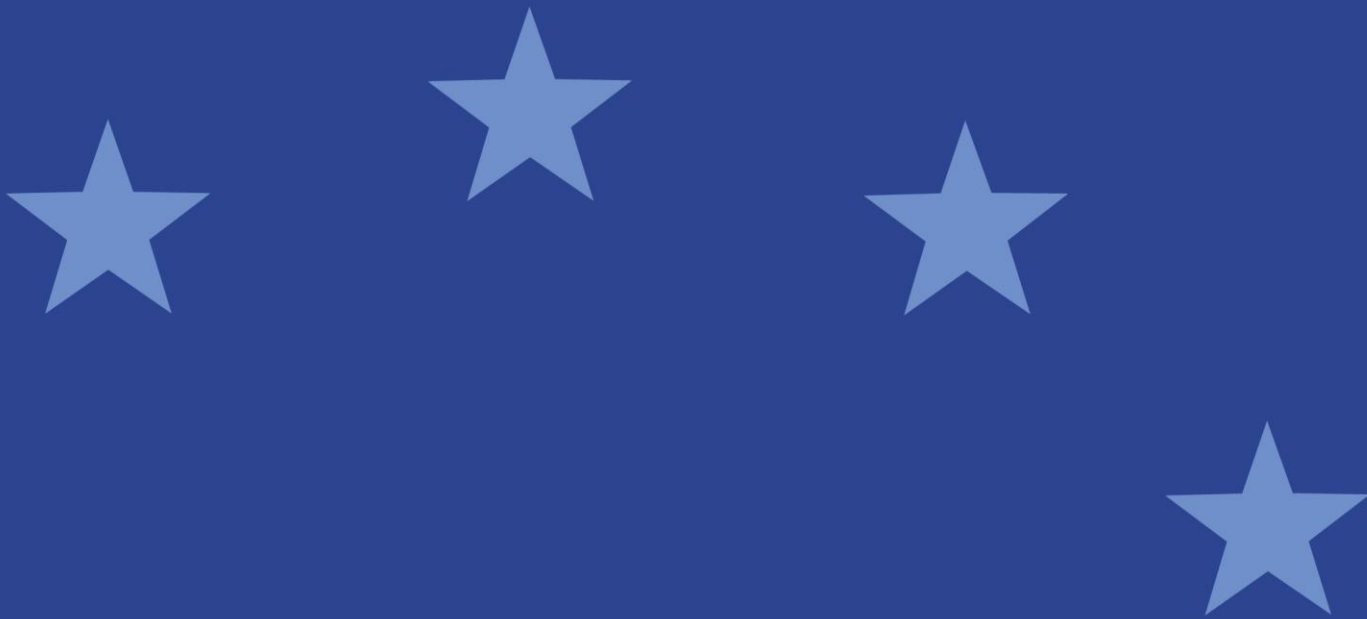




European Securities and  
Markets Authority

# Response Form to the Consultation Paper

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



28 September 2020 | ESMA74-362-887

Internal

## 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](http://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](http://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](http://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	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

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

<ESMA\_COMMENT\_CP\_TRRF\_1>

As an integrated provider of financial services and financial market infrastructures, Deutsche Börse Group (DBG) operates trading venues (Regulated Markets (RMs), Multilateral Trading Facilities (MTFs) and an Organized Trading Facility (OTF), Data Reporting Services Providers (DRSPs) as well as market data and index services, and furthermore Central Counterparties, Central Securities Depositories and a Trade Repository. DBG is thus subject to both MiFIR and non-MiFIR reporting and appreciates the opportunity to respond to ESMA's consultation on its MiFIR review report on the obligations to report transactions and reference data.

MiFID II/MiFIR was designed in a way that based regulatory regimes, supervisory measures and the assessment of the markets' functioning on data. Hence, DBG fully agrees with ESMA on the importance of data quality and completeness for the proper functioning of European markets. In this context, we would like to express our support for the majority of ESMA's proposals on how to ensure the proper functioning of the transaction data and reference data reporting systems and how to streamline MiFIR with EMIR, the Market Abuse Regulation (MAR) and the Benchmark Regulation (BMR).

In particular we agree with ESMA's proposals in relation to the reporting requirements for Systematic Internalisers (SIs). ESMA's suggestions are a welcome step to ensure that regulators and supervisors have a comprehensive overview of the transactions executed on SIs and to create a level playing field with trading venues. Please also see our answers to questions 5 to 7, 13, 15, 18 and 24.

However, we would like to highlight that we would welcome clarifications for some of ESMA's proposals. While sharing transaction reports among competent authorities makes sense, RTS 24 already allows for ad hoc requests to inform adjacent national competent authorities

(NCAs), including relevant competent authorities (RCAs). Hence, we would welcome if ESMA could clarify why to include RCAs as a recipient of transaction reports as well as who should transmit copies of these reports. Moreover, any questions from receiving NCAs on transmitted reports should be channeled through the NCA to which the reporting entity is fulfilling its reporting obligation. Further, DBG supports the alignment of MiFIR and the BMR in terms of transaction reporting. However, we would welcome more clarification on the term 'alternative Risk-Free Rates' in scope of the BMR and examples of such benchmarks to assess the rationale for their inclusion into MiFIR reporting. Importantly, while DBG understands the rationale of ESMA's proposal to amend the text of Art. 27 MiFIR to reflect the wording used in Art. 4 MAR, due to the alignment of the wording a clarification will be required whether or not the scope of reporting obligated entities will change due to the deletion of the term "Regulated Market". Using the wording "request for admission to trading on a trading venue" without a clarification in this respect would lead to a reporting obligation for instruments that are not set up in the trading system yet. Last but not least, we would welcome further clarifications regarding the usage of ISINs for complex instruments. Please also see our answers to questions 3, 4, 8, 10 to 12 and 31 for details.

Moreover, there are few suggestions where DBG does not agree with the proposals made by ESMA: DBG does not agree with ESMA's proposal to introduce an additional code which shall link all transactions pertaining to the same execution. DBG is of the opinion that the TVTIC is sufficient and can be used to fulfil this requirement. Further, DBG does not see any value added in including the client category in the details to be reported under Art. 26(3) MiFIR, as client details are already included in the reporting schema. DBG also disagrees with the introduction of a buyback programs' flag into transaction reporting due to the sophisticated and costly process. We neither support the introduction of UPI as there is no use-case and we have sufficient, well-functioning identifiers in place for those instruments that do not have an ISIN. Last but not least, we are of the view that any change to reporting timelines and frequency would create enormous efforts in the industry and should be avoided. Please also see our answers to questions 19, 20, 26, 30 and 32 for details.

Finally, we would like to bring to ESMA's attention an issue that we have identified in relation to Art. 26(5) MiFIR. Pursuant to this provision the operator of a trading venue shall report to its NCA details of transactions in financial instruments traded on its platform which are executed through its systems by a third country firm or firm which is not subject to MiFIR. However, operators of trading venues do face the issue that third country firms may not provide all the necessary data which however is required in order to provide details of transactions to the NCA. Therefore, we would like to encourage ESMA to consider a reporting solution for those cases, e.g. where the legal obligations of the home jurisdiction do not allow third country firms to provide specific information. Please also see our answer to question 28 for details.

DBG trusts that our comments are seen as a useful contribution to increase the functioning and effectiveness of the reference data and transaction data reporting regime, and remain at the disposal of ESMA for any questions and additional feedback.

<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>

No, DBG does not foresee any challenges with the outlined approach. DBG believes that MiFID II/MiFIR requirements should be consistently used across different types of Trading Venues and given that OTFs are included within the scope of MAR, we agree with ESMA's proposal that Art. 26(5) should refer to "members or participants or users" instead of "firm". In addition, we think that 'firm' is not 'any legal person' (e.g. commercial company) and is not consistent with Order Record Keeping pursuant to Art. 25 MiFIR. We therefore support the harmonization of MiFIR Articles, especially in light of the interdependence with RTS 22 (COMMISSION DELEGATED REGULATION (EU) 2017/590) and RTS 24 (COMMISSION DELEGATED REGULATION (EU) 2017/580).

<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>

While the arrangements referred to in this question mostly address NCAs, DBG sees advantages in the simplification of the reporting process and harmonization of Art. 26(8) MiFIR with Art. 14 RTS 22. Nevertheless, DBG would welcome more clarification on the phrase "... a copy of the reports provided for under this Article shall also be transmitted to the competent authority of the host Member States ..." to clearly state who will transmit this copy.

<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>

DBG welcomes more clarification on the reasons to include RCAs to the recipient list of the transaction reports and on the potential sender of such reports. It will help to deeply understand the intention especially in light of the alleviation of reporting duties addressed in questions 3, 13, 15 and 23. Moreover, RTS24 ad-hoc requests are already in place to address the needs of adjacent NCAs, incl. RCAs.

In addition, while the sharing of transaction reports among NCAs makes sense, any questions from NCAs about these transaction reports towards the executing entity should be channeled through the NCA to whom the executing entity has the reporting obligation.

<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>

We would agree with ESMA's suggestion to include OTC instruments exclusively traded through SI systems to better achieve a level playing field between trading venues and SIs.

We strongly agree in increasing the scope of transparency, transaction and reference data reporting by inclusion of derivative instruments traded through an SI. An expansion of the ToTV concept by applying the same contract concept to reach this goal would lead to more complexity, encouraging market participants to design their OTC products being outside the definition and would finally end up in less OTC derivatives in the reporting scope than meaningful.

To reach the goals of both having a level playing field between trading venues and SIs and an increased scope of reported instruments providing the NCAs with better and more comprehensive information the ToTV concept is not the right way forward.

<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>

We agree to include both mandatory and voluntary SIs in the expanded reporting scope. It would be difficult for market participants to understand different transparency regimes depending on if an SI is such on a mandatory or voluntary basis. In addition, with this approach there is no benefit for investment firms to avoid meeting the thresholds to keep voluntary SI and additionally, complexity would be reduced as well as the number of reported reference data and transactions to be increased. The latter contributes to a more comprehensive view on the derivatives trading which helps NCAs to fulfil their monitoring obligations.

However, we should also be vigilant of any unwanted side-effects; i.e. expanding the scope of transparency obligations shall not lead to less SI within the scope, which may occur if investment firms would abstain from voluntarily opting in into the SI regime due to the expanded reporting requirements. Rather, it might be worth reconsidering the concept of voluntary opt-in. Having a regulatory status with adjacent rights and obligations should not be a matter of choice and discretion but subject to clear-cut binding definitions. Alternatively, the opt-in regime could be replaced with lower thresholds for determining SI status – combined with an obligation to seek authorization if thresholds are crossed.

As elaborated in detail in our response to the parallel ESMA consultation on OTFs, we suggest integrating this question into broader reflections on the future of the SI regime with a view to

clarify SIs' activities through measures increasing transparency. The starting point could be to introduce the statutory requirement for investment firms for an outright authorisation requirement in MiFIR to provide SI services. As part of the authorisation, investment firms and their SIs shall provide a detailed description of their business activities. Moreover, compliance with the requirements shall be subject to periodic scrutiny.

As a general comment, we would like to highlight that SIs should be subject to the same transaction reporting rules as trading venues to ensure a level playing field and increase data quality.

<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>

DBG sees no challenges with the suggested approach when communicated well before introduction along with a clear guidance to allow all affected entities to adapt their internal processes.

We support Option 1. There are some advantages of this approach. It is the easiest to implement, applying the transactions reporting rules less granular and thus aligning with those of the reference data reporting rules. Additionally, it most enlarges the instrument scope to be reported, providing a more comprehensive picture of the trading landscape in the EU which helps regulators in fulfilling their obligations.

The other two suggestions are more complex to implement and monitor and would narrow the scope of instruments to be reported and thus voluntarily restrict the monitoring and supervising possibilities of the regulator.

<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>

DBG supports the alignment of Art. 26(2)(c) MiFIR with Art. 3(3) BMR and its scope in terms of transaction reporting. DBG is subject to non-MiFIR transaction reporting which includes products having benchmarks (reference rates) as underlying, which specifications fall in reporting duty. For such benchmarks as EURIBOR, SARON, EONIA and potentially €STR DBG has a technical reporting solution in place.

Moreover, ESMA claims that MiFIR does not provide any clarification in 'index' term referred to Art. 26(2)(c) MiFIR as well as that these internally elaborated indices should not be in scope of transaction reporting. ESMA considers that only the ones 'benchmarks' considered in Art. 3(3) BMR are covered. Thus, reference to BMR will reduce the scope in indices.

DBG welcomes more clarification on the term 'alternative Risk-Free Rates' in BMR scope and example of such benchmarks to assess the rationale for their inclusion.



<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>

Please see our response to the previous question.

We support option 1 since it will be easiest to implement and bring important instruments into the scope of market surveillance.

<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>

DBG understands the rationale of ESMA's proposal to amend the text of Art. 27(1) MiFIR to reflect the wording used in Art. 4 MAR. In general, we agree that such wording would be consistent with the text used in the related RTS 23 (fields 8, 9, 10 and 11 of RTS 23), where the fields related to "admission to trading" generally refer to "trading venues" and not only Regulated Markets. However, we have identified some challenges with the outlined approach. Please see our response to question 12, where we highlight that due to the alignment of the wording as outlined above a clarification will be required whether or not the scope of reporting obligated entities will change due to the deletion of the term "Regulated Market". Using the wording "request for admission to trading on a trading venue" without a clarification in this respect would lead to a reporting obligation for instruments that are not set up in the trading system yet.

<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>

DBG understands the rationale of ESMA's proposal to amend Art. 27 MiFIR in such a way that the focus is on the issuer's earlier consent to trading on this MTF. In general, we agree that such wording would be consistent with the text used in the related RTS 23. However, as explained in our answers to the previous and following questions we have identified challenges with the outlined approach that would require clarification.

<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>

DBG understands the rationale of ESMA's proposal to align the wording of Art. 27 MiFIR with Art. 4 MAR. In general, we agree that the approach under MAR is preferable because it

ensures consistency with both field 9 of RTS 23 and the transaction reporting requirement under Art. 26 MiFIR.

However, as alluded to in the answers to the previous questions, due to the replacement of the terms “regulated markets”, “MTFs” and “OTFs” by “trading venue” and the parallel introduction of the phrases “**or where the issuer has approved trading of the issued instrument**” and “**or where a request for admission to trading on a trading venue has been made**” we receive the impression of being obliged as a trading venue to report reference data of instruments even not set up in the trading systems of trading venues yet. Whereas instruments in case of regulated markets will be set up in the trading systems well before trading start this is not the case in other markets. As the term “regulated market” is ceased it seems that the same rules shall apply to other markets, too.

It therefore needs more clarification on to whom this obligation applies. A request for admission to trading in one venue does not necessarily cause reporting obligations on another venue. Besides this, instruments cannot be reported before they are set up in the relevant trading system. Regularly, this is not the case upon requests or approvals by third parties.

<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>

No, DBG does not foresee any challenges with the outlined approach. DBG does support ESMA’s proposal to amend Art. 27 MiFIR by adding “systematic internalisers”: “With regard to financial instruments admitted to trading or traded on a trading venue or **systematic internaliser** [...]”.

Besides our answer to the questions 10 – 12 we agree on the inclusion of SIs in the reference data reporting regime as this retains a level playing field and enlarges the scope of reference data to be made available to the regulator in order to provide a more comprehensive picture of the derivatives trading landscape in the EU.

<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>

No, DBG has not experienced any difficulties with the application of the defined list concept. DBG reports the reference data daily and supports the proposal that every TV/SI is obliged to report the reference data daily. This improves the data quality of the FIRDS database due to the regularly updated data and reduces the number of warnings that occur because the *relevant MIC* has reported outdated reference data to FIRDS. Moreover, it is easier to apply and less error-prone than daily check whether instruments were traded or not. Daily checks aren’t necessary if simply all instruments will be reported with their actual valid parameters. We are of the view that financial instruments should be reported during their entire life cycle to ensure accurateness and actuality of the data instead of occasional only.

<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>

No, DBG does not foresee any challenges with the outlined approach. DBG does support ESMA's proposal that all trading venues and all SIs send a daily file in order to provide accurate information whether all of their FIRDS entries are still correct or need to be changed. Please also see our answer to the previous question.

<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>

No, DBG does not foresee any challenges with the outlined approach. DBG supports ESMA's proposal that Art. 27 MiFIR should be amended in a way that it states that this data is provided for the purpose of transparency under the relevant provisions in MiFIR.

<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>

No, DBG does not foresee any challenges with the outlined approach. DBG supports ESMA's proposal that Art. 4 MAR should be repealed, and all additional requirements foreseen under this article should be brought under Art. 27 MiFIR as proposed in sections 4.3.1–4.3.5 above. Art. 4 MAR should be replaced with a reference to the amended Art. 27 of MiFIR. We support the idea that Art. 27 MiFIR will contain all provisions relevant for both regimes, so that for future revisions only one provision will need to be changed and there will not be an issue of synchronizing timelines of such changes as it is currently the case for MAR and MiFIR review that take place under different timelines.

<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>

DBG does not foresee any challenges with the approach outlined in paragraph 75 to include SIs in scope of TVTIC usage as well as assigning TVTIC to both trade sides. As TVTIC is already generated by the trading venue and is assigned automatically to both sides of a trade. Further DBG supports that TVTIC should be extended to transactions executed by SIs. It provides clarity on where the transaction has been executed and adds to supporting a level-playing field between trading venues and SIs. With regard to the proposal made in paragraph 76 we can see that NCAs would benefit as they could identify the market legs that pertain to the client legs when grouping orders.

<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>

DBG does not agree with ESMA's proposal to introduce an additional code which shall link all transactions pertaining to the same execution. DBG is of the opinion that the TVTIC is sufficient and can be used to fulfil this requirement. The TVTIC assigned to a transaction shall be disseminated from the trading participant down the transaction chain, which the regulator can use in order to link all transactions pertaining to the same execution.

Moreover, DBG is against introducing the INTERNAL ID CODE logic due to high implementation costs and potential exaggerated reporting scope, especially in light of existing TVTIV logic as explained above.

<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>

ESMA offers

- 1) amending Art. 26 (3) MiFIR via using "parties" instead of "clients"
- 2) making LEI mandatory if applicable, otherwise using the national identifier
- 3) categorize clients as: professional, treated as professional on request or retail in accordance to Art. 24 MiFID I.

DBG welcomes the 2) option of using LEI / National Identifier in the transaction reporting. The guidance on the priority of client-related data (LEI, e.g. passport number or insurance number as National Identifier) is already clearly addressed in ESMA Q&A. DBAG does not foresee any challenges with the LEI and National Identifier requirements.

However, DBG sees option 3) inadequate for introduction from a content and cost perspective. DBG does not see any value added in including the client category in the details to be reported under Art. 26(3) MiFIR, as client details are already included in the reporting schema. The client-related information is already clearly addressed based on RTS22, and any additional sub-classification could distract the receiving NCA from the core.

Moreover, we also like to point out that third country firms may not be allowed to provide individual-related and personal data including such information as client category which then may again become an issue for the operator of a trading venue as operators of a trading venue are required to provide transaction reporting for such firms according to Art. 26(5) MiFIR.

Please also see our answer to question 28.

<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>

No, DBG does not foresee any challenges with the outlined approach. We welcome ESMA's initiative using Algo ID for transaction reporting and audit trail purposes, especially in sake to

detect potential market abuses schemes. DBG has already necessary mechanisms in place to enhance reports with algo-related data. DBG can see that the information has proven to be useful for NCAs to monitor investment firm's compliance with their authorized activities.

<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>

DBG thinks that it will be challenging to determine a new short sale indicator on a transaction level and that developing any new indicator would be quite a lengthy and burdensome process (both from a regulatory and operational point of view) with limited relevance/added value. Hence, DBG prefers Option a, which is the removal of this information from the transaction reporting. Also considering that the definition of a short sell in the short selling regulation and its application within MiFIR transaction reporting cannot be reconciled, it would make sense to delete this field from the transaction reporting.

However, for any changes to reporting provisions that lead to adaptations in reporting structures, DBG would like to highlight that the industry needs to be granted sufficient time and resources to implement the technical changes to reporting structures.

<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>

Please see our answer to the previous response.

<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>

No, DBG foresees no challenges and supports the idea of a waiver indicator delivery by SIs in the future. Especially in light of questions 5, 13 and 15 DBG welcomes the harmonisation of the scope for regulated markets, multilateral trading facilities and SIs. We agree that ESMA should have a complete set of information regarding transactions executed under a waiver from pre-trade transparency in non-equity instruments, both on-venue and on SIs. This is in particular necessary to allow ESMA to assess the share of trading which happens in the dark.

<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>

DBG utilizes the waiver logic for pre- and post-trade transparency. No obstacles have been identified.

<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>

DBG disagrees with ESMA's proposal to introduce buyback programs' flag into transaction reporting due to sophisticated and costly process. For example, this could affect not only the investment firm themselves, but also the trading venues in light of non-MiFIR transaction reporting.

<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>

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<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>

Based on the current legal framework, DBG supports ESMA's proposal to keep Art. 26(7) MiFIR unchanged, outlining the ability of a trading venue to perform transaction reporting without ARM status.

Moreover, DBG would like to address an issue concerning Art. 26(5) MiFIR. According to this provision the operator of a trading venue shall report to its NCA details of transactions in financial instruments traded on its platform which are executed through its systems by a third country firm or firm which is not subject to MiFIR. We would like to point out that operators of trading venues do face the issue that third country firms may not provide all the necessary data which however is required in order to provide details of transactions to the NCA. This becomes tricky if the third country firm itself is not allowed to provide certain information in particular individual-related and personal data, due to a potential breach of legal obligations in its home jurisdiction. Therefore, we would like to encourage ESMA and the European Commission to consider a reporting solution for those cases where certain data is not provided by non-reporting firms for well-defined reasons, e.g. where the legal obligations of the home jurisdiction do not allow so.

<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>

We agree with the removal of that paragraph from Art. 26(7) MiFIR since it will be technically impossible to cover complete MiFIR transaction reporting with an EMIR transaction report and since the concept of a transaction is not identical between the two regulations. Furthermore,

we appreciate the approach to harmonise elements of EMIR and MiFIR. Both reportings and their different review cycles never bring a certain routine into the reportings. To decrease the reporting burden in Europe we would appreciate to harmonise the review cycles and reduce the reporting burden. In this context, we would like to point out that ETD transaction reporting under EMIR should be removed since it does not serve the purpose of systemic risk surveillance and transactions are already reported under MiFIR.

<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>

It is important to understand, that the whole of continental Europe's financial databases function on the basis of the key identifier ISIN. A change to another identifier would require significant and costly implementation work across the EU compared to the benefit it would bring. A central UPI would add unnecessary costs, especially with the monopoly position of the DSB and burden. We therefore do not support the introduction of UPI as there is no use-case and we have sufficient, well-functioning identifiers in place for those instruments that do not have an ISIN. It needs to be proven first why the existing identifiers cannot be used for OTC derivatives (e.g. ISIN or FISN) instead of UPI. We are of the view that additional identifiers do not add any value to the markets nor to their supervision. For instance, with a dedicated FISN any instrument could be identified independent of the usage of ISINs.

<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>

We are of the view that it should be further clarified for which instruments an ISIN is mandatory to be applied. Actually, the scope of financial instruments for which identifiers need to be provided, is set out in point (15) of Art. 4(1) of Directive 2014/65/EU. We consider these definitions to be not sufficient in terms of clarity. For example, neither level 1 nor level 2 regulation defines the usage of ISINs for complex instruments. In addition to the clarification in the Q&A on reference data reporting and the Guidelines (for) Transaction reporting, order record keeping and clock synchronization under MiFID II concerning this matter it should be made clear in the level 1 or level 2 regulation as well.

<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>

We do not see why ESMA would want explicitly the mandate to determine the date and frequency when data has to be reported. Reporting transactions on T+1 has avoided many of the inconsistencies and challenges with intra-day reporting and we see that the US is moving

away from intra-day reporting for Dodd-Frank to T+1 reporting. Any change to reporting timelines and frequency would create enormous efforts in the industry and should be avoided.  
<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>

No, DBG does not foresee any challenges with the outlined approach. DBG supports ESMA's proposal that reference data shall be made ready for submission to the competent authority in an electronic and standardized format before trading commences in the financial instrument that it refers to. We do support that issuers of financial instruments shall provide their LEI to the trading venue or SI where their instruments are traded or admitted to trading.

<ESMA\_QUESTION\_TRRF\_33>