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## AFME's Consultation Response

### ESMA Consultation Paper: Review of RTS 22 on transaction data reporting under Art. 26 and RTS 24 on order book data to be maintained under Art. 25 of MiFIR

[Link to Consultation Paper](#)

Date: 17 January 2025

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#### Executive Summary

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the ESMA's Consultation Paper (CP) on the Review of RTS 22 on transaction data reporting under Art. 26 and RTS 24 on order book data to be maintained under Art. 25 of MiFIR.

#### RTS 22 Review

As a general observation, one of the guiding principles of the new European Commission's work is the simplification of regulation and burden reduction for EU companies, including financial services regulation.

In this context, the review of RTS 22 should be taken as an opportunity for ESMA to streamline and simplify the existing complex transaction reporting regime and remove any duplicative or unnecessary fields of reporting, thereby improving data quality.

In our view, many of ESMA's proposals on the review of RTS 22 contravene simplification. The proposed fields and identifiers will increase the scope of transaction reporting. In some cases, they appear to exceed the legal mandate under Article 26 MiFIR. In addition, ESMA has not provided a clear justification of the usefulness of those new fields and how they can assist in detecting market abuse, which is the primary goal of a transaction reporting regime.

The CP also lacks any cost-benefit analysis and does not give regard to the implications of the proposed increase of the reporting fields to the growth and competitiveness of the EU financial markets.

AFME members are concerned about the challenges for investment firms who will have to adjust their reporting processes and technology to accommodate those changes. While ESMA has not conducted a cost benefit analysis and the level of costs will vary across firms, we expect costs to be considerably high, with no or little commensurate benefit.

To make the regime simpler, more standardised and efficient, **AFME proposes several recommendations that aim to bring pragmatism and address some of the existing issues and challenges in transaction reporting.**

We note that other jurisdictions are currently seeking to review, with a view to streamline, the transaction reporting process. AFME members would welcome if ESMA followed a similar approach. By way of an example, in their recent Discussion Paper 24/2, the UK Financial Conduct Authority (FCA) does not envisage the expansion of the TVTIC scope, but considers some options that aim to improve the usefulness of the TVTIC: the first option is to require the TVTIC to be disseminated by UK trading venues as a clearly labelled single

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piece of information; the second option is that the FCA publishes information on the expected format and structure of the TVTIC for each UK trading venue.

AFME members state three overarching concerns with the proposed draft RTS 22:

- **The balance between the value of more data for regulators and this not being overly burdensome for firms appears to be out of sync:** we find it hard to gauge why ESMA has requested some of this additional data, particularly non-EEA TVTIC, off-venue TIC, entity subject to reporting obligation, chain identifier, and client categorisation field. We also query whether some of those additional fields would be relevant for market abuse surveillance. In our view, there is inconsistency between ESMA's legal mandate in level 1 and some of the proposals in the CP. For example, our interpretation is that ESMA's proposal on the non-EEA TVTIC field is not covered in Article 26(3) of MiFIR. The latter only requires the generation and dissemination of transaction identification code by 'trading venues', which is a MiFID defined term as per Article 4(1)(24), and thus, excludes any organised trading systems outside the Union that are not authorised and operate under MiFID. Additionally, Article 26(3) of MiFIR does not include any reference to a TIC for off-venue transactions to be generated by "market facing firms" in a transaction.
- **There is uncertainty about the practical implementation of various proposals:** we are concerned that some of the proposals, particularly the use of the non-EEA TVTIC and identifiers for linking chains, the generation of new codes, and the expansion of EMIR definitions and concepts into RTS 22 will add complexity to the reporting process. For instance, clarity is required around the back reporting approach under the new MiFIR regime for trades executed prior to the new regime being enforced. Additionally, ESMA has no supervisory or enforcement powers over third country trading venues. Therefore, there is no practical way to ensure that non-EEA TVs will provide transaction identification codes in a standardised way and will not challenge ESMA's authority to require the generation and dissemination of that identifier from them.
- **Ability to meet compliance reporting requirements when investment firms are requested to rely on non-ESMA regulated firms for reporting:** we are concerned that investment firms are exposed to the risk of misreporting or underreporting as transaction reports might suffer inaccuracies or omissions if, for example, the non-EEA TVTIC is not generated as per the applicable syntax and format.

Finally, we note the inconsistency about the entry into force of when the new RTS will apply: paragraph 86 in section [4.1.4](#) of the CP and the proposed wording for [Article 17](#) of the amended version of RTS 22 in section 9.3.1 of the CP indicate 12 months and 18 months, respectively. AFME members support 18 months after level 3 guidelines are published as the appropriate implementation timeline, given the volume of proposed changes.

#### RTS 24 Review

We are concerned with the proposed adoption of JSON format and do not anticipate any benefit from such adoption. In particular, a potential move to JSON format will expose investment firms to high compliance costs given the level of effort and resources that this move will require. We also query the usefulness of prescribing data format technology in law.

Although we acknowledge ESMA's intention to apply a consistent data format across RTS 22 and RTS 24, we believe that the absence of any measurable benefit does not support the adoption of JSON format. We provide

further reasoning for our concerns in our responses to the relevant questions under both RTS 22 and RTS 24 part of the CP.

## Section on the amendment of RTS 22

No	Question
1	Are any other adjustments needed to enable comprehensive and accurate reporting of transactions which will enter into scope of the revised Article 26(2)?
<b>Response</b>	
Regarding equity and bond cash instruments, AFME members think that no other adjustments are needed given that there are no changes to the scope for those types of instruments in the revised Article 26(2) MiFIR.	

No	Question
2	Does the existing divergence in the implementation of the MRMTL concept under Art. 4 and Art. 26 of MiFIR result in any practical challenges for the market participants? If so, please explain the nature of these challenges and provide examples.
<b>Response</b>	
No practical challenges are expected. However, AFME notes that, when the primary market experiences an outage, there will be no liquidity for affected instruments on the MTFs (lit and dark) where those instruments can be traded. In the event of an outage, the primary market will be the relevant market for liquidity.	

No	Question
3	To what extent the rules applied for the determination of the RCA and RCA_MIC are relevant for your operations? Do you agree with the potential alignment of the RCA rules with the RCA_MIC rules for equities? Please provide details in your answer.
<b>Response</b>	
Please see response to Question 2 above.	

No	Question
4	Do you agree with the proposed RCA determination rule for emission allowances and CIUs other than ETFs? Please provide details in your answer.
<b>Response</b>	
AFME is not responding to this question.	

No	Question
5	Do you agree with the proposed RCA determination rule for equities for which no sufficient data is available to calculate the turnover? Please provide details in your answer.
<b>Response</b>	
Yes, AFME members agree with that proposal. The proposal to default to the RM or a suitable MTF in the absence of a listing where there is not sufficient data to calculate the MRMTL is simple and understandable.	

No	Question
6	Do you agree with the proposed RCA determination rules for the derivative contracts falling under Article 8a(2) of MiFIR? Please provide details in your answer.

Response	
AFME is not responding to this question as our consultation response focuses on equity and bond cash instruments.	

No	Question
7	Do you agree with the proposed amendments to RCA determination rules for index derivatives and depositary receipts?

Response	
AFME is not responding to this question as our consultation response focuses on equity and bond cash instruments.	

No	Question
8	Do you have any further comment or suggestion in relation to the inclusion of a new field to capture the effective date in transaction reports?

Response	
<p><b>The inclusion of the effective date field should not apply to bonds and equities.</b> See response to Question 9 for further detail.</p> <p>We note that there is no definition in the proposed RTS for the term “derivative contract”, while there is such definition in EMIR. AFME members would expect to see a clear definition for “derivative contract” to avoid any inconsistency or doubt with which asset class instruments this would apply to.</p>	

No	Question
9	Do you agree that the concept of effective date applies also to transactions in shares? If yes, should the intended settlement date be considered as the effective date? Please provide details in your answer.

Response	
<p><b>AFME members believe the concept of effective date should not apply to transactions in shares, and also should not apply to transactions in bonds.</b></p> <p>We understand the effective date has been introduced due to the removal of the “effective date” field in ISIN for OTC derivatives. However, there is no clear rationale for the inclusion of this field for cash products. This inclusion will add complexity without delivering any meaningful benefit.</p> <p>MiFID transaction reports aim to capture events at the point of execution/trading workflows, not settlement workflows.</p> <p>As per Paragraph 52, the purpose of the effective date field is to identify the “date when the obligation under the transaction in financial instruments becomes effective”. For cash securities, the obligation becomes effective immediately upon execution. Settlement of the transaction can be considered as fulfilment of the obligation. The settlement process has historically not been considered as relevant to the scope of transaction reporting. There is lack of clarity around ESMA’s proposal on whether the effective date ought to be the contractual settlement date or the actual settlement date. This proposal now blurs the lines and is problematic for cash securities.</p> <p>Furthermore, it creates unnecessary duplication with reporting under EMIR and the fact that this field is used in EMIR does not give weight to expand scope to cover RTS 22. Transaction reporting has its unique technology set-up and one size fits all solutions cannot always fit into the existing architectural structure.</p>	

In the event the effective date is applied to bonds and equities, ESMA should clarify how this field should be populated for these different asset classes.

No	Question
10	Do you agree with the inclusion of this new field according to the analysed scenario? Please specify if you see additional cases to take into consideration in the definition of this new field.
<b>Response</b>	
<p>We believe further clarity is required on the intention behind who the analysed scenario impacts and includes. It is not clear whether the proposed field “entity subject to the reporting obligation” extends the scope to include scenarios where a trading venue executes for any member, participant, or user not subject to MiFID reporting.</p> <p><b>AFME members strongly oppose this new field, if this expands the scope to include investment firms executing on behalf of non-EU investment firms.</b> We understand the expansion in scope is not ESMA’s intention as this would significantly change the types of activity reported under MiFID. If the intention behind this new field is not to expand the scope to include this activity, then AFME members do not oppose the inclusion of this field.</p>	

No	Question
11	Do you agree with the assessment that the TVTIC reporting requirement applies to all type of on venue executed transactions (e.g., negotiated trades)?
<b>Response</b>	
<p><b>AFME disagrees with ESMA’s proposed approach to expand the scope of TVTIC for EEA-venues.</b> Experience from the application of TVTIC in MiFID transaction reports demonstrates that there is currently inconsistency in the syntax and methodology used by EEA-TVs to create the code while trading venues (TV) disseminate the code at different timeframes or with considerable delays. Those data quality issues are recurring particularly among OTFs where bonds are traded.</p> <p>Thus, investment firms are exposed to the risk of misreporting or underreporting due to the lack of standardisation when TVs generate the code as well as due to the fact the TVTIC is not always provided by TVs on time.</p> <p>Furthermore, experience from the application of this code in the context of EMIR and SFTR has highlighted the challenges associated with the inconsistent generation and dissemination process of TVTIC as a result of dependency on other intermediaries/vendors.</p> <p>Therefore, a possible enlargement of the scope of TVTIC for EEA-TVs in the context of transaction reports under MiFID would simply magnify the effect of the existing data quality issues and increase the costs for investment firms that submit transaction reports.</p> <p>For that reason, AFME thinks that ESMA should take appropriate actions to address the above issues regarding the inconsistent generation and transmission process of the TVTIC identifier before expanding the code to additional categories of trades.</p> <p>In addition, in the event that ESMA were to proceed with the expanded scope of TVTIC, AFME would make the following recommendations:</p>	

- (i) **specifically for negotiated trades** (i.e. for transactions negotiated off-exchange and brought under the rules of a trading venue), **the TVTIC field should be optional** and both parties to a transaction should only be expected to report the market identifier code (MIC) of the trading venue. This pragmatic approach already applies not only in the EU but also for transaction reports submitted to the UK Financial Conduct Authority (FCA). Please see details in [FCA Market Watch 74](#)). In addition, ESMA should provide sufficient guidance well in advance before adopting the TVTIC for all negotiated trades to address any possible scenarios, e.g. when only one party to the negotiated trade is a member or participant of the trading venue.
- (ii) overall, **ESMA and NCAs should focus on promoting a standardised framework in the generation and dissemination of TVTIC** and provide appropriate guidance to investment firms that currently face challenges when reporting that identifier as they have to maintain distinct TVTIC formats across all EEA TVs.

In their recent [Discussion Paper 24/2](#), the FCA are also seeking to address the existing reporting issues concerning TVTIC. The FCA paper does not envisage the expansion of the TVTIC scope, but considers some options that aim to improve the usefulness of the TVTIC: the first option is to require the TVTIC to be disseminated by UK trading venues as a clearly labelled single piece of information; the second option is that the FCA publishes information on the expected format and structure of the TVTIC for each UK trading venue.

No	Question
12	Do you have views on how to improve the consistency of the reporting of TVTICs? Please provide your view on the proposal of making mandatory the reporting of such information in validation rules when the MIC code is provided.
<b>Response</b>	
AFME does not support a mandatory requirement of TVTIC when the MIC code is provided for all categories of trades and thinks that negotiated trades should be excluded. In this regard, we believe that reporting of TVTIC should occur only when the MIC code is that of a trading venue (namely RM, MTF and OTF as defined in Article 4(1) MiFID).	
Furthermore, AFME reiterates the need for standardisation in the generation and dissemination of TVTIC by EEA TVs to address the existing data quality issues. We would support the adoption of a more pragmatic approach to address the existing reporting issues similar to other jurisdictions. Please also see our response to Question 11 above for our concerns with ESMA's proposals.	

No	Question
13	Do you have views on how to improve the consistency of the TVTIC (non-EEA TV TIC) generation process for transactions executed in non- EAA venue? Please provide your view on the proposed syntax methodology based on the already reported fields or suggest alternatives.
<b>Response</b>	
AFME <b>strongly disagrees</b> with the proposal for a non-EEA TVTIC and believes that there will be <b>considerable practical challenges</b> that will add further complexity to the reporting process.	
We stress that <b>ESMA has no supervisory powers on third country trading venues</b> and therefore has no means to enforce any relevant action that might be required if a non-EEA venue does not accurately or timely generate the relevant TVTIC or deny complying with the requirement to generate such code.	



Consequently, transaction reports might suffer inaccuracies or omissions if the non-EEA TVTIC is not generated as per the applicable syntax and format, or if not generated at all, or generated with a delay by the relevant TV.

In addition, in our view, **ESMA's legal mandate in Article 26(9) of the revised MiFIR does not include any requirement for ESMA to regulate a syntax and methodology for a non-EEA TVTIC**. The legal text in Article 26 of MiFIR only requires the generation and dissemination of a transaction identification code by 'trading venues', which is a MiFID defined term as per Article 4(1)(24), and thus, excludes any organised trading systems outside the Union that are not authorised and do not operate under MiFID.

As this proposal appears to go beyond the Level 1 mandate, ESMA should refrain from proposing a TVTIC generated and disseminated by non-EAA venues as those are not included in the scope of Level 1 text.

If ESMA were to proceed with such a proposal, this could have serious repercussions to the growth and competitiveness of EU financial markets and market participants within the EU. Although ESMA has not completed a cost-benefit analysis on this matter, AFME believes that investment firms will be exposed to increased compliance and implementation costs as well as uncertainty which could have an impact on the quality of reporting.

No	Question
14	Do you agree with the proposal of identifying the non-EEA TV as the primary entity responsible for the creation of the non-EEA TV TIC code and for disseminating it?
<b>Response</b>	
As highlighted in our response to Question 13 above, ESMA has no supervisory or enforcement powers over third country trading venues. Thus, there is no practical way to ensure that non-EEA TVs will provide the TVTIC in a standardised way. Furthermore, any issues with the code generation process, e.g. inconsistent syntax and delayed creation, will inevitably affect the quality of reporting. In those situations, investment firms responsible for the submission of transaction reports would be exposed to the risk of having to step-up to cover any gaps in reporting. The investment firms would incur additional costs, allocate resources to generate a temporary code, and then at a later stage, correct the submitted report to replace the temporary code with the TVTIC received from the non-EEA TV.  There will also be substantial complexities to agree a common format for the TIC identifier generation across non-EEA venues.	

No	Question
15	Do you have any further comment or suggestion in relation to the definition of a new transaction identification code (TIC) for off venue transactions? Please provide your view for the proposed syntax methodology for creating the TIC based on the already reported fields, or suggest alternatives.
<b>Response</b>	
<b>AFME strongly opposes the proposal for a new transaction identification code (TIC) for off venue transactions.</b>  More precisely, <b>this code will not add any value to the transaction reporting process while at the same time it will increase costs due to the various complexities that it is expected to cause</b> . This is because a UTI code is already used for OTC derivatives trades so there will be no real benefit to include an additional	

code in the form of a TIC that will serve a similar purpose. Additionally, it appears that there is no reasonable market surveillance purpose that would provide a justification to include that TIC code in transaction reports. Furthermore, given the absence of any guidance from ESMA it is currently unclear whether it will be practically feasible to ensure standardisation in the generation and dissemination of the code. This can further have negative implications on the trade execution process and potentially cause delays in the post-trade transparency reports pursuant to Articles 20 and 21 MiFIR.

In our view, **ESMA's mandate in Article 26(9) MiFIR does not include any reference to a TIC for off-venue transactions** to be generated by "market facing firms" in a transaction. As such, this proposed new code should not be included in the revised draft RTS 22.

No	Question
16	Do you agree with the proposal of identifying the "market facing" firm acting as the seller as the primary entity responsible for the creation of the TIC code of off-venue transactions and for disseminating it to the other "market facing" firm acting as the buyer?
<b>Response</b>	
AFME reiterates the disagreement with the proposal for a TIC for off venue transactions to be generated by the "market facing" firm acting as the seller. Please refer to our response to Question 15 above.	

No	Question
17	Do you have any further comment or suggestion in relation to the inclusion of a new field (INTC identifier) to capture in detail the aggregate orders? Please provide views on the proposed methodology for defining a common syntax or suggest valuable alternatives.
<b>Response</b>	
AFME members can see the value of an INTC identifier when there are multiple INTC trades and market side trades. Currently there is no way to link complex aggregate orders so the INTC identifier would be a viable field to resolve this. AFME members, however, believe the INTC identifier field should remain internal only, and should not be disseminated further. Additionally, the requirement should only be for firms who are aggregating orders.	

No	Question
18	Do you agree that the executing investment firm should be responsible for generating consistently the INTC identifier?
<b>Response</b>	
AFME members agree that the executing firm should be responsible for generating the INTC identifier as the executing firm is the only party in the chain that has a view of all orders grouped together.	

No	Question
19	Do you agree with the proposal of how to report such additional field to identify and link chains in transaction reports? Please provide views on the key information to be considered for defining a common methodology for the syntax. Otherwise, please suggest alternatives for defining it and improve the linking process among chains.
<b>Response</b>	
AFME members strongly oppose the inclusion of a chain identifier as this is very difficult to achieve and ultimately could result in misreporting. AFME members do not see the purpose of this field and effective implementation will depend on multiple people/intermediaries on the chain. It can be proven quite challenging to implement when intermediaries do not provide the necessary information in a timely	



manner, and we query the efficacy in a T+1 world. It is also unclear how third country/non-EEA venues can be subject to those rules.

At a minimum, we would urge ESMA to provide multiple guidelines for all scenarios to demonstrate how these should be implemented.

No	Question
20	Do you agree with the proposal of identifying the entity executing transaction as the primary entity responsible for the creation of such code and for disseminating it?
<b>Response</b>	
See our response to Question 19 above.	

No	Question
21	Do you agree with the proposed reference to Art. 3(3) of Benchmark Regulation to define the relevant categories of indices?
<b>Response</b>	
This should not apply to cash instruments.	

No	Question
22	Do you see a need to specify the 'date by which the transaction data are to be reported' different from the date of application of the relevant RTS 22 or have other comments with regards to the proposed timeline? If so, please specify.
<b>Response</b>	
<p>We note the discrepancy in timelines proposed in the consultation paper between paragraph 86 and the Annex which state different times of <b>12 months</b> or <b>18 months</b>. AFME members support 18 months after guidelines are published as the appropriate implementation timeline, given the volume of changes and the proposed move to JSON format which would require sufficient time to implement.</p> <p>AFME members also ask ESMA for some clarity and additional guidance on reporting and transitional arrangements between the old and new regimes. For instance, if transactions from before entry into force need to be re-reported after entry into force, it is unclear whether these transactions follow the old or new model.</p> <p>Finally, we welcome the alignment between FIRDS (RTS 23) reporting and RTS 22 reporting due to the interdependency between the two models.</p>	

No	Question
23	Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on transaction reporting?
<b>Response</b>	
AFME welcomes the alignment with international developments and standards where applicable to ensure a more streamlined transaction reporting process.	

No	Question
24	Do you agree with the proposed alignment of fields with EMIR/SFTR requirements as presented in the table above? Are there any other fields that should be aligned?
<b>Response</b>	

With regard to field no. 1, AFME members would recommend maintaining the 'Report status' as it currently is instead of introducing the Action Type to report New Trade (NEWT) and Cancellation (CANC). This is due to the fact that, in this instance, the alignment with the terminology used in the relevant field in EMIR can disharmonise the two reporting regimes due to the different underlying data elements across MiFIR and EMIR to report that value.

Furthermore, it is proposed in the CP to remove 'OTHR' as an applicable format. However, for Entitlements (R\*\*\*\*\*) and specifically Warrants (RW\*\*\*\*\*) it is permissible per ISO CFI validation to report the 4th character (which reflects the Option Exercise Style) as Miscellaneous and therefore 'OTHR' could need to be used in these cases. Therefore, AFME would welcome advice from ESMA on how to report transactions under MiFID when option exercise style is unknown at the point of execution.

No	Question
25	Do you agree with the proposed approach for the alignment of reporting of the information related to direction of the transaction?
<b>Response</b>	
AFME is not responding to this question as our consultation response focuses on equity and bond cash instruments.	

No	Question
26	Do you agree with the proposed approach for the alignment of reporting of the information related to price?
<b>Response</b>	
Although AFME has no concerns, further clarification would be welcome for reporting of price value in respect of bond transactions. Furthermore, in relation to contracts for which the price value is specified in points, AFME would also recommend ESMA to consider including the CDE format value of 'basis points' for MiFIR transaction reporting as more suitable for that type of contracts.	

No	Question
27	Do you agree with the proposed alignment of the concept of complex trades with EMIR?
<b>Response</b>	
AFME notes that there are various practical challenges in the context of EMIR reporting when decomposing complex trades and linking different reports for a single complex transaction.	
Decomposing single complex trades into multiple instruments (linked with a complex trade ID), purely for the purpose of transaction reporting, will add unnecessary complexity.	
Therefore, AFME is concerned about applying that approach with respect to transaction reporting under MiFIR. We would request further detailed reporting guidance from ESMA with respect to use cases where decomposition of a complex trade solely for the purpose of transaction reporting may not be feasible.	

No	Question
28	Do you agree with adding the field 'Package transaction price' to align the reporting under MiFIR with EMIR Refit and CDE Technical Guidance?
<b>Response</b>	
AFME disagrees with the above proposal due to the additional complexities that it would cause for reporting of package transactions. When a package of transactions is executed, there will not necessarily be a single	

package price. Instead, each transaction has its own negotiated price. If a single price does not exist for the package, market participants will need to artificially create a package price simply to meet the reporting requirements. AFME thinks this is not a meaningful data point of a transaction, could potentially be misleading, and adds no value. Therefore, we recommend ESMA should provide appropriate guidance and examples to articulate the reporting logic for package transactions rather than proposing new reporting fields.

No	Question
29	Do you agree with the proposed additional fields to allow for the reporting of the ISO 24165 Digital Token Identifier for DLT financial instruments and underlyings?
<b>Response</b>	
<p>From an equity and bond cash instruments perspective, AFME does not support the proposed additional fields for the reporting of the ISO 24165 Digital Token Identifier for DLT financial instruments and underlyings. We do not believe the inclusion of a DTI is helpful for transaction reporting at this stage, particularly due to the immaturity of the market and consequent potential differing interpretations for the reporting of a DTI.</p> <p>We have concerns with the introduction of these fields in MiFIR transaction reporting, which we do not see as relevant in MiFIR or for market abuse surveillance. Additionally, we do not perceive the use or benefit of such transaction reporting data to NCAs.</p> <p>We suggest the cost-benefit needs to be assessed (including workflow costs and operational costs), particularly as the DLT financial instrument market is still maturing, and it is too early to pre-judge developments. It is also important to maintain technological neutrality with treating financial instruments and DLT financial instruments in the same way.</p> <p>Finally, data for DLT financial instruments should be open-source to ensure accessibility and minimise any additional costs to facilitate the growth of this market.</p>	

No	Question
30	Do you agree with the proposed amendments to Art.4 to extend the transmission of order agreement also to cases of acting on own account? Please detail your answer.
<b>Response</b>	
<p>We are not adverse to the extension of the scope of transmission of order agreements to also include cases of acting on own account (DEAL). However, <b>we encourage further clarity at both Level 2 and Level 3 (by means of further guidance)</b>, in relation to the different types of transactions, such as transmission of order agreement transactions, corporate actions, and asset transfers.</p> <p>AFME would also appreciate clarity from ESMA that reporting is not required when execution is passed on to another trading venue.</p>	

No	Question
31	Do you agree with the proposed amendments to Art.7 to include specific cases of portfolio and fund managers? Please detail your answer.
<b>Response</b>	

**AFME supports** the clarification that, in the specific cases of portfolio and fund management specified in Article 7, the portfolio and fund managers should be identified as the buyer/seller, not the decision maker, which is consistent with existing Level 3 guidance.

No	Question
32	Do you have any comments on the proposed approach to updating the 'Instrument details' section in the Annex to the RTS 22? Please flag any additional aspects that may need to be considered.
<b>Response</b>	
<b>AFME supports ESMA's intention to align these proposed changes with the revised changes in RTS 23 for reference data.</b> However, we request the changes to RTS 22 and RTS 23 also have clear and detailed guidance to support these changes.	

No	Question
33	Do you support inclusion of the new fields listed above? Please provide details in your answer.
<b>Response</b>	
<p><b>AFME disagrees with ESMA's proposal to include a new "client categorisation" field in transaction reports and most importantly with the inclusion of the field value "clients treated as professionals on request".</b> Such an inclusion would introduce unnecessary technical complexity in transaction reporting and increase compliance costs without delivering any benefits.</p> <p>Further, it is unclear how that new client 'categorisation' field can enhance market surveillance given that the indication of a client's categorisation does not seem to serve any of the goals of detecting market abuse, which is the key goal of a transaction reporting regime.</p> <p>Instead, the only justification provided by ESMA in paragraph 117 of the CP is that this field can support NCAs <i>"for the purpose of monitoring of the distribution of certain complex products to investors or to identify market trends when analysing the data on transaction reporting"</i>. However, those goals are not relevant for the purpose of the MiFIR transaction reporting. We further stress that, in our view, there is no explicit reference in Level 1 text that gives to ESMA the mandate to include that new field.</p> <p>Furthermore, client categorisation is a dynamic process and subject to changes particularly for clients treated as professional clients on request. In addition, some clients may opt-in to be treated as professionals only for certain categories/types of products and this assessment can change upon their request. Due to the evolving nature of client categorisation and the technical complexities around static data maintenance at the point of execution of each trade, there is risk that any changes to classification based on a client request will not be timely or accurately reflected on the relevant field in transaction reports. This would lead to incorrect submissions of reports. In addition, under regulatory conduct of business rules in some jurisdictions there are scenarios where it is permitted to treat an agent as a client, but principal in other cases. Maintenance of distinct static sets to identify clients MiFID reporting vs conduct of business rules would create complexity and high operational costs.</p> <p>Regarding the introduction of a "validity timestamp" field for "New" and "Cancellation" reports, AFME members attribute the rationale of ESMA's proposal for that new reporting field to the fact that, currently, time delays are implemented to address sequencing of multiple cancelled and new reports submitted within the same day. However, as the name of that field is not used in other reporting regimes, further analysis from ESMA is required. AFME believes that instead of introducing a new field to avoid using time delays, ESMA should utilise level 3 guidelines to provide guidance. AFME further highlights the increased</p>	

compliance costs and the absence of any benefits for reporting firms given that NCAs should be in a position to verify the sequencing of cancelled and new reports by looking at all available sources of data that they currently have.

No	Question
34	Do you agree with the amendments listed above for the existing fields? Please provide details in your answer.
<b>Response</b>	
Further clarity is needed in relation to ESMA's approach on the priority levels of national client identifiers for natural persons in view of the proposed new provisions in Article 6 of the draft RTS.	
In particular, given the existence of multiple 2 <sup>nd</sup> and 3 <sup>rd</sup> priority identifiers in Annex II of the proposed draft RTS, it is not clear how the mandatory requirement for investment firms, to obtain from clients the highest priority identifier under paragraph 2 of Article 6, should apply. It is also not clear whether that should mean that investment firms should only obtain and report on the 1 <sup>st</sup> priority identifier. In such case, there would be potential risks to the timeliness and accuracy of transaction reporting, should the 1 <sup>st</sup> priority identifier not be available.	
On a separate note, AFME would welcome further guidance from ESMA with respect to reporting of first names and surnames of the Buyer, Seller and Decision Maker (Fields 9, 10, 13, 14, 18, 19, 22 and 23) where clients have more than one first name(s) or surname(s), or names with a prefix or suffix. In those cases, it is recommended to report the names as they are written on the passport of clients and without using any commas.	

No	Question
35	Do you support suppressing the reporting of the field listed above? Please provide details in your answer.
<b>Response</b>	
Yes, AFME <b>agrees</b> with the removal of the short selling indicator.	

No	Question
36	Do you agree with the proposal of including in the list of exempted transactions under Art.2(5) the disposal or selling of financial instruments ordered by a court procedure or decided by insolvency administrator in the context of a liquidation / bankruptcy / insolvency procedure?
<b>Response</b>	
Yes, AFME <b>agrees</b> with the inclusion of transactions related to the disposal or selling of financial instruments ordered by a court procedure or decided by insolvency administrator in the context of a liquidation / bankruptcy / insolvency procedure in the exemption transactions list.	

No	Question
37	Do you consider that the exemption in Art.2 (5) should take into consideration also other similar instances as described? Please elaborate your answer.
<b>Response</b>	
AFME <b>believes corporate actions transactions should be exempted from transaction reporting</b> as we feel there is not any benefit to recording these transactions. Additionally, there is no capability to determine between voluntary, non-voluntary, and mandatory corporate actions. The list of corporate actions is quite extensive and regularly changes.	

No	Question
38	Do you agree with the assessment and the proposal of expanding the perimeter of the exempted transactions to auctions in emission allowances?
<b>Response</b>	
Yes, AFME members <b>agree</b> with auctions in emission allowances transactions to be exempted from transaction reporting.	

No	Question
39	Do you agree with the proposal of narrowing the perimeter of the exempted novations to transactions having clearing purposes?
<b>Response</b>	
While this is not relevant for equity or bond cash instruments, AFME does not agree with narrowing the scope of exempted novations only to transactions having clearing purposes. In our opinion all types of novations should be included in exempted transactions. We do not foresee there would be sufficient cases of other novation transactions that warrant narrowing the perimeter, but mostly AFME members believe narrowing the scope could instead possibly lead to market abuse with the ability to step in and out of the transactions.	

No	Question
40	Please provide your views on the format for reporting and any challenges you foresee with the use of JSON format compared to XML. Please provide estimates of the costs, timelines of implementation and benefits (short and long term) related to potential transition to JSON.
<b>Response</b>	
<p>AFME notes that the CP provides no reasons that could justify why a potential move to JSON format would offer any benefits to investment firms and it does not include any cost-benefit analysis. In this regard, AFME members are concerned that this change will lead to excessively high compliance costs for investment firms which will have to invest in resources to perform the proposed changes.</p> <p>In addition to the lack of any benefits, it is also anticipated that there will be further complexities that ESMA should consider. More precisely, back-reporting can become quite complex if reports previously submitted under XML format will have to be amended and resubmitted under the JSON format.</p> <p>Moreover, interoperability with other reporting regimes and related data schemas that are based on XML will become more complex, and can lead to inconsistencies due to the structural differences between XML and JSON across different reporting regimes.</p> <p>If ESMA were to proceed with such proposal, the implementation time for a potential move to JSON should be sufficient enough to ensure a smooth transition.</p>	

No	Question
41	Should the use of transaction data to perform the calculations be feasible, what would be the costs and the benefits of using this data and discontinuing the specific reporting flows (FITRS and / or DVCAP), including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects?
<b>Response</b>	



Although ESMA refers in section 5.2, paragraph 158 of the CP to potential benefits for trading venues, (due to the reduced reporting burden if FITRS and DVCAP calculations were to be discontinued and replaced by transaction data), **there will be no benefits whatsoever for investment firms that submit transaction reports.**

Instead, investment firms will have to incur additional costs to provide reporting under a more expanded transaction reporting regime, for which ESMA is proposing to add a significant number of additional fields (such as the expanded TVTIC and new TIC for off-venue transactions).

Therefore, the complexity of the proposed new transaction reporting regime and the associated increased compliance/implementation costs will outweigh any possible benefits.

Overall, AFME members are not supportive of a disproportionate increase of reporting burdens for investment firms, while at the same time other market participants, such as trading venues, will benefit from a decrease of those burdens. For the purpose of ensuring data quality, it would be easier to achieve this with a smaller number of contributing entities (i.e. the trading venues) than with a much larger population (investment firms) submitting transaction reporting data. We do not support this ESMA's proposal, if it means introducing new fields for transaction reporting purely to meet the goal of performing transparency and volume cap calculations. We therefore think that this proposal can result in reporting complexity and burden to market participants.

Furthermore, AFME recommends that market participants should be able to continue to review the calculation data for some types of financial instruments that is currently available in FITRS. Otherwise, a move to a new system that is part of transaction reporting data would mean that firms would no longer be able to access the data that is currently available on FITRS.

No	Question
42	Do you have any comments on the methodological approach outlined above?
Response	
AFME members have concerns that the methodology proposed by ESMA is not clear, nor how it will work when implemented.	
For that reason, ESMA needs to provide clarity on all relevant details, and specifically on what fields in transaction reports ESMA would be looking at to perform transparency and DVCAP calculations. As highlighted throughout our response to this CP, our fundamental position is that ESMA should not make significant alterations to reporting fields owing to the cost and complexity that will result with no or little commensurate and demonstrated benefit.	
We further note, that in section 4.5.3 of the Third MiFIR Review Consultation Package published in July 2024, ESMA reiterates the reliance on data in FITRS for the purpose of pre-trade and post-trade transparency calculations by ESMA. There are also proposals for three different options that aim to enable ESMA to perform a thorough assessment of the use of waivers and deferrals. Given the need for ESMA to have an informed view of the market with high levels of accuracy of calculations, we recommend that ESMA should provide further guidance and specify the details of the intended methodology before moving to discontinuing FITRS. Otherwise, that can have an adverse impact on the reports that ESMA should submit to the Commission in accordance with Article 4(4) and Article 9(2) MiFIR.	

No	Question
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<b>43</b>	Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?
<b>Response</b>	
AFME reiterates the increased burden for investment firms submitting transaction reports as well as the various complexities and implementation challenges that have been flagged in our responses to Questions 41 and 42 above.	

## Section on the amendment of RTS 24

No	Question
<b>44</b>	<ul style="list-style-type: none"> <li>Do you agree with the proposal of adopting JSON as standard and format of order book data keeping and transmission?</li> <li>Please justify your answer.</li> </ul>
<b>Response</b>	
<p>AFME has reservations about the use of JSON. We believe in particular that requiring the adoption of JSON will inflict substantial financial and labour costs on market participants to ensure that implementation is successful. AFME does not see any benefit to this requirement, nor do we think that ESMA serves the needs of markets as a whole by taking such a prescriptive approach. We recognise that ESMA seems to be recommending JSON wholistically and consistently, but consistency alone does not seem to be a sufficient reason to compel market participants to adopt JSON.</p> <p>Moreover, the adoption of JSON could have the unintended effect of causing smaller trading venues to stop submitting data to the consolidated tape ("CT"). The industry may also lose out on the application of post-trade MMT flags. Both scenarios would be deleterious, especially in view of the amount of effort that European legislators and regulators have made to promote the development of the CT.</p>	

No	Question
<b>45</b>	<ul style="list-style-type: none"> <li>Please provide your views on the format of reporting and any challenges you foresee with the use of JSON format compared to XML.</li> <li>Please provide estimates of the costs, timelines and benefits (short and long term) related to the potential implementation of JSON syntax.</li> </ul>
<b>Response</b>	
<p>We refer ESMA to our response to Question 44. Our concerns as expressed in that response are the same for this question. AFME would further add that XML is already in use with no evident technical problems. Neither AFME nor the plurality of market participants are aware of flaws in this setup that would warrant the adoption of JSON.</p> <p>At a higher level, AFME would underline the fact that significant regulatory changes are already being undertaken by market participants to ensure full compliance with regulatory requirements in the wake of the MiFID/R Review. In our view, the time, effort and expense that would be incurred by the adoption of JSON would be much better used if it were channelled into more impactful regulatory change, as this approach would result in better market outcomes over the long term.</p>	

No	Question
<b>46</b>	<ul style="list-style-type: none"> <li>Do you have any comments on the proposed approach to updating the field list in the Annex to align with the proposed RTS 22 fields?</li> <li>Please flag any additional aspects that may need to be considered.</li> </ul>

Response	
AFME has no comments on the proposed approach to updating the field list except to ask that ESMA be mindful of our response to Question 47, where we make more specific comments on the new fields that ESMA proposes to include. Our overall concern is that the inclusion of new fields should not materially increase the burden on investment firms that are required to submit reports to trading venues and that the field descriptions and supporting guidance provide enough clarity for market participants. We note, for example, that existing Level 3 guidance on transparency can be difficult to interpret, as transaction reporting in relation to a price and transparency reporting in relation to the same price is covered by different, sometimes contradictory guidance. AFME would like to propose that ESMA review and update its Level 3 guidance in relation to transaction and transparency reporting to ensure that it is consistent.	

No	Question
47	<ul style="list-style-type: none"> <li>Do you support inclusion of the new fields listed above?</li> </ul>
Response	
<p>AFME has the following comments on the proposed fields:</p> <ul style="list-style-type: none"> <li><b>Field 3</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 5</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 18a</b> – AFME would like more Level 3 guidance on the correct usage of this field. We refer ESMA to our response to Question 29, where we express our concerns about reporting fields for DLTs.</li> <li><b>Field 28</b> – While AFME has no comments or concerns about this field, we refer ESMA to our response to Question 26, where we state that further clarification would be welcome for reporting of price value in respect of bond transactions.</li> <li><b>Field 29a</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 30</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 32</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 33a</b> – AFME has no comments or concerns about this field.</li> <li><b>Field 48</b> – AFME has no comments or concerns about this field, but we refer ESMA to our responses to Questions 11 to 16, where we explain our concerns about ESMA’s proposed approach to the application of TVTIC.</li> </ul>	

No	Question
48	<ul style="list-style-type: none"> <li>Do you agree with the amendments listed above for the existing fields?</li> </ul>
Response	
AFME has no comments on the amendments listed above for the existing fields.	

No	Question
49	<ul style="list-style-type: none"> <li>Do you have further suggestions to improve or streamline the other fields in RTS 24?</li> </ul>
Response	
AFME has no further suggestions to improve or streamline the other fields in RTS 24.	

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**AFME**

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is accompanied by answers to the individual questions raised.