

SSMA response ESMA Consultation Paper on RTS 22 & 24

General comments

Swedish Securities Markets Association (SSMA) welcomes the opportunity to respond to this consultation regarding RTS 22 & 24.

SSMA is of the view that it is very important to have clear guidelines in place early during the 18-month implementation period. Otherwise, there is a risk that it will be difficult for all participants to be ready in time with poor reporting quality as a result.

CP on the amendment of RTS 22

Q01: Are any other adjustments needed to enable comprehensive and accurate reporting of transactions which will enter into scope of the revised Article 26(2)?

SSMA believes that corporate events should not be considered within the scope of market abuse, as they do not involve active trading decisions but are merely technical adjustments resulting from previous transactions. Apart from this, SSMA considers the scope to be appropriate and has not identified any further adjustments needed.

Q02: Does the existing divergence in the implementation of the MRMTL concept under Art. 4 and Art. 26 of MiFIR results in any practical challenges for the market participants? If so, please explain the nature of these challenges and provide examples.

SSMA do not think this will prove to be a problem for TRS reporting.

Q03. 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.

SSMA do not consider this relevant for our members but emphasizes the need for clear and simple rules, along with access to the data if it must be included. For simplicity, it is probably better with this approach to link it to the RM where the instrument was first admitted to trading. However, it is crucial that this aligns with other proposals stating that it should be the MIC of the most relevant market. The same principle should apply consistently across all cases and rules. We want to avoid a situation with different rules apply in different areas, causing changes back and forth between TVs depending on volume assessments.

Q04: Do you agree with the proposed RCA determination rule for emission allowances and CIUs other than ETFs? Please provide details in your answer.

Same as Q3

Q05: 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.

SSMA thinks this is a reasonable determination rule. It is important that MTFs does not pre-start trading before the official listing. SSMA want to avoid a situation where data fields change back and forth over time depending on turnover. Alignment between different rules is important – also see Q 3

Q06: 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.

Same as Q3

Q07: Do you agree with the proposed amendments to RCA determination rules for index derivatives and depositary receipts?

Same as Q3

Q08: 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?

SSMA sees no problem to include this new field to capture effective date but is of the opinion that this field should only apply for derivatives transactions.

Q09: 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.

SSMA do not agree since we do not think this is applicable to transactions in shares. SSMA is of the opinion that this field only should apply for derivatives transactions.

Q10: 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.

SSMA believes that field 6b should be optional if it differs from field 6. If this will be mandatory more guidance is needed for it to be reported correctly. Examples for how to set effective date in practice is also needed.

Q11: Do you agree with the assessment that the TVTIC reporting requirement applies to all type of on venue executed transactions (e.g., negotiated trades)?

For negotiated transaction SSMA is of the opinion that this information needs to be provided by the relevant Trading venue. Investment Firms need to get information about TVTIC from the venue to be able to report.

For non-EEA venues SSMA disagrees since this requirement can only apply to EEA Trading Venues. Trading venues outside EEA are not under ESMA supervision and can therefore not be forced to provide TVTIC. It is therefore unclear how TVTIC will be provided in these situations.

Q12: 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.

SSMA believes that the MIC code should be for a Trading Venue, not an SI. Obtaining the correct format for TVTIC from different trading venues is challenging. The requirement should lie with the Trading Venues to provide Investment Firms with the correct TVTIC. Currently, the format of the TVTIC is not readily available or provided by the TVs. ESMA should either impose this requirement on the TVs or offer a download functionality from an ESMA database. Standardisation would be

beneficial, making validations easier. At present, Investment Firms rely on their own validations. SSMA favours a common standardised format for TVTIC.

Q13: 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.

SSMA disagrees with the requirement for non-EEA TVs. SSMA believes the main issue is to get all non-EEA TVs to generate TVTIC, which is an unreasonable demand. If this requirement was imposed, it raises question of who would be responsible for generating the TVTIC. Additionally, adding date and time would not result in a unique code, especially with numerous trades occurring in a short time (milli-seconds or sub milliseconds). The proposed syntax demands a unique time stamp, which would be extremely complex and difficult to provide in practice. This proposal should be reconsidered due to these practical implications.

Q14: 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?

SSMA disagrees, see Q13.

Q15: 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.

SSMA disagrees. SSMA do not think it is clear which counterparts will be in scope. It should not involve technical transaction or transfers of positions, which are very difficult to differentiate in the systems from “real” transactions. The seller should provide the TIC, but it is unclear how this information will be exchanged. This is not clear today and we could end up in the same situation as today where the need to create the TIC anyway remains. If this is not solved and standardised the supervisor will never be able to pare transactions.

Q16: 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?

See Q15

Q17: 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.

SSMA believes this is a significant change and not a simple problem to solve. The necessary data should already be available in the current transaction reporting. With this solution, each institute can decide how best to link these transactions. Introducing a new field should not occur without a proper cost-benefit analysis. SSMA also questions whether this aggregated information will genuinely enhance the market abuse surveillance. A new identifier will not address the core issue, which is the large volume of orders executed in various situations.

Q18: Do you agree that the executing investment firm should be responsible for generating consistently the INTC identifier?

Same as Q17. Investment firms should be able to create this according to their own systems.

Q19: 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.

SSMA believes this will be very complex in practice both to implement and manage. It will create a situation where identifiers need to be exchanged in several layers and steps. Another problem is that trade allocations are not done in real time. A question is also who should be responsible to create and inform other investment firms. It should be the last firm in the chain. If this is introduced, it will lead to long complex reporting chains with most likely very poor quality and errors leading to a lot of corrections needed.

Q20: 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?

SSMA do not agree – see Q19. It will be complex and difficult to implement.

Q21: Do you agree with the proposed reference to Art. 3(3) of Benchmark Regulation to define the relevant categories of indices?

SSMA agrees.

Q22: 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.

SSMA believes the timeframe should be 18 months and understands this is the proposed duration. We agree that it should follow the same principal as the implementation of RTS 23. To ensure timely implementation, it is crucial that clear guidelines are established early within this 18-month period.

Q23: 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?

SSMA has not identified any standard missing.

Q24: 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?

SSMA in general agree that alignment of fields in most cases is good but we have some concerns. It is important that the same field name must have the same definitions in all regulations. Otherwise, they should have different field names to avoid misunderstandings.

In EMIR the action types, NEWT and CANC, are used. For MiFIR TRS reporting these values are applied differently with the effect that the same event will be reported with different values.

To limit the strike price to be expressed only in monetary value or percentage will align with EMIR but there are contracts where this is expressed as points. SSMA therefore think that CDE format value of basis points should be included for TRS reporting.

SSMA also has the following specific comments on some of the fields:

For field 49 it is unclear what this means in this case. It is unclear how this will be alignment to which regulation or international standard.

Field 51 will be affected by decimal points and will affect how this should be reported. In EMIR it is possible report both decimal and percentage and to get the right format notation is used to define when it should be monetary value or percentage. One exception is ETD IR options which are always reported in percentage. This also changes the base currency. It should be standard with the traded currency, otherwise there is a risk of errors in the reporting.

Q25: Do you agree with the proposed approach for the alignment of reporting of the information related to direction of the transaction?

SSMA does not agree but assuming this could be a typo we agree with alignment of reporting of the direction of the trade. It is important that the reporting of the two different legs is correctly aligned between EMIR and MiFIR. In EMIR refit the counterparty that goes “short” should be reported as seller but in this proposal for MiFIR it states it should be reported as buyer.

SSMA also for the record want to point out that in Sweden a Swap is treated and traded as ONE instrument not a combination of TWO legs and this creates a lot of problem in the reporting.

Q26: Do you agree with the proposed approach for the alignment of reporting of the information related to price?

In general, SSMA is positive towards alignment and harmonisation. However, we believe this is one of the most complex fields to populate, as it requires different specified prices for different instruments.

The price field is populated based on the instruments being reported. If the price is reported in another field, the price field should remain blank. For example, for IRS Fixed rate, the price is reported on Leg 1, and in EMIR the price field is left blank as it is not mandatory. ESMA proposes that in TRS reporting, NOAP should be populated in the price field in this scenario. SSMA sees a significant risk of differing interpretations by market participants and request that ESMA provides very clear Guidelines and examples on how the price should be reported.

Q27: Do you agree with the proposed alignment of the concept of complex trades with EMIR?

SSMA agrees.

Q28: Do you agree with adding the field ‘Package transaction price’ to align the reporting under MiFIR with EMIR Refit and CDE Technical Guidance?

SSMA disagrees, as we do not believe that all components in a package have reporting requirements or are priced as one single transaction. Instead, it can be an aggregation of several different negotiated transactions, technically combined into one transaction for reporting purposes. Therefore, adding this new field would not provide meaningful information, and we oppose its inclusion.

Q29: 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?

SSMA do not think this should be a problem. If it is not a financial instrument it will not be reported anyway. The DLT market is still quite young and interpretations of DTI might differ and there is not a one-to-one relationship between ISIN and DTI either. Clear guidelines are therefore needed on how these instruments are to be reported.

Q30: 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.

SSMA agrees.

Q31: Do you agree with the proposed amendments to Art.7 to include specific cases of portfolio and fund managers? Please detail your answer.

SSMA agrees and think it is good with this clarification.

Q32: 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.

SSMA agrees since we think it is logical that RTS 22 instrument details are aligned with RTS 23 fields, when the revised RTS 23 is finalised.

SSMA notes that some of the fields 42-56 in RTS 22 do not have the same description as in RTS 23. That is for Notional currency 2, Price multiplier, Underlying and Expiration date. We also note that DLT underlying is not in RTS 23.

Q33: Do you support inclusion of the new fields listed above? Please provide details in your answer.

SSMA think it is ok to include these new fields but do not see the need or reasoning behind for the inclusion. In the eventual case that the new fields are introduced it is very important that the new client category - clients treated as professionals on request - is not included in the new field. It will be difficult to implement in practice since this category does not exist in the Level 1 rules and should not be introduced or used for this purpose at this level since it is not properly defined.

Q34: Do you agree with the amendments listed above for the existing fields? Please provide details in your answer.

SSMA notes that article 10 "Designation to identify an applicable waiver" has been removed. We therefore believe that it should no longer be necessary to include the field 'Reference price waiver indicator' for transaction reporting and that this field could be deleted.

Otherwise SSMA agrees but notes that #8 should be field 61 and consequently #9 should be field 62. Should be corrected.

Q35: Do you support suppressing the reporting of the field listed above? Please provide details in your answer.

SSMA supports but we presume it should be field 62.

Q36: 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?

SSMA agrees.

Q37: Do you consider that the exemption in Art.2 (5) should take into consideration also other similar instances as described? Please elaborate your answer.

SSMA believes this approach is good and is of the opinion that it should apply for all corporate actions. Now the exemption only applies for fixed income instruments, but all corporate events should be out of scope for all instruments.

Q38: Do you agree with the assessment and the proposal of expanding the perimeter of the exempted transactions to auctions in emission allowances?

SSMA agrees.

Q39: Do you agree with the proposal of narrowing the perimeter of the exempted novations to transactions having clearing purposes?

From a market abuse perspective SSMA does not understand why this change is needed. In this case SSMA again think that ESMA should provide clear Guidelines to prevent misinterpretation.

Q40: 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.

SSMA believes that JSON is a simpler format and can be implemented, but it will be time-consuming and costly. One consequence is that old transactions cannot be corrected after switching to the new JSON format. It is also crucial that the format is harmonised with EMIR and SFTR. An implementation period of at least 18 months is necessary for a proper and orderly transition. Additionally, NCAs must have their systems ready for thorough testing and implementation. Since this is a new format, Investment Firms will need to test everything, including end-to-end testing with NCAs.

Q41: 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?

In general, SSMA is of the opinion that this mostly affects Trading Venues, which means that it will not save much for Investment Firms. No new fields should be introduced to compensate for this.

Q42: Do you have any comments on the methodological approach outlined above?

SSMA has no comment.

Q43: 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?

See Q41.

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Q44: Do you agree with the proposal of adopting JSON as standard and format of order book data keeping and transmission? Please justify your answer.

SSMA believes the requirements are mostly written for Trading venues and the question is how it will affect Investment Firms. See Q40 for SSMA concerns on JSON.

Q45: Please provide your views on the format of reporting and any challenges you foresee with the use of JSON format compared to XML. Please provide estimates of the costs, timelines and benefits (short and long term) related to the potential implementation of JSON syntax.

See Q40 and Q44 for SSMA views on JSON. JSON is capable to handle more data quicker. It is very difficult to estimate costs for this implementation. It will take long time to change format and it will take a lot of resources. It will not be possible to do a proper estimate before guidelines are in place. It is therefore important that guidelines are very clear and are published early during the implementation period.

Q46: 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? Please flag any additional aspects that may need to be considered.

SSMA think this harmonisation is good.

Q47: Do you support inclusion of the new fields listed above?

N/A for SSMA

Q48: Do you agree with the amendments listed above for the existing fields?

SSMA is positive that this is harmonised. Good that the same concepts are used for same issues.

Q49: Do you have further suggestions to improve or streamline the other fields in RTS 24?

SSMA has no suggestions.