

13 February 2025

Markets Reporting Team
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Email: dp24-2@fca.org.uk

Dear Sir / Madam,

Discussion Paper DP 24/2: Improving the UK transaction reporting regime

The City of London Law Society ("CLLS") represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees.

This response has been prepared by the CLLS Regulatory Law Committee (the "**Committee**" or "**we**"), a list of whose members can be found on the [CLLS website](#). The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

We thank the UK Financial Conduct Authority ("**FCA**") for the opportunity to respond to its proposals in Discussion DP 24/2 ("**Consultation Paper**") to update the current UK MiFIR transaction reporting regime ("**UK Transaction Reporting Regime**"). We agree with the FCA that there are parts of the UK Transaction Reporting Regime that could be improved from both a legal complexity and certainty perspective. Given the scope of the CLLS mandate, our response solely focuses on the FCA's proposals from a legal perspective. We consider the large majority of the proposals set out in the Consultation Paper to be of a technical nature and accordingly our response considers only a limited number of questions.

As an overarching point, we stress the importance of the interactions between the EU and UK regulatory regimes, which the FCA has acknowledged in a number of places in the Consultation Paper. For instance, updates to the UK Transaction Reporting Regime will create divergence with the transaction reporting regime under EU MiFIR (which is also being reviewed), which may accordingly create additional legal complexities (particularly when applying the requirements to chains of transactions involving both a UK and EU nexus).

Further, the scope of the UK Transaction Reporting Regime includes financial instruments traded on both UK and EU trading venues and therefore, the EU reference data is relied upon for the purposes of identifying instruments in scope of the requirements. Any changes to the determination of financial instruments within scope of the regime which requires changes to information collected under the

reference data reporting requirements under UK MiFIR could result in firms being unable to identify instruments within scope of EU MiFIR, thereby also creating further uncertainty.

Finally, we recommend that as part of the FCA's review of the UK Transaction Reporting Regime, it clarify when an errors and omissions form is required. The current guidance does not provide sufficient clarity on the matter, which has introduced significant inconsistencies in approach across the industry.

Below we set out our response to a number of questions in the Consultation Paper.

Identifiers for OTC derivatives

Question 8 – Does the daily rolling ISIN issue impact your firm? If so, please explain for which asset classes and sub-asset classes. We would welcome any data you can provide on associated costs.

Question 9 – Would reporting the UPI for instruments in scope under UK MiFIR Article 26(2)(b) and (c) require firms who would not otherwise have to obtain UPIs to do so?

Question 10 – What would be your preferred identifier for OTC derivatives in the transaction reporting regime? Please indicate why and explain which types of OTC derivative it should be applied to.

Question 11 – Would you support a change to the scope of reportable instruments to align with UK EMIR?

The CLLS does not have a specific recommendation as regards the FCA's proposed solutions to address its concerns regarding identifying TOTV derivatives as these are technical in nature. However, we do support the FCA's initiative to produce a solution on this topic. Currently, UK investment firms rely on the methodology set out in ESMA's Opinion ("*OTC derivatives traded on a trading venue*" dated 22 May 2017) ("**ESMA Opinion**") to determine whether a derivative is TOTV. We consider the approach set out in the ESMA Opinion to be suboptimal from a legal perspective. In particular, the approach in the ESMA Opinion provides that a derivative transaction is considered to be TOTV if the transaction shares the same details as the values reported by a trading venue in respect of a derivative transaction reported under the reference data reporting obligations (except fields 5 to 12). Many of the fields are not based on standard objective features (e.g. instrument name) of the instrument and therefore, creates inconsistencies in approach and non-uniformity as to the types of derivatives being captured by the Transaction Reporting Regime. However, as set out above, the FCA's solution will need to work for entirety of the scope of the UK Transaction Reporting Regime – i.e. that if the solution relies on a change to the reference data reports (e.g. the UPI+ model), it will not be workable for derivatives traded on an EU trading venue (which are also within scope of UK MiFIR for the purposes of the Transaction Reporting Regime).

Admission to trading and requests for admission to trading

Question 14 – Trading venues: Do you anticipate any issues with applying the concept of admission to trading across all trading venue types? Please explain why.

The FCA has proposed to introduce changes to apply the concept of "admission to trading" to all venue types (consistent with UK MAR) with the purpose of ensuring certain data fields include instruments for which a request for admission has been made on MTFs and OTFs.

In principle, we do not oppose this update. However, given the inconsistencies in use of the term "admission" and "TOTV" across legislation and the legal interpretations that have been given to date,

we urge caution in the approach that the FCA takes so as to not cause consequential legal uncertainty and the unintentional broadening of scope of other regulatory requirements. MTFs and OTFs may or may not have formal admission processes and therefore, TOTV has been used across UK MiFIR.

We consider the simplest solution would be for the FCA to identify the transaction reference data reporting fields for which it intends to broaden to all trading venues (i.e. in relation to instruments for which there has been a request for admission or making available for trading) and make a clarification for those specific fields.

We hope the above feedback will be useful to you. If you would like to discuss any of these comments then we would be happy to do so. Please contact Hannah Meakin by telephone on +44 (0)20 7444 2102 or by email at hannah.meakin@nortonrosefulbright.com in the first instance.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'H Meakin', with a stylized, cursive script.

Hannah Meakin

Chair, CLLS Regulatory Law Committee

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