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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 | Invesco |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_RVEW\_1>

As a global asset manager with operations across the EU, Invesco welcomes the opportunity to contribute to the European Securities and Markets Authority (ESMA) consultation on the review of the EU MiFIR regulatory technical standards (RTS) specifying pre- and post-trade transparency requirements for equity and non-equity instruments.

While the EU MiFID II/MiFIR framework has only been in application since January 2018, it is appropriate to consider the application and effectiveness of the regulatory framework in the context of the effective functioning of European financial markets.

On balance, we believe that the implementation of EU MiFID II/MiFIR has generally improved the overall regulatory framework in financial services, and that significant and positive progress as regards market structure has been achieved. However, we also believe that the framework would benefit from some targeted amendments and optimisations.

As such, in responding to this consultation, we have focused on the following area:

* Pre-trade transparency for trading systems, in particular FBA trading systems
* Amendments to the LIS thresholds for waivers and deferrals for ETFs
* Amendments to LIS and SSTI thresholds in RTS 2
* Implementation and timing issues

Invesco can provide further detail on these issues at ESMA’s request.

<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>

Invesco agrees with ESMA’s proposal to amend Article 7(2) of RTS 1 to increase the pre-trade large in scale (LIS) threshold for exchange traded funds (ETFs) from EUR 1,000,000 to EUR 3,000,000. We agree with ESMA’s assessment, as per paragraph 16 of the consultation, that revising the threshold in the proposed manner represents a proportionate approach to enhancing pre-trade transparency in the market while at the same time protecting large orders.

However, in increasing the pre-trade LIS threshold for ETFs, it is our view that the amended rules should more explicitly define how the threshold should be applied, for example, by ensuring that all venues publicise pre-trade thresholds in a machine-readable format and clarifying whether sub-LIS trade flow should be directed to lit venues only.

<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>

Invesco agrees with ESMA’s proposal to amend Table 5 of Annex II of RTS 1 to increase the minimum qualifying size for ETF transactions that can benefit from a 60-minute delay in publication post-trade from EUR 10,000,000 to EUR 15,000,000. In line with our response to Q1, we agree with ESMA’s assessment, as per paragraph 24 of the consultation, that revising the threshold in the proposed manner represents a proportionate approach to enhancing post-trade transparency in the market while at the same time protecting large orders.

However, as ESMA seeks to revise post-trade transparency rules for ETFs, it is our view that policymakers should seek greater harmonisation in the implementation and application of the rules across all exchange traded products (ETPs), including exchange traded commodities (ETCs). At present, ETCs follow fixed income reporting rules as they are classed as debt instruments meaning it is possible to have a 4-week deferral in the publication of qualifying trade data, which, in our view, is not appropriate for markets in commodities such as precious metals etc.

Moreover, end-of-day deferral reporting rules should be applied more robustly across EU Member States to ensure that all qualifying trade data is published before an earlier cut-off point (e.g., 18.30 CET on the same day of trading).

<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>

No response provided.

<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>

Invesco does not support ESMA’s proposal to include within Annex 1 of RTS 1 and RTS 2 frequent batch auction (FBA) systems as a new type of trading system with tailored pre-trade transparency requirements. Nor do we agree with ESMA’s updated description of period auction trading systems. It is our view that, in its Opinion of October 2019, ESMA took appropriate steps to clarify the application of pre-trade transparency and price determination in FBAs. This was a well-balanced approach and we do not believe there is sufficient evidence to suggest that further recalibration of the rules applying to periodic auction systems is warranted.

Indeed, we believe that the additional pre-trade transparency proposed by ESMA in respect of FBA systems would undermine the benefits that period auction venues have brought to market participants. It is our view that making orders transparent prior to a match being identified (either through full order book disclosure or the publication of best available price and volume) and making an imbalance quantity public during the course of an auction would provide sufficient data to enable exploitation of institutional interest by those capable of moving fastest in continuous markets – i.e., ESMA’s proposal would reintroduce the advantages (to some market participants) and disadvantages (to most market participants) of speed.

If ESMA pursues this proposal, the current pre- and post-trade price stability that attracts customers and liquidity to periodic auctions would, in our view, be immediately eliminated to the detriment of end-investors. We strongly discourage ESMA from taking such action.

<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>

As outlined in our response to Q4, Invesco does not support ESMA’s proposal to include within Annex 1 of RTS 1 and RTS 2 FBA systems as a new type of trading system with tailored pre-trade transparency requirements. Nor do we agree with ESMA’s updated description of period auction trading systems. It is our view that, in its Opinion of October 2019, ESMA took appropriate steps to clarify the application of pre-trade transparency and price determination in FBAs. This was a well-balanced approach and we do not believe there is sufficient evidence to suggest that further recalibration of the rules applying to periodic auction systems is warranted.

As such, we do not support either option proposed by ESMA on the applicable pre-trade transparency requirements for FBA trading systems.

Indeed, we believe that the additional pre-trade transparency proposed by ESMA in respect of FBA systems would undermine the benefits that period auction venues have brought to market participants. It is our view that making orders transparent prior to a match being identified (either through full order book disclosure or the publication of best available price and volume) and making an imbalance quantity public during the course of an auction would provide sufficient data to enable exploitation of institutional interest by those capable of moving fastest in continuous markets – i.e., ESMA’s proposal would reintroduce the advantages (to some market participants) and disadvantages (to most market participants) of speed.

If ESMA pursues this proposal, the current pre- and post-trade price stability that attracts customers and liquidity to periodic auctions would, in our view, be immediately eliminated to the detriment of end-investors. We strongly discourage ESMA from taking such action.

<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>

No response provided.

<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>

No response provided.

<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>

Invesco sees merit in considering further standardisation regarding the way in which pre-trade information is formatted and disclosed so as to facilitate consumption and aggregation via a consolidated tape.

<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>

Per our response to Q2, it is our view that end-of-day deferral reporting rules should be applied more robustly across EU Member States to ensure that all qualifying trade data is published before a specified cut-off point (e.g., 18.30 CET on the same day of trading).

<ESMA\_QUESTION\_RVEW\_9>

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

<ESMA\_QUESTION\_RVEW\_10>

No response provided.

<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>

Yes, we agree with the proposed amendment of Article 11(3)(c) of RTS 1 which should provide clarity on the post-trade LIS transactions to be excluded under that Article.

<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>

No response provided.

<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>

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No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<ESMA\_QUESTION\_RVEW\_21>

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

<ESMA\_QUESTION\_RVEW\_22>

No response provided.

<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>

No response provided.

<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>

It is our view that current pre-trade transparency requirements for fixed income securities have exceptionally limited/no beneficial impact on price formation. In many respects, where brokers provide price indications, they are generally available for a short period of time and can be challenging to interact with as a result – more often than not, the execution price will be different from the pre-trade indications provided by brokers.

Regarding OTC derivatives (with the exception of very ‘on-the-run’ (OTR) structures), the situation is very much the same. It is our view that current pre- and post-trade transparency requirements offer very little benefit from a price formation perspective. Similar to the above, more often than not, the execution price for OTC derivatives (including some OTR structures) will be different from the pre-trade indications provided by brokers.

In addition, in line with our responses to Q4 and Q5, Invesco does not support ESMA’s proposal to include within Annex 1 of RTS 1 and RTS 2 FBA systems as a new type of trading system with tailored pre-trade transparency requirements. Nor do we agree with ESMA’s updated description of period auction trading systems. It is our view that, in its Opinion of October 2019, ESMA took appropriate steps to clarify the application of pre-trade transparency and price determination in FBAs. This was a well-balanced approach and we do not believe there is sufficient evidence to suggest that further recalibration of the rules applying to periodic auction systems is warranted.

<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>

As outlined in our response to Q24, it is our view that current pre-trade transparency requirements for fixed income securities have exceptionally limited/no beneficial impact on price formation. In many respects, where brokers provide price indications, they are generally available for a short period of time and can be challenging to interact with as a result – more often than not, the execution price will be different from the pre-trade indications provided by brokers.

Regarding OTC derivatives (with the exception of very ‘on-the-run’ (OTR) structures), the situation is very much the same. It is our view that current pre- and post-trade transparency requirements offer very little benefit from a price formation perspective. Similar to the above, more often than not, the execution price for OTC derivatives (including some OTR structures) will be different from the pre-trade indications provided by brokers.

<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>

Per our response to the March 2020 ESMA consultation on the transparency regime for non-equity and the trading obligation for derivatives (DTO), Invesco continues to support (1) ESMA’s assertion that the SSTI waiver/deferral regime adds further complexity to an already complex pre- and post-trade transparency regime in representing another threshold to be assessed and (2) ESMA’s recommendation to delete the pre- and post-trade SSTI waiver/deferral and lower the pre- and post-trade LIS threshold proportionately.

<ESMA\_QUESTION\_RVEW\_26>

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

<ESMA\_QUESTION\_RVEW\_27>

No response provided.

<ESMA\_QUESTION\_RVEW\_27>

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

<ESMA\_QUESTION\_RVEW\_28>

No response provided.

<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>

Invesco questions whether the proposed deletion of Article 12(1)(b) of RTS 2 could lead to unnecessary duplication of interfund trade reporting for non-equity instruments.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

In our response to Q26, we reiterated our continued support of (1) ESMA’s assertion that the SSTI waiver/deferral regime adds further complexity to an already complex pre- and post-trade transparency regime in representing another threshold to be assessed and (2) ESMA’s recommendation to delete the pre- and post-trade SSTI waiver/deferral and lower the pre- and post-trade LIS threshold proportionately.

As such, we question the logic of suggesting further amendments to the rules governing the setting of the SSTI thresholds for non-equity instruments.

<ESMA\_QUESTION\_RVEW\_36>

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

<ESMA\_QUESTION\_RVEW\_37>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<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>

No response provided.

<ESMA\_QUESTION\_RVEW\_41>

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

<ESMA\_QUESTION\_RVEW\_42>

We welcome ESMA’s acknowledgement that firms will require sufficient lead-time to implement the necessary operational changes to comply with any updated transparency obligations. It is important that EU policymakers and regulators take a pragmatic approach to the implementation of new rules. Invesco would support ESMA’s proposal to ensure that firms are provided with at least six months to comply with any updated transparency obligations, following publication of the RTS in the OJEU.

<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>

No response provided.

<ESMA\_QUESTION\_RVEW\_43>