2 April 2025

European Securities and Markets Authority (ESMA)
Ms Verena Ross
Chair
verena.ross@esma.europa.eu

Re: Review of RTS 22 on transaction data reporting under Art. 26 of MiFIR

Dear Ms Ross,

As you may know, the European Financial Markets Lawyers Group (the "EFMLG") is a group of senior legal experts from the EU banking sector dedicated to making analysis and undertaking initiatives intended to foster the harmonization of laws and market practices and facilitate the integration of financial markets in Europe. The members of the Group are selected on the basis of their personal experience amongst lawyers of major credit institutions based in the EU active in the European financial markets. The Group is hosted by the European Central Bank.

I.- EFMLG views on ESMA's proposals for review of RTS 22 on transaction data reporting

In this letter we would like to convey the views of the EFMLG regarding specific proposals for review of Regulatory Technical Standards (RTS 22) in the field of MiFIR transaction reporting put forth by ESMA[1], as a follow-up to the review of MiFIR Regulation (Regulation (EU) 2024/791).

We understand that following a public consultation, ESMA expects to publish a Final Report and submit the revised Draft Technical Standards to the European Commission for endorsement.

1.- Additional reporting fields

ESMA proposes 45 new fields in addition to the 65 fields that have to be mandatorily reported pursuant to the regulatory framework currently in force (Annex I Table 2 of RTS 22).

In this respect, we would like to flag that, on 7 February 2025, ESMA issued a statement about simplification and burden reduction. In this statement, ESMA declared that transaction reporting under MiFIR constitutes an area where it intends to reduce the reporting burden[2].

With this objective in mind we propose that the above proposal is reconsidered, as detailed below in this letter.

2.- Use of transaction data for transparency calculations

As indicated in Section 5 of the Consultation Paper, ESMA proposes to use transaction data to perform the necessary transparency calculations instead of the quantitative reporting data

1 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, 3 October 2024 ESMA12-2121844265-3745.

2 Press Release "ESMA contributes to simplification and burden reduction" 7 February 2025, ESMA71-545613100-2696 (hereinafter: "ESMA Statement on simplification and burden reduction"). We also note that, over the past months, also the European Commission and the European Council expressed the need to reduce unnecessary reporting requirements, also in the field of financial services.

reported in ESMA's Financial Instruments Transparency System (FITRS). In order to achieve this goal, ESMA, inter alia, retains some transaction reporting fields e.g. the waiver field.

We note that ESMA recognizes that Article 26(3) of MiFIR, as revised by Regulation (EU) 2024/791, does not include the waiver under which the trade has been executed as one of the mandatory elements of the transaction data reporting under MiFIR (paragraph 125 of the Consultation Paper).

We further understand that in ESMA's view i) detailed information on waivers is not indispensable for supervisory purposes and ii) generally the waiver field could be removed (paragraph 125 of the Consultation Paper).

The removal of field #61 (Reference price waiver indicator) would be consistent with the approach set out by ESMA.

3.- Categorization of clients

ESMA proposes to add a new field i.e. field #15g (Indicator of the category of the client according to ISO standard 20022) related to the categorization of the clients pursuant to Article 24 and Article 30 of MiFID II. As indicated by ESMA, the underlying rationale of this proposal is to support National Competent Authorities when i) monitoring the distribution of certain complex products to investors or ii) identifying market trends when analyzing the data on transaction reporting (paragraph 117 of the Consultation Paper).

We cannot find, in the level 1 text, provisions that ask ESMA to add the categorization of the clients among the fields to reported for the purposes of MiFIR transaction data reporting.

We also note that, as clarified by co-Legislators at the time of adoption of MiFIR Regulation, the key goal of transaction reporting under MiFIR is to enable competent authorities i) to detect and investigate potential cases of market abuse and ii) to monitor the fair and orderly functioning of markets as well as the activities of investment firms (Recital 32 of MiFIR).

Finally, we would like to flag that, based on and as a consequence of the MiFID II regulatory framework, the categorization of clients is a dynamic process subject to changes, particularly for clients treated as "professional clients on request".

In the light of the arguments set out above, we would like to submit to your attention our concerns as to the inclusion of field #15 in the revised Draft Technical Standards.

4.- Execution chains and aggregated orders

ESMA suggests new reporting fields which require investment firms i) to create and to disseminate new, additional "codes of identification" in the chain of execution of one transaction and ii) to identify the different parts of aggregated orders i.e. field #7c (INTC Internal Code Identifier-Buyer).

We note that the generation of transaction reports i) will have to rely, in some instances, on non-EEA intermediaries or ii) will require reporting firms to receive or to share data from or with other intermediaries.

In our view, based on the current regulatory framework, it is already possible to establish the link i) between different steps of a chain of execution and ii) between a specific transaction and each of the underlying clients.

In the light of the arguments set out above, we would submit to your attention our concerns as to the inclusion of field #7c in the revised Draft Technical Standards.

European Financial Markets Lawyers Group

5.- Alignment of MiFIR reporting fields with other EU financial instruments

We recall that multiple transaction reporting regimes have been introduced in the financial services rulebook of the EU, particularly under MIFIR, EMIR, SFTR. These reporting requirements have become increasingly detailed and at times are overlapping.

The EFLMG welcomes that in the Consultation Paper, ESMA proposes to align reporting fields which are provided for by different EU pieces of financial regulation (e.g. MIFIR, EMIR and SFTR) in line with the mandate conferred to it by Regulation (EU) 2024/791. We also fully support ESMA's stated intention to play its part in reducing unnecessary reporting burden and avoiding duplications and streamlining reporting requirements for market participants.

We nevertheless understand that, as a consequence of ESMA proposals for a revised RTS 22, investment firms will continue to be under the obligation to report specific informational items both under MiFIR and under EMIR/SFTR. In the same time ESMA is already legally entitled to have access to the same information via EMIR/SFTR reporting repositories.

In this respect, we would like to recall some principles and rules set forth by MiFIR i.e. i) avoidance of double reporting of the same information (Recital 35 of MIFIR) and ii) the legal presumption that, where transactions have been reported to a trade repository in compliance with EMIR provisions, the corresponding MiFIR obligation on the investment firm shall be considered to have been complied with (Article 26(7) of MiFIR).

We propose that the above aspects are given due consideration.

6.- Cost-benefit analysis

We propose that the above considerations should be taken into account in the cost-benefit analysis relating to the review of the RTS 22 – the details of which we were not yet informed about.

We acknowledge that in the Consultation Paper ESMA indicates i) that a detailed cost-benefit analysis will be published together with the ESMA Final Report and ii) that the final cost-benefit analysis will include the feedback received from stakeholders to provide a refined assessment of the impact of the ESMA proposal on market participants.

Yours sincerely,

Fernando Conlledo

EFMLG Vice Chair