

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 **15 October 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 (AFME)
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

2. Questions

2.1 ITS on SI

Q36 Do you agree with the ESMA's proposed approach? Please elaborate.

<ESMA_QUESTION_CP3_36>

In general, AFME agrees with ESMA's proposed approach. However, AFME would like to request more clarity from ESMA on the matters below:

First, would ESMA please clarify which national competent authority should receive the SI notification if an investment firm that operates an SI has its head office in one member state but operates the SI via a branch, as defined by Article 4(1)(30) of MiFID, in another member state. The template as written does not make clear which authority, or whether both authorities, should be notified in this instance.

Second, we note that paragraph 182 of the consultation paper seems to indicate that that all investment firms that are currently registered as SIs for equity and equity-like instruments will be required to submit an SI notification to retain SI status. Also, paragraph 168 says that investment firms may opt in to become SIs for non-equity instruments. We have two questions in connection with these paragraphs:

1. Will the existing SI register be voided and will all pre-existing SI registrations for all asset classes cease? If yes, on which date will the existing register cease to exist? If no, how will the old and new registers run in parallel?
2. Will all investment firms that currently have SI status need to submit the notification to retain SI status?

Third, in the context of SIs for equities and equity-like instruments, the proposed provisions suggest that an investment firm that wishes to return SI status would need to submit the notification within two weeks. What will happen if an investment firm does not submit the notification within two weeks? (Please also see our response to question 38, where we suggest that a longer time period would be appropriate.)

Fourth, in the context of SIs for non-equity instruments, ESMA's expectations for notification are difficult to understand. Should firms that are currently non-equity SIs submit a notification to confirm that they will abandon this status? Should non-equity SIs submit a notification to notify their NCA that they wish to opt in? Or should non-equity SIs do nothing?

Fifth, in the context of SIs for non-equity instruments that cease to be SIs, we expect that many investment firms will need to complete a lengthy internal analysis on how to wind up well-established SI processes in their front-to-back technology stack. Most firms will not have begun this process yet based on the expectation that the relevant MiFID reforms will not come into effect until 29 September 2025, so the requirement to register as an SI may be unexpected.

We would appreciate ESMA's guidance on these matters.

<ESMA_QUESTION_CP3_36>

Q37 Do you think the fields included in the new form are exhaustive? If not, which other information are missing for the purpose of the template? Do you consider all requested fields to be needed? What is your perspective on the potential inclusion of a dedicated field for entering the MIC of the APA utilized by the SI during the notification submission process? Please elaborate.

<ESMA_QUESTION_CP3_37>

AFME requests that ESMA clarify the meaning of "person authorised to represent the entity". We believe that ESMA is referring to the main contact person at the investment firm, who may be contacted if the NCA has any questions or concerns about the SI notification, but we would be grateful for more clarity on this point.

AFME requests that ESMA provide its rationale for including the row "Acting as a Designated Publishing Entity", given that this notification is not intended to be used as a DPE notification. We believe that market participants are likely to find the inclusion of this row confusing. Unless there is a compelling reason to include this row, we propose deleting it.

AFME believes that the following statement is vague: "In case of first notification or in case changes to the firm's system occurred, please include a description of the system operated and how the applicable requirements are met (e.g. where and when the quotes are published including the details of any APA(s) used, as applicable)." We agree that ESMA has legitimate grounds to request certain information from SIs – for example, where and when quotes are published – but we are concerned that ESMA will not receive meaningful information if the request is phrased in this manner. We propose that ESMA consider amending this text to only request specific information about how an SI's quotes are published. We think that this form, given its concise format, is better suited to the provision of

specific operational aspects of an SI, such as where quotes are published, rather than lengthier descriptions of the overall operating model, which are more appropriate to discussions between firms and national competent authorities.

AFME does not understand why non-equity instruments have been included in the SI notification template given that the definition of an SI in Article 4(1)(20) of MiFID states that an SI is “means an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments ...” (emphasis added). AFME would be grateful if ESMA would clarify the intention behind the inclusion of non-equity instruments or delete non-equity instruments from the template.
<ESMA_QUESTION_CP3_37>

Q38 Do you think that two weeks would be a processing time long enough for the investment firms that intend to continue/start carrying out activities as SIs in any class of financial instruments to submit the new notification to the respective NCAs? Please elaborate.

<ESMA_QUESTION_CP3_38>

AFME would like to propose that ESMA allow one month, rather than two weeks, for SI notifications to be submitted. Noting that SIs should submit these notifications “as soon as technically possible”, we would ask ESMA to be mindful that two weeks will often be an insufficient amount of time for an SI to gather the required information, populate the template and obtain internal approval for submission. Allowing more time would give SIs a more reasonable opportunity to make high-quality submissions to NCAs.

<ESMA_QUESTION_CP3_38>

Q39 Are there any other suggestions you would like to propose? Please elaborate.

<ESMA_QUESTION_CP3_39>

AFME has no further suggestions.

<ESMA_QUESTION_CP3_39>

2.2 RTS 3

Q40 Do you agree with the proposed amendments to RTS 3, including the Annex? If not, please explain.

<ESMA_QUESTION_CP3_40>

AFME broadly agrees with the proposed amendments to RTS 3, including the Annex.

<ESMA_QUESTION_CP3_40>

Q41 Do you foresee any challenges with the use of JSON format compared to XML? Please provide estimates of the costs, timelines of implementation and benefits (short-and long term) related to potential transition to JSON.

<ESMA_QUESTION_CP3_41>

AFME defers to trading venues to comment on the implementation cost and timeline implications of changing the format, but we otherwise foresee no issues with the use of JSON for this low frequency data exchange.

<ESMA_QUESTION_CP3_41>

Q42 What is your preferred option for the frequency of reporting of data to ESMA from trading venues, and CTPs upon request: a) maintain bi-weekly reporting as present or b) switch to monthly reporting, on the 16th day of the month for the previous month? Please justify your answer and provide examples and data on the costs and benefits of your preferred approach.

<ESMA_QUESTION_CP3_42>

AFME agrees with the frequency of reporting as proposed in the draft RTS.

<ESMA_QUESTION_CP3_42>

2.3 RTS 7

Q43 Do you agree with the proposed Article 1 – Definitions? Please explain.

<ESMA_QUESTION_CP3_43>

In AFME's view, the definition of "algorithmic trading systems" in Article 1(1)(a) is quite broad. If adopted, this definition would cover every "arrangement or system" supporting the operation of any trading venue, with no scoping to capture only those systems that support algorithmic trading. Without a clearer delineation between algorithmic and non-algorithmic trading systems, manual activities that feed into an algorithmic trading system could be encapsulated within the definition of an algorithmic trading system even when critical components of these processes are not algorithmic in nature. Therefore, we propose the following drafting amendment:

*"(a) 'Algorithmic trading systems' means any trading systems **of the trading venue** that allow or enable algorithmic trading"*

AFME has no concerns about the definitions in Article 1(1)(b-d).

Article 1(1)(2) is difficult to interpret. All contemporary trading venues operate by electronic means, so under this paragraph all venues can be said to "allow or enable algorithmic trading where order submission and order matching [are] facilitated by electronic means." If ESMA's intention is to establish the principle in law that all contemporary trading venues possess the underlying technological capabilities to allow or enable algorithmic trading (a self-evident principle, in AFME's view) then we would propose alternative drafting as follows:

*"For the purposes of this Regulation, ~~it is considered that a~~ trading venues **shall be considered to be using algorithmic trading systems where they allow or enables algorithmic trading where order submission and or order matching is facilitated** by electronic means.*

With this proposal, we intend to emphasise that trading venues may allow or enable algorithmic trading by operating electronically while recognising the fact that non-algorithmic trading will continue to take place on the same venues.
<ESMA_QUESTION_CP3_43>

Q44 Do you agree with the proposed Article 17 – General principles in the establishment of Circuit Breakers)? Please explain.

<ESMA_QUESTION_CP3_44>

Article 17(1) is not appropriate for fixed income financial instruments. The definitions of "circuit breaker" in Article 1(1)(b) of RTS 7a refers to "mechanisms to be set in place by trading venues in ... to temporarily halt or constrain trading if there is a significant price movement in a financial instrument during a short period of time." Two types of circuit breaker are then defined – trading halts and price collars. This leads to concerns that fixed income trading venues will need to adopt these specific circuit breakers, but neither is appropriate to fixed income instruments. Therefore, we propose the following amendment to Article 17(1):

*"Trading venues shall establish circuit breakers ~~in the form of such as~~ trading halts or price collars **or other mechanisms that constrain trading** and ensure that such mechanisms are operational at all times during trading hours."*

Fixed income instrument price formation is done off venue in a number of markets. On venue, price movements for less liquid symbols can be fairly large and could appear to be the result of disorderly trading. Trading halts and price collars would not be appropriate circuit breakers because they are not designed for the behaviour of the fixed income market.

Other types of circuit breakers are used instead (for example, warnings). These breakers tend to less prescriptive than equity breakers.

<ESMA_QUESTION_CP3_44>

Q45 Do you agree with the proposed Article 18 – General principles in the establishment of the methodology for the calibration of Circuit Breakers? Please explain.

<ESMA_QUESTION_CP3_45>

AFME agrees with the proposed Article 18, which we believe is suitably broad without being excessively prescriptive.

<ESMA_QUESTION_CP3_45>

Q46 Do you agree with the proposed Article 19 – Disclosure requirement regarding circuit breakers? Please explain.

<ESMA_QUESTION_CP3_46>

AFME agrees with Article 19's requirements for trading venues to provide clear and concise information on the functioning and effects of circuit breakers. We believe that Article 19 would be even more effective if trading venues were explicitly required to post a notification on their website in the event that a circuit breaker is activated, as soon as possible after it is activated. We propose that a fifth paragraph be added to Article 19:

In addition to the disclosures required by paragraphs 1 to 4, trading venues shall disclose on their website as soon as technically possible when a circuit breaker is activated, whether the active circuit breaker is a trading halt or price collar or other mechanism to constrain trading, a list of instruments affected by the active circuit breaker and the reason for the circuit breaker's activation.

<ESMA_QUESTION_CP3_46>

Q47 Article 19(1)(f) mandates trading venues to disclose “information on the triggering of circuit breakers, with at least an annual frequency”. Do you support such disclosure, and do you think ESMA should further specify the type of information that should be disclosed? Please explain.

<ESMA_QUESTION_CP3_47>

AFME supports the requirement for such disclosures and has no further specifications to suggest in respect of the information that should be disclosed. However, in line with our response to question 46 above, AFME believes that it would be useful for trading venues to disclose that a circuit breaker has been activated as soon as possible after it is activated. This would mean a more frequent than annual disclosure.

<ESMA_QUESTION_CP3_47>

Q48 Do you agree with the proposed template to report information to NCAs? Please explain.

<ESMA_QUESTION_CP3_48>

AFME agrees with the proposed template to report information to NCAs.

<ESMA_QUESTION_CP3_48>

Q49 Do you agree with the proposal to delete Articles 15 of RTS 7 ('Business continuity arrangements')? Please explain.

<ESMA_QUESTION_CP3_49>

AFME agrees with the proposal to delete Article 15 of RTS 7. The deletion of article 15(2) aligns with our previously provided feedback that requiring trading venues to “ensure that trading can be resumed within or close to two hours of a disruptive incident” can be counterproductive in an outage situation. It created an incentive to resume trading at an arbitrary point in time even if there are still system issues while in the interim discouraging shifting continuous trading to an alternative venue. It ignored the nature of outages which dictate that a venue will be unable to control whether it can resume orderly trading within that timeframe.

While we acknowledge ESMA’s intention to generally eliminate duplication between RTS 7 and DORA requirements, we are concerned that, in the event of an outage, the communication expectations of trading venues’ members may not be met by the amendments made for new RTS 7a. We would propose that ESMA give effect to this by amending Article 14 of RTS 7a to include the following requirements:

- Trading venues must be proactive and clear in their communications, giving stakeholders as much detail as is known about the nature of the disruptive incident, as soon as it is known, without speculation.
- Communications related to a disruptive incident should be published publicly on the trading venue’s website as soon as technically possible.
- Communications regarding market status should be published in a machine-readable format, available on exchange connectivity and market data protocols, so that trading systems can automatically incorporate these notifications into their procedures.
- These communications should be updated on a regular fixed schedule, for instance every 30 minutes, giving a status update, even if the update is “no update”.
- At a minimum, any market statuses, instrument prices, outstanding order statuses, and trade feeds published by trading venues on their execution or market data feeds must be accurate and consistent during an outage, and not lead participants to believe the venue is operating in a normal state. Trading venues should make public the specific time stamps at the point at which orders were cleared and/or rejected and which trades were considered valid. This should be done as soon as is feasible.
- Any planned re-opening times should be published publicly on the trading venue’s website.
- Trading venues should consult with participants on whether to reopen to ensure there are no outstanding issues which might be further exacerbated by the market reopening.

- When a venue restarts it should open in a manner which avoids dependency on the primary opening and causes minimal disruption to trading.
- Trading venues should provide all stakeholders and members with a comprehensive post-mortem analysis and follow-up points after any major incident, which should include disclosure of the root cause and the steps taken to rectify and prevent recurrence.

<ESMA_QUESTION_CP3_49>

Q50 Do you agree with the proposed way forward on Article 8 of RTS 7 ('Testing of trading systems')? Please explain.

<ESMA_QUESTION_CP3_50>

AFME agrees with the proposed way forward on Article 8 of RTS 7.

<ESMA_QUESTION_CP3_50>

Q51 Do you agree with the proposed way forward on Article 23 of RTS 7 ('Security and limits to access')? Please explain.

<ESMA_QUESTION_CP3_51>

AFME agrees with the proposed way forward on Article 23 of RTS 7.

<ESMA_QUESTION_CP3_51>

Q52 Do you agree with the proposed amendments to Article 6 of RTS 7 ('Outsourcing and procurement'), Article 16 ('Business continuity plan') and Article 17 ('Periodic review of business continuity arrangements')? Please explain.

<ESMA_QUESTION_CP3_52>

AFME agrees with the proposed amendments to Articles 6, 16 and 17 of RTS 7.

<ESMA_QUESTION_CP3_52>

Q53 Do you suggest the deletion of other RTS 7 provisions due to the amendments to Article 48 of MiFID II? Please explain.

<ESMA_QUESTION_CP3_53>

The requirements in RTS 7 are vital provisions to ensure the sound operation of trading venues and for safeguarding the market more broadly and it is important that such obligations are not further reduced. On this basis, AFME has no further deletions to suggest.

<ESMA_QUESTION_CP3_53>

Q54 Do you suggest the amendment to other provisions of RTS 7, due the amendments to Article 48 of MiFID II? Please explain.

<ESMA_QUESTION_CP3_54>

Other than our proposed amendments in our responses to questions 43, 44, 46 and 49 above, we have no further amendments to suggest.

<ESMA_QUESTION_CP3_54>