European Securities and Markets Authority

Reply form for the Consultation Paper on Draft technical standards on data to be made publicly available by TRs under Article 81 of EMIR

14 December 2016

European Securities and Markets Authority

Date: 14 December 2016

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in Consultation Paper on Draft technical standards on data to be made publicly available by TRs under Article 81 of EMIR (DMPA), published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_DMPA_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_DMPA_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_DMPA_XXXX_REPLYFORM or

ESMA_DMPA_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **15 February 2017.**

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Argus Media Ltd
Activity	Choose an item.
Are you representing an association?	☐
Country/Region	UK

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_DMPA_1>

About Argus

Argus Media (Argus) is a specialist publisher serving the physical commodities sector. Its main activities comprise publishing market reports containing price assessments, market commentary and news, and business intelligence reports that analyse market and industry trends.

A small number of Argus' published price assessments have been adopted by subscribers for use as benchmarks in derivatives contracts. Argus may in due course become a benchmark administrator under the Benchmarks Regulation (BMR).

We have not completed the "Activity" box above, since none of the form's permitted responses correctly corresponds to our activities.

Summary Comments

Argus has serious concerns regarding the overall proposed approach of using Trade Repository (TR) data for purposes of BMR aggregations. We believe this is likely to be significantly sub-optimal and we alert ESMA to our worries that this approach may never lead in practice to reliable data for BMR purposes, however long and diligently ESMA and other authorities work at a granular level to improve EMIR data quality. We have previously noted these concerns in other ESMA consultations on BMR level 2 topics and we feel it necessary to reiterate them again in view of this current consultation.

We note that ESMA has, in our view very sensibly, proposed a data "fall-back regime" for BMR purposes until such time as TR data is sufficiently reliable (see Final Report & Technical Advice under the Benchmarks Regulation, ESMA/2016/1560). Because of our fundamental concerns over the likely reliability of TR data for BMR purposes, our expectation is that in reality this BMR "fall-back regime" may in many cases persist as the regime used in practice.

In our view, using TR data for BMR purposes is like trying to obtain an accurate image of a vase by reconstructing the vase from hundreds of thousands of small dispersed fragments. We think such an approach is in practice inherently unreliable because of the loss of data integrity and 'noise' introduced during the fragmentation, dispersion and reconstruction processes. An accurate image of the vase is much more reliably obtained by using the whole vase in its unbroken state, not by trying to reconstruct an image from hundreds of thousands of small broken vase fragments.

We appreciate that for other regulatory purposes — particularly around identifying where risk lies in the financial system — building a bottom-up picture from EMIR data may be the correct policy approach. But we emphasise that we do not believe the same holds true for BMR threshold purposes. BMR thresholds are not about identifying where risks lie, but about evaluating total usage of a given benchmark.

BMR is interested in a picture of the whole vase, not in the thousands of small broken pieces of the vase. Aggregating a picture of the whole vase from the large number of small dispersed pieces, especially when the pieces are multiplied twice, three, four or even up to twelve times by various reporting protocols, is fraught with potential error.

As we have said in previous consultations on BMR level 2 topics, certainly as far a data on exchange-traded derivatives (ETDs) is concerned, we continue to think it makes far better sense to seek and use data directly from trading venues. For BMR purposes, we consider trading venue data is likely to be inherently more reliable to aggregate correctly.

We recognise that for BMR threshold purposes this still leaves some other categories of in-scope activity to account for — ie trade via systematic internalisers and benchmark usage for measuring the performance of investment funds. But we note that the latter is in any case not in any way covered by the current consultation or by the aggregate data intended to be supplied by TRs. The former might on a fall-back basis require TR data, but in our view this does not provide anything like a sufficient reason to use TR data more widely for BMR aggregation purposes, given the very significant disadvantages.

In addition to our fundamental concerns regarding the overall approach of using TR data for BMR purposes, we have substantive concerns and comments of a more granular nature on the following aspects of the current consultation:

- Double and multiple-counting problems (see question numbered 13 in reply form)
- Correct treatment of ETD trades that are terminated early or otherwise closed out (see question numbered 3 in reply form)
- Correct treatment of ETD trades by Clearing Members (see question 1)
- Correct treatment of derivatives admitted to trading only on a non-EU trading venue and traded OTC (see question numbered 5 in reply form)
- Correct treatment of weightings in a basket (see question numbered 27 in reply form)
- Ambiguity regarding Common data field 7 (see question numbered 23 in reply form)
- Non-reconciled transactions (see question numbered 10 in reply form)
- Intergroup transactions (see question numbered 23 in reply form)
- Proposed minimum €5bn, 6 counterparty threshold for publication of an index aggregation (see question numbered 28 in reply form)
- Use of ISINs for indexes (see question numbered 25 in reply form)
- Need for TRs to establish a responsive contact point and mechanism for queries (see question numbered 17 in reply form)

<u>Error in ESMA Reply Form Numbering</u>

We draw to ESMA's attention that unfortunately there is an error in the question numbering of the reply form provided for this consultation. Question 3 of the original CP document does not appear in this reply form and all subsequent questions are mis-numbered in the reply form compared with the question number in the original consultation document.

For clarity, Argus has therefore indicated at the beginning of each response, where relevant, if there is a discrepancy between the question number in the reply form and the numbering in the original consultation document.

In light of this unfortunate problem, we request that ESMA pays particular attention to ensuring that it does not miss any stakeholder responses to a specific question. This may be especially important in any automatic or manual collation processes that ESMA may employ in order to collate together all stakeholder responses to a particular question.

<ESMA_COMMENT_DMPA_1>

Q1: For the purpose of more accurate aggregation of ETD volumes between the CM and its clients should only the trades where the CM is reporting counterparty be taken into account or should all trades where CM is on either side of the ETDs be considered? Please elaborate.

<ESMA_QUESTION_DMPA_1>
Argus notes that ESMA's proposed approach regarding the aggregation of ETD volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

a) <u>Contracts involving CMs</u>

Argus believes that the aggregation should consider any transaction where the clearing member (CM) is on either side of the ETD, providing that in addition neither counterparty is a Central Counterparty (CCP) and that all other relevant aspects of BMR scope are fully respected. The key salient point regarding this consultation question is whether the CM is a party to the ETD and the other party is not a CCP, not whether the CM is a reporting party.

b) <u>Correctly excluding, for BMR aggregations, CM contracts with CCPs where the CM is not trading on its own account</u>

Argus has concerns that the current draft revised RTS could appear ambiguous on this point. As current drafted, subclause 2(a)(iii) of Article 1b seems to be worded that only one of the two fields should not be a CCP, but not necessarily both fields.

However this is clearly not the intention, as ESMA states in CP paragraph 43: "ESMA would propose that when the TRs aggregate ETDs for the purposes of market activity, they include the trades where (a) the field "Venue of execution" is not populated with "XXXX" or "XOFF", **(b) where neither counterparty is a CCP** and …" (emphasis added).

Argus therefore recommends the following amendments to Article 1b subclause 2(a)(iii) (additions **<u>in bold underline</u>**, deletions **~~in bold struck-through~~**):

> iii. the LEI**<u>s</u>** reported in counterparty data fields "Reporting Counterparty ID" **~~or~~** **<u>and</u>** "ID of the other counterparty" **~~is~~** **<u>are</u>** not a CCP, and

<ESMA_QUESTION_DMPA_1>

Q2: For the purpose of more accurate aggregation of ETD volumes between the CM and the CCP, is the "Beneficiary ID" the appropriate field or the "Transaction reference number/Report tracking number" field should be used? Do you envisage any other alternative at this stage? What are the potential costs and benefits of implementing any of the proposed options? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_2>
Argus notes that ESMA's proposed approach regarding the aggregation of ETD volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Argus can accept ESMA's proposal to use the "Beneficial ID" field in order to distinguish between those CM-CCP contracts where the CM is trading on its own account and those contracts where the transaction is for a CM's client.

However Argus has serious concerns whether the use of this field is currently correctly specified in the draft revised RTS, particularly in respect of TR aggregations intended for BMR purposes — ie Article 1b.

a) Correctly accounting for CM proprietary trading

Our understanding is that ESMA intends to include in BMR aggregations both of the following:
a) Those ETD contracts where the CM has executed on behalf of a client
b) Those ETD contracts where the CM has executed on its own behalf

Further, we understand and we would agree that clause 2a of Article 1b is intended, in the draft revised RTS, to correspond to the first category identified above.

However we do not understanding how the second category identified above is accounted for in the draft revised RTS and we are seriously concerned that clause 2b of Article 1b may be defective if, as we suspect, it is intended to represent the second category.

We note that subclause 2b(iv) of Article 1b current says:
"the field [insert: the field "Beneficiary ID" **is not populated** with the LEI of the clearing member ID];…" (emphasis added)

However, according to our current understanding, if it is the intention to capture those trades with the CCP where the CM is the beneficial owner — ie the CM is trading for its own account — then surely precisely the reverse specification would be required in the revised RTS? In other words: the field "Beneficiary ID" **is populated** with the LEI of the clearing member ID.

In this way, according to our current understanding, all those transactions with the CCP where the CM is trading on its own account (ie the CM is the beneficial owner) would be included in this component of the aggregation while all those where the CM is trading on behalf of a client (ie the CM is not the beneficial owner) would not be included because those contracts are already fully accounted for under the component from clause 2a of Article 1b.

We therefore call on ESMA to review the wording of subclause 2b(iv) of Article 1b, since we believe it may, as currently drafted, have the diametrically opposite effect to that intended. If however our understanding is wrong and ESMA considers that subclause 2b(iv) is correctly stated then we call on ESMA to clarify and explain further why this is the case as we do not understand the current wording of Article 1b subclause 2b(iv).

PLEASE NOTE THAT CP QUESTION 3 IS MISSING FROM THE ESMA REPLY FORM. WE THEREFORE INCLUDE QUESTION 3 AND OUR RESPONSE TO IT HERE.

CP Q3: In general, do you agree with the approach outlined in section 3.1.1 to determine the scope of the data subject to aggregation for the purpose of calculating market volumes? Please elaborate on the reasons for your response.

Argus notes that ESMA's proposed approach regarding the aggregation of ETD volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

No — we have a number of concerns regarding the scope of data subject to aggregation for the purposes of BMR aggregations. Because of the dispersed nature of the consultation questions in respect of BMR aggregations, our concerns regarding data scope are laid out in our responses as follows:

- Double and multiple-counting problems (see question numbered 13 in reply form)

- Correct treatment of ETD trades that are terminated early or otherwise closed out (see question numbered 3 in reply form)
- Correct treatment of ETD trades by Clearing Members (see question 1)
- Correct treatment of derivatives admitted to trading only on a non-EU trading venue and traded OTC (see question numbered 5 in reply form)
- Correct treatment of weightings in a basket (see question numbered 27 in reply form)
- Potential ambiguity regarding Common data field 7 (see question numbered 23 in reply form)
- Non-reconciled transactions (see question numbered 10 in reply form)
- Intergroup transactions (see question numbered 23 in reply form)

<ESMA_QUESTION_DMPA_2>

Q3: For the purposes of more accurate aggregation of ETD market volume, do you agree with the proposed approach to take into account only the original ETD executions, i.e. those that are reported under the current RTS on reporting with action types "N" which would be reported under the amended TS on reporting with action type "P"? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_3>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 4 IN THE CONSULTATION DOCUMENT, NOT QUESTION 3.

Argus notes that ESMA's proposed approach regarding the aggregation of ETD volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Yes, Argus can accept ESMA's approach, based on our understanding of the amended reporting TS.

a) Correct treatment, for BMR purposes, of closed positions

Argus however has significant concerns regarding the proposed treatment of ETD contracts and the calculation of aggregate open positions. Argus notes that BMR clearly requires the measurement of the notional amount of derivatives to be a measure of the stock of derivatives — ie outstanding open positions — not of flow of derivatives, and ESMA has itself acknowledged this in several Level 2 documents on BMR (see for example Final Report & Technical Advice under the Benchmarks Regulation, ESMA/2016/1560, paragraph 56 and section 3.5 paragraph 2 (fall-back regime)).

Therefore in terms of TR aggregations for BMR purposes and the calculation of aggregated open positions, it is critical that only open ETD contracts are included while those ETD contracts that are closed — by virtue of the reversal of the position by the beneficial owner or by any other early termination event that results in the closure of the position — are clearly excluded by TRs in their aggregations of open positions.

However, Argus can find no direct correspondence to this critical scope point in Article 1b of the draft revised RTS. Argus notes that while clause 5 of Article 1b refers to a number of clauses of Article 1 that a TR must comply with for purposes of Article 1b aggregations, we note that clause 3 of Article 1 — which relates to the open / closed status of a transaction — is not referenced in Article 1b clause 5.

Argus therefore calls on ESMA to urgently clarify and explain how the draft updated RTS provides that only open transactions must be considered by TRs when calculating aggregate open positions under Article 1b.

Furthermore, in respect of the treatment of closed positions, even if the draft revised RTS is amended to unambiguously provide that a TR must exclude all closed positions in calculations of aggregate open positions, we cannot see how a TR can do so correctly where transaction reporting has taken place across two or more TRs. In other words, where the opening of an ETD contract is reported to one TR by the reporting parties, but for whatever reason the reporting parties have chosen to report to a second or third TR one or more transactions that represent the reversal or closing of the ETD position, we cannot see how it is possible for any of the TRs involved to know, without reference to the other TRs, that the position has been closed. Therefore in this situation we are deeply concerned that all TRs will continue to count these contracts in their aggregate open position calculations, whereas in fact these contracts should be fully excluded as they are closed.

The closing of an ETD hedge by reversing the position, rather than by letting the derivative run to ultimate expiry, is a very widespread practice in markets such as commodities derivatives where commercial firms will for example reverse their hedges as their physical supply contracts takes effect (eg a manufacturer will unwind its hedges as it receives and prices-in a purchase of a particular physical commodity). Therefore the early termination of derivative hedges is very widespread in markets such as commodities. This means it is vital that, in aggregate calculations of open positions, TRs correctly identify and exclude <u>all</u> closed positions as closing transactions are likely to comprise a substantial percentage of market activity.

As an illustration, if an ETD transaction reported to TR ‘A’ by or on behalf of two counterparties (eg CM client and CM) and representing the opening of a position, has a notional of 1,000,000; and if subsequently an ETD contract reported to TR ‘B’ by or on behalf of both parties and representing the closing of the same position also has a notional of 1,000,000; then we are seriously concerned that the aggregations produced by TR ‘A’ and TR ‘B’ will together show a notional of 2,000,000 of open positions, meaning a notional of 2,000,000 will be counted towards the aggregation for the index underlying the ETD. But the correct notional open position from these two transactions should be 0, since the position is fully closed.

If however our fears on this point are misplaced then we call on ESMA to clarify and explain why this would not be the case.

<ESMA_QUESTION_DMPA_3>

Q4: For the purposes of calculating ETD market volume, do you agree with the proposed approach to divide by 2 the resulting aggregations in order to cater for the inherent duplication of trading volume of ETDs? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_4>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 5 IN THE CONSULTATION DOCUMENT, NOT QUESTION 4.

Argus notes that ESMA’s proposed approach regarding the aggregation of ETD volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Yes. Argus considers it paramount that transactions are not double or multiple counted. However we believe that there may still be significant problems of double or even multiple counting of contracts for reasons other than those discussed in CP section 3.1.2. For a detailed discussion of these concerns please see our response to question numbered 13 in the ESMA reply form.

<ESMA_QUESTION_DMPA_4>

Q5: For the purpose of aggregating more accurately OTC derivatives volume of market activity, do you agree with the proposed approach to take into account only the original bilateral OTC and XOFF trades, i.e. those that are reported with action type “N”? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_5>

PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 6 IN THE CONSULTATION DOCUMENT, NOT QUESTION 5.

Argus notes that ESMA's proposed approach regarding the aggregation of OTC derivative volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Argus notes that BMR has a very specific scope in regards OTC derivatives. However we are concerned that the current draft RTS may not account for this correctly, particularly in respect of derivatives admitted to trading only on a non-EU trading venue and traded OTC.

a) BMR aggregations and derivatives admitted to trading only on a non-EU trading venue and traded OTC

In section 6.2.1, paragraph 117 of the CP states that "The data to be taken into account for the purposes of this aggregation [ie for BMR aggregation purposes] is the one defined in sections 3.1 and 3.2, except the derivatives identified as pure OTC - reported with value "XXXX" in field "Venue of execution", of this consultation paper."

Argus would however like to query with ESMA whether a derivative contract reported with value "XOFF" in the field "Venue of execution" could potentially refer to a derivative admitted to trading only on a non-EU trading venue (ie not admitted to trading on any EU trading venue) but where the contract was concluded OTC in the EU? If this could be a possible reporting scenario, such a contract would need to be excluded as it clearly falls outside of BMR's scope in terms of aggregations for BMR purposes.

Argus therefore requests that ESMA ensures in the RTS design that no contracts with value "XOFF" and where the derivative is admitted to trading only on a non-EU trading venue are included in any aggregations intended to fall within BMR's scope. Or alternatively, that such contracts are separately aggregated so that stakeholders using, for BMR purposes, TR data published pursuant to Article 1b can exclude such contracts.

<ESMA_QUESTION_DMPA_5>

Q6: Do you consider that the approaches outlined in sections 3.1 and 3.2 should be taken into account for the purposes of calculating also total volumes of reported transactions? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_6>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 7 IN THE CONSULTATION DOCUMENT, NOT QUESTION 6.

Argus notes that ESMA's proposed approach regarding the aggregation of derivative volumes also applies in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Argus notes that calculations of aggregate notional values for BMR purposes are clearly required to be a measure of stock of derivatives, not flow, in compliance with the BMR Level 1 text. ESMA has itself acknowledged this in various BMR documents (see for example Final Report & Technical Advice under the Benchmarks Regulation, ESMA/2016/1560, paragraph 56 and section 3.5 paragraph 2 (fall-back regime)). Therefore we do not believe that total volumes of reported transactions (ie flow data) are strictly necessary for BMR aggregation purposes, although the data would certainly be helpful to stakeholders and we have no objection to it being included in the requirements of Article 1b.

However our technical concerns that we describe throughout this consultation response in respect of open position aggregations by underling index also generally apply in respect of aggregations of volumes of reported transactions. We therefore believe it is vital for ESMA also to fully address these technical concerns as they apply in the context of aggregate volumes of reported transactions by underlying index, in order to ensure that the calculations are correctly performed by TRs.

<ESMA_QUESTION_DMPA_6>

Q7: Do you agree with the proposed cut-off and publication times? If not, what other aspects need to be considered? Please elaborate.

<ESMA_QUESTION_DMPA_7>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 8 IN THE CONSULTATION DOCUMENT, NOT QUESTION 7.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Yes, we agree.

<ESMA_QUESTION_DMPA_7>

Q8: Are there any further specific additional conditions that need to be included? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_8>

Q9: Further to products and currencies, what other data elements need to be taken into account to correctly identify outliers from the aggregate position data? How should the outliers be treated – not at all included in data aggregations or included in a raw data aggregation, but removed from a cleansed one? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_9>
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<ESMA_QUESTION_DMPA_9>

Q10: Should the reconciliation status be taken into account? Should only reconciled trades be included? Please elaborate.

<ESMA_QUESTION_DMPA_10>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 11 IN THE CONSULTATION DOCUMENT, NOT QUESTION 10.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Argus' strong preference is for only reconciled trades to be taken into account in aggregations intended for BMR purposes. Clearly it is widely recognised that at the present time unreconciled data unfortunately contains significant errors, and that data quality issues related to EMIR reporting are only being "gradually addressed", as ESMA candidly acknowledges in paragraph 103.

Argus considers that in the context of BMR it would not be a sensible approach to deliberately include a subset of data known to contain high levels of errors (ie unreconciled data) when it is possible to exclude the subset and where the resulting majority remainder has a much higher probability of being error-free. If two aggregate data statistics each with error margins are added, the two error margins do not cancel each other out — rather, the error margins are cumulative. Therefore, not including unreconciled trades would result in a much more reliable data statistic for BMR purposes, while acknowledging that some transactions might not be included because they remain unreconciled.

<ESMA_QUESTION_DMPA_10>

Q11: Do you agree with the suggested aggregation per type of "Venue of execution"?

<ESMA_QUESTION_DMPA_11>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 12 IN THE CONSULTATION DOCUMENT, NOT QUESTION 11.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

Please see our response to question numbered 5 in ESMA's reply form regarding contracts with value "XOFF" and where the derivative is admitted to trading only on a non-EU trading venue.

<ESMA_QUESTION_DMPA_11>

Q12: What other aggregations could be provided? What additional aspects should be taken into account? Please elaborate.

<ESMA_QUESTION_DMPA_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_12>

Q13: Do you agree with the suggested categories? If not, what other aspects should be taken into account? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_13>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 14 IN THE CONSULTATION DOCUMENT, NOT QUESTION 13.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

a) <u>Potential multiple-counting problems in aggregations intended for BMR purposes</u>

Argus remains significantly concerned by the risk of double and even multiple counting of contracts for the purposes of BMR. As we have said in our introductory remarks, BMR is interested in a picture of the whole vase, not in the thousands of small broken pieces of the vase. Aggregating a picture of the whole vase from the large number of small pieces, especially when the pieces are multiplied twice, three, four or even up to twelve times by various reporting protocols, is fraught with potential error.

To give a practical example, we note that a single lot of an ETD such as a commodity futures contract transacted on an EU trading venue, say bought by an airline and sold by an oil company, or bought by a heavy manufacturing company and sold by a power producer, could result in as many as 12 transaction reports to various TRs — six related to the futures contract buyer and six related to the futures contract seller (see latest ESMA EMIR Q&As, ESMA/2016/1176, p101 — Scenario 1, in respect of each of the buyer and seller). Yet this is simply, in our understanding, a single lot of a futures contract measured as one lot of open interest and equivalently one lot of traded volume.

With a single lot of open interest / traded volume potentially, under EMIR reporting protocols, resulting in up to 6 unique UTIs and in 12 lots-worth of transactions and reports, across potentially multiple TRs, the potential for double or multiple counting of contracts is in our view very considerable. Argus takes the opportunity to caution again regarding the serious reservations we have that this approach will ever result in reliable aggregate data. We appreciate that ESMA to an extent recognises and is attempting to minimise the problem, but nevertheless our serious reservations regarding the whole approach for BMR purposes remain.

Specifically, we note that ESMA proposes to halve the quantitative aggregates for all dual-sided trades, to show actual aggregations per unique UTI. But Argus is concerned that this may still be double-counting, if one lot of a futures contract — ie one lot of open interest / one lot of traded volume — results in two unique UTIs, representing on the one hand a contract between the end-user buyer and its investment firm or clearing member, and on the other hand a contract between the end-user seller and its investment firm or clearing member.

We therefore question whether ESMA should count only transactions where a CM client is the buyer (or equivalently only transactions where a CM client is the seller) in order to avoid double counting across end-buyer and end-seller. This concern is of course not limited just to dual-sided trades, but applies to all transations. If however our current understanding is incorrect, we call on ESMA to clarify and explain why double counting will not happen in this situation.

Furthermore and separately, we also note that ESMA does not propose any adjustments for single-sided EEA transactions. But in these cases, according to our current understanding, by definition the transaction will be reported by or on behalf of both of the end-counterparties since they both have reporting obligations under EMIR. Therefore we think it would make equal sense for TRs to similarly adjust single-sided EEA aggregations as for dual-sided trades. Otherwise there will inevitably be multiple counting of any single-sided EEA transaction within another TR's aggregations, meaning that summing all TR single-sided EEA data for a pan-EU total will certainly lead to multiple counting (even ignoring the separate double-counting problem discussed in the preceding two paragraphs). Again, if ESMA disagrees, we would appreciate clarification as to why ESMA considers our concerns are unfounded.

Finally in the context of double or multiple counting, we also re-emphasise our concerns regarding the need to fully identify and exclude all closed transactions reported across multiple TRs, and the multiple-counting problem that will result if this does not happen. Please see our response to question numbered 3 in the ESMA reply form for our detailed discussion on this point.

<ESMA_QUESTION_DMPA_13>

Q14: Should ESMA establish a longer period of time for keeping publicly available aggregates? What are the costs and benefits of a longer availability? Please elaborate.

<ESMA_QUESTION_DMPA_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_14>

Q15: Should the data made published by the TRs be in pivoted table form or in tabular form? What are the potential costs and benefits of each alternative?

<ESMA_QUESTION_DMPA_15>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 16 IN THE CONSULTATION DOCUMENT, NOT QUESTION 15.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

We believe that ESMA should specify that the data should be available in machine-readable format. Argus has no strong preference between tabular or pivot-table form but we are concerned to ensure that the information is not published in a PDF or similar text format, as this does not facilitate easy transfer of the data to a spreadsheet or similar data tool, particularly if the PDF is locked to prevent copying.

We note that for BMR purposes, data users such as benchmark administrators will need to perform a number of further data analyses and additional aggregations on the individual datasets published by TRs. These datasets may also be quite long, as there are anticipated to be hundreds of thousands of individual indexes used as underlying benchmarks in the EU and it seems that the draft revised RTS requires a number of sub-aggregations per underlying index. Therefore it is vital that the data is made available by TRs in a format that easily facilitates additional data analysis and calculations by data users and the public more widely.

<ESMA_QUESTION_DMPA_15>

Q16: Do you agree with the proposed treatment of legacy trades? Please elaboarate on the reasons for your response.

<ESMA_QUESTION_DMPA_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_16>

Q17: What other aspects should be taken into account for the purposes of publication of data? Please elaborate.

<ESMA_QUESTION_DMPA_17>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 18 IN THE CONSULTATION DOCUMENT, NOT QUESTION 17.

Argus notes that ESMA's discussion is also relevant in the context of its proposals for TR aggregations intended to be used for BMR purposes. In responding to this question, Argus is therefore commenting specifically in the context of the proposed aggregations for BMR purposes.

We fully agree that TRs should publish a clear and detailed statement of the methodology used for aggregations, for the benefit of the public and data users. Our preference is that this is done in a separate document, rather than within the Excel or similar file containing the aggregated data, which is the current practice of some TRs. In our experience this practice tends to hamper further data analysis and manipulation, particularly in aggregating across different TRs' published data.

Further, Argus also believes that TRs should establish and publish details of a clear contact point for data queries. In many cases this is currently not the case and in our experience it can be difficult for data users to know how to contact a TR, for example in order to request further clarification on a point of methodology or terminology, or on how a particular aggregation has been performed. Therefore we would like to see all TRs establish a clear contact point for queries regarding methodologies or the published data etc and responses to queries within a reasonable timeframe.

Importantly, we believe there should be a formal mechanism by which an index administrator can, on reasonable grounds, request that a TR checks and verifies its aggregate data on a particular index. For example, if there is a substantial discrepancy between aggregate data on usage of a particular index as calculated from data across all TRs, and as calculated from data directly sourced and aggregated from all relevant EU trading venues, then in our view it would clearly be proportionate and necessary for administrators to have a formal mechanism available to them to request that TRs check and verify their own aggregations on a given index.

Argus notes and appreciates ESMA's candid recognition of the ongoing weaknesses in data quality as reported to, and therefore as available from TRs, including that "ESMA is aware that the quality of the aggregate [] data published by the TRs is dependent on the quality of the data reported, however ESMA is also certain that the publication of aggregate data by TRs **would allow to address additional data quality issues which are only seen at more aggregate level, namely over and under-reporting, incorrect identification of the side of the trade or erroneous classification of derivatives, etc**." (CP paragraph 30, emphasis added).

Argus recognises and appreciates the benefits to improved data quality that ESMA is targeting, in effect via a positive feedback-loop. But we believe that this cannot be at the expense of, or without proper regard to, the significant legal obligations that BMR places on administrators in respect of their ongoing monitoring of the degree of use of their benchmarks, the obligation to promptly notify competent authorities on exceeding certain thresholds, and the legal penalties including administrative sanctions that may be imposed on administrators for a breach of BMR's requirements.

Given what amount to important legal obligations that are placed on administrators by BMR and that flow from use of these TR data aggregations, we therefore believe it is essential for the draft updated RTS to include a formal mechanism by which an administrator can, on reasonable grounds, request that a TR checks and verifies its aggregations in relation to a particular index.

<ESMA_QUESTION_DMPA_17>

Q18: Do you foresee any potential issues with identifying correctly the data to be included in the commodity derivatives aggregations? If so, please provide concrete examples of cases where you would not be able to identify the trades in scope of the aggregation. Please elaborate.

<ESMA_QUESTION_DMPA_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_18>

Q19: Do you agree with the proposed types of aggregation of commodities derivatives? If not, what other aspects should be taken into account? Please elaborate.

<ESMA_QUESTION_DMPA_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_19>

Q20: Is there any issue that could potentially prevent TRs from performing aggregation on classes of commodity derivatives on historical data reported before the date of application of the amended TS on reporting? Please provide concrete examples.

<ESMA_QUESTION_DMPA_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_20>

Q21: Do you foresee any issues in publishing a single aggregate figure per class of commodity derivative and a TR in accordance with the aforementioned rules?

<ESMA_QUESTION_DMPA_21>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_21>

Q22: Which alternative, weekly or lower frequency, is more accurate and useful to the entities relying on the data? What are the potential costs and benefits of aligning the frequency of publication of commodity derivatives data with other data aggregations? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_22>

Q23: Are there any other types of derivatives than those mentioned in paragraph 117 that need to be taken into account in order to provide more comprehensive aggregations of derivatives that reference indexes? Please provide concrete examples. Please elaborate.

<ESMA_QUESTION_DMPA_23>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 24 IN THE CONSULTATION DOCUMENT, NOT QUESTION 23. ALSO PLEASE NOTE THAT THE REFERENCE TO PARAGRAPH 117 IS INCORRECT — IT IS PARAGRAPH 118 IN THE CONSULTATION DOCUMENT.

We have already noted in response to previous questions Argus' concerns to ensure that TR aggregations intended for BMR purposes correctly and properly reflect BMR's scope. For example we believe the current draft updated RTS may have serious weaknesses in respect of:

- Double and multiple-counting problems (see question numbered 13 in reply form)
- Correct treatment of ETD trades that are terminated early or otherwise closed out (see question numbered 3 in reply form)
- Correct treatment of ETD trades by Clearing Members (see question 1)
- Correct treatment of derivatives admitted to trading only on a non-EU trading venue and traded OTC (see question numbered 5 in reply form)
- Correct treatment of weightings in a basket (see question numbered 27 in reply form)
- Non-reconciled transactions (see question numbered 10 in reply form)

In addition, we would like to make the following scope-related comments relevant to the discussion in this section 6.2.1 of the CP.

a) <u>BMR aggregations and intergroup transactions</u>

Argus notes that in CP paragraph 96, in relation to intragroup contracts and in the context of commodity derivative aggregation considerations, ESMA has concluded that: "Given they may not be representative of actual trading activity, ESMA has decided, on balance, that the intragroup transactions need to be removed from the calculations, i.e. trades reported with Common data field 38 "Intragroup" reported with "Y".

Argus appreciates ESMA's balanced reasoning here in the context of commodity derivative aggregations and we would like to invite ESMA to consider whether a similar approach might be advisable in the context of aggregations for BMR purposes.

Argus can see reasons for and against such an approach but on balance we think there may be merit in ESMA considering a similar approach in respect of BMR aggregations. Intergroup derivatives — across all asset classes and not specifically commodities — may very often reflect intragroup financing, fiscal and similar corporate optimisations at a group level and not be representative of any actual trading or commercial activity. Importantly, any intergroup derivative is by definition zero sum at group level and so does not reflect any net use of or exposure to the underlying benchmark at group level. Therefore, in order to avoid what may otherwise be undesirable distortions, Argus would like to invite ESMA to reflect further on the position of intragroup transactions in the context of BMR data aggregations.

b) <u>BMR aggregations and Common data field 7 in amended EMIR ITS on reporting</u>

Paragraph 118 of the CP states that "The derivative trades to be included in this aggregation [ie for BMR aggregation purposes] should be those where Common data field 7 under the amended EMIR ITS on reporting "Underlying Identification type" is populated with "X" for index or where common data fields "Floating rate of leg 1" or "Floating rate of leg 2" are populated. ESMA considers that would uniquely identify all the derivatives where the underlying is an index."

Argus would like to draw to ESMA's attention what we believe may prove a significant ambiguity in the design of Common data field 7 — "Underlying identification type" — under the amended EMIR ITS on reporting, which has recently been officially published as Commission Implementing Regulation (EU) 2017/105. We note that the format of this field under the amended EMIR ITS includes values "X" for index and "I" for ISIN. However we note that elsewhere ESMA has also said "ESMA highly recommends the European Commission to request the assignment of ISINs to indexes from administrators." (see CP paragraph 130 for reference to this recommendation).

If ESMA's recommended approach regarding the allocation of ISINs to indexes becomes effective in due course — a point Argus comments on in further detail in our response to CP question numbered 25 in the reply form — then many indexes may be assigned ISINs. But this is then likely to leave reporting entities under EMIR with potentially significant confusion according to the design of Common data field 7: in the case of a derivative with an index as an underlying, should the field be populated with "X" for index or with "I" for the index's ISIN? We expect ESMA may wish to consider future Level 3 guidance on this point to reduce ambiguities but nevertheless unfortunately we foresee persistent data errors and loss of data quality because of this issue, which could prove material in the context of BMR aggregations.

Furthermore, we would highlight the potential for ambiguity and the need elsewhere for care regarding this problem. CP paragraph 130 says "The objective is that, by using the reference data, the TRs identify and link all the ISINs that refer to the same index in order to prepare and calculate all the relevant aggregations for that index." But this is potentially ambiguous and/or circular, if indexes are represented by ISINs. Argus therefore encourages ESMA to be mindful to distinguish, both in its policy development thinking and in written material where relevant, between ISINs that represent financial instruments and ISINs that represent indexes.

Lastly we note that the actual draft revised RTS in this current consultation on data to be published under EMIR Article 81 does not seem to specify or lay down technical requirements as to how TRs should identify indexes. Argus wonders whether this is an oversight that should be addressed in the draft RTS, in order to ensure that it fully specifies the correct aggregations that TRs must perform pursuant to Article 1b.

<ESMA_QUESTION_DMPA_23>

Q24: What practical issues would you foresee in aggregating data on interest rate indexes? What mechanisms should be put in place to ensure that a TR is in a possession of accurate reference data to identify derivatives that have an underlying interest rate index? How the objective of publishing accurate aggregations can be achieved in the most efficient way? Please elaborate

<ESMA_QUESTION_DMPA_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_DMPA_24>

Q25: Do you consider this approach feasible? What type of information should be provided by the benchmark administrators? Which other entities should be involved in the reference data collection? How timely should be the provision of reference data to update the ISO 20022 data catalogue? What are the potential costs of such solution? Please elaborate.

<ESMA_QUESTION_DMPA_25>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 26 IN THE CONSULTATION DOCUMENT, NOT QUESTION 25.

a) Allocation of ISINs to indexes

Regarding the aspect of the approach that makes use of ISINs, Argus notes that many indexes used as benchmarks are not themselves tradable securities or financial instruments. We are therefore not currently fully certain whether it will be possible to obtain ISINs for all such indexes.

Argus entirely appreciates policy makers' desire for some form of global unique identification system for all indexes used as underlyings in financial instruments, and this is already well recognised in CPMI/IOSCO's work on harmonisation of Unique Product Identifiers as we have previously noted in our responses to other ESMA consultations. We also note ESMA's recent statement in its Final Report & Technical Advice under the Benchmarks Regulation (ESMA/2016/1560) that "ESMA highly recommends the European Commission to request the assignment of ISINs to indices from administrators".

Argus does not disagree with the underlying objective. But we do caution that it is not currently confirmed whether ISINs can in all circumstances be issued to all such indexes. We therefore encourage relevant EU policy makers to interact with the Association of National Numbering Agencies (ANNA), or other appropriate organisation responsible for ISIN allocation policy, in order to obtain a clear public confirmation that ISINs can indeed be issued to all indexes used as underlyings in financial instruments.

b) Development of comprehensive data catalogue for indexes used as benchmarks in the EU

Argus considers that an approach based on MiFID II/MiFIR RTS 23 reference data ought in the long term to be feasible. But we caution regarding how long it may take before the output is sufficiently reliable or effective in practice and we echo ESMA's own comments in paragraph 134 of the CP on the likely lengthy time and problems for many stakeholders in the meanwhile.

Clearly the availability of unique identifiers for all indexes would significantly assist the situation. Until that time, the identification of indexes, the compilation of a reference data catalogue and the aggregation of data by TRs are all likely to rely heavily on free-text descriptions of indexes, both as reported by trading venues under RTS 23 and as contained in transaction data reported by counterparties under EMIR. Argus' own experience is that market participants and market infrastructures very often create or adapt — either marginally or extensively — their own free-text descriptions of an index, whatever the index owner/publisher may state as the formal name of the index.

In Argus' view, index owners/publishers can likely provide:

- Official name of an index
- Name of the index owner/publisher, their contact details etc.
- The index owner's/publisher's own unique identifier for the index, according to the owner's/publisher's own internal identifier system
- ISIN or other external universal identifier for the index, but only as and when available

Importantly, Argus would like to emphasise that reference data on an index is not necessarily static and may on occasion change. Therefore the design and operation of the data catalogue must recognise and allow for this.

For example, the official name of an index could on occasion change. This might occur in situations such as when the index is bought by another party, when the owner of an index changes its own corporate name, or when the index itself has been materially updated due to changes in the underlying market that the index measures. It is also conceivable that the index owner's/publisher's own unique identifier for the index could on occasion change, for example if the index owner/publisher needed to update its internal system to take account of new developments.

<ESMA_QUESTION_DMPA_25>

Q26: What alternative solutions are available? Please elaborate.

<ESMA_QUESTION_DMPA_26>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 27 IN THE CONSULTATION DOCUMENT, NOT QUESTION 26.

Argus understands that this question relates to the identification of indexes used as benchmarks in derivatives within BMR scope. Assuming this understanding is correct, Argus is not immediately aware of any alternative solutions that would be better. It seems to us that the correct starting point is definitely with the trading venues, which list the derivatives, and which are therefore best placed to provide reference data on these contracts. In other words, to use RTS 23 reference data as the best starting point.

In Argus' experience, index owners/publishers do not necessary have access to timely or up-to-date details of all derivatives listed on a trading venue that reference a particular index provided by the owner/publisher. But once such an inventory has been compiled — ie from RTS 23 reference data — index owners/publishers can subsequently provide the additional details mentioned in our response to the previous question: ie the official name of an index; the name of the index owner/publisher, their contact details etc; the index owner's/publisher's own unique identifier for the index, according to its own internal identifier system; and the ISIN or other external universal identifier for the index, as and when available.

If this question is however intended to relate to the broader approach of using TR data for BMR aggregation purposes, please see our summary comments in our introduction.

<ESMA_QUESTION_DMPA_26>

Q27: Do you foresee any difficulties in implementing the suggested approach on data aggregation in the case of baskets? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_27>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 28 IN THE CONSULTATION DOCUMENT, NOT QUESTION 27.

Provided that the amended TS on reporting will indeed allow accurate identification of the weightings of each individual index within a basket, then Argus does not immediately foresee difficulties in this particular respect. We note though our wider concerns on this overall approach in respect of BMR aggregations, as discussed throughout our consultation response and in particular as summarised in our introduction.

Furthermore, while we note that ESMA states in CP paragraph 136 "ESMA is of the opinion that to the extent that a trade repository could identify the weightings of the components, those should be used as they are", and Argus fully agrees with this opinion, we can nevertheless see nothing in the draft revised RTS that reflects this requirement. Indeed we note that clause 4 of Article 1b seems to directly conflict, since in effect it mandates TRs to always take an equal weighting for indexes in a basket and to ignore the real weightings even if the TR has these available: "Where two or more indexes are used in a derivative under paragraph 2, for the purpose of publishing aggregate data, the notional of that derivative shall be divided by the trade repository by the number of the different indexes used."

Argus therefore calls on ESMA to fully reflect the policy intent of paragraph 136 in the draft revised RTS, and ensure that TRs take proper account of actual weightings whenever these are available.

Argus would also like to re-emphasise the importance of TRs correctly taking account of weightings in their aggregations. The potential impact, in inaccuracy terms, of TRs not doing so correctly would be equivalent to the problem of double or multiple counting of reported contracts. This is because, in effect, double or multiple counting is precisely what will result if the weightings are not correctly accounted for by TRs for BMR purposes. Therefore it is absolutely critical that TRs correctly account for index weightings within a basket whenever these are known, and that the draft revised RTS properly achieves this, fully in accordance with the methodological approach set out at Level 1 in BMR and as further specified by ESMA in the Final Report & Technical Advice under the Benchmarks Regulation (ESMA/2016/1560).

<ESMA_QUESTION_DMPA_27>

Q28: Is the limit of 5 billion EUR per index and TR, where there are at least 6 different counterparties to trades, sufficient to provide the sufficient transparency over those transactions, while not undermining the confidentiality of the data? Please elaborate on the reasons for your response.

<ESMA_QUESTION_DMPA_28>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 29 IN THE CONSULTATION DOCUMENT, NOT QUESTION 28.

Argus appreciates ESMA's interest to ensure the confidentiality of specific parties to a particular derivative contract but believes that it may be misplaced in the current context.

Firstly, we note that trading venues already typically publish on their websites on a daily basis open interest and trading volume data by individual listed derivative contract — which equivalently means by underlying index used by that contract, presuming the underlying index can be easily identified which is generally the case. Therefore, there is already aggregate information in the public domain available at a contract level for ETDs (although not always in machine-readable format), which has not been screened or masked by applying a certain minimum aggregate notional value of trade or minimum number of counterparties. Therefore ESMA's proposal does not seem to make sense to us in terms of what is already publicly available on ETDs. And furthermore, the anonymous aggregated data at a contract level already published on a daily basis by trading venues does not appear to enable the identification of any specific party to any contract.

Secondly and equally important for BMR purposes, ESMA's proposal, if we have understood correctly, is that a TR should only publish the aggregations for a given index when the total notional for the index exceeds €5bn and there are 6 or more counterparties to in-scope contracts reported to the TR. If the total notional is less than €5bn and/or less than 6 different counterparties have concluded in-scope contracts, ESMA proposes that the TR should add the data for that index to an "others" bucket, which would comprise aggregate data for other indexes in a similar situation.

Assuming our understanding is correct, this would therefore mean that in cases where the notional is under €5bn and/or there are less than 6 different counterparties, no data on that particular index would be published by a TR or made available to the administrator. Clearly the "others" bucket has little to no value to administrators as it does not allow for the identification of any index in the bucket or any disaggregated data for such an index. But this would not, in our view, be acceptable in light of BMR obligations. Administrators will have a legal duty under BMR to monitor the level of "use" of all of their benchmarks and the fact that TRs may be explicitly directed by an RTS to publish no data on a given index seems considerably at odds with this in policy terms.

We appreciate ESMA may perhaps be taking the view that since the significant threshold under BMR is €50bn, a benchmark without any specific data available on it from TRs should not be of concern to the administrator from the threshold perspective. However, we do not believe such a view would be correct. In the first place, the "others" bucket could certainly, according to its construction, include benchmarks with a total notional of well over €5bn — potentially even over €50bn — but meaning there is no TR data available to an administrator on the index itself. This would clearly not be an acceptable situation from the point of view of the administrator and its legal responsibility to monitor its benchmark 'usage' levels and advise its competent authority if thresholds are breached. But equally, the construction of the 'others' bucket or the withholding of all data on an index when the total notional is under €5bn seems in effect to be purposeless, given that detailed yet anonymous ETD data is already publicly available at a contract level from the trading venues, as we have already noted.

Additionally, we note that the CP seems only to consider two quantitative thresholds as relevant for BMR — the €500bn quantitative threshold for critical benchmarks and the €50bn threshold for significant benchmarks. But Argus would like to remind that according to Article 2(2)(g)(ii) of BMR, there is another important threshold to be considered for commodity benchmark administrators. This threshold — in effect a de minimis threshold — includes a quantitative component of €100mn. This is another important threshold for potentially any commodity benchmark administrator to monitor in respect of its legal obligations under BMR, and the threshold value of €100mn clearly means that the proposed €5bn minimum limit for TRs to publish data for a given index is inappropriate and unworkable.

Argus recognises that our discussion above regarding existing available public data applies specifically in respect of ETDs. Therefore there may perhaps be merit in ESMA considering further the case of trade in in-scope financial instruments via systematic internalisers, where some of the confidentiality considerations ESMA discusses may possibly be more valid and require further consideration. That said, Argus queries why the situation of systematic internalisers would be different to that of trading venues such as regulated markets, which already typically publish on a daily basis detailed open interest and trading volume data at a contract level (and which could therefore in principle reflect the trading activity of just two counterparties and a single transaction).

But for the reasons discussed more fully above, Argus does not support a proposal to limit TRs' obligations to publish aggregate data by index only to situations where the total notional is at least €5bn and at least 6 different counterparties are involved in contracts. We consider that equivalent anonymous data for ETDs is already regularly published by trading venues, in effect rendering the proposed restrictions on TRs redundant and the confidentiality justification unnecessary. Further, the obligations placed on administrators by BMR to monitor total value versus thresholds must be properly recognised, including those obligations flowing from the de minimis threshold of BMR Article 2(2)(g)(ii), and these mean that restricting as proposed the aggregate data published by TRs would not in our view be an acceptable approach.

<ESMA_QUESTION_DMPA_28>

Q29: Do you foresee any issues in publishing a single aggregate figure per index and a TR in accordance with the aforementioned rules?

<ESMA_QUESTION_DMPA_29>
PLEASE NOTE THAT THIS QUESTION IS MIS-NUMBERED IN THE ESMA REPLY FORM: THIS IS QUESTION 30 IN THE CONSULTATION DOCUMENT, NOT QUESTION 29.

Yes, we do. As we have explained in our introductory comments, Argus continues to have serious concerns regarding the overall proposed approach to using TR data for purposes of BMR aggregations. We continue to believe this is likely to be significantly sub-optimal and we alert ESMA to our worries that this approach may never lead in practice to reliable data for BMR purposes, however long and diligently ESMA and other authorities work at a granular level to improve EMIR data quality.

We feel that the proposal approach may well be fundamentally flawed. We note that ESMA has, in our view very sensibly, proposed a data "fall-back regime" for BMR purposes until such time as TR data is sufficiently reliable (see Final Report & Technical Advice under the Benchmarks Regulation, ESMA/2016/1560). Because of our fundamental concerns over the likely reliability of TR data for BMR purposes, our expectation is that in reality this "fall-back regime" may in many cases persist as the regime used in practice.

As the analogy in our introductory comments explains: BMR is interested in a picture of the whole vase, not in the thousands of small broken pieces of the vase. Aggregating a picture of the whole vase from the large number of small dispersed pieces, especially when the pieces are multiplied twice, three, four or even up to twelve times by various reporting protocols, is fraught with potential error. An accurate image of the vase is much more reliably obtained by using the whole vase in its unbroken state, not by trying to reconstruct an image from hundreds of thousands of small broken vase fragments.

In addition to our fundamental concerns regarding the overall approach of using TR data for BMR purposes, we have substantive concerns and/or comments on a more granular nature on the following aspects of the current consultation:

- Double and multiple-counting problems (see question numbered 13 in reply form)
- Correct treatment of ETD trades that are terminated early or otherwise closed out (see question numbered 3 in reply form)
- Correct treatment of ETD trades by Clearing Members (see question 1)
- Correct treatment of derivatives admitted to trading only on a non-EU trading venue and traded OTC (see question numbered 5 in reply form)
- Correct treatment of weightings in a basket (see question numbered 27 in reply form)
- Potential ambiguity regarding Common data field 7 (see question numbered 23 in reply form)
- Non-reconciled transactions (see question numbered 10 in reply form)
- Intergroup transactions (see question numbered 23 in reply form)
- Proposed minimum €5bn, 6 counterparty threshold for publication of an aggregation (see question numbered 28 in reply form)
- Use of ISINs for indexes (see question numbered 25 in reply form)
- Need for TRs to establish a responsive contact point and mechanism for queries (see question numbered 17 in reply form)

<ESMA_QUESTION_DMPA_29>