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| 28 November 2016 | ESMA/2016/1422 |

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| Reply form for the Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments |
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| Date: 28 November 2016 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the scope of the consolidated tape for non-equity financial instruments, 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\_MIFID\_NET\_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\_MiFID\_NET\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_MiFID\_NET\_ESMA\_REPLYFORM or

ESMA\_MiFID\_NET\_ESMA\_ANNEX1

***Deadline***

Responses must reach us by **05 December 2016.**

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://www.esma.europa.eu) under the heading ‘Legal notice’.

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_MIFID\_NET\_0>

CME Group would like to express its appreciation to ESMA for the opportunity to comment on its consultation paper on the RTS specifying the scope of the consolidated tape for non-equity financial instruments under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (**MiFID II**) and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (**MIFIR**) (the **Consultation Paper**). CME Group appreciates the efforts of ESMA to seek market feedback on its endeavours to provide guidance to investment firms, approved reporting mechanisms, trading venues and systematic internalisers (as defined in MiFID II) on compliance with the provisions of regulatory technical standards (**RTS**) 22, 23, 24 and 25.

The CME Group includes CME Europe, which is a UK Recognised Investment Exchange, MiFID Regulated Market and trading venue for the purposes of MiFID II.

CME Europe has prepared its responses to the specific questions contained in the Consultation Paper; these responses are set out below. We also have some more general comments and queries in response to the Consultation Paper.

* We assume that a trading venue which exceeds the applicable threshold is obliged to provide data to the consolidated tape provider (**CTP**). We assume that the trading venue can provide this data in such format as complies with the requirements in RTS 2 and that the CTP will take such further steps as may be needed to consolidate it with the other data it has collected.
* Given that market participants may pay for the receipt of post-trade data provided very close to real time, we assume that a trading venue is permitted to charge the CTP for the data it needs, albeit on a reasonable commercial basis. However, it is interesting to consider what the term ‘reasonable commercial basis’ means in this context.
* We assume that the CTP would be permitted, subject to acquiring the necessary licences, to use the data it collects and publishes for purposes other than simply providing the consolidated tape (**CT**).
* A trading venue will need to consider whether it has the requisite rights to publish a member’s data and to what extent it can protect its intellectual property rights in the data or any products that might be created on the basis of it.
* We would expect the CTP to need to enter into licence agreements governing the use of the data provided for both publication in the CT and any other use of the data that the trading venue may be willing to permit. For trading venues that already sell their market data, this will likely mean that they have to run two parallel sets of licences: one in respect of the data they themselves distribute and one for the data that is disseminated by the CTP. This creates significant additional complexity and cost.

We believe this regime also raises the question of which party is responsible for the data that is published – for example, if a trading venue published data which is correct but this data is corrupted in the CTP’s publication process, we assume the CTP would be responsible to the end user who receives data which is inaccurate?

< ESMA\_COMMENT\_MIFID\_NET\_0>

1. Do you agree with ESMA’s proposal to allow non-equity CTPs to specialize their offering? Do you agree to the level of specialisation proposed or would you recommend a less granular or more granular approach?

<ESMA\_QUESTION\_MIFID\_NET\_1>

We agree with allowing for the proposed specialisation proposed by ESMA. We think it is important that ESMA allows for specialisation because it may be difficult to find a single entity that wishes to act as CTP in relation to such a diverse range of instruments covered in the non-equities list. We would suggest that, if a prospective CTP wanted to provide the service in respect of a particular sub-type of non-equity instruments only, it should be possible to discuss that with its home competent authority and/or ESMA. We think it is important for the industry to understand what ESMA intends to do in the event that no CTPs volunteer for a particular asset type, and the likely timescales involved.

We would also note that some derivatives firms are having difficulty in deciding whether to apply to become an APA or a CTP because it is unclear which transactions have to be made public, given that the scope refers to transactions traded on a trading venue but entered into outside a trading venue. This is not traditionally the way that the listed derivatives markets have understood their products, so it would be helpful to have some clarity on this point. In other words, when is a derivative, other than the contract actually matched through the exchange’s central limit order book, considered to be traded on a trading venue?

<ESMA\_QUESTION\_MIFID\_NET\_1>

1. Do you agree that the threshold determining whether a trading venue or APA needs to be included in the CT should be based both on the volume and the number of transactions? If not, please explain and present an alternative approach.

<ESMA\_QUESTION\_MIFID\_NET\_2>

We agree that it makes sense to use two thresholds so that not only are sources that report a high volume of transactions captured, but sources that account for a large number of reported transactions are caught too.

<ESMA\_QUESTION\_MIFID\_NET\_2>

1. Do you agree with the proposed level for the threshold? In particular, do you agree that the threshold is set at the same level across all asset classes and for both the volume and number of transactions? If not, please explain why and propose an alternative approach.

<ESMA\_QUESTION\_MIFID\_NET\_3>

As noted in response to Q2 above, there are some question marks over the value of a CT for non-equity instruments which we believe need consideration. However, assuming this regime is to be pursued, we believe the threshold for each asset class should be set reasonably low in order to give a clear and accurate picture of activity to investors. Although it is rather difficult to undertake the calculations on the basis of publicly available data at present, for derivatives, we would suggest that this might mean including any venue with more than 1% of the market share in the Union measured in accordance with either of the two proposed approaches.

<ESMA\_QUESTION\_MIFID\_NET\_3>

1. Which entity should perform the calculations? Should it be the data source, i.e. trading venues and APAs, or the CTP?

<ESMA\_QUESTION\_MIFID\_NET\_4>

We believe the CTP should perform the calculation as to whether each trading venue exceeds the thresholds for inclusion on the CT. Each trading venue will have made public the number and volume of trades from January 2018 so it should be possible for the CTP to obtain the numerator for each calculation. Whoever undertakes the calculation, we believe ESMA should compute and publish the denominators needed for the calculations alongside the transparency calculations.

<ESMA\_QUESTION\_MIFID\_NET\_4>

1. Do you agree with the proposed calculation and publication frequency? Do you agree that only trading venues and APAs that have reported transactions covering the full reference period of 6 months should be required to carry out the assessment? If not, please explain why and propose an alternative solution.

<ESMA\_QUESTION\_MIFID\_NET\_5>

No response.

<ESMA\_QUESTION\_MIFID\_NET\_5>

1. Do you consider it appropriate to provide for a grace period of up to 6 months after the first assessment date for including new sources into the data stream? Do you consider the proposed length appropriate?

<ESMA\_QUESTION\_MIFID\_NET\_6>

No response.

<ESMA\_QUESTION\_MIFID\_NET\_6>

1. Do you agree that a source be only excluded if the thresholds are not met for at least three consecutive periods? If not, what do you consider to be the appropriate length of time?

<ESMA\_QUESTION\_MIFID\_NET\_7>

No response.

<ESMA\_QUESTION\_MIFID\_NET\_7>