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ESMA CONSULTATION PAPER
MiFID II/MiFIR

Summary of ESMA's
Market Data Reporting Proposals

February 2015

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Entities in scope

MiFIR obligations to …

… maintain records (article 25) …

… to report transactions (article 26) …

… to supply instrument reference data (article 27) …

… apply to …

Investment firms authorised under MiFID II when providing investment services and/or performing investment activities

Market operators including any trading venues they operate

Operators of trading venues have to transaction report on behalf of entities not subject to MiFIR (article 26(5) MiFIR)

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What constitutes a transaction and execution of a transaction

Concept is unchanged from DP but more clarity around definitions and included/excluded activity

TRANSACTION ➤ Still effectively any change in an investment firm's position and/or their client's position in a reportable instrument

EXECUTION OF A TRANSACTION ➤ Any action that results in a *transaction*

The transaction is the outcome and the execution is the activity that results in that outcome.

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What constitutes a transaction

Transaction means:

Acquisition, disposal or modification in a reportable financial instrument unless it comes under specified exclusions

Acquisition or disposal includes **but is not limited to**:

• Purchase or sale

• Firm hitting own order where there is publication of the trade

• Entering into or closing out of derivative instrument

Transaction includes (open list)

• exercise of options/warrants by party exercising and party being exercised against (as result in purchase/sale)

• "primary" and grey market activity if the instrument is admitted to trading or a request has been made

• increases and decreases in notional

Exclusions from transactions (closed list)

- Securities financing transactions (provided subject to reporting under Securities Financing Regulation)*
- Activity solely for clearing and settlement
- Assignments and novations*
- Compressions*
- Mandatory events
- Some specified events where low risk of market abuse where specified criteria are met

*Change from DP

What constitutes execution

- Direct action by the firm itself

(N.B. Includes action through a branch of the firm regardless of whether the branch is located inside or outside of the Union)

- Where a firm receives an order and sends an order to a third party without complying with conditions for transmission

- Where a firm acts on a discretionary basis and places an order with a third party and does not meet the conditions for transmission

Excludes:

investment advice and firm merely introducing two parties to each other

Transmission of an order

Substantially unchanged from DP

Clarification that transmission applies to:
- firm receiving order from clients and sending to third party
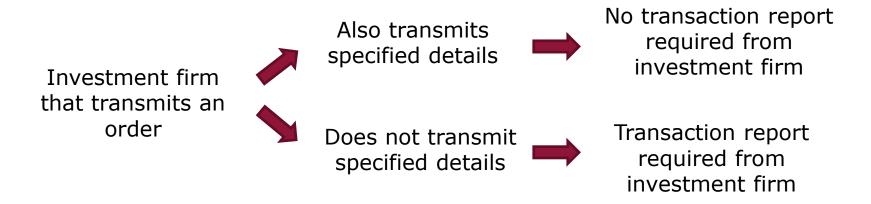- Firm acting on a discretionary basis and placing order with third party

(see definition of transmitting firm in RTS)

Clarification in CP text that a potential receiving firm does not have to enter into a transmission agreement

Clarification on validation required by receiving firm: restricted to obvious errors and omissions

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Transmission of an order

Investment firm that transmits an order

→ Also transmits specified details → No transaction report required from investment firm

→ Does not transmit specified details → Transaction report required from investment firm

Order deemed to have been transmitted for the purposes of transaction reporting when:
- Complete and accurate details of all relevant information are transmitted
- Written agreement between order transmitter and order receiver
- Details passed in accordance with the agreement which will include information on the time by which information must be received

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Simplified approach – material change

Change from current approach proposed

Instead of determining who is buying/selling from a combination of trading capacity, reporting firm, CP1 and CP2 fields and B/S indicator, the buyer and seller will be reported directly

Trading capacity proposed to remain but will be independent of the determination of who is buying and who is selling

More intuitive approach that should result in fewer errors

Example of simplified approach

Firm X trading on behalf of client John Smith purchases shares on a venue

Currently reported as:

B/S	Reporting firm	CP	Client	Trading capacity
B	Firm X	venue/CCP	John Smith	Agency

Proposed reporting:

Reporting firm	Buyer	Seller	Trading capacity
Firm X	John Smith	venue/CCP	Agent

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Trading capacity – additional capacity proposed

Respondents to the DP advised that "acting on behalf" can be interpreted in different ways and requested clarification.

Three flags proposed:

- Matched principal - dealing on own account as a facilitator by interposing between the buyer and seller where not exposed to market risk and executed at same price and time
- Principal – all other instances of dealing on own account
- Agent – not dealing on own account

Full definitions are in definitions to RTS for Article 26

Client identification

Natural persons

Concept along the same lines as DP but simplified and no longer any option for a firm level number

> **Unique national number following specified hierarchy for that nationality set out in Annex 2 to Article 26 RTS**

A typical hierarchy would be national identifier, passport number, concatenated number.

The highest priority identifier must be used

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Client identification cont'd

Concatenated code:

"BIRTH DATE (in form YYYYMMDD)+first 5 characters of FIRST NAME+first 5 characters of SURNAME

Additional information to complement the client identifier for natural persons unchanged from DP except that detailed address is no longer proposed to be included.

Full names, DOB, zip code and country of residence remain

Client identification

Legal persons

> Simplified from DP – only Legal Entity Identifier (LEI) will be used

Clarification that will apply to legal person rather than being restricted to legal entities

Firms need to collect and verify LEI provided by their client **prior to** the provision of the relevant investment service that would result in a transaction reporting obligation

Client information – beneficiary and decision maker

Unchanged from DP: information on the beneficiary and decision maker required

Clarifications:

- the concept of beneficiary applies to the person that acquires or disposes of the legal title to the instrument

- In the absence of a formal arrangement such as Power of Attorney or discretionary mandate a firm can assume the beneficiary is the decision maker

- Firm is not expected to look behind the legal identity in instances such as trusts

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Trader ID – persons responsible for the investment decision and the execution

Proposal simplified :

Investment decision
- Where decision made by **person** rather than algo: the trader that made the decision to acquire, dispose of or modify the financial instrument

- Where decision made by a formal committee: a separate trader ID for each committee, starting with pre-fix COM

- For informal or ad hoc committees: the trader taking primary responsibility.

Trader ID

Execution

Trader who initiated the execution, e.g.

- submits to the order management system
- instructs another firm

Where there is a chain of traders proposed to be the last trader in the chain.

Designation for trader

= client designation for natural persons

(unchanged from DP)

Additional information: none - names of trader no longer required

Algo ID – algorithms responsible for the investment decision and the execution

Substantially unchanged from DP - confirmed that firms have responsibility for and discretion over how to identify the algorithms.

- Can base on a unique set of code or a unique trading strategy
- Have discretion as to when to classify a variation to an algorithm as a new algorithm and how to identify the relevant algorithm or chain of algorithms where there are several

Conditions for algo ID:
- Firms must maintain adequate records of their algorithms and changes to them
- Algorithm identifiers must be:
  o Unique
  o Consistent
  o Persistent

Pre-trade waiver

Unchanged from DP

Equity
- Reference price waiver
- Negotiated transactions (volume weighted spread or market makers quotes, illiquid equity, conditioned)
- Large in scale

Non-equity
- Large in scale
- Indications of interest in request-for-quote and voice trading systems above a size
- Transactions executed under the waiver for instruments for which there is not a liquid market

Short Sales

- ESMA's proposal has been simplified, aided by the simplified approach

- Only applicable where the seller is the firm or its client

- One field to designate whether the seller is conducting a short sale and whether the short sale was conducted under an exemption:

> Short sale with no exemption: Y
>
> Short sale with exemption: E
>
> No short sale: N

Short Sales

Outcome of options consulted on in DP:

- <u>Flagging short sales on behalf of clients</u>
  - ➤ short sale information determined from client on a best efforts basis
  - ➤ Trading capacity is no longer relevant to designation of a short sale under the simplified approach

- <u>Aggregation</u>
- ➤ Where a firm aggregates orders from multiple clients only mark the allocation to the individual client if the transaction constitutes a short sale

Relevant financial instruments to be reported

Proposal for indices and baskets simplified:
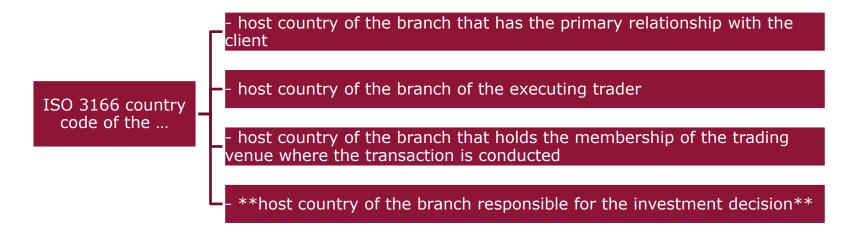
Indices/Baskets

reportable where at least one of the instruments in the index/basket is a financial instrument traded on a trading venue

The application of transaction reporting obligations to branches

Proceeding with proposal in DP

- All transactions are to be reported to the home competent authority
- Information to be incorporated in the transaction reports for routing to other CAs:

ISO 3166 country code of the …

- host country of the branch that has the primary relationship with the client

- host country of the branch of the executing trader

- host country of the branch that holds the membership of the trading venue where the transaction is conducted

- **host country of the branch responsible for the investment decision**

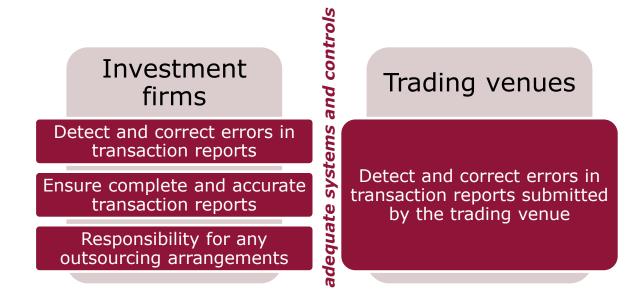(Branch fields are 7,22,52,70 and 73 in Table of fields)

Branch further details

- The trader will be the trader of the branch where the branch has supervisory responsibility for the trader

- For decisions made by committee the committee will be the committee of the branch if the branch has supervisory responsibility for the trader that has primary responsibility for the decision of the committee

- Branch fields still need to be populated where the firm rather than the branch undertook the activity

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Data standards and formats/Methods and arrangements for the information to be reported – substantially unchanged

- Electronic submission Format still to be determined
- Mechanisms for identifying and correcting errors in transaction reports ---> back reporting for a period no longer than 5 years

Investment firms

Detect and correct errors in transaction reports

Ensure complete and accurate transaction reports

Responsibility for any outsourcing arrangements

adequate systems and controls

Trading venues

Detect and correct errors in transaction reports submitted by the trading venue

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Methods and Arrangements

Requirement remains for firms to cancel transactions in non reportable instruments and transactions that have been reported that are not reportable.

Two principles added on consistency of reports

- Transaction reports submitted when viewed cumulatively must accurately reflect changes of position of the firm and/or its clients at the time the changes took place

- The related fields in an individual transaction report must be consistent, such that they accurately reflect the details of the transaction

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Transaction reports – Table of fields
Requirement to populate all applicable reference data fields

The DP was silent on whether instrument data always needed to be populated where the reference data would be provided to competent authorities under Article 27

The CP proposes that instrument reference data always needs to be populated since:

- for instruments admitted to trading/traded on non EEA venues information will not be provided to the competent authorities
- there may be occasions where there is an inadvertent delay in the reference date being provided to CAs.

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Transaction reports – Table of fields

Number of fields reduced from 92 in the DP to 81 in the CP

Removed
Repo flag (as no longer reportable)
Early termination date (not required for proposed method of reporting changes in notional)
B/S indicator*
Compressions (as no longer reportable)
Report matching number – no longer required
SSR exemption flag (as combined with short sell indicator)
Detailed address – no longer required
Trader id names – no longer required

Replaced
CP1 and CP2 replaced by Buyer and Seller fields*
Decision maker for the counterparty/client replaced by decision maker for the Buyer/Seller*
Branch that received order from client/Country of branch for Buyer and Seller*
Order transmitter replaced by Buyer and Seller transmitting the order code type and code*

New
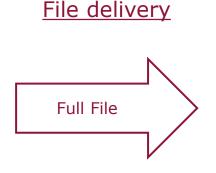Country of branch for trader (investment decision)
Modification of the contract (to flag up increases/decreases in notional)

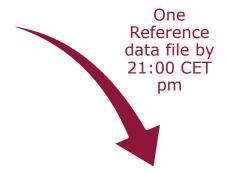* Result of simplified approach proposed

Obligation to supply financial instrument reference data

➢ Obligation falls on trading venues (article 27 MiFIR and article 4 MAR) and systematic internalisers (article 27 MiFIR)

Outcome from DP consultation

File delivery

Full File

Submission timelines

One Reference data file by 21:00 CET pm

Obligation to supply financial instrument reference data

40 Fields now proposed for instrument reference data

- Number of reference data fields have gone up from 34 in the DP.
- New fields to accommodate non-financial derivatives;

  Asset Class, Base product, Sub-product, Further subproduct Type, Transaction type, Settlement type, Final price type

- Proposed additional field for Bonds and Swaps;

  Bond type and Currency code 2 respectively

- Fields removed or renamed based on DP feedback;

  LEI of the Guarantor of the issuer, Guarantor's group, Issuer's group, Issuer country, Issuer name, Ultimate issuer country code, Ultimate issuer name, Reimbursement price

Obligation to supply financial instrument reference data

Establishing the relevant competent authority (RCA)

Confirmation that current approach under MiFID is to be retained:

- *Equity* – country of the trading venue where the instrument was first admitted to trading or of the trading venue with the highest turnover for that instrument

- *Debt* – country of the ultimate issuer

Obligation to supply financial instrument reference data

New/Further detail

Debt instruments with non-EEA issuer

Country of the issuer of the debt instrument itself if this is EEA, if not Home CA of the trading venue where the instrument was first admitted to trading or was first traded

Derivatives

(1) where ultimate underlying is equity, equity-like instrument or debt instrument admitted to trading/traded on trading venue – RCA is the same as for the ultimate underlying

(2) where underlying is a basket containing at least one equity/debt instrument admitted/traded on trading venue:

RCA is the CA of the trading venue where the derivative is traded

(but routed to all CAs that are RCAs of a component of the basket)

Obligation to supply financial instrument reference data

Derivative not coming under (1) nor (2) where immediate underlying of the derivative is a derivative:

- If immediate underlying is admitted/traded then RCA for the immediate underlying
- If immediate underlying not admitted/traded home CA for the trading venue where derivative is traded

Everything else (derivatives and other instruments): home CA of trading venue where first admitted/traded

Further work still required: Index based derivatives

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Obligation to maintain records of orders

Trading venues operators have to maintain records of order data for at least 5 years and have to keep those records at the disposal of the home CA for the trading venue upon request.

In the DP, ESMA provided 3 options as to the proposed approach for maintaining order data. Following the responses, ESMA proposes the Option 3(i) approach.

OPTION 3(i)

ESMA determines the list of data elements to be maintained.

ESMA determines the format in which some of the specified data elements are to be maintained.

Specified data elements converted into the prescribed format only upon request by the CA.

Obligation to maintain records of orders

Relevant data

Relevant parties, trading capacity and liquidity provision flag

Identification of the member/participant who transmits an order	• Venues can maintain their own internal identifiers but must be converted to LEI when the information is requested by the competent authority
Identification of other relevant parties	• Trader ID (same as in transaction reporting) • Algorithm ID (same as in transaction reporting) • Client ID (same as in transaction reporting) •Where orders are aggregated then the reference "AGGREGATED_X" will be used with X is the number of clients. • Technical intermediary ID changed to non-executing broker where member firms route orders on behalf of other member firms, using the latter's ID as opposed to their own
Agency/Principal capacity	
Liquidity provision activity	• Flagging orders placed by market makers and other liquidity providers

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Obligation to maintain records of orders

Relevant data (cont.)

Date and time, validity period/trade restrictions, priority timestamp/size and sequence number of the events

Date and time	• Date and time maintained in UTC • Accuracy of at least a millisecond unless gateway-to-gateway latency measured in less then increased accuracy required in line with Article 50 (clock synchronisation) • Voice trading systems accuracy of one second
Validity Period/Trade restrictions	• Relevant validity period of each order
Priority Timestamp	• The DP proposal has been changed in line with current market practice where the timestamp stored for order books operating on time priority or the size stored for order books using size priority
Sequence number	• Positive integer, unique, consistent, persistent, robust for trading date and in ascending order

Obligation to maintain records of orders

Relevant data (cont.)

Identification of the order, details of new order, order modification/cancellation and partial/full execution of the order

Identification of the order and identification of the order book	•Separate elements of the segment MIC, alphanumeric code established by the venue for each order book, financial instrument identifier, date of receipt of order and unique alphanumerical code assigned to the individual order •Strategy markets will need to flag implied orders as such with a linked order ID to identify all parts of a specific strategy order. •Routed orders will need to use an order status of routed when order has been routed to other venues.
Details of new order, order modification/cancellation and partial/full execution of the order	• Free format fields where trading venues must maintain all events that occur during the lifetime of the order.

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Obligation to maintain records of orders

Relevant data (cont.)

Type of order, prices and specific order instructions. Reference to the transaction(s) following the order in case of execution. Elements relating to the functioning of the order book.

Type of order	• Orders must be categorised into two generic order types of Limit or Stop • Venues must also provide the specific order type in free format as per the venues permitted order types
Prices	• Limit price • Additional limit price • Stop price • Pegged limit price
Specific order instructions	• Any characteristics of the order must be maintained. Most fields are free format
Link between transaction and order	• Transaction identification code generated by the trading venue (unique per transaction, consistent and persistent)
Other elements	• Trading phases • Indicative prices and volumes during auction call periods

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Obligation to maintain records of orders
- Firms engaging in HFT techniques -
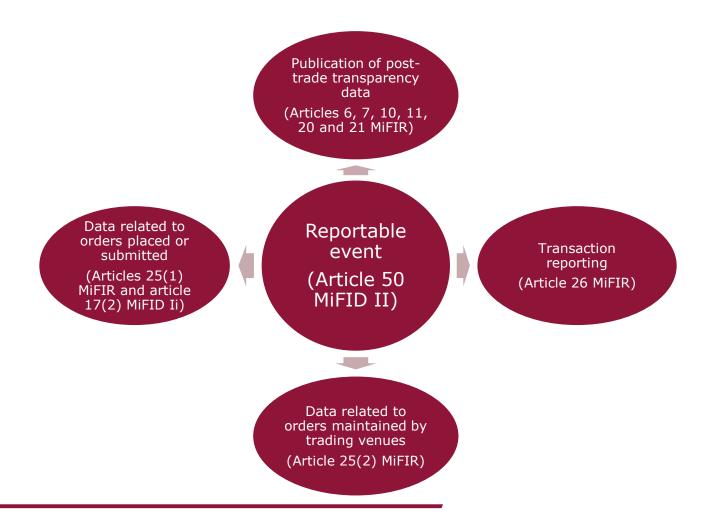
Content and format of records of placed orders

- Timestamps of microsecond granularity
- Table of fields setting out the required information
- Storage of each algorithm parameter and market data messages no longer required

Length of time for maintaining the above records

- Length of time of five years

Synchronisation of business clocks

Publication of post-trade transparency data
(Articles 6, 7, 10, 11, 20 and 21 MiFIR)

Data related to orders placed or submitted
(Articles 25(1) MiFIR and article 17(2) MiFID Ii)

Reportable event
(Article 50 MiFID II)

Transaction reporting
(Article 26 MiFIR)

Data related to orders maintained by trading venues
(Article 25(2) MiFIR)

Synchronisation of business clocks

Elements to be considered when specifying the level of accuracy

Reference time

- Reference to UTC time maintained by a timing centre e.g. NPL

Level of accuracy

- No more than one millisecond divergence from reference time for electronic systems
- Where trading venue has gateway to gateway latency of less than one millisecond they will be required to increase accuracy to that time e.g. microsecond latency requires no more than one microsecond divergence
- Voice trading systems have one second divergence
- Members obliged to have the same level of accuracy as the trading venues in the systems that they use to connect to the specific venue.

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Annex – Market Data Reporting Questions

Transaction reporting

Q214 - Do you anticipate any difficulties with the proposed definition for a transaction and execution?

Q215– In your view, is there any other outcome or activity that should be excluded from the definition of a transaction or execution. Please justify.

Q216 (Transmission) - Do you foresee any difficulties with the suggested approach? Please justify.

Q217 – Do you agree with ESMA's proposed approach to simplify transaction reporting? Please provide details of your reasons.

Q218 – We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

Q219 – Do you agree with the proposed approach to flag trading capacities?

Q220 – Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details.

Q221 - Do you agree with ESMA's approach for deciding whether financial instruments based on baskets or indices are reportable?

Q222 - Do you agree with the proposed standards for identifying these instruments in the transaction reports?

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Annex – Market Data Reporting Questions

Q223 - Do you foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity? If so, do you have any alternative proposals?

Q224 - Do you anticipate any significant difficulties related to the implementation of LEI validation?

Q225 (Methods and arrangements) – Do you foresee any difficulties with the proposed requirements? Please elaborate.

Annex – Market Data Reporting Questions

Instrument reference data

Q235- Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.

Q236 – Do you agree with ESMA's proposal to submit a single instrument reference data full file once per day? Please explain.

Q237 – Do you agree that, where a specified list as defined in Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data is submitted when the first quote/order is placed or the first trade occurs on that venue? Please explain.

Q238 - Do you agree with ESMA's proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of the new financial instruments.

Annex – Market Data Reporting Questions

Maintaining records of orders

Q226 – Are there any cases other than the AGGREGATED scenario where the client ID information could not be submitted to the trading venue operator at the time of order submission? If yes, please elaborate.

Q227 – Do you agree with the proposed approach to flag liquidity provision activity?

Q228 – Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

Q229 – is the approach taken, particularly in relation to maintaining prices of implied orders, in line with industry practice? Please describe any differences?

Q230 – Do you agree on the proposed content and format for records of orders to be maintained proposed in this Consultation Paper? Please elaborate.

Q231 – In your view, are there additional key pieces of information that an investment firm that engages in a high-frequency algorithmic trading technique has to maintain to comply with its record-keeping obligations under Article 17 of MiFID II? Please elaborate.

Q232 – Do you agree with the proposed record-keeping period of five years.

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Annex – Market Data Reporting Questions

Synchronisation of business clocks

Q233 – Do you agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation? Please elaborate.

Q234 - Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.