**Reply** **form**

on the Consultation Paper 3

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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 **30 September 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\_CP3\_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\_CP3\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP3\_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.

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 heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’..

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | BETTER FINANCE |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |  |
| Country/Region | Europe |

# Questions

# 2.1 CDR 2017/567

1. Should the use of alternative data to perform the calculations (i.e. as described under Option 2 above) be feasible, what would be the costs and the benefits of such a change for different categories of market participants, including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects? Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?

<ESMA\_QUESTION\_CP3\_1>

<ESMA\_QUESTION\_CP3\_1>

1. Do you agree with the proposal on the start day of application of the transparency calculations? Please explain.

<ESMA\_QUESTION\_CP3\_2>

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<ESMA\_QUESTION\_CP3\_2>

1. Do you agree with the proposal on the denominator of the (i) ADT, (ii) ADNTE and (iii) for specifying daily traded parameter? Please explain.

<ESMA\_QUESTION\_CP3\_3>

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<ESMA\_QUESTION\_CP3\_3>

1. Do you agree with the proposal on the liquidity determination for shares? Please explain.

<ESMA\_QUESTION\_CP3\_4>

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<ESMA\_QUESTION\_CP3\_4>

1. Do you agree with the proposal on the liquidity determination for other similar financial instruments? Please explain.

<ESMA\_QUESTION\_CP3\_5>

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<ESMA\_QUESTION\_CP3\_5>

1. Do you agree with the proposal to remove the field “holdings exceeding 5% of total voting rights” from the legal text but keeping it in the XML schema of the reporting without being obliged to report such information? Pease explain.

<ESMA\_QUESTION\_CP3\_6>

BETTER FINANCE recognizes the importance of balancing complexity with transparency in corporate reporting, particularly regarding liquidity. Reporting holdings exceeding 5% of total voting rights is essential for understanding the influence of large shareholders on both governance and liquidity. Significant movements, such as the liquidation of a large shareholder's position, can affect market dynamics and corporate control, making it crucial for retail investors to access this information to anticipate potential shifts. Simplifying reporting should not equate removing this requirement as it risks limiting retail investors' ability to assess the impact of large shareholders on market liquidity and related governance issues. Without this data, liquidity assessments may be incomplete, affecting regulatory decisions and disadvantaging investors. BETTER FINANCE recommends keeping this information within the mandatory reporting framework to ensure transparency. If kept in the XML schema, clear and accessible reporting is vital to maintain confidence in market liquidity and governance structures.<ESMA\_QUESTION\_CP3\_6>

# 2.2 RTS 1

1. Do you in general agree with the content of the proposed Tables 1a and 1b? Please specify (i) which fields you consider as not necessary (ii) any amendments that you consider necessary to the columns “Description and details to be published”, “Type of execution or publication venue”, “Type of trading system” to ensure that the information to be provided is clear and unambiguous (iii) the instruments and the circumstances when it is necessary to report the field price with a price notation different from “MONE” – Monetary value.

<ESMA\_QUESTION\_CP3\_7>

BETTER FINANCE supports the transparency efforts outlined in the consultation, as retail investors rely on sound price formation mechanisms to make informed decisions. However, Tables 1a and 1b should be reviewed to better capture true pre-trade transparency, and enforce it. Currently, the framework does not sufficiently address venues classified as pre-trade transparent but that may import prices from other markets, creating passive liquidity. This misrepresentation impacts price formation and distorts the best available prices seen by retail investors. Amendments should clarify whether venues actively contribute to price formation or passively rely on external sources. Moreover, this distinction is vital for the accuracy of the European Best Bid and Offer (EBBO) in the Consolidated Tape (CT), as failure to reflect genuine liquidity could undermine price discovery. Retail investors need clear, transparent data that accurately represents market conditions to ensure best execution and informed decision-making <ESMA\_QUESTION\_CP3\_7>

1. Do you agree with the proposed amendments to Article 4? Please explain.

<ESMA\_QUESTION\_CP3\_8>

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<ESMA\_QUESTION\_CP3\_8>

1. Do you agree with the proposed amendment to Article 6 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_9>

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<ESMA\_QUESTION\_CP3\_9>

1. Do you agree with the proposed amendments to Article 7 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_10>

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<ESMA\_QUESTION\_CP3\_10>

1. Do you agree with the proposed amendments to Article 8 of RTS 1? Please explai.

<ESMA\_QUESTION\_CP3\_11>

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<ESMA\_QUESTION\_CP3\_11>

1. How could ESMA take into account international best practices and competitiveness for the determination of the threshold up to which SIs have to be pre-trade transparent? Please explain.

<ESMA\_QUESTION\_CP3\_12>

BETTER FINANCE advocates for aligning SIs transparency requirements more closely with those of trading venues to address growing concerns about market opacity. In the EU, SIs play a significant role in liquidity (80% of SI trades in 2020 being below the standard market size (SMS)), indicating that many trades come from retail investors. However, this internalisation of trades without sufficient transparency pulls liquidity away from lit venues, distorting price formation and potentially leading to worse execution conditions for investors. ESMA could enforce similar, more closely aligned transparency measures taking stock of that of the USA, where SIs are properly identified and in post-trade data reporting, notably via the CT. This would provide investors, both local and foreign, with a clear view of liquidity, ensuring that SIs do not become opaque alternatives to regulated trading venues. Adopting these practices would improve price discovery, enhance market competitiveness, and safeguard retail investors, fostering a healthier and more transparent market environment in the EU.. <ESMA\_QUESTION\_CP3\_12>

1. Do you agree with the new AVT buckets and related SMS? Would you set a higher SMS for the AVT bucket [0-10000) (e.g. 10,000)? Please explain.

<ESMA\_QUESTION\_CP3\_13>

BETTER FINANCE supports a review of the SMS methodology to ensure it reflects both the liquidity risk and turnover of stocks while protecting retail investors’ access to transparent liquidity. We welcome the introduction of new AVT buckets, which allow for a more granular approach, but caution against raising the SMS threshold too significantly. Retail investors, who typically engage in smaller trades, may find their trades pushed toward Systematic Internalisers (SIs) operating with reduced transparency, distorting the true liquidity picture and compromising best execution.

We recognize the importance of aligning SMS thresholds with the Large in Scale (LIS) threshold for larger AVT buckets to support liquidity for institutional trades, provided this alignment does not undermine retail investors’ access to transparent venues. A proportional, tiered approach to SMS can be considered, where higher LIS alignment is reserved for larger liquidity trades, while moderate increases apply to smaller buckets, thus maintaining transparency for retail trades.

Additionally, we still strongly advocate for enhanced transparency obligations for SIs, also for trades below the SMS threshold, to ensure that retail investors benefit from both best execution practices and assessment, and for market transparency. ESMA needs to strikes a balance between supporting liquidity for larger trades and safeguarding retail investors trades from being excessively captured into opaque trading venues..<ESMA\_QUESTION\_CP3\_13>

1. Do you agree with ESMA’s proposal of the new threshold#1 for shares? Please explain.

<ESMA\_QUESTION\_CP3\_14>

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<ESMA\_QUESTION\_CP3\_14>

1. Do you agree with ESMA’s proposal of the new threshold#2 for shares? Please explain.

<ESMA\_QUESTION\_CP3\_15>

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<ESMA\_QUESTION\_CP3\_15>

1. Do you agree with the new AVT buckets and related SMS? Would you set a lower SMS for the AVT bucket [0-10000) (e.g. 5,000)? Please explain.

<ESMA\_QUESTION\_CP3\_16>

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<ESMA\_QUESTION\_CP3\_16>

1. Do you agree with ESMA’s proposal of the new threshold#1 for DRs? Please explain.

<ESMA\_QUESTION\_CP3\_17>

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1. Do you agree with ESMA’s proposal of the new threshold#2 for DRs? Please explain.

<ESMA\_QUESTION\_CP3\_18>

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<ESMA\_QUESTION\_CP3\_18>

1. Do you agree with the new AVT buckets and related SMS? Please explain.

<ESMA\_QUESTION\_CP3\_19>

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1. Do you agree with ESMA’s proposal of the new threshold#1 for ETFs? Please explain.

<ESMA\_QUESTION\_CP3\_20>

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1. Do you agree with ESMA’s proposal of the new threshold#2 for ETFs? Please explain.

<ESMA\_QUESTION\_CP3\_21>

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1. Do you agree with the proposed amendments to Article 11 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_22>

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<ESMA\_QUESTION\_CP3\_22>

1. Do you agree with the proposed new Article 11a of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_23>

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<ESMA\_QUESTION\_CP3\_23>

1. Do you agree with the proposed new Article 11b of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_24>

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<ESMA\_QUESTION\_CP3\_24>

1. Do you agree with the proposed amendments to Article 12 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_25>

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1. Do you agree with the proposed amendments to Table 3 of Annex I of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_26>

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<ESMA\_QUESTION\_CP3\_26>

1. Do you agree with the proposed amendments to Table 4 of Annex I of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_27>

BETTER FINANCE supports the proposed amendments to Table 4 of annex I of RTS 1, recognising the need to simplify the flagging process for clearer and more efficient post-trade transparency. However, we believe that the transaction flags should be reviewed greatly to ensure market participants have a granular view of liquidity, especially in the context of the Consolidated Tape (CT). We this advocate for maintaining granular SI flags and introducing a dedicated flag for midpoint executions by SIs, as these changes would significantly enhance transparency. This would ensure that retail investors have access to critical information on price improvements and market liquidity, thereby supporting best execution while keeping the market clear and transparent without adding unnecessary complexity. <ESMA\_QUESTION\_CP3\_27>

1. Would you consider that the SIZE, ILQD, RPRI flags could be removed? Please, explain.

<ESMA\_QUESTION\_CP3\_28>

BETTER FINANCE does not support the removal of the SIZE, ILQD, and RPRI flags, as they provide important information on Systematic Internalisers’ (SIs) executions, particularly related to size, illiquidity, and reference price transactions. These flags are crucial for giving investors, especially retail investors, a clear and informed view of market liquidity, helping them assess conditions and understand the context of specific trades. While these flags may have limited use, they offer valuable granular insights that are essential for best execution and market analysis. Removing them would reduce the quality of information available to market participants and negatively impact transparency around liquidity and price formation. Instead, we suggest reviewing and refining these flags to ensure they continue to serve a useful role. Additionally, in light of the Level 1 review and new midpoint matching possibilities for SIs, we recommend introducing a MIDP flag for midpoint executions, which would further enhance transparency and support retail investors.<ESMA\_QUESTION\_CP3\_28>

1. Would you consider that the ACTX flag could be removed? Please, explain.

<ESMA\_QUESTION\_CP3\_29>

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<ESMA\_QUESTION\_CP3\_29>

1. Would you further reduce the maximum time for disclosing pre-trade transparency “as close to real-time as technically possible”? If so, what maximum limit would you suggest? Please explain.

<ESMA\_QUESTION\_CP3\_30>

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<ESMA\_QUESTION\_CP3\_30>

1. Do you agree with the proposed amendments to Article 15 of RTS 1? If not, please explain.

<ESMA\_QUESTION\_CP3\_31>

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<ESMA\_QUESTION\_CP3\_31>

1. Which option do you prefer: Option A (status quo), Option B (add layer for technical trades), Option C (add layer for technical trades and waivers)? Please explain.

<ESMA\_QUESTION\_CP3\_32>

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<ESMA\_QUESTION\_CP3\_32>

1. Do you agree with the proposed amendments to Annex IV of RTS 1 in relation to Option B and Option C? Please explain.

<ESMA\_QUESTION\_CP3\_33>

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<ESMA\_QUESTION\_CP3\_33>

1. Do you agree with the proposed amendments to Articles 16 to 19 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_34>

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<ESMA\_QUESTION\_CP3\_34>

1. Do you agree with the proposed different application dates for the different provisions in Article 20 of RTS 1? Please explain.

<ESMA\_QUESTION\_CP3\_35>

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<ESMA\_QUESTION\_CP3\_35>

# 2.3 Input / Output data RTS (equity CTP)

1. Do you agree with the proposal for the Data related to the status of individual financial instruments? If not, please explain.

<ESMA\_QUESTION\_CP3\_55>

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<ESMA\_QUESTION\_CP3\_55>

1. Do you agree with the proposal for the data related to the status of status of systems matching orders? Would you consider that other identifiers of the trading system type should be used? Please explain?

<ESMA\_QUESTION\_CP3\_56>

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<ESMA\_QUESTION\_CP3\_56>

1. Do you agree that the pre-trade data to the CTP should be that included in Table 1b in section 4.1.3.1 except for fields 8 and 9? Please explain.

<ESMA\_QUESTION\_CP3\_57>

BETTER FINANCE supports the inclusion of pre-trade data in Table 1b for the Consolidated Tape Provider (CTP) but emphasizes the need for a comprehensive and transparent Consolidated Tape. Limiting the pre-trade data to just Best Bid and Offer (BBO) 1 already raised, as it restricts the full scope of data that investors - especially retail investors - need to make informed decisions. A broader range of data would ensure that the Consolidated Tape serves its intended purpose of enhancing transparency and access to liquidity information across EU markets and provide a source of quality assessment for best execution. Additionally, it is crucial to include the order entry timestamp to allow the CTP to reorder BBO based on the actual order time, mitigating issues related to network latency and “geographical disparities”. Without this, the data may provide a distorted view of liquidity, favoring contributors located closer to the CTP. By ensuring accurate reordering and broader data inclusion, the CTP can provide a true and useful view of European market liquidity, improving the quality of information for all market participants and protecting retail investors' interests<ESMA\_QUESTION\_CP3\_57>

1. Do you agree with the proposal for the output table? Please explain.

<ESMA\_QUESTION\_CP3\_58>

BETTER FINANCE supports efforts to streamline the output table, but stresses the need to retain sufficient granularity to provide retail investors with comprehensive and accurate market data. Simplification should not come at the cost of critical details that reflect price formation and liquidity. We believe it remain essential to include fields such as the “order entry timestamp”, which would allow the Consolidated Tape Provider (CTP) to reorder incoming data based on the actual order time, for exemple and to fulfil ots purspose. This would ensure that market participants receive a precise and transparent view of liquidity, free from the distortions caused by network latency or geographical disparities. Incorporating such details ensures that retail investors have access to reliable and comprehensive data, helping them make informed decisions and achieve best execution. The CTP can still serve all market participants while maintaining the integrity and accuracy of the orders by balancing streamlined output with necessary transparency and clear, layered (investo-friendly), accessible and complete data.<ESMA\_QUESTION\_CP3\_58>

1. Do you agree with the proposal for the input and output tables for the post-trade eq-uity CTP? Please explain.

<ESMA\_QUESTION\_CP3\_59>

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<ESMA\_QUESTION\_CP3\_59>

# 2.4 Flags in RTS 2

1. Do you agree with the proposed amendments to flags in Table 3 of Annex II or RTS 2? In particular, do you consider that the flag ‘ACTX’ should be deleted?

<ESMA\_QUESTION\_CP3\_60>

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<ESMA\_QUESTION\_CP3\_60>