**Reply** **form: MiFIR Review**

RTS 2, RTS on reasonable commercial basis and RTS 23

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Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments 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.

ESMA will consider all comments received by **28 August 2024.**

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_CP1\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). 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 close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | International Capital Market Association (ICMA) |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | International |

# Questions

**CP on the amendment of RTS 2**

1. Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

<ESMA\_QUESTION\_CP1\_1>

ICMA agrees with the definition set out in the ESMA proposal.

<ESMA\_QUESTION\_CP1\_1>

1. Do you consider that the definition should include other trading systems? Please elaborate.

<ESMA\_QUESTION\_CP1\_2>

ICMA does not believe that other trading systems should be included in the definition.

<ESMA\_QUESTION\_CP1\_2>

1. Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

<ESMA\_QUESTION\_CP1\_3>

ICMA agrees with the definition set out in the ESMA proposal is relevant for specifying the characteristics of these trading systems.

<ESMA\_QUESTION\_CP1\_3>

1. Do you agree to use ESA 2010 to classify bond issuers If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

<ESMA\_QUESTION\_CP1\_4>

ICMA would note that any system that is open to interpretation by multiple users is always likely to result in inconsistent or erroneous classifications, particularly where the classification is not necessarily obvious. Trading Venues are reliant on different reference data providers to provide the relevant CFI code. In certain cases, these will be different with respect to the same security. Furthermore, the current process for correcting incorrectly classified securities is onerous and lengthy, usually involving two NCAs in the case where the initial transaction is between two jurisdictions. Accordingly, the only way to ensure consistency in bond classification, as well as to facilitate swift corrections of misclassified securities, is to have a central golden source. Ideally this would be ESMA.

ICMA notes that there is precedence of ESMA providing Q&A guidance on the correct classification of a list of public bond issuers.

It should also be recognized that outside of the EU reporting framework, most market participants will not use the FIRDS/FITRS classifications and will instead rely on their own sources of reference data.

<ESMA\_QUESTION\_CP1\_4>

1. Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

<ESMA\_QUESTION\_CP1\_5>

ICMA believes that the pre-trade LIS thresholds for bonds should align with the real-time thresholds for post-trade transparency, which ICMA addresses in its answer to Q.12. Furthermore, ICMA proposes more granular groupings of bonds than those proposed here, with the rationale explained in its answer to Q.11. An additional consideration, also explained in the answers to Q.11 and Q.12 is that there is no single methodology for determining the appropriate size threshold.

Accordingly, the suggested thresholds provided here should be viewed in parallel with those suggested for the post-trade calibration in the answer to Q.12, but also noting the recommendation that ESMA undertake its own analysis based on the outlined methodologies.

|  |  |  |
| --- | --- | --- |
| **Grouping** | **Bond type** | **LIS** |
| 1 & 2 | Sovereign bonds | €5,000,000 |
| 3 | Other public bonds | €1,000,000 |
| 4 | Corporate, convertible, and other bonds – IG | €1,000,000 |
| 5 | Corporate, convertible, and other bonds – HY | €750,000 |
| 6 | Covered bonds | €1,000,000 |

<ESMA\_QUESTION\_CP1\_5>

1. Do you agree with the proposed LiS pre-trade thresholds for SFPs and EUAs? In your answer, please also consider the analysis provided in section 4.2.2.

<ESMA\_QUESTION\_CP1\_6>

ICMA would refer ESMA to the answers to Q.14 and Q.15 for consistency with our post-trade proposal.

<ESMA\_QUESTION\_CP1\_6>

1. Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

<ESMA\_QUESTION\_CP1\_7>

ICMA agrees with the approach taken for the illiquid waiver for pre-trade transparency with respect to bonds and SFPs. ICMA would also refer ESMA to the answers to Q.11 and Q.14.

<ESMA\_QUESTION\_CP1\_7>

1. Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

<ESMA\_QUESTION\_CP1\_8>

ICMA agrees with the introduction of “Flag” in Table 2 of Annex II (Field No 5 in Table 5).

While ICMA recognizes that the addition of the “Trading system” field (No 6 in Table 5) may create additional cost for Trading Venues, the additional information this provides should be beneficial to market participants. In particular it may be helpful in helping to identify which trading systems are optimal for certain asset classes, or individual securities, whether in general, at certain times, or under specific conditions. It is further noted that this is a Level 1 requirement, so largely a moot point.

<ESMA\_QUESTION\_CP1\_8>

1. Do you agree not to change the concept of “as close to real-time as technically possible”? If not, what would be in your view the maximum permissible delay?

<ESMA\_QUESTION\_CP1\_9>

ICMA agrees not to change the concept of “as close to real-time as technically possible”.

<ESMA\_QUESTION\_CP1\_9>

1. Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

<ESMA\_QUESTION\_CP1\_10>

ICMA agrees with the changes proposed for the purpose of reporting OTC transactions.

<ESMA\_QUESTION\_CP1\_10>

1. Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

<ESMA\_QUESTION\_CP1\_11>

While ICMA believes that the post-trade deferral matrix for bonds, established in the Revised MiFIR Level 1, is largely workable, extensive analysis and member discussion have led us to conclude that a number of modifications to the ESMA proposal are required. This is with the explicit goal of optimizing the post-trade deferral calibrations, which ICMA defines as maximizing the universe of transactions that are subject to real-time transparency without detrimental market impacts, while ensuring appropriate deferrals for the subset of trades that warrant a degree of protection.

ICMA proposes the following modifications to the ESMA proposal, which it believes are consistent with the Level 1 requirements, and which better achieve the objective of optimizing the deferral calibrations:

1. More granular groupings.
2. A more data-driven approach to establishing the appropriate Liquidity determinant (based on outstanding issuance size).
3. A refinement to the proposed matrix, which essentially splits out real-time (“N/A” in the ESMA proposal) into *Liquid* and *Illiquid* as well as the *Very Large* category also into *Liquid* and *Illiquid* sub-categories. This is discussed further in the answer to Q.12.
4. A more data-driven approach to establishing the appropriate trade size thresholds for the relevant deferral categories. This is also discussed further in the answer to Q.12.

The application of Average Daily Volumes

In identifying helpful modifications to the ESMA proposal as well as suggesting an alternative, more accurate approach to determining the appropriate thresholds (both for liquidity determination and deferral category calibrations), ICMA uses the historical average daily volumes (ADV) of notional amounts traded for various classes and sub-classes of bonds. This is based on a historical data set of MiFIR EU reported trades for all of 2023. Further details of how the data set is sourced and treated are provided in Annex I of this response.

ICMA uses ADV as a measure of liquidity, allowing for liquidity profiling of different classes and sub-classes of bonds, including estimating market depth, from which one can infer the potential time required to trade out of a risk position for a given size and bond. (This last point is discussed in more detail in the answer to Q.12.)

It is important to consider that there are essentially two main approaches for calculating ADV. One is an aggregate approach, which is calculated by summing the total notional value traded across all securities on a given day and then dividing this sum by the number of unique securities (ISINs) traded on that day. The other is an individual ISIN approach which involves calculating the ADV for each security individually, dividing this by the number of trading days for the data time series, and then averaging these individual values. More details of both methodologies are provided in the Annex IV of this response, while, for completeness, calculations using the individual ISIN approach are provided in Annex III. Neither approach is necessarily right nor wrong, however it is important to note that the latter (individual ISIN) methodology will tend to produce lower ADV measures than the aggregate approach, largely due to the fact it factors in the infrequency with which certain ISINs trade.

ICMA has taken the former (averaging) approach in providing feedback to this response due to its relative simplicity, but it is important to bear this in mind, particularly when estimating the time to trade out of a risk position, which is highlighted in the answer to Q.12. However, the averaging approach is perfectly adequate for determining appropriate groupings and in establishing liquidity thresholds.

Note that when calculating the adv, ICMA uses a 5-day moving average (ADV(5)) to help smooth out any short-term volatility in the daily calculations.

Groupings

When establishing groupings of bond classes and sub-classes for the application of a deferral regime, it is imperative that the bonds within each grouping have relatively similar liquidity profiles. This is because these bonds will be subject to the same liquidity determinant and the same trade size thresholds. groupings with diversely heterogenous bonds will weaken the deferral framework and lead to adverse outcomes.

ICMA has used ADV analysis of various classes and sub-classes to identify where more granular groupings than those in the ESMA proposal are warranted, while balancing this with the need to ensure that the framework is not overly complex. ICMA further recognizes that it is important to be able to categorize groupings relatively easily, transparently, and consistently.

*Sovereign and other public bonds*

One of the most striking observations from the data is the difference between the vanilla (fixed coupon) government bonds of the largest sovereign issuers and other sovereign and public bonds. In our analysis we focus on the government bonds of the sovereign issuers that individually account for more than 4% of total notional value of sovereign debt traded in the EU for the sample data set (in this case all of 2023). These are the government bonds issued by France, Germany, Italy, Spain, the UK, and the US. We will refer to these as group “SB1”. There are a number of factors that make SB1 bonds distinct from all other sovereign bonds. Firstly, SB1 bonds account for 90%[[1]](#footnote-2) of the total notional value of government bonds traded in the EU in 2023. Secondly, their issuance sizes are significantly larger than most other sovereign bonds, with an average notional outstanding of €37.9bn and a median value of €31.6bn, compared with €5.6bn and €1.6bn respectively for all other sovereign issuers bonds. Thirdly, the government bonds of these issuers are widely used as reference bonds for pricing and hedging, including for other sovereign bond markets. Unlike most other sovereign bond markets traded in the EU, they also have deep and active futures markets. Furthermore, when we look at the ADV of the SB1 grouping compared to that of non-SB1 sovereign bonds (which we call “SB2”), there is no comparison. The average ADV(5) for SB1 group equates to €116.44mn against €18.07mn for the SB2 group. The full time series for 2023 can be seen in Figure 1 in Annex I.

ICMA also looked at the ADVs of inflation-linked bonds (“linkers”) of the largest issuers and concluded that these were significantly less liquid than vanilla coupon bonds and were more closely aligned with the SB2 grouping. Inflation linked bonds of the largest issuers exhibit an average ADV(5) of €36.9mn. The full time series for 2023, compared to the ADV(5) of the SB2 group can be seen as per Figure 2. Accordingly, ICMA proposes that only vanilla, fixed coupon government issuance is included in SB1, and that bonds such as linkers, coupon strips, or floating rate notes (“floaters”) be included in SB2.

Grouping these SB1 government bonds together with all other sovereign bonds (SB2) into the same deferral matrix will generate a deeply suboptimal outcome due to the highly distortive nature of these largest issues. Even applying a relatively high liquidity threshold (eg €10bn outstanding issuance) will still be suboptimal given the significant difference in ADVs between *Illiquid* SB1 and SB2 bonds (€30.5mn vs €10.9mn). This is illustrated in Figures 1 to 3 in Annex I.

Hence ICMA proposes that for the EU deferral regime for sovereign bonds to be credible, the fixed coupon bonds of the largest government issuers (ie with a share >4% of total annual traded volume) need to be grouped separately from other sovereign bonds. ICMA would also point to the UK FCA proposal which provides a different treatment for the very largest sovereign issuers.

ICMA would recommend that ESMA reassess the individual share of each sovereign issuer (based on fixed coupon issues) with respect to the total traded notional value of all sovereign bonds in the EU on a regular basis (say, every two years) in order to determine the composition of the SB1 group.

ESMA may further wish to consider the treatment of US Treasury bonds, for some consistency with TRACE. As ESMA may be aware, currently TRACE only provides data for transactions in on-the-run treasuries. Under the ESMA proposal, US Treasuries traded in the EU would be afforded a higher degree of transparency than in the US.

*Other public bonds*

Based on ADV analysis, ICMA also believes that it is warranted for other public bonds (with an ADV of €4mn) to be grouped separately, rather than mixed with sovereign bonds (ADV €18mn).

*High Yield credit*

Given the distinct difference between investment grade (IG) and high yield (HY) credit, ICMA also proposes splitting the *Corporate, convertible, and other bonds* group into IG and HY. While ADVs do not immediately look dissimilar, and a larger issuance size threshold for the liquidity determinant could help move most of HY issuance into the *Illiquid* categories, this would fail to recognize the fact that IG and HY are effectively distinct asset classes. While there is a cross-over segment of HY that may have a similar liquidity profile to IG, the lower rated segment of the market is structurally very different, with both specialist investors and market-makers. When we look at ADV for IG versus that of HY with a credit rating equal to or lower than single B, we do see a sharp relative fall (see Figures 4 and 5 in Annex I). The products are traded differently, too. While IG credit is usually priced and traded on a spread basis (yield vs benchmark), HY credit is more commonly quoted and traded on price (ie percentage of par value). The latter is also more difficult to hedge and is associated with significantly higher idiosyncratic risk. For all of these reasons, HY credit is likely to be far more sensitive to information leakage and therefore requires a different deferral treatment to IG.

ICMA would also point to the fact that US TRACE applies a different transparency treatment for IG and HY corporate bonds, while the UK FCA proposes to do something similar.

In order for data providers and the CTP to categorize IG and HY consistently it is important to establish a relatively straightforward determination methodology, ideally supported by a centralized and accessible database.

In the case of TRACE, FINRA captures the credit ratings from two agencies at the end of each day via direct feeds (FINRA pays a fee for this). The FINRA definition for IG vs HY is available in FINRA rule 6710(h), (i) and (j) (<https://www.finra.org/rules-guidance/rulebooks/finra-rules/6710>). Based on this, FINRA makes available to participants its IG/HY assessment for each security (but not the underlying agency ratings).

A possible point of reference could be the methodology for determining IG employed by the ECB in its Corporate Sector Purchase Programme (CSPP). (This is outlined in Article 83 and 84 of [Guideline ECB/2014/60](https://eur-lex.europa.eu/search.html?&statSubType=MONETARY_POLICY&type=statistics&statType=ECB&sortOne=DD&sortOneOrder=desc&sortOneOrder=desc?skey=ECB/2014/60)). There is also a well-established precedence for utilizing external rating agencies in EU regulation with CRR/CRD.

Accordingly, ICMA proposes 6 groupings for the EU transparency framework:

|  |  |  |
| --- | --- | --- |
| **Grouping** | **Description** | **ADV (€mn)** |
| 1 | Largest sovereign bond issuers (vanilla) [SB1] | €116.44 |
| 2 | All other sovereign bonds [SB2] | €18.07 |
| 3 | Other public bonds | €4.01 |
| 4 | Corporate, convertible, and other public bonds IG | €1.63 |
| 5 | Corporate, convertible, and other public bonds HY | €1.72 |
| 6 | Covered bonds | €6.35 |

Calculating liquidity thresholds

In previous work, ICMA has applied regression modeling to identify the significant endogenous features of a bond that contribute to liquidity (measured in terms of ADV). After time since issuance, outstanding issuance size was identified as the next most important feature. Depending on bond class or sub-class, other features may also have an impact to some degree, including time to maturity, currency denomination, and credit rating. For sovereign bonds the analysis is complicated further by additional considerations such as the distinction between on-the-run and off-the-run bonds and futures deliverability.

For the purposes of this response, ICMA has focused primarily on outstanding issuance size (hereafter referred to as *issuance size*) as the sole liquiditydeterminant, consistent with ESMA’s proposal. However, ICMA does not discount the fact that the framework could be improved by incorporating other liquidity determinants, for example time to maturity, particularly in the case of sovereign bonds. (ICMA did look at the ADV maturity profile of sovereign bonds which is provided in Figures 6 and 7 in Annex I). Given the duration effect on liquidity (and risk), which naturally leads to smaller trade sizes in longer maturities, ICMA could support the introduction of an additional liquidity determinant based on time to maturity (which would also be consistent with the UK proposal for sovereign bonds).

ICMA has taken a 3-step approach to identifying the appropriate issue size threshold for each of the 6 groupings in order to differentiate betweenliquid and illiquid*:*

1. Applying a purely scientific ADV-based methodology.
2. Reference to the issuance size distribution of the relevant grouping (in particular the average issuance size).
3. Viewing the ratio of liquid:illiquid bonds for each issuance size threshold (noting that there is no rule for this, given that some bond classes are inherently illiquid).

Particularly in the case of the sovereign bond groupings, some members expressed concerns that the ESMA proposal tends toward low thresholds (eg €1bn for sovereign bonds), and that this could already anchor expectations, even without any analytical basis. Accordingly, the ICMA suggestion for the Group 1 issuance size threshold is far lower than could easily be justified.

*ADV vs issuance size*

To isolate the optimal issuance size threshold for each grouping, ICMA plotted the ADV associated with the bonds that fell into each issuance size bucket. At each issuance size interval we assume that all bonds with an equal or greater issuance size are liquid and those with a smaller issuance size are illiquid. This analysis can be seen in Figure 8 to 13 in Annex I.

As we would expect, the plot for both sets of bonds (liquid and illiquid) is upward sloping, with ADV increasing with issuance size. To identify the optimal point on the curve, we look to find the point at which the difference between liquid and illiquid ADV is at its widest (maximizing the spread between liquid and illiquid). Essentially, this aims to optimize the difference between liquid and illiquid bonds based on their relative ADV. While this works well in the case of a non-linear (quadratic) relationship between ADV and issuance size, we observe that in most cases the relationship is linear (ie the gradient of the curve is relatively constant). Here we apply a different methodology, whereby we look for the point on the illiquid curve where the gradient of the curve is at its lowest; ie where an incremental increase in issuance size has the least effect on ADV.

*Issuance size distributions*

The outstanding issuance sizes observed in each grouping are also a helpful reference point. These are illustrated in in the below table. While there is no strict rule, we would probably expect the threshold at least to be in line with mean and median values, and not significantly above or below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Issue size – figures in € | | | |
| **Group** | **25th percentile** | **mean** | **Median** | **75th percentile** |
| Group1 | 18,647,217,300 | 37,895,588,957 | 31,571,254,099 | 47,899,120,400 |
| Group2 | 751,587,750 | 5,606,781,758 | 1,631,495,000 | 5,533,275,825 |
| Group3 | 100,000,000 | 775,760,268 | 228,140,250 | 918,738,750 |
| Group4 | 416,880,500 | 741,639,188 | 600,000,000 | 913,292,000 |
| Group5 | 30,000,000 | 287,293,697 | 100,000,000 | 445,021,500 |
| Group6 | 180,349,365 | 617,766,026 | 500,000,000 | 750,000,000 |

*Liquid vs Illiquid ISIN count*

For each grouping we look at the percentage of liquid vs illiquid bonds for each issuance size threshold (see Figures 14 o 19 in Annex I). There is no rule for what the optimal ratio should be, given that certain bond classes and sub-classes are inherently less liquid. However, we would expect that when we look at less liquid bond types, the proportion of illiquid bonds should increase relative to liquid bonds.

Based on analysis using its 2023 data set, as well as member feedback, ICMA proposes the following issuance size thresholds as the liquidity determinant for each grouping. However, ICMA would also encourage ESMA to undertake its own analysis, particularly with attention to the relationship between ADV and issuance size, although ICMA would expect ESMA to reach similar conclusions.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Grouping** | **ADV optimization** | **Average Issuance size** | **50:50 Liquid/Illiquid** | **Proposed Threshold** |
| 1 | €15-20bn | €37.9bn | €31.6bn | **≥ €10bn** |
| 2 | €12.5-20bn | €5.6bn | €1.6bn | **≥ €5bn** |
| 3 | €5-7bn | €776mn | €228mn | **≥ €1bn** |
| 4 | €750mn-1.25bn | €742mn | €600mn | **≥ €750mn** |
| 5 | €750mn-1.25bn | €287mn | €100mn | **≥ €750mn** |
| 6 | €1-1.75bn | €618mn | €500mn | **≥ €1bn** |

Again, ICMA would make the point that while some of the proposed thresholds are notably higher than those suggested by ESMA, selecting the right calibration will ensure the optimal determination of liquid and illiquid bonds within the relevant groupings, as well as allowing for higher trade size thresholds with respect to liquid bonds for the corresponding deferrals. Selecting an issue size threshold that is too low will simply result in a less optimal determination of what is liquid and illiquid, along with much lower deferral trade size thresholds.

<ESMA\_QUESTION\_CP1\_11>

1. Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

<ESMA\_QUESTION\_CP1\_12>

ICMA believes that the trade size thresholds for each deferral category should reflect the estimated time required by liquidity providers to trade out of a risk position. Using the ADV of liquid and illiquidbonds within each grouping is a helpful gauge in this respect, as dividing the size of a trade by the related ADV provides a crude indication of the expected (average) time to trade out of the position in terms of days and fractions of days. (See also Annex IV for an explanation of the methodology.)

*Refining the real-time and deferral categories*

However, given the significant difference in ADV between liquidand illiquidbonds in each category, the proposed deferral matrix requires further refinement to reflect this reality. The current proposal does not provide for different real-time thresholds (category “N/A”) forliquid and illiquid bonds, and accordingly uses the same thresholds forliquid and illiquid bonds in each category, including *category 5* (*Very Large transactions*). ICMA sees this as a weakness in the proposed framework as it will naturally result in trade size thresholds that are too low for most liquid bonds, and too high for most illiquid bonds. By splitting categories N/A and 5 into liquid and illiquidsub-categories, it is possible to apply more precisely calibrated trade size thresholds that recognize the different ADV between liquid and illiquid bonds in each grouping.

ICMA’s proposal therefore introduces “N/A Liquid” and “N/A Illiquid” categories for real-time transparency, along with a new category 6 (“Very large Illiquid”). ICMA further suggests that to ensure compliance with the Level 1 requirements, it may be possible to split each proposed grouping into a Liquid and Illiquid sub-grouping.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Liquid** | | | | | |
| **Category** | **Issuance size** |  | **Trade Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ X |  | < a | Real Time | |
| 1 | ≥ X | Medium | a-b | 15 mins | |
| 3 | ≥ X | Large | b-c | T+1 | 1 week |
| 5 | ≥ X | Very Large | ≥ c | 4 weeks | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Illiquid** | | | | | |
| **Category** | **Issuance size** |  | **Trade Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < X |  | < d | Real Time | |
| 2 | < X | Medium | d-e | EOD | |
| 4 | < X | Large | e-f | T+2 | 2 weeks |
| 6 | < X | Very Large | ≥ f | 4 weeks | |

*Time to trade out*

ICMA believes that the estimated time to trade out of a risk position for a given bond and size should be the guiding principle for establishing the size thresholds for each category. Essentially, for transactions that are not reported in real-time, the post-trade deferral should allow enough time for a liquidity provider to trade out of the position before the details of the trade are made public.

ADV provides a crude indication of the time to trade out of a position, based on:

Time to trade out = Trade size / ADV

For the purposes of this response, ICMA uses this simple calculation to estimate the appropriate trade size thresholds for each of the six deferral categories for the different groupings. These are summarized below, while the estimated time to trade out is shown in Annex II.

For completeness, ICMA also estimated trade out times for each grouping using the individual-ISIN approach, which also estimated the longest trade out time based on the historical data set, and which can be found in Annex III.

However, as mentioned in the answer to Q.11, these estimated times to trade out of a position should be treated with some caution for the following reasons:

1. Using different ADV methodologies (average vs individual ISIN) will result in different ADV calculations for the same data set. This is explained in more detail in Annex III and Annex IV, but essentially the averaging methodology (as used by ICMA in this response) treats all bonds within a grouping as homogenous, which produces a higher ADV (and so a shorter time to trade out).
2. The ADV is an average of a distribution of daily volumes for different bonds within a grouping. For a given trade size, some bonds in that grouping will have a lower ADV, and require a longer average trade-out time, while some will have a higher ADV and require a shorter average trade-out time.
3. In the case of bonds that trade relatively infrequently (such as illiquid corporate bonds), the averaging methodology could underestimate the trade-out-time quite significantly.
4. The ADV reflects the total daily traded volume in a bond (essentially a measure of market depth). It is highly unlikely that a liquidity provider will be able to transact against 100% of the volumes during the deferral period, and this also needs to be factored into setting the trade size threshold (eg, one might assume that 25% of daily volume is achievable).
5. For categories 5 and 6 there is no upper threshold. Therefore, some very large trades will require longer than the 4-week deferral provided.

**Accordingly, these proposed thresholds should be viewed as indicative and ICMA would encourage ESMA to make its own assessment, taking into consideration these important points. However, this does help to illustrate how higher size thresholds can be achieved in the case of liquid bonds, based on more granular groupings and more scientifically based liquidity determination thresholds.**

**ICMA Group 1a: Sovereign bonds Liquid #1 [SB1: Government bond issuance by DE, FR, IT, ES, UK, and US – fixed coupon]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 10bn | < 5mn | Real Time | |
| 1 | ≥ 10bn | 5-20mn | 15 mins | |
| 3 | ≥ 10bn | 20-100mn | T+1 | 1 week |
| 5 | ≥ 10bn | ≥ 100mn | 4 weeks | |

**ICMA Group 1b: Sovereign bonds Illiquid #1 [SB1: Government bond issuance by DE, FR, IT, ES, UK, and US – fixed coupon]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 10bn | < 1mn | Real Time | |
| 2 | < 10bn | 1-10mn | End of day | |
| 4 | < 10bn | 10-50mn | T+2 | 2 weeks |
| 6 | < 10bn | ≥ 50mn | 4 weeks | |

**ICMA Group 2a: Sovereign bonds Liquid #2 [SB2: All other sovereign bonds]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 5bn | <5mn | Real Time | |
| 1 | ≥ 5bn | 5-7.5mn | 15 mins | |
| 3 | ≥ 5bn | 7.5-20mn | T+1 | 1 week |
| 5 | ≥ 5bn | ≥ 20mn | 4 weeks | |

**ICMA Group 2b: Sovereign bonds Illiquid #2 [SB2: All other sovereign bonds]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 5bn | <1mn | Real Time | |
| 2 | < 5bn | 1-5mn | End of day | |
| 4 | < 5bn | 5-10mn | T+2 | 2 weeks |
| 6 | < 5bn | ≥ 10mn | 4 weeks | |

**ICMA Group 3a: Other public bonds Liquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 1bn | <1mn | Real Time | |
| 1 | ≥ 1bn | 1-2mn | 15 mins | |
| 3 | ≥ 1bn | 2-10mn | T+1 | 1 week |
| 5 | ≥ 1bn | ≥ 10mn | 4 weeks | |

**ICMA Group 3b: Other public bonds Illiquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 1bn | <1mn | Real Time | |
| 2 | < 1bn | 1-2mn | End of day | |
| 4 | < 1bn | 2-5mn | T+2 | 2 weeks |
| 6 | < 1bn | ≥5 | 4 weeks | |

**ICMA Group 4a: - IG Corporate bonds, Convertible bonds, and Other bonds Liquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 750mn | <1mn | Real Time | |
| 1 | ≥ 750mn | 1-1.5mn | 15 mins | |
| 3 | ≥ 750mn | 1.5-5mn | T+1 | 1 week |
| 5 | ≥ 750mn | ≥ 5mn | 4 weeks | |

**ICMA Group 4b: - IG Corporate bonds, Convertible bonds, and Other bonds Illiquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 750mn | <0.5mn | Real Time | |
| 2 | < 750mn | 0.5-1mn | End of day | |
| 4 | < 750mn | 1-2mn | T+2 | 2 weeks |
| 6 | < 750mn | ≥ 2mn | 4 weeks | |

**ICMA Group 5a: - HY Corporate bonds, Convertible bonds, and Other bonds Liquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 750mn | <0.5mn | Real Time | |
| 1 | ≥ 750mn | 0.5-1mn | 15 mins | |
| 3 | ≥ 750mn | 1-3.5mn | T+1 | 1 week |
| 5 | ≥ 750mn | ≥ 3.5mn | 4 weeks | |

**ICMA Group 5b: - HY Corporate bonds, Convertible bonds, and Other bonds Illiquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 750mn | <0.25mn | Real Time | |
| 2 | < 750mn | 0.25-0.75mn | End of day | |
| 4 | < 750mn | 0.75-1.5mn | T+2 | 2 weeks |
| 6 | < 750mn | ≥ 1.5mn | 4 weeks | |

**ICMA Group 6a: Covered bonds Liquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Liquid | ≥ 1bn | <1mn | Real Time | |
| 1 | ≥ 1bn | 1-2mn | 15 mins | |
| 3 | ≥ 1bn | 2-5mn | T+1 | 1 week |
| 5 | ≥ 1bn | ≥ 5mn | 4 weeks | |

**ICMA Group 6b: Covered bonds Illiquid**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Issuance size** | **Size** | **Price deferral** | **Volume deferral** |
| N/A Illiquid | < 1bn | <0.5mn | Real Time | |
| 2 | < 1bn | 0.5-1mn | End of day | |
| 4 | < 1bn | 1-2mn | T+2 | 2 weeks |
| 6 | < 1bn | ≥ 2mn | 4 weeks | |

As part of its analysis, ICMA also used its 2023 data set to “retrofit” the proposed matrices, based on the suggested thresholds above, in order to estimate the expected amount of real-time transparency (in terms of transactions and traded volumes) as well as that for deferred transactions. The results can be seen in Annex II.

While the estimated percentage of real-time transactions varies depending on groupings (reflecting the relative underlying liquidity profile of each grouping), the overall proportion of real-time or near real-time transparency is extremely high (some 79% of all trades would be reported real time, encompassing 20% of total notional value) and not significantly lower than ESMA’s target.

***Distribution of all groups by category using 2023 data***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Trade Count (all groups)** | **Notional Traded (all groups)** | **Price deferral** | **Volume deferral** |
| N/A Liquid | 64.0% | 19.2% | Real Time | |
| N/A Illiquid | 14.8% | 0.8% | Real Time | |
| 1 | 9.4% | 24.3% | 15 mins | |
| 2 | 3.5% | 1.6% | End of day | |
| 3 | 4.1% | 34.9% | T+1 | 1 week |
| 4 | 1.5% | 1.7% | T+2 | 2weeks |
| 5 | 1.3% | 13.8% | 4 weeks | |
| 6 | 1.4% | 3.7% | 4 weeks | |

<ESMA\_QUESTION\_CP1\_12>

1. Do you agree with the maximum deferral period set out in the tables above?

<ESMA\_QUESTION\_CP1\_13>

While there are valid arguments for the need to defer the publication of price and volume for certain transactions for longer than 4 weeks, ICMA recognizes that the revised Level 1 does not allow for this (with the notable exception of the supplementary deferrals for sovereign bonds).

However, ICMA would strongly recommend that the RTS take advantage of the longer allowable deferrals for price publication with respect to categories 3 and 4 (*T+1* and *T+2* respectively). The reason for this is that in bond markets it is relatively easy to infer a lot of useful information from the publication of price alone.

For example, by comparing the deferred published price of a trade where the bond was quoted (pre-trade) based on the timestamp, it is immediately obvious whether the trade was a “risk trade” (ie, did a liquidity provider take the position onto their own books) or not. This is based on whether the trade price is inside or outside of the quoted bid-ask spread. Furthermore, if it is a risk trade, based on whether it is below or above the spread it is clear whether the liquidity provider went long or short-sold the bonds. Depending on the distance from the spread, it is also possible to make a good estimate of the relative size of the trade.

This suggests two important considerations with respect to the deferral calibrations:

1. Applying the *T+1* and *T+2* price deferrals for categories 3 and 4 is highly relevant, since the corresponding size deferrals have less impact. In other words, applying an end-of-day price deferral would effectively make categories 3 and 4 redundant.
2. When determining the appropriate trade size thresholds for categories 3 and 4, this should be based on the price deferral and not the size deferral.

ICMA’s proposal and suggested trade size thresholds take both of these considerations into account.<ESMA\_QUESTION\_CP1\_13>

1. Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

<ESMA\_QUESTION\_CP1\_14>

Structured Finance Products (SFPs) need adequate transparency deferral calibration. Regarding the transparency deferral regime for SFPs (ABS, RMBS, CMBS, CLOs, et al), ICMA recommends adopting a data-based approach focused on liquidity provision (ADV and trade-out time) to calibrate the appropriate deferrals. Until such an analysis is done, we recommend (i) either keeping the existing supplementary deferrals of weekly aggregation and 4 weeks, (ii) or defaulting the regime to the longest deferrals available for bonds, i.e. 4 weeks – and this for all trade sizes (i.e. below and above LIS).

It is important to consider the specificities of the SFPs market. SFPs are mostly traded OTC / outside of trading venues. Market conventions ensure transparency (volumes and cover prices) to market participants via the Bid Wanted in Competition (BWIC) process. The MiFIR post-trade transparency is mostly required because those instruments are listed on exchanges for notifications and documentation purposes.

SFPs trade infrequently and are illiquid. Well-calibrated deferrals should support market liquidity by protecting liquidity providers from undue risk. Requiring real-time reporting and T+2 reporting (as per latest consultation) would be detrimental to this market. ICMA’s expectation is that any liquidity analysis will demonstrate this. ICMA also understands that, since the launch of MiFIR in 2018, no quantitative and qualitative analysis has ever conducted on the SFP market and accordingly any such analysis will require more time than the target date of 29 December 2024.

A further consideration is that developing the EU securitisation market is a priority. Over the last few years, EU policy makers, supervisors, and market participants have made a priority of growing the EU securitisation market for the purpose of allowing further financing of the economy, as exposed in most if not all position papers of authorities and industry associations this year. This reinforces the point that any change to the transparency deferral regime for the secondary market of SFPs should be carefully assessed.

Finally, ICMA would point to the importance of international competitiveness. We therefore recommend monitoring closely the evolution of the securitisation markets, both primary and secondary, across jurisdictions. In particular, as per the latest consultation, the UK should be removing SFPs executed OTC from the scope of post-trade transparency. It will be important to observe the potential impacts (i) on the flow of non-EEA investments into EEA and non-EEA markets and (ii) on competitiveness of EU market participants on EEA and non-EEA markets.

<ESMA\_QUESTION\_CP1\_14>

1. Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?

<ESMA\_QUESTION\_CP1\_15>

ICMA understands that the RTS 2 Article 8 was modified and RTS 2 Articles 8a introduced for framing the deferrals of derivatives and bonds, SFPs and EAs respectively. ICMA believes that Article 8a (1) should be re-worded to allow for deferrals to apply provided one of the conditions is satisfied: the transaction is large in scale or the class of financial instrument does not have a liquid market (as per previous Art 8). In other words, SFPs transactions should be allowed to be deferred because they do not have a liquid market and this for all trade sizes.

<ESMA\_QUESTION\_CP1\_15>

1. Do you agree with the maximum duration proposed?

<ESMA\_QUESTION\_CP1\_16>

ICMA believes that Article 8a (1) should be re-worded to allow for price and volume deferral not exceeding 4 weeks after the transaction date (as per previous Art 11). In other words, SFPs should be deferred by 4 weeks because they do not have a liquid market and this for all trade sizes. Alternatively, Article 8a could also be re-worded to cover the weekly aggregation previously covered in Article 11.

<ESMA\_QUESTION\_CP1\_16>

1. Do you agree with a static determination of liquidity and determine that all EUA are liquid? If not, can you suggest any alternative methodology on how to define liquidity for EUAs?

<ESMA\_QUESTION\_CP1\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_17>

1. Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_18>

1. Do you agree with the classification of ETCs and ETNs as types of bonds?

<ESMA\_QUESTION\_CP1\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_19>

1. Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

<ESMA\_QUESTION\_CP1\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_20>

1. Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_21>

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<ESMA\_QUESTION\_CP1\_21>

1. What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

<ESMA\_QUESTION\_CP1\_22>

Supplementary deferrals

ICMA does not have any issues with the proposal for supplementary deferrals for sovereign bonds. ICMA would also agree that as much consistency between NCAs in the application of the deferrals would be helpful.

ICMA would also recommend consistency with the proposed deferral calibrations outlined in the answers to Q11 and Q12. Based on the ICMA proposals, in this case of supplementary volume deferrals, this would require revising the category 3 and 4 maximum price deferrals, as well as introducing category 6 (very large and illiquid).

With regards the proposal for the publication of aggregated trades, ICMA would again point to consistency with the standard post trade deferral matrices (see Q12). ICMA also finds the Table in paragraph 165 a little confusing and assumes that the final column (*Aggregated details publication*) is the pertinent timeline with respect to trade details being published.

Sovereign bond hedges for new issuance

ICMA recognizes a need for some leeway in the post-trade real-time reporting obligation in the case of transactions in sovereign bonds related to the hedging element of new bond issuance.

A real time booking and reporting requirement cannot be met for certain hedge trades commonly transacted in the form of government bonds associated with new bond issues, in particular if this was strictly required to occur within 15 minutes. In such scenarios, switches are agreed before primary pricing but conditionally on (i) primary pricing occurring and (ii) availability of primary pricing data. These hedge trades are consequently time-stamped/booked as of primary pricing. As the hedge price is part of the new issue package of pricing, the hedge price is communicated to the market once the overall pricing message has been prepared by the syndicate bank following the pricing call. The message is then checked and agreed by the rest of the syndicate banks before it is sent out to the banks’ sales teams. The time of execution is given on the message, but it is often more than 15 minutes before investors will receive that from their sales representative.

Post-trade processing of what can potentially include hundreds of switches begins after primary pricing and can continue for some time (minutes/hours). Tying primary pricing to all pending bookings and banks reporting so many trades in such a short time is practically challenging. Hence, ICMA would welcome either a dedicated deferral for this specific scenario (as provided for in the US under TRACE) or acknowledgement from ESMA that this is another scenario where a requirement for reporting “as soon as practicably possible” can require longer than a 15-minute deferral.

<ESMA\_QUESTION\_CP1\_22>

1. Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?

<ESMA\_QUESTION\_CP1\_23>

ICMA agrees that that currently there is no need to make changes to the temporary suspension of transparency obligations framework .

<ESMA\_QUESTION\_CP1\_23>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_24>

ICMA notes that ESMA currently has not yet decided on the “implementation period” for the amended RTS 2 (it is shown as “TBC“ on p.177 of the CP). Considering the complexity of the changes and the connection between RTS 23 and RTS 2, we would like to propose the same implementation period as proposed by ESMA for the amended RTS 23 (i.e., 18 months after the date of entry into force). In addition, we would also like to highlight that the delegated act of OTC derivative identifier and the new derivative transparency regime have additional impacts on RTS 2 and RTS 23, so we urge ESMA further align all related changes in a broader time plan to prevent unnecessary costs resulting from multiple sequential changes.

<ESMA\_QUESTION\_CP1\_24>

1. What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_25>

**CP on the RTS on reasonable commercial basis**

1. Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

<ESMA\_QUESTION\_CP1\_26>

ICMA members welcome that ESMA in its proposals is seeking to put more structure in the cost calculation, however in Chapter II Article 2 (6) in the draft RTS (as mentioned on page 308 of this Consultation Paper) item e. “other costs,…” should not give room for a wide interpretation of what such additional costs could constitute, which would be of concern to members from a data user perspective.

Members highlighted what some of such costs could consist of (such as a sharp increase in compliance costs, inflation for example) but ultimately it is for the regulator/ESMA to decide whether/which costs should be accepted to fall under this category and that this would be reviewed regularly by ESMA.

ICMA would like to highlight that the data provider should not be allowed to charge users for multiple use of data (as is the case now, see also our response to Q31 for further details).

The RCB control element is very important also with respect to the upcoming Consolidated tape regime and with respect to the CTP business model, where ICMA would like to refer to the draft RTS on RCB Article 3 (3) on page 309 of this CP, specifically the aim to “enable data access to the maximum number of market data clients”.

From a user perspective, ICMA members would also like to suggest that all market data could be licensed by customers at an enterprise level for their internal use in the ordinary course of business. This would enable customers to make use of market data within their organization, without the possibility of additional fees or reporting requirements.

<ESMA\_QUESTION\_CP1\_26>

1. Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

<ESMA\_QUESTION\_CP1\_27>

ICMA members welcome the approach, which looks comprehensive and already very detailed. See also our response to question 26.

<ESMA\_QUESTION\_CP1\_27>

1. Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software…) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

<ESMA\_QUESTION\_CP1\_28>

ICMA members agree with the proposal.

<ESMA\_QUESTION\_CP1\_28>

1. Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

<ESMA\_QUESTION\_CP1\_29>

Members agree.

<ESMA\_QUESTION\_CP1\_29>

1. Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

<ESMA\_QUESTION\_CP1\_30>

ICMA agrees with the proposed template.

With that in mind, the proportionality principle should be applied, in order to protect smaller market players, who will be facing huge costs with the new regime, and so that the requirements do not become too cumbersome. Members understand it is not the main goal to target the smaller players.

<ESMA\_QUESTION\_CP1\_30>

1. What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

<ESMA\_QUESTION\_CP1\_31>

ICMA welcomes ESMA’s proposals in order to ensure non-discriminatory access.

Furthermore, and in reference to the response to Q26, a situation should be avoided whereby multiple service users can be charged multiple times. This has also been highlighted in the ESMA proposal and hence members welcome the proposal.

Aside from the non-discriminatory aspect, there is also a competition aspect as the new regime should not lead to unfair competition (SIs should not be put in a competitive disadvantage). ICMA therefore agrees with ESMA’s recommendation in paragraph 235 on page 75 that “the European Commission should use its legislative power to create a level playing field between the market data providers subject to MiFIR and those entities that redistribute market data but are currently not subject to MiFIR.”

In addition to the above, ICMA would like to highlight that whilst ESMA’s proposals in Section 9 of the CP are useful and constructive, there could be some more concrete guidance to ensure that any question on interpretation can be rapidly answered, and that any abusive interpretation can be effectively challenged. As such, there could be value in putting in place a permanent dispute resolution mechanism which could help solve issues that arise, for example around the duplication of fees, and other subjects of dispute. ESMA should be the key point of contact for this. A list of FAQs by ESMA on this topic would also be of interest, which could provide examples that can be referenced. Stronger supervisory and enforcement mechanisms would also be welcome from a user perspective.

<ESMA\_QUESTION\_CP1\_31>

1. What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

<ESMA\_QUESTION\_CP1\_32>

The provisions look valid in the ESMA proposal, and are valid across all asset classes. Members agree to paragraph 229 though with respect to HFT.

ICMA agrees that different costs in the transmission protocols (such as API vs CSV) could affect fees.

<ESMA\_QUESTION\_CP1\_32>

1. Do you agree with ESMA’s proposal on how to set up fee categories. Please justify your answer.

<ESMA\_QUESTION\_CP1\_33>

In general, ICMA supports simple and standardized fee categories, and access to data on a non-discriminatory basis

Under the draft RTS on RCB as outlined in the Annex of this CP in Chapter III Article 5 (3) (page 310), ICMA would suggest the following changes, in order to provide an example of how discounts could be given in the form of volume discounts, as follows:

* + - From: “Discounts or any other temporary reduction of fees are allowed provided that they are based on factual elements, easily verifiable and sufficiently general to pertain to more than one client.”
    - To: “Discounts or any other temporary reduction of fees  *(such as for example as per the volume of data which is provided)* are allowed provided that they are based on factual elements, easily verifiable and sufficiently general to pertain to more than one client*,.”*

Furthermore, In the draft RTS on RCB (as outlined in the Annex of this CP in Chapter III Article 4 on page 309), ICMA would like to propose a slight change as follows:

* + - From: “Market data providers shall apply the same schedule of fees and the same terms and conditions to access market data to all clients requesting access to market data.”
    - To: “Market data providers shall offer the same standard schedule of fees and the same standard terms and conditions to access market data to all clients requesting access to market data.”

Finally, in Chapter III Article 4 (5), ICMA would like to propose to change the wording as follows:

* + - From: “Market data providers shall be able to justify any divergence in the final solution arrangement adopted on the basis of valid technical constraints.”
    - To: “Market data providers shall be able to justify *to regulators* any divergence in the final solution arrangement adopted on the basis of valid technical constraints.”

<ESMA\_QUESTION\_CP1\_33>

1. Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

<ESMA\_QUESTION\_CP1\_34>

Please see our response to Question 31 where we have responded in parts to this question already.

With respect to the ESMA analysis around redistribution, further differentiation between types of redistribution and re-selling seems necessary.

Furthermore, and in relation to the current [ESMA Consultation Package on the RTS on CTPs and DRSPs](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA74-2134169708-7225_-_MiFIR_MiFID_Review_-_CP_on_CTPs_and_DRSPs.pdf), it will also be of interest for data users to see what the redistribution model will look like for the CTP.

<ESMA\_QUESTION\_CP1\_34>

1. Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

<ESMA\_QUESTION\_CP1\_35>

Given that with respect to future price changes there is currently a 90 day notice period (as per Article 89(2)(b) of Delegated Regulation (EU) No 2017/565 & Article 11(2)(b) of Delegated Regulation (EU) No 2017/567), ICMA would like to propose that the notice period in the case of change of terms of conditions of the market data could be 90 days here again (or 3 months) instead of 2 months. In this sense, ICMA would like to propose to amend the draft RTS on RCB Chapter IV Article 16 (page 314 in this CP) in the first paragraph as follows:

* + - From: “The market data provider shall give notice to the market data client of any unilateral change to the terms and conditions of the market data agreement, including terms and conditions relating to fees, at least two months in advance of the relevant amendment entering into force. Where the amendment results in a change of the fees, the market data agreement shall foresee the right of withdrawal for the client.”
    - To: “The market data provider shall give notice to the market data client of any unilateral change to the terms and conditions of the market data agreement, including terms and conditions relating to fees, at least *three* months in advance of the relevant amendment entering into force. Where the amendment results in a change of the fees *or may have significant impacts on the client*, the market data agreement shall foresee the right of withdrawal for the client *without additional fees or penalties.”*

<ESMA\_QUESTION\_CP1\_35>

1. Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

<ESMA\_QUESTION\_CP1\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_36>

1. According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

<ESMA\_QUESTION\_CP1\_37>

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<ESMA\_QUESTION\_CP1\_37>

1. Do you agree with ESMA’s proposal on penalties? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_38>

ICMA members are of the view that the maximum timeline on penalties should be two years instead of three years (as was proposed by ESMA in this consultation). Three years is considered a too long period in terms of risk exposure to possible penalties.

Therefore, we would like to propose to amend the draft RTS Article 14.3 (page 313) to:

* A penalty payment request shall be made only within a reasonable time, *not exceeding two years*, from the infringement occurrence, and shall be based on clear evidence of the infringement occurrence

<ESMA\_QUESTION\_CP1\_38>

1. Do you agree with ESMA’s proposal on audits? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_39>

Similar to our response to question 38, the maximum timeline for audits should be two years instead of three years (as was proposed by ESMA in this consultation). Three years renders the process still too onerous, as providing the material for audits entails a huge operational cost to data users.

Moreover, there should be a time limit to how long after a contract has been terminated the audit can take place. This time limit should be six months.

Therefore we would like to propose to amend the draft RTS Chapter IV Article 15.6 (and add a point 15.7) as follows:

6. An audit shall cover a reasonable period of time, *not exceeding two years.*

7. *An audit shall not take place later than six months after the termination date of the agreement.*

<ESMA\_QUESTION\_CP1\_39>

1. Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_40>

1. Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_41>

1. Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA\_QUESTION\_CP1\_42>

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<ESMA\_QUESTION\_CP1\_42>

1. Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

<ESMA\_QUESTION\_CP1\_43>

See ICMA response to question 44.

<ESMA\_QUESTION\_CP1\_43>

1. Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_44>

Aside from “physical connection”, there should be a distinction made between trading protocols that are session-based, point-to-point protocols, where the session needs to be kept actively open, and other protocols that are cheaper to support.

<ESMA\_QUESTION\_CP1\_44>

1. Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA\_QUESTION\_CP1\_45>

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<ESMA\_QUESTION\_CP1\_45>

1. Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_46>

ICMA agrees with the approach on delayed data proposed by ESMA.

ICMA would like to note that there is a distinction to be made between equity and bond markets when it comes to latency, as also highlighted in ICMA’s response to the [ESMA Consultation on the RTS on CTPs and DRSPs](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA74-2134169708-7225_-_MiFIR_MiFID_Review_-_CP_on_CTPs_and_DRSPs.pdf). 15 minutes in equity markets is a lifetime, whereas in bond markets, 15 minutes are more similar to real-time, due to the fact that bonds trade on an irregular basis. Therefore, in the equity markets, it is expected that data users will still have to connect to data providers directly to obtain the real-time data, whereas on the bond side, it will be possible to wait 15 minutes for the data to become available for free. It is therefore particularly important in the bond markets to improve the accessibility of delayed data for market participants.

In addition to the above, ICMA members would like to see a clearer definition of what is machine-readable, given that at present, it is noted that the data is often presented in a non-machine-readable way. The RTS should clarify this further so that it is guaranteed it can be used for automation.

<ESMA\_QUESTION\_CP1\_46>

1. Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_47>

ICMA agrees.

<ESMA\_QUESTION\_CP1\_47>

1. ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_48>

Concerns were raised that three months could potentially be quite short, given that data providers would need to come up with new contracts (for existing relationships) and in case there was a two month notice period for clients to cancel the contract. Assuming the contract would need to be drafted after publication in the OJ, this would only give data providers one month to come up with a new contract. Also, Annex I) on page 320 of this CP refers to the data set of the (past) calendar year, which according to ICMA members will not be achievable for this initial past calendar year, once the RTS enters into force.

<ESMA\_QUESTION\_CP1\_48>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_49>

As mentioned previously under question 46 and also in ICMA’s response to the CP on RTS on CTPs and DRSPs, ICMA does not agree with the “one size fits all” approach, as there is a distinction to be made between bond and equity markets, especially when it comes to latency. What works for the equity tape will be very different from what can work for the bond markets.

<ESMA\_QUESTION\_CP1\_49>

1. What level of resources (financial and other) would be required to implement and comply with the RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_50>

Some ICMA members suggested that there could be a high cost expected for implementation of new RTS.

<ESMA\_QUESTION\_CP1\_50>

**CP on the amendment of RTS 23**

1. Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

<ESMA\_QUESTION\_CP1\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_51>

1. For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

<ESMA\_QUESTION\_CP1\_52>

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<ESMA\_QUESTION\_CP1\_52>

1. Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

<ESMA\_QUESTION\_CP1\_53>

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<ESMA\_QUESTION\_CP1\_53>

1. How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.

<ESMA\_QUESTION\_CP1\_54>

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<ESMA\_QUESTION\_CP1\_54>

1. Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives’ contract type classification?

<ESMA\_QUESTION\_CP1\_55>

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<ESMA\_QUESTION\_CP1\_55>

1. Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.

<ESMA\_QUESTION\_CP1\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_56>

1. As it concerns “underlying type” classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?

<ESMA\_QUESTION\_CP1\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_57>

1. Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?

<ESMA\_QUESTION\_CP1\_58>

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<ESMA\_QUESTION\_CP1\_58>

1. Do you have suggestions on how the fields mentioned above may be improved and streamlined?

<ESMA\_QUESTION\_CP1\_59>

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<ESMA\_QUESTION\_CP1\_59>

1. Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?

<ESMA\_QUESTION\_CP1\_60>

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<ESMA\_QUESTION\_CP1\_60>

1. Do you see a need to specify the ‘date by which the reference data are to be reported’ different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA\_QUESTION\_CP1\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_61>

1. Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on reference data?

<ESMA\_QUESTION\_CP1\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_62>

1. Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?

<ESMA\_QUESTION\_CP1\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_63>

1. Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?

<ESMA\_QUESTION\_CP1\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_64>

1. Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?

<ESMA\_QUESTION\_CP1\_65>

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<ESMA\_QUESTION\_CP1\_65>

1. Do you support inclusion of the new fields listed above?

<ESMA\_QUESTION\_CP1\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_66>

1. Do you agree with the amendment listed above for the existing fields?

<ESMA\_QUESTION\_CP1\_67>

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<ESMA\_QUESTION\_CP1\_67>

1. With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?

<ESMA\_QUESTION\_CP1\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_68>

1. Do you support suppressing the reporting of the fields listed above?

<ESMA\_QUESTION\_CP1\_69>

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<ESMA\_QUESTION\_CP1\_69>

1. Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

<ESMA\_QUESTION\_CP1\_70>

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<ESMA\_QUESTION\_CP1\_70>

1. In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?

<ESMA\_QUESTION\_CP1\_71>

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<ESMA\_QUESTION\_CP1\_71>

1. With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?

<ESMA\_QUESTION\_CP1\_72>

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<ESMA\_QUESTION\_CP1\_72>

1. Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?

<ESMA\_QUESTION\_CP1\_73>

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<ESMA\_QUESTION\_CP1\_73>

1. Source: Propellant.digital [↑](#footnote-ref-2)