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ESMA DISCUSSION PAPER
MiFID II/MiFIR

Summary of ESMA's
Market Data Reporting Proposals

June 2014

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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

TRANSACTION ➡ Any change (not related to corporate actions or valuations) 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*

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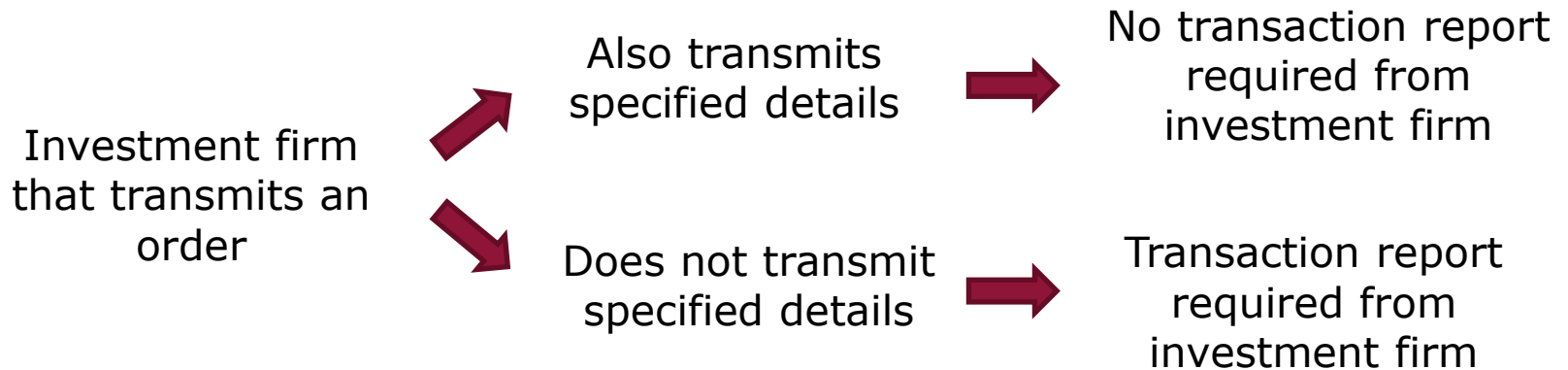# What constitutes a transaction and execution of a transaction

<u>Execution</u> includes:

- purchases or sales of reportable instruments
- assignments, novations, terminations, compressions and entering into a derivative contract in a reportable financial instrument
- exercises of options, warrants or convertible bonds
- performing any of the above actions or instructing a 3rd party to perform those actions when acting under a discretionary mandate

whether or not:

- *the action was performed by the firm or through a 3rd party*
- *the action took place on a trading venue or*
- *the firm acted as principal or as agent*

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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:
- All relevant information is transmitted
- Written agreement between order transmitter and order receiver
- Details passed in accordance with the agreement
- Robust systems and controls of the transmitting firm to ensure transmitted information is complete and accurate

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Client identification

Natural persons

> Unique national number based on the client's nationality

> Unique national number based on the client's residency within EEA

> Passport number

> Firm level unique client identifier

Proposal for additional information to complement the client identifier for natural persons

Client identification

Legal persons

Legal Entity Identifier (LEI)

Business Identifier Code (BIC) where legal person not eligible for LEI

National code where legal person not eligible for a LEI or BIC

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

	Investment decision	Execution
Agency (execution only)	Not applicable	• Trader who worked the order • Trader who submits the order to the order management system • Where algo executes, not applicable
Agency (discretion)	Investment manager	
Principal (transactions not triggered by clients)	• Individual trader/Committee • Where algo decides, not applicable	
Principal (transactions triggered by clients)	• Market side – same as for the principal scenario above where transactions are not triggered by clients • Client side – not applicable	

Trader designation = client designation for natural persons

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

	Investment decision	**Execution**
Manually worked order	Not applicable	Algo identification
Automatic trade	Algo identification	Algo identification

Investment firms have responsibility and discretion over how to identify the algorithms.

Algorithms identifiers:
- Unique
- Consistent
- Persistent

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Pre-trade waiver

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

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Short Sales

ESMA's proposal

- short selling flag – indicate whether a short sale took place
- exemption (Article 17 SSR) flag – indicate whether the short sale was undertaken under any exemption covered by Article 17 SSR

	Action	short selling flag	market making activity and primary market operations flag
Market making activity or primary market operations (article 17 SSR)	Buy	No	N/A
	Sell	No	N/A
	Short sale	Yes	Yes
Other activity	Buy	No	N/A
	Sell	No	N/A
	Short sale	Yes	N/A

Short Sales

Flagging short sales on behalf of clients

- ➢ Option 1: client voluntarily disclosures the short sale
- ➢ Option 2: short sale information based on client's holdings information recorded in the investment firm's system

Flagging short sales and trading capacity

- ▪ Option 1: require an investment firm acting in a principal capacity to only mark their transaction reports with a short sale flag where the firm has short sold
- ▪ Option 2: require an investment firm to use the short sale flag whenever the investment firm or the client has short sold
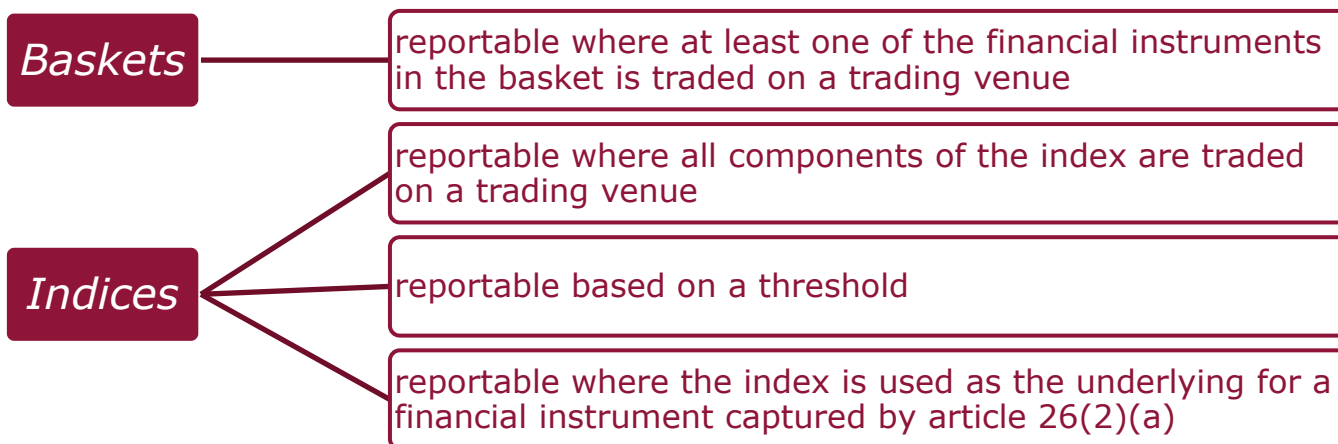
Where an investment firm acting as agent for several clients and where some clients are short selling, the investment firm should use the short sale flag on the relevant client side transaction reports.

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Relevant financial instruments to be reported

Categories of financial instruments

- Financial instruments admitted to trading or traded on a trading venue or subject to a request for admission to trading on a trading venue (this includes non-securities derivatives traded on trading venues)
- Financial instruments where the underlying is admitted to trading or traded on a trading venue
- Financial instruments where the underlying is an index or a basket

Indices and baskets

| **Baskets** | reportable where at least one of the financial instruments in the basket is traded on a trading venue |

Indices	reportable where all components of the index are traded on a trading venue
	reportable based on a threshold
	reportable where the index is used as the underlying for a financial instrument captured by article 26(2)(a)

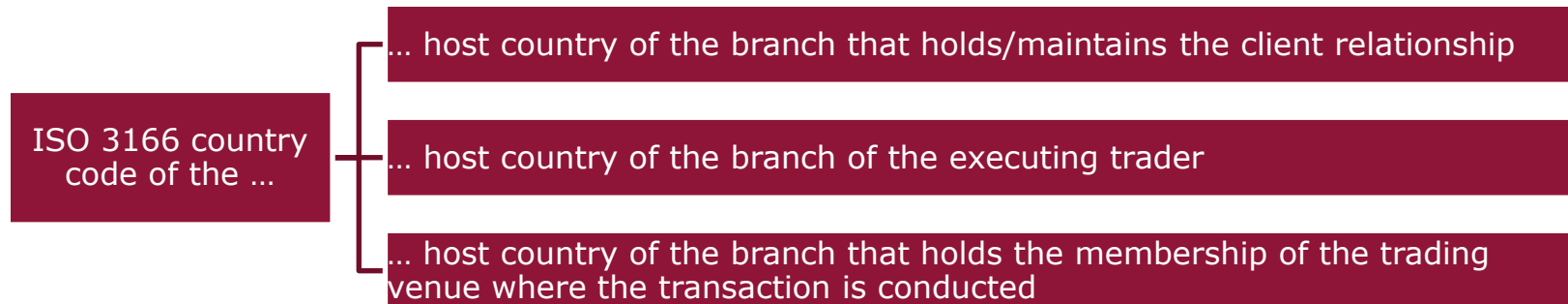**FCA**
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The application of transaction reporting obligations to branches
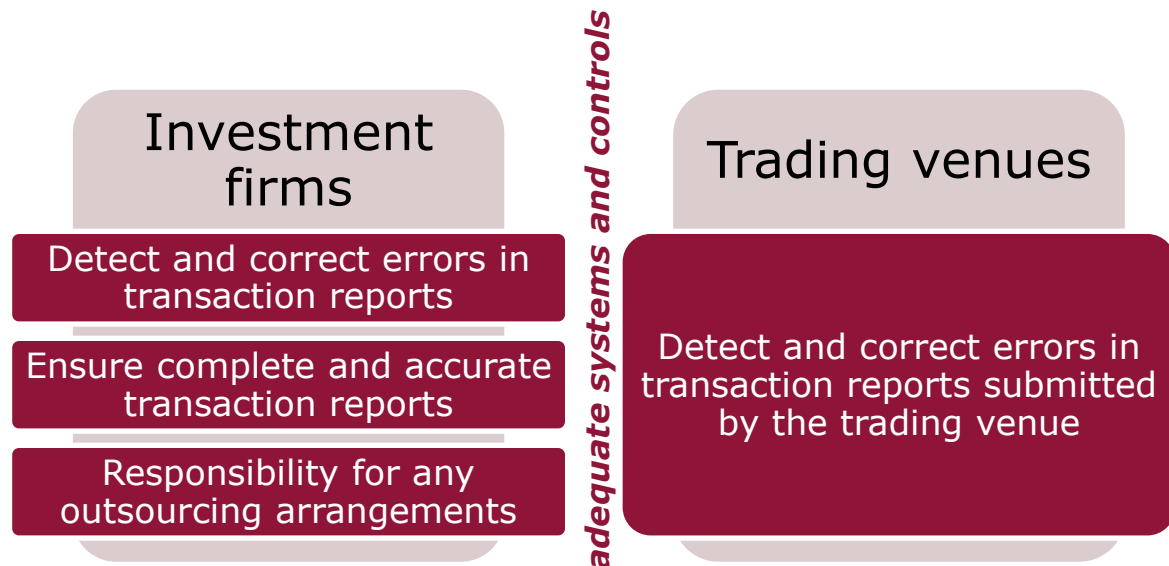
Proposal

The head office of the branch reports the transaction to the home competent authority

Additional information has to be incorporated in the transaction reports for routing to other competent authorities:

ISO 3166 country code of the …

… host country of the branch that holds/maintains the client relationship

… 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

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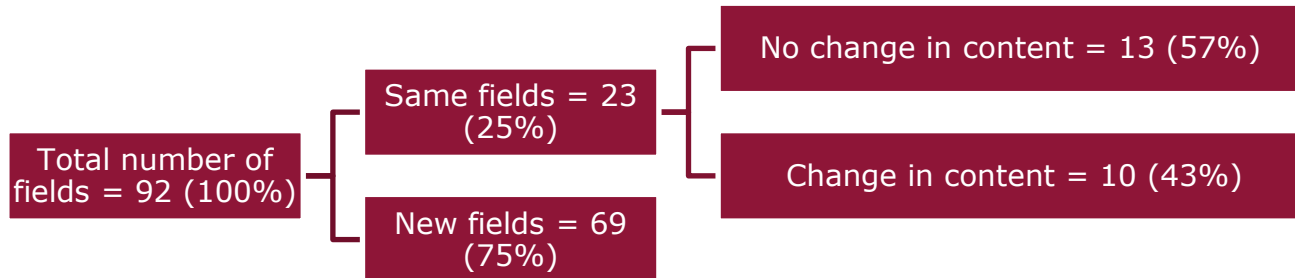
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Data standards and formats for the information to be reported

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

adequate systems and controls

Investment firms

Detect and correct errors in transaction reports

Ensure complete and accurate transaction reports

Responsibility for any outsourcing arrangements

Trading venues

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

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Transaction reports – Table of fields

		No change in content = 13 (57%)
	Same fields = 23 (25%)	Change in content = 10 (43%)
Total number of fields = 92 (100%)		
	New fields = 69 (75%)	

What's new?

- Submitting entity
- Branch reporting flags
- Quantity notation - nominal value or number of units
- Price notation – monetary value, percentage or yield
- Currency 1/currency 2
- Consideration
- LEI for legal entities eligible for an LEI

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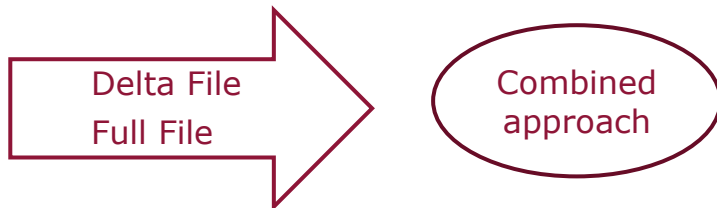FINANCIAL CONDUCT AUTHORITY

Transaction reports – Table of fields

- Unique national number for natural persons, where available
- Decision maker
- Further details for natural persons – name, surname, dob, …
- Instrument classification
- OTC derivatives specific fields – up-front payment, compressions, …
- Trader ID (investment decision and execution)
- Algo ID (investment decision and execution)
- Short selling related flags
- OTC post-trade flags
- Waiver flag
- Commodity derivative flag
- Result of exercise of options
- Repos
- Transmission of orders related fields
- Report matching number

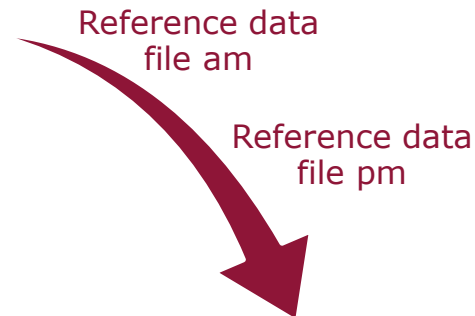# Obligation to supply financial instrument reference data

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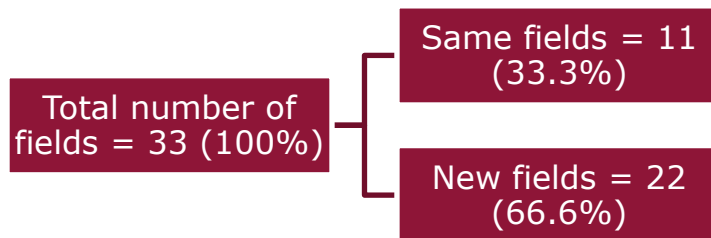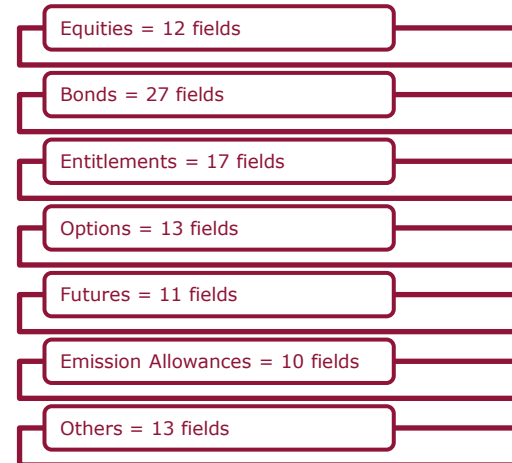
Proposals

<u>File delivery</u>

Delta File
Full File → Combined approach

<u>Submission timelines</u>

Reference data file am
Reference data file pm

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Obligation to supply financial instrument reference data

Fields of the instrument reference data

Out of 33 fields …

| Total number of fields = 33 (100%) | Same fields = 11 (33.3%) |
| | New fields = 22 (66.6%) |

Equities = 12 fields

Bonds = 27 fields

Entitlements = 17 fields

Options = 13 fields

Futures = 11 fields

Emission Allowances = 10 fields

Others = 13 fields
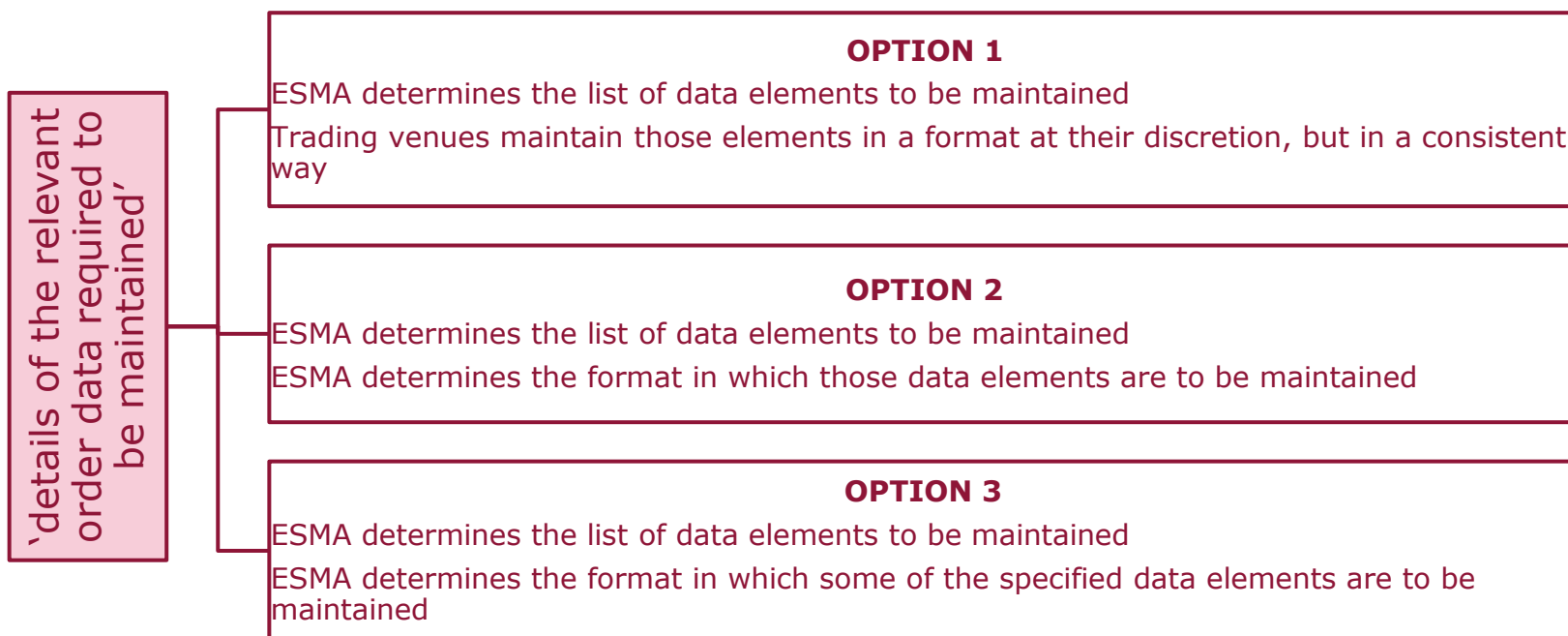
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Obligation to supply financial instrument reference data

Establishing the relevant competent authority (RCA)

- *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

- *Derivatives* – same as the RCA for the underlying instrument

- Further work: RCA rules for debt instruments with non-EEA issuer, non-securities derivatives, basket and index based derivatives

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

'details of the relevant order data required to be maintained'

OPTION 1

ESMA determines the list of data elements to be maintained

Trading venues maintain those elements in a format at their discretion, but in a consistent way

OPTION 2

ESMA determines the list of data elements to be maintained

ESMA determines the format in which those data elements are to be maintained

OPTION 3

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

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Obligation to maintain records of orders

Proposed ways of implementing **option 3**:

- specified data elements converted into the prescribed format only upon request by the CA
- specified data elements to be maintained in the prescribed format

Relevant data

Identification of the member/participant who transmits an order	• Any identifier has to be unique, consistent and persistent • LEI likely to be the most appropriate identifier
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) • Technical intermediary ID

Obligation to maintain records of orders

Relevant data (cont.)

Identification of the order	• Any order received by a trading venue has to be identified • The identifier has to be unique, consistent and persistent • <u>Proposal</u>: identifier = MIC trading venue + financial instrument identifier + date of receipt by trading venue + alphanumerical code
Date and time	• Granularity accuracy no less then microsecond • Date and time maintained in UTC
Sequence number	• To be reset at the end of each trading day

Obligation to maintain records of orders

Relevant data (cont.)

Characteristics of the order	• Type of order • Limit Price/Stop Price/Pegged Limit Price • Validity period • Priority of orders • Specific order instructions • Details of any new, modification, cancellation and partial/full execution orders
Agency/Principal capacity	
Liquidity provision activity	• Flagging orders placed by market makers and other liquidity providers
Link between transaction and order	• Transaction identification code generated by the trading venue (unique per transaction, consistent and persistent)
Other elements	• Related to the functioning of the order book

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Obligation to maintain records of orders
- Firms engaging in HFT techniques -

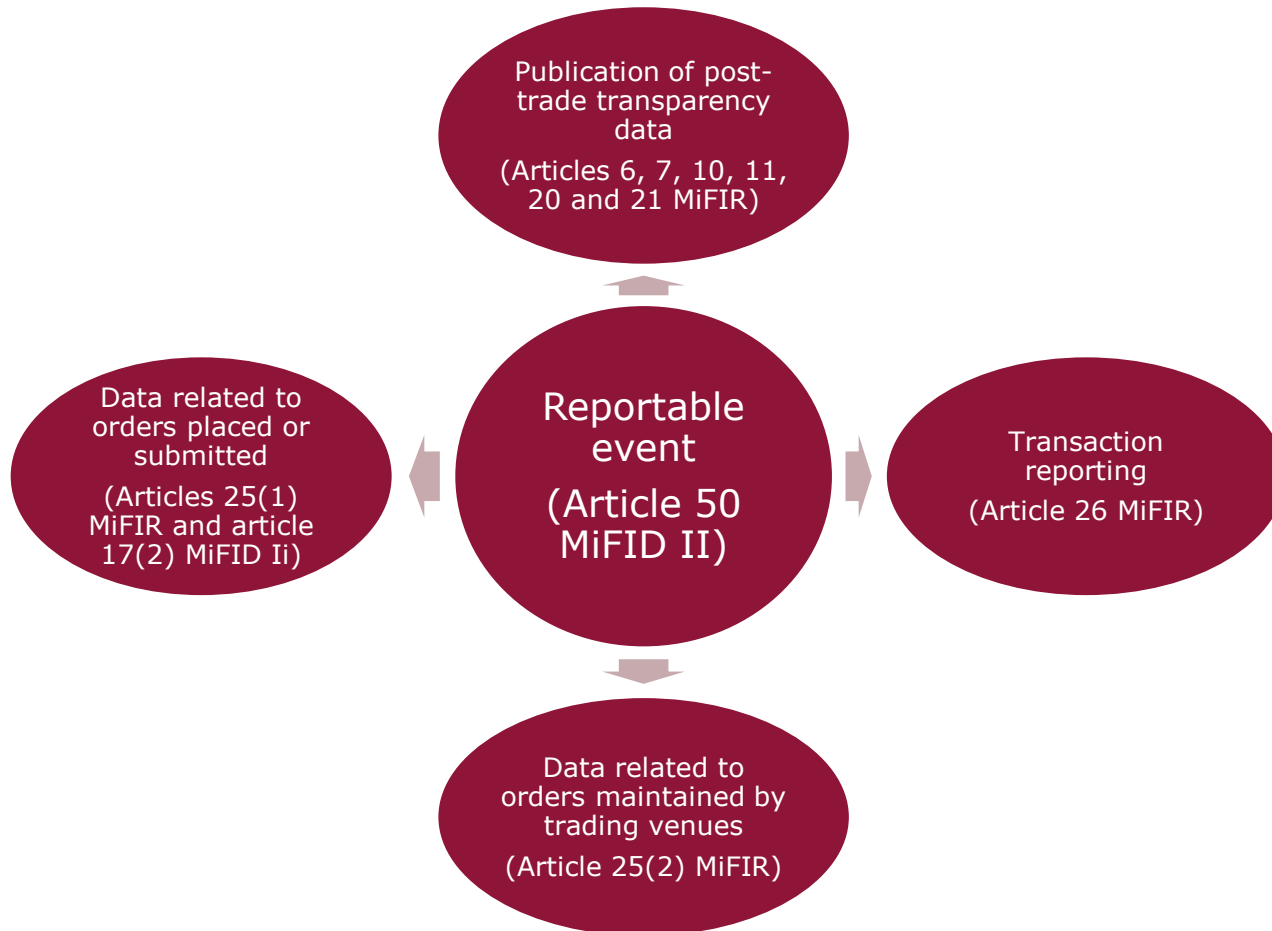## Content and format of records of placed orders

Additional information contemplated by article 17(2) MiFID:

- Each placed order's internal timestamp (with a format accommodating a granularity of a nanosecond)
- Each placed order's timestamp by the trading venue (with a format accommodating a granularity of a nanosecond)
- Each placed order's sequences
- Each placed order's unique internal identifier
- Each placed order's identifier provided by the trading venue

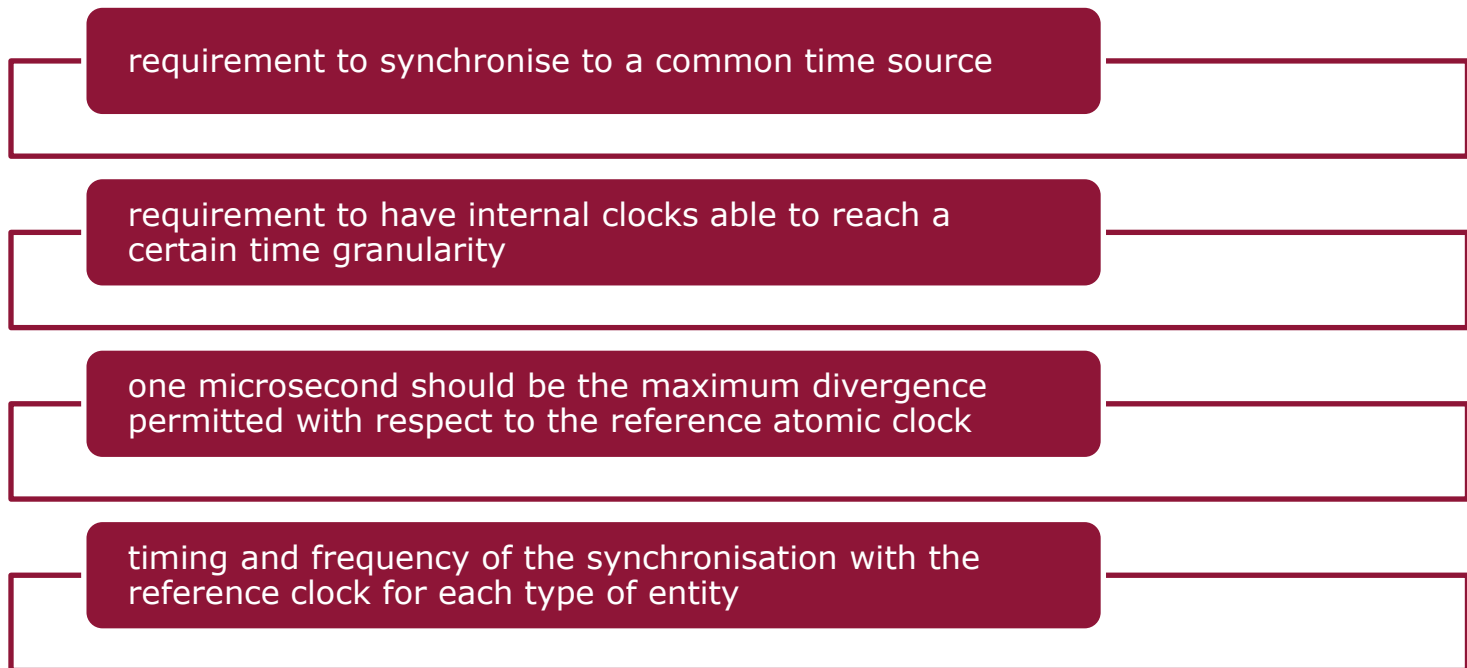## Length of time for maintaining the above records

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)

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Synchronisation of business clocks

Elements to be considered when specifying the level of accuracy

requirement to synchronise to a common time source

requirement to have internal clocks able to reach a certain time granularity

one microsecond should be the maximum divergence permitted with respect to the reference atomic clock

timing and frequency of the synchronisation with the reference clock for each type of entity

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Annex – Market Data Reporting Questions

Transaction reporting

Q546 - Do you agree with ESMA's proposal for what constitutes a 'transaction' and 'execution of a transaction' for the purposes of Article 26 of MiFIR? If not, please provide reasons.

Q547 - Do you anticipate any difficulties in identifying when your investment firm has executed a transaction in accordance with the above principles?

Q548 - Is there any other activity that should not be reportable under Article 26 of MiFIR?

Q549 - Do you foresee any difficulties with the suggested approach? Please elaborate.

Q550 – 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.

Q551 – Do you have any comments on the designation to identify the client and the client information and details that are to be included in transaction reports?

Q552 - What are your views on the general approach to determining the relevant trader to be identified?

Q553 - In particular, do you agree with ESMA's proposed approach to assigning a trader ID designation for committee decisions? If not, what do you think is the best way for NCAs to obtain accurate information about committee decisions?

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Annex – Market Data Reporting Questions

Q554 - Do you have any views on how to identify the relevant trader in the cases of Direct Market Access and Sponsored Access?

Q555 - Do you believe that the approach outlined above is appropriate for identifying the 'computer algorithm within the investment firm responsible for the investment decision and the execution of the transaction'? If not, what difficulties do you see with the approach and what do you believe should be an alternative approach?

Q556 – 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.

Q557 - Do you agree with ESMA's proposed approach to adopt a simple short sale flagging approach for transaction reports? If not, what other approaches do you believe ESMA should consider and why?

Q558 - Which option do you believe is most appropriate for flagging short sales? Alternatively, what other approaches do you think ESMA should consider and why?

Q559 - What are your views regarding the two options above?

Q560 - Do you agree with ESMA's proposed approach in relation to reporting aggregated transactions? If not, what other alternative approaches do you think ESMA should consider and why?

Q561 - Are there any other particular issues or trading scenarios that ESMA should consider in light of the short selling flag?

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Annex – Market Data Reporting Questions

Q562 - Do you agree with ESMA's proposed approach for reporting financial instruments over baskets? If not, what other approaches do you believe ESMA should consider and why?

Q563 - Which option is preferable for reporting financial instruments over indices? Would you have any difficulty in applying any of the three approaches, such as determining the weighting of the index or determining whether the index is the underlying in another financial instrument? Alternatively, are there any other approaches which you believe ESMA should consider?

Q564 - Do you think the current MiFID approach to branch reporting should be maintained?

Q565 - Do you anticipate any difficulties in implementing the branch reporting requirement proposed above?

Q566 - Is the proposed list of criteria sufficient, or should ESMA consider other/extra criteria?

Q567 – Which format, not limited to the ones above, do you think is most suitable for the purposes of transaction reporting under Article 26 of MiFIR? Please provide a detailed explanation including cost-benefit considerations.

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Annex – Market Data Reporting Questions

Instrument reference data

Q568 - Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?

Q569 - Do you anticipate any difficulties in providing, at least daily, a full file containing all the financial instruments?

Q570 - Do you anticipate any difficulties in providing a combination of delta files and full files?

Q571 - Do you anticipate any difficulties in providing details of financial instruments twice per day?

Q572 - What other aspects should ESMA consider when determining a suitable solution for the timeframes of the notifications? Please include in your response any fore-seen technical limitations.

Q573 - Do you agree with the proposed fields? Do trading venues and investment firms have access to the specified reference data elements in order to populate the proposed fields?

Q574 - Are you aware of any available industry classification standards you would consider appropriate?

Q575 - For both MiFID and MAR (OTC) derivatives based on indexes are in scope. Therefore it could be helpful to publish a list of relevant indexes. Do you foresee any difficulties in providing reference data for indexes listed on your trading venue? Furthermore, what reference data could you provide on indexes?

Q576 - Do you agree with ESMA's intention to maintain the current RCA determination rules?

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Annex – Market Data Reporting Questions

Q577 - What criteria would you consider appropriate to establish the RCA for instruments that are currently not covered by the RCA rule?

Maintaining records of orders

Q578 - In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.

Q579 - In your view, what are the data elements that cannot be harmonised? Please elaborate.

Q580 - For those elements that would have to be harmonised under Option 2 or under Option 3, do you think industry standards/protocols could be utilised? Please elaborate.

Q581 - Do you foresee any difficulties with the proposed approach for the use of LEI?

Q582 - Do you foresee any difficulties maintaining records of the Client IDs related with the orders submitted by their members/participants? If so, please elaborate.

Q583 - Are there any other solutions you would consider as appropriate to track clients' order flows through member firms/participants of trading venues and to link orders and transactions coming from the same member firm/participant?

Q584 - Do you believe that this approach allows the order to be uniquely identified If not, please elaborate.

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Annex – Market Data Reporting Questions

Q585 - Do you foresee any difficulties with the implementation of this approach? Please elaborate.

Q586/Q587 - Do you foresee any difficulties with the proposed approach? Please elaborate.

Q588 - Would the breakdown in the two categories of order types create major issues in terms of mapping of the orders by the Trading Venues and IT developments? Please elaborate.

Q589 - Do you foresee any problems with the proposed approach?

Q590 - Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.

Q591 - Do you agree that standardised default time stamps regarding the date and time at which the order shall automatically and ultimately be removed from the order book relevantly supplements the validity period flags?

Q592 - Do venues use a priority number to determine execution priority or a combination of priority time stamp and sequence number?

Q593 - Do you foresee any difficulties with the three options described above? Please elaborate.

Q594 - Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.

Q595 - Are there any other type of events that should be considered?

Annex – Market Data Reporting Questions

Q596 - Do you foresee any difficulties with the proposed approach? Please elaborate.

Q597 - Do you foresee any problems with the proposed approach? Do you consider any other alternative in order to inform about orders placed by market makers and other liquidity providers?

Q598 - Do you foresee any difficulties in generating a transaction ID code that links the order with the executed transaction that stems from that order in the information that has to be kept at the disposal of the CAs? Please elaborate.

Q599 - Do you foresee any difficulties with maintaining this information? Please elaborate.

Q600 - Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.

Q601 - Do you foresee any difficulties in complying with the proposed timeframe?

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Annex – Market Data Reporting Questions

Synchronisation of business clocks

Q602 - Would you prefer a synchronisation at a national or at a pan-European level? Please elaborate. If you would prefer synchronisation to a single source, please indicate which would be the reference clock for those purposes.

Q603 - Do you agree with the requirement to synchronise clocks to the microsecond level?

Q604 - Which would be the maximum divergence that should be permitted with respect to the reference clock? How often should any divergence be corrected?