



Post-trade made easy

Euroclear response to the ESMA consultation paper on Level II standards to MiFID II dated 19 December

Q39. Do you agree with the proposed exhaustive list of negotiated transactions not contributing to the price formation process? What is your view on including non-standard or special settlement trades in the list? Would you support including non-standard settlement transactions only for managing settlement failures? Please provide reasons for your answers.

Relevant provisions in the relevant section of the consultation:

38. ESMA is interested in views on whether the list should include transactions which, in accordance with Article 5(2) of Regulation 909/2014 (CSDR), are not intended to be settled within the second business day after the transaction takes place. ESMA understands that special or non-standard settlement transactions are currently being executed under the negotiated trade waiver as they may not be executed under prevailing market conditions on order books; however ESMA is also concerned that including those types of trades in the list may potentially undermine the policy objectives of MiFIR of ensuring that price formation remains efficient by limiting the use of waivers not subject to the volume caps.

Euroclear Response:

With regard to point 38, transactions passed for the purpose of managing settlement fails in accordance with Article 5 of CSDR (Regulation 909/2014) should not be understood as pure investment activity. Their mere role is to ensure the delivery of securities. Such transactions may indeed not be executed under the prevailing market conditions. Hence, in our view such transactions should be included in the list of transactions subject to the waiver.

We also use the opportunity to highlight that the CSD role, if any, in such transactions should not require compliance with MiFID II/MiFIR or any underlying standards, and be solely subject to CSDR.

Q48. Do you agree with the proposed list of transactions not contributing to the price discovery process in the context of the trading obligation for shares? Do you agree that the list should be exhaustive? Please provide reasons for your answers.

Relevant provisions in the relevant section of the consultation:

Article 2, RTS 8

*Transactions not contributing to the price discovery process
[Article 23(3) of Regulation (EU) No 600/2014]*

For the purposes of Article 23 of Regulation (EU) No 600/2014 a transaction in shares admitted to trading or traded on a trading venue does not contribute to the price discovery process where:

(a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price;

(b) the transaction is part of a portfolio trade that involves the execution of 10 or more shares from the same client and at the same time and the single components of the trade are meant to be executed only as a single lot;

(c) the transaction is contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot;

(d) the transaction is executed in the context of an investment firm that provides portfolio management services and transfers the beneficial ownership of a share from one fund to another and where no other investment firm is involved;

(e) the transaction is a give-up or a give-in;

(f) the transaction is for the purpose of transferring financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;

(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives; or

(h) the transaction is a securities financing transaction.

Euroclear Response:

Article 2(f) of the draft RTS 8, treats segregated collateral differently from non-segregated collateral. Such differentiation could be seen as an incentive to segregate collateral. Although it is not clear, whether this provision is referring to segregation solely at the CCP level, or also at the level of CSD.

We do not find these RTS an appropriate instrument to encourage segregation of collateral. We, therefore, suggest to amend Article 2 point f of RTS 8 as follows:

"(f) the transaction is for the purpose of transferring financial instruments as ~~segregated~~ collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;"

Q53. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 20? Do you think other types of transactions should be included? Please provide reasons for your answers.

Relevant provisions in the relevant section of the consultation:

Article 13, RTS 8

Application of OTC post-trade transparency to certain transactions
[Article 20(3)(b) of Regulation (EU) No 600/2014]

The obligation in Article 20(1) of Regulation (EU) 600/2014 shall not be applied to the following:

(a) transactions included under Article 12(2) of Regulation (EU) No xxx/20xx [Transaction Reporting RTS] where applicable;

(b) securities financing transactions;

(c) the exercise of options, covered warrants or convertible bonds;

(d) primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);
(e) give-ups and give-ins;
(f) transfers of financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Euroclear Response:

Please see our response to question 48 regarding Article 13(f) of the draft RTS 8. Article 13 also proposes a different treatment of segregated from non-segregated collateral.

We do not find these RTS an appropriate instrument to encourage such segregation of collateral. We, therefore, suggest to amend Article 13 point f of RTS 8 as follows:

(f) transfers of financial instruments as ~~segregated~~ collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Q76. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 21? Do you think other types of transactions should be included? Please provide reasons for your answers.

Relevant provisions in the relevant section of the consultation:

Article 9, RTS 9
[Article 21(5)(b) of Regulation (EU) No 600/2014]

The obligation in Article 21(1) of Regulation (EU) No 600/2014 shall not be applied to the following:

(a) transactions included under Article 3(3) of Regulation (EU) No xxx/20xx [Obligation to report transactions] where applicable;
(b) securities financing transactions;
(c) the exercise of options, of covered warrants or convertible bonds;
(d) primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);
(e) give-ups and give-ins;
(f) transfers of financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Euroclear Response:

Please see our response to question 48 and 53 regarding Article 13(f) of the draft RTS 8. Article 9 of draft RTS 9 also proposes a different treatment of segregated from non-segregated collateral.

We do not find these RTS an appropriate instrument to encourage such segregation of collateral. We, therefore, suggest to amend Article 9 point f of RTS 9 as follows:

(f) transfers of financial instruments as ~~segregated~~-collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Q213. Which of the formats specified in paragraph 2 would pose you the most substantial implementation challenge from technical and compliance point of view for transaction and/or reference data reporting? Please explain.

Relevant provisions in the relevant section of the consultation:

1. The new Transaction reporting regime will be standardised throughout the EU, establishing uniform requirements. The Transaction Reporting and Reference data regime, under MiFIR, sets out a number of reporting requirements in relation to the disclosure of transaction data and reference data on financial instruments falling within the scope of MiFID II to the competent authority. The increase in financial instruments scope and data fields to be reported will extend to more trading venues and more firms. The new MiFIR reporting requirements will replace national regimes in existence under current MiFID that will result in all stakeholders (competent authorities, trading venues, investment firms) having to upgrade or replace their system infrastructure.

2. In order to achieve this, ESMA is currently assessing and evaluating key elements of existing technical formats for transaction reporting and financial instruments reference data. The current landscape of these technical formats throughout the EU is currently thoroughly examined. A review of the level of appropriateness of available formats for MiFIR transaction reporting and for financial instruments reference data currently in use is conducted. The current scope includes in particular the following standards: FpML, ISO 20022, TREM (a custom XML format defined by ESMA and currently used for Transaction Reporting and Instrument Reference data exchanges between NCAs), IFX, FIX and XBRL.

Euroclear Response:

The following formats would pose the most substantial implementation challenge: FpML, TREM, IFX, FIX and XBRL.

We believe that ISO standards offer the best potential for cost-effective and future-proof implementation.

However, we do not think that the ESMA should include in legislation (i.e. delegated acts) particular ISO standards. Legislation should future-proof the industry and allow future evolution of reporting formats, when needed. The current format that is currently largely used by the industry is ISO15022. We believe that it will be able to address the data reporting needs. ISO 20022 is being gradually implemented. However, there is no need to precipitate its full implementation in law for the mere purposes of the present reporting requirements. Furthermore, a new ISO standard could be implemented without requiring a review of the delegated acts, when ISO 20022 is deemed obsolete.

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