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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 | The Investment Association and BVI |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ACDR\_1>

**BVI / IA position on the consultation paper regarding the amendment to Commission Delegated Regulation (EU) 2017/588 (RTS 11) (ESMA70-156-357)**

The BVI[[1]](#footnote-2) (German Investment Funds Association) and the IA[[2]](#footnote-3) (UK Investment Association) gladly take the opportunity to present their joint view on the proposed amendment to RTS 11.

We support this consultation and the rationale for the amendment to Commission Delegated Regulation regarding tick sizes. We support efforts to drive consistency of the application of the tick size regime across the EU and in so doing tighten spreads on EU trading venues.

Following the application of the MiFIR regime, a degree of complexity and confusion has arisen regarding the coding of smart order routers to access the most liquid trading line. We look to the ESMA proposals to bring clarity and increased certainty to facilitate smooth and effective access to liquidity.

Whilst each of the four options proposed by ESMA has merit, our preference is for option (d). “Coordination” however this requires meaningful dialogue between trading venue and regulator, the outcomes of which should adequately reflect the technical expertise of the relevant trading venue.

**Exchange Traded Funds**

Additionally, regarding the operation of the ETF tick size regime to date, we note and ask ESMA to consider:

* Where tick size application has been detrimental to spreads based on an ETF’s price i.e. DAXEX where bucketing is based on price has widened spread significantly, from 1bp to 2bp.
* Inconsistent application, where some trading venues apply the regime by ETF underlying holding location (ETF holds EU equities), and others by listing location (EU listed ETF holding no EU underliers).

Implementation of the regime is not consistent for ETFs and varies from one exchange to another. It is also applicable to some, but not all i.e. systematic internalisers (SIs) vs. non-SI. Even where ETFs can use the upper end of the liquidity bands, experience has shown that tick sizes >2bps will occur in some instances, which is too large for some very liquid and heavily traded products.

For efficient ETF markets in *liquid* instruments a tick size should be closer to 1bp and no more than 1.5bps, irrespective of the underlying assets. It follows that in order to achieve this outcome, ETFs should have their own liquidity bands completely, or further liquidity bands should be created to capture the dynamic trading element of ETFs.

**Systematic Internalisers**

The purpose of the tick size regime is to ensure that orderly and transparent trading takes place on trading venues through promoting the effective formation of prices on a displayed order book. It also helps to maintain a reasonable depth of liquidity whilst allowing spreads to fluctuate.

Therefore, the tick size regime is relevant for order book driven markets which are pre-trade transparent, and for alternative trading mechanisms that are comparable/competitive to such order book driven markets (e.g. accessed by market participants alongside - or as an alternative to - pre-trade transparent order books in the course of executing).

We recognize the intention of Members of the Committee on Economic and Monetary Affairs (ECON) of the European Parliament to create a level playing field between SIs and trading venues by proposing to introduce the tick size regime to SIs. However, over-applying the tick size regime would not serve its purpose, artificially constrain actual price formation and market transparency and risk arbitrarily and unnecessarily penalising investors in certain transactions.

BVI and IA take the perspective of the buy-side. Our view is that trades executed on SIs which are above Standard Market Size (SMS) or that are non-price forming should not be subject to the tick size regime.

* While trading venues must ensure that all orders entered onto their systems comply with the tick size regime, they may still conclude transactions at the midpoint, e.g. for large negotiated trades. If SIs were subject to the tick size regime when dealing in sizes above SMS, SIs not only would have a disadvantage, but it would also deprive investors from access to meaningful and differentiated risk liquidity that may not be available on a trading venue. It is also essential that institutional investors seeking execution of large orders can do so at the midpoint of the Bid-Ask spread. The midpoint 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 midpoint be constrained.
* Applying the tick size regime for trades above SMS may inhibit appropriate price formation between SIs and clients agreeing trades in large sizes. The ability to execute large trades on a sub-tick basis provides meaningful price improvement for clients trading in large sizes which brings benefits to end investors. Removing this capacity would amount to the regulation enforcing a bias against end investors (e.g. pensioners’ funds) who wish to trade in larger sizes. Indeed, some investors would lose whilst others would gain, depending on how rounding rules were applied.
* Institutional investors may wish average price executions, for example if they are targeting a stock in considerable size (e.g. when it is included in an index that the fund has to track) without causing a movement on the market. In those instances, they will request that their broker, typically in its capacity as an SI, enters the market and starts buying up the stock incrementally, tracking available liquidity at the average price of that liquidity at any given point in time over a certain period. Since this reflects an average price of available liquidity, it will in most cases not be at a round tick. Thus, guaranteed benchmark executions and other non-price forming transactions reflecting an average price achieved in the market naturally result in executions that do not conform to a tick table. A restriction to round ticks on these executions forces favouring of one set of investors and disadvantaging another and imposes on these investors needless cost, while providing no benefit to market transparency.

This matter should be dealt with in the context of the European Commission’s proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010 (COM(2017)0790 – C8-0453/2017 – 2017/0359 (COD)).

Our proposed amendment to the Commission’s proposal is systematically in line with the regulatory content of Title III of MiFIR and specifies that the tick size regime should apply to quotes pursuant to Article 14 of MiFIR.

In summary, we present a balanced amendment to the European Commission’s proposal that reasonably considers the intention for a level playing field as well as the market interests of the buy-side which includes best execution for investors of retail funds. Further, our amendment takes into account ESMA’s concerns that prices published by SIs shall reflect prevailing market conditions as expressed in ESMA’s draft amendment to the MiFIR regulatory technical standards (RTS 1).[[3]](#footnote-4)

**ANNEX**

**BVI’s and IA’s proposed amendment to the European Commission’s proposal:**

**Article 61 - paragraph 1 - point (a) (new)**

***The title of Title III is replaced by the following:***

***"***TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC ***AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS"***

***The following Article 17a is inserted:***

**Article 17a**

**Tick sizes**

**1. Systematic internalisers’ quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU unless the conditions set out in Article 15(3) apply. Waivers for equity instruments pursuant to Article 4 shall apply mutatis mutandis.**

**2. Paragraph 1 only applies to quotes pursuant to Article 14.**

***Article 14 paragraph 2 is replaced by the following:***

2. This Article and Articles 15, 16, 17 and **17a** shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16, 17 and **17a** when they deal in sizes above standard market size.

***Article 63 - paragraph 2a (new)***

**Notwithstanding paragraph 2, Article 61 (1), points (a) (new) shall apply 20 days after publication of this Regulation in the Official Journal of the European Union.**

***Recital 42a (new):***

**(42a) With the aim of guaranteeing a level playing field and promote the transparency of the European market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers’ quotes, price improvements and executions prices in sizes up to standard market size to the tick size regime.**

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

1. BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI’s over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en. [↑](#footnote-ref-2)
2. The Investment Association is the trade body that represents investment managers, whose 220 members collectively manage over GBP6.9 trillion on behalf of clients. The UK is the second largest investment management centre in the world and manages 37% of European assets. More information can be viewed on our [website](https://www.theinvestmentassociation.org/about-the-investment-association/). EU Transparency Register No: 5437826103-53. [↑](#footnote-ref-3)
3. Final Report, Amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1) (ESMA70-156-354). [↑](#footnote-ref-4)