European Securities and Markets Authority

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

9 November 2017

European Securities and Markets Authority

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 under the heading ‘Your input/Consultations’.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

Q1. 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>

The Nordic Securities Association (NSA) is a Nordic cooperation that works to promote a sound securities market primarily in the Nordic region. The NSA is formed by the Danish Securities Dealers Association (Børsmæglerforeningen), Finance Finland (Finanssiala), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Dealers Association (Svenska Fondhandlareföreningen).

Nordic Securities Association's public ID number in the Transparency Register is: 622921012417-15

On 9 November 2017, ESMA published a consultation paper regarding amendments to RTS 1 in which ESMA i.e. proposes to clarify that Systematic Internalisers' (SIs') quotes should be subject to the minimum tick sizes regime as specified in RTS 11.

The deadline for the consultation is on 25 January 2018.

The NSA welcomes the opportunity to comment on ESMA's consultation paper on amendments to Commission Delegated Regulation (EU) 2017/587 (RTS1) (Consultation Paper). 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, ESMA's concerns are primarily related to shares.

Please note that the views expressed in the response in relation to SIs are limited to SIs' activities in shares.

Q1 in the Consultation Paper reflects the statement referred to above, 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.

The NSA recognises ESMA's intention to ensure a level playing field between the trading venues and SIs. However, it is of great importance to ensure that a level playing field goes both ways, which does not seem to be the case in the proposal, as it stands.

First of all, beware that trading venues easily can offer trading at midpoint, i.e. circumventing the tick size regime themselves. This can for example be the case in relation to 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.

Therefore, 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 (art. 14-17), are only applicable for SI when dealing up to standard market size (cf. MiFIR, art. 14 (2)). Accordingly, MiFIR art. 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.

However, as trading venues are also able to match orders below standard market size at mid-price, thereby circumventing the tick size validation, SIs must also be able to provide a similar option in order to ensure a level playing field. Alternatively, trading venue should not be able to facilitate midprice trading below standard market size.

Thirdly, as discussed at length, the trading venues – and in particular the incumbent exchanges – continuously demonstrate a remarkable creative ability when using their pricing power in the market data space. So, 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 etc. Additional costs on investment firms will in the end of the day be passed on to the clients, which can be harmful for the liquidity.

Our concerns are illustrated below. Initially, The Consultation Paper states the following in section 12, page 7:

"For those reasons, ESMA would like to propose an amendment to RTS 1 to clarify that, for equity instruments subject to the minimum tick size regime under RTS 11, SI quotes would only be considered to reflect the prevailing market conditions where those quotes reflect the price increments applicable to EU trading venues trading the same instruments."

Nasdaq, which operates several trading venues in the Nordic region has, for instance, added an additional monthly fee for *"recipients that are operating a Trading Platform including but not limited to (…) systematic internalizers systems (…)"*

One of the arguments for this fee is, to our understanding, linked to the requirement that SI pricing is expected to follow the pricing on the venue and therefore the trading venues (and in particular the incumbent exchanges) claim that the prices belong to the trading venues.

The reasons behind that SIs might provide quotes which are close to the pricing on the trading venue are first of all natural in a liquid market. In addition, this could also be the result of the regulators expectations as SIs' quotes are only expected to reflect the prevailing market conditions under the conditions that those quotes reflect the price increments applicable to the EU trading venues trading in the same instruments.

Consequently, the NSA finds it challenging and unreasonable that SIs are expected to pay an additional fee to the trading venue when SIs – in contrary to trading venues – are taking the risks by providing prices on instruments which are also traded on a trading venue.

In short, the NSA strongly supports a level playing field approach. However, the ESMA proposal **reflected in Q1** 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 payment on market data. But, if ESMA

- escalates its focus on reasonable market data pricing by ensuring that the proposed change will not imply additional charges on date users
- ensures that the tick size regime only apply up to standard market size for SIs and
- ensures that trading venues cannot circumvent the tick size regime below standard market size

the NSA can accept the amendment.

<ESMA_QUESTION_RTS1_AMND_1>

Q2. Do you agree with the drafting amendment described above?

<ESMA_QUESTION_RTS1_AMND_2>
As for Q2, these changes are merely seen as an attempt to correct errors in the implementation in order to ensure consistent and unambiguous legal text. The NSA has no comments to the proposed changes.
<ESMA_QUESTION_RTS1_AMND_2>