



European Securities and
Markets Authority

Questions and Answers

On MiFIR data reporting





European Securities and
Markets Authority

Date: 18 December 2017
ESMA70-1861941480-56



Table of Contents

Table of questions	6
1 Introduction	9
2 LEI of the issuer [Last update: 20/12/2016]	11
3 Date and time of the request of admission and admission [Last update: 14/12/2017]....	13
4 Instrument identification code and Underlying instrument code [Last update: 02/02/2017] 15	
5 Maturity Date [Last update: 02/02/2017].....	16
6 Classification of Financial Instruments (CFI) and Financial Instrument Short Name (FISN) [Last update: 02/02/2017].....	16
7 Request for admission to trading by issuer [Last update: 02/02/2017].....	16
8 Base Point Spread of the index/benchmark of a floating rate bond [Last update: 02/02/2017].....	17
9 Field 23 – Seniority of the Bond [Last update: 03/04/2017].....	17
10 Business Case: Inflation Indexed bond [Last update: 03/04/2017]	18
11 Field 14 and Field 17 – Total issued nominal amount [Last update: 07/07/2017]	19
12 Field 30 – Quantity [Last update: 07/07/2017].....	20
13 Reference Data for financial instruments [Last update: 07/07/2017]	21
14 Financial instruments' volatile attributes [Last update: 05/10/2017].....	21
15 Transaction reporting [Last update: 14/12/2017].....	22
16 Order Record Keeping [Last update: 07/07/2017].....	44





Acronyms and definitions used

LEI	ISO 17 442 Legal Entity Identifier
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	The European Markets and Securities Authority
GLEIF	Global Legal Entity Identifier Foundation
ITS	Implementing Technical Standards
MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
MAR	Market Abuse Regulation – Regulation 596/2014 of the European Parliament and of the Council
NCA	National Competent Authority
Q&A	Question and answer
RTS	Regulatory Technical Standards

Table of questions

		Topic of the Question	Level 1/Level 2	Last Updated issue
LEI of the issuer	1	LEI of the issuer	MiFIR RTS 23 ¹	20/12/2016
	2	LEI of an operator of a trading venue or a systematic analyser	MiFIR RTS 23	20/12/2016
	3	Issuer LEI vs Ultimate Parent LEI	MiFIR RTS 23	20/12/2016
	4	LEI annual maintenance	MiFIR RTS 23	20/12/2016
Date and time of the request of admission and admission	1	Date and time of the request and of the admission of instruments in the past	MiFIR RTS 23	20/12/2016
	2	Unknown time of the request and of the admission	MiFIR RTS 23	20/12/2016
	3	Coinciding date and time of the request and of the admission	MiFIR RTS 23	20/12/2016
	4	Date of request for admission to trading	MiFIR RTS 23	02/02/2017
	5	Date of admission to trading or date of first trade	MiFIR RTS 23	02/02/2017
	6	Unknown date of admission	MiFIR RTS 23	14/12/2017
Instrument identification code and Underlying instrument code	1	ISIN, CFI and FISN	MiFIR RTS 23	02/02/2017
	2	Timeline to obtain ISINs	MiFIR RTS 23	02/02/2017
	3	Underlying Instrument Code for future contracts on sovereign bonds	MiFIR RTS 23	02/02/2017
Maturity Date	1	Maturity Date for perpetual debt financial instruments	MiFIR RTS 23	02/02/2017

¹ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.

Classification of Financial Instruments and Financial Instrument Short Name	1	CFI	MiFIR RTS 23	02/02/2017
Request for admission to trading by issuer	1	Population of Field 8	MiFIR RTS 23	02/02/2017
Base point Spread of the index/benchmark of a floating rate bond	1	Population of field 22	MiFIR RTS 23	02/02/2017
Field 23- Seniority of the Bond	1	Population of field 23	MiFIR RTS 23	03/04/2017
Business Case: Inflation Indexed bond	1	Reporting of Inflation Indexed bonds	MiFIR RTS 23	03/04/2017
Field 14 and Field 17 – Total issued nominal amount	1	Population of field 14 and field 17	MiFIR RTS 23	07/07/2017
Financial Instruments' volatile attributes	1	Fixed rate and strike price	MiFIR RTS 23 and 22	04/10/2017
Transaction reporting	1	Price not available at the time of execution	MiFIR RTS 22	03/04/2017
	2	National client identifiers for natural persons	MiFIR RTS 22	05/10/2017
	3	Circumstances where the buyer and seller in a transaction under Art. 26 of MiFIR are the same	MiFIR RTS 22	07/07/2017
	4	Population of Field 30 – Quantity	MiFIR RTS 22	07/07/2017
	5	OTC derivative contracts	MiFIR RTS 22	05/10/2017
	6	Portfolio management	MiFIR RTS 22	05/10/2017
	7	Portfolio management	MiFIR RTS 22	10/11/2017

	8	Primary issuance		MIFIR RTS 22	10/11/2017
	9	Corporate events		MiFIR RTS 22	10/11/2017
	10	Reporting of swaps		MiFIR RTS 22	10/11/2017
	11	Concept of underlying		MiFIR RTS 22	14/12/2017
	12	Non-EU branches of EU Investment firms		MiFIR RTS 22	14/12/2017
Order Record Keeping	1	Actionable Indication of Interest		MiFIR RTS 24	07/07/2017



1 Introduction

Background

The final legislative texts of Directive 2014/65/EU² (MiFID II) and Regulation (EU) No 600/2014³ (MiFIR) were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. The two texts were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following this publication – i.e. 2 July 2014.

Many of the obligations under MiFID II and MiFIR were further specified in the Commission Delegated Directive⁴ and two Commission Delegated Regulations^{5 6}, as well as regulatory and implementing technical standards developed by the European Securities and Markets Authority (ESMA).

MiFID II and MiFIR, together with the Commission delegated acts as well as regulatory and implementing technical standards will be applicable from 3 January 2018.

Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to regulatory data reporting topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

The content of this document is aimed at competent authorities and firms by providing clarity on the application of the MiFID II and MiFIR requirements.

The content of this document is not exhaustive and it does not constitute new policy.

Status

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁴ Commission Delegated Directive of 7.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. The Commission Delegated Directive was published on 7 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

⁵ Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. The Commission Delegated Regulation was published on 25 April 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 89 of MiFID II.

⁶ Commission Delegated Regulation of 18.5.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions. The Commission Delegated Regulation was published on 18 May 2016 and no objection has been expressed by the European Parliament or the Council on the MiFID II Delegate Directive and Delegated Regulation within the period set in Article 50 of MiFIR.



The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation⁷.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

Questions and answers

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

2 LEI of the issuer [Last update: 20/12/2016]

Question 1 [Last update: 20/12/2016]

What action should be taken by the operator of the trading venue or the systematic internaliser in the cases where the LEI of the issuer cannot be obtained?

Answer 1

Operators of trading venues and systematic internalisers are advised to inform the issuers pertaining to the financial instruments concerned of their obligation to obtain the LEI of the issuer of every financial instrument in order to comply with the requirements under Article 3(2) of the MiFIR RTS, Article 1 of the MAR RTS⁸ and Article 2 of the MAR ITS⁹. Trading venues and systematic internalisers are advised that the GLEIF has introduced the concept of 'Registration Agent'. This facility will enable trading venues and systematic internalisers to assist the issuer applying for the LEI to access the network of LEI issuing organisations¹⁰. For more information on the 'Registration Agent' arrangements please refer to the following link <https://www.gleif.org/en/lei-focus/how-to-get-an-lei-find-lei-issuing-organizations/registration-agents>.

Question 2 [Last update: 20/12/2016]

When can an operator of trading venue(s) and systematic internaliser(s) populate field 5 of Table 3 of the Annex to RTS 23¹¹ and related MAR RTS and ITS¹² with its own LEI?

Answer 2

Operators of trading venues and systematic internalisers can populate field 5 of Table 3 of the Annex to RTS 23 with their own LEI only where they create or issue themselves the financial instrument to be reported under the MiFIR and MAR obligations to supply reference data.

⁸ Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications

⁹ Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council

¹⁰ The list of LEI issuing organisations can be found at this link: <https://www.gleif.org/en/lei-focus/how-to-get-an-lei-find-lei-issuing-organizations>

¹¹ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.

¹² See footnote 8 and 9 respectively.



Question 3 [Last update: 20/12/2016]

In case the Issuer LEI code is missing but the Ultimate Parent Code LEI is available, can the latter one be used at least for a to-be-specified grace period?

Answer 3

No, it cannot. The information about the LEI of the issuer of the financial instrument is essential to determine the relevant competent authority pursuant to Article 16 of RTS 22¹³. For this reason, it is essential that the LEI pertaining to the issuer of the financial instrument and not that of the ultimate parent of the issuer is provided.

In general, issuers should be aware of a number of existing EU obligations that already require the LEI of the issuers to be provided (e.g. MAR, EMIR and Transparency Directive¹⁴). Under MAR, the LEI of the issuer, in addition to being used in the context of providing reference data, is part of the mandatory information to be included in the notifications by persons discharging managerial responsibilities and by all persons closely associated with them¹⁵. Under EMIR, the LEI is mandatory for the identification of all legal entities involved in the derivative contract to be reported to the EU Trade Repositories, including financial and non-financial counterparties that enter into derivative contracts, the beneficiary of derivative contracts, the broking entity and the clearing member. Under the Transparency Directive Officially Appointed Mechanisms are obliged to obtain the LEI of the issuer of financial instruments admitted to trading on regulated markets.

Question 4 [Last update: 20/12/2016]

In the case where the issuer does not pay the annual fees for maintaining its LEI to the Local Operating Unit, what is the responsibility of operators of trading venues and systematic internalisers and what measures should be taken?

Answer 4

While issuers of financial instruments should ensure that their LEI is renewed according to the terms of any of the accredited Local Operating Units of the Global Entity Identifier System, under Article 3(2) of RTS 23 operators of trading venues and systematic internalisers are not expected to ensure that the LEI pertaining to the issuer of the financial instrument has been renewed.

¹³ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.

¹⁴ Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulatory information at Union level

¹⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0523&from=EN>



3 Date and time of the request of admission and admission **[Last update: 14/12/2017]**

Question 1 [Last update: 20/12/2016]

What should be populated in field 10 (Date of request for admission to trading) and field 11 (Date of admission to trading or date of first trade) in the cases where the instrument was listed far in the past, e.g. when the MiFID I rules were not yet applicable and the concept of Regulated Market had not yet been introduced?

Answer 1

If the dates and times to be provided in fields 10 and 11 are known, those dates and times should be provided even if the request for admission and the admission occurred at a time where MiFID I did not yet apply. Otherwise, either the date of establishment of the given trading venue or systematic internaliser or the application date of MiFID I (i.e. 01 November 2007) should be used, whichever date is more recent.

Question 2 [Last update: 20/12/2016]

In some cases, the time of the request and of the admission is not known, e.g. when the instrument was listed far in the past or when the request was submitted by postal service. In such cases, would it be possible to populate fields 10 and 11 with a default time?

Answer 2

When the time is not available, the default time of midnight (00:00:00) should be provided.

Question 3 [Last update: 20/12/2016]

Can both fields 10 and 11 be populated with the same value where the request for admission to trading and the admission to trading takes place on the same day?

Answer 3

Yes.



Question 4 [Last update: 02/02/2017]

Which date and time should be populated by a trading venue in Field 10 (Date of request for admission to trading) in case it receives more than one request for admission to trading of a specific financial instrument on a given day?

Answer 4

In case more than one request for admission to trading of a specific financial instrument is received by a trading venue on a given day, Field 10 (Date of request for admission to trading) should be populated with the date and time of the first request for admission to trading.

Question 5 [Last update: 02/02/2017]

Which date should be populated in Field 11 (Date of admission to trading or date of first trade) – the date and time of the admission to trading or the date and time of the first trade, order or quote?

Answer 5

Field 11 (Date of admission to trading or date of first trade) should be populated with the date and time of the event which takes place first.

Question 6 [Last update: 14/12/2017]

What date should be populated in RTS 23Annex Table 3 Field 11 (Date of admission to trading or date of first trade) where the actual date is still unknown and the issuer makes the request for admission to trading (Field 8)?

Answer 6

If Field 11 (Date of admission to trading or date of first trade) is not known at the time of submission of reference data for FIRDS it should be reported with the default value of 9999-12-31T00:00:00, unless the financial instrument has a maturity/termination date, in which case that date should be used. As soon as date of admission to trading or date of first trade is known the FIRDS reference data should be amended with the actual date.



4 Instrument identification code and Underlying instrument code [Last update: 02/02/2017]

Question 1 [Last update: 02/02/2017]

What ISINs, CFI codes and FISNs can be used to identify financial instruments?

Answer 1

For the purpose of reporting reference data under the requirements of MiFIR Article 27, ISO 6166 ISINs, ISO 10962 CFI codes and ISO 18774 FISNs issued by the relevant National Numbering Agency (NNA) should be used. For further information please refer to the following link: <http://www.anna-web.org/standards/about-identification-standards/>.

Question 2 [Last update: 02/02/2017]

By when do ISINs have to be obtained for financial instruments submission of reference data for which is triggered by an order, quote or trade taking place?

Answer 2

For financial instruments for which submission of reference data is triggered by an order, quote or trade taking place, the ISINs have to be allocated in time to be included in the submission of reference data required under Article 2 of RTS 23¹⁶.

Question 3 [Last update: 02/02/2017]

How should Field 26 (Underlying instrument code) be populated in the case of a futures contract on sovereign bonds?

Answer 3

In case of a futures contract on sovereign bonds, field 26 (Underlying instrument code) should be populated with the ISIN of the cheapest-to-deliver bond. If this is unknown, this field should be populated with the ISIN of any of the bonds issued by the issuer. This concept also applies

¹⁶ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.



to transaction reports under Article 26 MIFIR for OTC derivatives where the underlying deliverable bond can be chosen from several bonds issued by the same issuer.

5 Maturity Date [Last update: 02/02/2017]

Question [Last update: 02/02/2017]

What date should be populated in Field 15 (Maturity date) for perpetual debt financial instruments?

Answer

For perpetual debt financial instruments field 15 (Maturity date) should be populated with the value 9999-12-31 (in accordance with the ISO format).

6 Classification of Financial Instruments (CFI) and Financial Instrument Short Name (FISN) [Last update: 02/02/2017]

Question [Last update: 02/02/2017]

Which version of the CFI is applicable for the purposes of the Commission Delegated Regulation [RTS 23]?

Answer

For the purposes of reporting reference data under the requirements of the RTS 23¹⁷, the ISO 10962:2015 CFI code is applicable.

7 Request for admission to trading by issuer [Last update: 02/02/2017]

¹⁷ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.



Question [Last update: 02/02/2017]

How should Field 8 (Request for admission to trading by issuer) be populated?

Answer

Field 8 (Request for admission to trading by issuer) should be populated with 'true' if the request for admission to trading was received from the issuer or the trading venue is aware of the issuer's approval for admission of its financial instrument to trading. Otherwise it should be populated with 'false'.

8 Base Point Spread of the index/benchmark of a floating rate bond [Last update: 02/02/2017]

Question [Last update: 02/02/2017]

In case of a decimal field with insufficient granularity to accommodate the complete actual value how should the field be populated, for example in the case of a base point spread with a 0.5 base point, how should the value be reported in Field 22 (Base Point Spread of the index/benchmark of a floating rate bond)?

Answer

In case of a decimal field with insufficient granularity to accommodate the complete actual value, the value has to be rounded up/down to the next integer. For the given example of base point spread with a 0.5 base point, the base point spread would be populated with a value of 1.

9 Field 23 – Seniority of the Bond [Last update: 03/04/2017]

Question [Last update: 03/04/2017]

Do the same standards apply to the character denoting seniority of a bond in field 3 and the attributes listed in field 23 (seniority of the bond) of RTS 23 of MiFIR?

Answer

No, different standards apply to field 3 and field 23 of RTS 23. Field 3 is populated for all instruments with the ISO 10962:2015 CFI code while field 23 is populated according to ISO 20022 standard and only applies to debt instruments. There is no validation rule in place that compares the value in field 3 with that populated in field 23.



10 Business Case: Inflation Indexed bond [Last update: 03/04/2017]

Question [Last update: 03/04/2017]

How should transactions on “inflation indexed bonds” be reported under RTS 22?

Answer

Example of transaction report on “inflation indexed bonds”:

An investment firm acquires a DBRI 0.1% 04/15/2026 (ISIN Code DE0001030567) by trading over the counter at 110.00%. The nominal value of the transaction is 1000000 EUR.

The net amount for this transaction is 1111274.01 EUR.

Considering that for the purpose of this example:

The static characteristics (as defined upon the issue of the financial instrument) are:

- Maturity Date: April 15th 2026
- Coupon frequency: Annual
- Day Count Convention: ACT/ACT
- Day to Settle Convention: 2 business days after the trade date

The variables (dynamic characteristics depending on the market conditions) are:

- Trade Date: July 25th 2016
- Settlement Date: July 27th 2016 (as per the Day to Settle Convention)
- Last Coupon Date: April 15th 2016
- Next Coupon Date: April 15th 2017
- Accrued number of days: 103 (i.e., the number of days between the Last Coupon Date and the Settlement Date)
- Period basis: 365 (i.e., the total number of days between the Last Coupon Date and the Next Coupon Date)
- Quantity: 1000000 (i.e., the nominal or monetary value of the transaction)
- Clean price: 110.00
- Index ratio: 1.009990
- Accrued interest: 0.02821918 (i.e., $\frac{\text{Nominal Coupon}}{\text{Annual Coupon Frequency}} \times \frac{\text{Accrued Number of Days}}{\text{Period basis}} = \frac{0.1}{1} \times \frac{103}{365}$)

The net amount will be calculated as follows (pursuant to the formula provided in field 35 of RTS 22):



Net amount¹⁸ = [(Clean price x Nominal value) + (Accrued coupons x Nominal value)] x Index ratio i.e. $[(\frac{110}{100} \times 1000000 \text{ EUR}) + (\frac{0.02821918}{100} \times 1000000 \text{ EUR})] \times 1.009990 = 1111274.01 \text{ EUR}$.

N	Field name	Values	XML representation
30	Quantity	'1000000'	<pre> <Tx> <New> ... <Tx> ... <Qty> <NmnlVal Ccy="EUR">1000000</NmnlVal> </Qty> <Pric> <Pctg>110.00</Pctg> </Pric> <NetAmt>1111274.01</NetAmt> <TradVn>XOFF</TradVn> ... </Tx> <FinInstrm> <Id>DE0001030567</Id> </FinInstrm> ... </New> </Tx> </pre>

11 Field 14 and Field 17 – Total issued nominal amount [Last update: 07/07/2017]

Question 1

In the case of Bonds or other forms of securitised debt, what should be reported in Commission Delegated Regulation (EU) 2017/585 Annex Table 3 Field 14 (Total issued nominal amount) if the total nominal amount changes? Similarly, what should be reported in Commission Delegated Regulation (EU) 2017/585 Annex Table 3 Field 17 (Nominal value per unit/minimum traded value) if nominal value per unit/minimum traded value changes?

Answer 1

In the case of Bonds or other forms of securitised debt, a trading venue should update Field 14 (Total issued nominal amount) accordingly if the total nominal amount changes (increasing or decreasing). The same approach should be applied to Field 17 (Nominal value per unit/minimum traded value).

¹⁸ Please note that this example differs from example 92 within the Guidelines by the index ratio that needs to be taken into account in the calculation of the Net Amount.

12 Field 30 – Quantity [Last update: 07/07/2017]

Question 1

How shall Field 30 (Quantity) in Commission Delegated Regulation (EU) 2017/590 Annex I Table 2 be reported for a transaction where there have previously been acquisitions or disposals that are excluded from the meaning of a transaction? For example, a decrease in notional amount in a financial instrument which has previously had pre-determined contractual down payments exempted from transaction reporting under Commission Delegated Regulation (EU) 2017/590 Article 2(5)(j)?

Answer 1

Competent authorities require an accurate and holistic view of transactions that are within the scope of reporting requirements under Article 26 of MiFIR. Therefore, Article 15(5) of Commission Delegated Regulation (EU) 2017/590 obliges an Investment Firm to ensure that a collective view of the transaction reports reported by the Investment Firm as the executing entity accurately reflects all changes in its position and in the position of its clients that arise from reportable transactions.

It should be noted that the reporting requirements are not intended to capture the Investment Firm's or the Investment Firm's client's actual position. What is of interest to competent authorities is the change of position resulting from reportable transactions. Therefore only acquisitions or disposals that are reportable transactions under Article 2 of Commission Delegated Regulation (EU) 2017/590 are reported and only the amount of the acquisition or disposal that takes place at the date time of the execution of the reportable transaction should be reported in field 30.

Scenario: Decrease in notional amount of a financial instrument originally reported with a notional amount of EUR 10 mill. The instrument has an ongoing amortisation cash flow and after 2 years, the contract has a remaining notional of EUR 8.5 million due to amortisations, i.e. contractually pre-determined payments that have not been reported due to the exemptions under Article 2(5)(j) of Commission Delegated Regulation (EU) 2017/590. The contract is then terminated, i.e. the notional amount is decreased to zero, in a transaction that was not contractually pre-determined to take place.

Field 30 (Quantity) shall be populated with 8.5 mill. This corresponds to the actual decrease of notional and it reflects the change in position of the investment firm resulting from a reportable transaction at the point of execution.



13 Reference Data for financial instruments [Last update: 07/07/2017]

Question 1

What information trading venues need to provide with respect to reference data reported under Commission Delegated Regulation (EU) 2017/585 for bonds where the coupon is calculated based on a complex formula involving several indices?

Answer 1

In case of bonds for which the coupon is calculated based on a complex formula that involves several indices, trading venues should provide the reference data using the following default values:

- Field 18 (“Fixed Rate”) and Field 19 (“Identifier of the index / benchmark of a floating rate bond”) should be left **blank**;
- Field 20 (“Name of the index / benchmark of a floating rate bond”) should be populated with the expression “FORMULA”;
- Field 21 (“Term of index / benchmark of a floating rate bond”) should be populated with “0 ‘DAYS’”;

14 Financial instruments’ volatile attributes [Last update: 05/10/2017]

Question 1 [Last update: 05/10/2017]

(a) How to complete reference data and transaction reports for financial instruments with a fixed rate that is a volatile attribute.

(b) How to complete reference data and transaction reports for financial instruments with a strike price that is a volatile attribute.

Answer 1

(a) Where a swap rate or forward rate financial contract is quoted as the fixed rate and it is considered to be an attribute of the transaction rather than an attribute of the financial instrument, the respective reports should be completed as follows:



Transaction report¹⁹ - the price (field 33) of the transaction should be populated with the fixed rate value. The upfront payment (field 38) should be populated with a value of zero.

Reference data report²⁰ - the relevant fixed rate leg (field 43 or 44) of the financial contract should not be populated

The above is applicable to the financial instruments with specific CFI codes for which the fixed rate is considered as a volatile attribute. The [CFI validation document](#) will be kept up to date to reflect that the fixed rate related fields should be non-applicable for the relevant CFI codes.

- (b) Where the strike price of a financial contract is considered to be an attribute of the transaction rather than an attribute of the instrument then the respective reports shall be completed as follows:

Transaction report - the price (field 33) of the transaction shall be populated with the strike price value. The upfront payment (field 38) shall be populated with the value of the option premium.

Reference data – the strike price field shall not be populated.

The above is applicable to the financial instruments with specific CFI codes for which the strike price is considered as a volatile attribute. The [CFI validation document](#) will be kept up to date to reflect that this field should be non-applicable for these codes.

If the trading model deviates from (a) and (b) above then the transaction report shall be completed in line with ESMA's published guidelines for transaction reporting, order record keeping and clock synchronisation under MiFID II²¹. In all cases transaction reports must be reported consistently with reference data.

15 Transaction reporting [Last update: 14/12/2017]

Question 1 [Last update: 03/04/2017]

Where the price of a transaction is not available at the time of execution (e.g. the NAV for certain ETFs), how can investment firms fulfil their post-trade transparency obligations under Articles 20 and 21 of MiFIR and their transaction reporting obligations under Article 26 of MiFIR for those transactions?

Answer 1

¹⁹ COMMISSION DELEGATED REGULATION (EU) 2017/590 with regard to regulatory technical standards for the reporting of transactions to CAs. Available at the following [link](#)

²⁰ COMMISSION DELEGATED REGULATION (EU) 2017/585 with regard to regulatory technical standards for the data standards and formats for financial instrument reference data. Available at the following [link](#)

²¹ https://www.esma.europa.eu/sites/default/files/library/2016-1452_guidelines_mifid_ii_transaction_reporting.pdf



If the price of a transaction is not available at the time of execution, investment firms should fulfil the applicable reporting obligations using 'PNDG' as price, specified in the field 'Price' of table 3 of Annex I of RTS 1, table 2 of Annex II of RTS 2 and/or field 33 of table 2 of Annex I of RTS 22. As soon as the price of the transactions (including the NAV in the particular case of ETFs) becomes available, investment firms should cancel the original reports with the 'PNDG' price (using the cancellation flag for post-trade transparency publication purposes) and publish new reports/ send new transaction reports pertaining to the given transactions using the actual price that became available (using the amendment flag for post-trade transparency publication purposes). The date and time specified in the field "Publication date and time" of table 3 of Annex I of RTS 1, table 2 of Annex II of RTS 2 and/or field 28 of table 2 of Annex I of RTS 22 should always refer to the original date and time of the execution.

Question 2 [Last update: 05/10/2017]

How are different national identifiers specified in Annex II of RTS 22 represented?

Answer 2

The table below shows the list of national client identifiers for natural persons to be used in transaction reports pursuant to the priority specified in Annex II of the Commission Delegated Regulation (EU) 2017/590. Information related to the format of the identifier is not provided in the case of CONCAT, since the procedure for generating such identifier is defined in Articles 6(1) and 6(4) of the Commission Delegated Regulation (EU) 2017/590.

Country code	Country name	National client identifier	Format of the identifier	Potential source of the information
AT	Austria	CONCAT		
BE	Belgium	Belgian National Number (Numéro de registre national - Rijksregisternummer)	11 numerical digits where the first 6 are the date of birth (YYMMDD), the next 3 are an ordering number (uneven for men, even for women) and the last 2 a check digit.	National ID
		CONCAT		
BG	Bulgaria	Bulgarian Personal Number	It consists of 10 digits. The first 6 are the date of birth (YYMMDD). The next 3 digits have information about the area in Bulgaria and the order of birth, and the ninth digit is even for a boy and odd for a girl. Seventh and eighth are randomly generated according to the city. The tenth digit is a check digit.	Passport, National ID, Driving Licence
		CONCAT		
CY	Cyprus	National Passport Number	The number for passports issued before 13/12/2010 consists of the character 'E' followed by 6 digits i.e E123456. Biometric passports issued after 13/12/2010 have a number that starts with the character 'K', followed by 8 digits. i.e K12345678	The passport is issued by the Civil Registry Department of the Ministry of Interior.
		CONCAT		
CZ	Czech Republic	National identification number (Rodné číslo)	It is a nine or ten-digit number in the format of YYXXDD/SSSC, where XX=MM (month of birth) for male, i.e. numbers 01-12, and XX=MM+50 (or exceptionally XX=MM+70) for female, i.e. numbers 51-62 (or 71-82). For example, a number 785723 representing the first six digits is assigned to a woman born on 23rd of July 1978. SSS is a serial number distinguishing persons born on the same date and C is a check digit. For people born before January 1st 1954 the number is without this check digit - YYXXDD/SSS (i.e. the nine-digit case). If the national identification number has ten digits, then the tenth (check) digit is the first nine digits modulo 11, unless this modulo is 10. In that case the tenth digit is 0. Therefore, the ten-digit number is usually divisible by 11.	It is assigned to a person shortly after birth by the birth registry and does not change throughout the life of a person. It is printed on a birth certificate (paper), national ID card (laminated or plastic card), drivers licence (laminated or plastic card), and possibly other documents.
		Passport Number	It is usually an eight digit number, but it can be longer.	
		CONCAT		
DE	Germany	CONCAT		

DK	Denmark	Personal identity code 10 digits alphanumeric: DDMMYYXXXX	The Danish personal ID is called the CPR number. It is 10 digits and does only consist of numbers [0-9]. The first 6 numbers represent the date of birth in "DDMMYY" format.	The CPR number is used for unique personal identification can be found in documents such as passports, health care cards and driver's licenses.
		CONCAT		
EE	Estonia	Estonian Personal Identification Code (Isikukood)	It consists of 11 digits, generally given without any whitespace or other delimiters. The form is GYYMMDDSSSC, where G shows sex and century of birth (odd number male, even number female, 1-2 19th century, 3-4 20th century, 5-6 21st century), SSS is a serial number separating persons born on the same date and C a checksum.	Passport, National ID, Driving license
ES	Spain	Tax identification number (<u>Número 0</u> Código de identificación fiscal)	Code composed by 9 characters: 8 numbers and a control letter. Letters I, Ñ, O, and U are not used. It looks like 99111222M. <u>Particular cases</u> - L + 7 numbers + control letter for non-resident Spaniards unless they have DNI, where then it would look like as above. - K + 7 numbers + control letter for Spaniards under 14 unless they have DNI, where then it would look like as above.	This code is in the National Identification Card (<u>document nacional de identidad – DNI –</u> or carnet de identidad), but it can also be found in the driving license or the social security card.
FI	Finland	Personal identity code	It consists of eleven characters of the form DDMMYYCZZZQ, where DDMMYY is the date of birth, C the century sign, ZZZ the individual number and Q the control character (checksum). The sign for the century is either + (1800–1899), - (1900–1999), or A (2000–2099). The individual number ZZZ is odd for males and even for females and for people born in Finland its range is 002-899 (larger numbers may be used in special cases). An example of a valid code is 311280-888Y.	Passport, National ID
		CONCAT		
FR	France	CONCAT		
GB	United Kingdom	UK National Insurance number	Two prefix letters, followed by six digits with one suffix letter, which is always A, B, C, or D. It looks something like this: AB123456A. The characters D, F, I, Q, U and V are not used as either the first or second letter of the prefix. The letter O is not used as the second letter of the prefix. For administrative reasons HMRC and DWP have sometimes used reference numbers which look like NINOs but which do not use valid prefixes. The administrative prefixes used are: OO, CR, FY, MW, NC, PP, PZ, TN. These should not be used.	The NINO is an administrative number primarily for the use of HM Revenue and Customs (HMRC) or the Department for Work and Pensions (DWP). It can be on a plastic National Insurance card, paper card or letter from HRMC and may also be obtained from payslips, form P60, tax returns or letters from the DWP/HRMC.
		CONCAT		

GR	Greece	10 Dematerialised Securities System (DSS) digit investor share	It consists of 10 digits and it is linked with the personal details of the investor (name, identity number, passport number, tax registration number).	Investor share is the account of the investor in the DSS which is operated by the Central Securities Depository S.A.
		CONCAT		
HR	Croatia	Personal Identification Number (OIB – Osobni identifikacijski broj)	OIB consists of 11 digits. 10 digits are chosen randomly and do not contain information related to the holder of OIB. One digit is a control number. OIB is unique, unchangeable and unrepeatable. It is a permanent identification code of every Croatian citizen and legal person with head office in the Republic of Croatia.	Source is National Identity Card or Internet engines but it can also be found on other personal documents.
		CONCAT		
HU	Hungary	CONCAT		
IR	Ireland	CONCAT		
IS	Iceland	Personal Identity Code (Kennitala)	Ten-digit number, where the first six are the date of birth (DDMMYY).	Passport, National ID, Driving Licence
IT	Italy	Fiscal code (Codice fiscale)	The code is unique, widespread and consistent over time and it is a combination of 16 letters and numbers (3 letters for the last name + 3 letters for the name + 5 letters/numbers for the date of birth (with different combinations to distinguish between men and women) + 4 letters/numbers for the place of birth + 1 check letter/number). Example: RSS MRO 62B25 E205 Y	It can be printed on a paper card (old version) or on the National Health Service magnetic card (newer ones).
LI	Lichtenstein	National Passport Number	The Code is a combination of 1 letter and 5 numbers. For example R00536	Passport
		National Identity Card Number	The Code of the national ID-Card is a combination of 2 letters and 8 numbers. For example ID022143586	The number changes with each renewed ID-Card
		CONCAT		
LT	Lithuania	Personal code (Asmens kodas)	It is 11 digits long. Format GYYMMDDNNNC, where G is the gender (4 or 6 for women; 3 or 5 for men); YYMMDD is the date of birth; NNN - serial number; C - check digit.	Passport, National ID, Driving license
		National Passport Number	Passport or Identity card number - 8 digit number	Passport, National ID
		CONCAT		
LU	Luxemburg	CONCAT		
LV	Latvia	Personal code (Personas kods)	11 numerical digits of the form DDMMYY-CZZZZ where the first 6 are the date of birth (DDMMYY) and the C is century sign (where the digit "0" is the 19th century, the number "1" - the 20th century, "2" - 21th century).	Identification documents for Republic of Latvia - National ID and/or passport

			<u>Or 11 numerical digits selected randomly, where the first six digits may be separated from other digits with a hyphen</u>	
		<i>CONCAT</i>		
MT	Malta	National Identification Number	8 characters: 7 numerical digits and 1 alphabetic letter (M, G, A, P, L, H, B, Z) Each ID Card has a unique Identity Number, based on a combination of: (a) a sequential registration number in the relevant year; (b) the relevant year number (2 digits), where the year is the year of birth (for Malta-born persons) or year of registration (for non-Malta born persons), and (c) a letter designating the geographic origin of the person. The definition of the letters is given by the Public Registry Department on the registration of a birth A = applicable to Foreigners in possession of an eRes Card B = applicable to Maltese births registered in the 1800+ G= applicable to Gozitan births registered in the 1900+ H= applicable to Gozitan births registered in the 2000+ L= applicable to Maltese births registered in the 2000+ M= applicable to Maltese births registered in the 1900+ P= applicable to Maltese citizens who are unable to obtain their original birth certificate from their country of birth to be registered in Malta. Z= applicable to Gozitan births registered in the 1800+	National ID
		National Passport Number	7 Numerical digits	Civil Registration Directorate
NL	Netherlands	National Passport Number	9 characters of which: Position 1 and 2: [A-Z] except for "O"; Position 3 - 8: [A-Z] [0-9] except for "O"; Position 9: [0-9].	Dutch National Passport
		National identity card number	9 characters of which: Position 1 and 2: [A-Z] except for "O"; Position 3 - 8: [A-Z] [0-9] except for "O"; Position 9: [0-9]. The character "O" is not allowed while "0" is.	Dutch National ID
		<i>CONCAT</i>		
NO	Norway	11 digit personal id (Foedselsnummer)	The id is 11 digits long, where the first 6 represent birthdate in "ddmmyy" format.	Includes but not limited to: passport, national id card, driving license
		<i>CONCAT</i>		
PL	Poland	National Identification Number (PESEL)	11 NUMERIC. ID for natural persons is assigned to a person shortly after birth by the birth registry and does not change throughout the life of a person.	Birth Certificate, National ID, Driving License
		Tax Number (Numer identyfikacji podatkowej)	10 NUMERIC. It is used by investment firms for the tax identification of a client.	Tax form PIT8 which is sent yearly by an IF on behalf of its client to the tax office.

PT	Portugal	Tax number (Número de Identificação Fiscal)	Code composed by one block of 9 digits (999999999). The first eight digits are sequential and the last one is used as a control: 1 to 3: Personal, 3 is not yet assigned; 45: Natural person. The initial digits "45" correspond to non-residents citizens that only get in Portuguese territory income subject to withholding at source; 5: legal person required to register in the National People Collective Registry; 6: The agencies of the Central Government, Regional or Local administration; 70, 74 and 75: Used to identify different types of Heritage Indivisible; 71: Collective non-residents subject to withholding at source definitively; 72: Investment Funds; 77: officious allocation of taxable NIF (entities that do not require NIF on the official bodies (RNPC); 78: officious assignment to non-residents covered by the proceeding VAT REFUND; 79: Exceptional rules - created in 98 exclusively to the Mundial Exposition (Expo 98); 8: "sole trader" (no longer used, is no longer valid); 90 and 91: Condos, Irregular Society and undivided inheritances; 98: Non-residents without permanent establishment; 99: Civil societies without legal personality.	
		National Passport Number	The passport of uniform and optical model consists of a notebook with 32 pages numbered, identified by one letter and six digits: Position 1: letter [A-Z] and Position 2 - 6: digits [0-9]	Portuguese National Passport
		<i>CONCAT</i>		

RO	Romania	National Identification Number (Cod Numeric Personal)	<p>Romanian Personal Numerical Code (Cod Numeric Personal, CNP) consist of 13 digits and is created by using the citizen's gender and century of birth (1/3/5/7 for male, 2/4/6/8 for female and 9 for foreign citizen), date of birth (six digits, YYMMDD), the country zone (two digits, from 01 to 52, or 99), followed by a serial number (3 digits), and finally a checksum digit.</p> <p>The first digit encodes the gender of person as follows:</p> <ul style="list-style-type: none"> 1 Male born between 1900 and 1999 2 Female born between 1900 and 1999 3 Male born between 1800 and 1899 4 Female born between 1800 and 1899 5 Male born after 2000 6 Female born after 2000 7 Male resident 8 Female resident 9 Foreign citizen <p>The country zone is a code of Romanian county in alphabetical order. For Bucharest the code is 4 followed by the sector number.</p> <p>To calculate the checksum digit, every digit from CNP is multiplied with the corresponding digit in number 279146358279; the sum of all these multiplications is then divided by 11. If the remainder is 10 then the checksum digit is 1, otherwise it's the remainder itself.</p>	The CNP is unique for each person, it is assigned at birth and never changes except in cases of erroneous attribution, sex change or change of status from legal resident to citizen, and it's written on Birth Certificate, Identity Card and Driving License.
		National Passport Number	Romanian Passport Number consist of 8 digits of which: Position 1 and 2: [A-Z] and Position 3 - 8: [0-9]	Romanian National Passport
		<i>CONCAT</i>		
SE	Sweden	Personal identity number	<p>Personal code number: 12 digits numerical in the format CCYYMMDDZZZQ CCYYMMDD is the date of birth, ZZZ the individual serial number, and Q is the control character (calculated with Luhn-algorithm). The individual number ZZZ is odd for males and even for females. CC is century, YY year, MM month and DD day.</p>	Personal code number is used for unique personal identification and are written on or into various personal documents such as passports, health care cards, driver's licenses, and is held by authority registration at Swedish tax agency.
		<i>CONCAT</i>		

SI	Slovenia	Personal Identification Number (EMŠO: Enotna Matična Številka Občana)	<p>It consists of 13 digits. The first 7 numbers represent the date of birth of the person - DDMMYYYY. Digit 8 and 9 represent the number of a register where EMŠO was assigned:</p> <ul style="list-style-type: none"> • 10-19 – Bosnia and Hercegovina (if signed in before 18 February 1999) • 20-29 – Montenegro (if signed in before 18 February 1999) • 30-39 – Croatia (if signed in before 18 February 1999) • 40-49 – Macedonia (if signed in before 18 February 1999) • 50-59 – Slovenia (if signed in before 18 February 1999, if later number 50 is used) • 60-69 – (not in use) • 70-79 – Serbia (if signed in before 18 February 1999) • 80-89 – Autonomous Province of Vojvodina (if signed in before 18 February 1999) • 90-99 – Kosovo (if signed in before 18 February 1999). <p>Digit 10, 11 and 12 are a combination of gender and serial number for persons, born on the same day (000-499 for male and 500-999 for female). Number 13 is a control number and is calculated by a special procedure, defined in Article 4 of the Regulation on the way of assigning the personal identification number (Nos. no. 8/99).</p>	Slovenian Personal Identity Card Slovenian National Passport
		CONCAT		
SK	Slovakia	Personal number (Rodné číslo)	The Personal Number consist of ten digits in the form YYMMDDCCXX. The first part is created from the date of birth (differently for male and female): YY - the last 2 digits of the year of birth; MM - month of birth for male (01 -12), month of birth plus 50 for female (51-62); DD - day of birth; CCC- number distinguishing persons born on the same date; X - check digit. The Person Number must be divisible by 11.	It is printed on a birth certificate (paper), national ID card (laminated or plastic card), drivers licence (laminated or plastic card), and possibly other documents.
		National Passport Number	It is issued in the format XXNNNNNNNN. It is a 9-digit unique code where XX are block letters and NNNNNNN are numbers. It has a validity of 10 years.	Citizens can have two passports and this code can only be found on the first one.
CONCAT				



Question 3 [Last update: 07/07/2017]

Could there be circumstances where the buyer and seller in a transaction report made under Article 26 of MiFIR are the same?

Answer 3

Yes, where a firm or investment firm, Firm A, instructs an investment firm, Firm B, to make a simultaneous buy and sell for its clients but Firm A has not complied with the conditions for transmission under article 4 of Commission Delegated Regulation (EU) 2017/590. If Firm B executes these transactions outside a trading venue then it should report the ISO 17442 LEI of Firm A in the buyer and seller fields in its transaction reports.

Question 4

How shall Field 30 (Quantity) in Commission Delegated Regulation (EU) 2017/590 Annex I Table 2 be reported for a transaction where there have previously been acquisitions or disposals that are excluded from the meaning of a transaction? For example, a decrease in notional amount in a financial instrument which has previously had pre-determined contractual down payments exempted from transaction reporting under Commission Delegated Regulation (EU) 2017/590 Article 2(5)(j)?

Answer 4

Competent authorities require an accurate and holistic view of transactions that are within the scope of reporting requirements under Article 26 of MiFIR. Therefore, Article 15(5) of Commission Delegated Regulation (EU) 2017/590 obliges an Investment Firm to ensure that a collective view of the transaction reports reported by the Investment Firm as the executing entity accurately reflects all changes in its position and in the position of its clients that arise from reportable transactions.

It should be noted that the reporting requirements are not intended to capture the Investment Firm's or the Investment Firm's client's actual position. What is of interest to competent authorities is the change of position resulting from reportable transactions. Therefore only acquisitions or disposals that are reportable transactions under Article 2 of Commission Delegated Regulation (EU) 2017/590 are reported and only the amount of the acquisition or disposal that takes place at the date time of the execution of the reportable transaction should be reported in field 30.

Scenario: Decrease in notional amount of a financial instrument originally reported with a notional amount of EUR 10 mill. The instrument has an ongoing amortisation cash flow and after 2 years, the contract has a remaining notional of EUR 8.5 million due to amortisations, i.e. contractually pre-determined payments that have not been reported due to the exemptions under Article 2(5)(j) of Commission Delegated Regulation (EU) 2017/590. The contract is then terminated, i.e. the notional amount is decreased to zero, in a transaction that was not contractually pre-determined to take place.

Field 30 (Quantity) shall be populated with 8.5 mill. This corresponds to the actual decrease of notional and it reflects the change in position of the investment firm resulting from a reportable transaction at the point of execution.

Question 5 [Last update: 05/10/2017]

In the case of a transaction on an OTC derivative contract²², what is expected in the transaction report when any of the following characteristics of that contract is changed: fields 50 to 56 of annex 2 of CDR 2017/590?

Answer 5

When any of those characteristics of the contract change, the transaction thereof should be considered as a new contract and therefore two transaction reports are expected:

- One materializing the closing out of the initial derivative contract (swapping the buyer and the seller).
- One for the opening of the new contract with the new characteristics.

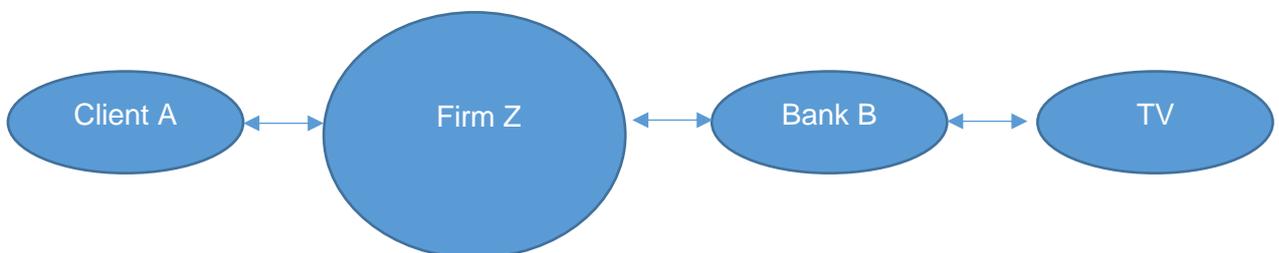
Question 6 [Last update: 05/10/2017]

Consider a scenario where an investment firm (Bank B) executes a reportable transaction under a discretionary mandate for a Client A (portfolio management).



a) *Does the Client A also have an obligation to report this transaction under Art. 26 MiFIR?*

b) *Does the Client A also have an obligation to report this transaction under Art. 26 MiFIR when a fund management company that is not a MiFID II investment firm (Firm Z) is interposing between client and Bank B?*



Answer 6

²² MIC code-field 36 = "XXXX". These are all derivatives falling under MiFIR Article 26(2)(b) and (c).

Yes, in both cases there is an own reporting obligation for Client A under Art. 26 MiFIR, if Client A is an investment firm.

Client A has to report under Art. 26 MiFIR because it provides the service under Art. 3 (1) (c) Commission Delegated Regulation (EU) 2017/590 “dealing on own account”. Dealing on own account as it is defined in Art. 4 (1) (6) MiFID II means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments. Even though the client outsources the investment decision and execution to Bank B it is still considered to be “dealing on own account” under Art. 3 (1) c Commission Delegated Regulation (EU) 2017/590.

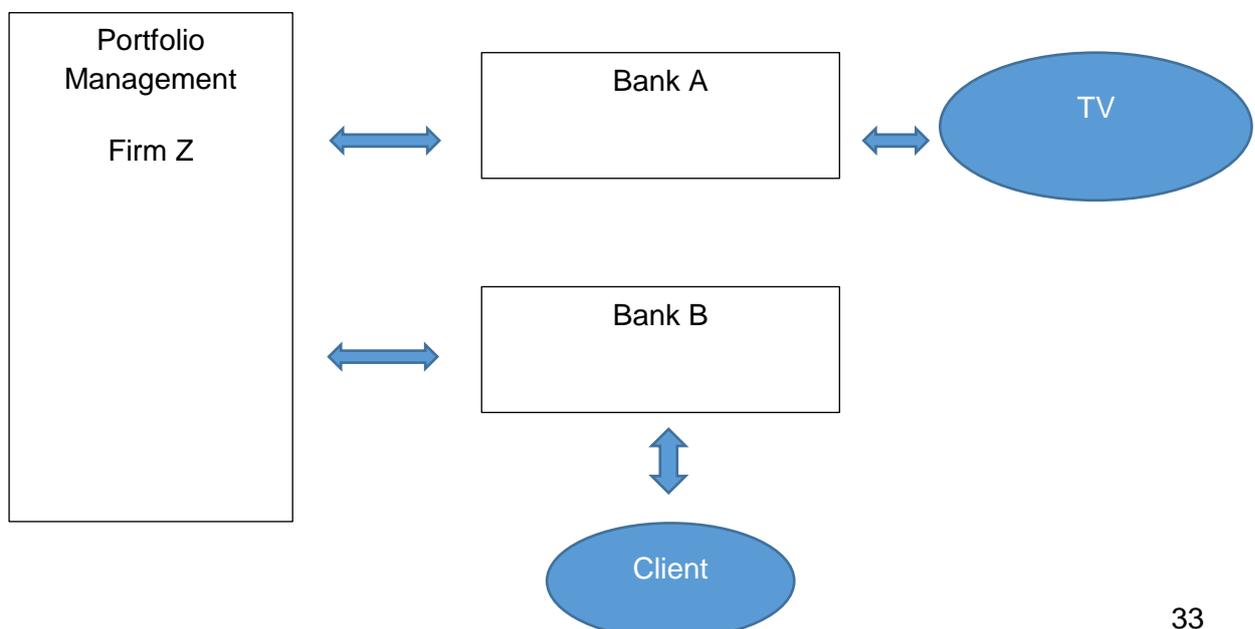
Question 7 [Last update: 14/11/2017]

How should transactions be transaction reported where portfolio management has been outsourced?

Answer 7

Consider the following example, where Banks A, B and Firm Z are investment firms:

- Client has a portfolio at Bank B.
- The client is a German national, Max Mustermann. His date of birth is 01/04/1974.
- Bank B has outsourced the portfolio management (discretionary mandate) to Firm Z, which is an investment firm undertaking portfolio management.
- Firm Z sends a purchase order to Bank A for execution without meeting the conditions for transmission under article 4 of Commission Delegated Regulation (EU) 2017/590. Firm Z is acting in an ‘any other’ trading capacity.
- Firm Z does not have a contract with the Client.
- Bank A executes the order on a Trading Venue.
- Bank A transfers the financial instruments from its own account to the account of Bank B just for settlement purposes.
- Bank B books the financial instruments from its account into the account of the Client.



a) Bank A and Bank B are acting in an own account trading capacity

The reports by Bank A and Bank B will be as follows:

N	Field	Bank A's reports		Bank B's reports	
		Report 1 Values	Report 2 Values	Report 1 Values	Report 2 Values
3	TVTIC	'1234'			
4	Executing entity identification code	{LEI} of Bank A	{LEI} of Bank A	{LEI} of Bank B	{LEI} of Bank B
7	Buyer	{LEI} of Bank A	{LEI} of Firm Z	{LEI} of Bank B	'DE19740401MAX##MUSTE'
12	Buyer decision maker code				{LEI} of Firm Z
16	Seller	{LEI} of CCP	{LEI} of Bank A	{LEI} of Firm Z	{LEI} of Bank B
21	Seller decision maker code				
29	Trading capacity	'DEAL'	'DEAL'	'DEAL'	'DEAL'
36	Venue	{MIC} of TV	'XOFF'	'XOFF'	'XOFF'
57	Investment decision within firm	Algo or national ID			
59	Execution within firm	Algo or national ID	Algo or national ID	'NORE'	'NORE'

Bank A is receiving instructions from Firm Z without the transmission requirements being met so it will report Firm Z as the buyer in its client side report.

Bank B's counterparty for execution purposes is Firm Z and since Bank B has not met the transmission conditions it will report its client as the buyer and itself, Bank B, as the seller.



Bank B has outsourced the discretionary management for its client to Firm Z so there is a power of representation. However, field 12 is only populated where the decision is made under a power of representation and the buyer is a client of the executing entity. Therefore field 12 is only populated in Report 2 of Bank B, since in Report 1 Bank B is itself the buyer.

Even though Firm Z is making the investment decision on behalf of Firm B, field 57 is a mandatory field where a firm is acting in an own account trading capacity since the firm is accepting the risk. Therefore this should be populated with the algo or person in Bank B that is primarily responsible for the decision to delegate.

Field 59 is a mandatory field but where the execution decision is made outside the firm it is populated with 'NORE'. In this scenario the execution decision is being made by Firm Z as it is deciding when and how to execute (by sending orders to Firm A) and therefore this field is populated with 'NORE' in Bank B's reports .

Reporting by Firm Z

		Portfolio Management Firm Z
N	Field	Report X Values
3	TVTIC	
4	Executing entity identification code	{LEI} of Firm Z
7	Buyer	{LEI} of Bank B
12	Buyer decision maker code	{LEI} of Firm Z
16	Seller	{LEI} of Bank A
21	Seller decision maker code	
29	Trading capacity	'AOTC'
36	Venue	'XOFF'
57	Investment decision within firm	Algo or national ID
59	Execution within firm	Algo or national ID

Firm Z is acting on behalf of Bank B and since Bank B has not met the transmission conditions it will report Bank B as the buyer and Bank A as the seller.

Firm Z is making an investment decision on behalf of Bank B so it will populate field 12 with its LEI and will populate field 57 with the algo or national ID of the person responsible for the investment decision within the firm.

- b) Bank A and Bank B are acting in any other trading capacity and Bank B is not meeting the conditions for transmission under article 4 of the Commission Delegated Regulation (EU) 2017/590.

N	Field	Bank A's report	Bank B's report
3	TVTIC	'1234'	
4	Executing entity identification code	{LEI} of Bank A	{LEI} of Bank B
7	Buyer	{LEI} Firm Z	'DE19740401MAX##MUSTE'
12	Buyer decision maker code		{LEI} of Firm Z
16	Seller	{LEI}CCP	{LEI} of Firm Z
21	Seller decision maker code		
29	Capacity	'AOTC'	'AOTC'
36	Venue	{MIC} of TV	'XOFF'
57	Investment decision within firm		
59	Execution within firm	Algo or national ID	'NORE'

Since the buyer in Bank B's report is its client and there is a power of representation field 12 is populated with the LEI of Firm Z in Bank B's report.

Since the execution decision is made outside the firm (being made by Firm Z) field 59 is populated with 'NORE' in Bank B's report.

Questions 8 [Last update: 14/11/2017]

- (a) What are the reporting obligations for a typical primary issuance (IPO)?
- (b) How should field 28 (Trading date time) be populated in this scenario?
- (c) How should field 59 (Execution within the firm) be populated in this scenario?
- (d) What would transaction reporting look like for a typical equity IPO example?

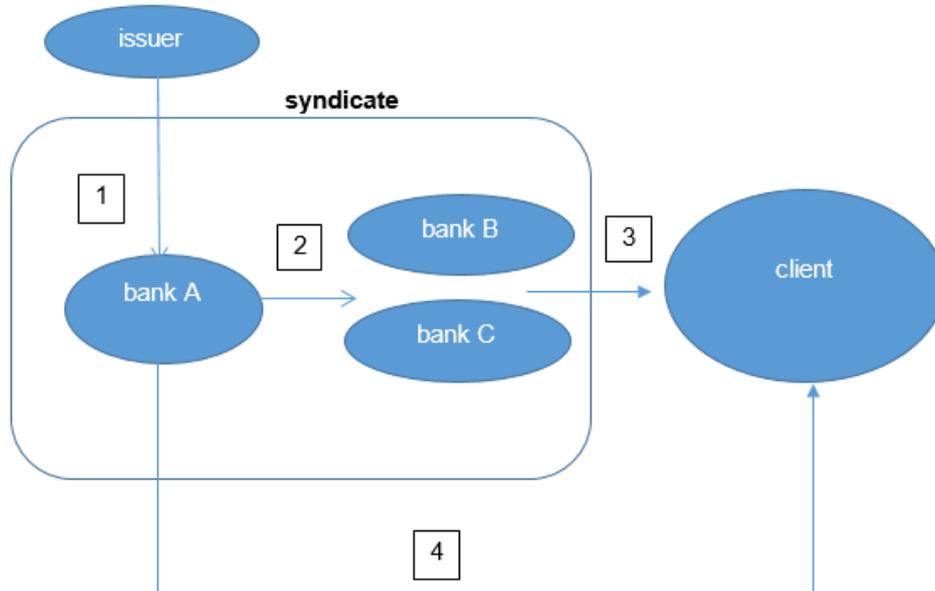
Answers 8

- (a) Primary issuance occurs through a group of banks that form a syndicate. This is shown in the example below where Banks A, B and C form a syndicate. One client may receive calls from a number of syndicate banks to introduce the new issue and the client will in turn indicate their interest to buy the financial instrument being marketed through each of those banks. A single order book is maintained across the syndicate which results in a single allocation of the financial instrument to the client.

A 'coordinating bank' will buy from the issuer/seller and sell to another bank or banks in the syndicate that act as the 'billing and delivering bank(s)' (B&D-bank). A B&D-bank will then sell to the client. A 'coordinating bank' may also perform the role of a B&D-bank.

The example below shows two situations, one where Bank A is acting as a 'coordinating bank' and Banks B and C are acting as the B&D-bank and one where Bank A is acting as both the 'coordinating bank' and B&D bank. In this example Banks A, B and C are all investment firms acting in an own account trading capacity but it is also possible for these banks to act in any other capacity.

The executions that take place are indicated by legs no. 1, 2, 3 and 4. The direction of the arrows indicates the direction of flow of the financial instruments.



All of the execution legs that are applicable to the situation are reportable. So if Bank A is the 'coordinating bank' and Banks B and C are the B&D-banks then legs 1, 2 and 3 are reportable. If Bank A is both the 'coordinating bank' and the B&D-bank then legs 1 and 4 are reportable. If the issuer or the client are investment firms they will have to transaction report as well as Banks A, B and C.

Settlement activity should not be reported.

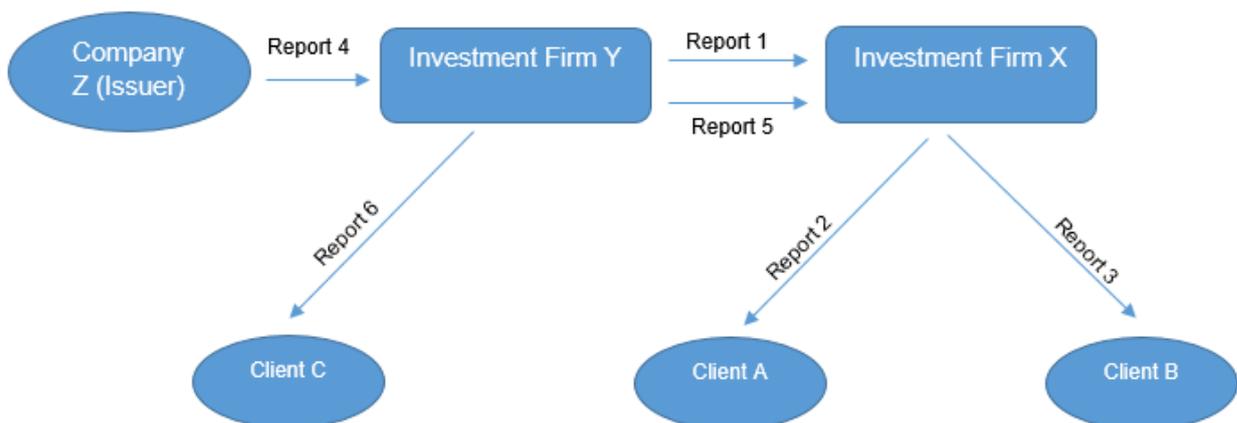
If there are additional investment firms involved in the chain that are executing then they will also need to transaction report.

- (b) This should be the date time at which the pricing and the allocations are finalised between the issuer and the syndicate. This is normally before the first listing date.
- (c) Where a client is making a decision for a primary issuance, then the activity by an investment firm to action that decision is just an administrative function as the investment firm has no discretion on how to exercise and therefore field 59 should be populated with 'NORE'. Where the investment firm is making the decision under a discretionary mandate it should be populated with a person or algorithm within the investment firm.
- (d) Issuing Company Z plans a primary issuance of 400 units of equity and engages a syndicate involving Investment Firm X and Investment Firm Y to run a book build on its behalf. Investment Firms X and Y are acting as B&D-banks responsible for recording the transactions in their books and records, confirming the purchase to the client and selling the units to the clients. Investment Firm Y is also acting as a 'coordinating bank'.

Client A and B have placed subscription orders for 200 units and 100 units respectively with Investment Firm X. Client C has placed subscription orders for 100 units with Investment Firm Y. Investment Firm Y will buy from the issuer/seller and sell to Client C and to Investment Firm X. The request for admission takes place on 26-06-2018 and the listing date is 27-06-2018. The transaction price of 99 for a unit is agreed between the syndicate and the issuer and the pricing and allocations are finalised between Issuing Company Z and the syndicate on 26-06-2018 at 19:00:00.

Assuming for the purposes of this example that Investment Firms X and Y are dealing on own account, the reports that need to be made by X and Y are indicated by Reports no. 1 – 6 in the figure below. The direction of the arrows indicates the direction of flow of the financial instruments.

Settlement activity should not be reported.



How would Investment Firm X report?

N	Field	Report 1 Values	Report 2 Values	Report 3 Values
4	Executing entity identification code	{LEI} of Investment Firm X	{LEI} of Investment Firm X	{LEI} of Investment Firm X
7	Buyer identification code	{LEI} of Investment Firm X	{LEI} of Client A	{LEI} of Client B
16	Seller identification code	{LEI} of Investment Firm Y	{LEI} of Investment Firm X	{LEI} of Investment Firm X
28	Trading date time	'2018-06-26T19:00:00Z'	'2018-06-26T19:00:00Z'	'2018-06-26T19:00:00Z'
29	Trading capacity	'DEAL'	'DEAL'	'DEAL'
30	Quantity	'300'	'200'	'100'
33	Price	'99'	'99'	'99'
36	Venue	'XOFF'	'XOFF'	'XOFF'
59	Execution within the firm	'NORE'	'NORE'	'NORE'

How would Investment Firm Y report?

N	Field	Report 4 Values	Report 5 Values	Report 6 Values
4	Executing entity identification code	{LEI} of Investment Firm Y	{LEI} of Investment Firm Y	{LEI} of Investment Firm Y
7	Buyer identification code	{LEI} of Investment Firm Y	{LEI} of Investment Firm X	{LEI} of Client C
16	Seller identification code	{LEI} of Issuing Company Z	{LEI} of Investment Firm Y	{LEI} of Investment Firm Y
28	Trading date time	'2018-06-26T19:00:00Z'	'2018-06-26T19:00:00Z'	'2018-06-26T19:00:00Z'
29	Trading capacity	'DEAL'	'DEAL'	'DEAL'
30	Quantity	'400'	'300'	'100'
33	Price	'99'	'99'	'99'
36	Venue	'XOFF'	'XOFF'	'XOFF'
59	Execution within the firm	'NORE'	'NORE'	'NORE'

If Issuing Company Z or Clients A, B or C are investment firms they will also need to transaction report.

Questions 9 [Last update: 14/11/2017]

(a) When are corporate events reportable?

- (b) Are corporate events resulting from a default option reportable?**
- (c) Is an event still reportable where the investor has given a standing instruction?**
- (d) What is meant by the investor not making an investment decision at the point in time of the creation, expiration or redemption of the financial instrument in article 2(5)(i) of Commission Delegated Regulation (EU) 2017/590?**
- (e) Are lapsed rights reportable?**
- (f) How should corporate events be reported?**
- (g) How should field 59 (Execution within the firm) be populated for corporate events?**

Answers 9

- (a) Corporate events are reportable where the investor has an opportunity to make an investment decision if the event does not come within one of the exclusions under article 2(5) of Commission Delegated Regulation (EU) 2017/590. In practice, because many corporate actions are effected through the mandatory issue of an intermediary instrument this brings them within the exclusions because the issue is mandatory and therefore not reportable under 2(5)(i) and the exercise of the intermediary instrument is excluded under 2(5)(h).
- (b) Yes. This is regardless of whether the default option is actively selected or results from no action. This is because the investor may have taken no action in the knowledge that they would receive the default option. Therefore they are regarded as effectively taking an investment decision.
- (c) Yes, where the investor has an opportunity to make an investment decision. This is because the investor had the opportunity to change their mind and revoke the instruction and may have chosen not to do so. Therefore they are regarded as effectively taking an investment decision.
- (d) This should be interpreted as the investor (or someone acting for them under a power of representation) not making an investment decision at the point in time when they could have made an investment decision for a particular corporate event. Thus it refers to the point of time of the initiation of the creation, expiration or redemption rather than the time of its completion. Consequently, if the investor did take a decision to initiate the creation, expiration or redemption or could have taken such a decision but received a default option or could have taken a decision despite a standing instruction being in place it does not come within the exclusion under article 2(5)(i) and the action is reportable unless it comes under one of the other exclusions in article 2(5).
- (e) No. This is considered to be within the exclusion in Article 2(5)(h) of Commission Delegated Regulation (EU) 2017/590.
- (f) The transactions resulting from the event should be reported.



Where an investment firm, Firm A, is giving instructions to take up an event on behalf of itself or a client it should report the party initiating the event if it is executing with that entity directly or the intermediary it is executing with an intermediary. For example, consider a corporate event where an investor makes a choice of receiving cash or additional financial instruments without there being an intermediate financial instrument and receives the financial instruments. Assuming that Firm A is acting in an 'any other' trading capacity and is executing directly with the issuer, Firm A will report the buyer as the client and populate the seller field with the LEI of the issuer. If the client is also an investment firm, the client will report Investment Firm A as the seller and if the issuer is also an investment firm the issuer will report Investment Firm A as the buyer. If Firm A is executing with an intermediary Firm A will report the intermediary.

Where payment is made the price should reflect this. If there is no payment then the price field should be populated with 'NOAP'. If there is a pending price it should be reported as 'PNDG' and updated when the price is known.

The trading date and time would be the date and time that the corporate action was completed by the entity initiating the event, so in the example above the date time in the confirmation of the transaction by the issuer.

- (g) Where a client is making a decision for a corporate event, then the activity by an investment firm to action that decision is just an administrative function as the investment firm has no discretion on how to exercise and therefore field 59 should be populated with 'NORE'. Where the investment firm is making the decision under a discretionary mandate it should be populated with a person or algorithm within the investment firm.

Question 10 [Last update: 14/11/2017]

Are both legs of a swap reportable, when one leg contains an index such as LIBOR or EURIBOR?

Answer 1

In the case of a swap, where one leg contains e.g. LIBOR or EURIBOR, it is key for competent authorities to have visibility of both legs of the reported swap. Therefore in transaction reports for an OTC swap, where one leg of a swap contains at least one reportable financial instrument, also the complementing leg of the given swap containing indices, such as LIBOR or EURIBOR, should be identified in a transaction report, as shown in Example 106 in section 5.35.7.1 of the ESMA Guidelines.

Question 11 [Last update: 14/12/2017]

- (a) Where there is more than one level of underlying instrument which should be considered when determining whether an instrument is in scope for reporting under article 26(2)(b) and (c) of MIFIR?**
- (b) Does the concept of an underlying for the purposes of Article 26(2)(b) or (c) of MiFIR extend to investments in a collective investment undertaking or an exchange traded fund?**
- (c) What is the implication of Answer (b)?**
- (d) Does the concept of underlying extend to the instruments on which ADRs, GDRs are based for the purposes of Article 26(2)(b) of MIFIR ?**
- (e) What is the implication of Answer (d)?**
- (f) Does the concept of an underlying for the purposes of Article 26(2)(b) of MiFIR extend to convertible bonds?**
- (g) What is the implication of Answer (f)?**
- (h) Does the concept of an underlying for the purposes of Article 26(2)(b) or (c) of MiFIR extend to warrants?**
- (i) What are the implications of Answer (h)?**

Answers 11

- (a)** The underlying is the direct or immediate underlying for the instrument rather than any ultimate underlying. For example, consider a CFD on an option on an equity. The immediate underlying is the option. Therefore, if the option is traded on a trading venue then the CFD is a reportable instrument under article 26(2)(b) and if the option is not traded on a trading venue then the CFD is not a reportable instrument under article 26(2)(b). This is regardless of whether the equity that is the ultimate underlying is traded on a trading venue.
- (b)** No, the concept of underlying does not extend to such situations.
- (c)** Transactions in a unit of a collective investment undertaking or an exchange traded fund are only reportable if the unit of a collective investment undertaking or the exchange traded fund



is itself admitted to trading or traded on a trading venue or a request for admission has been made.

(d) Yes.

(e) Where a transaction takes place in an ADR, GDR (the main instrument) where the underlying instrument on which the main instrument is based is traded on a trading venue the transaction is reportable under article 26(2)(b). Where a transaction report is made on the basis of the instrument being in scope of 26(2)(b) the underlying instrument on which the main instrument is based should be reported in field 47 (Underlying instrument code). Where the main instrument is also in scope under 26(2)(a) then the underlying does not need to be populated in the transaction report as only the ISIN of the main instrument needs to be reported (in field 41).

(f) Yes.

(g) Where a transaction takes place in a convertible bond (the main instrument) and the instrument into which the bond can be converted is traded on a trading venue the transaction is reportable under article 26(2)(b). Where a transaction report is made on the basis of the instrument being in scope of 26(2)(b) the underlying instrument into which the main instrument can be converted should be reported in field 47. Where the convertible bond is also in scope under 26(2)(a) then the underlying does not need to be populated in the transaction report as only the ISIN of the convertible bond needs to be reported (in field 41).

(h) Yes.

(i) Where a transaction takes place in a warrant and the instrument on which the warrant is based is traded on a trading venue the transaction is reportable under article 26(2)(b). Where the warrant is based on an index or a basket composed of financial instruments traded on a trading venue the transaction is reportable under 26(2)(c). Where the warrant is also in scope of Article 26(2)(a) then the underlying does not need to be populated in the transaction report as only the ISIN of the warrant needs to be reported (in field 41).

Question 12 [Last update: 14/12/2017]

Are transactions executed through non-EU branches of EU investment firms subject to transaction reporting under Article 26 of MiFIR?

Answer 12

Yes, transactions executed through non-EU branches of EU investment firms are subject to transaction reporting under Article 26 of MiFIR since a branch has no legal personality and is



part of the investment firm according to Article 4(1)(30) of MIFID II. This requirement applies to transactions executed in financial instruments specified in Article 26(2) of MiFIR. The transaction reports should be sent to the competent authority of the home Member State of the investment firm following Article 14 of the RTS 22 and the branch should be identified with the LEI of its head office even if it may be considered eligible for an LEI in some cases (see first paragraph, point 5.5 of the ESMA Guidelines on Transaction Reporting).

16 Order Record Keeping [Last update: 07/07/2017]

Question 1

Are actionable indications of interest subject to the order record keeping requirements for Investment Firms and trading venues under Article 25(1) and (2) of MiFIR?

Answer 1

Yes. An “actionable indication of interest” is defined in Article 2(1)(33) of MiFIR as “a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade”. Actionable indications of interest are subject to pre-trade transparency requirements under Articles 3(1) and 8(1) of MiFIR, along with current bid and offer prices and the depth of trading interests at those prices. To ensure that relevant and sufficient data is kept at the disposal of competent authorities, paragraphs 1 and 2 of Article 25 of MiFIR set out the obligation on investment firms and trading venues to maintain records of, amongst others, the relevant data relating to these orders, including actionable indications of interest.