esma European Securities and Markets Authority

Reply form for the Consultation Paper on the RTS 1 and RTS 2 Review

9 July 2021

European Securities and Markets Authority

Date: 9 July 2021

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the RTS 1 and RTS 2 review 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_RVEW_0> - 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;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

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

ESMA_CP_RVEW_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_CP_RVEW_ESMA_REPLYFORM or

ESMA_CP_RVEW_ANNEX1

Deadline

Responses must reach us by 1 October 2021.

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	Association of Proprietary Traders
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_RVEW_1>
The Association of Proprietary Traders represents 24 independent proprietary trading firms based in the Netherlands. Since the opening of the first European Options Exchange in 1978, Amsterdam has become a global center for proprietary trading, with a concentration of bigger and small sized independent trading firms. Most of our members operate as market makers on exchanges in and outside the EU and buy and sell financial instruments on own account. On the basis of an obligation following from MiFID II market makers commit to continuously providing liquidity to the market under all circumstances.

Proprietary firms perform a "warehousing" function, where supply and demand for financial instruments do not always meet. Our members enable retail investors as well as institutional investors to invest in, or divest, financial instruments including shares, bonds, options and ETFs. Over the past 30+ years and to the benefit of institutional and retail investors alike, activities of proprietary trading firms have contributed to transparent and liquid capital markets and to tightening spreads between bid and offer price.

We are happy to answer any questions which may rise from this response and provide more information.

List of APT members

- Algorithmic Trading Group	- Mako
- All Options	- Market Wizards
- Criterion Arbitrage & Trading	- Nino Options
- Cross Options	- Nyenburgh
- Da Vinci Derivatives	- Optiver
- DRW	- ORA Traders
- Flow Traders	- Radix Trading
- Gelber Group	- Tower Research
- Hill Capital	- Quantlab
- IMC	- Utr8 Group
- Jane Street	- WEBB Traders
- Jump Trading	- 323 Trading

Striking the right balance between LIT and dark trading

We support the objectives of the MIFID framework to promote market transparency, to enhance a robust price formation process and prevent disorderly markets. This means striking the right balance between protecting LIT market price discovery and recognizing the contribution of dark orders to orderly markets, for example for large trade sizes. In principle, we believe that platforms and flow should be accessible and subject to an interaction between supply and demand on LIT markets, which are the most important platforms for price discovery.

The right balance between LIT and dark seems to be missing in parts of the equity markets at the moment. For example, on the basis of public RTS 28 reports we assess that a substantial size of Dutch retail flow ends up at aggregators and third country investment banks. While some of the flow may be routed back to LIT

venues, we have strong indications that a sizeable portion of the flow is executed without being subject to the price formation process, i.e. is held captive and internalized. We cannot assess if, and to what extent, flow is effectively matched for practical purposes given the large value and amount of orders being internalized. While these prices may seem adequate from a Best Execution perspective, we cannot rule out that pricing would have been better if the order would have interacted with the supply and demand dynamics on LIT venues.

While we welcome further standardization and consistency in reporting as suggested by ESMA, we also believe that the suggested measures do not remedy one of the most pressing situations in the current market structure: increased internalization of flow that belongs on open markets, contributing to price formation. Soft inducements and (implicit) payment of order flow deserve utmost attention. Specific for this consultation paper: certain relevant flags may be removed, and non-price forming transactions are not discussed further.

We are concerned that increasing internalization of retail flow could lead to a decreasing appetite amongst market makers to be at risk and result in a widening of spreads. This will come at the expense to price discovery and the Capital Markets Union's objective to make Europe less dependent on banks. The end investor will end up – albeit unconsciously – paying the bill.

<ESMA_COMMENT_CP_RVEW _1>

Q1 : Do you agree with the proposed amendment to Article 7(2) of RTS 1? If not, please explain your concerns about the proposed increase of the threshold.

<ESMA_QUESTION_RVEW_1>
[We welcome the initiative to create more pre-trade transparency in the market. As the LIS waiver is an essential part of the price formation process, we would support a careful data-driven re-assessment of this threshold, based on more recent data, including the 2020 market turmoil, and taking into account the responses on this consultative paper.

In addition, we propose that the change of the threshold is implemented in two phases.
(1) First an increase from 1 to 2 million.
(2) 12 months later the threshold could be increased to 3 million if an impact review after 9 months would favour such an additional increase, which would give ESMA the opportunity to monitor and evaluate the impact of the first amendment.
<ESMA_QUESTION_RVEW_1>

Q2 : Do you agree with the proposed amendment to Table 5 of Annex II of RTS 1? If not, please explain why you are concerned about the proposed increase of the thresholds.

<ESMA_QUESTION_RVEW_2>
[No, as we strongly believe that a more gradual approach of the publication thresholds would be beneficial to the overall function and transparency of the capital markets. The following thresholds would allow market participants to absorb the risk of larger trades and increase transparency on smaller trades, which also reflect an important market share:
(1) All trades up to EUR 5 million should be published immediately.
(2) For trades from EUR 5 up to 15 million publication should be mandatory after 15 minutes.
(3) After an hour all trades between EUR 15 and 50 million should be published.
(4) End of day all trades above EUR 50 million need to be published..<ESMA_QUESTION_RVEW_2>

Q3 : Do you agree with ESMA's amendments to Articles 2, 6 and 13 of RTS 1 described above? If not, please explain why.

<ESMA_QUESTION_RVEW_3>
While we welcome the proposed simplifications and increased consistency proposed by ESMA, we strongly believe that one key concern in the current market structure remains unaddressed: as evidenced by RTS 28 reports from retail banks and brokers, a sizeable and increasing amount of transactions is being internalised by aggregators that do not contribute to price formation.

This presents two problems: such flow no longer interacts with a supply-and-demand mechanism for which we have regulated markets and MTFs and is no longer addressable by potential counterparties. If large enough, price discovery is hampered.

Additionally, and problematically, such aggregation provides a disincentive for market participants with an opinion on price (e.g. market makers) to quote tightly, because the trading flow that remains on regulated markets and MTFs deteriorates in quality, while market makers that are quoting can no longer appropriate profit – because effectively their pricing is being used by aggregators who internalise more and more flow. This necessitates market makers to quote wider spreads to counter both these symptoms, further deteriorating European markets.

We are concerned that this remains unaddressed while action is required. Additionally, if we read it correctly, removing the 'SIZE' flag as discussed in Section 3.4 and Q16 further reduces visibility of this phenomenon. As set out in our introduction, we believe that, in principle, trading should take place on lit platforms, addressable to all, in full competitiveness and transparency.
<ESMA_QUESTION_RVEW_3>

Q4 : Do you agree with the proposed description of FBA trading systems and the updated description of periodic auction trading systems? If not, please explain why and which elements should be added to the description and/or removed.

<ESMA_QUESTION_RVEW_4>
As a matter of principle, we believe that trading systems should be open to competition and transparent. Our main point is that the volume traded in frequent batch auctions (FBA) must be truly accessible and subject to a competitive price formation process. This means that the time to interact is sufficiently long for market participants to engage in meaningful competition. More recent implementations have showed some improvement here which is essential: FBAs should not act as de-facto crossing facilities for pre-arranged trades. More principally we believe that most flow is efficiently and competitively traded on CLOB and recommend ESMA to closely review the added value of FBA to the end-investor – and under which circumstances FBAs are of true benefit to the market structure at large. This assessment should be from the viewpoint of the end-investor – beyond the intermediaries involved.
<ESMA_QUESTION_RVEW_4>

Q5 : Which of the two options for the pre-trade transparency requirements for FBA trading systems do you prefer? Please explain in case you are supportive of a different approach than the two options presented.

<ESMA_QUESTION_RVEW_5>
[See our answer to Q4. We are strong proponents of harmonisation. We believe option 2 enhances market transparency, although we lean towards option 1 – everything else being equal - because it would be the most meaningful improvement of current practices. While we appreciate that other participants in the market structure argue that FBAs are of benefit to end-investors we would support ESMA to conduct a data-driven assessment of the options and to monitor the added value of FBAs over open platforms including CLOB and RfQs for larger tickets
<ESMA_QUESTION_RVEW_5>

Q6 : Do you agree with ESMA's proposals for 'hybrid systems'? If not, please explain why and which elements should be added and/or removed.

<ESMA_QUESTION_RVEW_6>
We support ESMA's attempts to harmonise and restrict initiatives that jeopardise transparency, competitiveness and regulatory arbitrage. Trading platforms should be open, transparent and competitive to allow interaction between supply and demand.
<ESMA_QUESTION_RVEW_6>

Q7 : Do you agree with aligning both Table 1, Annex I of RTS 1 and Table describing the type of system and the related information to be made public in accordance with Article 2, of Annex I of RTS 2, to describe the same systems (with the exception of voice trading systems) and pre-trade transparency requirements? If not, please explain why.

<ESMA_QUESTION_RVEW_7>
We support proposals that promote standardisation and consistency.
<ESMA_QUESTION_RVEW_7>

Q8 : Do you agree with ESMA's proposals to require a specific format and standardise further the pre-trade information to be disclosed? If not, please explain why. If yes, please clarify which elements should be amended, added and/or removed, if any.

<ESMA_QUESTION_RVEW_8>
We support proposals that promote standardisation and consistency.
<ESMA_QUESTION_RVEW_8>

Q9 : Do you agree with the changes proposed by ESMA to amend Article 15 (3) of RTS 1? If not, please explain your rationale.

<ESMA_QUESTION_RVEW_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_9>

Q10 : Do you agree with the proposed amendments to Article 17? If not, please explain.

<ESMA_QUESTION_RVEW_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_10>

Q11 : Do you agree with the proposed amendment of Article 11(3)(c) of RTS 1? Please explain.

<ESMA_QUESTION_RVEW_11>
We welcome further clarification, particularly if it promotes lit trading while protecting genuine transparency concerns for large-size trading of buy-side and market makers.
<ESMA_QUESTION_RVEW_11>

Q12 : Do you agree with the changes proposed to Table 3 of Annex I of RTS 1 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA_QUESTION_RVEW_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_12>

Q13 : Do you agree with ESMA's proposal not to change Tables 1 and 2 of Annex III of RTS 1? If not, and you consider that certain modifications shall be made, please explain.

<ESMA_QUESTION_RVEW_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_13>

Q14 : Do you agree with ESMA's proposal on the new Tables 1 and 2 of Annex IV of RTS 1? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_14>

Q15 : Please provide concrete examples or scenarios when the price cannot be determined as described or cases of the need to set a zero price for the different types of instruments: shares, ETFs, depositary receipts, certificates, other equity-like financial instruments.

<ESMA_QUESTION_RVEW_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_15>

Q16 : Do you agree with the deletion of the SI flags 'SIZE', 'ILQD' and 'RPRI'? If not, please explain what you consider to be their added value.

<ESMA_QUESTION_RVEW_16>
We refer to our answer to Q3. We are concerned about increasing volume becoming internalised by aggregators, no longer interacting with the price discovery mechanism. Removing the SIZE flag reduces visibility of this phenomenon.
<ESMA_QUESTION_RVEW_16>

Q17 : Do you agree with the deletion of the ACTX flag? If not, please explain what you consider to be its added value.

<ESMA_QUESTION_RVEW_17>
We welcome initiatives to further decrease use of 'broker crossing networks' because we favour open, transparent and competitive trading on-venue. We agree on the simplification of the pre and post-trade waivers.<ESMA_QUESTION_RVEW_17>

Q18 : Do you agree with the approach suggested for non-price forming transactions? If not, please explain.

<ESMA_QUESTION_RVEW_18>
We welcome further simplification and transparency/consistency.
<ESMA_QUESTION_RVEW_18>

Q19 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver flag for on-book transactions? If not, please explain. Should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVEW_19>
[We do not see a direct benefit of adding new waiver flags for on or off book pre-trade LIS orders. The current situation allows for sufficient clarity. Additionally, the suggestion from ESMA to only apply such waivers to complete fills as opposed to partial fills will make the waiver landscape very complex and onerous on market participants. Before ESMA proceeds, we request ESMA to provide additional guidance and consult market participants before making the waiver landscape too difficult and opaque.
<ESMA_QUESTION_RVEW_19>

Q20 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver for off-book transactions? If not, please explain.

<ESMA_QUESTION_RVEW_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_20>

Q21 : Do you agree with the proposal not to add such additional flags? If not, please explain why those flags are needed in your view.

<ESMA_QUESTION_RVEW_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_21>

Q22 : Do you recommend adding/deleting/amending any other flags? If yes, please explain.

<ESMA_QUESTION_RVEW_22>
Where ETF/ETC/ETN are traded at NAV, these transactions would receive post-trade transparency as close to real-time as possible, with a pending price. When the NAV price becomes available, parties update the pending price of the transaction. However, NAV trades are not eligible for deferrals. This is undesirable for large transactions which should be eligible for post trade deferrals. Most importantly, it

should be established which price to take into account when establishing if a NAV transaction is eligible for deferral (for borderline-cases).

We would suggest allowing post-trade deferral for NAV trades. Parties should be able to take mid-point of the most relevant market in terms of liquidity for the instrument to establish the price for calculating whether a transaction is above or below post-trade deferral thresholds."

We believe this deferral is lacking in the proposed "flagging"-system by ESMA. We could also suggest to create an individual flag for this deferral however, that might open us up to the argument that this would need a level 1 change, which we doubt and which debate we would try to avoid.
<ESMA_QUESTION_RVEW_22>

Q23 : Do you agree with the proposal to prescribe the order of the population of flags? If not, please explain and provide an alternative proposal.

<ESMA_QUESTION_RVEW_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_23>

Q24 : Do you agree with the proposed amendments above? If not, please do not reiterate the arguments made under the previous question asked for equity instruments and please rather explain why those amendments are not suitable for non-equity financial instruments.

<ESMA_QUESTION_RVEW_24>
We welcome further clarification and transparency/consistency.
<ESMA_QUESTION_RVEW_24>

Q25 : Do you agree with the proposal to specify the fields to be populated for pre-trade transparency purposes? If not, please explain. In case you support the proposal, please comment on the fields proposed, in particular whether you would consider them necessary and/or whether additional information is required.

<ESMA_QUESTION_RVEW_25>
We welcome further clarification and transparency/consistency.
<ESMA_QUESTION_RVEW_25>

Q26 : Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.

<ESMA_QUESTION_RVEW_26>
We welcome further clarification and transparency/consistency. We support any further initiatives to promote trading on-screen/lit trading, increasing competitiveness by increasing accessibility of trading volume as we believe this improves market quality for all: market makers as well as end-investors.
<ESMA_QUESTION_RVEW_26>

Q27 : Do you agree with the proposed changes to Article 13? If not, please explain.

<ESMA_QUESTION_RVEW_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_27>

Q28 : Do you agree with the proposed changes to Article 4? If not, please explain.

<ESMA_QUESTION_RVEW_28>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_RVEW_28>

Q29 : Do you agree with the proposed changes to Article 12? If not, please explain. Please do not reiterate the general comments made in the equity section and try to focus on arguments that are specific to non-equity financial instruments.

<ESMA_QUESTION_RVEW_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_29>

Q30 : Please provide your comments on the analysis and proposals related to the liquidity framework applicable to commodity derivatives, EA and DEA detailed in Section 4.2 and summarised in Section 4.2.5. Please list the proposals with their ID (#1 to #9) for ease of reference.

<ESMA_QUESTION_RVEW_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_30>

Q31 : Do you agree with the changes proposed to Table 2 of Annex II of RTS 2 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA_QUESTION_RVEW_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_31>

Q32 : Do you agree with the changes proposed to Table 4 of Annex II of RTS 2 (Measure of volume) presented above? Do you think that it now provides more clarity? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_32>

Q33 : Do you agree with ESMA's proposals on Table 1 (Symbol) and Table 2 of Annex IV of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_33>

Q34 : Do you agree with ESMA's proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives (Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_34>

Q35 : Please provide your comments in relation to the proposals related to the segmentation criteria applicable to commodity derivatives summarised in Table 11. Please list the proposals with their ID for ease of reference. Do you have other proposals related to the segmentation criteria applicable to commodity derivatives and C10 derivatives?

<ESMA_QUESTION_RVEW_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_35>

Q36 : Do you agree with ESMA's proposal on the new Table of Annex V of RTS 2 (Details of the data to be provided for the purpose of determining a liquid market, the LIS and SSTI thresholds for non-equity financial instruments)? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_36>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_36>

Q37 : Do you agree with ESMA's proposal to delete the ACTX flag? Please explain.

<ESMA_QUESTION_RVEW_37>
We welcome initiatives to further decrease use of 'broker crossing networks' because we favour open, transparent and competitive trading on-venue. We agree with the simplification of the pre and post-trade waivers. <ESMA_QUESTION_RVEW_37>

Q38 : Do you agree with ESMA's proposal to merge the current non-equity deferral flags into one general flag?

<ESMA_QUESTION_RVEW_38>
We have argued earlier that the deferral regimes could be further aligned or merged. Flags may be used inconsistently in practice. We cannot assess whether 'merging' the flags resolves this problem, and whether it would be at a cost of visibility of what's actually happening.
<ESMA_QUESTION_RVEW_38>

Q39 : Do you agree with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments? If not, please explain.

<ESMA_QUESTION_RVEW_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_39>

Q40 : Do stakeholders agree with ESMA's proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver? For LIS, should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVEW_40>
We are in favour of as much transparency as possible. While flags may be used inconsistently, which cannot assess whether 'merging' flags would be at a cost of visibility of what's actually happening.
<ESMA_QUESTION_RVEW_40>

Q41 : Do you agree with ESMA's proposal to introduce a flag for pre-arranged non-equity transactions?

<ESMA_QUESTION_RVEW_41>

We are unsure whether such a flag adds much besides to flags discussed in Q40.
<ESMA_QUESTION_RVEW_41>

Q42 : Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2 ? Do you have proposals to minimize the delay?

<ESMA_QUESTION_RVEW_42>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_42>

Q43 (CBA) : Can you identify any other costs and benefits not covered in the CBA below? Please elaborate.

<ESMA_QUESTION_RVEW_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_43>