



European Securities and
Markets Authority

Response Form to the Consultation Paper

MiFIR review report on the obligations to report transactions and reference data



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in the Annex. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 November 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CP_TRRF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_TRRF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TRRF_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation paper on MiFIR review report on the obligations to report transactions and reference data").

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper?

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

General information about respondent

Name of the company / organisation	Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_TRRF_1>

The Global Foreign Exchange Division ('GFXD') of the Global Financial Markets Association ('GFMA') welcomes the opportunity to provide comments to the ESMA on its Consultation Paper on MiFID II/ MiFIR review report on the obligations to report transactions and reference data, published on 24 September 2020.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe ('AFME'), the Securities Industry and Financial Markets Association ('SIFMA') and the Asia Securities Industry and Financial Markets Association ('ASIFMA'). Its members comprise 24 global FX market participants,¹ collectively representing the majority of the FX inter-dealer market².

The FX market is the world's largest financial market. Effective and efficient exchange of currencies under-pins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for

¹ Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, RBC, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac

² According to Euromoney league tables

globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

Overall, our key messages for this consultation are that:

- GFXD supports ESMA's continued focus on improving data quality and transparency;
- However, we are strongly concerned that expanding the Traded on a Trading Venue (ToTV) concept as proposed would not deliver a meaningful improvement in transparency;
- It would instead result in duplicative and unhelpful additional reporting and introduce increased reporting 'noise' for other participants;
- We suggest that greater use of the existing ANNA-DSB data would be a better solution to improve transparency for regulators; and
- There are also well-publicised challenges with the existing ISIN construct for FX, which would compound the challenges with ESMA's proposal. Addressing this, or moving to an identifier based on instrument tenor, should be a priority for ESMA and the ANNA-DSB.

<ESMA_COMMENT_CP_TRRF_1>

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.

<ESMA_QUESTION_TRRF_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_1>

Q2 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_2>

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<ESMA_QUESTION_TRRF_2>

Q3 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_3>

The GFXD supports the proposed approach.<ESMA_QUESTION_TRRF_3>

Q4 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_4>

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<ESMA_QUESTION_TRRF_4>

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.

<ESMA_QUESTION_TRRF_5>

Yes, the GFXD disagrees.

The GFXD is strongly concerned by the proposed expansion of the ToTV concept, on the basis that it would not deliver a meaningful improvement in transparency but would bring significant operational challenges. Instead, ESMA should work within the existing structure, particularly leveraging the data available via ANNA-DSB.

ToTV is clearly established concept which forms the basis of many MiFID obligations. Such a significant change to the scope of ToTV would have far-reaching impacts, including as outlined below, hugely increasing the amount of data reported to authorities. While we understand and support ESMA's continued focus on improving data quality and National Competent Authority (NCA) monitoring abilities, we strongly believe that such a far-reaching change would bring more disruption than benefit and would likely compound the existing challenges. The focus should instead be on improving the quality of existing data, rather than expanding the reporting obligations.

In relation to how the proposal would affect the FX market in particular, the current application of ToTV rules (whereby OTC derivatives sharing the same reference data details as the derivatives traded on a trading venue are considered ToTV) has resulted in the majority of standardised FX products having ISINs and being ToTV, e.g. FX Forwards, FX Non-Deliverable Forwards and FX Vanilla Options. The products that are not considered ToTV are generally the more complex or exotic products. This fits with ESMA's own assessment that standardisation is one of two key factors in the concept of ToTV (the other being central issuance, which is not applicable to FX derivatives).³

Therefore, for FX, the current ToTV rules already apply transparency and reporting requirements to the majority of products and certainly to those standardised instruments on which transparency is most broadly useful for regulators and market participants.

³ ESMA consultation paragraph 34 and May 2017 Opinion on OTC derivatives traded on a trading venue
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An expansion of the concept of ToTV would bring into scope non-standardised products. This would represent a significant expansion in terms of products, many of which are proprietary would not be widely traded or use terms that could be easily represented via the current reporting fields. Reporting such less common instruments and doing so in the current reporting templates which may not accurately capture the economics of the trades will significantly limit the benefits in terms of the usefulness of the data and increased transparency for market participants or regulators. As such, this would contradict the statement in paragraph 38 of this consultation that ESMA does not intend to “introduce reporting noise for other participants rather than meaningful transparency”.

Furthermore, establishing and maintaining reporting for these non-standardised products will increase the operational cost for firms, as well as for trade repositories, ARMs, APAs⁴ and ANNA-DSB itself. This may result in some firms ceasing to offer some products or charging higher prices to clients. This would have a further negative impact for wider market participants who would need to bear the higher prices or move to different products, which may not meet their bespoke needs.

In relation to the specific method of expansion, we see that ESMA proposes that an expanded definition of ToTV should include those instruments traded through an SI. However, for the purposes of practicality and providing services to clients (such as post-trade transparency reporting), many firms have opted in as an SI at the asset class level. Indeed, many Competent Authorities encourage this high-level approach in their own SI notification process. Such an expansion would therefore bring all FX instruments into scope for these firms, rather than a subset. Furthermore, it would not be practical to suggest that firms should opt in as an SI at a more granular level in order to mitigate this effect, as this would undermine the purpose and benefits of the SI regime.

The consultation notes in paragraph 43 that SIs should already have systems in place to report both transactions and reference data. While the former is true for FX, the latter would represent a more significant challenge. Currently, SIs are required to report reference data only on non-ToTV instruments where the underlying is traded on a trading venue (uToTV). The vast majority of FX derivatives have FX Spot as underlying, which is not a MiFID instrument, and therefore cannot be uToTV. Reference data reporting by FX SIs is therefore extremely minimal and for some SIs no reports are required at all.

Were the reference data obligations to be expanded in this way, such that FX SIs would have to report all MiFID instruments, this would represent a very significant expansion. Much of this expansion would be duplicative – SIs would be reporting data already reported by trading venues or already available to ESMA direct from ANNA-DSB. In particular we suggest that

⁴ Approved Reporting Mechanism (ARM) and Approved Publication Arrangement (APA)
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greater use of the existing ANNA-DSB data would be a better solution to improve transparency for regulators. ANNA-DSB already has visibility over which entities are creating and requesting ISINs. If the ISIN framework were also to be amended to better suit transparency needs (see our response to Q31 below), this would have more significant benefits without expanding the current scope and scale of reporting. <ESMA_QUESTION_TRRF_5>

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.

<ESMA_QUESTION_TRRF_6>

No, the GFXD does not agree.

As outlined in our response to Q5, we do not support the proposed extension to SIs, as it does not deliver meaningful FX transparency benefits for the significant product and resource expansion. Furthermore, ESMA acknowledges in paragraph 45 that the extension “may disincentivise firms from opting into the SI regime”. Many of GFXD’s members, who collectively represent the majority of the dealer FX market, have already opted in as SIs for FX; the disincentive that would be created by this change is therefore most likely to affect smaller firms who are not currently opted in, which would be in effect a barrier to increased market participation.

However, if ESMA proceeds with the extension, we believe that it should be equally applicable to mandatory and voluntary SIs. This would impose consistent obligations on firms, and would also prepare for mandatory SI calculations in FX.

<ESMA_QUESTION_TRRF_6>

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.

<ESMA_QUESTION_TRRF_7>

Yes, the GFXD disagrees and is concerned by the proposed approach.

As outlined in our response to Q5, we do not support the proposed extension to SIs, does not deliver any meaningful FX transparency benefits for the significant product and resource expansion, as well as for the possible negative impact on client choice and cost.

However, if ESMA proceeds with the extension, we believe that it should be limited to Option 3 – an SI in one derivative (or class of derivatives) would have to report quotes and transactions undertaken in this derivative (or class of derivatives) and when acting in an SI capacity. This would limit the additional reporting burden, which, as we have outlined in our response to Q5 would result in more reporting ‘noise’ than useful transparency.

In relation to ESMA’s comment under Option 3 that “it will be necessary to check whether an investment firm is acting in its SI capacity on a transaction basis”, it is unclear exactly what is meant. The SI itself will have the additional reporting obligation, not its counterparty. However, we note that there will be circumstances in which the SI may not be acting in its SI capacity, such as when it is acting as a Prime Broker and as such is not involved in a price-forming event.<ESMA_QUESTION_TRRF_7>

Q8 : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_8>

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<ESMA_QUESTION_TRRF_8>

Q9 : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA_QUESTION_TRRF_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_9>

Q10 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_10>

The GFXD supports the proposed approach.

<ESMA_QUESTION_TRRF_10>

Q11 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_11>

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<ESMA_QUESTION_TRRF_11>

Q12 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_12>

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<ESMA_QUESTION_TRRF_12>

Q13 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_13>

Yes, GFXD is concerned by the proposed approach.

As outlined in our response to Q5, we do not support the proposed extension to SIs, as it does not deliver meaningful FX transparency benefits for the significant product and resource expansion, as well as for the possible negative impact on client choice and cost. Furthermore, SIs are currently required to report reference data only on non-ToTV instruments where the

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underlying is traded on a trading venue (uToTV). The vast majority of FX derivatives have FX Spot as underlying, which is not a MiFID instrument, and therefore cannot be uToTV. Reference data reporting by FX SIs is therefore extremely minimal and for some SIs no reports are required at all.

Were the reference data obligations to be expanded in this way, such that FX SIs would have to report all MiFID instruments, this would represent a very significant expansion. Much of this expansion would be duplicative – SIs would be reporting data already reported by trading venues or already available to ESMA direct from ANNA-DSB. The rest would relate to non-standardised products, which would improve the quantity but not quality of data available to regulators and other market participants. We therefore strongly encourage ESMA not to expand the reporting obligation on SIs to data already reported by trading venues.

<ESMA_QUESTION_TRRF_13>

Q14 : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA_QUESTION_TRRF_14>

For FX SIs, the concept of a defined list of instruments does not apply.

<ESMA_QUESTION_TRRF_14>

Q15 : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_15>

Yes, GFXD is concerned by the proposed approach.

As outlined in our response to Q5, we do not support the proposed extension to SIs, as it does not deliver meaningful FX transparency benefits for the significant product and resource expansion.

In relation ESMA's proposal, we note that many firms have opted in as an SI at the asset class level, for the purposes of practicality and providing services to clients (such as post-trade transparency reporting). This means that the firm is a SI in all MiFID FX instruments, rather than a subset.

ESMA notes in paragraph 69 that, for venues/SIs operating without a defined list, requiring them “to report reference data on all financial instruments that are potentially tradable every day would be disproportionate”. However this then appears to be the proposal in paragraph 71.

This represents a very significant new data obligation (particularly given the challenges with the ISIN construct for FX, as outlined in our response to Q31), which would also put pressure on ESMA’s own systems. Feedback from GFXD members suggests that this new reporting obligation could extend to many millions of instruments per day, with the duplicative nature of the reports building up to billions of instrument reports from a single SI over the course of a year. Many of these reports would be for products that have an extremely minimal chance of being traded in the given day, which would exacerbate the existing challenge that many ISINs are created for instruments which are never the subject of transparency reporting.

We suggest instead that ESMA works with ANNA-DSB to make use of the data that is already available via trading venue reference data reporting, and via ANNA-DSB regarding the creation and requesting of ISINs by SIs.

<ESMA_QUESTION_TRRF_15>

Q16 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_16>

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<ESMA_QUESTION_TRRF_16>

Q17 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_17>

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<ESMA_QUESTION_TRRF_17>

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

<ESMA_QUESTION_TRRF_18>

Yes, the GFXD foresees challenges with the proposals.

The expansion of the Trading Venue Transaction Identification Code (TVTIC) and the creation of a new link ID will add additional complexity to the reporting process. Both will have to be generated and communicated between parties, which will require new builds for market participants and services such as Approved Reporting Mechanisms (ARMs) and Approved Publication Arrangements (APAs). This is likely involving manual processes at many firms, which increases operational risk. In addition, it is likely to require an industry protocol to cover situations in which the generating entity is not clear (such as when both parties to the trade are SIs).

Processes will also have to be in place to remediate missing identifiers, increasing the operational resource required.

There is also duplication with existing or forthcoming identifiers such as the MiFIR Transaction Reference Number, the EMIR Trade ID (which ESMA has consulted on changing to the global Unique Transaction Identifier standard) and the EMIR Package ID which ESMA has also consulted on introducing.

<ESMA_QUESTION_TRRF_18>

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.

<ESMA_QUESTION_TRRF_19>

Yes, the GFXD foresees challenges with the proposals. It is unclear what the purpose and benefit would be for OTC FX transactions, as the concept seems more applicable to equities transactions. The complexity of applying this concept to FX transactions, particularly as a venue is not always involved, would outweigh any benefit.

<ESMA_QUESTION_TRRF_19>

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

<ESMA_QUESTION_TRRF_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_20>

Q21 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_21>

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<ESMA_QUESTION_TRRF_21>

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

<ESMA_QUESTION_TRRF_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_22>

Q23 : Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_23>

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<ESMA_QUESTION_TRRF_23>

Q24 : Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_24>

Yes, for FX, pre-trade obligations are waived due to the illiquid status of the asset class as a whole. Therefore for FX there should be no need to require this additional information.

<ESMA_QUESTION_TRRF_24>

Q25 : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA_QUESTION_TRRF_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_25>

Q26 : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_26>

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

<ESMA_QUESTION_TRRF_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_27>

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

<ESMA_QUESTION_TRRF_28>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_TRRF_28>

Q29 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_29>

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<ESMA_QUESTION_TRRF_29>

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

<ESMA_QUESTION_TRRF_30>

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<ESMA_QUESTION_TRRF_30>

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?

<ESMA_QUESTION_TRRF_31>

Yes, it is widely understood within the industry that the current ISIN construct is not sufficiently standardised to capture FX products accurately across the market. In many instances, it is possible for two parties trading the same instrument to assign different ISINs.

Furthermore, the FX ISIN construct is based on settlement date, rather than instrument tenor. This makes it very difficult to compare products across a time range, for example how the price of a 3-month FX Forward in USD/EUR changes over time, as on each day that the instrument is traded it will be assigned a different ISIN. This reduces the transparency available to clients and significantly increases the scale of ISIN data within FX. Addressing this issue in particular, or moving to an identifier based on instrument tenor (as we expect the UPI to be), should be a priority for ESMA and the ANNA-DSB.

<ESMA_QUESTION_TRRF_31>

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

<ESMA_QUESTION_TRRF_32>

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<ESMA_QUESTION_TRRF_32>

Q33 : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA_QUESTION_TRRF_33>

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<ESMA_QUESTION_TRRF_33>