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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 | Cboe Europe Limited |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ACDR\_1>

Cboe Europe (Cboe) is the largest European equities exchange by market share and value traded.

Cboe Europe is the brand name of Cboe Europe Limited, a subsidiary of Cboe Global Markets Inc., which is a leading operator of stock and options markets in the U.S. and Europe. Cboe Europe is a Recognised Investment Exchange regulated by the UK Financial Conduct Authority (“FCA”).

Cboe supports open and fair competition and drives innovation in the European equities markets.

Full details about Cboe Europe, the services it offers and how we operates can be found on our website at: [markets.cboe.com](http://markets.cboe.com/europe/equities/trading/)

<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>

Cboe welcomes ESMA’s consultation paper and supports its plans to amend RTS 11. Aligning tick sizes in third country instruments is crucial for ensuring competitiveness and consistency throughout EU venues and consequently EU markets.

The paper establishes several approaches to remedy the shortfalls of the metric for calculating tick sizes for third country instruments. Cboe believes approach C would be the optimal solution to the tick size issue identified. However we note and agree with ESMA’s reservations about the practicalities of ESMA ingesting and processing data from third country venues.

We note that approach D requires NCAs to co-ordinate and feel that there is too much potential here for disagreement. It also leaves open the possibility that the relevant NCAs will agree on a tick size that differs from that available on the third country market.

We would instead support approach A as being the most pragmatic. In most cases it will be clear that a third country venue is the most liquid venue for a given instrument, and if that venue is trading the instrument, it will be observing a tick size, even if the jurisdiction does not impose one (EU venues had minimum tick sizes before MiFID II imposed them). Cboe believes this approach would address any possible tick size inconsistencies between EU and non-EU venues. Indeed, this approach has been taken by some NCAs and has addressed the issues that were observed when MiFID II was first implemented. ESMA should clarify that EU venues may still follow the MiFID II tick if they so wish.

We note that in its favoured approach, ESMA proposes that any changes be made by venues on the day following communication. To ensure orderly application, and whatever approach is taken, we would encourage ESMA to allow at least two days for venues to follow any change to the tick.

<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>

Cboe does not agree with ESMA’s proposal not to include depositary receipts within the scope of instruments for which the ADNT can be adjusted. While it does not currently seem to be an issue, EU venues may wish to offer trading in depository receipts that are most liquid on third country exchanges e.g. US exchanges. Furthermore, the UK, which is the most liquid market for depository receipts in Europe is soon to become a third country and those venues in the EU that do trade DRs may still wish to align.

<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>

The first few months of operation have not fundamentally called into question the calibration of the regime. However, it is essential that institutional and retail investors seeking execution of orders can do so at the mid-point of the Bid-Ask spread. The mid-point is understood and accepted globally as a fair execution price, and European markets would be materially harmed (and out of step with global markets) should the ability to execute at the mid-point be constrained.

Application of the tick size regime should therefore be understood as permitting the execution of mid-point orders at a half tick where the bid and ask being pegged to are an odd number of tick increments apart. Rounding these executions to a whole tick will force the venue into favouring one set of investors and disadvantaging another, resulting in detrimental execution outcomes for end investors.

We believe that this point could be clarified in an updated ESMA Market Structure Q&A as follows:

***Question 11***

***How should venues apply the tick size regime to mid-point peg orders where the mid-point referred to is at a half-tick?***

***Answer 11***

***Requiring venues to round mid-point orders up or down to the nearest tick would disadvantage either the buyer or the seller. Accordingly, mid-point peg orders should be permitted to rest and trade at a half tick where that reflects the mid-point of the BBO being used.***

<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>

We believe that ETFs should all be assigned to a single liquidity band to avoid confusion. It is currently extremely difficult to determine which ETFs are subject to the regime.

<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] |  |
| [51-250] | 92,400,000 |
| [251-1000] |  |
| >1000 |  |
| **Sell-side firm** | [1-50] |  |
| [51-250] |  |
| [251-1000] |  |
| >1000 |  |
|  |  | **Assets under management on 31/12/2017 (in millions euros)** |
| **Buy-side firm** | [1-50] |  |
| [51-250] |  |
| [251-1000] |  |
| >1000 |  |
| **Other (please specify)** | [1-50] |  |
| [51-250] |  |
| [251-1000] |  |
| >1000 |  |

<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 | 1,048 |
| % of total number of shares traded on your trading venue meeting the third country share definition | 17.20% |
| % of total share trading attributable to shares meeting the third country share definition during 1H2018 | 33.81% |
| Market share in those third country shares (average)  If average is not meaningful, please provide a range of % | 18.90% |

<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>

|  |  |  |
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| Revised tick size regime | Positive Impact | Negative impact |
| Impact on your business model/ organisation/ client relationship | The FCA and other NCAs permitted Cboe to follow the Swiss domestic regime, however, before they allowed this Cboe did notice a dramatic drop in our Swiss market share. |  |
| Impact on your revenues | Positive |  |
| Impact on market structure (e.g. principal vs agency trading, etc.) |  | The absence of mid-point peg orders will impact the market structure negatively. Largely impacting the end investor. |
| Impact on market liquidity and execution costs | If a provision for mid-point peg orders is permitted, this will improve market liquidity and reduce execution costs. |  |
| Other impacts. Please elaborate | N/A |  |

<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>

The absence of mid-point peg orders is concerning. This is a significant market structure issue that needs to be resolved.

Generally, there are low compliance costs for following the tick regime so long as the regulatory data is readily available.

<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 | 10,000 | N/A | N/A | N/A | N/A |
| Recurring costs (on an annual basis} | N/A | N/A | N/A | N/A | N/A |

<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>

Low

<ESMA\_QUESTION\_ACDR\_11>