decision the field should not be populated.

If the Investment Firm providing the SIPP sends orders to another Investment Firm to fill the order and wants to meet the conditions for transmission under Article 4 of RTS 22 then it should transmit to the receiving Firm the details of the individual as the buyer/seller and the details of the actual decision maker.

Investment Firms offering such a service should ensure that the arrangements are clear to all the parties involved so as to avoid duplication or inconsistent reporting.

Clarification was also sought for reporting executions for funds/portfolios and their management firms as to whether it was the fund or the management firm that a reporting firm should identify as buyer/seller, since the reporting firm does not need to look behind its immediate client. The Guidelines state clearly now that in the absence of transmission under Article 4, it is the fund management firm, regardless of whether this is a MIFID II firm or not.

2.2.2 Block 4: Investment decision within the firm

2.2.2.1 Concept of 'primary responsibility'

Respondents queried the concept of 'primary responsibility'. They wanted to understand what factors have to be taken into account to determine who is responsible for the decision within the firm, particularly where several individuals or decision trees are involved. They also asked whether a static value could be used (e.g. head trader) rather than a more specific one. ESMA is of the view that the investment firm is best placed to know what best fits the firm's governance model and this is reflected in the regulatory technical standards text (Article 8 of RTS 22).

2.2.2.2 'Decision maker' and 'person making the investment decision'

ESMA has included additional examples which show the difference between the Buyer/Seller decision maker code Fields (Field 12, Field 21), and the Investment decision within the firm Field (Field 57), following a request for further clarification on when to populate those Fields.

2.2.2.3 Additional examples and amendments to existing ones

The industry highlighted some mistakes in the existing examples and those have now been corrected. Also, ESMA has added further examples to the chains and the DEA sections of the Guidelines to show how Field 57 should be populated. No further clarifying text has been added to the Guidelines as ESMA believes it is sufficiently clear when read in conjunction with the RTS 22.

2.2.3 Block 5: Execution within the firm

Respondents asked for further guidance on how to deal with situations where no person within the firm was involved in the decision about the execution. This might be the case in the instance of specific instructions by the client, which prevents the investment firm from taking its own execution decision.

ESMA confirms that in case the execution decision was already taken by persons outside the investment firm without any further intervention by the investment firm, Field 59 should be filled with the identifier 'CLIENT'. This has been clarified in the relevant section of the Guidelines.

Respondents also sought further guidance on how to populate Field 59 in case of executions that are done automatically by an order management system but without an involvement of algorithms (such as execution-only trading).

ESMA confirms that the term 'algorithm' should be read as any system that automatically executes transactions without human intervention. Also in this case an identifier for the automated system should be populated in Field 59, this has been clarified in the relevant section of the Guidelines.

2.2.4 Block 6: Date and time

Several respondents requested clarification of whether rounding or truncation applied for Field 28, Trading date time. ESMA has clarified in the Guidelines that values should not be rounded.

2.2.5 Block 7: Venue

2.2.5.1 Reportable Instruments

Three respondents requested that the Guidelines should explicitly state that the instrument traded on a platform outside of the EU is reportable if it is either a valid MIFID II instrument or its underlying is. Otherwise it might be incorrectly implied that instruments on platforms based outside of the EU are in scope.

ESMA amended the text in the Guidelines to specify that the instrument is reportable.

2.2.5.2 Trading venue transaction identification code (TVTIC) – Field 3

Respondents requested further guidance in relation to the TV TIC. Firstly, on whether SIs need to report a TV TIC. Therefore, this section of the Guidelines clarifies that SIs and IFs executing transactions with SIs do not have to populate Field 3 because Field 3 applies only to trading venues. Therefore, SIs do not have to generate a TV TIC.

There were also request for clarifications on how to populate Field 3 when a transaction is executed under the rules of a trading venue but not executed on the venue itself. The section of the Guidelines related to the concept of 'execution of a transaction on a Trading Venue' provides clarifications also in this respect.

2.2.6 Block 8: Short selling

Most respondents to these questions raised the impracticability of the short selling flag and requested ESMA's guidance on how to populate this information in transaction reports. Most of the issues highlighted regarded the methodology for determining the existence of a short sale. Respondents raised the need for this determination to be made on a legal entity basis rather than on a trader by trader basis, at the time of submission of the order to sell and on an individual portfolio basis instead of the global position of the entity.

Moreover, concerns regarding the reporting to be done by trading venues on behalf of non-MiFID II firms were raised. The respondents mentioned the impossibility to collect this information from non-MiFID II firms. Furthermore, they added that this information should not be mandatory when receiving an order from a MiFID II market participant.

In light of the above comments, ESMA provided in the Guidelines that:

- The short selling flag applies to the reports showing the transactions with the individual clients rather than to the aggregated market transaction report. Therefore, where both clients or one of the clients is short selling, the short selling indicator is blank in the aggregated market transaction report since this report does not relate to a single client but instead to all clients whose orders have been aggregated. This is covered in the relevant section of the Guidelines.
- The short selling indicator for individual clients is reported in the individual client side transaction reports;
- The short selling flag is to be populated on the basis of the legal entity that is selling the financial instruments as required by level 1.

2.2.7 Block 9: Waiver, OTC post-trade and commodity derivative indicators

2.2.7.1 Waiver indicator and OTC post-trade indicator

Some respondents asked for clarifications regarding the population of Field 61 (Waiver indicator) as according to them there is no formal requirement for trading venues to provide the waiver information.

ESMA is of the view that each investment firm that submitted the order to the Trading Venue or made a report of the trade to the Trading Venue has to be aware if its order or trade report has benefited from any pre trade transparency waivers and on which trading venue it has executed its own transaction.

To this respect, ESMA has clarified in the Guidelines that Field 61 shall be populated only for transactions executed on a trading venue and that it shall be populated only by the investment firm that has submitted the order to the Trading Venue or made a report of the trade to the Trading Venue.

One of the validation rules for Field 63 has been deleted since it would have resulted in transaction reports for transactions on an SI being rejected if the OTC post-trade indicator was populated. Relevant OTC post-trade indicators should be populated for transactions with an SI.

2.2.8 Block 10: Branches

Most respondents informed ESMA that the subject of branches was sufficiently explained and no further clarification was needed.

Only a limited number of respondents asked for additional scenarios in the Guidelines to cover more combinations of branches involved in the execution of a transaction, therefore ESMA abstained from creating more examples around this question.

There was a query about what was meant by references to a trader at a firm – whether it meant located at the firm or employed by the firm. These references have been amended the Guidelines to refer to a trader acting for a firm. The country of the branch to be populated in Fields 58 and 60 is the country of the branch that supervises the person responsible for the investment decision or execution respectively.

2.2.9 Block 11: Report status

Overall the majority of respondents agreed with the proposals in the Consultation Paper, therefore the proposed approach is maintained.

Stakeholders requested a clarification as to whether cancelled or amended trades that are published under the transparency regime but have not yet been reported should also be transaction reported, therefore reflecting the entire chain of events. Based on this feedback, ESMA clarified that transaction reporting should not replicate the post-trade transparency flows. Therefore, where several post trade publications are generated for a given trade before the transaction has been reported, the transaction report should only reflect the information on the last post trade publication.

A few additional issues were raised by stakeholders. In light of the feedback received, ESMA expanded the Guidelines to clarify the following:

- In the case of corrections or cancellations, firms cannot re-submit the full report: hence, if the cancellation report is submitted with more fields than the key fields, it will be rejected.
- It was clarified that firms can use as many ARMs as they wish and this will not have an impact on the TRN (transaction reference number) as the number should be generated at the executing firm level.
- The TRN should be re-used for any subsequent correction. In the case where more than one correction is being submitted, the sequence of the transaction reports should follow the report processing logic in order to make the re-use of the transaction reference number workable.

A minority of respondents claimed that re-using the transaction reference number is not compliant with the description of the Transaction Reference Number Field in RTS 22. ESMA does not see any conflicts with the description of Field 2 in RTS 22 as the new transaction report submitted after a cancellation to correct the original information is related to the initial transaction report.

2.2.10 Block 12: Change in notional

Further to the feedback received from the stakeholders, an additional clarification has been added to this section of the Guidelines to clarify that automated increase/decreases of notional such as those occurred under an amortization schedule are not reportable as these fall under Article 2(5)(j) of RTS 22. Additionally, the example on total or full termination has been extended.

In response to several requests from stakeholders, ESMA confirms that all modifications that result in the increase or decrease of notional value should be reported as a new transaction without making reference to the old transaction.

2.3 Trading scenarios

2.3.1 Transfer of securities

According to the feedback received, the wording on what transfer of securities means was further elaborated and incorporated in the final version of the Guidelines.

Two respondents spotted a potential inconsistency between the exclusion of post-trade events such as novation and assignments and the reporting of transfers for securities in general which they also regard as being potential post-trade events. ESMA confirms that transfers are reportable unless the transaction comes under one of the exclusions. This principle applies for all acquisitions or disposals. If an exclusion applies, then the acquisition or disposal is not included within the definition of a transaction and is not reportable.

2.3.1.1 Transfers between accounts

Transfers between accounts

A couple of respondents requested confirmation that transfers between accounts belonging to the same client where no change in ownership takes place (e.g. moving a client from a discretionary service to an execution only service) are not reportable. ESMA confirms that this is not reportable since there is no acquisition or disposal. A clarification has been added in the relevant section of the Guidelines.

Respondents also sought confirmation that ad hoc administrative assistance performed for a client in order to complete transfers would not place transaction reporting obligations on the firm. ESMA confirms that if the investment firm's only involvement is to handle paperwork in the capacity of providing administrative assistance and it is not performing the actual transfer then the firm is not considered to be executing the transaction. This has been clarified in the relevant section of the Guidelines.

2.3.1.2 Transfers in a chain

Clarification was sought on how to report if transfers between three separate investment firms have taken place.

2.3.1.3 Validations on Price

Several respondents had queries relating to validations on price relating to confusion around NOAP being included in the Annex to the Guidelines CP. The final RTS 22 endorsed by the European Commission includes NOAP in the Price Field 33.

2.3.1.4 Trading Date Time

Respondents requested clarification that where an investment firm transmits orders that do not meet the conditions under Article 4, the investment firm may report the execution time confirmed to it by the firm receiving the order. ESMA confirms that this is the case and that firms need to report the execution time and not the time that the confirmation was received.

Respondents also requested confirmation that for a chain with an end execution on a venue only the market facing report on the venue needs to be reported with the granularity set out in Article 3 of RTS 25 and the other reports are only required to be made to seconds. ESMA confirms that this is the case although a higher granularity may be reported and this is reflected in the examples in the Guidelines. With respect to the section of the Guidelines on transfers of securities between two investment firms, several respondents noted that it stated that reported times may differ slightly when in some cases reported times may diverge by several hours, or even several days. The text was amended to remove 'slightly' and state 'Each firm shall report the time it effected the transfer and these times may differ'.

2.3.2 Firms acting over the counter to match two client orders

This scenario only covers OTC trading examples, and not where trading takes place on exchange. An example where one of the clients is a firm subject to a transaction reporting requirement has been added.

2.3.3 One order, multiple transactions

The vast majority of respondents' requests were linked to the possibility of using the aggregated client account (INTC) for cases of multiple executions for a single client, with the argument that this possibility reflects the trades as actually dealt and booked. ESMA advises that it is important for CAs in monitoring for market abuse to be able to determine the actual execution time for the transactions for the client and therefore ESMA is maintaining its position that 'INTC' should not be used in these circumstance.

Several respondents asked for additional reporting scenarios, using this question to provide their business cases, which were analysed in order to assess the added value. As a result, a

new scenario was introduced by ESMA in the Guidelines to clarify the transaction reporting in case of a client's order being filled by using the firm's own book.

2.3.4 Grouping orders

For a better understanding of the aggregate client account use, a large number of respondents requested further examples where there were several market fills for several clients, over a few trading days and when the orders are warehoused at the end of every day (in case of large orders or illiquid instruments). ESMA has confirmed that the apparent movement through 'INTC' is a convention for linking the market side and client sides of transactions and stating clearly in the Guidelines that the aggregated client account (INTC) is flat at the end of the day and having assessed the requests is of the opinion that the existing examples are sufficient.

There were many queries for an additional scenario, in order to explain and confirm the reporting obligation for an investment firm when it is operating as an OTF acting on a matched principal basis, which was included in the Guidelines.

Some concerns of respondents were linked to the trading date time for the client side report, which can be the later of the market executions, when an investment firm is acting on its own account, or at the trading date time of the market executions, when the investment firm is acting in any other capacity (AOTC). The general interest was about the limitation of extended number of transactions reports that should be sent, in case of principal and agency trading. ESMA confirms in the Guidelines that these rules are still applicable and that the transaction reports have to reflect every single market fill.

2.3.5 Transmission of orders in a chain

Principles

There were several questions around the principles of transmission

- whether transmission was an 'all or none' concept.
- whether a firm dealing on a trading venue could be transmitting
- whether transmission could take place between branches of the same firm
- how transmission applies to legal entities within the same group
- how transmission applies where there is a firm in a chain that is not an investment firm.

Some respondents sought clarification on whether transmission requirements were "all or none", meaning that if a transmitting firm does not pass on all the information then the receiving firm will ignore all the information from the transmitting firm and report all fields as though there is no transmission. ESMA confirms that this is the case and has included a statement to this effect in the relevant section of the Guidelines.

There was also a misinterpretation by some respondents as to whether an investment firm trading on a trading venue could be transmitting. Where a firm is dealing on a trading venue

that is not an OTF acting on a matched principal basis it is not transmitting as it is not transmitting to another investment firm. This is confirmed in the relevant section of the Guidelines.

ESMA confirms that transmission does not take place between branches of the same firm as a branch is part of the firm and Article 4 requires orders to be sent to another firm. Again, this is confirmed in the relevant section of the Guidelines.

ESMA confirms that firms belonging to the same group are treated in the same way as firms that are not part of a group. This is also confirmed in the relevant section of the Guidelines.

The transmission conditions under Article 4 of RTS 22 are not applicable to firms that are not investment firms. Therefore, when an investment firm receives orders from a firm that is not an investment firm it should report the buyer/seller as the firm that sent the order rather than the underlying client of the firm. This statement has been added to the relevant section of the Guidelines.

Mechanics of transmission

There were several questions around the mechanics involved in transmission:

- Several respondents requested more clarity around what information a transmitting firm has to provide to a receiving firm and at what point the information has to be provided.
- There were also questions raised about the difference between the information that has to be provided by a transmitting firm and the information to be reported by a receiving firm.
- which competent authority a receiving firm should report to where a chain involves investment firms in two different EEA countries
- whether a receiving firm has to become an ARM

a) Details required to be transmitted by the transmitting firm

ESMA confirms that regulators are interested in the client and firm information being provided by the transmitting firm. For example, the purpose of Field 27 in the report is to show the firm that has the relationship with the ultimate client. The market information is more reliably provided by the receiving firm, as the receiving firm is the source of this information rather than the transmitting firm. Therefore, the transmitting firm only has to provide the information set out in Article 4 of RTS 22 and only insofar as it is pertinent to the given order.

The transmitting firm is only required to transmit the order price and quantity and is not required to confirm the actual traded price and quantity back to the receiving firm. The receiving firm should report the market data from its own data on the basis of the execution and should only use the information from the transmitting firm to report those fields specified in Annex 1 of RTS 22 to be reported from the information from the transmitting firm. This has been clarified in the relevant section of the Guidelines.

b) Timing for information to be transmitted

A few respondents queried when information had to be transmitted and in particular raised questions about the timing of allocations.

ESMA confirms that information may be provided subsequent to the order. In order to ensure the fulfilment of their duties of market abuse surveillance, the CAs consider as a good practice that the information is provided by the time specified in the agreement between the transmitting firm and receiving firm. Failure to meet the deadline for transmission specified in the agreement will not be considered as a good practice by the CAs.

The queries on allocations and who should be reported as the buyer/seller where there are allocations to clients that are transmitted after the initial order indicated that respondents were incorrectly focusing on the timing of when allocations are provided rather than whether or not they are provided inside or outside of a transmission agreement.

ESMA confirms that the party to be reported depends only on whether the conditions for transmission have been met and not on when the information is passed. So if information is passed in the absence of a transmission agreement, for example for clearing and settlement, it does not change the fact that the firm receiving the order reports its immediate counterparty. So, for example, for a fund manager passing orders to a broker the broker reports the fund manager unless the conditions for transmission are met in which case it reports the funds. This is clarified in the relevant section of the Guidelines.

c) Receiving firm to report to its home competent authority

Article 14 of RTS 22 applies to the receiving firm even in the case where there is transmission under Article 4 of RTS 22. So the relevant section of the Guidelines clarifies that a receiving firm should send any reports to its home competent authority.

d) No requirement for a receiving firm to become an ARM

There was request for confirmation that a receiving firm reporting details transmitted by a transmitting firm did not need to become an ARM. ESMA confirms that that is not an outsourcing arrangement as the receiving firm is making its own report and it is not required to become an ARM. A statement on this has been included in the relevant section of the Guidelines.

2.3.5.1 Population of specific fields in chain scenarios

a) Transmission of order indicator (Field 25)

There was some confusion about the reporting of this field, partly because of a discrepancy in the draft RTS 22 that was published with the consultation paper. Some respondents also suggested alternative ways of reporting that would indicate whether a firm had attempted but failed to meet the transmission requirements. ESMA confirms that this field is a mandatory field

to be populated for all transaction reports. RTS 22 has been amended to reflect this. The purpose of the indicator is to show the outcome rather than the intention of the executing firm. It is an indicator that will allow competent authorities to understand whether there was transmission within a chain to another investment firm without meeting the conditions of Article 4 of RTS 22. Where firms are acting on an own account or matched principal trading capacity or where they are executing directly on a trading venue Field 25 should be populated with 'false'. Where there is transmission within a chain to another investment firm without meeting the conditions of Article 4 of RTS 22 it should be populated with 'true'. A clarification has been added to the relevant section of the Guidelines.

b) Investment decision within the firm (Field 57)

There was feedback that where an investment firm is acting for more than one client, the Investment decision within the firm Field should not be populated for reports at the aggregated (block) level but only for reports of the client allocations since different people could be responsible for the investment decisions for different clients. ESMA agrees with this approach, and has amended the examples in the Guidelines accordingly.

2.3.5.2 Errors and clarifications

a) General

Respondents pointed out some errors in the examples in relation to population of certain fields.

Several respondents pointed out that the examples in the relevant sections of the Guidelines refer to shares and also to a commodity instrument and values for both are populated and requested clarification that the short selling flag and commodity derivative flag are mutually exclusive. This was an error and the examples have been amended to reflect separate examples for a commodity derivative and for shares. ESMA confirms that the short selling flag is only applicable where the investment firm is selling reportable shares or sovereign debt within the scope of Articles 2, 13 and 17 of Regulation (EU) No. 234/2012 either on own behalf or on behalf of a client. A statement to this effect has been added in the relevant sub-section of this part of the Guidelines.

All the examples in the Guidelines have been reviewed. Errors have been corrected and additional explanations have been added for some of the examples.

Respondents also requested that the reports of the executing firm Y should also be shown in the examples in the relevant sub-section of this part of the Guidelines. ESMA has added the reports of firm Y and where additional examples have been added in this section, reports by all parties with reporting obligations are shown.

There was a request for the diagrams in the chains and transmission section to be annotated with information on the investment decision maker within the firm. ESMA has amended the diagrams accordingly.

- b) Request for clarification on the requirement for investment firms to report individual fills confirmed by the firm that fulfilled its order

A respondent raised an apparent discrepancy between the general statement in the relevant sub-section of this part of the Guidelines that a firm in a chain should report the execution confirmed to it by the firm that fulfilled the order and the statement in the relevant sub-section of this part of the Guidelines that a client with reporting obligations should report the market executions rather than an average price transaction. It was not clear to the respondent what had to be reported where there was an intermediary between itself and the trading venue, particularly since the reports would be populated with 'XOFF' and therefore would not be providing complete information about the market executions. Nor was it clear whether a firm could just report information at whichever level it received from the executing firm.

The references to confirmations for average prices and to confirmations for market executions seem to have caused confusion. Where there is an intermediary between the firm and the trading venue the firm should report the quantity, price and date time of the execution that has been confirmed to it by the intermediary. The intermediary is required to provide confirmations of the actual executions to the client. These confirmations will depend on the capacity in which the executing firm is dealing and this has been clarified in the examples in the relevant sub-section of this part of the Guidelines. Any average price confirmations that may be sent by the executing firm to its client are in addition to confirmations of the actual executions that the intermediary is required to send to its client.

- c) Reporting of buyer/seller where the fund manager and client are both clients of the executing firm

Respondents queried who should be reported as the buyer/seller of an investment manager acting under a discretionary mandate where the client is a client of the investment manager and also a client of the firm that the order is being sent to by the investment manager. ESMA expects that where a firm is sending orders under a discretionary mandate, this firm is identified by the firm receiving the order as the buyer/seller where the transmission conditions under Article 4 are not satisfied. Otherwise, there will be double reporting as the firm acting under a discretionary mandate also has obligations to report provided it is an investment firm. For consistency, this should still be the case where the firm is not an investment firm. An example has been added in the relevant section of the Guidelines.

2.3.5.3 Requests for additional examples

There were requests for many additional examples. ESMA assessed the requests and has included additional examples where they could not be easily extrapolated from the existing examples or represent a very common trading scenario.

- a) Chains where either the executing broker or the investment manager are not investment firms

Examples of these have been added in the relevant section of the Guidelines.

b) Chains with transmission but without transmission conditions being met

There was a request for a simpler chain where an investment firm makes a decision under a discretionary mandate and places an order with another firm. This example would apply to the majority of cases for investment managers.

ESMA has added such an example to the relevant section of the Guidelines.

c) Value driven orders with a balancing unit

There was a request for an example on reporting of aggregated value driven orders, particularly where any balancing units in the financial instrument are allocated to the investment firm aggregating the orders. ESMA has added an example to the Guidelines on grouping orders.

d) Transmitted orders aggregated for several clients

Respondents requested an example of transmission of an order that is aggregated for several clients and how this would be reported by the receiving firm. ESMA has included such an example in the relevant section of the Guidelines.

2.3.6 Direct Electronic Access (DEA)

The vast majority of respondents requested that examples be included in the Guidelines in order to clarify the reporting of transactions in the context of the DEA. In particular, clarification was requested in relation to the identification of the persons concerned and of their role: Field 57 (Investment decision within firm), Field 59 (Execution within firm), Field 29 (Trading capacity), Field 7 (Buyer identification code), Field 16 (Seller identification code), Fields 12 and 21 (Buyer decision maker code, Seller decision maker code), Field 4 (Executing entity identification code). A few respondents submitted some transaction reporting examples in relation to discretionary portfolio management, request for quotes, Fields 57 and 59. Some respondents further requested examples to illustrate cases where the DEA client is an investment firm (including cases of transmission and non-transmission of an order as per Article 4 of [RTS 22]).

In light of the above comments, the relevant Section of the Guidelines was revised with a view to expanding on and clarifying the general principles governing the reporting of transactions involving DEA. Notably, the Guidelines now expressly specify how the aforementioned fields should be populated by the DEA provider and the DEA client.

Moreover, and as requested by the great majority of respondents, the DEA Section of the Guidelines has been supplemented by illustrative scenarios in order to provide DEA providers and DEA clients with the relevant guidance on how to transaction report in two instances: where the DEA client is acting on behalf of a client and where it is not.

2.3.7 Give ups

ESMA has become aware that the terminology 'give-up agreements' or 'give ups' is common usage only in some jurisdictions. Also most of the examples in the give-up section were already covered elsewhere in more detail in the Guidelines. Therefore, the 'majority of give-up' examples have been removed from this section.

Nevertheless, ESMA would like to clarify that, as in any other trading scenario, any 'give-up agreements' apply to all kinds of financial instruments according to MiFIR Article 26.

2.3.8 Reporting by a trading venue of a transaction executed through its system under Article 26(5)

A number of respondents from the brokerage industry requested clarity on the obligations for venues reporting on behalf of non-MiFID II firms. In particular, it was deemed unclear whether trading venues have an obligation to ensure validation of the LEIs provided by the executing firm and its underlying client.

In light of the above comments, the Guidelines were expanded to clarify that Trading Venues should perform the checks that are prescribed under Article 5 and 13(3) of RTS 22. This means that trading venues should verify that the LEI of the executing firm is accurately formatted and is in the GLEIF database maintained by the Central Operating Unit (the LEI can be 'issued', 'pending transfer' or 'pending archival'). Trading venues should also verify that the LEI of the underlying client of the executing firm is accurately formatted and is in the GLEIF database (in this case the LEI can be 'issued', 'pending transfer', 'pending archival' or 'lapsed'). For clients that are not eligible for an LEI code, trading venues should check that the national ID provided does not contain obvious errors and omissions.

2.4 Reporting of different types of instruments

2.4.1 Identification of financial instruments not traded on a trading venue or available on the ESMA list

2.4.1.1 Equity or equity-like instruments

Most respondents informed ESMA that the rules on equity or equity-like instruments were sufficiently explained and no further clarification was needed.

2.4.1.2 Bonds or other form of securitised debt

Several respondents requested further examples in the Guidelines in order to clarify the reporting obligations in the context of bond transactions. Firstly, explanations were requested regarding the use of certain fields (Field 35 Net amount and Field 54 Maturity date). Secondly, additional business cases seemed required to assist in interpreting the reporting expected

especially in the case of convertible bonds. Finally, some clarifications were required concerning the identification of certain debt instruments in the context of [RTS 23].

In light of the above comments, the Guidelines were revised, to include notably additional business cases (e.g., convertible bonds).

2.4.2 Reporting specific financial instruments

2.4.2.1 Options

Respondents asked for further guidance on how to populate Field 33 (Price) and Field 34 (Price Currency) in case of more complex options, especially when the strike price does not take the form of a currency or in case of FX options or options with a basket as an underlying.

ESMA acknowledges that this is an area that needs further consideration. Therefore, although the Guidelines remain unchanged for now, further guidance on this subject may be given at a later stage.

2.4.2.2 Spreadbets

Some respondents requested more examples to cover other spread-bet contracts such as a spread-bet on an option on a bond or equity and other non-reportable derivative products.

ESMA has decided to retain the current examples in the Guidelines but provide a general statement in the PART IV introduction section to clarify that where a derivative instrument has as underlying another derivative instrument, for example an option on a future on an equity, the ISIN code to be populated in the Underlying instrument code Field (Field 47) of the transaction report is the direct underlying instrument.

Moreover, there was a suggestion that the bond future spread-bet is more likely to be based on basis points movement rather than on currency. ESMA agrees that it would be beneficial to reflect the recognised market trading convention on the financial instrument and has therefore changed the example in the Guidelines accordingly.

Finally, respondents queried whether the daily rolling spread-bets would need to be closed out or re-reported every day. ESMA confirms that for daily rolling spread-bets only the initial opening and final closure of the contract need to be reported. This has been clarified in the equity spreadbet section.

2.4.2.3 Credit Default Swaps

One respondent argued that it is not very clear why in example 1.4.3.6 the transaction is reportable. ESMA clarified that the underlying instrument is traded on a trading venue.

Another respondent asks why, if the CDS is one derivative contract, the Field 30 (Quantity) is not reported as 1, and seeks more clarity in the choice of value of this field. ESMA considers

the determination of the value of Fields 30 in RTS 22 sufficiently clear, as it states that for credit default swaps, the quantity shall be the notional amount for which the protection is acquired or disposed of.

2.4.2.4 Swaps

Respondents argued that swaps should be reported in a single transaction report instead of in two. ESMA has taken the many arguments against the two-report approach into consideration, and implemented an approach based on the respondents' suggestions where only one report is created per swap contract transaction.

Respondents asked for guidance on how to report the price and the spread of a swap contract. Respondents identified issues with the price fields in cases where multiple currencies are reported, and in cases where the underlying is a basket but only some of the components of the basket are financial instruments. ESMA has taken the respondents' concerns into consideration when implementing the 1-report approach. Field 30 "Quantity" should contain the nominal value of the reported swap contract transaction. Field 46 "Price multiplier" should contain the number of swap contracts traded in the transaction. Field 33 "Price" should contain the spread paid/received in addition to the underlying interest rate where applicable.

2.4.2.5 Complex trades

a) Scope of 'combination of financial instruments'

Respondents asked for further guidance on the scope of Article 12 of RTS 22. In particular, they asked for clarity around the definition of the term 'combination of two or more financial instruments'.

ESMA confirms that a combination of two or more financial instruments only occurs where there is one transaction in different financial instruments for one single price (e.g. the buy of one short butterfly contract). This has been clarified in the relevant section of the Guidelines on complex trades.

b) Life cycle events

Some firms asked for clarification on how life cycle events of complex trades should be reported. They propose that only the affected components need to be reported again and not the components that remain unchanged.

ESMA confirms that all components of the complex trade shall be reported separately. Life-cycle events only trigger transaction reporting requirements if the event leads to an increase or decrease of notional. In that case, the event only affects the component of the strategy that is subject to the increase or decrease.

c) Transaction Reference Number

Furthermore, respondents asked for clarification that each reported component of a complex trade should have its own transaction reference number.

ESMA confirms that all reported components of the strategy should contain a different transaction reference number. The reports belonging to the same strategy are linked by the Complex trade component ID in Field 40.

d) Price

For example, in case of straddles and vertical call spreads respondents asked for clarification if only one price per complex trade shall be reported or the price per leg.

ESMA confirms that only one price per complex trade should be reported. This has been clarified in the relevant section of the Guidelines.

3 Order record keeping

The sequence of the sections has been re-arranged in order to begin with the general principles on order record keeping (Part I) followed by specific scenarios (Part II).

3.1 General principles

3.1.1 Client ID

The main concerns of respondents to this question relate to the responsibility of trading venues in the event they do not receive the required information from their members and participants and the question if and how they are supposed to validate relevant data fields, such as the LEI and national identifiers. With respect to the first question, it should be noted that, given that trading venues have an obligation to record keep this information under MiFIR Article 25 and ESMA RTS 24, the expectation is that trading venues would have contractual arrangements in place with their members (e.g. membership requirements) to ensure that their members provide the relevant information.

In light of the above, the Guidelines were amended to clarify that if trading venues do not receive the required information at the time the order is submitted, they should recover the information by the end of the next trading day at the latest. Clarification has been included that trading venues need to check the national identifiers for obvious errors and omissions.

3.1.2 Non-executing broker

Typically, a non-executing broker operating in a trading venue is an investment firm that handles orders from members or participants and routes them to the trading venue's order book. Such orders are considered in effect as being introduced in the trading venue's order book by the member or participant and, thus, trading capacity of the order is referred to that of

the member or participant. The trading venue usually requires that, if a member or participant wishes to use a non-executing broker to send its orders to the trading venue, a designation agreement has to be signed by the member or participant and sent to the trading venue. Additionally, the trading venue should hold a public registry where non-executing brokers are recorded.

An example on how to populate the relevant fields relating to the identification of the relevant parties in such case is added to the Guidelines.

3.2 Scenarios

3.2.1 Central limit order book

Some of the respondents requested to use the term “matching engine” to describe the process of timestamping events (new/cancellation/modification of orders), instead of “gateway”. This request has been addressed by ESMA in the Guidelines.

Also, a few respondents asked for clarification on priority changing on matching algorithms that behave differently from “Price-time” and “Size-time” priority, specifically on “pro-rata” matching algorithms where the quantity of an incoming order is distributed across all resting orders proportionally to their residual quantity. Accordingly, ESMA has added in the Guidelines a scenario of the use of a pro-rata matching algorithm on priority changing.

3.2.2 Request for Quote (RFQ)

Respondents requested ESMA for further clarity, especially regarding the use of the value “RFQS” and “RFQR”. Furthermore, respondents requested an additional example explaining what to do when a quote is adjusted after a certain amount of time.

In order to address the first request ESMA has added some footnotes, explaining these two values fall under the {ALPHANUM-4} free format, however firms are expected to use these values in the mentioned cases.

As there are already examples stating what to do when orders are adjusted during their lifecycle, ESMA did not consider it appropriate to include the requested examples.

4 Clock Synchronisation

4.1 Reportable events

Although some respondents requested an exhaustive definition of reportable event, ESMA cannot provide it as it does not have the mandate under Article 50 of MiFID II. However, the Guidelines provided a list of events that should be considered as relevant for the purpose of the application of the clock synchronisation requirements.

Respondents requested another clarification on whether record keeping of the time related to quotes entered or amended by systematic internalisers should be considered a “reportable event”. ESMA recalls that any record keeping obligations apply to each trading venues’ member (or participant) and therefore also to any investment firm member of a trading venue that is also a systematic internaliser.

ESMA has clarified in the relevant section of the Guidelines on order record keeping that operators of a trading venue shall always generate a TVTIC (trading venue transaction identification code) for each transaction executed on their trading venue that arises from orders that have gone through their matching systems.

4.2 Time stamp granularity

A number of respondents stated that the Guidelines do not explicitly explain the time stamp requirements for investment firms that are not direct members of a trading venue but transmit orders to another firm e.g. direct electronic access.

ESMA has revised the Guidelines in order to address the specific clarification requests submitted by market participants in relation to the following subjects:

- OTC trades;
- the time-stamping obligations of entities which are not members of trading venues;
- the precise point of time at which the order has to be time-stamped;
- the coordination of the time-stamps in the event an order is transmitted through a chain of firms;
- the time-stamping of RFQ.

ESMA clarifies in the text that MiFID II Article 50 and related RTS 25 are only applicable to trading venues and their members or participants. However, MiFIR RTS 6 and Article 74 of the Commission Delegated Regulation (EU) 2016/1013 of 25.4.2016 apply to investment firms regardless of whether they act as members or participants of a trading venue. The reference to the clock synchronisation requirements in these two regulations should be understood to only apply to the investment firms when acting as members or participants of trading venues as this is in line with the scope of the obligation defined in the level 1 text. When investment firms are not acting as members or participants of trading venues, they should record times to the nearest second. This approach is consistent with the transaction reporting examples specified in the relevant section of the Guidelines on clock synchronisation.

4.3 Compliance with the maximum divergence requirements

Most respondents informed ESMA that they had issues with the proposals by ESMA. However, most issues related directly to the level two requirements. Therefore, ESMA abstained from changing the content regarding the maximum divergence requirements.

Respondents also requested that an acceptance level for meeting the requirements of maximum divergence from UTC in the range of 95% be added to the text. This was on the

basis of the many factors that can influence time stamping, such as system load and temperature. It should be considered that the level 1 requirements under MiFID II Article 50 do not provide a mandate to ESMA to set compliance thresholds and therefore the text in the Guidelines has not been amended.

A couple of responses highlighted the risks that could be encountered with using a GPS receiver. ESMA has added these risks to this section of the Guidelines and made reference to the relevant international standard that should be used to mitigate such risks and indicated that entities are required to monitor time stamping systems to ensure they are performing as expected. In particular, the International Telecommunication Union Radio Communication (ITU-R) recommendation TF.1876 on trusted time source⁴ should be considered by entities planning to use GPS receivers, especially the entities that will be subject to the more stringent accuracy requirements.

4.4 Local time and offset from UTC

A respondent requested clarification that storing local timestamps or two timestamps consisting of the time and an offset to UTC is acceptable. ESMA agrees that both of these would be considered acceptable if when the data is provided to a competent authority that a single timestamp is provided in UTC.

Following the responses ESMA has added specific text in the Guidelines around how leap seconds should be handled which reflects the current ITU-R standard.

Further detail has been added to the examples used in the Guidelines as they had been over simplified and failed to reflect the latency involved around the transmission of an order from investment firm to a trading venue.

4.5 Gateway-to-gateway latency

The respondents were supportive of the 99th percentile in measuring gateway to gateway latency. A couple of respondents requested that the gateway-to-gateway latency be defined and be publically available. ESMA wishes to highlight that gateway-to-gateway is already defined in RTS 25 Article 2(1). There is no need for the gateway-to-gateway latency to be made publically available for the purposes of Article 50 MiFID II as the requirements for time stamping of members is completely separated from that of trading venues. ESMA has clarified that the time stamping requirements to be applied by a trading venue will change if its gateway-to-gateway latency changes.

⁴ Recommendation TF.1876-0 (04/2010), available at <https://www.itu.int/rec/R-REC-TF.1876-0-201004-I/en>.