



European Securities and
Markets Authority

Final Report

On the review of RTS 1 (equity transparency)





European Securities and
Markets Authority

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Table of Contents

1	Executive Summary	9
2	Introduction	11
3	Amendments of the provisions in the main text	12
3.1	Increased LIS-threshold for waivers for ETFs.....	12
3.1.1	Proposal in the CP	12
3.1.2	Feedback to the consultation.....	15
3.1.3	ESMA’s assessment and next steps	16
3.2	Increased LIS-threshold for deferrals for ETFs.....	17
3.2.1	Proposal in the CP	17
3.2.2	Feedback to the consultation.....	18
3.2.3	ESMA’s assessment and next steps	18
3.3	Non-addressable liquidity and non-price forming transactions (Articles 2, 6 and 13) 18	
3.3.1	Proposal in the CP	20
3.3.2	Feedback received to the CP	25
3.3.3	ESMA’s assessment and next steps	26
3.4	Pre-trade transparency requirements for trading systems (Table 1 of Annex I)	29
3.4.1	FBA trading systems.....	29
3.4.1.1	Proposal in the CP	29
3.4.1.2	Feedback received to the CP.....	31
3.4.1.3	ESMA’s assessment and next steps.....	32
3.4.2	Hybrid systems	32
3.4.2.1	Proposals in the CP	32
3.4.2.2	Feedback received to the CP.....	33
3.4.2.3	ESMA’s assessment and next steps.....	33
3.4.3	Format of the pre-trade transparency information	34
3.4.3.1	Proposal in the CP	34
3.4.3.2	Feedback received to the CP.....	34
3.4.3.3	ESMA’s assessment and next steps.....	35
4	Other amendments of the main text of RTS 1.....	35
4.1	Deferred publication of transactions (Article 15).....	35
4.1.1	Proposal in the CP.....	35

4.1.2	Feedback received to the CP	36
4.1.3	ESMA’s assessment and next steps	36
4.2	Changes to Article 17 of RTS 1 and Article 3 of RTS 11	36
4.2.1	Proposal in the CP	36
4.2.2	Feedback received to the CP	38
4.2.3	ESMA’s assessment and next steps	39
4.3	Clarification on the applicable large-in-scale threshold for Article 11(3)(c) of RTS 1 39	
4.3.1	Proposal in the CP	39
4.3.2	Feedback received to the CP	40
4.3.3	ESMA’s assessment and next steps	40
4.4	Correction of wrong cross-references	41
5	Reporting fields (Tables 2 and 3 of Annex I, Tables 1 and 2 of Annex III)	41
5.1	Fields for the purpose of post-trade transparency (Tables 1 and 2 of Annex II)	41
5.1.1	Proposal in the CP	41
5.1.2	Feedback received to the CP	41
5.1.3	ESMA's assessment and next steps.....	42
5.1.3.1	Field names and sequential order – Table 3 of Annex I of RTS 1	42
5.1.3.2	Field “Trading date and time” – Table 3 of Annex I of RTS 1	42
5.1.3.3	Fields “Price”, “Price currency”, “Price notation” and “Quantity” – Table 3 of Annex I of RTS 1	43
5.1.3.4	Field “Venue of execution” and “Third-country trading venue of execution” – Table 3 of Annex I of RTS 1	44
5.2	Reference and Quantitative data to be provided for the purpose of transparency calculations (Reporting to FITRS).....	46
5.2.1	Proposal in the CP.....	46
5.2.2	Feedback received to the CP and ESMA’s assessment and next steps	47
5.3	Other issues that emerged in the CfE	54
5.3.1	Proposal in the CP	54
5.3.1.1	Feedback received to the CP	55
5.3.2	ESMA’s assessment and next steps	55
6	Flags (Table 4 of Annex I).....	56
6.1	Deletion of existing SI and agency cross transaction flags	57
6.1.1	Proposal in the CP.....	57
6.1.2	Feedback received to the CP	58

6.1.3	ESMA’s assessment and next steps	58
6.2	Amendment of non-price forming transactions flag	59
6.2.1	Proposal in the CP	59
6.2.2	Feedback received to the CP	60
6.2.3	ESMA’s assessment and next steps	60
6.3	Addition of pre-trade LIS flags	62
6.3.1	Proposal in the CP	62
6.3.2	Feedback received to the CP	62
6.3.3	ESMA’s assessment and next steps	63
6.4	Addition of other flags	63
6.4.1	Proposal in the CP	63
6.4.1.1	Feedback received to the CP	64
6.4.1.2	ESMA’s assessment and next steps	65
6.5	Order of flags	65
6.5.1	Proposal in the CP	65
6.5.2	Feedback received to the CP	66
6.5.3	ESMA’s assessment and next steps	66
7	Implementation and timing issues	66
8	Annexes	67
8.1	Annex I Legislative mandate to develop technical standards	68
8.1.1	RTS 1.....	68
8.1.2	RTS 11.....	70
8.2	Annex II Cost-benefit analysis	72
8.3	Annex III – Draft RTS amending RTS 1	79
8.4	Annex IV – Draft RTS amending RTS 11	99



List of abbreviations and related legal acts

ADT	Average daily turnover
ADNA	Average daily Notional Amount
ADNTE/ADNT	Average daily number of transactions
ADNTE-MRMTL	Average daily number of transactions on the most relevant market in terms of liquidity
ADVL	Average Daily Volume in Lots
AVT	Average value of transactions
APA	Approved Publication Arrangement
BIPM	Bureau International des Poids et Mesures
CDR 2017/567	Commission Delegated Regulation (EU) 2017/567
CfE	Call for evidence on RTS 1 and 2
CP	Consultation Paper
CT	Consolidated Tape
CTP	Consolidated Tape Provider
DR	Depository receipt
ECB	European Central Bank
EEA	European Economic Area
EMIR	European Market Infrastructure Regulation
ESMA	European Securities and Markets Authority
ETF	Exchange Traded Funds
FBA	Frequent Batch Auction
FIRDS	Financial Instruments Reference Data System
FITRS	Financial Instruments Transparency System
FR	Final report



FX	Foreign Exchange
HFT	High Frequency Traders
ISIN	International Securities Identification Number
LIS	Large in scale
MIC	Market Identifier Code
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NT	Negotiated trade
OMF	Order management facility
OTC	Over-the-counter
OTF	Organised Trading Facility
RFMD	Requests for Market Data
RM	Regulated Market
RP	Reference price
RTS 1	Commission Delegated Regulation (EU) 2017/587
RTS 2	Commission Delegated Regulation (EU) 2017/583
RTS 11	Commission Delegated Regulation (EU) 2017/588
RTS 22	Commission Delegated Regulation (EU) 2017/590
RTS 23	Commission Delegated Regulation (EU) 2017/585
SACID	Sub-asset class identifier
SC	Segmentation criteria
SFP	Structured Finance Products



SI	Systematic Internaliser
SMS	Standard market size
SSTI	Size Specific to the Instrument
STO	Trading obligation for shares
STS	Standard Trade Size
TCTV	Third-country trading venue
ToTV	Traded on Trading Venue
TR	Trade Repository
UTC	Coordinated Universal Time

1 Executive Summary

Reasons for publication

Commission Delegated Regulation (EU) 2017/587 (RTS 1) and Commission Delegated Regulation (EU) 2017/583 (RTS 2) further specify the MiFIR pre-trade and post-trade transparency requirements for equity instruments (shares, depositary receipts, exchange traded funds (ETFs) and certificates) and non-equity instruments (bonds, structured finance products (SFPs), emission allowances and derivatives).

Three years after the start of application of MiFID II and MiFIR, ESMA started to review the applicable obligations both through a series of review reports on the MiFIDII/MiFIR framework itself as well as on technical standards specifying this framework. On the latter, ESMA published a Consultation Paper (CP) in July 2021 with proposals for amending RTS 1 and 2.

This Final Report presents ESMA's draft RTS for the amendment of RTS 1 for the first step of the review. An amendment to RTS 11 is also proposed in order to follow a consistent approach in the application date of the transparency parameters.

Contents

Following the publication of the European Commission's legislative proposals on the MiFIR review on 25 November 2021 and taking into account the feedback received to the CP, ESMA decided to revisit the timeline and prioritisation of topics of the current review of RTS 1 and RTS 2 to avoid working on topics that could overlap with the ongoing negotiations of the MiFIR review proposal.

It was therefore decided to conduct the review RTS 1 and RTS 2 in two steps and to (i) publish a first series of proposed amendments to address issues that have received broad support from stakeholder and/or are considered important in the context of establishing a consolidated tape provider (CTP), and (ii) to finalise the review of RTS 1 and RTS 2 together with the other numerous adjustments that will have to be introduced to those RTS following the MiFIR review.

The final report on RTS 1 therefore only presents proposals on a subset of the topics tackled in the CP. This report nevertheless presents the feedback received on all proposals that were included in the CP but, as explained, only makes final recommendations on certain of them, whereas the remaining proposals will be reassessed after the MiFIR review.

Section 3 of the report presents the proposed amendments to the main text of RTS including the revision of (i) Large in scale (LIS) thresholds for ETFs, (ii) the legal provisions relating to non-price forming transactions, (iii) the list of trading systems and of the pre-trade transparency requirements attached to those. Section 4 presents other technical amendments to RTS 1 which relate to (i) the time of publication of transactions executed outside trading hours, (ii) the date of application of ESMA transparency calculations and (iii)

the calculation of the standard Market Sizes (SMS). Section 5 focuses on the reporting fields (Tables 2 and 3 of Annex I as well as Tables 1 and 2 of Annex III) while section 6 elaborates on flags. Section 7 covers the implementation period. In view of the limited scope of the review, ESMA considers it not necessary to provide for a minimum implementation period.

The Annexes to this report include, among others, a cost and benefit analysis of the proposals made as well as the legal drafting of the proposed amendments to RTS 1 and RTS 11.

This final report focuses on RTS 1. The feedback and proposals on RTS 2 are presented in a separate report (ESMA70-156-4825).

Next Steps

ESMA submitted the final report to the European Commission on 28 March 2022. In accordance with Article 10 of ESMA Regulation¹, the Commission has three months to decide whether to endorse the proposed amendments to the RTS.

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Securities and Markets Authority (OJ L 331, 15.12.2010, p. 84–119), [here](#).

2 Introduction

1. In its Consultation Paper (CP) published in July 2021², ESMA presented targeted proposals for amending RTS 1 and RTS 2 following ESMA's review of the MiFID II/MiFIR provisions, and in particular the review reports on (i) the functioning of the consolidated tape (CT) for equity instruments of 2019³ and (ii) the transparency requirements for equity⁴ and non-equity instruments of 2020⁵.
2. The CP focussed in particular on:
 - the recommendations made in the ESMA MiFID Review reports on equity and non-equity transparency that can be addressed at Level 2 and which do not require a Level 1 amendment;
 - amendments aiming at improving the quality of OTC data, in particular in view of the potential establishment of a CT for equity and non-equity instruments; and
 - amendments of technical nature identified since the application of RTS 1 and 2.

An amendment to RTS 11 is also proposed in order to follow a consistent approach in the application date of the transparency parameters.

3. The CP was split in two main sections: i.e. proposed amendments to RTS 1 and proposed amendments to RTS 2. With respect to RTS 1, ESMA in its CP presented (i) amendments of provisions in the main text of RTS 1, in particular the LIS-thresholds for ETFs and, the topic of non-addressable liquidity and non-price forming transactions, (ii) amendments to the pre-trade transparency requirements for equity instruments and (iii) amendments to the annexes of RTS 1, in particular the reporting fields and flags to be populated when making post-trade information public, as well as the reporting of transparency reference and quantitative data to ESMA.
4. Following the publication of the European Commission's legislative proposals proposal for amending the MiFID II/MiFIR framework on 25 November 2021 and taking into account the feedback received to the CP, ESMA decided to revisit the timeline and prioritisation of topics of the current review of RTS 1 and RTS 2 to avoid working on topics that could overlap with the discussions currently held on possible amendments to MiFID II and MiFIR (MiFIR Review).
5. The review of RTS 1 and RTS 2 will therefore be carried out in two steps. This final report includes a first series of proposed amendments to address issues that have received broad

² Consultation Paper on the review of RTS 1 (equity transparency) and RTS 2 (non-equity-transparency), July 2021, ref. ESMA70-156-4236, [here](#).

³ MiFID II/MiFIR Review Report No. 1 On the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, [here](#).

⁴ MiFID II/MiFIR Review Report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares, [here](#).

⁵ MiFID II/MiFIR Review Report MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives, [here](#).

support from stakeholder and/or are considered important in the context of establishing a consolidated tape provider (CTP). A second, and broader, review will be carried out following the MiFIR review, focussing on the necessary changes of RTS 1 and 2 in consequence of the review and also including the analysis of proposals that were included in the CP but that are not covered in this final report.

6. This Final Report therefore does not include final proposals on all issues tackled in the CP. Nevertheless, this report provides an overview on the feedback received to all topics covered in the CP. As explained, the issues that are not included remain on ESMA's Agenda but will be included in a subsequent report to be published once the MiFIR review has been finalised.
7. The Final Report below provides in particular concrete proposals regarding: (i) the LIS thresholds for ETFs, (ii) the lists of non-price forming transactions including in Articles 2, 6 and 13 of RTS 1, (iii) the inclusion of a new type of trading system (for hybrid systems), (iv) Article 15 of RTS 1 (time of deferred publication), (v) date of application of new transparency calculations, (vi) clarification regarding the calculation of the Standard Market Sizes, (vii) reporting fields, and (viii) flags for non-price forming transactions.
8. Finally, in order to make its proposals more user-friendly, ESMA decided to publish the proposals for RTS 1 and RTS 2 in two separate reports. The Final Report with proposals for non-equity financial instruments has been published in parallel under the reference ESMA70-156-4825.

3 Amendments of the provisions in the main text

3.1 Increased LIS-threshold for waivers for ETFs

3.1.1 Proposal in the CP

9. MiFID II / MiFIR built on the MiFID I pre-trade transparency requirements to create a stronger transparency regime for all equity instruments. Article 3 of MiFIR requires market operators and investment firms operating a trading venue to make public current bid and offer prices and the depth of trading interests at those prices that are advertised through their systems for equity and equity like instruments.
10. MiFIR allows trading venues to benefit, in clearly defined circumstances, from waivers for their pre-trade transparency obligations. Article 4 of MiFIR currently provides for four different types of waivers available to trading venues: (i) the reference price (RP) waiver; (ii) the negotiated trade (NT) waiver; (iii) the large in scale (LIS) waiver; and (iv) the order management facility (OMF) waiver.
11. Although transparency has overall increased in the market following the application of MiFIR, ESMA's extensive analysis on the subject, already presented in the 2020 consultation and final report in the context of ESMA's MiFID II review report on Equity



Transparency⁶ as well as in the annual reports on waivers and deferrals⁷, noted that the level of pre-trade transparency for equity instruments is still limited.

12. According to the data presented in the CP for the review report on Equity Transparency 50% of the total ETF volume executed on-venue, i.e. including lit and dark trading, benefitted between January 2018 and August 2019 from an LIS waiver. Furthermore, 88% of volume and 11% of ETF transactions executed under the waivers for ETFs were executed under the LIS waiver.
13. Therefore, in order to achieve a greater level of transparency, ESMA proposed in the consultation and in the subsequent final review report on Equity Transparency, to increase the LIS pre-trade transparency threshold to €3,000,000.
14. ESMA included hence in the CP on the RTS 1 and 2 review the proposal to increase the pre-trade transparency threshold for ETFs and expanded on the analysis already presented in above mentioned reports. The analysis was carried out based on the data available from ESMA's 2020 Annual Report on Waivers and Deferrals covering 2019 data. In fact, when looking at the total turnover under a waiver in relation to total turnover, the asset class with the highest percentage of turnover traded in the dark were still ETFs (58% of total ETF trading). Moreover, 91% of this total ETF turnover under a waiver benefitted from the LIS waiver, i.e. an increase from the previous years. Finally, the CP also observed that the ETF market is characterised by a small number of orders or transactions, which are of a very high size. In consequence only 1% of transactions in equity instruments executed under a waiver in 2019 were in ETFs, whereas these transactions reflected 35% of the turnover in equity instruments executed under a waiver in 2019.

TABLE 1 - TOTAL TURNOVER EXECUTED UNDER A WAIVER IN 2019 IN RELATION TO TOTAL TURNOVER, PER ASSET CLASS

% Turnover under the waiver / Total turnover per asset class	
Shares	11.8698%
ETFs	57.5618%
Certificates	0.2433%
Depository Receipts	17.0360%

⁶ Consultation Paper, MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares (ESMA70-156-2188), [here](#) and MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives (ESMA70-156-2682), [here](#).

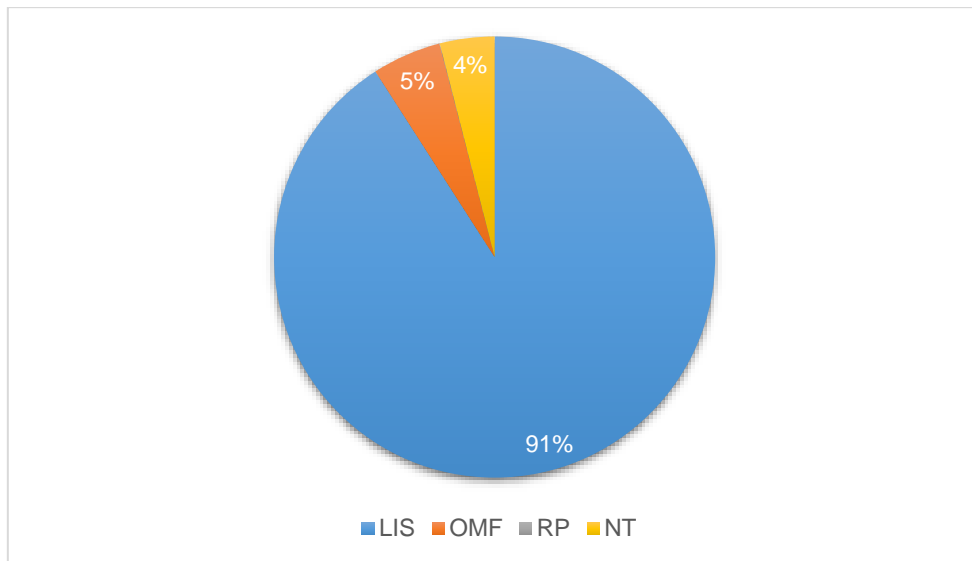
⁷ Annual Report

On the application of waivers and deferrals (ESMA70-156-2401), [here](#) and Annual Report – 2020 On the application of waivers and deferrals for equity and equity-like Instruments (ESMA70-156-1010), [here](#).

Other equity-like instruments	12.9687%
All equity instruments	16.56%

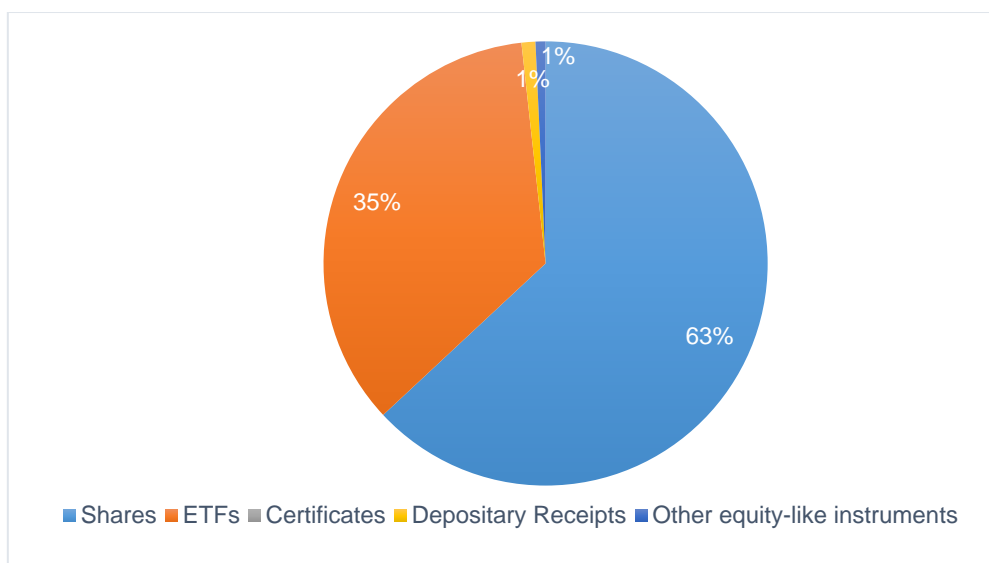
Source: ESMA Annual Report – 2020 on the application of waivers and deferrals for equity and equity-like instruments, ESMA data collection from trading venues

FIGURE 1 – TOTAL TURNOVER EXECUTED UNDER A WAIVER IN ETFs IN 2019, PER WAIVER TYPE



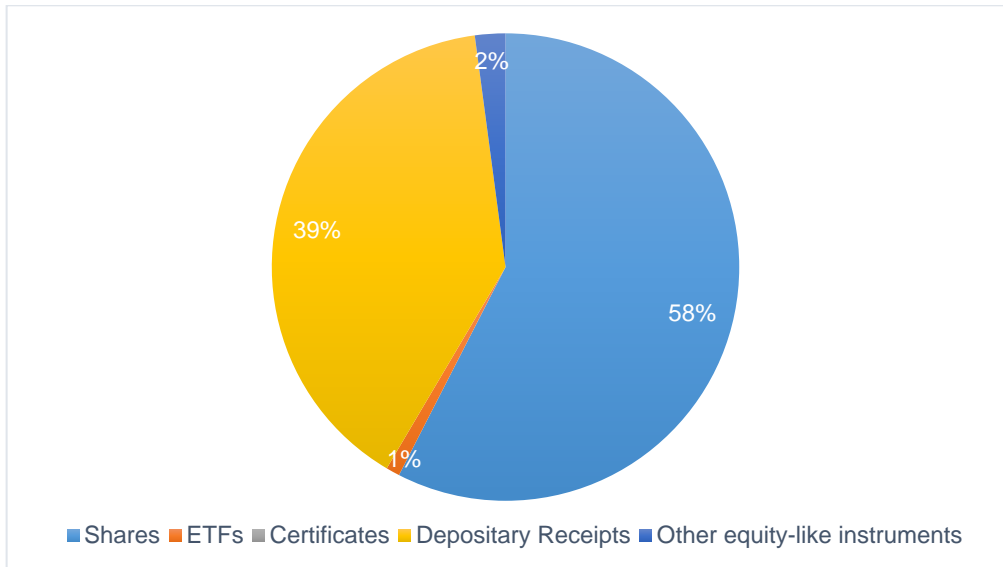
Source: ESMA Annual Report – 2020 on the application of waivers and deferrals for equity and equity-like instruments, ESMA data collection from trading venues

FIGURE 2 - TOTAL TURNOVER EXECUTED UNDER A WAIVER IN 2019, PER ASSET CLASS



Source: ESMA Annual Report – 2020 on the application of waivers and deferrals for equity and equity-like instruments, ESMA data collection from trading venues

FIGURE 3 - TOTAL NUMBER OF TRANSACTIONS EXECUTED UNDER A WAIVER IN 2019, PER ASSET CLASS



Source: ESMA Annual Report – 2020 on the application of waivers and deferrals for equity and equity-like instruments, ESMA data collection from trading venues

3.1.2 Feedback to the consultation

15. The majority of respondents agreed with ESMA's proposal to amend Article 7(2) of RTS 1 to increase the pre-trade LIS threshold to 3,000,000 EUR. Respondents agreed that this amendment would benefit pre-trade transparency and provide better conditions for trade execution and that the additional transparency available in the market should be in the best interest of all market participants.
16. ESMA also received feedback from some participants that, whilst agreeing with the proposal, proposed to complement this measure with additional steps to further promote on-venue transparency. These respondents stressed that most trading in ETFs is done in RFQ systems which, according to them, are less transparent than lit order books and therefore suggested for ESMA to consider further measures aiming at enhancing pre-trade transparency applicable to lit order books.
17. In addition, a couple of respondents suggested a more cautious approach, including a phase-in approach for increasing the threshold.
18. Respondents disagreeing with the proposal considered ESMA's comparison between ETFs and equity markets to be flawed. Although they recognised that some ETFs can be easily hedged and therefore accommodate for an increased pre-trade threshold, that would not be the case for most ETFs, especially ETFs with non-equity instruments as underlying.



Hence, those stakeholders were concerned that an increase in the threshold could negatively impact the liquidity in the ETF market overall.

19. Considering that the liquidity profile of different ETFs is not linear, one respondent suggested distinguishing between liquid and illiquid ETFs and recommended to use a method which looks at the liquidity of the underlying basket or proxy assets to determine whether an ETF is liquid or not.

3.1.3 ESMA's assessment and next steps

20. ESMA welcomes the feedback received to the consultation and notes the broad support for its proposal to increase the pre-trade LIS threshold for ETFs.

21. ESMA attempted to complement the analysis presented in the CP on the RTS 1 and 2 review with data from the 2021 Annual Report on waivers and deferrals based on 2020 data⁸, which showed a slight decrease in the percentage of total turnover executed under a waiver for ETFs (58% vs. 56%). Since 2020 data represents a transitional year with the United Kingdom leaving the EU, it was not possible to directly compare the data of the 2020 and 2021 annual reports on waivers and deferrals. Nevertheless, it appears clear that the proportion of LIS trading in ETFs remains high which goes against the objectives of MiFID II, and that the use of waivers for ETFs appears to be rather the norm and not an exception as envisaged under MiFID II.

22. Taking into account the above data and reflections, ESMA maintains its proposal to increase the pre-trade LIS threshold for ETFs from EUR 1,000,000 to EUR 3,000,000. ESMA remains of the view that this increase provides the right balance between increasing pre-trade transparency in the market, which is an important objective of MiFIR, whilst at the same time protecting large orders.

23. ESMA therefore proposes to amend Article 7(2) of RTS 1 in the following manner:

“An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR ~~1 000 000~~ **3 000 000**’.”

24. The scope of this RTS 1 review as highlighted in the CP focuses on technical amendments or recommendations made in the ESMA review report on equity transparency that could be addressed via level 2 changes. Therefore, the suggestion to limit the use of a certain type of trading system to the use of a waiver does not fit into the scope of this review and hence was not considered by ESMA.

⁸ Annual Report – 2021 On the application of waivers and deferrals (ESMA70-156-4474), [here](#).

3.2 Increased LIS-threshold for deferrals for ETFs

3.2.1 Proposal in the CP

25. MiFIR also reinforced the post-trade transparency regime for equity instruments. In particular, Article 6 of MiFIR requires market operators and investment firms operating a trading venue to make public the price, volume and time of publication of the transactions executed in equity and equity-like instruments. These details should be made public as close to real time as technically possible.
26. Competent authorities can authorise trading venues to provide for deferred publication of the details of certain transactions according to their type or size in accordance with Article 7 of MiFIR. In particular, deferred publication can be authorised for transactions that are large in scale when compared to the normal size for that instrument. The qualifying size and additional technical details that should be satisfied are specified in Article 15 and Table 5 of Annex II of RTS 1. Moreover, according to Article 20(2) of MiFIR also investment firms may benefit from such deferred publication when trading outside trading venues.
27. In the equity transparency review report, ESMA included a detailed analysis of the post-trade transparency requirements applicable to equity and equity like instruments and the use of deferrals since the application of MiFID II / MiFIR and until August 2019. The analysis noted that, in general, the MiFIR objective of protecting large trades whilst maintaining a high level of real-time transparency has been achieved. In particular, for shares and depository receipts (DRs) the percentage of trades subject to real-time transparency was relatively high with only 2% of transactions in shares and DRs benefiting from a deferral respectively.
28. With respect to volumes traded throughout the application of the MiFID II / MiFIR regime, the analysis showed that 87% and 79% of the total turnover was subject to real-time publication in shares and DRs respectively.
29. However, the case of ETFs seems quite different with a significantly higher proportion of deferred transactions compared to shares and DRs. The analysis showed that only 60% of the total turnover in ETFs was subject to real-time publication and 6% of transactions benefitted from a deferral.
30. Hence, considering the objective of achieving a higher level of real-time post-trade transparency in ETFs, ESMA proposed revisiting the thresholds applicable to these instruments to increase the number of transactions subject to real-time publication in the review report on Equity Transparency.
31. The CP on the RTS 1 and 2 review followed up on that recommendation with ESMA proposing to increase the minimum qualifying size of transactions eligible for a 60-minute delay from EUR 10,000,000 to EUR 15,000,000. This increase, whilst still providing the necessary protection for large orders, was considered sufficient to enhance real-time



transparency in the ETF market and hence increase the information available to investors in line with the objectives set out in MiFIR.

3.2.2 Feedback to the consultation

32. The majority of respondents who provided a view on this question agreed with ESMA's proposal. These respondents concurred with ESMA's analysis that the current volume of transactions benefitting from a deferral is too high and goes against the overarching objective of MiFID II / MiFIR of achieving high levels of real-time transparency.

33. The minority of respondents objecting to ESMA's proposal noted that even at present 60 minutes is not enough to fully hedge positions. An increase in the thresholds could have detrimental effects on the behaviour of liquidity providers with market makers either stepping back from pricing large orders or widening their spreads to cater for the additional risk.

3.2.3 ESMA's assessment and next steps

34. Considering the broad support, ESMA maintains the proposal.

35. In ESMA's view, this change will provide for more real-time post-trade transparency in ETF instruments without having detrimental effects on liquidity as the necessary protection for large orders is still guaranteed for large transactions. This change requires an amendment of Table 5 of Annex II of RTS 1 as follows:

Deferred publication thresholds and delays for ETFs

Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication after the transaction
10 000 000 15 000 000	60 minutes
50 000 000	End of the trading day

3.3 Non-addressable liquidity and non-price forming transactions (Articles 2, 6 and 13)

36. Since the application of MiFID II, there have been intense discussions on whether MiFID II delivered on its objective to increase market transparency. In particular, different views emerged on the impact of MiFID II on the landscape of equity trading and the share of trading activity executed on (lit) trading venues as compared to OTC and SI-trading. These controversial discussions are reflected in various studies published by different stakeholders considering that the share of OTC-trading compared to on-venue trading is

too high⁹ or is artificially inflated by not appropriately discounting for non-price forming transactions¹⁰.

37. In the CP on the RTS 1 and 2 review, ESMA explained that one of the key drivers explaining these controversies is linked to different interpretations of the concept of non-price forming transactions, non-addressable liquidity and technical trades and to the inconsistent reporting of such transactions.
38. For ESMA, the unclarity around the concepts of technical, non-price forming or non-addressable trades comes partly from the legal structure of MiFIR. MiFIR contains various provisions establishing a different regulatory treatment depending on the types of transactions executed (e.g. “transactions not subject to the current market price” or “non-addressable liquidity”). However, the MiFIR framework does not provide for common definitions of these concepts and, instead, includes separate mandates requesting ESMA to establish various lists of “transactions subject to conditions other than current market price”.
39. This has led to co-existing provisions in Level 2 referring to similar concepts (e.g. “transactions not contributing to the price discovery process”, “transactions subject to conditions other than the current market price”, non-reportable OTC transactions, etc...) ¹¹. The transactions referred to in these articles have been established for a very specific regulatory purpose and are not always consistent. The current articles include for instance different definitions for similar types of transactions or, in a similar vein, include overlapping concepts. It is ESMA’s understanding that this legal structure has contributed to unclarity and different applications regarding the treatment of those transactions.
40. In the CP, ESMA therefore made some proposals to improve the consistency between these references to “non-price forming” or “non-addressable” transactions. ESMA suggested some targeted amendments to RTS 1 with the aim to establish a clearer regime and more consistent reporting and flagging of non-price forming and non-addressable transactions. Similar changes to RTS 2 were also proposed and the feedback to these proposals and the final ESMA proposals are described in the Final Report for RTS 2.
41. In the CP, ESMA identified four different concepts which are commonly used, including in the MiFIR framework, to characterise liquidity: i.e. (i) transactions that do not contribute to the price discovery process or to the price formation (also referred to as non-price forming transactions); (ii) transactions subject to conditions other than the current market price, (iii) non-addressable liquidity trades and (iv) technical trades.
42. While the distinction between these transactions can be relevant in certain contexts, ESMA had decided in the CP, to facilitate the discussion, to refer generally to the broader concept of “non-price forming transactions”. A similar approach is adopted in this report. Readers

⁹ See for instance: Primary and secondary equity markets in the EU Final report November 2020; [here](#) ; or: FESE calls for greater transparency in a now overly complex European market infrastructure, 1 June 2021, [here](#).

¹⁰ See for instance: The landscape for European equity trading and liquidity The importance of utilising accurate data for assessing equity market structure Prepared for the Association for Financial Markets in Europe (AFME) May 2021; [here](#).

¹¹ See in particular Articles 2, 6 and 13 of RTS 1, Article 12 of RTS 2, Article 14(5) of CDR 2017/567, and Article 2(5) of RTS 22.



are nevertheless invited to bear in mind that this category is not homogeneous and includes transactions which do not share all the same characteristics.

3.3.1 Proposal in the CP

43. In the CP, in order to simplify and improve the regime, ESMA explored two main avenues. It was proposed to revise both (i) the lists of non-price-forming transactions included in RTS 1 and 2 and (ii) of the system of flags (this part is further developed in section 6.2).
44. Regarding the lists of non-price forming transactions, ESMA did not propose a one-size-fits-all approach and continued to consider that the regulatory treatment should be adjusted depending on the specific type of transactions. For instance, while ESMA saw merit in exempting benchmark transactions from the share trading obligation (STO), it appeared appropriate to publish those transactions in the post-trade data feed with appropriate flag to ensure that other market participants are informed about the volumes exchanged.
45. ESMA's proposal was hence to streamline the three articles referring to non-price forming transactions by notably (i) using more consistently Article 2(5) of RTS 22 as a central point of reference for the lists of "non-price forming transactions" included in RTS 1 and 2 and (ii) removing existing overlaps. Such cross-references are already used in Article 13 of RTS 1 and Article 12 of RTS 2 but not in Articles 2 and 6 of RTS 1.
46. ESMA therefore proposed to revise Articles 2 and 6 of RTS 1 by adding "excluded transactions" listed under Article 2(5) of RTS 22 into these Articles. These "excluded transactions" would therefore not be subject to the STO and become eligible to the NT3 waiver (in practice many of those transactions were already covered in those two Articles but using different terminologies).
47. In parallel, ESMA suggested deleting the references to certain transactions in Articles 2 and 6 of RTS 1 which, following the addition proposed in the paragraph above, would become redundant. This is typically the case for "clearing purpose", "conversion" and "settlement" trades. The specific changes proposed in the CP are summarised in the table below.

Table 2 SUMMARY OF ESMA'S PROPOSALS REGARDING THE VARIOUS LISTS OF NON-PRICE FORMING TRANSACTIONS

Short name	Types of transactions	Art 2 of RTS 1 (STO)	Art 6 of RTS 1 (NT3)	Art 13 of RTS 1 / Art 12 of RTS 2
Benchmark transactions	the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;	Exempted from STO (no change proposed)	Eligible for NT3 transactions (no change proposed)	Not exempted from OTC post-trade transparency (no change proposed)
Portfolio trade	the transaction is part of a portfolio trade	Exempted from STO (no change proposed)	Eligible for NT3 transactions (no change proposed)	Not exempted from OTC post-trade transparency (no change proposed)
Contingent trade (1)	the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot	Exempted from STO (no change proposed)	Eligible for NT3 transactions (no change proposed)	Not exempted from OTC post-trade transparency (no change proposed)
Funds transfers	the transaction is executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction	Delete (Collective investment undertakings and pension funds are excluded from the scope of MiFID II and therefore not subject to STO or transparency)		
Give-ups	the transaction is a give-up transaction or a give-in transaction	Delete (replace by "clearing or settlement purpose" - RTS 22 definition)		
Clearing purpose	the purpose of the transaction is to transfer shares/financial instruments (Art 2 and 6 RTS 1) as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP	Delete (replace by "clearing or settlement purpose" - RTS 22 definition)		

Conversion/exercise trade (1)	the transaction results in the delivery of shares (Art 2)/financial instruments (Art 6) in the context of the exercise of convertible bonds, options, covered warrants or other similar (financial (art 6)) derivatives	Delete (replace by "conversion trade (2)" - RTS 22 definition)		
Settlement purpose	the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014	Delete (replace by "clearing or settlement purpose" - RTS 22 definition)		
Clearing or settlement purpose Article 2(5)(b) of RTS 22	a contract arising exclusively for clearing or settlement purposes	<div style="display: flex; justify-content: space-around; align-items: center; height: 100%;"> <div style="text-align: center; width: 30%;"> To be exempted from STO </div> <div style="text-align: center; width: 30%;"> To be made eligible for NT3 transactions </div> <div style="text-align: center; width: 30%;"> Exempted from OTC post-trade transparency (no change proposed) </div> </div>		
Settlement purpose Article 2(5)(c) of RTS 22	a settlement of mutual obligations between parties where the net obligation is carried forward			
Custodial purpose Article 2(5)(d) of RTS 22	an acquisition or disposal that is solely a result of custodial activity;			
Novation Article 2(5)(e) of RTS 22	a post-trade assignment or novation of a derivative contract where one of the parties to the derivative contract is replaced by a third party			
Compression Article 2(5)(f) of RTS 22	a portfolio compression			

<p>Creation or redemption by collective investment undertaking administrator Article 2(5)(g) of RTS 22</p>	<p>the creation or redemption of units of a collective investment undertaking by the administrator of the collective investment undertaking</p>			
<p>Conversion/exercise trade (2) Article 2(5)(h) of RTS 22</p>	<p>the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument</p>			
<p>Pre-defined or mandatory event trade Article 2(5)(i) of RTS 22</p>	<p>The creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument</p>			
<p>Pre-defined or mandatory notional amendment Article 2(5)(j) of RTS 22</p>	<p>a decrease or increase in the notional amount of a derivative contract as a result of pre-determined contractual terms or mandatory events where no investment decision by the investor takes place at the point in time of the change in the notional amount</p>			
<p>Index update Article 2(5)(k) of RTS 22</p>	<p>a change in the composition of an index or a basket that occurs after the execution of a transaction</p>			
<p>Dividend re-investment plan Article 2(5)(l) of RTS 22</p>	<p>an acquisition under a dividend re-investment plan</p>			
<p>Employee incentive plans Article 2(5)(m) of RTS 22</p>	<p>an acquisition or disposal under an employee share incentive plan, or arising from the administration of an unclaimed asset trust, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes [...]</p>			



Tender offer Article 2(5)(n) of RTS 22	an exchange and tender offer on a bond or other form of securitised debt where the terms and conditions of the offer are pre-determined and published in advance and the investment decision amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary its terms			
Collateral trade Article 2(5)(o) of RTS 22	an acquisition or disposal that is solely a result of a transfer of collateral.			

3.3.2 Feedback received to the CP

48. Respondents unanimously supported ESMA's initiative to amend RTS 1 and RTS 2 and to streamline the provisions referring to the concept of non-price forming transactions or non-addressable liquidity. Respondents supported the proposal to improve the consistency between these various provisions in particular through the introduction of cross-references to list of transactions excluded from transaction reporting under Article 2(5) of RTS 22. Respondents however suggested some adjustments to the ESMA proposal.
49. Several respondents (mainly from the buy-side community) raised concerns regarding the deletion of references to give-ups and give-ins. They stressed that some types of give-up transactions might not be covered by the reference to Article 2(5)(b) of RTS 22 (i.e. "a contract arising exclusively for clearing or settlement purposes"). They explained that most give-ups and give-ins in the equities market, do not involve a 'client trade' that is passed to another investment firm for the purpose of post-trade processing.
50. This is typically the case for Requests for Market Data (RFMD) where, following the receipt of a RFMD from a client, an executing broker executes a risk trade or a series of risk trades (either on or off venue) and then gives up that risk trade to another broker (typically the prime broker of the requesting client). This issue had already been tackled in an ESMA Q&A clarifying that RFMD trades should be considered as VWAP trades (as defined in Article (2)(a) of RTS 1) and reported using 'XOFF' as the Venue of Execution field and using the 'TNCP' flag.
51. Respondents recognised that RFMD trades do not really fit into the definition of Article 2(5)(b) of RTS 22 (i.e. trades for "clearing or settlement purposes") and, from a policy perspective, should not be excluded from transaction reporting since they allow NCAs to have a complete audit trail tracking in particular the change of ownership from executing broker to prime broker. They therefore did not recommend modifying the scope of Article 2(5)(b) of RTS 22 in this regard.
52. Respondents suggested (i) to exempt give-up/give-in activity which follows a RFMD from publication entirely (which might require an amendment of the current give-up / give-in definition) or, at a minimum, (ii) to flag them appropriately.
53. Another group of respondents (mainly trading venues), while supporting the ESMA proposal, stressed that it is crucial not to limit the concept of addressable liquidity (and related provisions) to only certain types of execution venues (typically lit order books). They considered on the contrary that the notion of addressable liquidity is not about the place of execution and is not limited to multilateral venues.
54. In the same vein, another respondent suggested to introduce a different regulatory treatment between trades that are inherently non-addressable, for instance technical trades, and "non-addressable" liquidity that could have been addressable if the order flow had been taking place on a lit venue.
55. Other comments received included, amongst other:

- Some considered that the benchmark (BENC) definition in Articles 2(a) and 6(a) of RTS 1 should be amended to include benchmark trades where the benchmark is a single point in time event (for example, market close);
 - Some raised concerns about the proposed deletion of Article 6(j) of RTS 1 since they considered that the new reference to Article 2(5) of RTS 22 might not cater for all existing cases and trades and could put into questions the use of NT3 waivers by certain trading venues (including waivers that have been considered compliant by ESMA in the past);
 - One respondent proposed that OTC trades exempted from transparency should also be exempted from post trade transparency when undertaken on venues under the third leg of the Negotiated Trade Waiver;
 - Some raised the issue about inter-affiliate (or intra-group) trades which, in their view, occur only for risk management purposes and should be excluded under Article 2, Article 6 and Article 13 of RTS 1 (but not necessarily under RTS 22).
56. One respondent stressed a possible contradiction between MiFIR and the Market Abuse Regulation (MAR) regarding transactions that lead to no change in beneficial ownership of a financial instrument. In their view, the publication of these transactions could be regarded as misleading (in terms of price, supply or demand) and therefore in breach of MAR. The stakeholder mentioned different examples to illustrate the concern: (i) the case of retail clients wanting to move securities in or out of an “insurance wrapper” or, more generally, (ii) activities by clients that are large insurance companies, pension funds or other asset managers that want to move assets from one portfolio to another within the same legal entity. They therefore suggested to amend RTS 1 and 2 in order to exempt transactions from post trade transparency where there is no real change of ownership (no real buyer and seller interests) and a publication therefore would be in conflict with MAR.
57. Finally, one respondent seized the occasion to flag the increasing number of transactions being internalised by aggregators that do not contribute to price formation.

3.3.3 ESMA’s assessment and next steps

58. ESMA welcomes the broad support received to the proposals made in the CP as well as the specific adjustments suggested by respondents. One of these recommended adjustments concerns the treatment of RFMD transactions.
59. It was not ESMA’s intention to change the current regime applicable to RFMD transactions and it remains unclear to ESMA to which extent the transparency regime applicable to those would be impacted by the proposed amendments to Articles 2, 6 and 13 of RTS 1. In its Q&A, ESMA clarified that “an RFMD give-up/give-in trade flow is characterised by being executed as a VWAP trade” and that “as such, the trade should be defined as a transaction not contributing to the price discovery process as defined in Article (2)(a) of Commission Delegated Regulation 2017/587”.

60. ESMA has therefore considered in its Q&A that RFMD should be assimilated to benchmark transactions. References to benchmark transactions would not be impacted by the proposed amendment to Articles 2 and 6 of RTS 1 and the regulatory treatment of RFMD, with respect to the MiFIR transparency requirements, should therefore not change. They remain exempted from the STO, eligible to the NT3 waiver and subject to appropriate flagging (i.e. the BENC Flag, see the section below on flags) allowing market participants to detect their non-price forming nature.
61. ESMA agrees that the concept of addressable liquidity should not necessarily be limited to certain execution venues (multilateral systems in particular). Typically, the liquidity executed through systematic internalisers could, to a certain extent, be considered as addressable. It was however not the purpose of the CP to discuss how broad this concept of addressable liquidity should apply. Such discussion would be more appropriate concerning the Level 1 text. ESMA aims in this review to improve the consistent application of existing provisions and, more generally the quality of post-trade data, through concrete amendments. Respondents that raised this issue about the scope of application of the addressable liquidity concept did not clarify what concrete regulatory concern this relates to.
62. ESMA would also like to stress that its proposal in the CP was not limited to a specific type of execution venue. It included in particular a revision of Article 13 of RTS 1 which defines transactions which should not be subject to post-trade transparency when executed OTC. Concerning the proposals to exempt certain on-venue transactions from the transparency requirements via RTS 1 and 2, ESMA would like to recall that MiFIR does only provide for such possibility for OTC transactions, but not for transactions executed on trading venues.
63. Regarding the proposal to introduce a different regulatory treatment between transactions that are inherently non-addressable (“technical trades”) and transactions that are “non-addressable” because of their place of execution, ESMA considers that this is already the case. The current regulatory regime focuses rather on the former and does not consider the place of execution to determine the nature of a transaction. In other words, the transactions listed under Article 2, 6 and 13 of RTS 1 have been identified based on their inherent characteristics and are not dependent on method or place of execution.
64. Regarding the other comments made, ESMA does not consider that a transaction executed on a single point in time event should be considered as a benchmark transaction. Regarding the specific example mentioned in the responses (closing price as a benchmark), ESMA also would like to stress that these transactions are specifically addressed in certain provisions of MiFIR (e.g. Article 4(2)(b) of MiFIR).
65. Regarding the deletion of Article 6(j) of RTS 1, ESMA considers that this deletion would in most cases be compensated by the addition of a general cross reference to “excluded transactions” listed under Article 2(5) of RTS 22”. ESMA is therefore confident that the waivers that have previously been granted under Article 6 of RTS 1 would remain valid. However, ESMA acknowledges that in some cases the deletion of Article 6(j) might not be directly compensated by the new reference Article 2(5) of RTS 22. ESMA has therefore decided to maintain paragraph (j) in Article 6 of RTS 1 to avoid unintended consequences

in particular for waivers granted in the past under Article 6(j), and to keep a degree of flexibility regarding the transactions eligible to the NT 3 waiver.

66. Regarding the possible contradiction between MiFIR and MAR, ESMA notes that transactions that “lead to no change in beneficial ownership of a financial instrument” are not “deemed, in themselves, to constitute market manipulation” (i.e. in breach of MAR) but should be “taken into account when transactions or orders to trade are examined by market participants and competent authorities” (Annex I (A) of MAR). The concerned transactions would therefore not constitute per se a breach of MAR but would be considered as an indicator of market manipulation. The post-trade publication of these transactions is therefore not in direct contradiction with MAR. ESMA appreciates though that it forces market participants and NCAs to undertake a more detailed market surveillance and analyse trading on a trade-by-trade basis.
67. In addition, any new exemption of RTS 1 (and RTS 2) would only apply to OTC trading but not on-venue transactions. ESMA understands though that in some of the examples provided the transactions are executed on trading venues. The proposed amendments therefore would not fully address the issue described. More generally, the exemptions in Article 13 of RTS 1 and Article 12 of RTS 2 are meant to cover technical transactions and not to introduce a more general exemption limiting the scope of the MiFIR post-trade transparency regime.
68. Considering the arguments above, ESMA does not consider it appropriate to introduce the proposed exemption in RTS 1 and RTS 2 nor to introduce a specific flag to better identify these transactions.
69. The flags for non-price forming in RTS 1 and RTS 2 (see section 6.2) are meant to cover transactions that are commonly executed in the market. ESMA appreciates that these general flags might not cover all possible scenarios which can emerge due to national specificities or market developments. Market participants and trading venues may consider complementing this general regime with further information (flags or other identification methods) where considered necessary. Such initiatives should be developed collaboratively, involving a broad range of market participants as it is for instance the case for the Market Model Typology (MMT) initiative developed by FIX Trading Community.
70. ESMA would like to adopt a similar approach (i.e. no new exemption or flags) regarding intra-group transactions. This issue had already been brought to ESMA’s attention various times by market participants. ESMA agrees that it is not always clear whether and under which circumstances these transactions should be subject to the MiFIR transparency regime.
71. However, it does not appear appropriate to provide such guidance or to establish a possible exemption for these transactions (or a sub-set of them) through amendments to Article 13 of RTS 1 and Article 12 of RTS 2. Such amendment should rather be made directly in MiFIR. Similarly, considering the legal uncertainty around the regime applicable to intra-group transactions, it does not appear appropriate to add a specific flag in RTS 1 and RTS 2. This should however not preclude coordinated industry-led initiatives to create flags or

other identification method to complement the information required under RTS 1 and RTS 2 if and where considered appropriate.

3.4 Pre-trade transparency requirements for trading systems (Table 1 of Annex I)

72. Article 3(2) of MiFIR sets out a list of different types of trading systems for which pre-trade transparency requirements should be calibrated, including continuous auction order book, quote-driven, hybrid and periodic auction trading systems. Table 1 of Annex I of RTS 1 provides a short description of each of those trading systems for equity instruments, together with the related pre-trade information to be made public.

73. In the MiFIR review reports for equity and non-equity transparency, ESMA suggested to update the catalogue of trading systems in RTS 1 and RTS 2 and the corresponding applicable pre-trade transparency requirements in order to better reflect market developments and to ensure the consistent application of pre-trade transparency across the Union. In particular, ESMA recommended adding Frequent Batch Auction (FBA) systems as a new type of trading system with tailored pre-trade transparency requirements and to further specify the pre-trade transparency requirements applicable to hybrid systems and any other trading system.

3.4.1 FBA trading systems

3.4.1.1 Proposal in the CP

74. FBA systems have been operated in the EU for several years and have gained particular traction with the application of MiFID II and the suspension of trading under the reference price waiver under the double volume cap mechanism (Double Volume Cap Mechanism or DVCM).

75. ESMA already assessed the functioning of FBAs, and their contribution to pre-trade transparency, back in 2018 with a call for evidence¹², which resulted in ESMA issuing an opinion setting out its expectations on the application of pre-trade transparency by FBA systems in 2019¹³. The opinion has now been applied for more than two years. However, ESMA received feedback from stakeholders that not all trading venues are complying with the opinion.

76. ESMA also assessed FBAs in its review report on equity transparency¹⁴ and recommended developing tailored pre-trade transparency requirements for FBAs in RTS 1. Therefore, the CP on the RTS 1 and 2 review presented proposals for (i) adding FBA systems as a separate type of trading system in RTS 1 and 2 (adjusting in parallel the current description

¹² Call for evidence Periodic auctions for equity instruments, [here](#).

¹³ Opinion On frequent batch auctions (FBAs) and the double volume cap mechanism (DVCM), [here](#).

¹⁴ MiFID II/MiFIR Review Report

on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares, [here](#).

of periodic auction trading systems); and (ii) developing tailored pre-trade transparency requirements for FBA systems.

77. Concerning the introduction of a separate description for FBA systems, ESMA suggested in the CP the following: 'A system that matches orders periodically during continuous trading hours, using a trading algorithm. FBA systems are not based on scheduled auctions, and the start of an auction is determined by the submission of orders by members or participants or by the identification of two potentially matching orders'.
78. This proposal captured two of the three main characteristics of FBAs, i.e. the auctions take place during the trading day and are triggered following the submission of orders by members or participants. Moreover, since some trading venues set the trading price at the beginning of an auction, the reference to an auction system operated without human intervention has been removed from the description. The third characteristic of FBA systems, i.e. short auction duration, was not included in the proposal to avoid specifying an artificial maximum duration of an auction.
79. To ensure a proper delineation between the definition of FBA trading systems and conventional periodic auction trading systems, ESMA suggested in the CP to update the description of periodic auction trading systems: '***A system that matches orders on the basis of ~~a periodic auction~~ an auction schedule and/or following a volatility interruption and using a trading algorithm operated without human intervention. The start of an auction is determined by the trading venue. Periodic auction trading systems include opening auctions, closing auctions and auctions following a volatility interruption, but not frequent batch auctions (row 4)***'.
80. Concerning the pre-trade transparency requirements for FBA systems, ESMA presented two options in the CP.
81. Under the preferred approach (option 1), ESMA proposed the following pre-trade transparency requirements for FBA trading systems: '***The price at which the system would best satisfy its trading algorithm in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system and the volume that would potentially be executable at that price by participants in that system as well as the side and size of any order imbalance. Pending the identification of two matching orders the best price and the aggregated volume on both sides at that price shall be made public.***'
82. Under the second option, the following pre-trade transparency requirements would apply to FBA trading systems: 'The price, size and side of any order submitted to a frequent batch auction as well as the price at which the system would best satisfy its trading algorithm in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system and the volume that would potentially be executable at that price by participants in that system.'
83. Stakeholders were invited to provide feedback both on the definition of FBA systems as well as on the proposed pre-trade transparency requirements.

3.4.1.2 Feedback received to the CP

84. Overall, feedback received from stakeholders was split in in two groups. A first group of stakeholders, mainly composed of buy- and sell-side firms as well as operators of FBA systems, expressed strong opposition to the proposals in the CP. Those stakeholders considered that the proposals would have a similar effect as prohibiting FBA systems. A second group of stakeholders, mainly composed of regulated markets and prop traders, was supportive of the proposals which, in their view, would strengthen the level playing field. This group of also raised concerns about the current inconsistent application of the opinion on FBA systems in the EU.
85. Concerning the proposed definition of FBA systems, the first group of stakeholders argued against introducing a separate definition for FBAs and considered that FBAs were well placed within the current description of periodic auction trading systems. This group of respondents stressed the positive effects of FBAs, in particular the protection from high frequency traders (HFT), the low price impact, and the possibility to execute at mid-point. Several trading venues operating FBA systems also provided ESMA with quantitative data to document the positive impacts of FBA trading.
86. The second group of stakeholders was overall supportive of the proposed definition of FBA systems. Some of the respondents of this group of stakeholders suggested integrating further elements to the definition, in particular on the short duration and clarifying that FBAs are operated without human intervention. Some respondents raised concerns that the definitions of periodic auction systems and FBAs may not cover all auction types and may thereby create uncertainty. Furthermore, some stakeholders considered that there should be no list of the types of auctions that are covered by the periodic auction description or suggested to clarify that intraday auctions are considered as periodic auctions.
87. A number of respondents recommended that ESMA should carry out further analysis to assess how pre-trade transparency information currently disclosed by FBA systems is utilised by market participants. Those stakeholders also considered that ESMA should focus less on the definition of pre-trade transparency requirements for FBA systems, but rather on ensuring that FBAs are price forming and truly multilateral.
88. Concerning the proposed pre-trade transparency requirements for FBA systems, the first group of stakeholders, opposed both options proposed and considered that either option would make FBA systems an unattractive business proposal. Concerns were raised that the detailed pre-trade transparency requirements proposed (disclosure of individual orders and/or of volume imbalance) would result in information leakage, thereby removing the protection from HFT, adversely impact quoting activity and price formation, and therefore possibly lead to trading flow moving to the UK. This group of stakeholders considered that the current pre-trade transparency requirements on FBA systems together with the guidance in the ESMA opinion is sufficient.
89. The second group of stakeholders had split views on which option should be selected, with several respondents recommending leaving FBA systems the choice between option 1 or 2.

3.4.1.3 ESMA's assessment and next steps

90. In view of the mixed feedback received from stakeholders, ESMA considers that further analysis should be carried out, also on the basis of the quantitative information submitted by entities operating FBA systems. It should be further assessed whether tailored pre-trade transparency requirements for FBA systems are needed and, if yes, how these requirements should be calibrated to provide for meaningful pre-trade transparency without undermining the added value that FBA systems could create for market participants. ESMA understands that FBAs play a key role in particular with respect to avoiding negative market impact and providing less technically sophisticated market participants and institutional investors an alternative to the high-speed environment in continuous books. At the same time, ESMA notes that FBAs are not the only way to execute transaction with limited market impact or offering protection from high-frequency trading.
91. ESMA therefore decided not to include proposals on FBA systems in the RTS review at this stage. ESMA will reassess its proposals based on the arguments provided by stakeholders replying to the consultation and might include proposals to improve the application of pre-trade transparency by FBA systems in the second stage of the RTS review, i.e. when reviewing RTS 1 and 2 following the MiFIR review. Given that the FBAs have not been added as a new trading system in Annex I of RTS 1, also the changes proposed in the CP to periodic auction trading systems are not reflected in the final proposal for amending RTS 1.
92. ESMA took note of the concerns raised by several stakeholders confirming the disparate application of the opinion on FBA systems throughout the Union. ESMA intends to follow up with NCAs on this topic to ensure the consistent application of the opinion, thereby contributing to strengthening the level playing field.

3.4.2 Hybrid systems

3.4.2.1 Proposals in the CP

93. In the CP, ESMA noted that, according to the information provided in pre-trade transparency waiver notifications, an increasing number of trading venues operate hybrid systems. Due to the absence of a separate category in the current RTS 1, these systems are currently classified as "any other trading system" and therefore subject to very generic pre-trade transparency requirements.
94. As outlined in the CP, ESMA considers that this categorisation gives trading venues inappropriate discretion to decide the level of pre-trade transparency they consider appropriate, ultimately leading to inconsistent application of pre-trade transparency across the Union. The "any other trading system" has indeed been construed as a catch-all category with unspecific transparency requirements, leaving significant margin to trading venues to adjust their specific pre-trade transparency arrangements. This category was however rather designed for trading systems with very unique features while hybrid systems are a combination of trading systems already specified in RTS 1.

95. ESMA therefore expressed the view that the current description of ‘any other trading system’ in Table 1, Annex I of RTS 1 should not be used anymore for hybrid systems and thus, proposed to introduce a new type of trading system by separating the category of ‘hybrid system’ from ‘any other trading system’. Consequently, with the proposed new category, a system should be classified as a ‘hybrid system’ when it falls within two or more of the types of trading systems currently covered in rows 1 to 5 of Table 1, Annex I of RTS 1.

96. Moreover, ESMA noted that the description of trading systems specified in Table 1 of Annex I of RTS 1 and Annex I of RTS 2 slightly differ. In order to ensure consistent descriptions and requirements applicable to both equity and non-equity instruments, ESMA proposed in the CP to align the description of trading systems and the respective pre-trade transparency requirements in RTS 1 and 2. Hence, ESMA proposed the same changes for hybrid systems and FBA trading systems also in RTS 2.

3.4.2.2 Feedback received to the CP

97. Following the consultation, many respondents shared ESMA’s view and findings on the proposal to create a new category, dedicated to “hybrid systems. Nevertheless, some respondents were of the opinion that it is necessary to retain the category of “any other trading system” as a catch all category to allow for the innovation of new trading models.

98. In particular, these respondents believed that, if a trading system shows additional particularities which are not reflected in rows 1 to 5 of the Table 1 in Annex I of RTS 1 but which are substantial to characterize the nature and functioning of this system, it should not be categorised as a “hybrid system” but should continue to be categorised as “any other trading system”.

99. The proposal to align the descriptions of trading systems in RTS 1 and 2 also received strong support, as market participants were in favour of harmonisation and consistency.

100. A minority of respondents, however, did not agree that the proposed alignment of the definitions in RTS 1 and 2 would be beneficial to European markets. They argued that the properties of equity and non-equity instruments, as well as the microstructures of the trading systems developed for the different asset classes, differ to such an extent that they require separate classification and specific definitions.

3.4.2.3 ESMA’s assessment and next steps

101. ESMA notes the support received to both proposals made in the CP.

102. ESMA welcomes the comment made regarding the need to maintain a category of trading systems to capture innovative trading models and that there is a need to offer sufficient flexibility to accommodate market developments. It was not ESMA’s intention to delete the “any other trading system” category but rather to limit its use. The proposal in the CP was indeed limited to defining a new category for hybrid systems in RTS 1.

103. Therefore, ESMA maintains its proposal to create a new category dedicated to hybrid systems, alongside the existing category of “any other trading system”, which will capture all the trading systems not already classified in rows 1 to 5 in Table 1, Annex 1 of RTS 1. This strikes a balance between maintaining room for innovation and accurately classifying the trading systems.

104. In combination with the above, and for the purpose of standardisation, ESMA will also proceed with the proposal to align the descriptions in of trading systems in RTS 1 and 2.

3.4.3 Format of the pre-trade transparency information

3.4.3.1 Proposal in the CP

105. ESMA’s proposal included in the CP aimed at further aligning the practices for disclosing pre-trade information. Precisely, as opposed to post-trade transparency, RTS 1 does not include a specific description of the format of pre-trade transparency information to be disclosed. In practice, this means that trading venues and systematic internalisers have significant discretion to interpret the requirements set out in Table 1 of Annex I.

106. While this has provided some flexibility to market participants regarding the application of pre-trade transparency information, this has also led to diverging practices affecting ultimately the consumption of the information by receiving entities and its aggregation with information from other sources.

107. Therefore, ESMA proposed to amend Annex I of RTS 1 by specifying the obligations and harmonising format for the publication of the pre-trade transparency information.

To facilitate the consumption and aggregation of pre-trade transparency information published on EU markets, ESMA considered important that these new requirements should apply to both trading venues and systematic internalisers. To that effect, it was proposed to amend Article 3, Article 9 and Annex I of RTS 1.

3.4.3.2 Feedback received to the CP

108. Stakeholders provided mixed feedback on the proposal to harmonise the format for pre-trade transparency. While about half of the respondents supported the suggested amendments, the other half did not agree with these partially or in full. The main reasons of disagreement were linked to the significant IT development costs required to implement the amendments, the increased bandwidth consumption, slower data transmission speed and overload of data users with unnecessary information. Some drafting suggestions as well as further recommendations were also made.

109. Last but not least, several respondents highlighted the need to ensure consistency of the proposed changes with the ones envisaged under the MiFIR review to avoid duplication and unnecessary costs. The need for sufficient time for implementation was also emphasized.

3.4.3.3 ESMA's assessment and next steps

110. ESMA has purposely proposed an exhaustive list of fields in the new table in order to allow feedback on the large set of information. ESMA appreciates that there is however merit in reflecting on whether all the information proposed (i) is meaningful and, more importantly, (ii) can be provided without creating unnecessary technical challenges for reporting entities.
111. ESMA therefore decided not to make concrete proposals regarding the format of pre-trade transparency at this stage. ESMA will reassess its proposals based on the arguments provided by stakeholders replying to the consultation and, also in light of the current reform of MiFIR, might include revised recommendations in the next RTS review, i.e. when reviewing RTS 1 and 2 following the MiFIR review.

4 Other amendments of the main text of RTS 1

4.1 Deferred publication of transactions (Article 15)

4.1.1 Proposal in the CP

112. Since the application of RTS 1, there have been a number of changes in trading practices and/or technological developments which have rendered certain provisions of RTS 1 no longer appropriate. ESMA considered notably that the deferral period for publication of transactions as specified in Article 15(3)(b) of RTS 1 could be revisited.
113. This observation was already shared by some stakeholders who contributed to the CfE. Those stakeholders considered that the requirement to either publish transactions no later than noon of the following trading day, was unnecessarily long and they suggested to significantly shorten it.
114. ESMA has therefore proposed in the CP to amend Article 15 (3) of RTS 1 as follows:

'For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:

(a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;

*(b) no later than ~~noon local time~~ **the opening of the trading day of the most relevant market in terms of liquidity** on the next trading day for transactions not covered in point (a).'*

4.1.2 Feedback received to the CP

115. A vast majority of respondents agreed with the changes proposed by ESMA. However, some market participants suggested that publication should be at a fixed time, such as 9:00 CET, rather than taking into account the opening of the most liquid market. According to them, adopting a fixed time would be significantly easier to implement and would avoid further complexity both for venues and market participants ultimately impacting data quality.

116. A few stakeholders did not agree with ESMA's proposal. Those stakeholders who noted that the extended reporting window was established to allow for the unwinding of the risk taken on in the transaction and not to accommodate technical shortcomings. In their view, allowing for delayed publication only until the next day's market opening would not give sufficient time to unwind risk.

4.1.3 ESMA's assessment and next steps

117. ESMA notes the broad support received to the proposal made in the CP as well as the specific adjustment suggested by respondents to set a specific time for publication, such as 9 a.m., rather than the opening of the most liquid market to ease the application of this requirement. ESMA does not consider that it is necessary for hedging purposes to maintain the current deferral time of noon local time.

118. Therefore, ESMA suggests amending Article 15 (3) of RTS 1 as follows:

'For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:

(a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;

*(b) no later than ~~noon local time~~ **9 am local time of the most relevant market in terms of liquidity** on the next trading day for transactions not covered in point (a).'*

4.2 Changes to Article 17 of RTS 1 and Article 3 of RTS 11

4.2.1 Proposal in the CP

Date of application of transparency calculations (Article 17)

119. Article 17 of RTS 1 sets out the methodology and the dates of publication and application of the transparency calculations for equity and equity like instruments. Looking in particular at the dates of publication and application of the transparency calculations,

Article 17(1) of RTS 1 requires competent authorities to ensure the publication by 1 March of each year of the following information:

- a) the trading venue which is the most relevant market in terms of liquidity¹⁵;
- b) the average daily turnover for the purpose of identifying the size of orders that are large in scale¹⁶;
- c) the average value of transactions for the purpose of determining the standard market size¹⁷.

120. Furthermore, the information published in relation to the transparency calculations referred to above, applies from 1 April following their publication, and for a period of 12 months. These requirements are spelled out in Article 17(2) of RTS 1.

121. Taking into account feedback received from market participants from different areas within the financial industry, ESMA understood that the complexity behind the infrastructural and IT adjustments necessary for firms to be ready to apply the new calculations is quite significant. This is typically when 1 April is in the middle of a week, leaving less margin to all relevant participants to adjust their systems. ESMA is aware that most of these necessary updates to IT systems and infrastructures are, ideally, processed throughout the weekend in order to avoid unintended consequences should a glitch in the process occur during a working day.

122. Taking this aspect into consideration, ESMA proposed in the CP that the transparency calculations should start to apply from the first Monday of April following the publication of the calculations. The application period should last until the day before the first Monday of April of the subsequent year.

123. This minor modification aims at ensuring that the process of updating the transparency calculations run as smoothly as possible whilst maintaining relatively unchanged the timelines envisaged in RTS 1.

124. It was therefore proposed to amend Article 17(2) as follows:

*‘Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014, for **a the period of 12 months from 1 between the first Monday of April of the year in which the information is published and the day before the first Monday of April of the subsequent year.***’

Insertion of a new paragraph 17(6)

¹⁵ As set out in Article 4(2) of RTS 1.

¹⁶ As set out in Article 7(3) of RTS 1.

¹⁷ As set out in Article 11(2) of RTS 1.

125. The CP also suggested to add a new paragraph 6 to Article 17 requiring competent authorities to collect that data from trading venues, APAs and CTP as set out in the proposed Annex IV of RTS 1:

(6) 'Where ESMA or competent authorities require information in accordance with Article 22 of Regulation (EU) No 600/2014 trading venues, APAs and CTPs shall provide such data as per Annex IV of this Regulation.'

Clarification on exchange rate

126. Throughout the application of MiFID II, in particular when assessing pre-trade transparency waiver requests in respect of LIS orders, ESMA noted a practical issue concerning equity instruments that are not denominated in EUR. In fact, RTS 1 does not specify which exchange rate should be used to convert the monetary value expressed on these financial instruments. The CP identified this issue in Articles 7, 8, 11 and 15 as well as in some of the Annexes.

127. In order to promote a convergent and coherent application of the LIS waiver throughout the Union, ESMA deemed necessary to include a provision in RTS 1 to provide all market participants with a clear indication of which foreign exchange rate to use when orders or transactions are not denominated in EUR. Regarding the absence of such provision in RTS 1, ESMA reminds that for non-equity instruments RTS 2 clearly indicates which exchange rate should be used.

128. ESMA therefore took a similar approach to that of RTS 2 and proposed in the CP to add a new paragraph seven in Article 17 of RTS 1 with the objective to cover all instances of RTS 1, including pre-trade waivers, post-trade deferrals and some provisions for the SMS, where the application of an exchange rate is required:

(7) 'Where the trade size defined for the purpose of paragraph 1 and 2 of Article 7, paragraph 2(a) of Article 8, paragraph 1 of Article 11 and paragraph 1 of Article 15 is expressed in monetary value and the financial instrument is not denominated in Euros, the trade size shall be converted to the currency in which the financial instrument is denominated by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year.'

4.2.2 Feedback received to the CP

129. The proposal to amend article 17 of RTS 1 as proposed by ESMA had unanimous support.

130. On the date of application of the transparency calculations, a number of market participants noted that the change should go beyond RTS 1 and should be included on RTS 11, in particular Article 3(4), to provide for consistency between both pieces of legislation.

4.2.3 ESMA's assessment and next steps

131. Considering the overwhelming support from respondents, ESMA keeps its proposal to amend Article 17 of RTS 1 as proposed in the CP.

132. Considering the feedback received from respondents on the consistency of the proposal to move the application date of transparency calculations with the application of the tick size regime, ESMA agrees with the concerns raised and will also propose to amend Article 3(4) of RTS 11. Therefore, the date of application of the tick size regime should also be the first Monday of April. Therefore, Article 3(4) of RTS 11 (see Annex III of this final report) should be amended as follows:

“Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from the first Monday of 4 April following that publication.”

133. ESMA has also expanded the research to other Level 2 legislation to ensure consistency across all transparency provisions and noted that the application date of the liquidity status parameter, that is covered by Commission Delegated Regulation (EU) 2017/567¹⁸, should also be amended along the same lines. ESMA therefore proposes to the Commission to amend Article 5(2) of said regulation.

4.3 Clarification on the applicable large-in-scale threshold for Article 11(3)(c) of RTS 1

4.3.1 Proposal in the CP

134. In the CP, ESMA analysed the methodology for determining the SMS, as specified by Article 11 of RTS 1, i.e. the order size up to which the quoting obligations for systematic internalisers apply. Article 11(2) of RTS 1 specifies the transactions that should be included in that calculation. According to Article 11(3)(c) of RTS 1, post-trade LIS transactions as set out in Table 4 of Annex II should not be included when determining the SMS.

135. In its analysis, ESMA noted that, since Table 4 of Annex II of RTS 1 provides for various post-trade large in scale thresholds for equity instruments depending on the average daily turnover (ADT) and, for shares, depositary receipts and certificates, the minimum qualifying size of a transaction, there is some ambiguity in Article 11(3)(c) as to the transactions above the post-trade LIS threshold to be excluded from the SMS calculations. Furthermore, Article 11(3)(c) of RTS 1 only covers shares and depositary receipts, thereby creating uncertainty on the exclusion of post-trade LIS transactions for ETFs and certificates.

¹⁸ Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90)

136. In order to provide clarity on the post-trade LIS transactions to be excluded under Article 11(3)(c) of RTS 1, ESMA already clarified in Q&A ¹⁹ that “ [...] for shares, depositary receipts and certificates only the highest threshold for the related average daily turnover (ADT) band in Tables 4 and 6 of Annex II should be used to identify those transactions. For ETFs the highest threshold in Table 5 should be used to identify those transactions.”

137. In the CP, ESMA therefore suggested to integrate this approach in Article 11(3)(c) to provide further certainty on the transactions that should not be included when determining the SMS and in view of the amendments proposed in section 3.3.2.1 (field 9 of table 2 of the new Annex IV of RTS 1), and proposed to amend Article 11(3) of RTS 1 as follows:

*‘(c) it shall exclude for **shares, depositary receipts and certificates** post-trade large in scale transactions **of a size at or above the highest threshold for the related average daily turnover band in Tables 4 and 6 as set out in table 4 of Annex II. For ETFs, it shall exclude post-trade large in scale transactions at or above the highest threshold in Table 5 of Annex II.** ‘*

4.3.2 Feedback received to the CP

138. Most of the respondents agreed with ESMA on the need to amend Article 11(3)(c) of RTS 1 and the proposed amendment. However, some market participants considered that excluding LIS from SMS calculations would have the effect of further reducing the average SMS size. They suggested to simply amend Article 11 to include post-trade LIS transactions: such amendment would ensure that the SMS level is properly representative of liquidity in equity markets.

139. A minority of respondents did not welcome ESMA’s proposal, arguing that using average daily volume instead of transaction size may potentially lead to much higher and many different SMS levels. In this context, they expressed preference for standardised SMS levels.

4.3.3 ESMA’s assessment and next steps

140. ESMA notes the support received to the proposal made in the CP and acknowledges the observations made by market participants in relation to the risk of reducing the average SMS size by excluding LIS from SMS calculations. Nevertheless, the amendment to Article 11(3) of RTS 1 proposed by ESMA is not intended to introduce any new element with respect to what has already been clarified in Q&A 20, therefore, for the purpose of clarity, ESMA will maintain its proposal of including the content of the Q&A in the legal text as proposed in the CP.

4.4 Correction of wrong cross-references

141. ESMA identified a number of wrong cross-references in RTS 1, either referring to a wrong Article or to a wrong CDR. This applies to cross-references in Article 9(b), Article 18 as well as in Tables 3 and 4 of Annex I. As already explained in the CP, ESMA would like to seize the opportunity of this review of RTS 1 to correct these cross-references and ensure that the legal text is as clear as possible (please refer to the draft RTS in the Annex for the specific amendments of cross-references that are proposed).

5 Reporting fields (Tables 2 and 3 of Annex I, Tables 1 and 2 of Annex III)

142. The section on the reporting fields covers two dimensions: (i) the fields to be published for the purpose of post-trade transparency, and (ii) the reference data and the quantitative data to be provided for the performance of the transparency calculations.

143. The changes proposed aimed at providing more clarity on what has to be reported both to the public and to FITRS, with the ultimate goal to improve data quality and data aggregation.

5.1 Fields for the purpose of post-trade transparency (Tables 1 and 2 of Annex II)

5.1.1 Proposal in the CP

144. Articles 6 and 20 of MiFIR provide for the post-trade transparency requirements for trading venues and investment firms, including SI, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments.

145. The details to be published for the purpose of post-trade transparency, by trading venues and APAs, on behalf of investment firms and SIs, are provided in Tables 2 and 3 of Annex I of RTS 1 and, by means of Article 15 of RTS 13, CTPs are also obliged to publish the same details.

146. In this regard, ESMA made a number of proposals aimed at clarifying further the definition of certain fields but also add new ones considered important for the aggregation of the post-trade transparency reports.

5.1.2 Feedback received to the CP

147. In general, there was support to the proposals even if some recommendations and opposition, regarding certain ones, was expressed.

148. In particular, some respondents did not support the proposals: (i) on the requirement of the use of the same order and the names of the post-trade transparency fields; (ii) on

the use of major currency units (3 letters ISO standard); (iii) on the information to be provided in the price field (i.e. adding “NOAP” when price is not available).

149. Furthermore, the substantive costs for the industry were also highlighted. In this context, some flexibility was requested (e.g. on the use of technical formats by the trading venues).

150. In addition to the above, some respondents made recommendations to further clarify and harmonize certain fields – including among others the price currency, trading date and time, identification of the third-country trading venues. Finally, one market participant highlighted the need for more guidance to ensure reporting consistency in some areas as well as the need to enhance the post-trade transparency for SIs.

151. The next section is providing further details on the way forward as regards these recommendations as well as on the issues that are raising stakeholders’ concern.

5.1.3 ESMA's assessment and next steps

5.1.3.1 Field names and sequential order – Table 3 of Annex I of RTS 1

152. A respondent to the consultation expressed his opposition towards this proposal arguing that the order of the data fields is not relevant to information provision and usage by third parties. However, one of the most recurrent comments received in the CfE was the difficulty to use the post-trade reports and to aggregate them. To alleviate this issue, ESMA proposed to standardise the order and the name of the fields in Table 3 of Annex I to be used in the publication of the post-trade reports.

153. ESMA appreciates the required investments by trading venues and APAs to align to these requirements. However, it is an important step to ease the aggregation of such reports by market participants. Therefore, in order to limit the burden to trading venues and APAs which would require additional investments compared to a CTP, ESMA proposes in this Final Report to require the standardisation on the use of the name of the fields without requiring to follow the order of the fields in Table 3 of Annex I. However, nothing prevents those trading venues and APAs to follow the order of the fields suggested in the Annex if they wish so.

154. The same approach is proposed for Table 2 of Annex II of RTS 2.

5.1.3.2 Field “Trading date and time” – Table 3 of Annex I of RTS 1

155. As far as the field “Trading Date and Time” is concerned, ESMA confirms that no other changes are made except the deletion of the reference to OTFs because OTFs, according to their definition set out in Article (2)(1)(24) of MiFID II, are trading venues dedicated for the trading of non-equity instruments. Respondents supported this proposal.

156. Respondents also acknowledged the need to further harmonise the timestamps. ESMA suggested that the consolidation can be done by future CTPs. One respondent mentioned

that such approach (i.e. consolidation at the CTP level, while keeping different level of granularity of the timestamps at source level) will not be optimal. ESMA appreciates the concerns and shares the view that not the same precision will be required but, the different levels of granularity of the timestamps are defined on the basis of the type of market participant providing this information and, therefore, its capability to grant a certain level of precision. Therefore, ESMA confirms the proposal to tackle this issue following the adoption of the MiFIR Review and in parallel with the establishment of the CTPs. Indeed, the MiFIR review proposal includes a requirement for ESMA to draft RTS on clock synchronisation for the purpose of the CTP (Article 22a (2) of the amendment MiFIR). Therefore, ESMA will further analyse this issue once the RTS has been adopted.

157. The same approach is proposed for Table 2 of Annex II of RTS 2.

5.1.3.3 Fields “Price”, “Price currency”, “Price notation” and “Quantity” – Table 3 of Annex I of RTS 1

158. Following the feedback received, it is proposed to move the use of alphanumerical codes in a separate field from the “Price” which is defined as an alphanumeric field. The new field is called “Missing price”.

159. The same approach is proposed for Table 2 of Annex II of RTS 2.

Price	<p>Traded price of the transaction excluding, where applicable, commission and accrued interest.</p> <p>Where price is reported in monetary terms, it shall be provided in the major currency unit.</p> <p>Where price is currently not available but pending, the value should be ‘PNDG’.</p> <p>Where price is not applicable shall not be populated, the value shall be ‘NOAP’.</p> <p>The information reported in this field shall be consistent with the values provided in field Quantity.</p> <p>Where price is currently not available but pending (‘PNDG’) or not applicable (‘NOAP’), this field shall not be populated.</p>	RM, MTF, APA, CTP	<p>{DECIMAL-18/13} when in-case the price is expressed as monetary value in the case of shares, ETFs, depositary receipts and other equity-like financial instruments equity and equity-like financial instruments</p> <p>{DECIMAL-11/10} when in-case the price is expressed as percentage or yield in the case of certificates and other equity-like financial instruments</p> <p>‘PNDG’ in case the price is not available</p>
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Missing Price	<p>Where price is currently not available but pending, the value should be 'PNDG'.</p> <p>Where price is not applicable, the value shall be 'NOAP'.</p>	RM, MTF, APA, CTP	<p>'PNDG' in case the price is not available</p> <p>'NOAP' in case the price is not applicable</p>
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160. ESMA clarified in the CP that the “Price” field should be populated with the price of the instrument expressed in the major currency unit and that, the currency in which the price is provided should comply with the 3-letters ISO 4217 which includes only major currencies units. Although a few respondents expressed disagreement with this requirement which would affect a number of securities that do not qualify as major currencies, ESMA considers it important to apply an international standard for this field. Therefore, it is not proposed to change the requirement to provide the “Price” of the instrument in major currency unit and it is thus, proposed to align the specification on how to populate the field “Price Currency” with this requirement in order to have consistent information between these two fields. In other words, it is confirmed that the price of instruments reported in cents or other minor currency units should be converted into the relevant major currency unit.

161. Finally, the proposal to include the “Price notation” field in line with RTS 2, as well as the minor modifications to the “Quantity” field, are also maintained with no additional changes. Indeed, the price notation would allow to understand in which unit the price is provided, and both proposals were not controversial from the feedback received.

5.1.3.4 Field “Venue of execution” and “Third-country trading venue of execution” – Table 3 of Annex I of RTS 1

162. The modifications proposed in the CP for the “venue of execution” field were non-controversial though the costs of implementation were emphasized. Furthermore, respondents highlighted the need to clarify that this refers to EEA trading venues. ESMA notes that in order to extend the applicability of an EU act to the EEA EFTA States, an EEA

relevant EU act has to be incorporated into the EEA Agreement²⁰²¹²²²³²⁴. Following the incorporation of RTS 1 into the EEA agreement, the reference to EU should be read as reference to EEA with the relevant adaptations for the purposes of this Agreement. Therefore, ESMA considered that no change is needed and maintained the drafting suggestions included in the CP.

163. In the CP it was proposed to add the new field “Third-country trading venue of execution” on top of minor adjustments at the drafting aimed at clarifying the description and details to be published of this field.
164. More specifically, it was suggested to populate this field as follows: (1) when the MIC is available, the MIC; (2) when the MIC is not available and the third country trading venue (TCTV) appears in the annex of the opinion determining third-country trading venues for the purpose of transparency under MIFIR (this would concern only venues with a partially positive assessment), the code provided in the field “ESMA ID” in the annex of the opinion, e.g. ‘US1141’; (3) when the MIC is not available and the TCTV does not appear in the annex of the opinion, the two letters identifying the country of the venue (ISO3166) followed by the name of the trading venue, e.g. ‘JP– Trading Venue XYZ’.
165. In the responses to the consultation, an investment firm suggested to simplify the approach and populate the field as follows: (1) when the MIC is available, the MIC; otherwise (2) when the MIC is not available, the two letters identifying the country of the venue (ISO3166) e.g. ‘JP’.
166. ESMA sees the merits of this simplification and the need also for stakeholders to rely only on one data source. Therefore, ESMA proposes to maintain the new field in the table and to simplify the methodology to provide such information. As far as the request to merge this new field in the “venue of execution” field, it has to be considered that the latter has to be populated with “XOFF” when a transaction is executed on a third country venue. In order to maintain this clarity and considering that this field is already populated according to this guidance, it is considered more appropriate to keep these two fields separated.
167. The changes between the proposal in this Final Report and that in the CP are highlighted in blue below, in red the modifications compared to the RTS in force.

²⁰ When an EU act is incorporated into the annexes of the EEA Agreement, a number of adaptations may be applied to stipulate how such acts are to be applied under the EEA Agreement. Such adaptations could be of general character²¹, specific adaptations²², adaptations of the scope²³ or adaptations due to other factors²⁴.

²¹ For instance, whenever EU acts refer to nationals of an EU Member State, the references shall, for the purposes of the EEA Agreement, also be understood as references to nationals of EFTA States.

²² When EU acts, for instance, confer to EU institutions the competence to adopt binding decisions, to grant authorisations or to issue fines or other pecuniary measures, an adaptation text in the Joint Committee Decision is generally needed to describe how this should be dealt with on the EEA EFTA side.

²³ The EEA Agreement differs from that of the EU treaties, therefore, specific adaptations may be needed when EU acts cover policy areas that fall outside the scope of the EEA Agreement.

²⁴ Specific situations in the EEA EFTA States which are not taken into account in an EU act may require specific adaptations, mostly of substantive nature.

Third-country trading venue of execution	<p>Identification of the third-country trading venue where the transaction was executed. This shall be populated when the “venue of execution” field is populated with XOFF.</p> <p>Where the transaction is not executed on a third-country trading venue, the field shall not be populated.</p>	APA, CTP	<p>{MIC} where MIC is available or</p> <p>{ALPHANUM-25}</p> <p>otherwise</p> <p>{COUNTRY CODE_2}, otherwise</p>
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168. The same approach is proposed for Table 2 of Annex II of RTS 2.

5.2 Reference and Quantitative data to be provided for the purpose of transparency calculations (Reporting to FITRS)

5.2.1 Proposal in the CP

169. Article 22(3) of MiFIR requires trading venues, APAs and CTPs to provide information for the performance of the transparency calculations. In order to perform those calculations for equity and equity-like instruments, a mix of reference and quantitative data is necessary. CDR 2017/567 provides for both, reference and quantitative data necessary for the liquidity assessment, the details of the reference and quantitative data to be provided for the calculation of the other transparency parameters are split across different legal texts.

170. More specifically, Annex III of RTS 1 provides for the reference data needed to perform the transparency calculations for equity and equity-like instruments, RTS 3 provides for the requirement to provide all the necessary data for carrying out the calculations and, the specific information on the necessary quantitative data can be found only in the Reporting Instructions for FITRS²⁵. Therefore, the specific fields are currently missing from the legal texts for the quantitative data.

171. ESMA proposed to provide clarity and legal certainty to market participants and to align to the extent possible the structure of RTS 1 and CDR 2017/567 by including in the former a new annex with the details of the relevant quantitative data currently missing from the legal texts (currently found in the Reporting Instructions of FITRS). Those would complement the reference data necessary for the performance of the calculations as per CDR 2017/567. No changes were proposed to the tables related to reference data to be

²⁵ Reporting Instructions FIRDS Transparency System, [here](#).



provided for the purpose of transparency calculations (Tables 1 and 2 of Annex III of RTS 1).

172. In conclusion, ESMA proposed in the CP not to change Tables 1 and 2 of Annex III of RTS 1 with regard to the reference data to be reported and to add a new Annex, in line as much as possible with the Reporting Instructions, specifying the quantitative data to be reported.

173. It was also specified that, after the introduction of this new Annex, the Reporting Instructions would still be available as they also contain further technical aspects related to the implementation of the reporting of the data necessary for the performance of the transparency calculations.

5.2.2 Feedback received to the CP and ESMA's assessment and next steps

174. As far as reference data is concerned, all respondents to the CP supported ESMA's proposal not to change Tables 1 and 2 of Annex III of RTS1.

175. Following the general stakeholder's support, ESMA does not propose any change to the indicated tables as proposed in the CP.

176. As far as the quantitative data is concerned, most of the respondents to the CP supported ESMA's proposal on the new Tables 1 and 2 of Annex IV. However, they highlighted the costs for implementing the changes as well as the need to have sufficient time to perform the changes.

177. Considering the importance of ensuring clarity and legal certainty, ESMA's maintains the proposal of including the new table in the Level 2 text. However, the required information mirrors the current reporting regime. In other words, the reporting of trading volumes per waiver type and in relation to non-price forming transactions have been removed in consideration of (i) the on-going MiFIR review and uncertainties related to the transparency regime of waivers which also affect the work on flags (ii) the implementation costs of the proposal from market participants as well as on ESMA's side for the IT development that might add up to those related to MiFIR review. Therefore, the implementation costs of this proposal are zero at this stage.

178. Moreover, modifications are made to the field "Total number of transactions excluding those executed under the post-trade LIS deferral" which is now in line to the current Reporting Instructions in the reporting logic, i.e. to exclude transactions executed under the post-trade LIS deferral. Furthermore, the guidance included in [Q&A 5 in the Equity Transparency section](#) is now added to this table in the RTS. In summary only the highest post-trade LIS threshold has to be used in order to define the transactions that shall be excluded from this value. Parallel changes are made to the field "Total turnover excluding those executed under the post-trade LIS deferral".

179. It is reminded that the below will be the minimum requirement of information to be provided, additional information might be necessary for technical reasons and those will be included in the Reporting Instruction.

180. Here below the final proposal of the new Annex, highlighting in red the changes compared to the Reporting Instruction and in blue the final amendments suggested in this Final Report.

Annex IV

Data to be provided for the purpose of determining the Most Relevant Market in terms of liquidity, the ADT and the AVT

Table 1

Symbol table

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. decimal separator is ‘.’ (full stop); negative numbers are prefixed with ‘-’ (minus); values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits	Numerical field for both positive and negative integer values.

Table 2

Details to be provided for the purpose of determining the Most Relevant Market in terms of liquidity, the ADT and the AVT (based on the current reporting instructions)

Field num	Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 1
1	Instrument identification code	Code used to identify the financial instrument.	Regulated Market (RM) Multilateral Trading Facility (MTF) Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	{ISIN}
2	Reporting Execution date	Date for which the data is provided and on which the trades are executed.	RM, MTF, APA, CTP	{DATEFORMAT}
3	Trading Execution venue	Segment MIC for the EU trading venue or systematic internaliser, where available, otherwise operating on a MIC. MIC XOFF in the case the transaction is executed by investment firms which are not systematic internalisers and not on a trading venue.	RM, MTF, APA, CTP	{MIC} – of the trading venue or systematic internaliser or {MIC}- XOFF

4	Suspended instrument flag	Indicator of whether the instrument was suspended for the whole trading day on the respective TV / APA on the reporting execution day. The suspension flag shall be populated with Y if the instrument is suspended during the whole trading day. As a consequence, Fields 5 to 210 shall be reported with a value of zero.	RM, MTF, CTP	TRUE - if the instrument was suspended for the whole trading day or FALSE – if the instrument was not suspended for the whole trading day
5	Total number of transactions	The total number of transactions executed on the reporting execution day. (**)	RM, MTF, APA, CTP	{INTEGER-18}
6	Total volume turnover	The total volume turnover executed on the reporting execution day, expressed in EUR. (*) (**)	RM, MTF, APA, CTP	{DECIMAL-18/5}
7	Transactions executed, excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c).	The total number of transactions executed on the reporting execution day excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c) on the same day. (**)	RM, MTF, CTP	{INTEGER-18}
8	Total volume turnover executed, excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c).	The total volume turnover executed on the reporting execution day excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c) on the same day. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
7	Total number of transactions executed under reference price waiver	The total number of transactions executed under a waiver in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014 (reference price waiver) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}

8	Total turnover of transactions executed under a waiver in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014 (reference price waiver)	The turnover executed under a waiver in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014 (reference price waiver) on the execution date. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
9	Total number of transactions executed under a negotiated transaction waiver of type 1	The total number of transactions executed under a waiver in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 1) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}
10	Total turnover of transactions executed under a negotiated transaction waiver of type 1	The turnover executed under a waiver in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 1) on the execution date. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
11	Total number of transactions executed under a negotiated transaction waiver of type 2	The total number of transactions executed under a waiver in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 2) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}
12	Total turnover of transactions executed under a negotiated transaction waiver of type 2	The turnover executed under a waiver in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 2) on the execution date, expressed in EUR. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
13	Total number of transactions executed under a negotiated transaction waiver of type 3	The total number of transactions executed under a waiver in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 3) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}
14	Total turnover of transactions executed under a negotiated transaction waiver of type 3	The turnover executed under a waiver in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 (negotiated transactions waiver of type 3) on the execution date. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}

15	Total number of transactions executed under large in scale waiver	The total number of transactions executed under a waiver in accordance with Article 4(1)(c) of Regulation (EU) No 600/2014 (large in scale waiver) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}
16	Total turnover of transactions executed under large in scale waiver	The turnover executed under a waiver in accordance with Article 4(1)(c) of Regulation (EU) No 600/2014 (large in scale waiver) on the execution date. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
17	Total number of transactions executed under order management facility waiver	The total number of transactions executed under a waiver in accordance with Article 4(1)(d) of Regulation (EU) No 600/2014 (order management facility waiver) on the execution date. (**)	RM, MTF, CTP	{INTEGER-18}
18	Total turnover of transactions executed under order management facility waiver	The turnover executed under a waiver in accordance with Article 4(1)(d) of Regulation (EU) No 600/2014 (order management facility waiver) on the execution date. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}

49	<p>Total number of transactions excluding those executed under large-in-scale waiver the post-trade LIS deferral.</p>	<p>Total number of transactions executed on the reporting execution dayte, excluding those transactions executed under Large-In-Scale waiver (post-trade). (**)</p> <p>For shares and depositary receipts only the highest threshold for the related average daily turnover (ADT) band in Tables 4 of Annex II should be used to identify those transactions.</p> <p>For certificates and other similar financial instruments only the highest threshold in Table 6 should be used to identify those transactions</p> <p>For ETFs only the highest threshold in Table 5 should be used to identify those transactions.</p> <p>The total number of transactions executed under a waiver in accordance with Article 11(3) of this Regulation (post-trade LIS deferral) on the execution date.</p>	<p>RM, MTF, APA, CTP</p>	<p>{INTEGER-18}</p>
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210	<p>Total volume turnover of excluding transactions executed under large-in-scale waiver the post-trade LIS deferral.</p>	<p>Total volume of transactions executed on the reporting execution dayte, excluding those transactions executed under Large-In-Scale waiver (post-trade). (*) (**)</p> <p>For shares and depositary receipts only the highest threshold for the related average daily turnover (ADT) band in Tables 4 of Annex II should be used to identify those transactions.</p> <p>For certificates and other similar financial instruments only the highest threshold in Table 6 should be used to identify those transactions</p> <p>For ETFs only the highest threshold in Table 5 should be used to identify those transactions.</p> <p>The turnover executed under a waiver in accordance with Article 11(3) of this Regulation (post-trade LIS deferral) on the execution date. (*) (**)</p>	RM, MTF, APA, CTP	{DECIMAL-18/5}
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(*) The turnover shall be calculated as number of instruments exchanged between the buyers and sellers multiplied by the unit price of the instrument exchanged for that specific transaction and shall be expressed in EUR.

(**) Transactions that have been cancelled should be excluded from the reported figures. In all cases, the field has to be populated with any value greater than or equal to zero up to 18 numeric characters including up to 5 decimal places.

5.3 Other issues that emerged in the CfE

5.3.1 Proposal in the CP

181. As regards other issues that emerged in the CfE, ESMA's CP provided further clarifications on field 11 of RTS 23 (the admission to trading date of an instrument) as well as the field 'price' in CDR 2017/567 and the possibility to set such price equal to zero. In case of the latter, although it was not part of the proposed amendments, ESMA asked for concrete examples or scenarios when the price cannot be determined or cases where the only solution is to set a zero price for the different instruments.



5.3.1.1 Feedback received to the CP

182. Two trading venues and an association consider that the most problematic case for providing a price is for the day corresponding to the 'Date of admission to trading or first trading date'. Hence, the proposal was to apply default values until trading venues are able to provide a price referring to a price forming transaction. It was argued that trading on the basis of default parameters like a non-liquid flag, EUR 10,000 for the SMS and EUR 15,000 for the LIS for shares is acceptable as long as no transaction has been executed.

183. In the case of shares, while it would appear possible to provide an estimate for an initial public offering, the task is a lot more difficult in the case of a secondary listing, especially for non-EU shares (mostly illiquid) and for which a reference price cannot be provided due to lack of price availability, the rights to use that price or the exchange rate. Moreover, due to the relative illiquidity of those instruments, no transaction may occur on the venue up to a reporting date, and consequently, no price can be determined in the next days.

5.3.2 ESMA's assessment and next steps

184. Considering that the "price" should be provided also at the end of the first 4-weeks after the 'Date of admission to trading or first trading date', it is considered that allowing to report to FITRS a zero price in the reference data, for shares which are newly admitted to trading or first traded, can be performed and applicable in the short-term as it is a change in the parametrisation of the checks currently implemented in FITRS.

6 Flags (Table 4 of Annex I)

186. Table 4 of Annex I of RTS 1 specifies flags for identifying different types of transactions, thereby aiming at informing market participants and regulators of specific characteristics of transactions. According to Articles 7(2)(a) and 20(3)(a) of MiFIR the flags aim, among others, at 'distinguishing between those [transactions] determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors'. Furthermore, according to Article 20(3)(b) of MiFIR, ESMA may specify the application of post-trade transparency obligations 'to transactions involving the use of those financial instruments for collateral lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument.
187. Table 4 of Annex I of RTS 1 specifies the name of the flags and their description, including the circumstances when the flags should be used, the symbols to be used and the type of execution venue (RM, MTF) or publication venue (APA, CTP) to which the obligation for flagging a type of transactions apply.
188. Broadly speaking, RTS 1 currently provides for 4 types of flags:
- Flags used to signal that a transaction has been amended or cancelled (CANC, AMND);
 - Flags to identify transactions that are non-price forming and/or where the price has been determined based on factors other than the market price (BENC, NPFT, TNCP);
 - Flags linked to waivers from pre-trade transparency or deferred publication of transactions (LRGS, RFPT, NLIQ, OILQ, PRIC);
 - Other flags introduced either due to regulatory requirements (ALGO), to avoid the double-reporting of OTC transactions by the CTP (DUPL) or to provide information on certain transactions executed with a systematic internaliser (SIZE, ILQD, RPRI) or for other purposes (ACTX, SDIV).
189. ESMA issued via Q&As guidance on the application of flags²⁶, explaining in particular that flags should only be applied in case the circumstances described are met and that, where none of the specified circumstances apply, the transaction should be published without a flag. Moreover, ESMA provided guidance on which flags are mutually exclusive and which flags can be combined with other flags.

²⁶ See Q&A 2a of section 2 of the Q&As on MiFID II transparency topics, [here](#).

190. Nevertheless, since the application of MiFID II ESMA has noted that a number of issues with flags persist, thereby undermining the quality and usability of transactions published, in particular for OTC-transactions.
191. In view of these observations, ESMA proposed in its CP to review the complete set of flags with the objective of ensuring that flags are applied in a consistent manner across the Union by all market participants, thereby delivering meaningful and accurate information about important characteristics of different types of transactions to market participants and regulators. In the CP, ESMA suggested deleting a number of flags, amending certain existing flags and introducing a few additional flags in RTS 1. ESMA also suggested requiring the publication of flags in a prescribed order.
192. Bearing in mind the feedback received to the consultation, and to avoid working now on topics that overlap with the discussions at the European institutions on possible amendments to MiFID II and MiFIR (MiFIR Review), ESMA decided to carry out the review of the flags in two steps
193. The majority of amendments proposed would only be considered in the second review following the MiFIR review. Nevertheless, feedback from the market has indicated that clarity around non-price forming transactions should be dealt with as a priority. Tackling this issue will also contribute to greater data quality in the context of establishing a CTP. Hence ESMA is covering these changes as well as changes to the accompanying flags in the current report. Furthermore, this report provides an overview on the feedback received to the other proposals included in the CP, which may be included in the second review after the MiFIR review.

6.1 Deletion of existing SI and agency cross transaction flags

6.1.1 Proposal in the CP

194. In line with ESMA's general approach to limit the number of flags in order to streamline the use of flags across market participants and improve the quality of post-trade transparency data, ESMA proposed to delete the systematic internalisers' flags SIZE, ILQD and RPRI as specified in Table 4 of Annex I of RTS 1.
195. The proposal to remove this flag was based on the finding that systematic internalisers themselves noted that these flags are rarely used or not always used appropriately. ESMA recognised though that some stakeholders may nevertheless use (a subset of) these flags for the purpose of carrying out data analysis. ESMA hence proposed to delete these particular flags unless stakeholders would indicate otherwise. Stakeholders were therefore asked to inform ESMA whether they use any of these flags for any particular purpose and whether they consider these flags to have an added value.
196. In addition, RTS 1 currently provides for an agency cross transaction flag (ACTX) to be used for OTC-transactions where an investment firm has brought together clients' orders

with the purchase and the sale conducted as one transaction and involving the same volume and price.

197. As ESMA illustrated in the CP, the use of the flag is limited to OTC-trading that is not done by systematic internalisers, given that under MiFID II systematic internalisers are not allowed to perform matched principal trading on a regular basis. Moreover, since Article 23(2) of MiFIR requires firms that operate an internal matching system to be authorised as an MTF, the practical use case of the ACTX flag appears limited. Hence ESMA suggested deleting the ACTX flag.

6.1.2 Feedback received to the CP

198. In relation to the systematic internalisers' flags, stakeholders had splits views on whether to delete the flags SIZE, ILQD and RPRI. Several respondents were in favour of ESMA's proposal to streamline the use of flags, as they noted that SIZE and ILQD had no meaningful additional information and could hence be deleted. Some were of the opinion that RPRI would still have some informative and supervisory value.

199. However, a majority of respondents did not support the ESMA proposal. Some stakeholders questioned whether deleting these flags would contribute to a more accurate use of flags and suggested to rather aim at better enforcement, improved consistency and completeness of systematic internalisers' data quality. Others had particular concerns about the deletion of these flags, in particular of RPRI, as it would limit their ability to perform data analysis. Lastly, some were concerned that removing the flags would reduce visibility of systematic internalisers' activity.

200. In relation to the agency cross transaction flags, ESMA's proposal was rather controversial, with market participants divided between those who were in favour of the deletion of the ACTX flag and those who did not support the removal.

201. According to the latter, who constituted a slight majority, the ACTX flag should be maintained as it might still have a use case. Some noted that as the ACTX flag does not apply to transactions executed on a trading venue, it reveals if a transaction was arranged OTC and executed OTC.

6.1.3 ESMA's assessment and next steps

202. As also mentioned above, most of the amendments related to flags will be pushed to a second review. This also holds for the potential deletion of existing flags, including the systematic internalisers and agency cross transaction flags. ESMA will further consider the views from stakeholders in its second review of RTS 1.

6.2 Amendment of non-price forming transactions flag

6.2.1 Proposal in the CP

203. In the CP, ESMA explained that there are multiple existing flags that are currently relevant for non-price forming transactions. Firstly, there are flags for some specific non-price forming transactions, i.e. BENC for benchmark trades. In addition to those, there are two more generic flags, i.e. NPFT for transactions not subject to post-trade transparency when executed OTC (Article 13 of RTS 1) and TNCP for transactions exempted from the STO (Article 2 of RTS 1). Finally, negotiated transactions subject to conditions other than the current market price (NT3) also have a dedicated flag, i.e. PRIC.

204. The flagging of non-price forming trades has proven challenging to apply in practice for market participants. The broad variety of flags and existing overlaps between those flags have led to the inconsistent application of the RTS 1 flagging requirements and, ultimately, to blurring the picture for market participants and supervisors trying to interpret executed transactions on the basis of existing flags. For instance, a benchmark transaction executed as a negotiated transaction on a trading venue can be flagged with BENC, NPFT, TNCP and PRIC.

205. ESMA therefore proposed two main amendments to the flagging systems of non-price forming transactions: i.e. (i) reducing the number of existing flags to simplify the regime and avoid confusion for market stakeholders and (ii) introducing further clarification on how flags should be used and combined.

206. Regarding the possible simplification of the flags, ESMA proposals were made in addition to the amendments proposed regarding the lists of the non-price forming transactions in Articles 2, 6 and 13 of RTS 1 (see final ESMA proposals in this respect in section 3.3). Taking into account the improved consistency between these three Articles, ESMA considered in the CP that a simpler and clearer flagging of non-price transactions could be achieved by introducing the following changes:

- adding two new flags to Table 4 of Annex 1 of RTS 1, i.e. PORT and CONT for transactions listed respectively under (i) Articles 2(b) and 6(b) and (ii) Articles 2(c) and 6(c) of RTS 1;
- deleting the flags PRIC and TNCP from Table 4 of Annex I of RTS 1; and
- changing the definition of the NPFT flag which should include transactions excluded under Article 2(5) of RTS 22.

207. Regarding the proposals made on the possible combination and order of flags, the ESMA proposals and the feedback received to those are described in section 6.5. With respect to non-price transactions flags, beyond the general proposal made to establish a specific order for flags, ESMA in that section proposed to clarify that certain flags should not be used cumulatively.

6.2.2 Feedback received to the CP

208. Respondents generally welcomed ESMA's efforts to streamline the use of flags for non-price forming transactions. Some however invited ESMA to carefully think these changes through to avoid further changes in the short or medium term.

209. Regarding ESMA's specific proposals, comments received included the following:

- Respondents generally agreed with the introduction of the 'CONT' flag but one respondent stressed that these transactions should ideally be exempted from post-trade transparency.
- Some respondents (buy-side mainly) suggested to keep the 'TNCP' flag as an option if further scenarios were identified as non-price forming trade in the future.
- Some respondents (mainly trading venues) invited ESMA to reconsider whether PORT, BENC and CONT flags should be mutually exclusive providing the following examples: (i) portfolio risk guaranteed VWAP trades (where a broker may execute a portfolio of their client's orders against their own capital at the VWAP price of each stock) or (ii) an exchange for physical where, e.g., an equity index future is 'exchanged' for its underlying shares and that would qualify for both PORT and CONT flags.
- Some respondents (buy-side mainly) also made a link with certain proposals on flags developed in the following sections of the CP and in particular the proposals regarding intra-group transactions, trades executed outside trading hours and trades brought to venue for clearing purposes. They also considered that these trades are non-price forming and should therefore be flagged as such.
- Finally, many respondents invited ESMA to not only focus its efforts on streamlining the flags in RTS 1 and 2 but also to continue providing guidance on how flags should be used and ensuring that EU supervisory practices are aligned in this respect.

6.2.3 ESMA's assessment and next steps

210. ESMA welcomes the general support for the proposals presented in the CP. Respondents considered that these amendments could indeed streamline the flagging of non-price-forming transactions and improve the overall quality of the information published.

211. With respect to contingent trades, ESMA notes that the proposal to exempt these transactions from post-trade transparency was only advocated for by a limited number of respondents. In addition, any exemption through RTS 1 would only apply to OTC trading making it less relevant in practice. For these reasons, ESMA decided not to amend further the lists of exempted transactions in Article 13 of RTS 1 but maintains its proposal to add a specific flag for these transactions (as initially proposed in the CP).

212. Regarding the TNCP flag, ESMA does not find it appropriate to maintain this flag as a back-up option in case new types of non-price forming trades were to be identified in the

future. The new cross reference to Article 2(5)(b) of RTS 22, which uses a more generic description, should cater for all possible scenarios. More generally, maintaining this flag would mean unclarity regarding the transactions it is meant to cover and would stand in contradiction to ESMA’s attempt to reform the flags with respect to non-price forming transactions.

213. ESMA acknowledges the comment made regarding the possible combination of flags and would see merit in allowing combination in certain cases. This would typically be the case for the PORT, BENC and CONT flags. However, ESMA would maintain that these flags should not be used in combination with the NPFT flag. This clarification will be integrated in a forthcoming more general ESMA guidance on post-trade transparency issues, including flags.

214. Finally, the proposed deletion of the PRIC flag was proposed in conjunction with a possible addition of new flags for transactions executed on the basis of orders benefitting from the LIS waiver. It was indeed ESMA’s understanding that non-price forming transactions (i.e. transactions exempted from the STO through Article 2 of RTS 1) are generally executed either under the waiver set out under Article 4(1)(b)(iii) (i.e. negotiated transactions subject to conditions other than the current market price or NT3) or under an LIS waiver (when used for pre-arranged transactions). The addition of new flags to identify pre-arranged transactions executed under the LIS waiver (NTLS flag in particular, see section 6.3 for further details) would have therefore made the PRIC flag redundant.

215. As explained below the proposals regarding a possible addition of new flags for pre-arranged transactions executed under the LIS waiver is the next review of RTS 1. It is therefore proposed to maintain the PRIC flag for the moment and re-evaluate its relevance in the next review round.

216. As a conclusion, ESMA proposes to (i) delete the TNCP flag, (ii) add two new flags (PORT and CONT flags), (iii) maintain the PRIC flag and (iv) amend the definition used for the NPFT flag. The new proposed flagging system for non-price forming transactions is summarised in the table below.

Table 3 FINAL PROPOSAL REGARDING FLAGGING OF NON-PRICE FORMING TRANSACTIONS AS PROPOSED BY ESMA

Type of transactions	Venue of execution	Waiver	Flags
Benchmark transactions (including RFMD)	OTC	N/A	BENC
	On-venue	NT3 waiver	BENC, PRIC
		pre-arranged LIS	BENC
Portfolio trade	OTC	N/A	PORT
	On-venue	NT3 waiver	PORT, PRIC
		pre-arranged LIS	PORT
Contingent trade	OTC	N/A	CONT
	On-venue	NT3 waiver	CONT, PRIC

		pre-arranged LIS	CONT
Excluded transaction under Article 2(5) of RTS 22	OTC*	**No post-trade transparency**	
	On-venue	NT3 waiver	NPFT, PRIC
		pre-arranged LIS	NPFT

6.3 Addition of pre-trade LIS flags

6.3.1 Proposal in the CP

217. In the CP, ESMA proposed to introduce two new equity flags in RTS 1. This would concern one flag related to on-book transactions benefitting from a pre-trade large in scale (LIS) waiver and one for off-book transactions that are pre-arranged and benefit from a LIS waiver (due to order size) but do not benefit from a negotiated trade (NT) waiver. The objective of introducing two dedicated pre-trade LIS waiver flags was to clear out any inconsistencies in the use of the LRGS post-trade flag as a pre-trade flag. Certain market participants had also suggested the off-book flag in particular.

218. For on-book transactions the flag WAIV was proposed for transactions executed on-venue where at least one order benefitted from the LIS waiver. To counter any information leakage for partially filled orders, ESMA had suggested to consider limiting the flag to only completely filled LIS orders. For off-book transactions the flag NTLIS was proposed for transactions negotiated OTC but brought onto a venue for final execution.

219. Stakeholders were invited to indicate whether they support the proposal by ESMA to add these two new flags.

6.3.2 Feedback received to the CP

220. ESMA's proposal to introduce a pre-trade LIS waiver flag for on-book transactions received mixed responses. Among those who were in favour, most agreed that the current widespread use of LRGS is not correct or appropriate, and noted that introducing the WAIV flag would allow to accurately identify the amount trading under the LIS waiver. These respondents support any changes intended to remedy incorrect usage of flags in order to improve data quality overall and, as such, support this new flag.

221. There were different views on whether the flag should apply to completely filled or also partially filled orders. It was noted that as the flag may not be present on every LIS execution, it would not be possible to accurately ascertain the volume of executions from LIS orders and may lead to a significant understatement of the volumes. Moreover, as there are some scenarios where orders using different pre-trade transparency waivers interact with each other, one respondent strongly recommended that the final text states clearly which flag or flags result from such executions.

222. Of those not in favour of the proposal, some mentioned that they do not see a direct benefit while it will require a large technical effort. Hence, it was recommended that ESMA first provides additional guidance on the use of existing flags before introducing new ones. Others mentioned that the information is already given in the trade feed in MMT format where it can be deduced that LIS orders were involved in the trade.
223. Regarding ESMA's proposal to introduce a pre-trade LIS waiver for off-book transactions, a majority of respondents agreed that it would significantly improve post-trade data quality. Respondents highlighted that it would allow to accurately identify the amount of trading taking place under the LIS waiver. One respondent noted that, while supportive of the concept, the NTLS flag is not suitable since most of the block trades could then end up under the one that is aimed to be used for transactions negotiated OTC but brought onto a venue for final execution.
224. Respondents that did not agree noted that there is no obvious added value to this new NTLS flag, and that the solution should rather be for ESMA to publish further information and guidance as to how to apply the LRGS post-trade flag in an accurate and consistent manner. Flags should be implemented carefully so it does not lead to unnecessary IT development costs.

6.3.3 ESMA's assessment and next steps

225. As also mentioned above, most of the amendments related to flags will be pushed to a second review. This also holds for pre-trade LIS flags. ESMA will further consider the views from stakeholders in its second review of RTS 1.

6.4 Addition of other flags

6.4.1 Proposal in the CP

226. As explained in the CP, ESMA had received requests from market participants to add a few other flags, with the main objective to better identify addressable liquidity. This concerned a flag for trades brought on a venue purely for clearing purposes, a flag for transactions executed outside trading hours and a flag for inter-affiliate group transactions. ESMA was not convinced that these flags were necessary to add and did not propose any changes.
227. Regarding trades brought on a venue purely for clearing purposes, some stakeholders recommended the introduction of a flag to identify trades that are purely for settlement purposes and, hence, non-addressable liquidity. Articles 2, 6 and 13 list non-price forming transactions which include transactions carried out for clearing and settlement purposes. Under the proposal for the flagging of non-price forming transactions, such transactions would be flagged as NPFT. ESMA explained in the CP that it was therefore not convinced that a new and more granular flagging would be necessary.

228. Regarding transactions executed outside trading hours, market participants also recommended the introduction of a new flag for trades that have been published the business day after the trade date, due to the trade being published to an APA or trading venue outside of operating hours. ESMA assessed this proposal and concluded that such a flag did not seem indispensable. Table 3 of Annex I of RTS 1 already provides for dedicated fields for trading date and time and publication date and time. Hence, the information is already available to market participants and, therefore, ESMA did not propose adding such a flag.
229. Regarding inter-affiliate transactions, ESMA received also a request to introduce a new flag for transactions undertaken between legal entities of a single company where those transactions are considered to be for 'housekeeping' purposes (e.g. position management) or intercompany back-to-back trades. ESMA explained that it considers that the transactions for 'housekeeping purposes' would be exempted from post-trade transparency for OTC trades under Article 13 of RTS 1 or flagged as BENC or PORT. Where such transactions are executed on trading venue, they would be flagged using NPFT, BENC, or PORT. Furthermore, introducing such a flag may risk introducing some uncertainty on the reporting and flagging of inter-affiliate activities that are addressable liquidity. For these reasons ESMA did not propose adding such a flag.
230. Stakeholders were invited to comment on the proposal by ESMA not to introduce these additional flags.

6.4.1.1 Feedback received to the CP

231. A majority of stakeholders agreed with ESMA not to add specific flags for the following trades: trades brought on a venue purely for clearing purposes, out of trading hours transactions, and inter-affiliate group transactions. Most were of the opinion that adding these flags would not be properly justified.
232. Others highlighted the following points:
- trades brought on a venue purely for clearing purposes should ideally be exempted from post-trade publication by trading venues, though this is rather a Level 1 and not Level 2 amendment;
 - trades brought on a venue purely for clearing purposes are already considered non-price forming transactions;
 - trades that would take place after the closing auction and inter-affiliate transactions are addressable in many cases.
233. Respondents that disagreed mostly advocated for the introduction of an inter-affiliate trade flag. Respondents noted that inter-affiliate trades represent a balancing of risk between group entities and that these trades should be specifically flagged or not included for the purpose of post-trade transparency so that they can be easily discounted from

addressable liquidity. Including these volumes may distort the overview of real liquidity available in the EU.

234. According to these respondents ESMA should consider at least one of the following actions:

- explicitly including such trades under one of the transaction reporting exemptions (while recognising that RTS 22 is not in scope for this consultation);
- introducing a new exemption under Article 13 of RTS 1 that explicitly refers to this type of transactions; or
- introducing a new flag to allow the trades to be distinguished from other activity.

235. In addition to the above, ESMA asked stakeholders in the CP whether they recommended any other amendments, including additions and deletions of flags that would in particular aim at better identifying addressable liquidity.

236. Market participants responded to this request providing the following suggestions, which were not necessarily linked to identifying addressable liquidity:

- the addition of a flag for trades benefitting from OMF waivers in order to allow NCAs and ESMA to conduct a full analysis on the size and type of trading that takes place under each waiver;
- the addition of flags necessary to implement the FIX MMT flags standard in order to support a European equity consolidated tape;
- the introduction of PNDG and NOAP as trade flags rather than price field value.

6.4.1.2 ESMA's assessment and next steps

237. As mentioned above, most of the amendments related to flags will be pushed to a second review. This also holds for the potential addition of new flags, such as those mentioned above.

6.5 Order of flags

6.5.1 Proposal in the CP

238. In the CP, ESMA expressed its intention to provide further guidance on the use of flags, in particular on the combination of different flags and on different trade scenarios.

239. In order to better enable stakeholders to read the information provided in the post-trade transparency flags and to ease the consolidation of data by CTPs, ESMA suggested prescribing the order of flags to be used. ESMA's proposal was largely based on the current approach in the FIX MMT standard. However, since ESMA contextually proposed to delete



and add certain flags, the proposal illustrated in the CP did not fully match the current FIX MMT approach.

6.5.2 Feedback received to the CP

240. Stakeholders expressed mixed views on the proposal to align the order of flags with the current approach in the FIX MMT standard. Many respondents agreed with the logic behind the proposal, especially in light of the development of a CTP but believed that this change would require a significant re-engineering effort across the market data value chain with important costs. They also supported the proposal to prescribe an order but insisted on the importance to be consistent with current market practices, particularly the MMT model. In this context, stakeholders noted that the proposed order appears to be taking some design principles from FIX MMT while making some key structural changes that would render ESMA's proposals incompatible with FIX MMT without substantial changes to the latter.

241. Many stakeholders also expressed strong disagreement with ESMA's proposal as they believed that such provisions would be potentially very disruptive in terms of data structure and data format, without adding value to post-trade transparency quality.

6.5.3 ESMA's assessment and next steps

242. As also mentioned above, most of the amendments related to flags will be pushed to a second review. This also holds for the potential revision of the order of flags. ESMA will further consider the views from stakeholders and investigate the concerns on any possible inconsistencies with FIX MMT standards in its second review of RTS 1.

7 Implementation and timing issues

243. In the CP, ESMA asked feedback on possible implementation issues and the timing for the application of the new or amended requirements to be included into RTS 1. ESMA did not receive specific concerns regarding the changes to RTS 1. Considering this absence of concerns and also considering that the scope of the review has been significantly scaled down (most controversial issues were removed), ESMA does not see any reason to derogate from the standard application period.

244. It is therefore proposed that the new requirements enter into force on the twentieth day following their publication in the Official Journal of the European Union.



8 Annexes



8.1 Annex I Legislative mandate to develop technical standards

8.1.1 RTS 1

Article 4(6) of MiFIR

6. ESMA shall develop draft regulatory technical standards to specify the following:

- (a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2);
- (b) the most relevant market in terms of liquidity of a financial instrument in accordance with paragraph 1(a);
- (c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction;
- (d) the negotiated transactions that do not contribute to price formation which avail of the waiver provided for under paragraph 1(b)(iii);
- (e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7(2) of MiFIR

1. ESMA shall develop draft regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 of Directive 2014/65/EU:
 - (a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those



determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;

(b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours.

(c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned in accordance with paragraph 1 of this Article and with Article 20(1);

(d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 14(7) of MiFIR

7. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, ESMA shall develop draft regulatory technical standards to specify further the arrangements for the publication of a firm quote as referred to in paragraph 1, the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3, and of the standard market size as referred to in paragraphs 2 and 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance

Article 20(3) of MiFIR

3. ESMA shall develop draft regulatory technical standards to specify the following:

(a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;



(b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;

(c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 22(3) of MiFIR

3. ESMA shall develop draft regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs are to respond to data requests referred to in paragraph 1, the type of data that is to be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to data requests in accordance with paragraph 2.

Article 23(3) of MiFIR

2. ESMA shall develop draft regulatory technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process as referred to in paragraph 1, taking into consideration cases such as:

(a) non-addressable liquidity trades; or

(b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8.1.2 RTS 11

Article 49(3) of MiFID II



3. ESMA shall develop draft regulatory technical standards to specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other similar financial instruments where necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 2 and the price, spreads and depth of liquidity of the financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8.2 Annex II Cost-benefit analysis

Introduction

This section provides a cost-benefit analysis (CBA) of the draft amendments to RTS 1 and RTS 11. The amendments to RTS 1 and RTS 11 that ESMA has decided to bring forward at this stage are non-substantial changes, representing adjustments aimed at improving the existing regime without incurring significant costs for stakeholders.

Considering that the consultation on the RTS 1 review precedes the MiFIR review, ESMA opted to postpone certain critical changes, such as to flags, that could be impacted by MiFIR Review, to a second review in order to avoid the duplication of implementation costs.

Moreover, ESMA notes that the questions raised in the CP inviting stakeholders to identify costs and benefits associated with the proposed amendments and not already covered by ESMA did not attract any answer. This CBA remains therefore of a mainly qualitative nature.

The stakeholders identified are: ESMA, NCAs and financial entities (investment firms, TVs, APAs, SIs, data providers).

The costs that the stakeholders will have to bear are expected to be minor and mainly concern the adaptation of the existing IT systems to the reviewed requirements.

ESMA provides below a detailed analysis of the costs and benefits that could arise from the provisions in the draft RTS 1 and the draft RTS 11 that are new or amended compared to the current RTS 1 and RTS 11.

Increased LIS threshold for waivers for ETFs

Policy Objective	Achieving a greater level of real time pre-trade transparency in the ETFs markets, which are characterised by a small number of orders or transactions, but of a very high size.
Technical Proposal	Amending Article 7(2) of RTS 1 by increasing the pre-trade LIS threshold for ETFs from EUR 1,000,000 to EUR 3,000,000.
<i>Benefits</i>	Providing market participants in the ETF market with more real-time pre-trade transparency, which will further contribute for the price formation process and investor protection, whilst at the same time protecting large orders.
<i>Cost to regulator:</i> - <i>One-off</i>	NCAs may incur one-off IT costs to adjust any IT surveillance system using this threshold. Those costs should not be significant given the previous experience with the regime.

- <i>On-going</i>	
<i>Compliance cost:</i> - <i>One-off</i> - <i>On-going</i>	Reporting entities may incur one-off IT and staff compliance costs to adjust the new calculations and cater for the new updated threshold. Those costs are expected to be non-significant as trading venues already have experience with the calculations currently required.
<i>Cost to other stakeholders</i>	None identified
<i>Indirect costs</i>	None identified

Increased LIS threshold for deferrals for ETFs

Policy Objective	Increasing the number of transactions subject to real-time publication with the objective of achieving a greater level of real time post-trade transparency in the ETFs markets.
Technical Proposal	Amending Table 5 of Annex II of RTS 1 by increasing the minimum qualifying size of transaction eligible for a 60-minute delay from EUR 10,000,000 to EUR 15,000,000.
<i>Benefits</i>	Providing market participants in the ETFs market with more real-time post-trade transparency whilst still providing the necessary protection for large orders.
<i>Cost to regulator:</i> - <i>One-off</i> - <i>On-going</i>	NCA's may incur one-off IT costs to update the existing threshold field for pre-trade transparency calculations. Those costs should not be significant given the previous experience with the regime.
<i>Compliance cost:</i> - <i>One-off</i> - <i>On-going</i>	Reporting entities may incur one-off IT and staff compliance costs to adjust the new calculations and cater for the new updated threshold. Those costs are expected to be non-significant as trading venues already have experience with the calculations currently required.
<i>Cost to other stakeholders</i>	None identified
<i>Indirect costs</i>	None identified

Non-addressable liquidity and non-price forming trades

Policy Objective	To provide a simplification and harmonisation of the legal text, providing more clarity and consistency on non-price forming transactions, including removing existing overlapping of concepts.
Technical Proposal	To streamline the lists of non-price forming transactions in RTS 1, namely by: (i) using more consistently Article 2(5) of RTS 22 as a central point of reference and (ii) removing existing overlaps. For RTS 1, this means deleting Article 2 (d) to (i), Article 6 (d) to (i), and Article 13 (b) to (c) of RTS 1, and adding a new reference in Articles 2 and 6 to Article 2(5) of RTS 22 to avoid overlaps and ensure consistency.
<i>Benefits</i>	This proposal will ensure more consistency regarding the overall treatment of non-price forming transactions, remove possible usage of different terminology to refer to the same type of non-price forming transaction and, hence, contribute to higher quality post-trade data.
<i>Cost to regulator:</i> - <i>One-off</i> - <i>On-going</i>	None identified
<i>Compliance cost:</i> - <i>One-off</i> - <i>On-going</i>	Market participants (investment firms, APAs, trading venues) will have some one-off cost for adjusting the reporting of non-price forming transactions in light of the amendments in RTS 1 and 2.
<i>Cost to other stakeholders</i>	None identified
<i>Indirect costs</i>	None identified

Pre-trade transparency requirements for trading systems

Policy Objective	Ensuring that market developments affecting trading systems are reflected and captured in the transparency requirements set for
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	trading systems in RTS 1 and that the application of these is harmonised across the EU.
Technical Proposal	Introducing a new category dedicated to “hybrid systems”, alongside the existing category “any other trading system”, to capture all the trading systems which present a combination of two or more trading systems already covered in rows 1 to 5 of Table 1, Annex I of RTS 1.
<i>Benefits</i>	Ensuring the correct classification of hybrid trading systems whilst maintaining room for innovation, which will be provided by the current category “any other trading systems”.
<i>Cost to regulator:</i> - <i>One-off</i> - <i>On-going</i>	NCA's may incur one-off cost to adjust to the new catalogue of trading systems set out in RTS 1. Those costs are expected to be non-significant.
<i>Compliance cost:</i> - <i>One-off</i> - <i>On-going</i>	Trading venues operating hybrid systems would incur one-off costs to adapt their systems to the change in pre-trade transparency information to be disclosed.
<i>Cost to other stakeholders</i>	Entities receiving pre-trade data may incur one-off costs to adjust to the new catalogue of trading systems.
<i>Indirect costs</i>	None identified

Deferred Publication of Transactions (Article 15 of RTS 1)

Policy Objective	Improving the level of timely disclosure of post-trade transparency information by shortening the deferral period for certain transactions in view of changes in trading practices and technological developments.
Technical Proposal	Amending Article 15(3)(b) of RTS 1 by anticipating the current deadline for the deferred publication of transactions to 9 am on the next trading day for transactions executed less than two hours before the end of the trading day.

<i>Benefits</i>	Improves the level of timely post-trade transparency and provides market participants with a timelier view of transactions executed close to end of the previous trading day.
<i>Cost to regulator:</i> - <i>One-off</i> - <i>On-going</i>	None identified
<i>Compliance cost:</i> - <i>One-off</i> - <i>On-going</i>	Trading venues and investment firms will incur one-off costs to implement the shortened deferral period.
<i>Cost to other stakeholders</i>	None identified
<i>Indirect costs</i>	None identified

Date of application of transparency calculations (Article 17 of RTS 1 and Article 4 of RTS 11)

Policy Objective	To ensure further harmonisation on the application of the transparency calculations and to limit the operational impact for all market participants involved. The aim is to agree on a process that runs as smoothly as possible whilst maintaining relatively unchanged the timelines envisage in RTS 1 and RTS 11.
Technical Proposal	The proposal is that the transparency calculations start to apply from the first Monday of April following the publication of the calculations. The application period should last until the day before the first Monday of April of the subsequent year.
<i>Benefits</i>	These amendments provide further standardisation on the date of the application of transparency calculations and the process is operationally easier to implement for all market participants by ensuring that the calculations start applying at the beginning of the week.
<i>Cost to regulator:</i>	This will require a change in the ESMA IT system, with respect to the computation of date of application, and maybe to the automatic scheduling of the calculations.

<ul style="list-style-type: none"> - <i>One-off</i> - <i>On-going</i> 	It will also require updates to the download instructions, which means an impact on the users of the data.
<p><i>Compliance cost:</i></p> <ul style="list-style-type: none"> - <i>One-off</i> - <i>On-going</i> 	This will require a change in the IT system of reporting entities, with respect to the computation of date of application (one-off costs)
<i>Cost to other stakeholders</i>	The change will require updates to the download instructions, which means an impact on the users of the data (one-off costs).
<i>Indirect costs</i>	None identified

Reporting fields

Policy Objective	Providing more clarity on the trading information to be reported both to the public and to FITRS, with the ultimate goal of improving data quality and data aggregation.
Technical Proposal	<p>It covers two dimensions: (i) the fields to be populated for the purpose of post-trade transparency by trading venues and APAs, (ii) the reference data and the quantitative data to be provided for the performance of the transparency calculations.</p> <p>With reference to (i), the proposals are to clarify some of the fields to be used in the publication of the post-trade reports as per Table 3 in Annex I of the draft amending RTS 1 provided in Annex VI, to clarify the order and the name of the fields and to add a few additional of fields.</p> <p>With reference to (ii), the proposal is to align the structure of RTS 1 and CDR 2017/567 and include in the former a new annex with the details of the relevant quantitative data, complementing the reference data necessary for the performance of the calculations as per CDR 567/2017.</p>
Benefits	The proposals provide clarity and harmonization on the information to be reported according to different legal texts for the purpose of post-trade transparency and for the performance of the transparency calculations.

<p><i>Cost to regulator:</i></p> <ul style="list-style-type: none"> - <i>One-off</i> - <i>On-going</i> 	<p>NCA's may incur one-off IT costs to adjust to the amendments to the reference data fields and the new reporting of quantitative data.</p>
<p><i>Compliance cost:</i></p> <ul style="list-style-type: none"> - <i>One-off</i> - <i>On-going</i> 	<p>Reporting entities may incur one-off IT compliance costs to adjust the reporting fields. Besides the financial costs, the implementation of the changes might require a significant time for the industry to adapt.</p> <p>Though limited, some additional reporting complexity should be acknowledged.</p>
<p><i>Cost to other stakeholders</i></p>	<p>None identified</p>
<p><i>Indirect costs</i></p>	<p>None identified</p>



8.3 Annex III – Draft RTS amending RTS 1

COMMISSION DELEGATED REGULATION (EU) .../...

of []

amending Commission Delegated Regulation (EU) 2017/587 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012²⁷, and in particular Article 4(6), Article 7(2), Article 14(7), Article 20(3), Article 22(3) and Article 23(3) thereof,

Whereas:

- (1) Delegated Regulation (EU) 2017/587²⁸ sets out transparency requirements for trading venues and systematic internalisers in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments.
- (2) Delegated Regulation (EU) 2017/587 has been applied for more than four years and taking into consideration the experiences acquired with its application, the identification of inconsistent application of some provisions and the changes in trading practices due to technological developments and adaptations of behaviour of market participants, it appears necessary to amend certain provisions of Delegated Regulation (EU) 2017/587. Such

²⁷ OJ L 173, 12.6.2014, p. 84

²⁸ Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p.387).

amendments will contribute to the convergent application of the Regulation as well as provide market participants with legal certainty.

- (3) It has emerged from the current application of Delegated Regulation (EU) 2017/587 that there have been different interpretations of the concept of non-price forming transactions which has led to inconsistent publication of post-trade transparency information and flagging of transactions and eventually resulting in an unsatisfactory quality of data reported. In order to improve transparency, data quality and ultimately to facilitate data aggregation, it is therefore necessary to simplify and clarify the existing reporting regime by amending some provisions in Delegated Regulation (EU) 2017/587. These objectives will be achieved by introducing adequate cross-references in particular in Articles listing, for various purposes, transactions that are considered, for various purposes, non-price forming.
- (4) The amendments introduced to certain articles of Delegated Regulation (EU) 2017/587, in particular the articles listing transactions that are considered non-price forming or non-addressable, make certain definitions redundant. It is therefore proposed to maintain in Delegated Regulation (EU) 2017/587 only a simplified set of definitions.
- (5) Although pre-trade transparency in equity and equity-like instruments increased following the application of Delegated Regulation (EU) 2017/587, the level of real time pre-trade transparency remains low for ETFs and a significant percentage of ETF transactions, both in terms of the number of trades and volume traded, currently benefit from a waiver, in particular the large in scale waiver. Therefore, the objective of Regulation 600/2014 of increasing the transparency available in the ETF market has not been fully achieved. In view of increasing real-time pre-trade transparency in ETF, it is therefore necessary to revisit the pre-trade large in scale transparency threshold applicable to ETFs in Delegated Regulation (EU) 2017/587. An increase in the threshold will ensure that more transactions in ETFs are subject to real-time pre-trade transparency requirements in line with the objectives of Regulation 600/2014. The increase in the threshold should reflect the right balance between increasing real-time transparency whilst ensuring the right level of protection for large orders.
- (6) Similarly, while in general the objective of Regulation 600/2014 of protecting large trades whilst maintaining a high level of real-time post-trade transparency has been achieved for most equity and equity-like instruments, the level of post-trade transparency for ETFs remains low, with the proportion of deferred publication of transactions in ETF remaining significantly higher than for shares and other equity instruments. In view of ensuring that more transactions in ETFs are subject to real-time post trade transparency requirement in line with the objectives of Regulation 600/2014, it is necessary to increase the minimum qualifying size of transaction for permitted delay of 60 minutes for ETFs. The increase in the threshold should reflect the right balance between increasing real-time transparency whilst ensuring the right level of protection for large orders.

- (7) Different interpretations of market participants on the applicable pre-trade transparency requirements for hybrid trading systems, resulted in inconsistent pre-trade transparency disclosed by such systems. Therefore, Delegated Regulation (EU) 2017/587 should be amended to introduce tailored pre-trade transparency requirements for hybrid systems to ensure that such systems disclose appropriate pre-trade transparency information in a consistent manner across the Union.
- (8) Post-trade information is required to be made available as close to real time as technically possible. Recent technological and market developments allow market participants to provide information on transactions at an earlier point in time. Taking this into account, the possibility to publish the post-trade information no later than noon of the following trading day for transactions executed less than two hours before the end of the trading day is deemed as unnecessarily long. Therefore, in line with the objectives of Regulation 600/2014 and in order to ensure the timely publication of post-trade information, it is necessary to reduce the period to no later than 9 am local time of the following trading day.
- (9) The requirements on the disclosure of post-trade transparency information to the public and the information to be provided to competent authorities and ESMA for the purpose of the transparency calculations are not interpreted consistently by trading venues, APAs and investment firms, resulting in a situation where such information is incomplete, lacking accuracy or inconsistent. This situation undermines the usability of such information and the quality and accuracy of the transparency calculations based on the data submitted. It is therefore necessary to provide further specification in this Regulation on the content of the data requests and in particular the details to be disclosed by trading venues, APAs and CTPs and for the reporting of reference data and quantitative data to competent authorities and ESMA. More clarity in the reporting framework is essential to promote the consistent application of the post-trade transparency requirements across the Union.
- (10) Some of provisions of Delegated Regulation (EU) 2017/587 contain incorrect references [or clerical errors] that affect the substance of those provisions. Therefore, such provisions should be amended to insert the correct references.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (12) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁹,

²⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/587

(1) Article 1 is replaced by the following:

‘Article 1

Definitions

‘For the purposes of this Regulation, the following definitions apply:

(1) ‘portfolio trade’ means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;

(2) ‘systematic internaliser’ means an investment firm as defined in Article 4(1)(20) of Directive 2014/65/EU of the European Parliament and of the Council’.

(2) Article 2 is amended as follows

(a) letters (d) to (i) are deleted;

(b) a new letter (j) is inserted;

‘(j) it is an excluded transaction listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable.’

(3) Article 6 is amended as follows

(a) letters (d) to (i) are deleted;

(b) a new letter (k) is inserted;

‘(k) it is an excluded transaction listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable.’

(4) Paragraph 2 of Article 7 is replaced by the following:

‘2. An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR 3 000 000’

(5) Article 9 is amended as follows:

(a) letter (b) is replaced by the following:

‘(b) the arrangement complies with technical arrangements equivalent to those specified for approved publication arrangements (APAs) in Article 14 of Delegated Regulation (EU) 2017/571 that facilitate the consolidation of the data with similar data from other sources;’

(6) Letters (b) to (d) of Article 13 are deleted:

(7) Paragraph 2, point (b) of Article 15 is replaced by the following:

‘(b) no later than the opening of the trading day of the most relevant market in terms of liquidity on the next trading day for transactions not covered in point (a).’

(8) Article 17 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. Competent authorities, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014, for the period between the first Monday of April of the year in which the information is published and the day before the first Monday of April of the subsequent year.’

(b) a new paragraph 6 is inserted:

‘6. Where ESMA or competent authorities require information in accordance with Article 22 of Regulation (EU) No 600/2014 trading venues, APAs and CTPs shall provide such data as per Annex IV of this Regulation’

(c) a new paragraph 7 is inserted:

‘7. Where the trade size defined for the purpose of paragraph 1 and 2 of Article 7, paragraph 2(a) of Article 8, paragraph 1 of Article 11 and paragraph 1 of Article 15 is expressed in monetary value and the financial instrument is not denominated in Euros, the trade size shall be converted to the currency in which the financial instrument is denominated by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year.’

(9) Article 18 is replaced by the following:

The competent authority for a specific financial instrument responsible for performing the calculations and ensuring the publication of the information referred to in Articles 4, 7, 11 and 17 shall be the competent authority of the most relevant market in terms of liquidity in Article 26 of Regulation (EU) No 600/2014 and specified in Article 16 of Delegated Regulation (EU) 2017/590.

(10) Annex I is amended as follows:

(a) Table 1 is replaced by the following:

Table 1

Description of the type of trading systems and the related information to be made public in accordance with Article 3

Row	Type of trading system	Description of the trading system	Information to be made public
1	Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.	The aggregate number of orders and the shares, depositary receipts, ETFs, certificates and other similar financial instruments that they represent at each price level for at least the five best bid and offer price levels.
2	Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself.	The best bid and offer by price of each market maker in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system, together with the volumes attaching to those prices. The quotes made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
3	Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention.	The price at which the auction trading system would best satisfy its trading algorithm in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system and the volume that would potentially be executable at that price by participants in that system.

4	Request for quote trading system	A system where a quote or quotes are provided in response to a request for quote submitted by one or more members or participants. The quote is executable exclusively by the requesting member or participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.	The quotes and the attached volumes from any member or participant which, if accepted, would lead to a transaction under the system's rules. All submitted quotes in response to a request for quote may be published at the same time but not later than when they become executable.
5	Hybrid system	A system falling into two or more of the types of trading systems referred to in rows 1 to 4 of this table.	<p>For hybrid systems that combine different trading systems at the same time, the requirements correspond to the pre-trade transparency requirements applicable to each type of trading system that forms the hybrid system.</p> <p>For hybrid systems that combine two or more trading systems subsequently, the requirements correspond to the pre-trade transparency requirements applicable to the respective trading system operated at a particular point in time</p>
6	Any other trading system	Any other type of trading system not covered by rows 1 to 5.	Adequate information as to the level of orders or quotes and of trading interest in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that instrument, if the characteristics of the price discovery mechanism so permit.

(b) Table 3 is replaced by the following:

Table 3

List of details for the purpose of post-trade transparency

#	Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
1	Trading date and time	<p>Date and time when the transaction was executed.</p> <p>For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 2 of Delegated Regulation (EU) 2017/574.</p> <p>For transactions not executed on a trading venue, the date and time when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44 as specified in Table 2 of Annex 1 of Delegated Regulation (EU) 2017/590, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a trading venue the time reported shall be granular to at least the nearest second.</p> <p>Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 of Delegated Regulation (EU) 2017/590 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.</p>	<p>Regulated Market (RM)</p> <p>Multilateral Trading Facility (MTF)</p> <p>Approved Publication Arrangement (APA)</p> <p>Consolidated tape provider (CTP)</p>	{DATE_TIME_FORMAT}
2	Instrument identification code	Code used to identify the financial instrument	RM, MTF, APA, CTP	{ISIN}

3	Price	<p>Traded price of the transaction excluding, where applicable, commission and accrued interest.</p> <p>Where price is reported in monetary terms, it shall be provided in the major currency unit.</p> <p>Where price is currently not available but pending ('PNDG') or not applicable ('NOAP'), this field shall not be populated.</p>	RM, MTF, APA, CTP	<p>{DECIMAL-18/13} when the price is expressed as monetary value in the case of equity and equity-like financial instruments</p> <p>{DECIMAL-11/10} when the price is expressed as percentage or yield in the case of certificates and other equity-like financial instruments</p>
4	Missing Price	<p>Where price is currently not available but pending, the value should be 'PNDG'.</p> <p>Where price is not applicable, the value shall be 'NOAP'.</p>	RM, MTF, APA, CTP	<p>'PNDG' in case the price is not available</p> <p>'NOAP' in case the price is not applicable</p>
5	Price currency	Major currency unit in which the price is expressed (applicable if the price is expressed as monetary value).	RM, MTF APA, CTP	{CURRENCYCOD E_3}

6	Price notation	Indication as to whether the price is expressed in monetary value, in percentage or in yield	RM, MTF APA, CTP	<p>'MONE' — Monetary value</p> <p>in the case of equity and equity-like financial instruments</p> <p>'PERC' — Percentage</p> <p>in the case of certificates and other equity-like financial instruments</p> <p>'YIEL' — Yield</p> <p>in the case of certificates and other equity-like financial instruments</p> <p>'BAPO' — Basis points</p> <p>in the case of certificates and other equity-like financial instruments</p>
7	Quantity	<p>Number of units of the financial instruments.</p> <p>The nominal or monetary value of the financial instrument.</p>	RM, MTF, APA, CTP	<p>{DECIMAL-18/17} in case the quantity is expressed as number of units</p> <p>{DECIMAL-18/5} in case the quantity is expressed as monetary or nominal value</p>

8	Venue of execution	<p>Identification of the venue where the transaction was executed.</p> <p>Use the ISO 10383 segment MIC for transactions executed on an EU trading venue. Where the segment MIC does not exist, use the operating MIC.</p> <p>Use 'SINT' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.</p> <p>Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is either (1) not executed on an EU trading venue and not executed on a systematic internaliser or (2) executed on an organised trading platform outside of the EU (the latter requires also the population of the field "Third-country trading venue of execution").</p>	RM, MTF, APA, CTP	<p>{MIC} – EU trading venues or</p> <p>'SINT' — systematic internaliser</p> <p>'XOFF' — otherwise</p>
9	Third-country trading venue of execution	<p>Identification of the third-country trading venue where the transaction was executed. This shall be populated when the "venue of execution" field is populated with XOFF.</p> <p>Where the transaction is not executed on a third-country trading venue, the field shall not be populated.</p>	APA, CTP	<p>{MIC} where MIC is available or</p> <p>{COUNTRYCODE_2} otherwise</p>
10	Publication date and time	<p>Date and time when the transaction was published by a trading venue or APA.</p> <p>For transactions executed on a trading venue, the level of granularity shall be in accordance with the requirements set out in Article 2 of Delegated Regulation (EU) 2017/574.</p> <p>For transactions not executed on a trading venue, the date and time shall be granular to at least the nearest second.</p>	RM, MTF, APA, CTP	{DATE_TIME_FORMAT}

11	Venue of Publication	Code used to identify the trading venue or APA publishing the transaction.	CTP	trading venue: {MIC} APA: ISO 10383 segment MIC (4 characters) where available. Otherwise, 4-character code as published in the list of data reporting services providers on ESMA's website.
12	Transaction identification code	<p>Alphanumeric code assigned by trading venues (pursuant to Article 12 of Commission Delegated Regulation (EU) 2017/580 ⁽¹⁾) and APAs and used in any subsequent reference to the specific trade.</p> <p>The transaction identification code shall be unique, consistent and persistent per ISO 10383 segment MIC and per trading day. Where the trading venue does not use segment MICs, the transaction identification code shall be unique, consistent and persistent per operating MIC per trading day.</p> <p>Where the APA does not use MICs, it should be unique, consistent and persistent per 4-character code used to identify the APA per trading day.</p> <p>The components of the transaction identification code shall not disclose the identity of the counter- parties to the transaction for which the code is maintained</p>	RM, MTF, APA, CTP	{ALPHANUM-52}

(1) Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (see page 193 of this Official Journal).

(c) Table 4 is replaced by the following:

Table 4

List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
‘BENC’	Benchmark transactions flag	RM, MTF APA CTP	Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.
‘NPFT’	Non-price forming transactions flag	RM, MTF CTP	Non-price forming transactions as set out in Article 2(5) of Delegated Regulation (EU) 2017/590.
‘PORT’	Portfolio transactions flag	RM, MTF APA CTP	Transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price.
‘CONT’	Contingent transactions flag	RM, MTF APA CTP	Transactions that are contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot.

'ACTX'	Agency cross transactions flag	APA CTP	Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
'SDIV'	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
'LRGS'	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
'RFPT'	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
'NLIQ'	Negotiated transaction in liquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.

‘OILQ’	Negotiated transaction in illiquid financial instruments flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.
‘PRIC’	Negotiated transaction subject to conditions other than the current market price flag	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.
‘ALGO’	Algorithmic transaction flag	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(39) of Directive 2014/65/EU.
‘SIZE’	Transaction above the standard market size flag	APA CTP	Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.
‘ILQD’	Illiquid instrument transaction flag	APA CTP	Transactions in illiquid instruments as determined in accordance with Articles 1 to 10 of Commission Delegated Regulation (EU) 2017/567 ⁽¹⁾ executed on a systematic internaliser.

‘RPRI’	Transactions which have received price improvement flag	APA CTP	Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.
‘CANC’	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled
‘AMND’	Amendment flag	RM, MTF APA CTP	When a previously published transaction is cancelled
‘DUPL’	Duplicative trade reports flag	APA	When a transaction is reported to more than one APA in accordance with Article 16(1) of Delegated Regulation (EU) 2017/571.
<p>⁽¹⁾ Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (see page 90 of this Official Journal).</p>			

(11) Table 5 of Annex II is replaced by the following:

Table 5

Deferred publication thresholds and delays for ETFs

Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication after the transaction
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10 000 000	60 minutes
15 000 000	
50 000 000	End of the trading day

(12) A new Annex IV is added:

Annex IV

Data to be provided for the purpose of determining the Most Relevant Market in terms of liquidity, the ADT and the AVT

Table 1

Symbol table

Symbol	Data Type	Definition
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. decimal separator is '.' (full stop); negative numbers are prefixed with '-' (minus); values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits	Numerical field for both positive and negative integer values.

Table 2

Details to be provided for the purpose of determining the Most Relevant Market in terms of liquidity, the ADT and the AVT (based on the current reporting instructions)

Field num	Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 1
1	Instrument identification code	Code used to identify the financial instrument	Regulated Market (RM) Multilateral Trading Facility (MTF) Approved Publication Arrangement (APA) Consolidated tape provider (CTP)	{ISIN}
2	Execution date	Date on which the trades are executed.	RM, MTF, APA, CTP	{DATEFORMAT}
3	Execution venue	Segment MIC for the EU trading venue or systematic internaliser, where available, otherwise operating MIC. MIC XOFF in the case the transaction is executed by investment firms which are not systematic internalisers and not on a trading venue.	RM, MTF, APA, CTP	{MIC} – of the trading venue or systematic internaliser or {MIC}- XOFF'
4	Suspended instrument flag	Indicator of whether the instrument was suspended for the whole trading day on the respective TV on the execution date. As a consequence, Fields 5 to 10 shall be reported with a value of zero.	RM, MTF, CTP	TRUE - if the instrument was suspended for the whole trading day or FALSE – if the instrument was not suspended for the whole trading day
5	Total number of transactions	The total number of transactions executed on the execution date. (**)	RM, MTF, APA, CTP	{INTEGER-18}

6	Total turnover	The total turnover executed on the execution date, expressed in EUR. (*) (**)	RM, MTF, APA, CTP	{DECIMAL-18/5}
7	Transactions executed, excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c).	The total number of transactions executed on the execution date excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c) on the same day. (**)	RM, MTF, CTP	{INTEGER-18}
8	Total turnover executed, excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c).	The total turnover executed on the execution date excluding all transactions executed under pre-trade waivers of MiFIR Art 4(1) (a) to (c) on the same day. (*) (**)	RM, MTF, CTP	{DECIMAL-18/5}
9	Total number of transactions excluding those executed under the post-trade LIS deferral.	<p>Total number of transactions executed on the execution date, excluding those transactions executed under Large-In-Scale waiver (post-trade). (**)</p> <p>For shares and depositary receipts only the highest threshold for the related average daily turnover (ADT) band in Tables 4 of Annex II should be used to identify those transactions.</p> <p>For certificates and other similar financial instruments only the highest threshold in Table 6 should be used to identify those transactions</p> <p>For ETFs only the highest threshold in Table 5 should be used to identify those transactions.</p>	RM, MTF, APA, CTP	{INTEGER-18}

10	Total turnover of excluding transactions executed under the post-trade LIS deferral.	Total volume of transactions executed on the execution date, excluding those transactions executed under Large-In-Scale waiver (post-trade). (*) (**) For shares and depositary receipts only the highest threshold for the related average daily turnover (ADT) band in Tables 4 of Annex II should be used to identify those transactions. For certificates and other similar financial instruments only the highest threshold in Table 6 should be used to identify those transactions For ETFs only the highest threshold in Table 5 should be used to identify those transactions.	RM, MTF, APA, CTP	{DECIMAL-18/5}
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(*) The turnover shall be calculated as number of instruments exchanged between the buyers and sellers multiplied by the unit price of the instrument exchanged for that specific transaction and shall be expressed in EUR.

(**) Transactions that have been cancelled should be excluded from the reported figures. In all cases, the field has to be populated with any value greater than or equal to zero up to 18 numeric characters including up to 5 decimal places.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President



8.4 Annex IV – Draft RTS amending RTS 11

COMMISSION DELEGATED REGULATION (EU) .../...

of []

amending Commission Delegated Regulation (EU) 2017/588 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the tick size regime for shares, depository receipts and exchange-traded funds

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU³⁰, and in particular Article 49(3) thereof,

Whereas:

- (1) Delegated Regulation (EU) 2017/588³¹ sets out the tick size regime for shares, depository receipts and exchange-traded funds.
- (2) To ensure that the tick size regime can operate effectively and to ensure consistency in the application of the various requirements covered by this Regulation and Delegated Regulation (EU) 2017/587, it is appropriate to apply the tick sizes of the liquidity band corresponding to the average daily number of transactions on the same date as the application of the transparency requirements applicable to equity instruments.
- (3) It is therefore necessary to amend this Regulation in the same way as Regulation (EU) 2017/587 to ensure the tick size regime applies from the first Monday of April each year.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (5) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and

³⁰ OJ L 173, 12.6.2014, P. 349.

³¹ Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depository receipts and exchange-traded funds (OJ L 87, 31.3.2017, p.411).



requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³²,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/588

Paragraph 4 of Article 3 is replaced by the following:

“Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from the first Monday of April following that publication.”

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

³² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).