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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 | Europex |
| Activity | Association of European Energy Exchanges |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_RVEW\_1>

Europex welcomes the opportunity to provide feedback to ESMA’s proposals for amending RTS 1 and –most relevant to us– 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 illiquid market and Large-In-Scale (LIS) transactions waiver methodologies 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, Europex members are concerned with some of the proposals that lead to an even more negative impact than the current regime. These proposals relate to the liquidity determination for commodity derivatives as well as the LIS threshold calculations, which should evidently be based on order book (or screen data) alone.

In our response, we provide detailed feedback on ESMA’s proposals to review RTS 2, with a particular emphasis on the following:

* *ESMA’s proposal on commodity derivatives 3 to increase the parameter of the “average daily notional amount” (ADNT) to 50 trades per day for all commodity derivatives*: Europex remains of the view that 50 trades per day would be too low and suggest that 100 trades per day would be a more suitable threshold.
* *ESMA’s proposal on commodity derivatives 4 to replace the criterion of ADNT with the criterion of “standard trade size” (STS) and set the parameter of the STS mode at 5 lots for futures:* While Europex supports the introduction of the STS criterion, we believe it should complement the ADNA liquidity criterion and not replace it. Adding this criterion is particularly important for the appropriate calibration of options. Further, we highlight that instead of using ADNA, volume should be measured by looking at the Average Daily Amount traded in Lots (“ADAL”).
* *ESMA’s proposal on commodity derivatives 6 to have LIS and SSTI thresholds 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:* After having carefully investigated the ADVL proposal as well as other alternatives, we concluded that the 70 percentile approach is the least flawed methodology and could fit if the approach were slightly adapted.
* *Proposal Commodity Derivatives 9 whereby ESMA proposes that transparency calculations continue to be performed with all data (on-venue, SI and OTC):* Europex is strongly of the view that the liquidity assessment and LIS threshold calculation should be based on on-book data only.

We remain at ESMA’s disposal to discuss the new proposals for IL and LIS waiver methodologies and the quantitative data to be provided for the purpose of the transparency calculations.

<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>

TYPE YOUR TEXT HERE

<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>

Should ESMA maintain the proposed definition of FBAs as well as its pre-trade transparency requirements in table 1 of Annex I of RTS1 and align it with table 1 of Annex 1 of RTS2, then Europex strongly believes that exchanges should be able to operate FBAs in line with the requirements following from either of the two options put forward by ESMA. While the requirements mandated in Option 1 already provide for an appropriate amount of transparency, we do not see why FBAs which also display information related to orders, as reflected in Option 2, should not be possible. The varying FBA auctions have been calibrated to the needs of the market participants and we strongly advise to provide exchanges with the flexibility to choose between the two equally valid options. As a matter of fact, we believe that both options fit different situations and products and that 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Europex tends to disagree with the proposal to align RTS1 and RTS2 with regard to the description of trading systems and pre-trade transparency requirements. This is because we are concerned that the definition of FBAs as proposed by ESMA in Question 4 risks unintentionally capturing too many auction trading systems, whereas the definition of periodic auctions may capture too few. We believe that the FBA definition should capture 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.

In order to do so, we believe a reference to the duration of the auction has to be introduced. As stated by ESMA in paragraph 61: “FBAs have a shorter duration than conventional periodic auctions, often only lasting for some milliseconds”. Although we appreciate that it is difficult to set a maximum or average length for an auction, we believe it is important to include a reference to the duration of the auction. Furthermore, we recommend maintaining the current definition of periodic auctions, but including a sentence stating that it does not include FBAs.

If ESMA maintains the current definitions and aligns them with table 1 of Annex 1 of RTS2, the unintended consequence will be that auctions set up for non-equities might become subject to pre-trade transparency requirements calibrated for FBAs that have been used in the equity environment to circumvent the DVCM, essentially shifting trades to dark pools. Commodity derivatives auctions have essentially been used to avoid a shift of trades to the uncleared OTC environment. Given that these auctions serve opposite purposes, it should be avoided that they become subject to a one size fits all approach in terms of pre-trade transparency requirements. Instead, the auctions set up by commodity exchanges should continue to be considered as periodic actions.

Please also refer to our response to Question 5. Should ESMA still be convinced that a broader definition of FBAs is needed and is necessary to apply to non-equity instruments, we believe it is crucial to introduce optionality between either Option 1 or Option 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, more data could slow down the operation of the venue, which we do not believe is in the interest of the market participants. Once there is evidence that the pre-trade information is of use to market participants and there is evidence that market participants would like to see further harmonisation, ESMA could reconsider the proposal to further harmonise the pre-trade transparency publication.

Should ESMA still decide a common format is needed, we have four preliminary comments on the table.

1) We do not believe the inclusion of the ISIN will add value, as only few customers use this label when they select the product they wish to trade;

2) Market participants are generally aware of the size of a lot and the inclusion of notional and notional currency is not needed;

3) It seems contradictory to include the strike and strike currency of an option, but not include other data such as the maturity of the option and whether it is a put/call; and

4) We have noted that there is no field to distinguish between bids and asks.

<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>

With regard to the proposed **date of application of transparency calculations**: We very much welcome ESMA’s suggestion not to implement changes on a fixed date, such as 1 June, but to start on a Monday, allowing for changes to be made over the weekend. However, we are of the opinion that the third Monday of June would be preferable as:

1) 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 on ensuring this life cycle event is completed correctly.

2) In the past, new transparency calculation sometimes coincided with the use of a different data template from ESMA. If this occurs, there is very 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 6 weeks seems more suitable to ensure that the deadline is met and the changes are implemented in an orderly manner.

Alternatively, as we understand that the preferred week depends on the type of products a trading venue lists, we would also support a more flexible approach whereby a deadline is set, rather than a fixed date. The deadline should then take into account the 6 weeks period to implement the changes, as suggested above.

With regard to the **submission of quantitative data**: Yes, we believe that the new table with quantitative data will provide clarity, certainty and, not least, quality with regard to the data that is required.

<ESMA\_QUESTION\_RVEW\_27>

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

<ESMA\_QUESTION\_RVEW\_28>

We agree and support the proposal, understanding it confirms the status quo.

<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>

As an introductory remark, we believe there is one important issue that touches upon all the below proposals, i.e. the data scope. While proposal 9 deals with the issue, we would like to flag from the beginning that 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, Europex believes it was important for ESMA to compare data from screen trading, pre-arranged trading as well as the uncleared space. This is because assessing the differences between these spaces 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, however, should evidently 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. 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.

This becomes especially relevant for commodity derivatives which generally originate from the OTC markets. To mention some attributes that define the commodity markets uniqueness’ is to look at the market participants trade behaviour, e.g., speculative appetite, hedge requirements/needs and professionality. Even within a commodity product seeing substantial trading today, the mix of participants and their needs vary. In commodity products where there is always a high degree of fundamental hedgers, the maturities are often longer dated, adjustments in their portfolios are often tied to certain expiries, seasonality, and are to some extent more ad-hoc than in the equity markets, for example.

Where commodity markets have reached a certain/decent liquidity (in terms of transactions and volume) they are often dependent on the symbiosis of a well-functioning broker market, catering to longer dated contracts and more tailored requirements from the traders (such as options and option strategies), in tandem with an independent exchange order book, determining a trustworthy closing price. Often, a pre-arranged trade is fundamental to get markets active during the day.

In addition, most commodity markets have alternative routes than exchange registration of pre-arranged trades, where the result from curbing the broker driven share of the market has detrimental and adverse effect on both the overall liquidity and systemic risk (i.e., trades end up in the uncleared environment). As an example, a market such a 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 therefore not make sense for this market to be classified as liquid on the basis of the proposed parameters.

In the electricity and gas markets, the markets are heavily dependent on brokers to tailor and conclude options and options strategies, as well as longer dated futures trades and the more ad-hoc portfolio adjustments when getting closer to expiry, especially for the less active, though very important fundamental hedgers. With the proposed setup, accumulating screen and pre-negotiated trades, we are concerned that products including their maturity buckets will be wrongfully accounted for.

**Proposal Commodity Derivatives 1**:

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**

As a preliminary comment**,** Europex 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 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 the liquidity of several 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 Europex members of course do 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 gas, for example, 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. Appreciating 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, Europex 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 STS and ADNA.

We support the introduction of the criterion Standard Trade Size (“STS”), 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 of 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 firsts 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.

Adding the STS mode\_5 criterion 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.

**Treatment of energy commodity options & spreads**

As noted earlier, with several modifications to, amongst others, the liquidity determination, Europex 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. This is exacerbated by the data scope referring to both pre-arranged trading and order book trading. Please refer to our introductory remark.

According to ESMA’s calculations the TTF Gas contract would be exposed to a LIS threshold between 200 and 1000 lots, 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 nearly 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 does not naturally fit the category of ‘Energy commodity options’ as specified in RTS 2. Existing ESMA Q&A[1] 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.

Europex 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.

In strategies such as 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.

However, with inter-commodity spread trading strategies, which by definition involve 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. ICE 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 is an important tool to meet EU climate change ambitions.

In order to not disturb the orderly functioning of these markets and to allow market participants to hedge their risks, Europex recommends either to fully account for 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 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, Europex 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, Europex disagrees with the new proposal.

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

1. 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;
2. The volumes are converted to EUR (and threshold are set in EUR);
3. The level of the floor is such that most liquid classes have a LIS equal to the floor; and
4. The rounding rules in Article 13(12) of RTS2 inflate the size of the thresholds.

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

1. As stated in #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 to avoid setting 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 space, instead of on-book. Imposing one minimum floor across all 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 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 phase-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 space.

**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 your 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 be 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 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 harmonised 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 on-book data only. Please see our introductory comment. In the context of the data collection, Europex did advise ESMA 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 nothing but order book data.

<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, however, 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 out 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. 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 Europex does not disagree with adding “renewable energy”, we wonder which types of energy exactly ESMA had in mind, as for example solar power and wind power futures from our perspective are C10 derivatives.

**SC\_Commo\_5: For energy sub-asset classes, delete the segmentation criterion “load type”:**

Europex 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**: Europex 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 indeed 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**: Europex agrees with splitting segmentation criterion 1 in two. However, further sub products for dairy are necessary.

**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**: Europex 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”:**

Europex agrees that containerships should be considered as a further sub product of dry freight. Europex 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, Europex noted there is only a list of routes or time charters for wet freight. We would recommend to ESMA to also have a list detailing the different routes and time charters for dry freight. These would 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, Europex 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. This is because when concluding transactions off-book, market participants are already aware of the fact that these transactions must benefit from a waiver, otherwise, an off-book transaction would not be possible.

<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 do not believe that the introduction of a flag for pre-arranged non-equity transactions will be useful for market participants and NCAs, who can already identify such pre-arranged transactions formalised on trading venues, even in real-time. However, it might be useful for ESMA to distinguish pre-arranged trading from order book trading to calculate the IL and LIS thresholds. Please see also our comments to proposal Commodity Derivatives 9 of Question 30.

<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>