European Securities and Markets Authority

Reply form for the Consultation Paper on the RTS 1 and RTS 2 Review

9 July 2021

European Securities and Markets Authority

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 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 under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	European Energy Exchange AG
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_RVEW_1>
The European Energy Exchange (EEX) Group, the commodity branch of Deutsche Börse Group welcomes the opportunity to provide its views on ESMA's review of RTS 1 and RTS 2.

Given the long history of discussions on the pre-trade transparency regime and its implications for commodity markets, we truthfully welcome that ESMA acknowledges the need to review its current design and appreciate the effort behind the suggested proposals.

We believe it is crucial that the revised RTS2 will consider the unique characteristics of commodity trading, one of them being the important role of pre-arranged trading for the development of on-screen trading. ESMA's proposals show that alternative proposals have been carefully assessed, and ESMA has paid significant attention to the differences between different commodity asset classes.

However, EEX Group has identified some areas that are worth further consideration. These areas concern the liquidity determination for commodity derivatives as well as the LIS threshold calculation. First of all, we consider it important that both the liquidity determination and the LIS threshold calculation should be performed on the basis of order book data alone. Secondly, with regard to the liquidity assessment, we suggest using a combination of average daily number of trades (ADNT), average daily volume traded in lots (ADAL) and standard trade size (STS). Please look at our response to Q30 for detailed comments on their calibration. Thirdly, with regards to the LIS and SSTI thresholds, EEX Group is concerned that the ADVL approach has severe flaws and feels that the percentile approach, if slightly adjusted, is the least flawed methodology and hence might be preferable.
<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>
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<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>
In line with the response from Deutsche Börse Group, EEX Group welcomes ESMA's proposal to have tailored pre-trade transparency requirements for FBAs, as they could result in the disclosure of more meaningful pre-trade information to investors. However, considering the list of criteria provided by ESMA to identify FBAs in comparison to conventional periodic auctions, we believe it is crucial that the definition captures only those auctions that meet all of the characteristics outlined in paragraph 61 of the consultation paper.

The definitions proposed for FBAs and periodic auctions raise the concern that some auction models will be wrongfully classified as an FBA. It would capture for example auction systems that currently do not fit the definition of a periodic auction and have effective pre trade transparency measures in place. It would also lead to auction systems previously classified as periodic auctions, now neither being covered by the FBA definition nor being covered by the periodic auction definition. Hence, EEX Group believes that it is important to have a more precise definition of FBAs in order for the relevant pre-trade transparency requirements to successfully contribute to price formation.

We have identified at least two dimensions of the definition of FBAs proposed by ESMA which are problematic:

1. The duration of the auction
As specified by ESMA in paragraph 69 the "description captures two of the three main characteristics of FBAs, i.e. the auctions take place during the trading day and are triggered following the submission of orders by members or participants". This means there is no longer a reference to the short duration of an FBA. Although we appreciate that it is difficult to set a maximum or average length for an auction, we believe it is of utmost importance that there is some reference to the duration of the auction. Indeed, the description as it stands would now cover systems with auctions lasting potentially longer than the conventional periodic auctions. This would be in stark contrast with the description provided by ESMA in paragraph 61: "FBAs have a shorter duration than conventional periodic auctions, often only lasting for some milliseconds".

2. During continuous trading hours

We question the mention of “during continuous trading hours”. First, following the reasoning from ESMA (see paragraph 61), FBAs would not qualify as such if they were to run in parallel with conventional periodic auctions, which qualify as “periodic auctions” but not “continuous trading”. On this, replacing “during continuous trading hours” with “during the trading day” wouldn’t solve the issue since periodic auctions could potentially run any time including outside trading hours. Second, the mention of “during continuous trading hours” is not consistent with the definition of periodic auction trading systems which does neither include nor exclude any specific session to run those auctions. Hence, we would ask for “during continuous trading hours” to be removed from the definition.

Regarding the description of periodic auction trading systems, EEX Group believes that there is no need to narrow down the definition of a periodic auction. Instead it is preferable to maintain the current definition and potentially simply add one sentence to the current definition, stating that periodic auction systems do not include FBAs (E.g. ’a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. Periodic auctions trading systems do not include frequent batch auctions (row 4)’). We do not see any merit in providing an exhaustive list of auctions falling under the definition besides the description itself; to the contrary we are concerned that a dedicated list of auctions can lead to unintended consequences. Providing such a narrow list increases the potential that auctions neither fall under the definition of an FBA nor fall under the definition of a periodic auction. Typically, intraday auctions which are neither opening auctions, nor closing auctions or auctions following a volatility interruption, are not mentioned. Those intraday auctions taking place usually at midday are scheduled and do interrupt continuous trading.
<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>
In line with the response from Deutsche Börse Group, in regard to the concerns raised in our response to Q4, we cannot recommend a suitable option for the pre trade transparency requirements for FBAs. Considering the FBA definition as proposed by ESMA in this consultation, and the trading systems which would fall under it, we have identified that some of them already provide a level of pre trade transparency which is optimal and calibrated to the needs of the investors, be it more in line with Option 1 or more in line with Option 2.

Indeed, for some auctions market participants may have already access to quotes in real time with price and volume. In that case the Option 1 described by ESMA would bring less transparency. However, we can also imagine that FBAs fulfilling the requirements under Option 1 provide for the appropriate amount of transparency and hence should be able to have that possibility too; notwithstanding the fact that under Option 1 and for FBAs, the price information available remains of limited relevance provided that for most venues the price will either be the midpoint or within the best bid and offer on the primary market or own definition of EBBO, resulting in limited or no contribution to price formation. But to the least, we would advise to provide the operators of FBAs with the flexibility to choose between the two options. Both options fit different situations and products and a one size fits all approach to them would not be beneficial.
<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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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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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>
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Q10 : Do you agree with the proposed amendments to Article 17? If not, please explain.

<ESMA_QUESTION_RVEW_10>
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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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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>
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<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>
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<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>

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<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>
In line with the response from Deutsche Börse Group, EEX Group does not agree with the proposal from ESMA to align both RTS 1 and RTS 2 to describe the same trading systems. As stated in the response to Q4, we believe that it is crucial that the FBA definition in RTS 1 captures specifically those FBAs that could benefit from more meaningful pre-trade information, i.e. those auctions that meet the characteristics outlined in paragraph 61 of the consultation paper.

Introducing the concept into RTS 2 will exacerbate the unintended consequences. It is rather recommended to develop a more precise definition of FBA. Alongside we urge ESMA to maintain the current definition for periodic auction systems as per RTS 2, i.e. a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. This definition has established proven and well-working auction mechanisms.

As stated in paragraph 233 of the consultation paper, equity and non-equity markets are fundamentally different. For commodity derivative markets, for example, auctions have been used to avoid a shift of trades to the uncleared OTC environment. As these auctions are also triggered by potentially matching orders, they could be considered FBAs under the new definition. However, given that these auctions serve opposite purposes, it should be avoided they become subject to a one size fits all approach in terms of pre-trade transparency requirements. With respect to securitized derivatives and bonds, existing continuous auction trading models provide liquidity in non-equity-markets. By sharpening the pre-trade transparency requirements to trading venues by defining them as FBAs, ESMA would add to the already existing imbalance between SIs and trading venues in the non-equity-environment.

In sum, to capture those FBAs that would benefit from more meaningful pre-trade information, we believe it is sufficient for this trading model to be integrated in the list of trading systems in RTS1, but not in RTS 2.
<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>

No, we do not believe that there is a need to specify the fields to be populated for pre-trade transparency purposes. Given that it is unclear to what extent the pre-trade transparency information is used by the market, we believe it is premature to decide upon further harmonisation of the fields.

Moreover, adding additional data fields to pre-trade transparency for trading venues will add significantly to the data volume circulating within EU markets. Please note that today more than 90% of data volumes and message count is being generated by pre-trade messages of trading venues. Adding all the additional data fields to pre-trade messages will certainly add to a) higher latency and b) significantly higher amount of pre-trade data with impact on data cost for the industry.
<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>
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<ESMA_QUESTION_RVEW_26>

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

<ESMA_QUESTION_RVEW_27>
In line with the response from Deutsche Börse Group, EEX Group agrees with ESMA's proposal to amend Article 13(17) of RTS 2 such that the application date of the new transparency thresholds is always on a Monday.

However, EEX Group does not consider the first Monday of June as appropriate application date. The reason is that the first Monday of June may come too close to the quarterly expiry week in June, which always takes place across all trading venues in the third week in June, and thus imposes further stress on market participants. For example, in 2022 the application date of the new thresholds would be 06 June, according to ESMA's proposal. This would be one week before the quarterly equity derivatives expiry and two business days prior to the last trading day of fixed income futures in June.

When an expiry of positions approaches, market participants tend to close their existing positions in products with the soon to expire maturity and open positions in the same products with a maturity date further in the future (a so-called rolling of positions). Wherever pre- and post-trade thresholds will be decreased as a result of the updated transparency calculations, the effects on market participants directly before expiry week should be neglectable. However, where pre- and post-trade thresholds will be increased as a result of ESMA's most recent publication, this bears the risk that market participants might no longer be able to roll their positions as initially intended. For example, where an LIS threshold used to be 50 and is now to be increased to 75, a member holding a position of 50 will become unable to trade out of this position exactly during the week, when the participant is on average most likely to want to trade out of the position. While it is of course possible for market participants to adapt their trading behaviour to increased thresholds in the mid- to long-term, we strongly recommend to not force an ad hoc amendment of trading behaviour upon members, by implementing new pre- and post-trade thresholds directly before the expiry week.

We therefore believe that a change of trading parameters before the expiry week bears the risk of creating uncertainties amongst market participants and ultimately might destabilise the functioning of financial markets. To prevent these potentially detrimental effects, we urgently request ESMA to move the effective date of the updated transparency calculations for non-equity instruments across all EU trading venues to a date after the June expiry week, i.e. first Monday following the third Friday in June, which would in 2022 correspond to 20 June.
<ESMA_QUESTION_RVEW_27>

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

<ESMA_QUESTION_RVEW_28>

In line with the response from Deutsche Börse Group, EEX Group agrees with ESMA's proposal to transfer the Q&A provisions on minimum size of orders held in an order management facility to Art. 4 RTS 2.
<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>
ESMA proposes to amend Art. 12 RTS 2 such that redundancies in the legislative text are removed. The amendments entail no practical changes for non-equities. EEX Group therefore agrees with the proposed changes to Art. 12 RTS 2.
<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>
As an introductory remark, we believe there is one important issue that touches upon a number of the below proposals, i.e. both the liquidity assessment as well as the LIS threshold calculation should be performed on the basis of on-book (or screen) data alone.

For the data collection, however, EEX Group believes it was important for ESMA to compare data from screen trading, pre-arranged trading as well as the uncleared environment. This is because assessing the differences between these environments in terms of, for example, liquidity and standard trade sizes, will help assess the potential impact of a new LIS waiver threshold methodology.

The assessment of whether a market is liquid or not and whether a trade is large in scale or not, should, however, be based on order book data alone. This is because it is the order book that needs to be liquid enough to support a LIS threshold. The trades pre-arranged off order book do not directly contribute to the liquidity of the order book and hence should not be considered when assessing the liquidity of a contract. As an example, a market such as dry bulk freight derivatives, which is entirely traded off book, will be unable to support a LIS threshold on its order book as there are no trades taking place on this order book. It would hence therefore not make sense for this market to be classified as liquid on the basis of the proposed parameters. Also, whether a trade is large in scale or not should be assessed on the basis of order book data alone. This is because trade sizes are typically significantly larger off book and hence will give a misleading picture of what may be considered as "large-in-scale" on order book.

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

Yes, we agree and support the proposal.

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

Yes, on the basis of the data provided by ESMA, we agree and support the proposal.

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.

First of all, it is important to reiterate that only actual on-screen transactions should count for determining whether a market is liquid or not. This is particularly valid for calculating ADNT.

Appreciative of the analysis of the implications of using different thresholds across different asset classes, we remain of the view that 100 trades per day would be a more suitable threshold.

Even when the data scope is limited to on-book data, 50 trades per day, which roughly corresponds to a frequency of one trade every 10 minutes, would be too low because of three reasons:

1. Trading is rarely uniformly distributed throughout the day;
2. ESMA disagrees that liquidity should be assessed on a venue-per-venue basis. This means that the proposed ADNT of 50 trades corresponds to one trade every 10 minutes across all venues. As not all traders have access to software that bundles liquidity of all venues onto one screen even 5 minutes (ADNT 100) remains a low number; and
3. Moving to 100 trades per day means that there will be more observations to base the LIS threshold on and the counterintuitive effects of the percentile approach to calculate the LIS threshold will be further reduced. (Please refer to our response to Proposal Commodity Derivatives 6 on LIS/SSTI.)

We furthermore appreciate the impact analysis from ESMA, as EEX Group does not have a complete view over the venue-aggregated data. We acknowledge the impact from moving from 50 to 100 trades per day might be limited for, for example, gas, but also notice it does bring a significant change as to which power contracts are to be classified as liquid or illiquid.

Finally, we agree with ESMA that the same parameter should be used for all asset classes. While acknowledging that liquidity is a very complex matter to assess and simple parameters as ADNT and ADNA all have their weaknesses, we would not opt for setting parameters in such a way that a certain amount of trading activity would be deemed liquid. Liquidity has to be determined by opportunity to trade, not by the goal of treating a certain percentage of trading activity as liquid.

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).

First of all, EEX Group reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining whether a market is liquid or not. This is valid for both the STS and ADNA criteria,

We support the introduction of the STS criterion, as it is indeed a remedy to one of the two most important issues with using ADNA, i.e. the ADNA does not allow distinguishing between (1) a market with on average few trades of large sizes (potentially illiquid); and (2) a market with on average numerous trades of small sizes (potentially liquid). Those two markets could have the same average daily notional amount while exhibiting different liquidity profiles. However, from this follows that the STS liquidity criterion should complement the ADNA liquidity criterion and not replace it. If the criterion referring to volume (currently ADNA) would be removed, the STS criterion remedies a problem with a criterion that is no longer present, i.e. ADNA.

The reason why the STS should complement a criterion referring to volume is because the STS should not be considered as a direct measure of assessing liquidity. This is because the assumption that the more liquid an instrument the smaller the STS does not always hold true. A market characterised by small commercial hedgers will for example typically trade smaller sizes than markets that primarily see large commercial hedgers as well as financial firms providing access to other market participants. Moreover, there are large differences between short term maturities such as daily futures and weekly futures compared to calendar futures. The STS of short term maturities tends to be higher than for long term maturities because the first are used as final portfolio adjustment before delivery and transactions in these contracts involve lower notional amounts (i.e., trading limits admit more lots and arbitrage operations require more volumes than for longer maturities) As a consequence the long-term maturities will artificially be more quickly deemed liquid than short-term maturities.

Finally, adding the STS mode with a threshold of 5 lots is particularly important for ensuring that options markets in commodities are classified appropriately. Almost no screen trading takes place in the options contracts which exist in for example gas, power or emissions derivatives. Under some of the methodologies discussed by ESMA in the consultation document, an extremely inappropriately high LIS threshold ranging from 200 lots to 1000 lots could apply to these options markets if they are classed as liquid. The implementation of such unreasonably high LIS thresholds would have serious negative consequences for the orderly functioning of these markets.

Finally, it is important that the criterion referring to volume (currently ADNA) will no longer be expressed in notional values but in lots. As proposed by ESMA in its Proposal Commodity Derivatives Nr. 7, we believe that we should look at Average Daily Amount of Lots traded, i.e. ADAL, to have an appropriate reflection of the volume traded in a given contract.

Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS_mode for all contract types, including options (5 lots).

Yes we support this proposal. Options are rarely efficiently traded on screen, as options and option packages are often complicated and too illiquid per strike to gain much traction. As such, it is therefore of no surprise that they are deemed illiquid. We do not see why a different parameter should apply to options. Please also refer to our answer to Proposal Commodity Derivatives 4 regarding the need to also use ADAL as part of the liquidity assessment.

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.

As a preliminary comment, EEX Group reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining the LIS threshold.

Although we appreciate the efforts to consider new methodologies of setting a LIS threshold, EEX Group disagrees with the new proposal.

We agree that indeed the following issues with the current approach need to be addressed:

- The percentile approach leads to a counter-intuitive effect in the sense that it leads by construction to higher thresholds for the least liquid classes compared to the most liquid classes, which contradicts the original objective;
- The volumes are converted to EUR (and threshold are set in EUR);
- The level of the floor is such that most liquid classes have an LIS equal to the floor; and
- The rounding rules in Article 13(12) of RTS 2 inflate the size of the thresholds.

However, having investigated the proposal to use ADVL and also having looked into alternative methodologies, EEX Group believes we might throw the baby out with the bathwater when completely removing the percentile approach.

1. As stated in paragraph 302 of the consultation, the counter-intuitive effect of the percentile approach is partially linked to the use of ADNA as a liquidity criterion. ESMA expects that adding the STS_mode 5 liquidity criterion will largely remove this issue. We believe that if also the ADNT is properly calibrated (100 trades per day) the issue might be removed entirely. (Please also refer to our response to Proposal Commodity Derivatives 3.)

2. Converting the LIS thresholds into lots will remove the second issue.
3. Removing the minimum floor, for which we do not see a proper justification, will remove the third problem. We do not see a need to impose a minimum floor as the calibration of a LIS threshold requires significant caution not to set the limit too high. This is for the obvious reason that a LIS threshold that is set too high will push trades off-book, in the uncleared OTC environment, instead of on-book. Imposing one minimum floor across all commodity markets, fully disregards this need for caution.
4. Also, the rounding rules can be easily adjusted as has already been proven by ESMA's data collection. It used small trade size bins (1 lot until 20 lots, 5 lots until 100 lots and 50 lots thereafter).

It might therefore be unnecessary to entirely change the current percentile approach.

The use of the ADVL approach for the calculation of the LIS threshold completely dissociates large-in-scale and normal market size, introducing new contentive effects for liquid markets (in the sense of ADNT and STS). The ADVL approach creates an almost-linear relation between the LIS threshold and the number of transactions while ignoring normal trade sizes. In a market with an ADNT of 1000 and only 1-lot trades (i.e. STS=1), 5% of ADVL means 50 lots (i.e. 50 times the largest trade seen in this contract), while 95% percentile means 1 lot. This effect can be seen in ESMA's simulation for the most liquid contracts, which systematically reach the cap defined by ESMA. In this example, a 50 lots trade seems excessively large compared to normal deal sizes. Since the counterintuitive effect of the percentile approach can be corrected with an adequate value of ADNT and the combination of both the average daily notional amount traded in lots (ADAL) and the STS mode 5 criterion, the percentile approach seems a more appropriate approach to establish the level where a trade can be considered large-in-scale. 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).

We investigated other alternatives but concluded that the percentile approach is probably the least flawed methodology. However, it is unclear to us where the 95th percentile, mentioned in paragraph 309 page 106 of the consultation paper, originates from. We would strongly recommend maintaining the percentile at 70 or – preferably – adopting a phased-in approach starting at 30% and gradually moving it up to 70%. This would be more suited given the need for a cautious approach not to push trades to the uncleared OTC environment.

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.

We agree with ESMA that using lots is the more pragmatic way forward.

However, we would like to note that the framework will need to be adapted, as per our comments on the former proposals, to function adequately. We recognize the need for measures to address the risk of downward revisions of the lot sizes, but we believe this will be limited if the framework is designed adequately. One suggestion would be that ESMA decides on a standard for the different commodity contracts and that if you have listed a different type of contract, one would have to compute your LIS versus this standard. E.g., 1 lot on a monthly electricity contact has a standard between 672 MWh and 745 MWh. If a trading venue lists a contract with a different "contract base" (e.g., not in MWh, but in KWh), the trading venue would have to use the standard from the "main" setup to compute its LIS threshold, similar to how ESMA treats position limits when calculating mini or micro contracts into full size contracts.

However, it should be noted that a downward revision of a lot size could be justified when trying to build a niche market, trading separately from a large benchmark contract, where there is a genuine need for trading in smaller units. The initial proposal made by ESMA in the consultation paper which makes changes to the lot sizes, could require the formal authorisation of the competent authorities and is subject to a yearly monitoring by ESMA, does sound to be rigid. An open dialogue with the competent authorities could though be called for.

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.

ESMA suggests two new fields to the quantitative data, 'Total Volume in Lots' (where applicable) and 'Total Volume' to FITRS. As a general comment, reporting of lots as such is welcome. However, as Transparency Quantitative data reporting for non-equity instruments is made using what is called 'bins' (i.e. reported values are assigned a bin size depending on value of transaction) additional guidelines would be needed on how to assign 'bins' when using lot sizes instead of notional amount. Such a requirement on further technical reporting instructions not covered by the RTS would somewhat diverge from one of the key points from ESMA in the RTS 2 consultation which is that none of the reporting tables for quantitative data is regulated in the RTS today, but rather in separate 'reporting instructions' issued by ESMA. It is important that proper reporting guidelines are issued to complement the updated RTS to facilitate a harmonized understanding of the updated requirements.

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

We are strongly of the view that the liquidity assessment and LIS threshold calculation should be performed on the basis of order book data only. Please see our introductory comment. In the context of the data collection, Europex did advise to also look at off-book data and ideally also data on the OTC uncleared market. This recommendation was made with the intention to enable ESMA to reflect on the differences between on- and off-book trading as discussed in the introductory comment. However, the assessment itself should be based on order book data alone.
<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>
From a market participant's perspective, we do not see the need to make these changes. Moreover, we believe that for exchange traded derivatives all the proposed information should already be available within the reference data. Adding further detailed information to trade messages slows them down and may introduce further latency to the overall data stream.
<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>
With regard to commodity derivatives, we understand that ESMA proposes that the measure of volume no longer refers to the national amount of traded contracts but to the equivalent amount of commodity or emission allowance traded expressed in measurement unit. We agree and support this proposal.
<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>
Please refer to our response to Q35.
<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>
Yes, we agree and support the proposal.
<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>
SC_Commo_1: Settlement location should be a segmentation criterion for gas (in addition to electricity), and reported with an EIC code.

We agree that the settlement location should be a segmentation criterion for natural gas and that for electricity and natural gas the settlement location should be reported with market standard (EIC code) instead of a free text. We also agree with aligning the reporting of this field with EMIR reporting to trade repositories, apart from contracts with delivery outside of the EU.

SC_Commo_2: Settlement location should not be a segmentation criterion for energy other than gas and electricity (unless a standard is provided by stakeholders.

Although there might not be any energy contracts other than electricity and gas in the EU at this stage, we believe it is important for RTS2 to be future-proof and to keep the settlement location criterion for all energy contracts. It is noteworthy that revisions of certain settlement locations occur, when for example two zones merge.

We believe it is justified to require the use of a reporting standard which can be determined at a later stage, when those contracts emerge.

SC_Commo_3: Add the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts:

We strongly support adding the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts for the reasons laid down in the consultation paper. However, to avoid confusion, instead of duration of the delivery period, it would be better to use the term "contract term" (e.g., monthly, yearly, daily). This way, there will be no artificial split between contracts that are delivered 30 days and contracts that are delivered 31 days. Generally, we would appreciate a dialogue with ESMA to ensure that the same standards are used by everyone.

SC_Commo_4: Align wording of the list of energy types with RTS 23 (in particular add renewable energy):

While EEX Group does not disagree with adding “renewable energy”, we wonder which types of energy exactly ESMA had in mind, as we consider, for example, solar power futures to be C10 derivatives.

SC_Commo_5: For energy sub-asset classes, delete the segmentation criterion “load type”:

EEX Group agrees with the analysis and supports the proposal to delete segmentation criterion 4.

SC_Commo_6: For energy sub asset-classes, the segmentation criterion “underlying energy” should not apply to natural gas:

EEX Group disagrees that “underlying energy” should not apply to natural gas. It is important that a distinction can be made between for example LNG, hydrogen and natural gas. As it would not make sense to make the distinction via the segmentation criterion “delivery zone”, it should be made possible via the segmentation criterion “underlying energy”.

SC_Commo_7: For commodity swaps, align the segmentation criterion “settlement type” with RTS 23:

No comments.

SC_Commo_8: For agricultural sub asset- classes, split the segmentation criterion “underlying agricultural commodity” in two:

EEX Group agrees with splitting segmentation criterion 1 in two. However, further sub products for dairy are necessary. However, we do believe that for the sub product dairy, there should be at least five different further sub products, i.e. Butter, Whey Powder, Skimmed Milk Powder, Liquid Milk and Other.

SC_Commo 9: For freight derivatives, amend the values listed after segmentation criterion “contract type” and delete the contract type FFA from the reference data table:

EEX Group agrees with deleting the contract type FFA, as futures and FFAs are used interchangeably.

SC_Commo_10: Define reporting standards for RTS2#12 “specification of the size related to the freight sub- type” and RTS2#13 “specific route or time charter average”:

EEX Group agrees that containerships should be considered as a further sub product of dry freight. EEX Group also agrees with having fixed lists for the segmentation criterion 4 (specification of the size related to the freight sub-type) and the segmentation criterion 5 (specific route or time charter average). However, both should include a field called “other” to ensure that when new sizes of ships emerge, as well as new routes, they can be categorised properly. Particularly routes are subject to a lot of change, hence it would certainly benefit from such a category.

Furthermore, EEX Group noted there is only a list of routes or time charters for wet freight. We would strongly recommend to ESMA to also have a list detailing the different routes and time charters for dry freight. These include 4TC, 5TC, 6TC, 10TC, C3, C5, C7, P1A, P2A, P3A, P1E, P2E, P3E and “Other”.
<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>
It is difficult to provide solid feedback, as the quantitative data to be provided depends on the final proposal on the IL and LIS waiver threshold methodologies. Once this proposal is final, EEX Group would be very appreciative of a dialogue with ESMA conversation on the quantitative data to be provided for the purpose of the transparency calculations.
<ESMA_QUESTION_RVEW_36>

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

<ESMA_QUESTION_RVEW_37>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
We agree and support the proposal.
<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 do not believe that introducing a general waiver flag will add any value for market participants. Whether a trade benefited from a waiver can usually, at least for all trades traded at EEX, be observed from the product traded (liquid or illiquid) and the size of the trade (LIS threshold exceeded or not).
<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 agree that introducing a flag for pre-arranged transactions will be valuable for ESMA to distinguish between pre-arranged transactions and order book transactions when setting the IL and LIS waiver thresholds Please also refer to our response to Q30 Proposal Commodity Derivatives 9.
<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>
In order to plan, test and implement technical changes appropriately and securely, we believe that an implementation period of 18 months is necessary. However, we would appreciate it if amendments concerning the liquidity assessment, LIS and SSTI thresholds for commodity derivatives, C10 derivatives, EA and DEA,: the relevant sections of amended Article 13 of RTS 2, and the relevant amended tables in Annex III of RTS 2, were processed sooner than the timeline suggested, e.g. by mid of 2022.
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_43>