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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

|  |  |
| --- | --- |
| Name of the company / organisation | ICE Endex |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_RVEW\_1>

Intercontinental Exchange, Inc. (“ICE”) is a provider of marketplace infrastructure, data services and technology solutions to a broad range of customers including financial institutions, corporations and government entities. As an operator of regulated exchanges and clearing houses in major market centers around the world for a broad array of derivatives contracts and financial securities, ICE enables its customers to manage risk and raise capital. ICE's regulated exchanges include futures exchanges in the U.S., the U.K., the E.U., Singapore and (as of 2021) Abu Dhabi.

ICE Endex (“NDEX”), ICE's exchange based in continental Europe, provides liquid European gas, emissions and power markets that enable energy firms, EU ETS compliance entities and financial participants to effectively manage price risk. NDEX welcomes the opportunity to respond to the ESMA consultation paper “on the review of RTS 1 (equity transparency) and RTS 2 (non-equity transparency)“.

NDEX is fully committed to the policy objectives of MiFIR, including to provide more transparency in non-equity markets. Indeed, transparent price formation is an essential part of the regulated markets’ business model. However, only an appropriately calibrated transparency regime can achieve that objective. NDEX has been concerned for a number of years that the methodology for calculating Large in Scale (“LIS”) thresholds, which is set out in MiFIR and RTS 2, is fundamentally flawed, as it contains an inherent bias which leads to the calculation of extremely low LIS thresholds for the most liquid exchange-traded derivative products and much higher LIS thresholds for less liquid products. The reason for this outcome is that the MiFIR methodology is based on a statistical analysis of post-trade data to which a set of generic and arbitrary metrics is applied, which do not take sufficient account of available liquidity in the central order book or the operation of the underlying physical market.

Prior to replacement with the MiFIR process, the exchanges actively managed the process of setting LIS thresholds, overseen by their regulator, to ensure that the right balance was struck. Market participants were also able to feed into the process, thus ensuring that all stakeholders could contribute to achieving an appropriate balance. NDEX recommends reinstating this approach, which worked well prior to its replacement with the flawed MiFIR process.

If ESMA maintains a more prescriptive approach, NDEX has the following key recommendations in relation to the proposed amendments to RTS 2:

* **Auction classification for non-equity markets:** NDEX agrees with ESMA that option 1 is the preferred approach for pre-trade transparency requirements for Frequent Batch Auction (“FBA”) trading systems in commodity markets.
* **Liquidity determination:** NDEX supports ESMA’s proposal to replace the criterion “average daily notional amount” with the criterion Standard Trade Size (“STS”). The introduction of this criterion is essential for ensuring that illiquid markets which are currently unable to support pre-trade transparency requirements, as for example the TTF Gas options contract, are not subjected to unsuitable LIS thresholds.
* **Methodology for setting LIS thresholds:** NDEX recommends maintaining the current percentile approach for calculating LIS thresholds.The proposed Average Daily Volumes in Lots (‘ADVL’) approach produces inappropriate LIS thresholds for liquid markets. Even with the introduction of the 200 lots cap put forward as part of the ADVL proposal, it would effectively mean an increase of over 500 percent of the existing LIS threshold applicable to TTF Gas Futures (47 lots). The main flaws in the current methodology, the counter intuitive effects for less liquid classes of commodity derivatives, will largely be addressed by the introduction of the STS criterion. Energy options contracts and spread trading strategies, however, require special treatment under RTS 2, as they have different characteristics and would receive inappropriate LIS thresholds if the standard percentile methodology would be applied.

ESMA data analysis

In its consultation document on the review of RT1 and RTS 2, ESMA compares and assesses the impact of various options for changing the methodologies for establishing, amongst others, the liquidity determination of a market and the LIS thresholds. ESMA subsequently puts forwards several preferred options for revising the relevant regulatory technical standards.

Before commenting in more detail on the substance of the proposed policy changes, NDEX wants to express its concern about ESMA’s approach to assessing the impact of the various proposals. NDEX especially has fundamental concerns with ESMA’s approach whereby it has chosen to (1) aggregate orderbook and blocked transactions and (2) accumulate trading activity across different trading venues, for the purpose of determining whether a market is liquid and setting LIS thresholds.

* *Aggregation of orderbook and block transactions:*NDEX strongly believes the liquidity determination or LIS threshold should exclusively be based on data derived from order book trading activity. The counting of block trades for the purpose of establishing whether a market is liquid or setting LIS thresholds is highly inappropriate, as the number of block transactions in an exchange-traded derivative does not give any indication of market depth or liquidity in that instrument. This is particularly visible in options markets in commodities, which are scarcely traded through the orderbook. Such an approach would result in highly undesirable outcomes if these markets would be determined liquid by virtue of block trading activity.
* *Venue accumulation:* NDEX believes that it is crucial that the pre-trade transparency arrangements accommodate the specific characteristics of each individual market. ESMA has however taken an approach whereby trading activity on trading venues is aggregated for the purposes of determining whether a market is liquid and setting the LIS threshold. It is impossible to make a realistic assessment of the liquidity in the order book of an individual exchange when transaction data is accumulated across venues.

Absent changes to ESMA’s impact assessment based on the above-mentioned fundamentals, NDEX believes it is unlikely that the policy changes would achieve the policy goal of increasing transparency in commodity markets. NDEX is eager to work with ESMA to address the above-mentioned issues in the analysis of available data.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

NDEX agrees with the proposed description of Frequent Batch Auction (“FBA”) trading systems, as it is an accurate reflection of the system which it currently operates.

<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>

NDEX agrees with ESMA that option one is the preferred approach. These pre-trade transparency requirements are commensurate with the manner in which the FBA operates. We would not object to trading venues being allowed to choose between both options put forward by ESMA, depending on the design of the FBA.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_9>

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

<ESMA\_QUESTION\_RVEW\_10>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_21>

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

<ESMA\_QUESTION\_RVEW\_22>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

We do not believe it is necessary for the regulations to specify in detail the information that trading venues need to disclose in the operation of their markets. Requiring venues to add data that participants do not need will slow the operation of the venue, which we do not believe is in consumers best interests and will hamper the formation of an orderly and efficient market. Generally, if market participants want venues to provide more information, they do so.

On the detailed specification of Table 7 NDEX would like to note that:

* There is no field for bids and offers.
* We do not think the inclusion of the ISIN is helpful and is likely to add latency to the system. Few customers use ISINs when they want to select a product to trade.
* Most participants know the size of a lot and, thus, the inclusion of notional and notional currency is not needed.
* It seems odd to include the strike and strike currency of an option, but not to include other data such as the maturity of the option and whether it is a put/call.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_26>

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

<ESMA\_QUESTION\_RVEW\_27>

NDEX appreciates ESMA’s proposal to apply the annual transparency calculations on a Monday to allow exchanges to implement changes to IT systems over the weekend. NDEX however does strongly advise to change the timing to the third Monday of June, instead of the first Monday for the following reasons:

* The first week of any month is often preceded by the weekend following the expiries of commodity derivative contracts. During the weekend the exchange and clearing house are focusing their resources to ensure this life cycle event is executed correctly.
* In the past, new transparency calculation sometimes coincides with the use of a different data template from ESMA. If this occurs, there is too little time between April 30 and the first Monday of June to work through the impact of the changes to the data template and implement the updated transparency calculation at the same time. A period of 5-6 weeks is more suitable to implement changes in an orderly manner.

NDEX therefore advises ESMA to amend Article 13(17) of RTS 2 as follows: “Competent authorities shall ensure the publication of the results of the calculations referred to under paragraph 5 for each financial instrument and class of financial instrument by 30 April of the year following the date of application of Regulation (EU) No 600/2014 and by 30 April of each year thereafter. The results of the calculations shall apply from the ***Third Monday*** of June each year following publication until the day before the first ***Third Monday*** of June of the subsequent year.”

<ESMA\_QUESTION\_RVEW\_27>

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

<ESMA\_QUESTION\_RVEW\_28>

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>

TYPE YOUR TEXT HERE

<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>

* *Proposal Commodity Derivatives 1: [Metals] Determine that all metal sub-asset classes do not have a liquid market*

NDEX has no specific comments on this proposal.

* *Proposal Commodity Derivatives 2: [ADNT] Maintain the criterion “average daily number of trades” (do not switch to “median daily number of trades”)*

NDEX has no issues regarding maintaining the criterion of Average Daily Number of Trades (‘ADNT’).

* *Proposal Commodity Derivatives 3: [ADNT] Increase the parameter of the ADNT to 50 trades per day for all commodity, C10, EA and DEA sub-classes.*

In order for a market to be considered liquid, a sufficiently high number of trades should be executed on each trading day. We recommend that the threshold be set at an average of 100 transactions per day instead of the current average of 10 or ESMA’s proposed 50. Considering the fact that liquidity is the ability to find a counter party in a relatively short period of time within a given trading day, a threshold of 100 trades per day represents an average of approximately 1 trade every 5 minutes on an 8-hour trading day. By contrast, a threshold of 10 trades represents just 1.25 trades per hour. Given that trading is rarely uniformly distributed throughout the day, the higher threshold is a better basis for determining liquidity.

* *Proposal Commodity Derivatives 4: [ADNA] Replace the criterion “average daily notional amount” with the criterion “standard trade size” calculated as the most frequently traded size (mode) and set the parameter of the STS mode at 5 lots for futures: any class for which the most frequently traded size is lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).*

We support the replacement of the criterion “average daily notional amount” with the criterion Standard Trade Size (“STS”). Trade frequency and standard trade size exclude unrelated vectors such as price and currency and are both appropriate metrics to determine liquidity. Although the STS criterion does not take into account the actual quantity, the new segmentation criteria under paragraph 4.3.3.3.7.2 “duration of the delivery period” are introduced for electricity and natural gas contracts. These segmentation criteria ensure that products with the same characteristics are aggregated in the same sub-class and therefore when ESMA determines the liquidity status of a market under RTS 2, determined the actual quantity will become irrelevant.

The STS mode proposal with a threshold of 5 lots is especially important for classifying commodity options markets appropriately. Almost no screen trading takes place in options contracts in utility markets. Under some of the methodologies discussed by ESMA in the consultation document, an inappropriately high LIS threshold ranging from 200 lots to 1000 lots could apply to these options markets should they be classed as liquid. The implementation of such unreasonably high LIS thresholds would have serious negative consequences for the orderly functioning of these markets.

NDEX also notes that, as explained in more detail in our introductory comments, it is crucial that only actual on-screen transactions count for determining whether a market is liquid or not.

* *Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS\_mode for all contract types, including options (5 lots)*

NDEX believes that an STS\_mode of 5 lots for futures will have a positive effect on the determination of the liquidity of the products and only actual liquid products will be deemed liquid. As noted earlier in the response, this is especially true for option markets in commodities.

* *Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.*

Replacing the current methodology to calculate the LIS and SSTI threshold with the ADVL approach is incorrect and NDEX considers the introduction to be unnecessary. Firstly, it is clear that the current methodology has counter intuitive effects for less liquid classes of commodity derivatives. However, this issue has been solved by introducing the standard trade size (STS\_mode) as a condition in the liquidity framework. As the liquidity determination is now based on a new quantitative liquidity criterion, only actually liquid classes of commodity derivatives will receive LIS thresholds. Therefore, we do not see merit in changing the approach to calculating the LIS and SSTI thresholds as it does not solve the flaws of the current methodology.

Secondly with the ADVL approach, ESMA assumes that liquidity is appropriately measured by the average daily volumes in lots. However, as trade volume and liquidity are interrelated it does not solely capture actual liquidity of a market. We could introduce another metric to measure liquidity, and this would be the average daily volumes in trades (ADVT). When there is a significant level of trading activity there is also a higher level of liquidity in the market. Together with the combination of the trade size distribution this would be a more effective metric to set the LIS and SSTI thresholds. Therefore, the percentile approach where a set percentile of the trade size distribution (in lots) in combination with an average daily volume in trades (ADVT) would be the preferable way forward.

We furthermore note that even with the introduction of a cap of 200 lots, the proposed ADVL methodology will produce LIS thresholds for benchmark commodity contracts which are unreasonably highly. ICE notes that the 200 lots cap put forward as part of the ADVL proposal, would effectively mean an increase of over 500 percent of the existing LIS threshold applicable to TTF Gas Futures (47 lots).

**Special treatment of energy commodity options & spreads**

As noted earlier, with several modifications to amongst others the liquidity determination, NDEX supports the percentile approach for establishing the LIS thresholds. Energy options contracts and certain spread trading strategies, however, require special treatment under RTS 2, as they have different characteristics and would receive inappropriate LIS thresholds if a standard methodology would be applied.

*Energy options:*

The varying proposals for the determination of LIS thresholds (percentile, ADVL, etc.) which are under consideration produce highly inappropriate results for energy options contracts. According to ESMA’s calculations the TTF Gas contract would be exposed to a LIS threshold between 200 and 1000 lots LIS threshold, depending on the methodology used (ADVL or percentile approach). Considering that currently no screen activity takes place on the TTF Gas options market, the consequences of this market being deemed liquid is that near all block transactions would be below LIS. This could result in trading activity moving outside of Europe (i.e. third country exchanges) or remaining uncleared, as the ICE’s option screen isn’t liquid. Such developments would strongly contradict with EU flagship policy ambitions to strengthen the international role of the Euro, whereby the Commission identified the TTF Gas contract as the primary euro-denominated benchmark contract in the field of energy.

The ICE Endex TTF Gas Option contract is a derivative on a derivative, as at expiry a position in a TTF Gas Options contract exercises into a position in the underlying TTF Gas Futures contract. A position in the options contract thereby doesn’t result in a cash payment (cash settlement) or physical delivery of natural gas (physical settlement). The TTF Gas Options contract is nonetheless generally considered a physically settled contract by virtue of the characteristics of the underlying derivative (TTF Gas Futures).

Considering the above detailed characteristics, the TTF Gas Options contract doesn’t naturally fit the category of ‘Energy commodity options’ as specified in RTS 2. Existing ESMA Q&A[[1]](#footnote-2) already recognizes different types of options contract by the introduction of the sub class “derivatives on derivatives”, whereby options classed as such are largely subjected to the pre-trade transparency requirements that follow from the underlying futures contract.

NDEX suggests building on this existing approach from the ESMA Q&A to revise RTS 2, whereby energy options with a derivative as underlying should apply the LIS threshold of the underlying derivative contract (if the underlying derivative contract is deemed liquid under RTS 2). It would however not be appropriate to adopt the liquidity determination of the underlying futures derivative for the options contract, as this would risk inappropriately classifying options contracts as liquid.

An alternative approach to calculating a more appropriate LIS threshold would be to make use of the Delta of an option contract to calculate the LIS threshold. This would be in line with the approach taken under the position limits regime.

*Inter-commodity spreads:*

In strategies as for example spread trading (simultaneous execution of two or more derivatives contracts with a different underlying, location or maturity) or Delta hedges, the total size of the different legs in a strategy should be considered as a package when assessed against the relevant LIS threshold. Delta hedging is an options strategy that aims to reduce or hedge the risk associated with price movements in the underlying asset. The trading strategy allows market participants to take a primary position in an options contract, whilst simultaneously obtaining a position in a related futures contract, which is used to mitigate risk related to the position in the options contract.

However, with inter-commodity spread trading strategies, which by definition involves separate derivative contracts with different underlying commodities, an alternative approach is warranted. This is because the applicable LIS threshold is based on lots and is thereby unable to accommodate for the different units of measurement which are standard in the varying underlying commodity of the derivative contracts. NDEX for example allows market participants to simultaneously trade 2 lots of gas, 1 lot of power and 4 lots of EUAs by means of the inter-commodity spread trading strategy “clean spark spreads”. The trading strategy allows market participants to instantly hedge the costs of green power production based on gas and is an important trading strategy which aids the energy transition and an important tool to meet EU climate change ambitions.

In order not to disturb the orderly functioning of these markets and to allow market participants to hedge their risks, NDEX recommends either to fully take account of the different units of measurement of the different underlying commodities when establishing an LIS for inter-commodity spreads, or simply apply the lowest LIS of a commodity derivative contract determined liquid which is traded as part of the strategy.

* *Proposal Commodity Derivatives 7: [Units or Lots] Set the liquidity framework in lots (STS\_mode parameter set in lots, volumes reported to ESMA in lots, LIS and SSTI thresholds published in lots) accompanied by Level 3 measures to address the risk of downward revisions of the lot sizes*

NDEX notes that not using lots will create additional and unnecessary complexity.

* *Proposal Commodity Derivatives 8: [Reporting to FITRS] number of transactions shall be reported to FITRS per trade-size bins which are defined in the new Annex V of RTS 2. Total volumes in lots and total volumes in underlying units shall also be reported to FITRS as specified in the new Annex V of RTS 2.*

NDEX has no specific comments on this proposal.

* *Proposal Commodity Derivatives 9: [data scope] The transparency calculations continue to be performed with all data (on-venue, SI and OTC)*

The transparency calculations should exclusively be performed using Central Limit Order Book (“CLOB”) data, as these trades will determine whether a market is liquid and whether the block trade quantity is above the normally average traded lot size on the exchange.

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

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>

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<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>

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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>

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<ESMA\_QUESTION\_RVEW\_36>

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

<ESMA\_QUESTION\_RVEW\_37>

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<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>

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<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>

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<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>

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<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>

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<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>

NDEX supports ESMA’s proposal for delayed implementation and suggest delaying by at least one year.

<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>

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<ESMA\_QUESTION\_RVEW\_43>

1. ESMA Q&A on MiFID II and MiFIR transparency topics (Question 13) [↑](#footnote-ref-2)