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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 | Virtu Financial Europe |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Ireland |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_RVEW\_1>

Virtu Financial Europe (collectively **'Virtu'**) is a group of investment firms authorised in both the EU and the UK which carry out a range of MiFID activities including market making, proprietary trading, brokerage services, acting as a systematic internaliser and the operation of a both an EU and UK Multilateral Trading Facility (“**MTF**”).

Virtu welcomes ESMA's efforts to reexamine the transparency technical standards. We have focused our response on RTS 1 issues and refer to previous submissions made in response to ESMA’s review of MiFIR[[1]](#footnote-2). We are happy to engage with ESMA further on these matters, either as a standalone firm or through our trade association FIA EPTA.

<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>

While we note that the proposal to change the LIS value has been reduced from the originally mooted €5million to €3 million we maintain that this blanket approach for all ETFs is not appropriate.

If a change is to be made, then a distinction should be drawn between ETFs that are liquid or illiquid. An increase above €1million would be a significant trade size in illiquid ETFs. Illiquid ETF quote spreads would be negatively impacted by pre trade transparency which would be negative for end investors.

The liquidity of an ETF is not only defined by how frequently or how much it trades on a daily basis - an ETF is as liquid as the underlying basket or proxy assets to that basket. We would suggest a method which looks at the liquidity of the underlying basket or proxy assets to determine whether an ETF is liquid or not. For example, an S&P 500 ETF that trades frequently on exchange is likely to have similar liquidity to that of an S&P 500 ETF that trades infrequently, as the underlying basket via the creation/redemption process or proxy assets, such as futures, dictates the total liquidity.

<ESMA\_QUESTION\_RVEW\_1>

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

<ESMA\_QUESTION\_RVEW\_2>

We note ESMA’s reduction in the threshold from the mooted €20million in the Call for Evidence but continue to oppose ESMA's recommendation of raising ETFs threshold above €10million.  The majority of ETF liquidity provision comes from market maker liquidity.  The immediate publication of trades as large as €15million would have a negative impact on quoted risk spreads, in particular for less liquid ETFs.  A reasonable delay should continue to be permitted for the hedging of risk associated with principal liquidity provision.  Without this delay, end investors would be impacted by wider spreads.

<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>

Yes, we support the changes as proposed and welcome the clarity they will bring to the regime.

<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>

We do not agree with delimitating FBAs from traditional periodic auctions.

During conventional periodic and frequent batch auctions (FBAs), the indicative Price and Volume are the most important values required for electronic interaction. This information becomes available only when there are both Buy and Sell orders present.

Virtu does not agree with the proposal to require the disclosure of orders submitted to FBAs, orders which are submitted and are only single sided will not trigger the publication of Indicative Volume and Price and could have adverse effect or larger trading impact.

FBAs operate in a manner very similar to that of conventional periodic auctions on primary exchanges and we do not consider that they ought to be subject to distinct regimes. Based on Virtu’s internal research, execution in FBAs have a higher quality of executions in the form of adverse selection relative to lit executions on Primary and MTFs. FBAs help investors by reducing market impact – that benefit would be undermined by requiring the disclosure of all orders submitted to FBAs. Virtu notes that it may be contradictory to enable hidden or partially hidden iceberg orders on certain markets, proposed by ESMA in the MiFIR review[[2]](#footnote-3), but to require the disclosure of all orders submitted to FBAs.

We further refute the suggestion that FBAs constitute “non-price forming systems”. A distinction should be drawn between a venue on which the only uncrossing price available is necessarily fixed by reference to a price derived from elsewhere (which would be inherently non-price forming), and venues which facilitate the execution of orders which the client has instructed be pegged to the mid-point.

We agree that those venues which do not facilitate price-formation by means of their execution logic should operate under a pre-trade transparency waiver - however one should not confuse such venues with those which are facilitative of price-formation but, due to the majority of investors electing to submit orders to that venue which are pegged to the mid, the price formation of the venue is less apparent.

If a buyer and seller both decide to limit their orders to the mid-point, the price formation process on any venue would by definition produce a mid-point price as the only price at which they can and should match. That does not preclude the periodic auction from generating a different auction price in other scenarios based on the order prices entered e.g. a sell order with a fixed limit vs. a buy order with a price protection of peg ask could be anywhere within the limits of those 2 orders.

Virtu would argue investors should be allowed to use pegged instructions as price protections on their orders without penalty.

<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>

Please see response to question 4. We do not support either option for the reasons outlined therein.

<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>

Yes, we support the proposal.

<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>

Yes, we support these amendments and the clarity they would bring.

<ESMA\_QUESTION\_RVEW\_7>

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

<ESMA\_QUESTION\_RVEW\_8>

We support the amendments as outlined.

<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>

Yes, we support the changes proposed. Alternatively, the wording could be amended to allow for reporting up to one hour after the commencement of the next trading day.

The drafting could then read:

15.3 For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:

(a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;

(b) no later than one hour after the opening of the trading day of the most relevant market in terms of liquidity on the next trading day for transactions not covered in point (a).

<ESMA\_QUESTION\_RVEW\_9>

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

<ESMA\_QUESTION\_RVEW\_10>

Yes, we support the changes as outlined.

<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 support the changes as outlined.

<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>

Yes, we support these changes as outlined.

<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>

Yes, we support ESMA’s proposal as outlined.

<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>

Yes, we support the proposal of the new tables as outlined.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree that these flags should be deleted as they are rarely used effect data quality.

<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>

Yes, we agree with this deletion.

<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>

Yes, we agree with these additions.

<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>

Yes, we agree with the proposal as the current widespread use of LRGS is not correct or appropriate. To prevent information leakage the flag should only be used for completely filled LIS orders.

<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>

Yes, we agree that these additional flags are not necessary for the reasons outlined therein.

<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>

Yes, we agree with the proposal. It will be especially helpful given the impetus for developing a CT.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_27>

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

<ESMA\_QUESTION\_RVEW\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_28>

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

<ESMA\_QUESTION\_RVEW\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_29>

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

<ESMA\_QUESTION\_RVEW\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_30>

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

<ESMA\_QUESTION\_RVEW\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_31>

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

<ESMA\_QUESTION\_RVEW\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_32>

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

<ESMA\_QUESTION\_RVEW\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVEW\_33>

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

<ESMA\_QUESTION\_RVEW\_34>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

1. ESMA70-156-2188 [↑](#footnote-ref-2)
2. Ibid. [↑](#footnote-ref-3)