

SUMMARY OF FEEDBACK RECEIVED

Consultation title	VERSION 3 OF THE TRANSACTION REPORTING USER PACK (TRUP)
Date of consultation	Consultation was published on 3 November and closed on 24 November 2011
Summary of feedback received	<p>We received responses from 24 respondents, of which:</p> <ul style="list-style-type: none"> • 14 were firms; • six were trade associations; and • four were consultants or Approved Reporting Mechanisms (ARMs). <p>The feedback received will be summarised in two sections</p> <ol style="list-style-type: none"> 1. feedback on areas of new guidance highlighted in the consultation; and 2. other substantive feedback on changes or existing text <p>Additional changes made by the FSA to some sections will then be covered.</p> <p>The applicable section numbers in the consultation are shown with the number in the final guidance, where different, indicated after this in brackets.</p>
	<p>1. Feedback on areas of new guidance highlighted in the consultation</p> <p>Section 7.18.3. (7.18.2.), final paragraph</p> <p>Agency transactions to be required to be reported in a single transaction report (without using the internal account).</p> <p>Responses were received requesting clarification of the specific scenario this was intended to apply to and, more importantly, several responses were received that indicated that substantial systems changes would be required to comply with the guidance.</p> <p>FSA response: The examples in the existing guidance indicate that the FSA expects agency trades for a single client to be reported in a single report but this is not explicitly stated in the text. The FSA is aware that some firms are reporting agency trades for a single client in two reports and proposed the change since i) this method of reporting is not recognised in Europe and ii) removing unnecessary transaction reports improves our ability to monitor for market abuse. The FSA has a) clarified the fact that this guidance only applies to agency transactions for one client in one security and b) changed the proposed guidance from a requirement to an expression of the FSA's preference (in recognition of the possible systems changes that respondents advised would be required). However, it is possible that European regulations will require this change in due course so firms should take this into account in their planning.</p> <p>Section 5. Branch reporting</p> <p>No responses were received on the reporting obligations of EEA firms transacting through non-EEA branches or on obligations of EEA branches of non-EEA firms. However, a response was received indicating that the language in Section 5. was difficult to understand as a result of the inclusion of historical background.</p> <p>FSA response: We have re-drafted this section, removing the historical references.</p>

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Section 11.6. (8.3.6.) - Guidance on reporting of total return swaps

The existing guidance in TRUP Version 2 indicates that reporting of total return swaps as CFDs was under consideration but this did not progress. The proposed consultation guidance advised that total return swaps should be reported as swaps rather than CFDs as this was more useful for monitoring market abuse.

One response indicated that this would require systems changes for the firm. Another response suggested that this guidance should be included in the main section on OTC derivatives rather than being in an FAQ.

FSA response: We believe that other firms would also be likely to require systems changes to report total return swaps as swaps. Given that ESMA is reviewing the OTC transaction reporting guidelines and that the definition of total return swaps is interpreted differently across the industry we have decided to allow firms to report total return swaps either as CFDs or as swaps and have re-drafted this accordingly as a new Section 8.3.6. An associated change has also been made to Section 8.3.3. (Contracts for difference) to reflect this.

Section 8.3.5. - Additional detail for guidance on reporting credit default swaps (CDS)

Guidance was added to provide clarity on the detail of how these should be reported.

A response from a trade association was received that indicated that the proposed guidance was a change from market practice and would require system changes. An argument was presented that since we were proposing to seek agreement among our counterparts in ESMA to report the coupon in basis points in the strike price field with the upfront fee in the unit price field in currency (as originally proposed in Market Watch 38) the guidance proposed for Version 3 of TRUP might only be a short-term interim reporting arrangement. The response also noted that bundling accrued interest, upfront fee and running coupon into one price field would not provide the pricing clarity that is needed to monitor and understand activity in the CDS markets.

FSA response: We are persuaded by the arguments presented and have therefore amended our guidance to note our preference for CDS pricing (rather than stating it as a requirement).

Section 7.16. - Amendment to guidance on the population of the price notation field for spread bets to bring it into line with CESR 10-661 guidance

One response by a consultant indicated that this might involve a systems change for some firms.

FSA response: The proposed change was previously requested by the Spreadbetters Association and no issues were raised by any firm. The FSA has therefore decided that no change to the proposed text is required.

Section 7.17. Quantity

We have expanded the guidance on quantity to note that OTC derivatives may be traded and reported on the quantity of shares/bonds or nominal size rather than the number of contracts.

This reflects market practice and improves the consistency of our guidance across asset classes.

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	<p>No responses were received on the specific issue. However, one response was received that pointed out an error in the example in the proposed text.</p> <p>FSA response: We have corrected the example accordingly.</p> <hr/> <p>2. Substantive feedback received on other changes and existing text</p> <p>Section 3.2. Reportable instruments</p> <p>Two responses requested clarification around what was meant by securitised derivatives. Two responses also indicated that it would be helpful to cover the situation where a security is admitted to trading on more than one market.</p> <p>FSA response: We have re-drafted Section 3.2b to make clear the difference between: i) equity and debt instruments, including ETCs and ETFs that are admitted to trading on a securities market that is a regulated market (and are reportable); and ii) non-securities derivatives that are admitted to trading on a regulated market that is a derivatives market (which are not reportable). We have also added additional text to footnote 8 in Section 3.2(1) to make it clear that trading in an instrument taking place on another market where the instrument is also admitted to trading on a regulated market is reportable if the instrument identifier is identical.</p> <p>Section 3.3. Reportable transactions</p> <p>Two responses requested clarification on whether the definition of primary market transactions included issues following admission to trading such as rights issues and capital raisings rather than being restricted to initial public offerings.</p> <p>FSA response: We confirm that the primary market exclusion from the requirement to transaction report extends beyond initial public offerings and have added some text and examples to this effect at the end of Section 3.3.</p> <p>Section 4. and 9.4. (9.5.) Obligation to report and receipt and transmission of orders</p> <p>Several responses were received on both of these sections. The proposed language in the consultation, which was intended to state the requirement more clearly than TRUP Version 2, caused firms to review the issue. Initial responses indicated that some firms that may have misinterpreted the previous TRUP Version 2 guidance had now become aware of their obligations. However, following extensive consultation with the trade associations on this issue, we have concluded that, while this might be true of a small minority of firms, the majority of the industry were fully aware of our requirements and are reporting accordingly.</p> <p>Responses also requested clarification on the meaning of receipt and transmission and the information required to be passed to the executing broker in order for there to be no requirement on the transmitting firm to report.</p> <p>FSA Response: Our position on what we require is unchanged from previous guidance. However, to avoid any doubt, these sections have been re-drafted to make it clear that: i) where a firm executes a reportable transaction, i.e. it is a counterparty to the transaction, it must report the market side of the transaction and any subsequent client leg; and ii) unless a firm acting for a client (in a principal or agency capacity) passes the actual relationship with the client to the executing broker, it retains the relationship with the client and consequently must transaction report.</p>
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Sections 4. and 9.4. (9.5.), 9.6.2. (9.7.1), 9.6.3(e) (9.7.2(e)) and 11.3.

One trade association made several connected points on these sections.

(1) The trade association advised that it believed the duty to transaction report should sit with the last point in the chain within the EEA, as long as all necessary information is transmitted along the chain, ie with the sell side broker, not with the asset manager.

(2) The trade association also raised the fact that it was not always clear to asset managers where they had placed orders with an EEA firm that has subsequently passed the order to a non-EEA broker that the portfolio manager had dealt with a non-EEA broker. In some instances, while this was made clear, the confirmation might not be received in a timely fashion.

(3) The trade association also requested clarification on over reporting, noting that it seemed to be limited to the over reporting of instruments and requested confirmation from us that we did not object to the over reporting of transactions by portfolio managers made where they were not sure that the executing broker would be reporting.

FSA response to issue (1): The obligation to transaction report flows from whether the firm is a counterparty to the transaction which should be clear from the re-drafted language in Section 4. and 9.4. (9.5). If the client is passed on to a non-EEA broker for the non-EEA broker to execute the order on the client's behalf, the EEA broker passing on the order to the non EEA broker will have no relationship with the client regarding the actual execution of the transaction and so will have no obligation to report.

FSA response to issue (2): Portfolio management firms have an obligation to report where the execution is with a non-EEA broker and should therefore ensure they receive confirmation of the entity they are transacting with in a timely manner to meet this obligation. Executing brokers should provide confirmation to firms in a timely manner.

FSA response to issue (3): We confirm we do not regard reporting by portfolio managers that could rely on a third party to report as over reporting (which we define as the reporting of instruments that are not reportable under SUP 17). We allow the over reporting of instruments because of the difficulty firms may face in determining the reportable instrument set with certainty. We have clarified this by defining over reporting in Section 11.3. and we have confirmed that we would rather that firms do not over report and firms should take reasonable steps to avoid over reporting where possible. We have also taken the opportunity to explain that non-reportable instruments on Aii markets will be rejected.

Section 7.3. Trading time

We proposed removing some text allowing firms to report the booking time where they were unable to report the actual trading time. Accurate reporting of trade times is clearly essential for market abuse monitoring and transaction reporting requirements had been in place for a sufficient period of time, for us to consider it reasonable to expect firms to be able to identify the actual trading time. There was also concern that some firms could be relying on this text as a reason not to develop processes to report the actual trading time.

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Several responses were received indicating that in certain circumstances firms were unable to report the actual time of the trade but were able to report a time very close to the trade time. Respondents advised that if the option to report the booking time was withdrawn they would have to report these transactions with a default time, which would not be helpful to us in monitoring market abuse.

A trade association advised that smaller firms that were not executing the transactions in the market often experienced difficulty in obtaining the trade time from the executing broker in a timely fashion and therefore had difficulty meeting the transaction reporting timeframe of T+1. Often they only received the time from contract notes that were not received until T+3.

FSA response on booking time: We are persuaded by the respondents' arguments that a trade time that is very close to the actual time is more useful than a default time. We have therefore re-instated the text allowing firms to report the booking time where the actual trade time is not available provided that it is not materially different from the actual trade time. The FSA would also like to emphasise that in this situation firms should continue to make every effort to minimise the discrepancy between the trading time and the booking time.

FSA response on failure to provide trade times on a timely basis: The obligation of firms to provide complete and accurate transaction reports on a timely basis is clear. It is a firm's obligation to ensure that it receives the execution time from its executing broker and the executing broker should provide it on a timely basis.

Section 7.10. Maturity date and Section 8.3.1. Spread bets - no requirement for maturity date for daily rolling spread bets

A respondent had requested clarification of whether the maturity date was required to be populated for daily rolling spread bets.

FSA response: The maturity date is not required for rolling daily spread bets and this is clarified in Sections 7.10. and 8.3.1.

Section 7.17. Quantity

A response from a trade association suggested that the quantity should not be zero and that this should be clarified in the text since the existing text might imply that a quantity of zero was acceptable.

FSA response: We confirm that while a quantity of zero in a transaction report will not cause the report to be rejected, the quantity should not be zero. The text in 7.17. has been amended accordingly.

Section 7.18.2. (17.18.1.) Use of BIC codes

We proposed to amend our guidance to advise that firms should report the BIC of the entity that was the counterparty to the trade rather than any BIC for the firm.

A response was received from a trade association that advised this would result in a costly and complex mapping exercise for firms.

FSA response: We would prefer to receive the entity of the counterparty to the trade but since the FSA has the ability to map these BICs itself it has decided to allow firms to continue to report any of the available BICs for the firm.

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Section 7.19. Venue identification – Off book transactions and reporting of counterparties that are acting as Systematic Internalisers (SIs)

A response suggested that the treatment of transactions agreed under the rules of an exchange but conducted off the order book should be included for clarity and completeness.

Another response advised that a firm transacting with a counterparty that is acting as an SI may not know that the counterparty is acting as an SI.

FSA response: We have added text to **7.19.1.** (On market transactions) to explicitly cover the situation where a transaction is executed off the order book but under the rules of the exchange. We have also clarified in section **7.19.3.** that where a firm does not know its counterparty is acting as an SI it may report the venue as XOFF.

Section 7.21. Cancellation flag

A couple of respondents requested additional clarification on amendments.

FSA response: We have tweaked the text in **7.21.2.** to make it clearer and added some text to **7.21.1.** to clarify the fact that the validation rules are applied by the system to all fields before processing the cancellation itself and the implications of this for back reporting.

Section 9.5. (9.6.) DEA access

One response indicated that it was not appropriate to include obligations to report suspicious transaction reports (STRs) in transaction reporting guidance.

FSA response: We are content that the requirement to send STRs to us is covered elsewhere in the FSA Handbook and we have removed the reference to STRs in this section.

Section 9.6. (9.7.) and subsections - Portfolio managers relying on a third party to report

A large number of responses were received raising concerns about the wording in the consultation text. Respondents considered the language to be misleading, as rather than relying on a third party to report on its own behalf the reliance is actually on the fact that an EEA executing broker will be making a transaction report to fulfil its **own** obligations and the report will be in the name of the broker not the portfolio manager.

FSA response: We understand respondents' concerns about potential confusion on this issue. There is no intention to change the guidance itself and this language has always been used in SUP 17. However, to try to minimise confusion we have amended the language to simply refer to reliance on a third party to report.

Section 9.7.2. (9.7.1.) Clarification of the treatment of advisory transactions

Several responses were received that advised that the respondents were unclear on the correct treatment for advisory transactions.

FSA response: We are providing clarification for the treatment by amending the language of 9.7.2. (9.7.1.) to make it clear that advisory transactions must be reported unless these are made for clients where the firm has a discretionary mandate for the clients.

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	<p>Section 10.3. Transaction reporting failures and errors</p> <p>A response was received from a trade association that queried whether each and every failure needed to be reported to us and asked us to quantify when this was required.</p> <p>FSA response: Given the range of firm types that are subject to transaction reporting obligations, and the case-by-case approach we take in relation to transaction reporting failures and errors, we do not believe it is possible to set specific metrics around the materiality of such failures and errors. So the text of this part of section 10.3. is unchanged.</p> <p>Section 11.5.3. (11.5.2.) Are ‘in specie’ transfers reportable</p> <p>A trade association requested that it would be helpful if this section could be ‘clarified to cover scenarios such as wife to husband (and vice versa) transfers and gifts’.</p> <p>FSA response: We appreciate that firms wish to exclude some transfers. However, transactions with nil consideration need to be reported, as there are some transactions that may be reported with nil consideration that are required for effective market abuse monitoring and we would not wish to exclude these. We have therefore decided to leave the language in this section as currently drafted. If firms have any questions concerning reporting of transfers they should contact the transaction monitoring unit as stated in this section.</p>
	<p>Additional changes made by the FSA</p> <p>In addition to changes arising from responses to the consultation we have made some additional changes to some sections, as set out below.</p> <p>Section 4.3. transactions executed and reported through a regulated market or MTF</p> <p>We have added some language to this section to draw firms’ attention to the fact that the NYSE Liffe London market feed will include all reportable ‘market side’ transactions by all branches of the firm using the same Liffe membership mnemonic. Firms should take this into account when determining whether to rely on the feed and should ensure that they do not report the same transaction to two separate competent authorities. We have also added text indicating that firms must notify us in advance of any change to their reliance on the feed.</p> <p>Sections 8.3.2. Spread bets on an option on an equity and 8.3.4. Contract for difference on an option on an equity</p> <p>The language for both of these sections has been corrected to make it clear that in line with SUP 17.1.4 (2) only the ultimate underlying equity is required to be admitted to trading on a regulated market.</p> <p>In response to recent queries:</p> <p>i) clarification has been added to the population of price multipliers for spread bets on an option on an equity in 8.3.2. reflecting the guidance already set out in 7.14. (Price multiplier); and</p> <p>ii) clarification has been added in 8.3.4. for the price multiplier for contract for difference on an option on an equity in line with the CESR 10-661 guidelines.</p>

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	<p>In addition to the changes set out above some minor inconsistencies and errors were corrected as a result of feedback and/or further review by the Transaction Monitoring Unit. All changes from the consultation text are highlighted in the text with comments providing further information where the change is not self explanatory.</p>
<p><u>Full text of the finalised guidance with changes from the consultation text highlighted can be accessed here</u></p> <p><u>Full text of a clean version of the finalised guidance can be accessed here</u></p>	