10 July 2024
ESMA74-2134169708-7343

Reply form

on the Consultation Paper 3

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 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 under the headings 'Legal notice' and heading 'Data protection'..

1. General information about respondent

Name of the company / organisation	Association for Financial Markets in Europe
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	UK

2. Questions

2.1 CDR 2017/567

Q1 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>
While AFME does not have strong views on Options 1 or 2 at this stage, we wish to highlight that Option 2 is likely to entail costs to market participants. Market participants already ingest data from FITRS, so the transition to any replacement system – whatever form that system may take – would require market participants to budget appropriate resources and adapt to the changes by a regulatory deadline. We ask ESMA to remain mindful of these costs if Option 2 is selected; our preference would be to maintain the same methodology of data ingestion under FITRS notwithstanding other changes that may result from Option 2. AFME remains ready to engage with any future proposals in connection with this matter.

<ESMA_QUESTION_CP3_1>

Q2 Do you agree with the proposal on the start day of application of the transparency calculations? Please explain.

<ESMA_QUESTION_CP3_2>
AFME agrees with the proposal on the start day of application of the transparency calculations.

<ESMA_QUESTION_CP3_2>

Q3 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>
For the purpose of clarifying the denominator for ADT and ADNTE, and for specifying daily traded parameter, AFME agrees with the proposal to use the number of days on which the instrument was made available for trading on the MRMTL and where such market was open.

<ESMA_QUESTION_CP3_3>

Q4 Do you agree with the proposal on the liquidity determination for shares? Please explain.

<ESMA_QUESTION_CP3_4>
AFME agrees with the proposal on the liquidity determination for shares but only on the basis that the number of liquid shares seems to remain relatively stable. We reiterate our view that the free float criterion is a more accurate indicator of the number of shares that are available to the market. Market capitalisation provides only a calculation of the value of the issuer as a whole and is based on shares not all of which are publicly available for trading. Inclusion of unavailable shares into the calculation of a liquid market creates a misleading representation of the liquidity in these financial instruments and consequently may mischaracterise instruments as liquid or illiquid in the MiFIR transparency regime.
<ESMA_QUESTION_CP3_4>

Q5 Do you agree with the proposal on the liquidity determination for other similar financial instruments? Please explain.

<ESMA_QUESTION_CP3_5>
AFME agrees with the proposal on the liquidity determination for other similar financial instruments.

<ESMA_QUESTION_CP3_5>

Q6 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>
AFME agrees with the proposal insofar as it seems reasonable to keep the field in the XML scheme to save market participants an implementation action to remove field and to allow for any retrospective analysis.

<ESMA_QUESTION_CP3_6>

2.2 RTS 1

Q7 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>
AFME largely agrees with the content of the proposed Tables 1a and 1b but we make several observations below.

Regarding Field 1 of Table 1b, Level 1 (article 2 36b point vii) requires a number of timestamps that, together, can be read as 'the timestamp of an event that causes the best bid or offer price or volume to change):

- the execution of the transaction and any amendment thereto,
- the entry of the best bids and offers into the order book,
- the indication, in an auction trading system, of the prices or volumes,

Noting the various market models and associated requirements for aggregated and disaggregated data, we believe it would be clearer to call this the 'Update time' in both Table 1b and Table 5 and modify the explanatory text as follows:

- For non-aggregated market models, this should be more clearly defined as being the time at which the order is received by the trading venue (not the time is it sent by a participant of that venue) or cancelled, modified or executed.
- For aggregated market models, this should be the timestamp that the trading venue changes the price or quantity at the best bid or offer (resulting from an order creation, modification, cancellation or execution).
- For "trading venues operating an auction trading system", we think this is referring to periodic auction trading activity (as opposed to continuous auction trading, which we believe to be covered above), and recommend this be made clearer in the text. We believe this timestamp represents the date and time of the generation of an updated value of the auction's indicative price or size and we recommend that the text states this.

Regarding Field 3:

- We note that Section 8.2.2 of the consultation paper contains examples of both matched and unmatched periodic auctions (Figures 15 and 16 respectively) with only a matched auction example provided in section 4.1.3.1 (Figure 3). There is no requirement pre-trade transparency for mismatched order booked under periodic auction trading models under RTS 1 so it not clear how the scenario in Figure 16 arises. We suggest that references to pre-trade transparency for unmatched periodic auctions, including Figure 16, are removed.

- We note that the concept of 'bids' and 'offers' in a matched periodic auction could be confusing and that prices and sizes are typically referred to as the indicative price and indicative volume. We recommend that this terminology be used to aid understanding and that field 3 supports a value to represent the indicative price (and volume), for example 'INDX'. This would correlate with the inclusion of specific 'auction' price and volume fields in Table 5 for CTP output (fields 10 and 11 respectively).
- There is an apparent error in Figure 3, on page 35 of the consultation paper, which shows the bid and offer sizes in the example to be different. On the basis that this example reflects a matched periodic auction (based on the bid and offer prices being equal), the description of the data to be made public from RTS 1, Annex 1, Table 1 implies that the bid and offer sizes should be equal.

With respect to Field 5 of Table 1b, we note that some instruments may in theory trade in minor currencies which end users will expect to continue to see. We also note that Field 8 of Table 1b does not explicitly state the same requirement for major currencies. We agree with adding "MONE" to the format for Field 6 of Table 1b (Price notation).

<ESMA_QUESTION_CP3_7>

Q8 Do you agree with the proposed amendments to Article 4? Please explain.

<ESMA_QUESTION_CP3_8>
AFME broadly agrees with the proposed amendments to Article 4.

With regard to Field 6b which covers the "venue of first admission to trading", when considering its proposals for the equity consolidated tape revenue sharing scheme in the case of young instruments (see p44, CTP CP), it would be helpful for ESMA to clarify how it expects this field to be populated when the IPO takes place in a third country. We expect that ESMA would be referring to the EU venue that first lists or trades the instrument in the EU.

<ESMA_QUESTION_CP3_8>

Q9 Do you agree with the proposed amendment to Article 6 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_9>
AFME agrees with the proposed amendment to Article 6 of RTS 1.

<ESMA_QUESTION_CP3_9>

Q10 Do you agree with the proposed amendments to Article 7 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_10>
AFME broadly agrees with the proposed amendments to Article 7. However, regarding taking into account "other previous or similar financial instrument of the same issuer, we note that this is not relevant to shares.

Therefore, we propose the following amendment to Article 7(6):

> "*Before a share, depositary receipt, certificate or other similar financial instrument is traded for the first time on a trading venue in the Union, the competent authority shall estimate the average daily turnover for that financial instrument taking into account any previous trading history of that financial instrument, other previous or similar financial instrument of the same issuer* ***in the case of instruments other than shares****, and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate."*

<ESMA_QUESTION_CP3_10>

Q11 Do you agree with the proposed amendments to Article 8 of RTS 1? Please explai.

<ESMA_QUESTION_CP3_11>
AFME agrees with the proposed amendment to Article 8(1) of RTS 1. However, to better reflect the way that a reserve order works in practice, AFME would propose a slight amendment – namely, the addition of the text "(including partial execution)" – to the drafting of Article 8(3), as follows:

> A reserve order as referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is capable of execution only after ~~**its release to the order book as a new**~~ **the execution (including partial execution) of the** disclosed order.

<ESMA_QUESTION_CP3_11>

Q12 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>

AFME analysis illustrates that the European Union is an outlier when assessed relative to comparable capital markets jurisdictions such as the United States and Switzerland. These jurisdictions impose no restrictions on firms' ability to provide valuable risk capital for the internalised facilitation of clients' transactions:

	European Union (lowest AVT bucket)	**United Kingdom** (lowest AVT bucket)	**United States**	**Switzerland**
Requirement to trade at quote	Up to €10,000	Up to €10,000	Unrestricted	Unrestricted
Minimum quote size	€ 5,000	€ 1,000	Unrestricted	Unrestricted
Content of quotes	Firm bid and offer price for size up to 2xSMS	Firm bid and offer price for size up to SMS	Unrestricted	Unrestricted
Prevailing market conditions	Quotes must be close in price to MRM	Quotes must be close in price to MRM	Unrestricted	Unrestricted

Such jurisdictions recognise that diversity in trading choices supports positive outcomes for end-users and is a feature of their vibrant and mature market structure. Internalisation in these markets, or SIs in Europe, is an important component of the trading ecosystem as it provides investors with a trading service similar to the way in which banks provide loans to businesses. SIs are fundamentally different from trading venues as they utilise their own capital to trade with their clients and in doing so provide a bespoke facilitation role. An SI uses its own capital and balance sheet to facilitate, more efficient and better priced execution to its clients. In turn, this ultimately benefits end investors, such as pensioners and savers, who entrust their money to the SI's clients, which include asset and portfolio managers, to obtain the best possible results for them. SIs act as a 'shock absorber' by limiting price impacts of client positions. SIs are the only trading mechanism that can provide execution against risk capital, a non-substitutable but complementary liquidity to that which is found on venue. Therefore, it is vital to preserve such risk provision as part of the EU's market eco-system and to maintain its competitiveness.

By comparison, trading venues do not facilitate trades using their balance sheets and instead bring buyers and sellers together by providing a matching mechanism. With this model, the exchange does not take on any risk and instead provides a commercial service (earning fee revenue) by acting as a multilateral facility where buyers and sellers can meet anonymously.

Even in the UK, where HM Treasury has considered proposals to increase the minimum quote size requirement to €10,000, still no proposal to change the threshold has been made a the time of writing (contrary to ESMA's note at paragraph 99). The UK minimum quoting threshold remains at 10 per cent of standard market size, markedly below the levels proposed in the EU.

As noted above, when the UK is removed from the analysis, the lack of restrictions on placed on internalisation in other jurisdictions compared to the EU is even more apparent. AFME acknowledges that ESMA is constrained by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate to seek to avoid further disadvantages to firms within the EU.

<ESMA_QUESTION_CP3_12>

Q13 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>
Generally, AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts as an unhelpful and inflexible method for policy-setting. However, AFME recognises that ESMA is constrained by the Level 1 provisions in Articles 14(7)(b) and (c) of MiFIR, which respectively establish the threshold below which SIs will be obligated to make firm quotes public and the minimum quote size. Therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, and noting our response to question 12 above, AFME supports ESMA's proposal to keep the thresholds at the lowest possible level. Prior to the MiFID/R Review, the determination of thresholds did not take account of average trade sizes, with SMS set at €10,000 (for AVT less than €20,000) when average trade sizes on venue tended to range from €3,000 to €5,000. Further, AFME observes that in the UK, FTSE350 shares would fall into ESMA's proposed lowest €0-10,000 bucket. The proposed thresholds are an improvement on the status quo because they move in the direction of actual average trade sizes. AFME therefore supports these AVT buckets and SMS, even if they are not ideal.

Furthermore, we would like to offer some observations about the calculation and use of AVT for the purpose of SI quoting.

AFME's view is that auction trading volumes and transaction numbers should be excluded from the determination of AVT because including them would render AVT an inappropriate measure by which to set SI quoting sizes.

When quoting, SIs are obligated to provide "regular and continuous quotes during normal trading hours", i.e. the continuous trading period. Therefore, given that a large proportion of activity happens during the close, requiring SIs to quote for eight and a half hours based on sizes included in the auction creates distortions. This is because trade sizes that manifest in the last five minutes of the day are not comparable to standard market sizes during continuous trading. The closing auction represents 24% percent of on-venue liquidity in the EU and closing auction average trade sizes are around €400k[1].

Article 14(3) of MiFIR requires SI quotes to reflect "prevailing market conditions". Such conditions are widely understood by market participants during the uninterrupted continuous trading phase. However, during the auction, instrument sizes and prices are only known after a trade has occurred. While an auction is taking place the only information available to participants is the indicative price in the relevant instruments.

We should also highlight that closing auctions are the main mechanism used by market participants and investors whenever a major index is reshuffled. Therefore, capturing such episodic closing auction activity within the SI quoting obligation would include unique, unrepresentative events that would artificially distort trade sizes.

<ESMA_QUESTION_CP3_13>

Q14 Do you agree with ESMA's proposal of the new threshold#1 for shares? Please explain.

<ESMA_QUESTION_CP3_14>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges that ESMA is constrained by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, and noting our response to question 12 above, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_14>

Q15 Do you agree with ESMA's proposal of the new threshold#2 for shares? Please explain.

[1] YTD2024 EU closing auction as a percentage of EU adjusted on-venue lit liquidity is 24%, (28% unadjusted), and YTD2024 EU closing auction average trade sizes are €391,841. Source AFME/BigXYT

<ESMA_QUESTION_CP3_15>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges that ESMA is constrained by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, and noting our response to question 12 above, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_15>

Q16 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>
AFME agrees with the new AVT buckets and related SMS for DRs. <ESMA_QUESTION_CP3_16>

Q17 Do you agree with ESMA's proposal of the new threshold#1 for DRs? Please explain.

<ESMA_QUESTION_CP3_17>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges that ESMA is constrained by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_17>

Q18 Do you agree with ESMA's proposal of the new threshold#2 for DRs? Please explain.

<ESMA_QUESTION_CP3_18>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges

that ESMA is constrained by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_18>

Q19 Do you agree with the new AVT buckets and related SMS? Please explain.

<ESMA_QUESTION_CP3_19>
AFME agrees with the new AVT buckets and related SMS for ETFs. <ESMA_QUESTION_CP3_19>

Q20 Do you agree with ESMA's proposal of the new threshold#1 for ETFs? Please explain.

<ESMA_QUESTION_CP3_20>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges that ESMA is bound by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_20>

Q21 Do you agree with ESMA's proposal of the new threshold#2 for ETFs? Please explain.

<ESMA_QUESTION_CP3_21>
AFME regards the setting of prescriptive, hardcoded thresholds into Level 1 legislative texts generally to be unhelpful and an inflexible method for policy setting. However, AFME acknowledges that ESMA is bound by the thresholds set in Level 1 as a minimum, and, therefore, we think that the approach that ESMA has adopted in this consultation is the most appropriate, especially to seek to avoid further disadvantages to firms within the EU. Given that the Level 1 mandate includes a quoting floor, AFME supports ESMA's proposal to keep the threshold at the lowest possible level.

<ESMA_QUESTION_CP3_21>

Q22 Do you agree with the proposed amendments to Article 11 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_22>
AFME agrees with the proposed amendments to Article 11 of RTS 1, noting that they give legal effect to the proposed AVT buckets and SMS for ETFs, certificates and similar financial instruments.
<ESMA_QUESTION_CP3_22>

Q23 Do you agree with the proposed new Article 11a of RTS 1? Please explain.

<ESMA_QUESTION_CP3_23>
AFME agrees with the proposed new Article 11a of RTS 1.

<ESMA_QUESTION_CP3_23>

Q24 Do you agree with the proposed new Article 11b of RTS 1? Please explain.

<ESMA_QUESTION_CP3_24>
AFME proposes that the word “quote” in the title of Article 11b and the words “minimum quote” in Article 11b(1) be written without capital letters. This is a stylistic suggestion that does not affect the content of the provision. Otherwise, we agree with the proposed new Article 11b of RTS 1.

<ESMA_QUESTION_CP3_24>

Q25 Do you agree with the proposed amendments to Article 12 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_25>
While AFME agrees with the proposed amendments to Article 12 of RTS 1, it does not seem appropriate to change the title of the article. Paragraphs 2, 3 and 6 of Article 12 still make reference to investment firms trading outside a trading venue.<ESMA_QUESTION_CP3_25>

Q26 Do you agree with the proposed amendments to Table 3 of Annex I of RTS 1? Please explain.

<ESMA_QUESTION_CP3_26>
AFME agrees with the proposed amendments to Table 3 of Annex I of RTS 1.<ESMA_QUESTION_CP3_26>

Q27 Do you agree with the proposed amendments to Table 4 of Annex I of RTS 1? Please explain.

<ESMA_QUESTION_CP3_27>
AFME agrees with the proposed amendments to Table 4 of Annex I of RTS 1. We recognise that many of the proposed amendments seek further harmonisation with the UK regime which will serve to reduce reporting frictions for market participants operating across these jurisdictions. Furthermore, we would recommend that ESMA consider introducing changes to trading flags that FIX Trading Community have worked on, including the GIVE and IGRP flags to improve post-trade transparency for SI and OTC trades.

While we welcome these changes and greater consistency with the UK, we note that when ESMA last updated RTS 1, the MiFIR review was underway and it was clear that further revisions to the framework would have been required at the end of that process. Revisiting this regime is technologically and financially burdensome for firms and our members would have preferred if the changes were only made once. We would ask ESMA to ensure there is greater stability going forward and to bear in mind the implementation costs for firms every time they are reviewed. We would urge ESMA to finalise a complete set of changes to post-trade flags now and seek to avoid further large-scale revision of the framework for the foreseeable future.

<ESMA_QUESTION_CP3_27>

Q28 Would you consider that the SIZE, ILQD, RPRI flags could be removed? Please, explain.

<ESMA_QUESTION_CP3_28>
Please refer to our response to Question 27 above.
<ESMA_QUESTION_CP3_28>

Q29 Would you consider that the ACTX flag could be removed? Please, explain.

<ESMA_QUESTION_CP3_29>
Please refer to our response to Question 27 above.
<ESMA_QUESTION_CP3_29>

Q30 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>

AFME's position is that an acceptable maximum time limit for post-trade transparency disclosure is up to one minute in real time. For firms that engage in manual reporting of trades, a time limit less than this would represent an infeasible and inappropriate requirement, and may result in such firms reporting over the time limit in a number of cases.
<ESMA_QUESTION_CP3_30>

Q31 Do you agree with the proposed amendments to Article 15 of RTS 1? If not, please explain.

<ESMA_QUESTION_CP3_31>
AFME agrees with the proposed amendments to Article 15 of RTS 1.
<ESMA_QUESTION_CP3_31>

Q32 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>
AFME is supportive of ESMA receiving the information it needs in order to have an informed view of the market and which increases the accuracy of calculations and reporting.

We additionally propose that ESMA consider taking this opportunity to collaborate with the FCA to eliminate the double-reporting of some off-book, off-exchange trades. At the present time, there is an unnecessary duplication of the reporting of these trades, which could be resolved if regulators in the EU and UK mutually recognised the post-trade reporting of these trades. Equally, we note that if there were more harmonisation between the regimes, particularly with regard to the exclusion of certain non-addressable transactions from post-trade transparency, this would provide a more accurate view for market participants assessing the market. Above all, ESMA can help to improve data quality by thorough scrutiny of the data under the existing rules and with this information guide firms and venues to a consistent application of the post trade transparency regime.<ESMA_QUESTION_CP3_32>

Q33 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>
Please refer to our response to Question 32 above.

<ESMA_QUESTION_CP3_33>

Q34 Do you agree with the proposed amendments to Articles 16 to 19 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_34>
AFME agrees with the proposed amendments to Articles 16 to 19 of RTS 1.

<ESMA_QUESTION_CP3_34>

Q35 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>
AFME agrees with the proposed different application dates for the different provisions in Article 20 of RTS 1.

<ESMA_QUESTION_CP3_35>

2.3 Input / Output data RTS (equity CTP)

Q55 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>
AFME is supportive of the proposals but makes the following observations:

Instrument and market status are already published by exchanges over their market data feeds but generally using separate messages. This would be consistent with the proposal to include 'regulatory data' in CTP scope and with the CTP's messages.

We note that venues today generally publish the trading phase of individual instruments, which is complementary to the proposed halted and suspended status. We recommend therefore that the trading phase field in Table 2 be included in Table 1. This would, therefore, also add an "outage" status to the instrument status a status which cannot be covered by the definitions of halt, removed and suspended as defined in the relevant article of Directive 2014/65.

Status of instruments communicated by the CTP can only be for information purposes and must be made available also through trading venue websites. Amendments to this table should not have the effect of making the consolidated tape mandatory to consume.
<ESMA_QUESTION_CP3_55>

Q56 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>
AFME is supportive of the proposals but makes the following observations:

Instrument and market status are already published by exchanges over their market data feeds but generally using separate messages. This would be consistent with the proposal to include 'regulatory data' in CTP scope and with the CTP's messages.

We recommend usage of MMT for system status, specifically the identification of trading phases.

We note that generally venues operate individual market models under different segment MICs and suggest that ESMA introduce another field value (or another field) to differentiate between order books, such as lit, dark and so on.

Venue status communicated by the CTP can only be for information purposes and must be made available also through trading venue websites. Amendments to this table should not have the effect of making the consolidated tape mandatory to consume.
<ESMA_QUESTION_CP3_56>

Q57 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>

Given that quantity currency is important for pre-trade information and is information about the trade, it is not clear why Field 8 should be excluded. Therefore, AFME disagrees with its exclusion.

Regarding field 9, AFME would note that inconsistencies may arise between trading venues and CTPs that may or may not possess this market data.<ESMA_QUESTION_CP3_57>

Q58 Do you agree with the proposal for the output table? Please explain.

<ESMA_QUESTION_CP3_58>
Given the overlap of fields required for pre-trade transparency and the output of the CT, we reiterate many of our comments made at Question 7 in response to this question.

It is not clear how the CTP should handle situations where different markets operate different 'trading system types' or in different trading phases at the same time. For example, Xetra has an intraday auction at midday, during which some MTFs offer continuous trading. It would be helpful for ESMA to clarify what the CTP should publish to reflect such scenarios.

Regarding Field 1, Table 1b, we note that Level 1 (article 2 36b point vii) requires a number of timestamps that, together, can be read as 'the timestamp of an event that causes the best bid or offer price or volume to change):

- the execution of the transaction and any amendment thereto,
- the entry of the best bids and offers into the order book,
- the indication, in an auction trading system, of the prices or volumes,

Noting the various market models and associated requirements for aggregated and disaggregated data, we believe it would be clearer to call this the 'Update time' in both Table 1b and Table 5 and modify the explanatory text as follows:

- For non-aggregated market models, this should be more clearly defined as being the time at which the order is received by the trading venue (not the time is it sent by a participant of that venue) or cancelled, modified or executed.
- For aggregated market models, this should be the timestamp that the trading venue changes the price or quantity at the best bid or offer (resulting from an order creation, modification, cancellation or execution).
- For "trading venues operating an auction trading system", we think this is referring to periodic auction trading activity (as opposed to continuous auction trading, which we believe to be covered above), and recommend this be made clearer in the text. We believe this timestamp represents the date and time of the generation of an updated value of the auction's indicative price or size and we recommend that the text states this

Regarding Fields 10 and 11, Table 5:

- We note that the concept of 'bids' and 'offers' in a matched periodic auction could be confusing and that prices and sizes are typically referred to as the indicative price and indicative volume. We recommend that this terminology be used to aid understanding and that field 3, Table 1b supports a value to represent the indicative price (and volume), for example 'INDX'. This would correlate with the inclusion of specific 'auction' price and volume fields in Table 5 for CTP output.
- There is an apparent error in Figure 3, on page 35 of the consultation paper, which shows the bid and offer sizes in the example to be different. On the basis that this example reflects a matched periodic auction (based on the bid and offer prices being equal), the description of the data to be made public from RTS 1, Annex 1, Table 1 implies that the bid and offer sizes should be equal.
- We note that Section 8.2.2 of the consultation paper contains examples of both matched and unmatched periodic auctions (Figures 15 and 16 respectively) with only a matched auction example provided in section 4.1.3.1 (Figure 3). There is no requirement pre-trade transparency for mismatched order booked under periodic auction trading models under RTS 1 so it not clear how the scenario in Figure 16 arises.

Field 4 and 8, Table 5:

As we noted with respect to Field 5 of Table 1b, some instruments may in theory trade in minor currencies which end users will expect to continue to see. We also note that Field 8 of Table 1b does not explicitly state the same requirement for major currencies.<ESMA_QUESTION_CP3_58>

Q59 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>
AFME agrees with this proposal as it makes sense to identify gaps and overlaps, and ensure consistency, between RTS 1 and input and output fields for the CTP.<ESMA_QUESTION_CP3_59>

2.4 Flags in RTS 2

Q60 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>
As a general remark, AFME stress that duplicative work would possibly be required by investment firms due to the staggered approach followed by ESMA with respect to transaction reporting issues that are covered in different RTSs. AFME members believe that any changes to RTS 2 proposed in section 9 of the MiFIR Review Consultation Package 3 (CP 3) in relation to post-trade deferral flags for bonds, ETCs, ETNs, SFPs and EUAs should be implemented simultaneously with the relevant RTS 2 changes to pre- and post-trade transparency framework applicable to those instruments which are included in the MiFIR Review Consultation Package 1 that was published on 21 May 2024 (CP 1). That would ensure consistency for market participants and regulators in the implementation of the revised RTS 2 and remove the possibility that RTS 2 may be updated twice to cover in essence the same issues.

Likewise, as there is not an open consultation yet on amendments to RTS 22, the use of the existing post-trade deferral flags (LIS, Illiquid and SSTI) would continue to be required for bonds under that RTS despite the fact that as per the proposals in CP 3, those flags will be replaced for bonds by new flags aligned to the five bond deferral categories. Therefore, RTS 22 will seemingly continue to require reporting of these (relatively) soon to be obsolete flags on transaction reports for an as yet undetermined period between the revised RTS 2 coming into effect, and a revised RTS 22 subsequently coming into effect. It is therefore important for ESMA to provide further guidance and adopt a pragmatic approach that will effectively address any mismatches in reporting across the different regulations. That will critically require any changes in RTS 2 not to be disconnected from RTS 22. It would therefore be advisable and to the extent possible that the amendments across all those regulations, namely RTS 2 and RTS 22, should start applying from the same point in time to avoid any negative implications due to the staggered approach followed for the updates to the various RTSs. AFME would also recommend a 9-12 month bundled transition period for the application of changes included in the above mentioned consultation papers for amendments to RTS 2 and RTS 22 commencing from the date when the revised RTSs enter into force (which as per current ESMA planning is expected in March 2025).

Furthermore, regarding each of the individual proposed amendments to flags in this CP, AFME note the following:

- Post-trade deferral flags for transactions in bonds: Pursuant to AFME's model for the calibration of the post-trade transparency framework for bonds which is presented in AFME Consultation Response to CP 1 on MiFIR Review (submitted on 28th August 2024 and available here) and for the reasons explained therein, transactions in all three general bond types that classify as very large (Category 5) should be divided between liquid and illiquid transactions and different trade size thresholds should accordingly apply to them. Provided that such proposal would be accepted by ESMA, we would suggest the inclusion of an additional flag (potentially ‘VLF6’) to distinguish between liquid and illiquid very large trades. Finally, we note that the table on page 175 in CP 3 refers to the ‘Large Liquid Flag’ as ‘LLF1’ whereas in the Consolidated version of Table 3 of Annex II of RTS 2 (page 340-341 of CP 3) this flag is shown as ‘LLF3’. We understand this discrepancy to be unintentional and would consider that ‘LLF3’should be viewed as ESMA’s proposed flag for that category of transactions.

- Post-trade deferral flags for transactions in ETCs, ETNs, SFPs and EUAs: As highlighted in our response to ESMA’s CP 1 on MiFIR Review (see link here), ETCs, ETNs and SFPs are all illiquid instruments and therefore should be subject to appropriate deferral timeframes regardless of the applicable post-trade LiS to each of them. The calibration of relevant deferrals should be based on data analysis to be performed for each of those asset classes. Given the current standard practice of applying extended deferrals for price and volume details of trades in those instruments that are typically in the range of 4 weeks, it would be recommended for more than one types of deferrals to be introduced (and not only one deferral of T+2 for transactions above the applicable LiS as suggested by ESMA) or alternatively default to the longest deferral applied to bonds. Accordingly, there is need for more than one flags to be put in place that will reflect the corresponding deferral categories.
- Supplementary deferral flags for sovereign debt instruments: AFME members have no concerns with ESMA’s proposal.
- Agency-Cross (ACTX) flag: AFME members believe that the flag could be deleted given its limited practical use.
- Matched Principal Trading (MHPT) flag: AFME note that RTS 22 currently includes ‘MTCH’ flag for matched principal trading. It is therefore important to ensure that ESMA apply a consistent approach in the naming convention used for the matched principal trading flag across RTS 2 and RTS 22. AFME also think that there would be no real benefits if that flag were to be introduced in RTS 2. Although ESMA refer in paragraph 307 of the CP to some data quality checks, it is unclear whether any concerns about the correctness of reporting were identified during those checks that could be addressed by the proposal to introduce the new MHPT flag. As ESMA point out, it is possible for two trades with two different prices to exist which would require those trades to be appropriately reported. The reporting of those trades as two transactions further allows market participants to identify the spread of the transaction. Consequently, if the two separately reported trades have the same execution timestamp, instrument identifier and size it would still be possible to accurately identify the relevant spread.

<ESMA_QUESTION_CP3_60>