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| 9 November 2017 |

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| Reply form for the Consultation Paper on Amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1) |
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| Date: 9 November 2017 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Discussion Paper on the amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1), published on the ESMA website.

*Instructions*

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

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_ QUESTION\_RTS1\_AMND\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

**Naming protocol**

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

ESMA\_RTS1\_AMND\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_RTS1\_AMND\_ESMA\_REPLYFORM or

ESMA\_RTS1\_AMND\_ESMA\_ANNEX1

***Deadline***

Responses must reach us by **25 January 2018.**

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

***Publication of responses***

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

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

1. Do you agree with ESMA’s proposal to clarify that SIs’ quotes would only reflect prevailing market conditions where the price levels could be traded on a trading venue at the time of publication?

<ESMA\_QUESTION\_RTS1\_AMND\_1>

As general comments, the European Savings and Retail Banking Group (ESBG) agrees with ESMA's view and welcomes a clarification that the quotations of the Systematic Internalisers reflect only the prevailing market conditions in which the price level could be traded at the time of publication at a trading venue.

ESBG believes that the tick size regime is necessary to prevent the negative effects of high frequency trading as a special form of algorithmic trading and to ensure the stability and functioning of financial markets. Furthermore, ESBG believes that the activities of trading venue operators and SIs are comparable in such a way that, in principle, identical rules should apply to these market players (or "level playing field"). The current legal situation leads to Systematic Internalisers having a competitive advantage over the pricing of trading venue operators. As a result, trade tends to shift from trading venues to Systematic Internalisers. As ESBG understands it, the spirit of MiFIR / MiFID II is to steer the trading of financial instruments towards the transparent and liquid trading venues. The unequal treatment undermines the spirit of MiFIR / MiFID II. Furthermore, ESBG notes that banks are facing expenses in connection with the implementation, validation and further development of best execution/smart order routing. These costs are passed on to end customers as part of the pricing for value-added services. A tick size regime inconsistent or not applied to all market participants increases the complexity for the validation and further development of the IT infrastructures. Consequently, costs for investment services, which are borne by the end-customers, increase.

Furthermore, ESBG would like to draw your attention to the experiences of the MiFID I application. A “race to the bottom” took place concerning the tick size and did not lead to improved price quality, higher liquidity, efficient valuation or more efficient pricing. A competition of this kind among the Systematic Internalisers does not make economic sense. To prevent this foreseeable malfunction, ESBG would also welcome an extension of the tick size regime to Systematic Internalisers.

In addition, ESBG would like to point out further aspects in this context: Systematic Internalisers and EU trading venues also compete with third-countries trading venues. Legislators and regulators need to find solutions to prevent leakage of liquidity to these external trading venues. ESBG sees this risk particularly in a post-Brexit global market.

With regards to the specificities of the consultation, ESMA stresses that questions have emerged whether the quotes of an SI can adequately reflect prevailing market conditions (as stated in MiFIR, art. 14 (7)) when those quotes do not reflect the minimum price increments (“tick sizes”) applicable to on-venue to the quoted financial instrument. In this context, ESMAs concerns are primarily related to shares.

Question 1 reflects this statement, as ESMA asks whether we agree with ESMA’s proposal to clarify that SIs’ quotes would only reflect prevailing market conditions where the price levels could be traded on a trading venue at the time of publication, *i.e.* SIs must be subject to the tick size regime as specified in RTS 11.

As indicated above, ESBG supports ESMA’s intention to ensure a level playing field between the trading venues and Systematic Internalisers. However, it is of great importance to ensure that a level playing field go both ways, which does not seems be the case in the proposal, as it stands.

Firstly, it should be highlighted that trading venues can easily offer trading at midpoint, *i.e.* circumventing the tick size regime themselves. This can for example be the case for trading under the reference price waiver, the negotiated trade waiver or the large in scale waiver. Furthermore, most trading venues offer additional trading methods in order to attract liquidity from SIs, *i.e.* Nasdaq offers Auction on Demand, in which trading at midpoint is doable. Similar initiatives can be found on other exchanges, most likely subject to some kind of midpoint peg, which is not tick size validated.

So, adopting a rule which will allow trading venues to continue circumventing the tick size regime, whereas SIs cannot, does not seem to be in line with a level playing field approach.

Secondly, the SIs obligations as specified in MiFIR (Article 14 to 17), are only applicable for SI when dealing up to standard market size (cf. MiFIR, Article 14(2)). Therefore, MiFIR Article 14(7) is only applicable up to standard market size. This implies that if the suggested tick size requirement is adapted, it is crucial that this is only applicable when dealing up to standard market size.

Thirdly, as discussed at length, the trading venues – and in particular the incumbent exchanges – continuously demonstrates a remarkable creative ability when using their pricing power in the market data space. Hence, requiring that SI quotes de facto should mirror the prices on the trading venues will undoubtedly serve as a catalyst for trading venues claiming that SI prices belong to the trading venues. Thereby, trading venues will pursue this as an additional source of income *i.e.* in the form of a derived data license. Additional cost on investment firms will in the end of the day be passed on to the clients, which can be harmful for liquidity.

In short, ESBG strongly supports a level playing field approach. However, ESMA’s proposal reflected in the question 1 does not seem to support this approach as trading venues can offer execution which is not tick size validated. Furthermore, trading venues will most likely exploit requirements to mirror prices on trading venues to introduce additional payments on market data. But, if ESMA escalate its focus on reasonable market data pricing by ensuring that the proposed change will not imply additional charges on date users and that the tick size regime only apply up to standard market size, ESBG can accept the amendment.

<ESMA\_QUESTION\_RTS1\_AMND\_1>

1. Do you agree with the drafting amendment described above?

<ESMA\_QUESTION\_RTS1\_AMND\_2>

ESBG welcomes the deletion of Articles 2 (h) and 6 (h) and the correction of the cross-reference in Article 3 (2) as these changes are merely seen as an attempt to correct errors in the implementation in order to ensure consistent and unambiguous legal text.

However, ESBG rejects the other adjustments to RTS 1 for the time being. In particular, the effects of the changes cannot be estimated in the current state of play. Due to transitional rules and various developments, consequences are not yet foreseeable. ESBG would welcome a similar consultation at a later stage, taking into account the Delegated Regulations, which are also concerned.

<ESMA\_QUESTION\_RTS1\_AMND\_2>