MiFID Trading Capacity & FIX Tag 29

## MiFID Trading Capacity Values

MiFID II introduces three trade capacity values as follows:

|  |  |  |
| --- | --- | --- |
| **Value** | **Meaning** | **Supporting regulatory text** |
| **DEAL** | Dealing on own account | Trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments[[1]](#footnote-1).  *Note also:*  Dealing on own account when executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back-to-back trading), which should be regarded as acting as principal and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account[[2]](#footnote-2). |
| **MTCH** | Matched principal | A transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction[[3]](#footnote-3). |
| **AOTC** | Any other trading capacity |  |

In addition to the above, ESMA have published Level 3 guidance for transaction reporting which provides examples and further text regarding the usage of these trading capacities[[4]](#footnote-4). Of particular note are the following:

* AOTC, though defined as ‘any other trading capacity’, includes trading in an agency capacity[[5]](#footnote-5).
* DEA (Direct Electronic Access) activity should be reported as AOTC or MTCH[[6]](#footnote-6).
* Both DEAL and MTCH may be used for executing client orders on a riskless principal basis[[7]](#footnote-7), with the main difference relating to transaction reporting:
* DEAL permits the aggregation of executions and average pricing over an order[[8]](#footnote-8). This is because the broker will need to produce a single client-side transaction report and the client will need to produce an equivalent market-side transaction report[[9]](#footnote-9).
* MTCH requires that details of each individual execution be made available to the client. This is because the broker will need to produce client-side transaction reports for each execution[[10]](#footnote-10) and so the client will need to produce equivalent market-side transaction reports for each execution.

## Implications and Requirements

The underlying business requirements are as follows:

* To carry ESMA’s trading capacity definition (AOTC, MTCH, DEAL) on:
* Order messages between participants/members of trading venues and trading venues in order for the trading venues to meet their order record keeping obligations[[11]](#footnote-11).
* Execution messages between investment firms to meet their transaction reporting and record keeping obligations under MiFID II[[12]](#footnote-12).
* To permit investment firms to distinguish between DEAL-capacity executions undertaken on a riskless principal basis (i.e. matching executions from a venue or other firm with no change in price) as opposed to a principal basis (i.e. external executions with change of price, or where the investment firm is executing on risk, e.g. as a systematic internaliser). This is important as a number of market participants consider[[13]](#footnote-13) that DEAL-capacity principal executions are not eligible for commission sharing for US funds under SEC rule 28(e), whereas DEAL-capacity riskless principal executions (along with AOTC and MTCH) are.

## Proposed Guidance for Usage of Tag 29 LastCapacity

Rather than introducing a new FIX tag to communicate these MiFID-related capacity changes, the FIX MiFID Transparency Working Group has concluded that the best way of meeting the above requirements is to extend the existing tag 29 to include a new ‘riskless principal’ value, and to provide updated guidance and mapping between the Tag 29 values and the MiFID II capacities. This approach involves expanding on and modifying the existing (historic) FIX Guidance for Usage of Tag 29 LastCapacity (see Appendix).

The new values and usage guidance are as follows:

| **Value & Description** | **Explanatory Guidance** |
| --- | --- |
| **1 (agent)** | * An execution on a public market or from an external party (e.g. broker) conducted on an agency basis. * For MiFID II, this will be used to represent ‘AOTC’ capacity. |
| **2 (cross as agent)** | * An execution between two clients of the executing firm, taking place within the firm, and conducted on an agency basis. * For MiFID II, this will be used to represent ‘AOTC’ capacity. |
| **3 (cross as principal)** | * An execution on a public market or from an external party (e.g. broker) conducted on a matched principal basis in line with the MiFID definition of ‘MTCH’ capacity. |
| **4 (principal)** | * An execution where the executing firm is committing capital (e.g. a risk fill or change in price on fills obtained from markets or external parties). * Where the FIX execution message is being used to communicate an indicative price and quantity (for example when being used by the executing firm to write a swap), regardless of the source of liquidity. * For MiFID II, this will be used to represent ‘DEAL’ capacity. |
| **5 (riskless principal)** | * An execution on a public market or from an external party (e.g. broker) conducted on a riskless principal basis. * For MiFID II, this will be used to represent ‘DEAL’ capacity. |

The following examples illustrate how Tag 29 (and Tag 30 for venue of execution) will be set on execution messages from brokers to their clients under various trading scenarios. The table also shows the equivalent MiFID capacity, which can be inferred from Tag 29:

| Venue | Scenario | Tag 29 | Tag 30 | Implied MiFID Capacity |
| --- | --- | --- | --- | --- |
| Venue (non-DEA) or external broker | Fills from trading venues (non-DEA) or external brokers, in agency capacity | 1 | Venue MIC | AOTC |
| Venue (non-DEA) or external broker | Fills from trading venues (non-DEA) or external brokers, not in agency capacity, but where broker is returning the same price as achieved in the venue or by the external broker  *(Requires transaction reporting on Avg-Price allocation/booking)* | 5 | Venue MIC | DEAL |
| Venue (non-DEA) or external broker | Fills from trading venues (non-DEA) or external brokers, not in agency capacity, but where broker is returning the same price as achieved in the venue or by the external broker  *(Requires transaction reporting on every individual fill)* | 3 | Venue MIC | MTCH |
| Venue (DEA) | Fills from trading venues (DEA), in agency capacity | 1 | Venue MIC | AOTC |
| Venue (DEA) | Fills from trading venues (DEA), not in agency capacity | 3 | Venue MIC | MTCH |
| Broker (as SI) | SI risk fill (i.e. an investment firm filling on risk in its capacity as a systematic internaliser) | 4 | SI’s MIC | DEAL |
| Broker (as SI) | SI client cross (i.e. an investment firm filling against another client order in its capacity as a systematic internaliser) | 5  Or  3 | SI’s MIC | DEAL  Or  MTCH |
| Broker (OTC) | OTC risk fill (i.e. an investment firm filling on risk but not in systematic internaliser capacity) | 4 | Broker’s “OTC” MIC | DEAL |
| Broker (OTC) | OTC client cross (i.e. an investment firm filling against another client order but not in systematic internaliser capacity) | 2 | Broker’s “OTC” MIC | AOTC |

## Appendix - Current Guidance for Usage of Tag 29 LastCapacity

The FIX best practice guidelines ( August 2015) for usage of tag 29 are, in full:

| **Value** | **Usage in Americas** | **Usage in EMEA** |
| --- | --- | --- |
| **1 (agent)** | * An execution on an exchange or alternative execution venue external to the executing broker-dealer, where the broker-dealer is acting as agent on behalf of the client. | |
| **2 (cross as agent)** | * An execution between two clients of the executing broker-dealer, where the broker-dealer is acting as agent on behalf of both clients, including when the execution takes place within the broker-dealer's electronic matching engine in an agency capacity (i.e. client order vs. another client order). | * An execution between two clients of the executing broker-dealer taking place within the broker dealer. This also applies where the other order is a house order generated specifically to hedge a swap. |
| **3 (cross as principal)** | * An execution between two clients of the executing broker-dealer, where the broker is acting as a principal solely for the purpose of effecting the execution between the clients, including when the broker is acting as principal to collect consideration for the transaction by printing one or both clients at net prices. * An execution performed on a public market in riskless principal capacity. * An execution taking place within the broker-dealer's electronic matching engine in a principal capacity (e.g. client order vs. a house order). | * An execution performed on a public market in riskless principal capacity. * An execution between a client order and a house risk order taking place within the broker-dealer. |
| **4 (principal)** | * An execution where the broker-dealer is acting as a dealer and is the principal on the opposite side of the client execution. | * An execution where the broker-dealer is acting as a dealer and is the principal on the opposite side of the client execution. * Where the FIX execution message is being used to communicate an indicative price and quantity (for example when being used by the broker to write a swap), regardless of the source of liquidity. |

1. MiFID II article 4.6. [↑](#footnote-ref-1)
2. MiFID II recital 24. [↑](#footnote-ref-2)
3. MiFID II article 4.38. [↑](#footnote-ref-3)
4. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.2. [↑](#footnote-ref-4)
5. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.2.3. [↑](#footnote-ref-5)
6. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.28. [↑](#footnote-ref-6)
7. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.22. [↑](#footnote-ref-7)
8. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.22.1.a). [↑](#footnote-ref-8)
9. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.1. [↑](#footnote-ref-9)
10. “Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID II”, 10 October 2016 ESMA/2016/1452 Section 5.22.1.b). [↑](#footnote-ref-10)
11. MiFIR 25/RTS 24. [↑](#footnote-ref-11)
12. MiFIR 26/RTS 22. [↑](#footnote-ref-12)
13. It should be noted that this statement should not be considered legal advice and merely represents an opinion voiced by a number of FIX member firms. [↑](#footnote-ref-13)