

## Summary of feedback received

6 February 2015

<b>Consultation title</b>	VERSION 3.1 OF THE TRANSACTION REPORTING USER PACK (TRUP)
<b>Date of consultation</b>	8 May 2014
<b>Summary of feedback received</b>	<p>We received responses from five respondents, of which:</p> <ul style="list-style-type: none"> <li>▪ four were firms</li> <li>▪ one was a joint trade association.</li> </ul> <p>The feedback received on the relevant sections of the TRUP guidance is summarised in the order these sections appear in the TRUP. Overall there was support for our clarifications and, in some cases, we have provided additional points of clarification or examples to illustrate. The area where respondents were most keen to ensure we had taken into account the potential impact on themselves, was in relation to the usage of trading capacity (section 7.5.).</p>
<b>Detailed feedback and FCA response</b>	<p><b>1. Reliance on NYSE Liffe feed (Section 4.3.)</b></p> <p>Respondents were supportive of the proposed changes to make it explicitly clear that firms should not report the market side through an Approved Reporting Mechanism (ARM) where they are relying on the NYSE Liffe feed. In the light of the NYSE/ICE migration, they also requested additional text covering the migration.</p> <p><b>FCA response:</b> We have not added text in relation to the NYSE/ICE migration as this is a transitory issue (now passed) and would make the text overly detailed. The focus of TRUP is on principles that will not change. However, the examples of transactions on Liffe and information on the Liffe feed have been amended in the TRUP 3.1 guidance to take account of the transition.</p> <p>As a result of the migration, the MIC 'XLIF' is no longer applicable. The appropriate MIC for trades executed on ICE Futures London varies according to the asset class in question and we are including a link to the ICE website in the guidance that provides details of the product codes and venues for particular instruments.</p>

**2. Price multiplier (Section 7.14.)**

Respondents thought that we had made it clearer that we receive a price multiplier in our reference data feed for listed derivatives, but that it was not clear what the price multiplier for index options should be. An example of an index option was, therefore, requested.

**FCA response:** An example of an index option admitted to trading on a regulated market has been added. OTC derivatives on an index are not reportable, as set out in section 3.2(a) of TRUP.

**3. Unit price (Section 7.15.)**

Respondents generally supported the proposed changes and welcomed the addition of the examples. However, they expressed concern about the removal of the sentence on equities as they stated that, in certain circumstances (for example, cash equity and give-up trades between brokers), the price incorporates the broker's commission on the trade and that is the price used in the trade report.

Respondents also raised the fact that there are some products that have bond characteristics but are traded like equities and traded, confirmed and settled to the client with unit prices, for example, convertible bonds, participation certificates and other securitised notes. They advised that the current practice is to transaction report them with unit prices to the client. Consequently, they seek clarity on this, as a modification to this practice would result in significant systems changes for them. This would specifically impact the reporting of convertible bonds that have historically been treated as equity-like products.

**FCA response:** While we are sympathetic to firms' points regarding transactions where commission is necessarily included in the price, the sentence on equities was removed because of the potential confusion over the word 'net price' and to fully align with the Markets in Financial Instruments Directive (MiFID) Implementing regulations which specifically require the unit price to be the price excluding commission and accrued interest (where relevant). Therefore, firms should make every effort to report the price without commission or any accrued interest. Under the Markets in Financial Instruments Regulation (MiFIR), we expect that there will be an accommodation for transactions where the instrument is traded on the basis of a dirty price.

For instruments with bond characteristics that are traded as equities, we expect the unit price in the transaction report to reflect the traded price, ie, if the instrument is traded in monetary value instead of a percentage price we expect the unit price to be transaction reported in monetary value and have added this to the TRUP 3.1 guidance.

**4. Derivatives other than bond futures, CDS and spread bets (Section 7.15.5.)**

Respondents argued that the proposed new text: *'the unit price*

*should be reported as the price per underlying security or index such that the monetary value of the derivative contract can be determined by the FCA by multiplying that unit price by the price multiplier'* is in direct conflict with guidance issued by ESMA (CESR 10/661) on how to report OTC derivative transactions. For options and warrants, the market practice is to consider that the unit price is the premium.

They further stated that it is not clear for option contracts whether the price used in the example is the option premium, or price per underlying security, or the value of the ultimate underlying security.

**FCA response:** The price to be used is the premium per underlying security. This is consistent with the CESR 10/661 guidance which refers to the premium per share in the examples in 2.1 and 2.2. We acknowledge that our proposed wording might have been a source of confusion. Therefore, we have amended the text to clearly state that the unit price for derivatives other than bond futures, CDS and spread bets should be the price per derivative contract per underlying security or index point. For option contracts, it is the premium of the derivative contract per underlying security or index point. Therefore, we have amended the text and the example and added another example for an index option admitted to trading on a regulated market to make this clear. We have also corrected the footnote to derivative type in the table to make it clear that this does not need to be populated by firms for derivatives admitted to trading on regulated markets or prescribed markets where the instrument identifier is an ISIN but it will need to be populated where the instrument is identified by the Alternative Instrument Identifier.

### **5. Trading capacity (Section 7.5.)**

We proposed clarification of existing guidance to ensure that firms' transaction reports accurately reflect the changes in their position and that of their clients at a given point in time, as a result of transaction(s). We highlighted our expectation of consistency in trading capacity used between the market side and client side – if this is inconsistent then the changes in position may not be reported accurately which has a negative impact on the FCA's ability to monitor for market abuse effectively.

Respondents advised that the challenge from their perspective arises from the fact that there are multiple ways to define 'trading capacity' from a business perspective and only two choices available for transaction reporting, that is, principal and agent, hence requiring interpretation of the actual capacity of the firm.

Respondents also advised that the proposals may not cater for more complex booking scenarios, and provided an example of such a scenario, and potentially have unintended consequences, such as exposing a firm to regulatory risks. They advised that the proposals would not be fully effective since, in the absence of requiring all events that caused a change in position the

regulator would not be aware of the firm's position. They were also concerned that the proposals would not align with the eventual situation under MiFIR in 2017 and that firms would end up incurring unnecessary costs.

Another concern raised was that designating 'dealing' capacity differently for transaction reporting from a firm's records and confirmations, and creating fictitious transactions or reports would require IT development, incur costs and breach a firm's design principles.

**FCA response:** The primary purpose of the section 7.5. guidance is to clarify the existing MiFID/SUP 17 (Supervision Manual, Chapter 17) requirements and to enable further compliance with existing MiFID/SUP 17 in more complex trading scenarios. Only those firms that are not currently reporting accurately will be affected and, wherever possible, we are providing firms with guidance on alternative ways of reporting accurately. In response to consultation feedback, we have included a further example to show how the more complex booking scenario raised by a respondent (which involves multiple executions with different trading capacities for multiple clients requiring average prices) could be accommodated.

More generally, we are seeking to avoid requiring firms to make changes where these are not necessary, but we need to close the current gap where, under the MiFID/SUP 17 framework some firms may be reporting incorrectly in certain trading scenarios that have not previously been covered explicitly in TRUP. Doing this will enable us to monitor effectively for market abuse. We are also of the view that the guidance follows predictably from the current SUP 17 rules.

As always, if firms have any doubt about how to report a particular scenario they should contact the Transaction monitoring unit (TMU).

Again, we would like to highlight that the concept of Principal and Agency Capacity discussed in the proposed text are only applicable to transaction reporting under MiFID and SUP 17. Currently, in accordance with Annex 1 of the MiFID Implementing Regulations, transaction reports need to describe whether the firm executed the transaction (i) on its own account (either on its own behalf or on behalf of a client) or (ii) for the account and on behalf of a client.

In accordance with existing directly applicable EU legislation (and as reflected in SUP 17), transaction reports must comply with the requirement to describe the transaction in either of the above two capacities. As such, our TRUP guidance is made within such regulatory framework and we do not intend to prescribe in what trading capacity the firm is dealing. The capacity described in the transaction reports to the FCA does not necessarily have to match the firms' confirmation to the client or have wider applicability to other areas of the firm's business. From an

effective market monitoring standpoint, the FCA is interested in receiving transaction reports which accurately reflect the firm's and its client(s)' **change of position** in a financial instrument at any given time. We would like to stress that for market abuse monitoring we are concerned here with the change of position and not the actual position.

As set out in the guidance, the most straightforward way of reporting acceptable to the FCA does not require the creation of artificial transactions. Even for the alternative ways of reporting, the 'INTERNAL' movements being reported reflect the allocations from the firm's aggregated client 'account' to the individual clients, and so we consider that such ways of reporting still represent what is actually taking place.

In relation to the changes that might come in under MiFIR in 2017, the underlying principle will remain that firms need to accurately report the change in position of themselves and their client(s). The specific guidance in TRUP 3.1 is not in direct conflict with the proposals in the Consultation Paper on the RTS for MFIR and we note the MiFIR CP does propose much wider changes to transaction reporting including a simplified approach to reporting and the addition of a third trading capacity of matched principal. However, any such changes will not take effect until 2017 and it would not be possible for the MiFIR proposals to be introduced now while the MiFID regulatory framework (under which TRUP has been made) is still in place. The changes that might be required by some firms for some limited scenarios to comply with the TRUP 3.1 guidance are minimal in the wider scheme of things. The changes that are proposed to come in under MiFIR are very wide ranging and we expect firms will need to undertake a comprehensive review of their transaction reporting arrangements to be MiFIR compliant.

We therefore believe that the proposals in the TRUP 3.1 guidance are proportionate and will proceed with the guidance as consulted on, as well as adding an additional example for the particular scenario of a firm executing an average price transaction for multiple clients with multiple fills. Since firms may need to make systems changes to comply with the changes to the guidance in this section and related guidance in section 7.18.2 'Use of 'INTERNAL'', these changes will be effective from 6 August 2015.

### **6. On-market transactions (Section 7.19.1.)**

Respondents pointed out challenges they would face in obtaining the segment MIC where the segment MIC is not received on the venue's execution file and where it cannot be determined from usual data reference channels.

**FCA response:** We acknowledge the potential limitations in obtaining the segment MIC from the venue. Firms should make every effort to obtain the segment MIC from the trading venue, or failing that, from data reference channels. However, if firms are still unable to determine the segment MIC they may use the

operating MIC. We have therefore amended our guidance to reflect this.

### **7. Internal transactions (Section 9.1.)**

Respondents supported the amendments proposed, but noted that the way in which a firm might hit its own order differs from venue to venue and they therefore sought further clarification on the following points.

- a. A venue may cancel two equal and opposite orders from the same member firm such that no transaction ever occurs. Firms assume that these would not be reportable.
- b. Further, some venues allow netting of such executions for clearing/settlement such that firms may/may not actually have a transaction to book in their systems and hence may have difficulties making a transaction report.

**FCA response:** We believe that the reason for the proposed text is clear. Regardless of the differences from venue to venue, if a firm hits its own order resulting in a trade report we expect to see the equivalent transaction report, irrespective of any subsequent cancellation by the trading venue or clearing/settlement activity. If a venue cancels two equal and opposite orders from the same member firm such that no trade report ever occurs – then there is no transaction to report as long as the cancellation is immediate and not after the publication of the trade report. Since firms may need to make systems changes to comply with the changes to the guidance in respect of hitting their own order, and in respect of following guidance on reporting change of position accurately, changes in this section will be effective from 6 August 2015.

### **8. Strategy trades/scope of the TRUP**

On reviewing the text for this section post consultation, we decided that, since the statement about the applicability of the guidance to transaction reports submitted to us did not just apply to this particular section of guidance but applies to TRUP in general, the text should be amended accordingly. While many of the requirements of competent authorities may be similar or identical, competent authorities may have different requirements in certain areas. Therefore, we have inserted this statement in Section 1.2 Scope of the TRUP and removed it from Section 9.8. The strategy trades examples have also been updated to reflect the ICE Migration.

### **9. Transaction reporting obligations within firms (Section 10.1.)**

Respondents recognised the importance of reconciliations and sought additional clarity on the minimum requirements for front-to-back reconciliations. They were concerned that the guidance prescribes front-to-back reconciliations without allowing firms flexibility in achieving the same result through several point-to-point reconciliations. They recommend that we consider amending the language to ensure that firms could decide on how the processes of front-to-back reconciliations are achieved, for example, instead of using the term ‘front-to-back reconciliations’

adopt the term 'adequate completeness check'.

**FCA response:** It is not our intention to prescribe how these reconciliations should be carried out. However, we believe that the alternative phrase suggested by respondents is too vague. Therefore, we have clarified what we consider to be end-to-end reconciliations and have explained that this may be achieved by reconciling the end-points or by point-to-point reconciliations. We have also made some other minor editorial changes to the text.

### **10.Training (Section 10.1.)**

Respondents suggest changing the wording to accommodate the fact that different training packs were often designed for different target audiences. In addition, they suggested that the wording '*how and when to interact with the FCA transaction monitoring unit*' be changed to '*an understanding of the firms' policy for communicating with the FCA*'.

**FCA response:** While we have no issue with the proposed text regarding firm interactions with the FCA, we want to encourage a more holistic view of training and discourage training being restricted too closely to an individual's role. Therefore, we are amending the text to acknowledge that while firms should tailor their training programmes appropriately for different audiences, they should consider including the areas highlighted in the proposed text.

### **Updating of TRUP 3.1 text**

We have updated the links and references throughout the document and made some editorial improvements. There are three footnotes that we have removed from TRUP 3 (16, 29 and 30) which refer to changes that were proposed or under discussion: a change to the identifier for reporting firm, a change to the pricing of CDS and a potential change to reporting of total return swaps. These are no longer relevant since no changes will be made in these areas before MiFiR and MiFiR will dictate the reporting requirements for these areas.

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[You can access the full text of the guidance consulted on here](#)

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