

Consultation Response

MiFIR Review - CP on the amendment of RTS 2

Date: 28 August 2024

Question Responses

No	Question
1	Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.
Response	
Yes, AFME agrees with the proposed definition of CLOB.	

No	Question
2	Do you consider that the definition should include other trading systems? Please elaborate.
Response	
No.	

No	Question
3	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.
Response	
Yes, AFME agrees with ESMA's proposed description.	

No	Question
4	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.
Response	
<p>AFME would welcome ESMA guidance to provide further clarity on the classification of different bond types for the purpose of FITRS reporting. AFME members understand that other than the areas mentioned above (i.e., transparency/FITRs), there is no intention by ESMA to apply that guidance for other purposes such as when obtaining ISINs for issuances of bonds as that would risk creating mismatches between FITRs and FIRDS.</p> <p>With regard to the proposed 'public sector unit control' test under ESA 2010 that ESMA recommends in the CP in order to address uncertainties and divergent classifications that are present in the market, it is noted that the notion of 'non-market producer' which will be considered for the purpose of categorising different types of issuers can be subject to various interpretations leading to different classification results.</p> <p>In particular, in the decision tree in para 36 the following definition of "non-market producer" is provided: <i>"the qualification of institutional units as non-market producers corresponds to entities providing all or most of their output (goods and services) free of charge or at prices that are not economically significant"</i>. However, the criteria to determine output that is "free of charge" or "economically insignificant" are unclear and can be problematic, for example in the context of EIB. The EIB extends loans at their cost of market borrowing</p>	

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plus a margin designed to cover the bank's costs so it would be unlikely that a loan from EIB would be "free of charge" or at "not economically significant price" either. Consequently, if EIB would be judged to be a "non-market producer" then, following the decision tree, it would be classified as a 'Sovereign issuer', if not, then as an 'Other public issuer.' Nevertheless, this would contradict the definition of 'sovereign issuer' in article 2 par 1 (46) MiFIR and article 4 par. 1 (60) MiFID under which EIB is classified as sovereign issuer.

Therefore, in view of the uncertainties and divergent classifications that the implementation of ESA 2010 can cause, it would be desirable if further analysis is undertaken (but no adjustments made until RTS2 changes have come into effect) and support could be provided by ESMA, including workable examples to illustrate the approach to the factors used to determine the categorisation/classification of the different type of issuers.

No	Question
5	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.
Response	
AFME is generally in agreement with the proposed LIS pre-trade thresholds for bonds to the extent that those are largely aligned with the existing thresholds.	

No	Question
6	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.
Response	
AFME members are comfortable with the proposed pre-trade LiS threshold for SFPs (EUR 250,000) and the proposed pre-trade LiS threshold for EUAs (5 lots).	

No	Question
7	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.
Response	
Regarding bonds the (outstanding) issue size (which is proposed as determinant of liquidity for post-trade regarding bonds) should not be the sole criterion for pre-trade liquidity and instead it should be explored further if there is space for additional criteria to be considered.	

No	Question
8	Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.
Response	
Yes, AFME agrees with the proposals from ESMA on the harmonisation of post-trade fields.	

No	Question
9	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?
Response	
Yes, AFME agrees with ESMA's proposal for no changes.	

No	Question
10	Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?
Response	
Yes, AFME is generally supportive of the proposed changes.	

No	Question
11	Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

Response

No. We believe that the proposed liquidity thresholds **when viewed in the context of the ESMA proposed bond type groupings** and deferral timeframes would lead to unintended consequences for all bond types.

In particular, given the fact that the maximum deferral periods are prescribed by Level 1 text, the issuance size and trade size differentiators are of paramount importance in ensuring a well calibrated regime that takes into account the broad interests of investors, liquidity providers, issuers and other key market stakeholders, including government bond issuers. Establishing appropriate bond type groupings and associated liquidity thresholds within those will be fundamentally important to maintaining and improving market liquidity (Recital 16, MiFIR) as well as enhancing overall market transparency which will help to achieve the objectives of instrument valuation as well as the efficiency and robustness of price formation (Recital 15, MiFIR).

Incorrect calibration leads to incorrect outcomes

Our concerns about ESMA's calibration of liquidity thresholds can be evidenced by the calibration for covered bonds, where we believe that the threshold of €250mm is set too low and would incorporate within the 'liquid bond' segment covered bonds that are not sufficiently liquid.

Similarly, we also believe that the liquidity thresholds for sovereign and public bonds should likewise be increased to align with the liquidity profile and outstanding issue sizes of that bond type.

Our fundamental approach to analysing the structure and thresholds contained in ESMA's proposals as well as during the process of formulating our own, is to be guided, first and foremost, by thorough analysis of existing post-trade data. In particular, we have focused on how transparency would be distributed across the different deferral categories **as well as** the likely time to trade out of risk in each bond segment i.e. **both** sides of the appropriate balance ESMA state to be their primary objective in achieving in para. 72 of the CP. (Please see further detail in response to Qu. 12 below.)

Additional bond groupings allow for more accurate treatment and flexibility in the future

The conclusions drawn from the results of this analysis led to us proposing a refinement of ESMA's proposals. The most significant of these changes is to propose more granular bond type groupings, using parameters that we believe to be most effective in better targeting illiquid securities and thereby a more effective targeting of deferrals to where they are most needed. We believe this restructuring to be fully compatible with the Level 1 text and have received legal advice from external counsel which supports this belief.

Even after this exercise, we still believe that the issue size thresholds are too low in ESMA's proposals, specifically in the cases of Sovereign & Public bonds and Covered bonds. Accordingly, AFME proposes the below liquidity thresholds. These, in conjunction with our proposals on bond type sub-groupings, trade size thresholds and price deferral periods contained in our response to Question 12, would ensure high

percentages of overall transparency which achieve ESMA's stated targets while at the same time addressing substantial and widespread concerns around market liquidity and undue risk that surround ESMA's current proposals:

- (i) **Sovereign and other public bonds:** €2 Bln
 - a. Sub-Grouping 1: (Bonds from EU, US & UK, Fixed Coupon 0-11 Years Maturity Only)
 - b. Sub-Grouping 2: (Bonds from EU, US & UK, Fixed Coupon 11+ Years Maturity; AND all Sovereign & Public Bonds from all other Countries. All Linkers, FRNs, Strips & Bills from ALL Jurisdictions)
- (ii) **Corporate, convertible and other bonds:** €500 Mln
 - a. Sub -Grouping 1: (Bonds in EUR, USD & GBP, IG Only)
 - b. Sub-Grouping 2: (Bonds in EUR, USD & GBP, HY Only. All bonds in all other currencies)
- (iii) **Covered bonds:** €1 Bln

The above thresholds reference **outstanding** issuance size in line with ESMA's proposal in par. 91 of the CP.

We also note that the elements contained within the proposed bond groupings (which differ between sub-groupings 1 and 2) is explained further in Question 12. In addition, we believe that including sub-groupings in each bond type would offer flexibility when determining the trade size thresholds and cater for the different liquidity profiles of instruments.

For an overview of AFME key concerns with ESMA's proposed thresholds and their impact on liquidity, please also refer to Annex A1 "Executive Summary" to AFME Consultation Response on the amendment of RTS 2.

No	Question
12	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.
Response	
<p>Overall, AFME members believe that the proposed trade size thresholds within ESMA's currently proposed structure are too high and, if implemented as proposed, could result in trades in many bonds, particularly covered bonds and less liquid bonds in both ESMA's sovereign and corporate bond type groupings being subject to effective real time transparency when they lack the necessary liquidity to support such levels of transparency in the trade sizes proposed. For an overview of AFME key concerns with ESMA's proposed thresholds and their impact on liquidity, please also refer to Annex A1 "Executive Summary" to AFME Consultation Response on the amendment of RTS 2.</p> <p>Under the current transparency regime, the 'liquid' nature of a bond is assessed on the average number, frequency and size of transactions. Although this regime is considered complex, it has the virtue of being based on an estimate of the ability of market makers to trade out of risk. As we explain below, basing assessments on the average daily volume (ADV) per ISIN traded to factor in variations in the liquidity of a given bond at different trade sizes and across different segmentations, brings some consistency to the proposed regime by including this liquidity element to help determine the ability to trade out of risk without any material additional complexity.</p> <p>Quantification analysis of undue risk needed</p> <p>We note that in paragraph 72 of the consultation paper, ESMA states that "<i>the aim of the transparency regime is to provide for an adequate level of transparency to market participants while at the same time ensuring that liquidity providers are not exposed to undue risk.</i>" However, it would appear that the</p>	

impact on liquidity providers has not been factored into how the thresholds were set. This is illustrated by the fact that ESMA's data analysis contained in the CP focuses entirely on "*an adequate level of transparency*", but no consideration has been given to "*undue risk*."

Incorrect calibration leads to changes in market behaviour – no one wins

Example:

- Firm A intends to purchase corporate Bond X in material size
- At the point of executing, Firm A sees a print in that same bond, that was subject to a deferral period that was not sufficient for the entity buying it (Firm B) to trade out of the associated risk
- Firm A naturally delays their purchase of that bond in
 - 1) the knowledge that a material risk size of that bond has just entered the market and
 - 2) the expectation that the price in that bond will consequently under perform as a result of that market-wide knowledge (as others would also delay any potential purchases)
- Firm B thereby loses money on the trade when they sell owing to the price underperformance caused by the overly early publication of trade details
- This results in Firm B then being more defensive in their pricing the next time they are in a similar situation
- This naturally widens bid / offer spreads as other market making participants experience similar scenarios and also become more defensive in their pricing
- This reduces market liquidity and, over time, also negatively affects where issuers can sell new issues (reflecting greater execution & liquidity risk in the secondary market) and thereby increases the cost of funding to issuers over the longer term.
- The impact of incorrect calibration is exacerbated in times of market stress – these periods with one way buying or selling flow rely heavily on risk intermediaries who will be disincentivised from facilitating risk transfers if their positions are immediately disclosed to the market.

The above scenario and consequent effects are clearly in no-one's interests and certainly counter to the long term objectives of CMU. In this way, AFME members believe that ESMA's currently proposed thresholds could have significantly negative repercussions for the proper functioning and the broader competitiveness of EU capital markets and the ability to achieve better outcomes for end investors.

Using time to trade out of risk as a quantification for undue risk

When properly considering this risk dynamic, it is critical that the transparency regime factors in the likely time it would take for a market maker to trade out of the risk that they assume when making 'risk prices' and facilitating risk transfer on behalf of their institutional investor clients. This is especially important for less liquid bonds which typically trade less frequently and in smaller sizes.

Our methodology for doing this rests on calculating the Average Daily Volume (ADV) traded per unique ISIN traded within each segmentation of bond types. We then divide the notional trade size in any given scenario by the ADV per ISIN that traded within that bond segment. This gives a value for average likely time to trade out of that risk and is expressed in 'Trade Out Days'. These values can all be seen in the tables in **Annex A.2** and we show them in response to this question's request for "qualitative data" to support our analysis.

This methodology was developed in conjunction with Finbourne Technology, a specialist data management company, in 2022 and formed the basis for 2 papers (available [here](#) and [here](#)) produced that year that performed an in-depth analysis of this topic in the context of the ongoing MiFIR/MiFID 2 review.

Hedging does not address this risk

A further important point to note is the idiosyncratic nature of the market risk introduced by overly early publication of specific trade details. This owes to the fact that the risk is focused onto one specific security i.e. the one referenced in the trade details that have been published. This is important to understand in the context of claims that the time to hedge a position is the one relevant to this topic.

In the above described scenario, Firm B can hedge their credit risk by either shorting other corporate bonds from the same issuer or by buying a CDS contract. Thus, in the event of material news being released on that issuer, any resulting negative or positive price action in Bond X should be offset by similar movements in the hedge bonds they have shorted or in the CDS contract.

However, in the above scenario, the negative price movement would be specific to that one security, Bond X, with no commensurate movement in the hedge bonds or the CDS contract. This is because the information released (through trade details being published) is specific to that one security, Bond X. This dynamic is explored in more detail in an AFME paper published last year which can be found [here](#).

TRACE

Unsurprisingly, some European market participants have considered the current ESMA proposals in the context of the way TRACE operates for corporate bonds in the US. It is important to take into full account that TRACE operates under a different structure than that proposed by ESMA, namely, by use of a volume capping mechanism to avoid undue risk. The **executed price** of any trade in TRACE eligible bonds (USD denominated only) has to be published within 15 minutes of trade time but, critically, **the volume published is capped at USD \$5 Mln** for Investment Grade (IG) bonds and **USD \$1 Mln** for High Yield (HY) bonds. Full details of the volume traded on these trades is thereafter only published after 6 months (down from 18 months in 2017.) It is this volume capping mechanism that is critical and fundamental to avoiding undue risk in the US market but which, given the prescriptiveness of the Level 1, text is not an option available to ESMA to use in the EU's revised regime.

AFME Data led analysis

In order to complement ESMA's analysis around the distribution of transparency, AFME have commissioned our own data analysis to factor in the time to trade out of risk. Our aim has been to better inform and guide the process of developing a transparency framework that would serve ESMA's goals of increasing overall market transparency while maintaining adequate protection for less-liquid instruments. Our belief is that the structure we propose provides a more optimal and desirable solution that can serve the interests of investors, issuers and market makers.

In particular and as referenced above, our methodology is based on the expected length of time for the average trade size in each category of trades to be unwound from a risk perspective (i.e. to be "traded out" of.) As shown by the data, the trade out periods for a significant number of transactions extend beyond the maximum deferrals for price and volume provided in the revised MiFIR. To effectively address this shortcoming, we propose a revised approach to the calibration of the transparency as currently proposed.

AMF and ICMA analysis

Additionally, it is important to note that our methodology is very similar to that used by the AMF in their impactful 16th July paper titled: "Bond Transparency: How to Calibrate Publication Deferrals?" ([link here](#)) and acknowledged by them in the footnote on page 8 of their paper.

As a further point of note, ICMA has also adopted this approach in their recent work on this topic and for the purposes of responding to this consultation paper.

To the best of our knowledge, we are the only 3 organisations that have made an attempt to quantify the risk and undue risk side of the required balance cited in para. 72 of this CP. It is therefore highly significant, as well as hopefully helpful to ESMA, that all 3 organisations have focused on Average Daily Volume per ISIN traded as the most appropriate metric for doing this (please see Annex A3 for more detail.) As such, AFME recommends in the strongest terms that ESMA do their own such analysis by leveraging the above methodology that relies on the use of ADV per ISIN traded, and in consultation with industry experts such as AFME that have been actively engaged in the development of that methodological approach, before finalising the structure(s) that will be used for the revised regime. This is in order to balance their existing analysis of the distribution of transparency across the various deferral buckets and to arrive at a similarly balanced outcome that will satisfy their objective as stated in para. 72 of this CP.

A fundamental objective of the regime must be to align transparency deferrals for each bond segment with the time it would likely take to trade out of risk so as to prevent other market participants from altering their behaviour based on information gleaned from the transparency regime.

Other relevant criteria are important for accurate calibration

It is also stressed that our approach is supported by Article 11(4)(e) MiFIR which allows ESMA to take into account "other relevant criteria" when specifying what constitutes a transaction of a medium size, of a large size and of a very large size. For completeness, we would note that Article 11(4)(d) MiFIR provides that 'liquid' and 'illiquid' markets can only be determined "according to the issuance size" of the relevant bond. However, ESMA's mandate to calibrate which bond types and transaction sizes should be placed into the different deferral categories, is to be based according to Article 11(4)(e) MiFIR on quantitative and qualitative analysis and take into account the criteria in Article 2(1), point (17)(a) MiFIR, and other relevant criteria where applicable. Furthermore, we note that ESMA's final report should also reflect the outcome of consultation with the expert stakeholder group established pursuant to Article 22b(2) MiFIR.

Bond groupings result in more transparency for the bulk of actively traded bonds

In this context we recommend that ESMA refines its approach when determining bond type groupings, category structure and trade size thresholds in line with the principles outlined in our response to this question. We recommend a number of changes which can be summarised as follows:

- (i) Create more granular and nuanced bond type sub-groupings for both Sovereign & Public and Corporate, Convertible & 'Other' Bonds. Covered Bonds to be left unchanged:

a. Sovereign & Public Bonds:

- (i) Sub-Grouping 1:
 - Issued by entities domiciled in EU, US and UK
 - Bullet, Fixed coupon only (i.e. no inflation-linked, bills, strips or FRNs)
 - 0-11 years maturity
- (ii) Sub-Grouping 2:
 - Non-bullet bonds issued by EU, US & UK entities
 - Bonds 11+ years to maturity issued by EU, US & UK entities
 - All bonds issued by entities domiciled outside EU, US and UK

b. Corporate, Convertible & 'Other' Bonds:

- (i) Sub-Grouping 1:
 - Bonds denominated in EUR, USD & GBP
 - Investment Grade only

- (ii) Sub-Grouping 2:
 - High Yield Bonds in EUR, USD & GBP
 - All other currency bonds

c. All Covered Bonds

The fundamentally important **rationale** for this re-ordering of the bond type sub-groupings – and, critically, the parameters used for doing so – is to facilitate the better targeting of less liquid bonds and their associated appropriate deferrals. Indeed, the improved targeting of these less liquid bonds actually facilitates **more transparency** for the most liquid bonds where the bulk of trading activity takes place. In particular we note that:

- o Using maturity as grouping for sovereign bonds: This is because longer maturity bonds have much higher interest rate risk and so typically trade in smaller sizes than bonds with shorter maturities.
 - o Splitting sovereign bonds by nominal and inflation bonds: The inflation bond market has much fewer issues (even though the issue sizes are often similar to nominal bonds) and there is much less two way flow in inflation bonds as investors typically buy and hold the bonds (this comes out in the ADV differences).
 - o Splitting sovereign bonds by country of issuer: This provides different treatment of emerging market bonds.
 - o Splitting corporate, convertible and other bonds by Investment Grade (IG) vs High Yield (HY): HY bonds often have lower issue sizes and are more sensitive to price transparency as their risk is often harder to hedge (trade on price not spread, inactive CDS or equity for the issuer, often have callable features). It may be helpful to note here that credit ratings are used in the operation of banks’ prudential regulation so there are both precedent as well as established operational practices in the use of this metric in calibrating financial regulations.
- (ii) In pursuit of taking into due account the quantification of time to trade out of risk, it is necessary to have differentiated trade size thresholds between liquid and illiquid segments throughout Categories 1-4. This, in turn, requires that structural adjustments be made to both Categories 0 and 5 which should also be split into liquid and illiquid buckets (using the same issue size differentiator as for the other categories.) This allows for e.g. a higher trade size threshold of €10 Mln for liquid Sovs & Public bonds in Category 0.
 - (iii) Adopt the methodology of quantifying and incorporating time to trade out of risk, appropriately balanced against transparency targets, and consequently adjust the trade size thresholds.

Retain maximum allowed deferrals until data supports shortening

In addition, we think that at the current stage ESMA should not deviate from the maximum price and volume deferral thresholds provided for in MIFIR as post-trade data analysis does not support doing so. In our view, any proposals for reduced deferral times should be considered only after the new transparency regime starts applying so that any lessons learned from the experience of application of the new provisions can be properly assessed. We would note ESMA’s proposed price deferral of EOD for both “medium” and “large” in categories 2-4 does not sufficiently differentiate – for example a liquidity provider is taking on more risk for a “large” vs “medium” trade or “large liquid” vs “large illiquid” trade, but price is disseminated to the market at the same time for both trades.

AFME proposal–A simple solution achieving greater transparency while being appropriately tailored

Our proposed model strikes the right balance between simplicity and appropriate levels of granularity in order to effectively meet the various objectives that a transparency regime is expected to support. We also stress that moving from the current calculation-based methodology to a static methodology as proposed above, does not represent any significant implementation challenges as all parameters of our model are based on static or semi-static criteria that are easily programmable.

Furthermore, as shown by the transparency percentage numbers included in the AFME proposed model, our changes are not detrimental to the percentages of transparency achieved as they successfully maintain high levels of transparency for all bond types.

In particular, our analysis has shown that if the transparency regime would be calibrated as proposed by AFME then for:

- (i) **Sovereign and other public bonds** 93.8% of all trades would be subject to real time transparency with such percentage increasing to **96.6% transparency** if trades subject to a 15-minutes price and volume deferral were to also be counted.
- (ii) **Corporate, convertible and other bonds:** 82.2% of all trades would be subject to real time transparency with such percentage increasing to **88.2% transparency** if trades subject to a 15-minutes price and volume deferral were to also be counted.
- (iii) **Covered bonds:** 86.1% of all trades would be subject to real time transparency with such percentage increasing to **89.9% transparency** if trades subject to 15 minutes price and volume deferral were to also be counted.

The above transparency figures demonstrate a radical change to the current levels of market transparency, which are considerably lower, and thus they will increase overall market transparency very markedly. This is especially the case for corporate bonds. Moreover, particularly for sovereign and other public bonds, the above transparency percentages achieve more ambitious targets than the 90% transparency target which ESMA aims to reach for trades subject to immediate transparency. Importantly, we are confident that our model can also offer protection for genuinely illiquid instruments which represent only a small part of the whole universe of trades but nevertheless require a substantive amount of time to be unwound. In that way, our proposed model can ensure that there would be a valid business case for trading activity in those instruments to not be impacted severely as otherwise market participants might refrain from trading those instruments due to the idiosyncratic risk to which they would be exposed if the transparency regime is not carefully calibrated.

Minimising regulatory divergence

Finally, we note that our proposed model and the parameters used to create more granular bond type groupings mirrors, to the extent possible, the methodology and thresholds used in our buy- and sell-side transparency model recently proposed to the FCA (see [here](#)). Importantly, this minimises divergence between the two regimes to the extent possible. This final point is one we believe also to be of importance given the split between EU & UK based bond market activity and the landscape of liquidity available to all market participants trading in the wider European time zones.

No	Question
13	Do you agree with the maximum deferral period set out in the tables above?
Response	

Please see response to Question 12 above. As mentioned there, maximum deferral periods should not deviate from the maximum deferral times permitted by Article 11 MiFIR and should be retained until data analysis supports shortening.

No	Question
14	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?
Response	
<p>AFME agree that all SFPs should be classed as illiquid. However, the current ESMA’s proposal for T+2 deferral does not provide adequate protection, especially for large size trades. Data reviewed by AFME shows an ADV per ISIN traded of €164,234, so deferral for T+2 days would not provide protection for trades much over €329k. However, this issue is compounded by the fact that all SFPs up to the LIS threshold of € 1 million will be real-time transparent due to the lack of consideration in the proposed for illiquid SFPs.</p> <p>We also stress the possible negative impact on trading activity in SFPs and the risk of market fragmentation, if the EU calibrates a new regime for those products without careful analysis. In this regard, AFME would propose calibrating the relevant thresholds for pre- and post-trade transparency in line with developments in other key jurisdictions to avoid regulatory divergence. We particularly note FCA CP 23/32 in which SFPs and emission allowances traded on trading venues are proposed to be classified as Category 2 instruments. For those instruments, investment firms will not be required to make public trade reports. Likewise, for trading venues, post-trade transparency will be set by each trading venue in line with certain proposed criteria in FCA’s rules. This treatment reinforces the argument that SFPs are very illiquid and that this market requires appropriate handling of transparency. Moreover, any unjustified misalignment with patterns in the market could also have repercussions on the international competitiveness of EU financial markets.</p> <p>For these reasons, AFME’s proposal is to apply the deferral thresholds and timeframes suggested in our response to Question 15 and 16 below. In essence, and until an analysis is undertaken on the quantification of undue risk, we propose maintaining the approach typically followed for SFPs until today whereby these products, precisely due to their illiquid nature, have not been historically subject to real-time transparency but instead to extended deferral times of up to T+4 weeks or to default to the longest deferral applied to bonds.</p> <p>Finally, regardless of the methodology used to determine liquidity for SFPs, AFME members believe that the new framework should allow the reassessment of the liquidity determination and therefore should include appropriate provisions to enable the periodic review and reassessment.</p>	

No	Question
15	Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?
Response	
<p>As highlighted in our response to Question 14, SFPs are illiquid products. This assessment necessitates the development of liquidity thresholds and deferral timeframes outside of the bond universe structure with the aim to calibrate a separate transparency regime applicable only to SFS. In developing this regime it will be possible for ESMA to benefit from the flexibility provided in level 1 (art. 2(1)(17) MiFIR) according to which the following criteria can be used to define liquidity thresholds: (i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within</p>	

the class of financial instrument; (ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product; (iii) the average size of spreads, where available; (iv) the issuance size, where appropriate.

Furthermore, separate data analysis is necessary to be conducted for relevant ADVs and trade-out days regarding this segment of the market that will feed into the calibration of threshold sizes and deferral periods. It will therefore be advisable for ESMA to rely on the results of such analysis before proceeding to make any changes to applicable threshold sizes.

No	Question
16	Do you agree with the maximum duration proposed?
Response	
<p>No, AFME do not agree with the maximum duration proposed at T+2. It is noted that currently NCAs are able to implement extended deferral periods for SFPs whereby post-trade information is aggregated and published up to 4 weeks after the trade date. Historically, there has been a uniform pattern among NCAs of applying 4 weeks deferral times. This practice implicitly acknowledges the illiquid nature of SFPs. Therefore, the approach proposed by ESMA (par. 120-121 of the CP) on allegedly maintaining the current maximum deferral period of no longer than 19.00 local time on the second working day after the date of the transaction for all SFS ignores the current allowed deferrals.</p> <p>Furthermore, to the best of our knowledge, we are not aware of any statistical publication that could support the shortening of current deferral regime to T+2. As explained on our response to Question 14, it is necessary for a careful data analysis to be conducted that would, similarly to the methodology proposed for bonds, calculate trade out days based on ADVs per ISINs traded in order to provide adequate analysis of trade-out risk specific to SFPs. In the absence of any reliable analysis so far, AFME would be supportive of maintaining the extended deferrals in line with the existing regime which would essentially mean that all SFPs should be subject to a 4-weeks maximum deferral. In addition, AFME would also support maintaining the weekly aggregation that is currently applicable to the extent that ESMA sees value in that provided that a 4-week deferral timeframe also applies.</p> <p>Finally, we note that the new article 8a par. 1 b) in the proposed amended version of RTS 2 as it is currently drafted inadvertently subjects SPFs that are below the proposed LIS threshold to real-time transparency despite the fact that ESMA intends to classify all SFPs as illiquid. According to AFME members views, post-trade publication for SPFs should be deferred irrespective of the applicable LIS threshold (as there is not a liquid market for them) and the maximum deferral time should be set at the levels suggested above.</p>	

No	Question
17	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?
Response	
<p>AFME agrees with the determination of all EUA as liquid. As also mentioned for SFPs, AFME also recommends a periodic review and reassessment framework of that determination so that ESMA will have the necessary flexibility to adopt a different methodology if that is needed.</p>	

No	Question
18	Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

Response	
AFME generally think that the proposed post-trade deferral threshold for EUA included in Table 18 of the CP is reasonable.	

No	Question
19	Do you agree with the classification of ETCs and ETNs as types of bonds?

Response	
Currently, there are different views among market participants on the asset type classification of ETCs and ETNs with some of them treating ETCs and ETNs as equity while others as non-equity. In view of the divergent approaches, AFME would refrain endorsing a particular classification. Nevertheless, in the event that ESMA were to proceed with the classification of ETCs and ETNs as types of bonds, we believe that the post-trade transparency regime proposed by ESMA would not be appropriate and instead deferral timeframes should be increased as outlined below in our response to Question 21.	

No	Question
20	Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

Response	
AFME members agree with treating ETCs and ETNs as illiquid products.	

No	Question
21	Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

Response	
<p>AFME note that despite recognition from ESMA that all ETCs and ETNs are classed as illiquid, a transaction will be subject, according to the new article 8a par. 1 of RTS 2, to a deferral only if it is above the post-trade size threshold of € 50,000,000. In addition to being illiquid, although ETCs and ETNs will be classified as types of bonds, ESMA's proposals restrict the maximum deferral to T+2 whereas for bonds the maximum deferrals will be up to 4 weeks.</p> <p>Therefore, it is important that analysis is conducted to ensure the deferral timeframes are adequately calibrated specifically for ETCs and ETNs. In any case AFME members disagree with introducing a maximum deferral of T+2 only for ETCs and ETNs above the post-trade threshold as proposed in the new article 8a par. 1 a) of RTS 2. Instead, we believe that given the absence of a liquid market in ETCs and ETNs, trades in those instruments should be subject to a deferral and could default to the longest deferral applied to bonds.</p>	

No	Question
22	What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

Response	
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As noted by ESMA in paragraph 145 in the CP, NCAs have a choice of two options regarding alternative deferrals for Sovereign bonds as per Article 11(3) MiFIR. It is also noted that, if implemented per the CP descriptive text, option (a) will offer greater simplicity compared to option (b). However, AFME thinks the drafting of Article 11 in RTS 2 that ESMA proposes in the relevant Annex of the CP provides for a pragmatic approach for both options and makes both options (a) and (b) achievable and implementable (as they are today) as all categories could have a standard deferral time for price and volume for up to six months.

As referenced above, it is noted that although ESMA seems to propose in the CP that the six month volume deferral as per options (a) and (b) of Article 11(3) MiFIR is additive to the standard deferral timeframes, there appears to be a deviation from that approach in other parts of the CP. More precisely, the proposed drafting of Article 11 in draft RTS 2 states the *'omission of publication of volume of an individual transaction for an extended time period not exceeding six months'* and *'for a period not exceeding 6 months, the publication of the aggregation of several transactions'*, which contradicts the envisaged approach outlined in Table 21 pg. 59 and Table 22 pg. 60 of the CP and is in line with the current RTS and implementation approach.

Moreover, option (b) provides for the aggregation/disaggregation of details of trades, but there are inconsistencies in how this is proposed in the CP. For example, paragraphs 151 to 153 indicate that the implementation of this should be done after the volume deferrals in the standard table have elapsed, most notably adopting a narrower interpretation, which as noted, the mechanics of such a construct can lead to complications as the weekly aggregation proposed would include 5 different categories of trades with different deferral timeframes. However, the MiFIR text refers to details of transactions (i.e. both price and volume details), and in paragraphs 150 and 154 it refers to keeping the process as it currently is, with paragraph 154 stating that the content of aggregated data remains unchanged (i.e., should include weighted average price, total volume, and the total number of transactions). The current application of weekly aggregation that paragraphs 150 and 154 refer to aggregates all trades (both price and volume) within the weekly cycle with no previous deferral lapses being required (per the draft RTS Article 11 in the CP Annex).

Therefore, AFME members think that the proposed drafting of revised RTS 2 is better aligned with the interpretation that should apply to Article (3) option (a) and (b) MiFIR and would be supportive of a maximum deferral of volume of up to six months applying as the ultimate deferral limit for all Categories of trades and not as an additional six month deferral period commencing once the standard volume deferral per each category ends.

In addition, AFME consider that this approach also be reasonable in the context of non-EU sovereign debt instruments for which ESMA have remit to decide the appropriate deferral requirements, and would urge that for ease of application and to ensure a level of consistency with current regime, that the option (b) of weekly aggregation be applied to these instruments.

No	Question
23	Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?
Response	
AFME agree with maintaining the existing approach, where the calculations of liquidity thresholds which trigger the temporary suspension are based on the average monthly volume calculated as a nominal value. However, those volume calculations could suffer inaccuracies or inconsistencies due to reporting errors or omissions that could affect the way calculations are carried out and as a result of any other data quality issues. However, ESMA's approach in the CP does not specify how the impact of any such errors and data	

quality issues can be addressed to ensure that calculations are not skewed due to that reason and whether ESMA intends to have any monitoring role in the process.

No	Question
24	Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.
Response	
<p>AFME reiterate that ESMA's mandate would require sufficiently nuanced treatment for the large number of different bonds with different liquidity profiles which has been made significantly more difficult by the prescriptiveness of Level 1 text (as argued previously.) Chances of success would have been significantly improved with ability to consider greater number of 'static' factors than simply issue size to delineate between liquid & illiquid (e.g. maturity, currency, country of issue, IG/HY etc).</p> <p>Whilst we are highly supportive of the data analysis-led approach to calibration, we believe ESMA's data work highlighted in this CP to be partial and subjective.</p> <ol style="list-style-type: none">1) Para 72 of the CP states: "The aim of the transparency regime is to provide for an adequate level of transparency to market participants while at the same time ensuring that liquidity providers are not exposed to undue risk." It is therefore puzzling to note that all the data analysis appearing in the CP is focused on the former ('adequate' level of transparency) and none at all on the latter (ensuring that liquidity providers are not exposed to undue risk.) i.e. all the analysis focuses on the distribution of ISINs, traded volume and number of trades across the 5 different categories stipulated in the Level 1 test (6 including small trades) without any attempt to measure, either quantitatively or otherwise, the undue risk element.2) While there is extensive analysis of how ISINs/volumes/trade counts would likely be distributed across the 6 categories, there is no justification or rationale explained for how the apparently target distribution numbers were arrived at. E.G. para 99 states: "ESMA is of the view that the great majority of trades should be subject to real-time post trade transparency. ESMA believes that around 90% of trades should fall under this category." AFME would like to understand how the figure of 90% was arrived at and how it is justified by data analysis and after considering the impact on liquidity providers. We would like to see any data analysis ESMA has conducted that might demonstrate or suggest that the risk profiles of trades in the remaining 10% are materially different from those in the 85-90% bracket. What risk metrics were analysed to suggest that 90% is the appropriate proportion of the whole. <p>AFME also reiterate the need to ensure that all instruments classed as illiquid, namely SFPs, ETCs and ETNs, will be subject to appropriate deferral timeframes regardless of the applicable LiS to each of them and after data analysis is performed. As further explained in our responses to Questions 14 – 16 and 19 – 21, as those types of products are already regarded as illiquid they are subject to deferrals which as a standard practice are in the range of 4 weeks for both price and volume details. This is because NCAs consistently apply such deferral times in acknowledgement of their illiquid nature. Therefore, it appears that ESMA's proposals in the CP for applying a maximum of T+2 deferral for trades above the suggested LiS thresholds contradict the assessment of those products as illiquid without providing any clear justification. Consequently, AFME members do not agree with the way that the new article 8a par.1 in the proposed RTS 2 is drafted as it critically excludes a portion of illiquid trades from deferred publication.</p> <p>Moreover, AFME would propose introducing reporting delays for operational reasons (which should not be considered as a deferral) for complex categories of trades that would otherwise be subject to real time publication, such as package trades, portfolio trades, certain hedge trades commonly transacted in the form</p>	

of government bonds associated with new bond issues. In particular, with respect to the latter category of trades, AFME notes that the allocations of the new issue itself are not reportable for post-trade transparency (as primary issuance), but as the current language in MIFIR implies, the hedge trades in government bonds are. 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).

In addition, the proposal in Section 5.2 of the CP on the separation of scope for ESCB members that are part of the Eurosystem from those that are not may have implementation challenges. Although this needs further analysis, AFME believes it would be preferable if these are not separated at this point.

Finally, adequate implementation time should be provided for market participants and AFME recommend that any changes to RTS 2 should start applying at least not less than six months after entry into force.

No	Question
25	<p>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.</p>
Response	
<p>AFME members note that given the dependencies of changes to RTS 2 with changes to other RTSs (e.g. RTS 23) as well as the increased levels of interaction required between ESMA, NCAs, APAs, TVs, investment firms, CTPs and technology providers, the assessment of implementation and compliance costs should include any one-off or recurring costs for the purpose of ensuring a smooth and effective transition to the new MiFIR transparency regime.</p> <p>Those costs are expected to be significant for investment firms registered as DPEs and AFME members have identified the following key areas where the majority of costs are expected to be incurred:</p> <ul style="list-style-type: none"> (i) DPE regime: costs regarding compliance with the new transaction reporting framework for DPEs (such as determining whether the counterparty has DPE status and who will be the party responsible for complying with reporting obligations, regulatory fees for registration as DPE and/or branches of DPEs for asset classes and for complying with asset classification used in the DPE register). (ii) Revised scope of post-trade reporting: the scope of reporting has changed and firms are required to adjust their systems/internal set-up to the new regime which applies in a different way per each asset class particularly for derivatives. This is expected to be a considerable technological overhaul requiring testing before transition to a 'business as usual' mode. (iii) Changes to deferrals regime: reporting fields are expected to change, additional arrangements and cooperation with APAs to ensure that data are accurately reported, addressing any potential increase to fees charged by APAs to offer their reporting services to investment firms. <p>It is also noted that a compressed implementation timeframe for all the above changes will considerably increase costs for investment firms. Thus, AFME recommend that at least six to eight months elapsed time is provided. Moreover, investment firms will be expected to employ a wide range of operational and technological resources and dedicate team members for the purpose of ensuring such transition. However,</p>	

due to the different hiring strategies of firms across locations, it would not be possible at this stage to provide monetary figures on the expected costs in a consistent way across all firms.