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| 9 July 2021 |

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| Reply form for the Consultation Paper on the RTS 1 and RTS 2 Review |
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| Date: 9 July 2021 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the RTS 1 and RTS 2 review 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\_RVEW\_0> - 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;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

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

ESMA\_CP\_RVEW\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_RVEW\_ESMA\_REPLYFORM or

ESMA\_CP\_RVEW\_ANNEX1

***Deadline***

Responses must reach us by 1 October 2021.

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’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | BVI |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_RVEW\_1>

As a general remark and with respect to the basic concept of markets regulation, BVI believes that stock exchanges/regulated markets (RM) are not functioning properly today and need to come back to the original idea of offering a market place where all investors, large and small, can execute trades at fair terms for everyone. This is not the fault of the alternative trading venues (MTFs or SIs) or trading systems such as Frequent Batch Auction (FBA) or periodic auctions.

From our point of view it is up to the exchanges (regulated markets -RM to improve the existing CLOB product offering which is today too often catering mainly to the needs of principal and high frequency traders. This means that our members, who are long term investors, are faced with smaller and smaller trade sizes and additional trading and infrastructure costs, as RM pass on their investments in high frequency infrastructure, which our members do not need to fulfil the mandate given by their investor, who is ultimately the man in the street. At the same time retail investors are leaving the stock exchanges en masse, as is deplored by the RMs themselves. Stock exchanges need to revisit their business model in order to allow less latency depending retail and institutional investors to participate more in lit market trading going forward. Especially institutional investors, such as our members, need attractive offers by the exchanges which would allow them to execute large orders on the lit markets without creating too much market impact. The EU policy focus should therefore be on the improvement of the RM CLOB product offering and associated transparency rules for all clients. Regulation should not curtail the remaining segments of the market such as MTF and SIs which are able to fulfil our members’ trading needs better than the RMs do today and which follow a different business model which is not necessarily based on improved pre-trade transparency. European investors today benefit from a level of choice when it comes to trading mechanisms. This includes both multilateral systems such as lit and dark order books, periodic auctions, and block trading mechanisms, as well as bilateral mechanisms such as systematic internalisers (SI). This diversity is a strength of the European eco-system, not a weakness, and it should be maintained at all costs. Having access to a range of trading mechanisms is essential to support different trading strategies, investment objectives and market conditions. It has also been proven to deliver better execution outcomes and make Europe an attractive global marketplace. The focus of regulators should be on maintaining a healthy eco-system of complementary execution mechanisms which operate on a level playing field, rather than simply removing them. Any decision to restrict venue choice in order to boost trading on lit markets would have to be based on evidence of harm being caused to end investors and the price formation process. We believe no such evidence exists and that arbitrarily forcing trading onto lit markets would increase volatility and prevent investors from gaining access to venues offering price improvement combined with reduced market impact. In particular, we strongly oppose further requirements for reference price waiver venues, and periodic auctions, as discussed below.

\*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. Asset Managers 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 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

<ESMA\_COMMENT\_CP\_RVEW \_1>

Q1 : Do you agree with the proposed amendment to Article 7(2) of RTS 1? If not, please explain your concerns about the proposed increase of the threshold.

<ESMA\_QUESTION\_RVEW\_1>

Pre-trade transparency waivers are an effective means of meeting the needs of institutional investors, such as fund managers, to be able to place orders without market impact, thus avoiding adverse signalling effects which might be exploited to the disadvantage of the investors. Generally, when assessing the LIS waiver threshold, a practical aspect to be considered is that orders which would qualify for LIS are for technical reasons often split into smaller orders to be able to make use of different pools of liquidity.

We consider the proposed changes of the ETF threshold to be adequate.

<ESMA\_QUESTION\_RVEW\_1>

Q2 : Do you agree with the proposed amendment to Table 5 of Annex II of RTS 1? If not, please explain why you are concerned about the proposed increase of the thresholds.

<ESMA\_QUESTION\_RVEW\_2>

We consider the proposed changes of the deferred publication thresholds and delays for ETFs to be adequate.

<ESMA\_QUESTION\_RVEW\_2>

Q3 : Do you agree with ESMA’s amendments to Articles 2, 6 and 13 of RTS 1 described above? If not, please explain why.

<ESMA\_QUESTION\_RVEW\_3>

BVI agrees that there is no one-size-fits-all definition of “non-price forming” transactions but, instead, distinct technical standards providing for separate lists of transactions qualifying as non-price forming for each specific provision. This, however, has led to a complex regulatory regime and possibly divergent practices in the market. We support in full ESMA’s work in order to simplify and improve the regime, as it will also help the work of a future European equity CT. however, we at the buyside are not providing detailed comments as other parties in the value chain of equity instruments trading are engaged in the direct reporting activities.

<ESMA\_QUESTION\_RVEW\_3>

Q4 : Do you agree with the proposed description of FBA trading systems and the updated description of periodic auction trading systems? If not, please explain why and which elements should be added to the description and/or removed.

<ESMA\_QUESTION\_RVEW\_4>

Innovation in execution venues was one of most successful outcomes of MiFID II, including the emergence of periodic auctions, new large-in-scale systems and request-for-quote platforms. Periodic auctions, in particular, have proven themselves as highly-valued, price forming mechanisms helping firms to trade in a way that reduces market impact and delivers better execution outcomes. PA/FBA are innovations created in close consultation with market participants and regulators to provide an execution alternative that minimizes price impact, reduces the impact of speed by prioritising size, and allows for the possibility of price improvement. While we understand the MiFID II review represents an opportunity to enshrine in legislation conclusions that the European Securities and Markets Authority reached in 2019 with respect to periodic auctions, we believe no evidence of investor detriment exists to justify different conclusions or materially different regulatory action on the platforms at this time. ESMA received a large amount of feedback from a broad range of market participants and, on that basis, ESMA was able to conclude that minor enhancements were required to FBAs. Proposed full order book transparency for periodic auctions, when run alongside continuous trading, would indicate the direction of trading interest/market pressure and potentially influence other trading mechanisms. This would result in unnecessary order, cancel and replace activity as participants strive to minimise their information leakage.

We therefore answer the question with ”No”. There is no need to separate the description of FBA and periodic auctions as their similarities are such that they should be treated the same for transparency purposes. The idea that they are different appears to stem from the inaccurate assertion that for periodic auctions “*a high number of orders are submitted during (and before) the auction call and resulting in a high number of transactions*.” This is simply not the case. For the majority of stocks there is only a very small number of orders placed into the opening or closing auctions, indeed every day there are many stocks with zero orders matched. This confusion seems to have led to the belief that intraday auctions require different transparency from opening or closing auctions.

Moreover, it is not our belief that “the *current pre-trade transparency requirements for periodic auction trading systems have been developed to cover a situation where many orders are submitted during the auction call*”. Again, the majority of periodic auctions do not have very many orders submitted and the transparency requirements function just fine.

We agree with the opinion of FBA operators and maintain that it is important to be clear about why a separate description is required for FBA trading systems. There are indeed some key differences, but it is worth noting that the fundamentals of the auction algorithm and price formation process are the factors relevant to determining the transparency regime and are common to all genuinely price forming auction mechanisms.

Of the differences that ESMA notes, ESMA has either already addressed these in its earlier guidance, e.g. dealing with the unscheduled nature of unscheduled natured FBAs by requiring an auction start message make, or are not relevant to the question of transparency, e.g. the shorter duration of FBAs. On the latter point, provided data shows that market participants consume and are able to interact with FBAs based on the pre trade transparency provided. Some of the other observations made are not particular to FBAs - a low number of orders is also a feature of other traditional periodic auction types, such as opening auctions. The key difference that we observe, and indeed the one most relevant to transparency and therefore RTS 1, is the fact that FBAs take place contemporaneously with continuous trading. This increases the risk that any pre trade information that is published can be exploited by market participants with the technological capability to do so i.e. low latency or high frequency trading firms, who can trade against the published information in the continuous market. The current regime mitigates this issue by only publishing information about the equilibrium volume and equilibrium price. This in no way limits the ability of the auction to form a price but allows participants to find that price without the risks of information leakage and adverse selection that they may face in the continuous market. Given this key difference, the separate definition should only be introduced if the intention is simply to enshrine the requirements that were previously implemented via guidance, or to protect the current transparency regime if here is a desire to change the regime for other auction types.

The introduction of a separate definition, however, should not be used to then argue for changes to a transparency regime for FBAs that has proven to be effective, particularly if those changes will be detrimental to their usefulness and/or survival. Given that investor protection must naturally be at the forefront of ESMA’s objectives, we feel it important to clearly set out the benefits that FBAs have brought to investors.

Additionally, given that exchange-operated Opening, Closing and EDSP auctions are already a natural monopoly, any proposal to suppress alterative auction models could be construed as anti-competitive.

<ESMA\_QUESTION\_RVEW\_4>

Q5 : Which of the two options for the pre-trade transparency requirements for FBA trading systems do you prefer? Please explain in case you are supportive of a different approach than the two options presented.

<ESMA\_QUESTION\_RVEW\_5>

Neither. We agree with the opinions of FBA operating trading venues: Both options represent a backward step for the market. Either option would so fundamentally change the functioning of FBAs as to render them valueless. This would deny EU investors the protection from latency arbitrage afforded by FBAs as well as putting them at a disadvantage to overseas investors who could still access functioning FBAs in non-EU jurisdictions. Discriminating against one auction model in favour of another cannot be justified and would be tantamount to simply supporting one set of market operators in favour another for no logical reason. As was established in ESMA’s recent review of FBA transparency [cf. EMSA Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the DVC and the trading obligations for shares, 4 February 2020] the current regime functions satisfactorily. Indeed, it is hard to know why the issue has been reopened in this consultation paper when we can identify no new developments in the realm of auctions since the last paper was published.

The current transparency regime is appropriate for these mechanisms and should not be amended at this time for the following reasons:

• Frequent Batch Auctions have the potential to deliver better outcomes for non-low latency market participants (i.e. institutional investors) than can be achieved in other continuous market models (both lit continuous and dark continuous orderbooks), while also allowing for genuine and transparent price formation - the proposed changes would result in poorer outcomes;

• The current transparency regime is appropriately calibrated for these mechanisms – the changes proposed would be fatal for their usefulness and would drive liquidity towards less transparent alternatives.

• A review of FBA transparency in isolation is not warranted at this time - any amendments made in isolation from other elements of the MiFIR transparency regime will lead to unintended consequences;

• Changes such as those proposed must be subject to proper cost benefit analysis – such an analysis has not been attempted by ESMA, and may be impossible in isolation; and

• Damaging FBAs will lead to a migration of trading to mechanisms that deliver similar trading outcomes but with lower levels of pre trade transparency and price formation

<ESMA\_QUESTION\_RVEW\_5>

Q6 : Do you agree with ESMA’s proposals for ‘hybrid systems’? If not, please explain why and which elements should be added and/or removed.

<ESMA\_QUESTION\_RVEW\_6>

We agree with ESMA’s finding on the outcomes of processing pre-trade transparency waiver notifications, in particular for non-equity instruments and equity instruments and that an increasing number of trading venues operate hybrid systems, and in consequence are being categorized as ‘any other trading system’, due to the absence of a separate category. Such situation is likely to result in several trading systems being inaccurately classified, and by being classified generically as ‘any other trading system’, this may offer inappropriate leeway to trading venues to decide on the level of pre-trade-transparency they consider appropriate, leading to an inconsistent application of pre-trade transparency across the Union. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 and RTS2 usage.

<ESMA\_QUESTION\_RVEW\_6>

Q7 : Do you agree with aligning both Table 1, Annex I of RTS 1 and Table describing the type of system and the related information to be made public in accordance with Article 2, of Annex I of RTS 2, to describe the same systems (with the exception of voice trading systems) and pre-trade transparency requirements? If not, please explain why.

<ESMA\_QUESTION\_RVEW\_7>

We support ESMA’s work in the area. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 and RTS2 usage.

<ESMA\_QUESTION\_RVEW\_7>

Q8 : Do you agree with ESMA’s proposals to require a specific format and standardise further the pre-trade information to be disclosed? If not, please explain why. If yes, please clarify which elements should be amended, added and/or removed, if any.

<ESMA\_QUESTION\_RVEW\_8>

We support ESMA’s work in the area. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 and RTS2 usage.

<ESMA\_QUESTION\_RVEW\_8>

Q9 : Do you agree with the changes proposed by ESMA to amend Article 15 (3) of RTS 1? If not, please explain your rationale.

<ESMA\_QUESTION\_RVEW\_9>

We agree with ESMAs analysis that since the application of RTS 1, it appears that due to changes in trading practices and/or technological developments it does no longer appear appropriate to allow for the publication of such transactions until noon of the following trading day and that such period would be unnecessarily long and suggest significantly shortening it. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 and RTS2 usage.

<ESMA\_QUESTION\_RVEW\_9>

Q10 : Do you agree with the proposed amendments to Article 17? If not, please explain.

<ESMA\_QUESTION\_RVEW\_10>

We agree with ESMAs analysis that following the application of MiFID II, the complexity behind the infrastructural and IT adjustments necessary for firms to be ready to apply the new calculations are quite significant, and that most of these necessary updates to IT systems and infrastructures are, ideally, processed throughout the weekend in order to avoid unintended consequences should a glitch in the process occur during a working day. We support that ESMA is therefore proposing that the transparency calculations start to apply from the first Monday of April following the publication of the calculations. The application period should last until the day before the first Monday of April of the subsequent year.

<ESMA\_QUESTION\_RVEW\_10>

Q11 : Do you agree with the proposed amendment of Article 11(3)(c) of RTS 1? Please explain.

<ESMA\_QUESTION\_RVEW\_11>

We agree with ESMA that there is some ambiguity in Article 11(3)(c) as to the transactions above the post-trade LIS threshold to be excluded from the SMS calculations, and that Article 11(3)(c) of RTS 1 covers shares and depositary receipts, thereby creating uncertainty on the exclusion of post-trade LIS transactions for ETFs and certificates. We support in general ESMA’s wish to provide clarity on the post-trade LIS transactions to be excluded under Article 11(3)(c) of RTS 1, as ESMA has clarified in Q&A 20 previously.

<ESMA\_QUESTION\_RVEW\_11>

Q12 : Do you agree with the changes proposed to Table 3 of Annex I of RTS 1 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA\_QUESTION\_RVEW\_12>

BVI supports ESMA’s work on data harmonization and standardisation. However, while data quality and post-trade transparency for equities has improved significantly under MiFID II, there is room for improvement. A significant issue faced by market participants is the identification of addressable and non-addressable liquidity, and we believe this could be resolved by improved reporting. We believe additional guidance and enforcement is required to ensure that OTC reporting obligations, including accurate flagging of transactions, are applied consistently. For example, as Cboe’s Approved Publication Arrangement (APA)handles around 75% to 80% of all equity APA reports, we support their advice that particular consideration should be given to providing guidance on the required flags for: Give-Ups/Ins; exercising of derivatives contracts; riskless principal transactions; and equity capital markets (ECM) transactions. We also support their suggestion that post-trade transparency could be enhanced for systematic internalisers by printing the name of the SI operator on the post-trade tape. Given that larger trades where the systematic internaliser is exposed to significant risk are subject to an appropriately calibrated publication delay, we don’t believe identifying SIs once published will discourage liquidity provision.

<ESMA\_QUESTION\_RVEW\_12>

Q13 : Do you agree with ESMA’s proposal not to change Tables 1 and 2 of Annex III of RTS 1? If not, and you consider that certain modifications shall be made, please explain.

<ESMA\_QUESTION\_RVEW\_13>

BVI supports in general ESMA’s work on data harmonization and standardisation relating to Tables 1 and 2 of Annex III of RTS 1. However, members did not request to change the Tables 1 and 2 of Annex III of RTS 1.

<ESMA\_QUESTION\_RVEW\_13>

Q14 : Do you agree with ESMA’s proposal on the new Tables 1 and 2 of Annex IV of RTS 1? If not, please explain and provide any alternative proposal you might have.

<ESMA\_QUESTION\_RVEW\_14>

BVI supports in ESMA’s work on data harmonization and standardisation. On the new Tables 1 and 2 of Annex IV of RTS 1, however, we refrain from concrete proposals at this stage as the buyside is usually not directly involved in RTS1 usage.

<ESMA\_QUESTION\_RVEW\_14>

Q15 : Please provide concrete examples or scenarios when the price cannot be determined as described or cases of the need to set a zero price for the different types of instruments: shares, ETFs, depositary receipts, certificates, other equity-like financial instruments.

<ESMA\_QUESTION\_RVEW\_15>

BVI supports ESMA’s work on data harmonization and standardisation seeking concrete examples or scenarios when the price cannot be determined as described or cases of the need to set a zero price for the different types of instruments. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 usage.

<ESMA\_QUESTION\_RVEW\_15>

Q16 : Do you agree with the deletion of the SI flags ‘SIZE’, ‘ILQD’ and ‘RPRI’? If not, please explain what you consider to be their added value.

<ESMA\_QUESTION\_RVEW\_16>

We did not receive requests to delete this flags. We caution that these may be important to a future European equity CT operator.

<ESMA\_QUESTION\_RVEW\_16>

Q17 : Do you agree with the deletion of the ACTX flag? If not, please explain what you consider to be its added value.

<ESMA\_QUESTION\_RVEW\_17>

We did not receive requests to delete this flag.

<ESMA\_QUESTION\_RVEW\_17>

Q18 : Do you agree with the approach suggested for non-price forming transactions? If not, please explain.

<ESMA\_QUESTION\_RVEW\_18>

BVI agrees with the analysis that the flagging of non-price forming trades has revealed challenging to apply in practice for market participants. The broad variety of flags and existing overlaps between those flags have led to the inconsistent application of the RTS 1 flagging requirements and, ultimately, to blurring the picture for market participants and supervisors trying to interpret executed transactions on the basis of existing flags. BVI supports therefore ESMA’s work on data harmonization and standardisation in this area. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 usage.

<ESMA\_QUESTION\_RVEW\_18>

Q19 : Do you agree with ESMA’s proposal to introduce a pre-trade LIS waiver flag for on-book transactions? If not, please explain. Should it be limited to completely filled LIS orders?

<ESMA\_QUESTION\_RVEW\_19>

We did not receive requests to provide for this flag.

<ESMA\_QUESTION\_RVEW\_19>

Q20 : Do you agree with ESMA’s proposal to introduce a pre-trade LIS waiver for off-book transactions? If not, please explain.

<ESMA\_QUESTION\_RVEW\_20>

We did not receive requests to provide for proposal to introduce a pre-trade LIS waiver for off-book transactions.

<ESMA\_QUESTION\_RVEW\_20>

Q21 : Do you agree with the proposal not to add such additional flags? If not, please explain why those flags are needed in your view.

<ESMA\_QUESTION\_RVEW\_21>

We did not receive requests to provide for more flags, other than those necessary to implement FIX protocol MMT flags standard to be able to support an European Equity CT.

<ESMA\_QUESTION\_RVEW\_21>

Q22 : Do you recommend adding/deleting/amending any other flags? If yes, please explain.

<ESMA\_QUESTION\_RVEW\_22>

We fully support all flags which are necessary to implement the FIX Protocol Ltd MMT flags standard to be able to support an European Equity CT.

<ESMA\_QUESTION\_RVEW\_22>

Q23 : Do you agree with the proposal to prescribe the order of the population of flags? If not, please explain and provide an alternative proposal.

<ESMA\_QUESTION\_RVEW\_23>

BVI supports ESMA’s work on data harmonization and standardisation prescribing, the order of the population of flags, including concrete examples or scenarios when the price cannot be determined as described or in cases of the need to set a zero price for the different types of instruments. However, we refrain from making concrete proposals at this stage as the buyside is usually not directly involved in RTS1 usage.

<ESMA\_QUESTION\_RVEW\_23>

Q24 : Do you agree with the proposed amendments above? If not, please do not reiterate the arguments made under the previous question asked for equity instruments and please rather explain why those amendments are not suitable for non-equity financial instruments.

<ESMA\_QUESTION\_RVEW\_24>

BVI supports a post trade European Bond Consolidated Tape (bond CT) in the non- equity space. Therefore further standardisation of non-equity instrument pre-trade transparency rules is not of primary importance at this stage.

<ESMA\_QUESTION\_RVEW\_24>

Q25 : Do you agree with the proposal to specify the fields to be populated for pre-trade transparency purposes? If not, please explain. In case you support the proposal, please comment on the fields proposed, in particular whether you would consider them necessary and/or whether additional information is required.

<ESMA\_QUESTION\_RVEW\_25>

BVI supports a post trade European Bond Consolidated Tape (bond CT) in the no- equity space. Therefore further standardisation of non-equity instrument pre-trade transparency fields is not of primary importance at this stage.

<ESMA\_QUESTION\_RVEW\_25>

Q26 : Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.

<ESMA\_QUESTION\_RVEW\_26>

We support increasing the transparency of pre-trade indicative prices on Fixed Income instruments under MIFID II in the medium term as follows. In particular, we support the COSSIOM position as follows: Market data vendors like Bloomberg and Refinitiv own major MTFs on Bonds and Swaps such as Bloomberg MTF (also known as Bloomberg Bond Trader) and Tradeweb MTF. Because those MTFs do not run limit order books but are rather Request For Quote (RFQ) platforms, they provide only intermittent real time pre-trade transparency data under MIFID II from those RFQ (e.g. when an investor request a price for a liquid bond and a size below the SSTI threshold). Alternatively, and for each instrument available on their MTF, those vendors provide a real time composite indicative price (bid/ask) derived from indicative quotes provided by market makers on those MTF. Those data are often indispensable for many market participants but are not regulated by MIFID II. Because real time composite indicative prices are not regulated by MIFID II, vendors have the ability to strictly control their availability (exclusive distribution) and to market their access at unjustified prices (since the “reasonable commercial basis” principle does not apply) In order for MIFID II to reach its objective of increasing market data availability and reduce their costs, we recommend that all composite real time indicatives prices coming directly or derived from MTFs’ trading activities be subject to the obligations and terms set by MIFID II for pre-trade transparency data:non- discriminatory access should be ensured, and they should be made available under reasonable commercial basis. This analysis and recommendation should be extended to real indicative prices obtained from OTF (notably Inter-Dealer Brokers (IDB) such As TP ICAP, Tradition, BGC Partners, GFI Group). For details, please see the COSSIOM position paper:” Increasing the transparency of European markets: The case of pre-trade indicative prices on Fixed Income instruments under MIFID II”, May 2021.

<ESMA\_QUESTION\_RVEW\_26>

Q27 : Do you agree with the proposed changes to Article 13? If not, please explain.

<ESMA\_QUESTION\_RVEW\_27>

BVI agrees with the arguments already put forward, in particular the complexity behind the infrastructural and IT adjustments necessary for firms to be ready to apply the new calculations, BVI supports the view that the application of the transparency calculations should be effective on a Monday.

<ESMA\_QUESTION\_RVEW\_27>

Q28 : Do you agree with the proposed changes to Article 4? If not, please explain.

<ESMA\_QUESTION\_RVEW\_28>

n.a.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_28>

Q29 : Do you agree with the proposed changes to Article 12? If not, please explain. Please do not reiterate the general comments made in the equity section and try to focus on arguments that are specific to non-equity financial instruments.

<ESMA\_QUESTION\_RVEW\_29>

BVI takes exemption to the proposed deletion of Article 12 (1) (b) RTS2 which reads” (b) transactions executed by a management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council ( 3 ) or an alternative investment fund manager as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council ( 4 ) which transfer the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction.”

Deletion of the article would lead to not necessary duplication of interfund trade reporting, especially on bond trades.

<ESMA\_QUESTION\_RVEW\_29>

Q30 : Please provide your comments on the analysis and proposals related to the liquidity framework applicable to commodity derivatives, EA and DEA detailed in Section 4.2 and summarised in Section 4.2.5. Please list the proposals with their ID (#1 to #9) for ease of reference.

<ESMA\_QUESTION\_RVEW\_30>

n.a.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_30>

Q31 : Do you agree with the changes proposed to Table 2 of Annex II of RTS 2 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA\_QUESTION\_RVEW\_31>

We agree in part, please see our answer to Q39 for details.

<ESMA\_QUESTION\_RVEW\_31>

Q32 : Do you agree with the changes proposed to Table 4 of Annex II of RTS 2 (Measure of volume) presented above? Do you think that it now provides more clarity? If not, please explain and provide any alternative proposal you might have.

<ESMA\_QUESTION\_RVEW\_32>

We agree in part, please see our answer to Q39 for details.

<ESMA\_QUESTION\_RVEW\_32>

Q33 : Do you agree with ESMA’s proposals on Table 1 (Symbol) and Table 2 of Annex IV of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA\_QUESTION\_RVEW\_33>

n.a.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_33>

Q34 : Do you agree with ESMA’s proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives (Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA\_QUESTION\_RVEW\_34>

We agree in part, please see our answer to Q39 for details.

<ESMA\_QUESTION\_RVEW\_34>

Q35 : Please provide your comments in relation to the proposals related to the segmentation criteria applicable to commodity derivatives summarised in Table 11. Please list the proposals with their ID for ease of reference. Do you have other proposals related to the segmentation criteria applicable to commodity derivatives and C10 derivatives?

<ESMA\_QUESTION\_RVEW\_35>

n.a.

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<ESMA\_QUESTION\_RVEW\_35>

Q36 : Do you agree with ESMA’s proposal on the new Table of Annex V of RTS 2 (Details of the data to be provided for the purpose of determining a liquid market, the LIS and SSTI thresholds for non-equity financial instruments)? If not, please explain and provide any alternative proposal you might have.

<ESMA\_QUESTION\_RVEW\_36>

We agree in part, please see our answer to Q39 for details.

In particular, the buyside requests to focus on the key field and flag changes which would be useful also to a bond CT for data aggregation and data quality perspectives: i.e. extra field on bond reporting (price vs %) , price reported in Euros (i.e. forex done by APAs and venues) as well as adding the following asset class related data fields in RTS2:

**Government bonds:** minimum tradeable unit (denomination); fixed /floating interest rate; basis; yield (bid/ask/mid); maturity date, senior/subordinated/tranche/ranking/class;

**Corporate Bonds:** the above, plus security, covenants, options (prepay)

**High Yield Bonds**: the above, plus sector/type

**Asset-backed Securities**: the above, plus Weighted Average Life (WAL).

<ESMA\_QUESTION\_RVEW\_36>

Q37 : Do you agree with ESMA’s proposal to delete the ACTX flag? Please explain.

<ESMA\_QUESTION\_RVEW\_37>

We did not receive requests to delete this flag.

<ESMA\_QUESTION\_RVEW\_37>

Q38 : Do you agree with ESMA’s proposal to merge the current non-equity deferral flags into one general flag?

<ESMA\_QUESTION\_RVEW\_38>

The consolidation of the three deferrals flags (SSTI, 2 days, 4 weeks) is important to have a sound basis for a meaningful discussion on the future reform of the deferrals regime after a bond CT has been set up. A future bond CT supported by NCAs and ESMA is in an ideal position to challenge wrong use of the deferrals flags going forward by being able to compare their use by the various reporting parties. In this way a more accurate and realistic picture of the use of and the requirement to maintain certain deferrals could be quantitative established.

<ESMA\_QUESTION\_RVEW\_38>

Q39 : Do you agree with ESMA’s proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments? If not, please explain.

<ESMA\_QUESTION\_RVEW\_39>

BVI furthermore supports the FIX request developed Fixed Income Consolidated Tape (for a Bond CT) EU-Schema (V1.0) with the following remarks:

1. Description of Price - (MONE or BAPO - Price should be defined as the monetary value MONE by default but BAPO: Basis Point Spread when the execution price will be calculated using a basis point spread and a benchmark price at a future time

2. There is a market need for a method for identifying Inter-affiliate trades, so these trades and associated volumes can be excluded from the tape by the consumer of the data if they so wish. FIX members do not believe that inter affiliate trades should form part of any post trade transparency reporting – At this moment in time it is part of the EU reporting requirements and needs to identified as such.

3. Also in the bond CT there is the need for a method for identify Portfolio Trades that are not classed as Package Transactions (TPAC), so that consumers of the tape can see that these trades represent real liquidity but do not necessarily represent the current pricing level for the individual instrument: BVI members believe that there is an additional scenario which could result in a non-price forming transaction. In addition to the existing Package Transaction (defined by “mefroc” and now similar to the Contingent Trade being considered for RTS 1), members are regularly observing Portfolio Trades where the price of the individual trades making up a Portfolio Trade are potentially different to the current market value for the individual instruments. As the package transaction flag is very specifically tied to “mefroc” flag, whereas the requirement from the buyside is to be able to identify trades that are part of a portfolio where the price may be impacted by the terms of the portfolio execution, but do meet the criteria for the “mefroc” flag. BVI would therefore welcome the introduction of a new flag that would identify components of a Portfolio Trade. This way market participants will be able to assess the reason for which certain reported trades may be at prices deferring from the prevailing market at the time. The definition of a Portfolio trade would need further consideration as the RTS1 definition of a Portfolio Trade is not suitable for non-equity instruments.

<ESMA\_QUESTION\_RVEW\_39>

Q40 : Do stakeholders agree with ESMA’s proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver? For LIS, should it be limited to completely filled LIS orders?

<ESMA\_QUESTION\_RVEW\_40>

We agree with the need to clarify the use of flags for non-equity transactions benefitting from a waiver, and to abolish the practice that the ‘LRGS’ or ‘ILQD’ deferral flags are often used to indicate that the transaction benefitted from a waiver. However, we did not receive requests to introduce the general waiver flag.

<ESMA\_QUESTION\_RVEW\_40>

Q41 : Do you agree with ESMA’s proposal to introduce a flag for pre-arranged non-equity transactions?

<ESMA\_QUESTION\_RVEW\_41>

We did not receive requests to delete this flag.

<ESMA\_QUESTION\_RVEW\_41>

Q42 : Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2 ? Do you have proposals to minimize the delay?

<ESMA\_QUESTION\_RVEW\_42>

We support delayed implementation of the proposals in order to allow also the industry to prepare for the changes in internal and reporting systems.

<ESMA\_QUESTION\_RVEW\_42>

Q43 (CBA) : Can you identify any other costs and benefits not covered in the CBA below? Please elaborate.

<ESMA\_QUESTION\_RVEW\_43>

We reiterate the need for the introduction of both bond and equity CT in the EU. Reforms of RTS 1 and RTS 2 will help to improve the data quality at the individual reporting party and help also with some aspects of harmonization of data across venues. However, only a CT provider will able to fulfil the promise of data harmonization and general improvement of data comparability across trading venues and reporting entities.

<ESMA\_QUESTION\_RVEW\_43>