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| 13 July 2018 | ESMA70-156-471 |

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| Response form for the Consultation Paper on the Amendment to RTS 11 (ESMA70-156-357) |
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| Date: 13 July 2018  ESMA70-156-471 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper (ESMA70-156-357) proposing amendments to Commission Delegated Regulation (EU) 2017/588 (RTS 11). Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 7 September 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_ACDR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_PE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ACDR\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Securitisation Repositories Application Requirements”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page 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. 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 not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Data protection”.

Who should read the Consultation Paper

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to trading venues offering trading in equity instruments but responses are also sought from any other market participant which might be impacted by the proposals contained in this document including investment firms, trade associations and industry bodies, as well as institutional and retail investors.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | SIX Swiss Exchange AG |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Switzerland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ACDR\_1>

About SIX:

SIX operates and develops infrastructure services in the areas of securities, payment transactions and financial information with the aim of raising efficiency, quality and innovative capacity across the entire value chain of the Swiss financial center. The company is owned by its users (127 banks). With a workforce of some 4,000 employees and a presence in 23 countries, it generated operating income in excess of CHF 1.9 billion and group net profit of CHF 207.2 million in 2017.

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SIX Swiss Exchange welcomes ESMAs outreach to seek necessary changes to resolve this issue longer term in a structured and transparent manner and consulting on the potential measures to achieve this.

We thank ESMA for the opportunity to contribute to this consultation.

Prior to the implementation of MIFID II, European Exchanges and MTF’s agreed a common harmonised tick size regime for all blue chip securities and this was fully implemented across Europe and include Switzerland as the “relevant” third country market for Swiss securities.

Additionally there was a common approach to tick sizes for the small and mid-segment products, but not a fully harmonised implementation of the relevant tables as there were liquidity constraints in different markets which necessitated different tick values to protect market liquidity.

MIFID II sought to implement both a fully harmonised methodology and implementation across all shares on all EU venues, based on the “relevant market” assessment of activity conducted on trading venues within the EU. By default this would result in the values calculated being generated based on a limited sub-set of trading data where the share in question was a third country product and the actual “relevant market” was outside the EU. However, as seen once MIFID II was implemented, the consequence of the legislative approach led to tick size values within the EU, for third country products, being created which distorted the market as they were and continue to be based on a sub-set of trading volume which was more often lower than the third country.  It therefore resulted in wider tick sizes being imposed on EU venues than would be the case in the third country “reference” market.

This outcome was not unexpected as the impacts were identified prior to the implementation of the legislation and these were openly discussed with relevant key stakeholders. Indeed the issues for third country stocks were not limited to tick sizes but also cover the calculations for volume caps, LIS, SMS and the deferred publication values. All suffer from calculations based on a limited sub set of data which result in values which are often suboptimal when compared to those that would be generated on a full data set.

We welcomed the NCAs decision to withdraw third country products from the MIFID II tick size regime shortly after the implementation of MIFID II and aligning them to the third country markets values as an initial solution.

If we recall the original concept which was for a harmonised approach to both methodology and to the implementation of the outcome of that methodology, it could be asserted that the aim was to promote harmonised tick values which encouraged liquidity provision and therefore stock availability (irrespective of capitalization) and price formation; ensured investor protection as the values were constant over multiple execution venues and ensured competitive pressure did not result in values that undermined the earlier aim by a “race to the bottom” in tick sizes to unsustainable levels which ultimately would negatively impact investors.

ESMA recognised in the consultation that the regime, as currently structured in legislation, unintentionally created a competitive disadvantage to EU trading venues compared to third country trading venues. However, it goes on to conclude that “this might trigger a liquidity shift from EU trading venues to third country venues and ultimately resulting in scarcer and less deep liquidity available on EU trading venues to the detriment of investors trading on those EU venues and ultimately orderly markets in the EU”.

Whilst one could challenge that this was an unintentional consequence of legislation, it is implausible to assert that a liquidity shift to third country venues offering better execution outcomes to investors, is detrimental to investors and ultimately to orderly markets in the EU. This outcome is precisely what best execution measures are supposed to achieve and the liquidity shift in this instance proved the effectiveness of best execution.

ESMA ought to recognise the value of third country reference markets, such as SIX Swiss Exchange, in that they offer the same, if not better, benefits to investors as their peers within the EU. Without third country reference markets providing the necessary disclosure regimes, deep and liquid markets and full transparency, EU markets would not be able to provide the necessary environment under which to facilitate trading to EU investors in third country products on their venues.

ESMA rightly note in the consultation that Switzerland has fully implemented the MIFID II methodology and that we are likely to have smaller tick values because we have higher turnover than in the EU. This is completely analogous to the relevant market regime applied within the EU.

ESMA rightly acknowledge that EU legislation does not provide for flexibility to include liquidity on non-EU trading venues.

<ESMA\_COMMENT\_ACDR\_1>

1. : Do you agree with the proposed amendments to RTS 11 described above? If you do not, please explain why and what alternative you would suggest.

<ESMA\_QUESTION\_ACDR\_1>

In relation to the options considered by ESMA, as potential solutions to the issue identified, it would appear that if ESMA wish to maintain a harmonised approach within the EU and wish to ensure that in doing so it does not create the reverse problem ESMA has identified within the EU, then the current preferred option does not appear optimal.

ESMA note that the preferred option d) could result in the applicable tick sizes not always being aligned to third country markets.

This would be a perverse outcome for ESMA or an NCA to allow the current law to be subverted, on the grounds of investor protection and preservation of orderly markets in the EU, if this resulted in potentially detrimental outcomes of the same nature being inflicted on jurisdictions where the actual reference market for that product is based in a third country.

It is therefore vitally important that ESMA ensures that its actions do not result in creating worse investor outcomes, a disorderly market and anti-competitive tensions on third country markets as a result of this change due to the inadequacies of the current regime as defined within MIFID II.

We would suggest that ESMA should consider a mix of option a) and option d) as the preferred outcome to aim to mitigate these problems.

If a third country market, such as SIX Swiss Exchange, has a public tick size regime, regardless of that venue using the MIFID II methodology, then the regime to be used within the EU should replicate the third country market. For the avoidance of doubt SIX Swiss Exchange is regulated, the reference market for Swiss listed products and has implemented the MIFID II methodology.

We would question if trading on average once a day in any share would suggest there is reasonable frequency in such products and therefore make the product within scope of the provisions being assessed in the consultation. Indeed an assessment at this level would suggest there is no liquidity in that particular product. Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 (Art 1, 1 (b)) defines measure to determine liquidity which uses an average daily number of transactions of 250. This value may be a more consistent and meaningful measure to use for this proposal.

In such cases EU venues could chose to implement the same tick regimes as used by third country markets or they could chose to implement a wider tick regime for that product to ensure that it can generate sufficient liquidity at the touch.

Where a third country market does not have a tick size regime then the provisions of option d) could prevail.

However we would suggest that in any eventuality no EU market could ever undercut the ticks used on any third country market but could have wider tick depending on the circumstances of the individual market.

The suggestions made here will allow EU venues to continue to operate under a harmonised approach but will ensure that ESMA or NCAs do not inadvertently impose a regime that could have negative cross jurisdictional effects .

<ESMA\_QUESTION\_ACDR\_1>

1. : Do you agree not to include depositary receipts in the scope of instruments for which the ADNT could be adjusted? If not, please provide evidence supporting their inclusion.

<ESMA\_QUESTION\_ACDR\_2>

We agree that depository receipts should not be included within the scope of this proposal.

<ESMA\_QUESTION\_ACDR\_2>

1. : Do you agree with ESMA’s assessment that the first months of application of the new tick size regime have not fundamentally called into question the calibration of this regime? If not, please provide evidence of any detrimental effects that you consider the current regime is causing.

<ESMA\_QUESTION\_ACDR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ACDR\_3>

1. : Do you consider that ESMA should introduce some clarifications regarding ETFs within the scope of the mandatory tick size regime? If yes, please explain which ones.

<ESMA\_QUESTION\_ACDR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ACDR\_4>

1. CBA: This first question aims at identifying the category of firm/entity you belong to:

<ESMA\_QUESTION\_ACDR\_5>

|  |  |  |
| --- | --- | --- |
| **Category** | **Number of employees** | **Total turnover in 2017 (in millions euros** |
| **Trading venue** | [1-50] | TYPE YOUR TEXT HERE |
| [51-250] | TYPE YOUR TEXT HERE |
| [251-1000] | TYPE YOUR TEXT HERE |
| >1000 | TYPE YOUR TEXT HERE |
| **Sell-side firm** | [1-50] | TYPE YOUR TEXT HERE |
| [51-250] | TYPE YOUR TEXT HERE |
| [251-1000] | TYPE YOUR TEXT HERE |
| >1000 | TYPE YOUR TEXT HERE |
|  |  | **Assets under management on 31/12/2017 (in millions euros)** |
| **Buy-side firm** | [1-50] | TYPE YOUR TEXT HERE |
| [51-250] | TYPE YOUR TEXT HERE |
| [251-1000] | TYPE YOUR TEXT HERE |
| >1000 | TYPE YOUR TEXT HERE |
| **Other (please specify)** | [1-50] | TYPE YOUR TEXT HERE |
| [51-250] | TYPE YOUR TEXT HERE |
| [251-1000] | TYPE YOUR TEXT HERE |
| >1000 | TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ACDR\_5>

1. CBA: (Not for trading venues) Based on the definition of third country shares provided in the draft RTS, how often do you trade any of those instruments on an EU trading venues (on average):

<ESMA\_QUESTION\_ACDR\_6>

Choose an item.

<ESMA\_QUESTION\_ACDR\_6>

1. CBA: (For trading venues only) Based on the definition of third country shares provided in the draft RTS, how many shares traded on your trading venue would be eligible for a revised tick size regime? Which percentage of the total number of shares traded on your trading venue does this account for? Which percentage of total turnover does this account for?

<ESMA\_QUESTION\_ACDR\_7>

|  |  |
| --- | --- |
| **Third country shares (shares for which the most liquid venue is located outside the EU and traded at least once a week on the most liquid EU venue)** | **As of 30/06/2018** |
| Number of third country shares traded on your trading venue | TYPE YOUR TEXT HERE |
| % of total number of shares traded on your trading venue meeting the third country share definition | TYPE YOUR TEXT HERE |
| % of total share trading attributable to shares meeting the third country share definition during 1H2018 | TYPE YOUR TEXT HERE |
| Market share in those third country shares (average)  If average is not meaningful, please provide a range of % | TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ACDR\_7>

1. CBA: Based on the draft RTS, which impacts do you expect from the revised tick size regime for third country shares?

<ESMA\_QUESTION\_ACDR\_8>

|  |  |  |
| --- | --- | --- |
| Revised tick size regime | Positive Impact | Negative impact |
| Impact on your business model/ organisation/ client relationship | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| Impact on your revenues | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| Impact on market structure (e.g. principal vs agency trading, etc.) | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| Impact on market liquidity and execution costs | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| Other impacts. Please elaborate | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ACDR\_8>

1. CBA: Is there any specific provision in the draft RTS that you would expect to be a source of significant concerns or cost? If so, please elaborate

<ESMA\_QUESTION\_ACDR\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ACDR\_9>

1. CBA: Please provide an indication, even a rough one, of compliance costs (in thousands of euros)

<ESMA\_QUESTION\_ACDR\_10>

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Draft amendment to RTS11 | a. IT costs | b. Training costs | c. Staff costs | d. Other costs (please identify) | Total cots ( if a, b, c or d are not available separately) |
| One-off costs | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| Recurring costs (on an annual basis} | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

<ESMA\_QUESTION\_ACDR\_10>

1. CBA: Taking into account the size of your firm, would you qualify overall compliance costs as “low”, “medium” or “high”?

<ESMA\_QUESTION\_ACDR\_11>

Choose an item.

<ESMA\_QUESTION\_ACDR\_11>