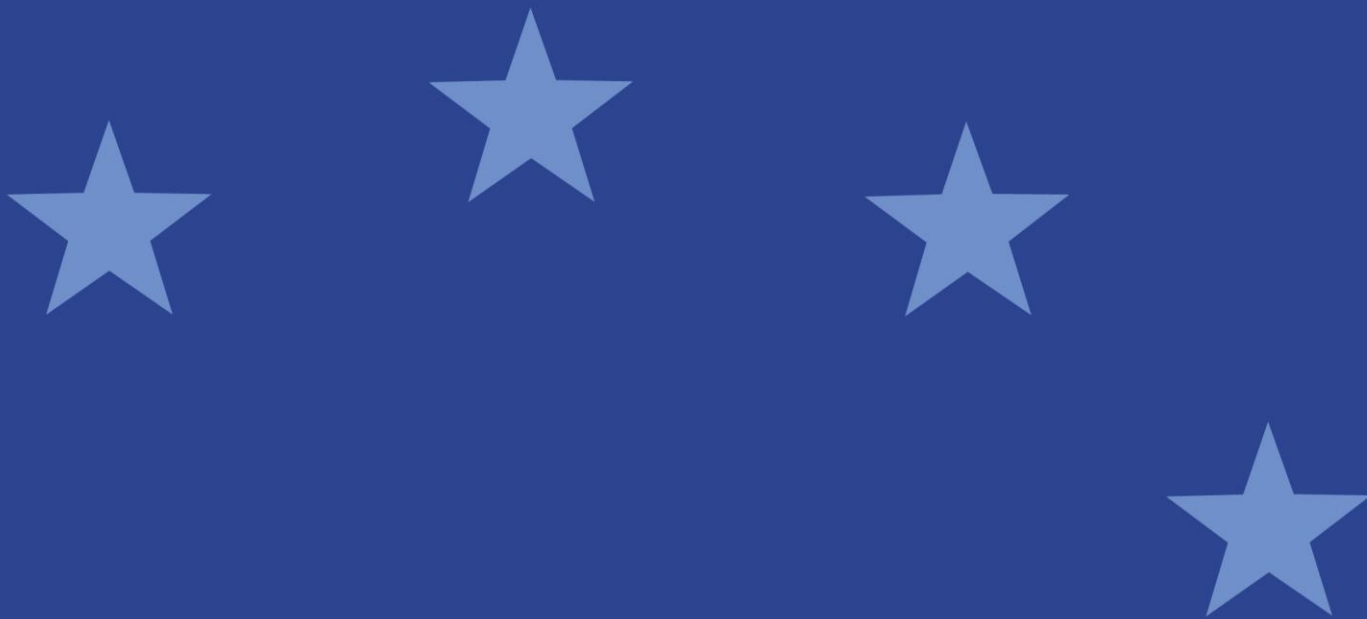




European Securities and
Markets Authority

Reply form for the Consultation Paper on the RTS 1 and RTS 2 Review



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the RTS 1 and RTS 2 review published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_RVIEW_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses 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.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA_CP_RVIEW_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_CP_RVIEW_ESMA_REPLYFORM or

ESMA_CP_RVIEW_ANNEX1

Deadline

Responses must reach us by 1 October 2021.

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 end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 'Data protection'.

General information about respondent

| | |
|--------------------------------------|---|
| Name of the company / organisation | AFME - Association for Financial Markets Europe |
| Activity | Banking sector |
| Are you representing an association? | <input checked="" type="checkbox"/> |
| Country/Region | Europe |

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_RVIEW_1>

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on ESMA's Consultation Paper on the review of RTS 1 and RTS2. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

ESMA's consultation addresses several important issues including the treatment of non-price forming transactions and the way in which these types of transaction are flagged for the purposes of post-trade transparency. AFME is very appreciative of the work ESMA has undertaken with a view to improving post-trade data quality. We believe this work will contribute to a stronger transparency regime and while also laying the groundwork for a consolidated tape. Whilst the format of RTS2 pre-trade transparency information is discussed in this consultation paper, it is worth highlighting that pre-trade transparency offers little benefit and therefore the SI regime should be reworked in line with the revision of some of the other pre- and post-trade transparency requirements for fixed income.

AFME members understand what data is helpful to a user in deciding whether and where to trade and also understand what data is unhelpful and/or misrepresents activity. Ultimately the purpose of the post-trade transparency data is to a) identify unique liquidity that can be interacted with (also known as addressable or accessible liquidity) and b) provide information related to the real level of liquidity. We therefore ask ESMA to reflect on our recommendations about what activity is unhelpful to be published for the purposes of post-trade transparency (e.g. where it is duplicative of other activity) and what activity needs to be flagged (e.g. out of hours). Any activity that is published that is not addressable or a duplicative print simply pollutes the post-trade data, undermining the market's confidence in post-trade data as a true indicator of liquidity that a market participant can interact with.

AFME members state that with the exception of the definition of periodic auctions, the current definitions of trading systems outlined in Annex 1 of RTS 2 are sufficient and do not require further enhancement or alignment with the description of trading systems outlined in RTS 1. On frequent batch auctions, AFME does not support the introduction of a separate description of FBA trading systems. Additionally, we disagree with ESMA's assertion that a tailored set of pre-trade transparency requirements for FBAs would result in the disclosure of more meaningful pre-trade information for investors. We provide further detail and a rationale for our approach in our response to Question 4 and Question 24.

For further argumentation please find AFME's full response below.

<ESMA_COMMENT_CP_RVIEW_1>

Q1 : Do you agree with the proposed amendment to Article 7(2) of RTS 1? If not, please explain your concerns about the proposed increase of the threshold.

<ESMA_QUESTION_RVIEW_1>

No. AFME does not agree with ESMA's proposal to increase the pre-trade LIS threshold for ETFs from EUR 1,000,000 to EUR 3,000,000.

ESMA's analysis regarding transparency levels in ETF markets suggests that they can be directly compared to cash equities. This is not a sensible comparison. Cash equities and ETF markets are fundamentally different markets with contrasting characteristics, therefore ESMA's analysis should not be relied upon as a justification for increasing the pre-trade LIS threshold for ETFs.

LIS thresholds should be carefully calibrated as to achieve a balance between transparency objectives and risk profile of the asset. In the case of ETFs, particular care needs to be taken with regards the nature of the ETF and its correlation with its underlying.

AFME agrees with the view mentioned within ESMA's consultation that an increase in pre-trade LIS threshold could have detrimental effects on the liquidity of these instruments. Although an EUR 3,000,000 trade in a liquid Developed Market Equity ETF will generally have a readily available hedging instrument, this will not be the case for a number of ETFs, especially where the underlying is a non-equity instrument such as a bond. This means that liquidity impacts may occur due to firms being unable to adequately manage their risk exposure. Given this risk AFME does not agree with ESMA's proposal.

<ESMA_QUESTION_RVIEW_1>

Q2 : Do you agree with the proposed amendment to Table 5 of Annex II of RTS 1? If not, please explain why you are concerned about the proposed increase of the thresholds.

<ESMA_QUESTION_RVIEW_2>

No. AFME does not agree with ESMA's proposal to increase the minimum qualifying size of transaction for permitted delay with a 60 minutes delay from EUR 10,000,000 to EUR 15,000,000.

In line with our response to Q1, we do not believe that comparing transparency in cash equities and ETF markets is sensible and we do not support the use of this analysis to justify an increase the minimum qualifying size of transaction for permitted delay with a 60 minutes delay.

As it stands, for ETFs with less liquid underlyings, 60 minutes is insufficient time to fully hedge the resultant risk. Should the qualifying size be increased, it is likely that market makers may step back from pricing larger blocks, or otherwise widen spreads to account for increased risk from the market trading ahead, thereby reducing liquidity. Such an increase to introduce transparency, at the expense of liquidity is not desirable because it would most likely increase costs to end investors and increase the risk of front running on illiquid underlyings. Especially when the underlying is under a different transparency regime than ETFs, for example as it is for bonds.

<ESMA_QUESTION_RVIEW_2>

Q3 : Do you agree with ESMA's amendments to Articles 2, 6 and 13 of RTS 1 described above? If not, please explain why.

<ESMA_QUESTION_RVIEW_3>

We welcome the opportunity to comment on the issues raised by this question. AFME members would like to bring particular attention to the recommendations we make in respect of this question. As dealers and brokers, we are the interface between the buy-side and execution venues. In some instances, we are also execution venues ourselves. In that regard, we are both consumers of data published by execution venues (to guide us in selecting the most appropriate venues as per best execution requirements) and producers of data (where we trade outside of trading venues or act as a venue ourselves, and contribute to pre and/or post trade transparency).

In our position, we understand what data is helpful to a user in deciding whether and where to trade and also understand what data is unhelpful and/or misrepresents activity. Ultimately the purpose of the post-trade transparency data is to a) identify unique liquidity that can be interacted with (also known as addressable or accessible liquidity) and b) provide information related to the real level of liquidity of the stock. We therefore ask ESMA to reflect on our recommendations about what activity is unhelpful to be published for the purposes of post-trade transparency (e.g. where it is duplicative of other activity) and what activity needs to be flagged (e.g. where it is negotiated, out of hours, etc). Any activity that is published that is not addressable or a duplicative print simply pollutes the post-trade data, undermining the market's confidence in post-trade data as a true indicator of liquidity that a market participant can interact with.

AFME is supportive and thankful of ESMA's proposal to add "excluded transactions" listed under Article 2(5) of RTS 22 into Articles 2 and 6 of RTS 1. We believe that this change will result in a clearer regime which will, in turn, contribute to addressing some of the issues around the reporting and identification of non-price forming and non-addressable transactions.

AFME is, however, concerned by the proposal to remove paragraph J of Article 6, RTS 1. We note that certain benchmark trades would not qualify as an "excluded transaction" and would therefore be incorrectly classified as price forming. Therefore, AFME proposes that ESMA retains paragraph J with a view to ensuring that all non-price forming trades are treated correctly. However, in conjunction with or in the alternative to this change, the benchmark (BENC) definition in Articles 2(a) and 6(a) should be amended to include benchmark trades where the benchmark is a single point in time event (for example, market close) as the current definition is too restrictive as currently drafted, and risks requiring certain benchmark trades to be published without adequate flagging.

In relation to give-ups AFME does not believe that the current organisation and legal arrangements for give-up transactions in equities are covered by the reference to "clearing or settlement purpose" transactions under Article 2(5) and therefore we do not support ESMA's proposal to delete the definition of give-up. Instead, we propose that ESMA include an amended definition within Article 2, Article 6 and Article 13 of RTS 1. This would resolve the current issues arising out of MIFID II with regards to give in/give ups which ESMA tried to address in its 2019 Q&A by recommending market participants to flag such transaction as XOFF-TNCP.

Currently, RTS 1 attempts to define give-in/ups so that they are not subject to the post-trade transparency regime. However, the existing definition does not accord with how most give-ups are structured in the equities market in practice. Therefore, the removal of the definition (and its replacement with the more generic approach of Article 2(5)(b) of RTS 22) combined with the proposed changes in the flagging options would likely force firms to report those transaction as SI trades. While ESMA tried to address the shortcomings through the 2019 ESMA Q&A on RFMD trades, this meant that transactions that should have been excluded by the give up definition are in fact reported (as OTC - XOFF with the TNCP flag). ESMA is also,

separately, proposing to remove the TNCP flag. This means they would be printed either as standard SI trades (price forming) or BENC (non-price forming) which would dramatically pollute post-trade data.

Most give-ups and give-ins in the equities market, do not involve a 'client trade' that is passed to another investment firm for the purpose of post-trade processing (though this may happen in other scenarios – e.g. in the futures and options markets).

Equities clients that have a prime broker relationship keep all their positions with one or more prime brokers (PBs). However, they may not rely on their PBs for all executions. Instead, an Executing Broker (EB) is sent a request for market data (RFMD), and following such a request, the EB undertakes a series of own account risk trades either on or off venue (which are post-trade reported by the venue or EB as relevant). The EB then offers (or, in other words, gives-up) the own account trade or trades, usually on a net basis and often at the end of the day, to the client's PB. The PB then holds the position (for example as a custodian for the client) or enters into a swap with them (and uses the position as the hedge). Since the price forming trades were reported when they happened (by the venue or EB, as applicable), there is no value in printing the (non-price forming) give-up between the EB and the PB for the purposes of post-trade transparency, as all its economic characteristics are pre-determined by the trading activity undertaken by the EB.

We therefore propose that ESMA retain and enhance the give-up definition in Article 1 of RTS 1 (in line with the Q&A) and that the reference to it in Article 2, 6 and 13(c) of RTS 1 are retained. We also oppose to its inclusion in RT22 2(5) as this would create a supervisory gap where give-in-give up transaction are not reported to the regulators. We propose to enhance the definition as follows so that it is capable of capturing most give-ups in the equities markets:

'give-up transaction' or 'give-in transaction' means a transaction where:

- i) **an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or**
- ii) **following a request for market data, an investment firm passes a risk trade to, or receives a risk trade from, another investment firm or third country financial institution.**

In the alternative, if ESMA decides not to exempt give-up/give-in activity which follows a RFMD from publication entirely, we strongly recommend, at a minimum, that a flag is included for them. This flag would enable the market to filter give-up/give-in trades out so that it can have a true understanding of available liquidity, and would maintain the position established by the 2019 ESMA Q&A.

Finally, in relation to inter-affiliate risk-transfer trades, we would like to re-iterate our position that we do not think inter-affiliate trades that occur for the purpose of intra-group risk management should be post-trade reported and that they should be excluded under Article 2, Article 6 and Article 13 of RTS 1 (see our response to Q3). This is because the activity that these trades represent is to balance risk between group entities. It does not represent activity that could or would have been entered into with any other party and is not relevant when considering overall liquidity in a stock. On that basis, it is, as FIX suggest, intra-group housekeeping activity, and publication of it would give a misleading view of available liquidity in a particular instrument. We also do not believe that these transactions should be restructured (or otherwise flagged) as BENC or PORT transactions as ESMA suggest. To keep the post-trade data clean, the

BENC and PORT flags should only be used for benchmark and portfolio activity that represents addressable liquidity.

However, if despite our serious concern, ESMA decides not to exempt these trades from publication entirely, we strongly recommend, at a minimum, that the market requires a flag for them. This flag would enable the market to filter the trades out so that it can have a true understanding of available liquidity.

We would like to make clear that whilst our view is that these types of transactions should be not be reported for the purposes of post-trade transparency, we strongly believe that investment firms should be required to report these transactions in accordance with their obligations set out under Article 26, MiFIR.

<ESMA_QUESTION_RVIEW_3>

Q4 : Do you agree with the proposed description of FBA trading systems and the updated description of periodic auction trading systems? If not, please explain why and which elements should be added to the description and/or removed.

<ESMA_QUESTION_RVIEW_4>

No. AFME does not support the introduction of a separate description of FBA trading systems and does not believe that ESMA has provided a sufficient rationale to merit such a change. Additionally, AFME disagrees with ESMA's assertion that a tailored set of pre-trade transparency requirements for FBAs as outlined in either option 1 or 2 would result in the disclosure of more meaningful pre-trade information for investors. In contrast, AFME members believe that the implementation of either option outlined would result in a complete change to the use case of these platforms and ultimately result in a worse performance being delivered back to clients. As highlighted in its Final Report following the Call for Evidence on Periodic Auctions, ESMA noted that *"overall, most respondents did not identify pre-trade transparency with both types of system"* (referring to the two types of FBA identified in ESMA's Final Report). We believe that this continues to reflect market participants' view that the current levels of pre-trade transparency are appropriate. Any further adjustments to the level of pre-trade transparency should be left at the discretion of FBA operators with the goal of ensuring optimal execution outcomes and maximising liquidity.

AFME recommends that ESMA consult with the operators of frequent batch auctions to understand the extent to which auctions grow in volume, from initial indication to the time of uncross. It is our understanding that this growth is significant and demonstrates that pre-trade transparency under the existing requirements is being utilised by market participants and is sufficient for the effective use of these platforms.

The role of frequent batch auctions has already been reviewed through the ESMA Call for Evidence on FBAs (November 2018) and ESMA's CP on the transparency regime for equities (April 2020). This resulted in the publication of the Final Report on FBAs (June 2019), an Opinion on FBA pre-trade transparency and price determination and the ESMA MiFID II Review Report on equities (FBAs covered by Section 3.7). FBAs have adjusted in order to account for ESMA's recommendations within each of these publications and throughout, FBAs' low market share has remained stable. This indicates that FBAs have established themselves as additive and valued trading mechanisms which provide a useful alternative to lit order books. We do not believe that any further review is required.

We would like to emphasise the positive role FBAs play as part of the broader European market structure. MiFID I introduced competition into continuous trading which has had a hugely positive impact, particularly in reducing transaction costs for European investors. We refer to the [BIS Working Paper](#) (August 2021), “Quantifying the high-frequency trading “arms race”” which highlights that FBAs are be used as a protective mechanism against market participants running ultra-low latency strategies and reduce investors’ cost of liquidity by 17%. We would also like to draw ESMA’s attention to Indriawan, Pascual and Shkilko (March, 2021), whose paper titled “On the Effects of Continuous Trading” analyses the example of the Taiwan Stock Exchange (TWSE) moving all of its equity trading from batch auctions to a continuous order book. The authors show that adverse selection increases when using a continuous order book. The authors conclude that:

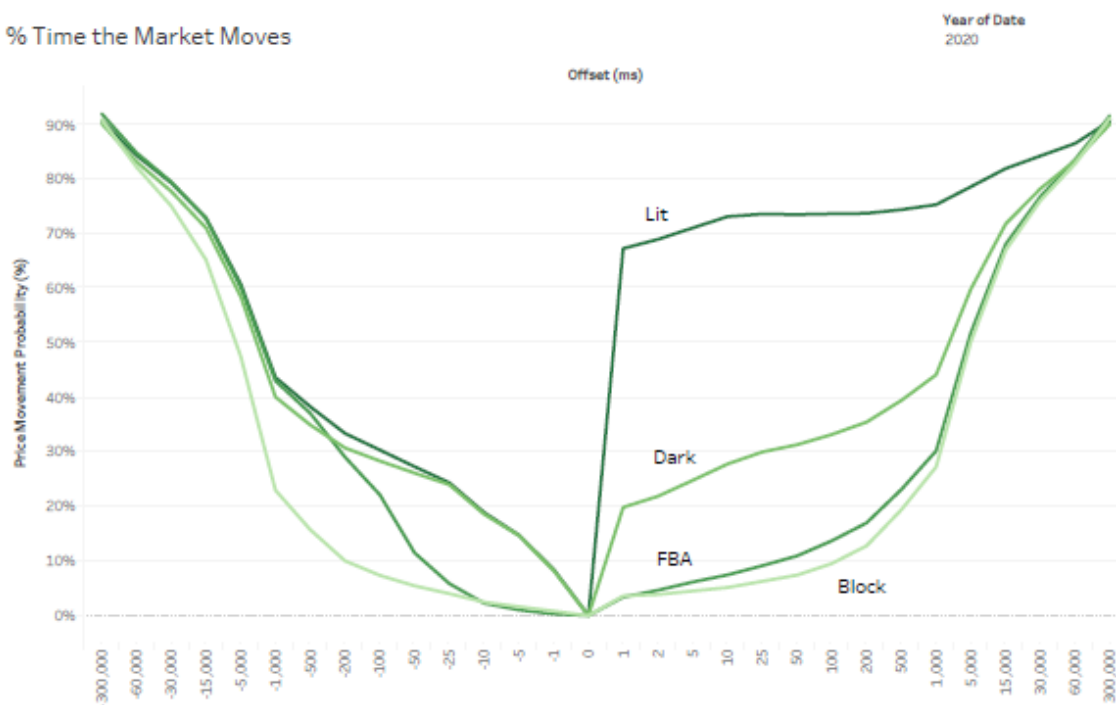
“The total liquidity effect of the TWSE move [was] negative; trading costs increased, and displayed liquidity declined”.

Moreover, when considering the benefits of batch auctions against continuous order books, the authors conclude that:

“On the one hand, the adverse selection cost embedded in the continuous design may be reduced by switching to frequent batch auctions, thereby benefiting the end-users of liquidity. On the other hand, the continuous design comes with increased trading volumes boosted by arbitrage activity, thus benefiting the exchanges. Given the high fixed costs of running an exchange, it is unlikely that market operators will willingly change the status quo, especially if the change will negatively affect trading volumes”.

Asset managers when trading in size on behalf of their funds’ investors, cannot complete their orders on central limit order books (as trades there are too small for institutional sized orders) and must be able to complete their trading without their trading intention being detected by market participants employing latency sensitive strategies triggering large price movements against them. The chart below shows the probability of price movement during the lifecycle of a trade and demonstrates that FBAs (labelled as “Auction Periodic”) offer significantly less price impact when compared to lit or non-displayed trading.

% Time the Market Moves



Source: Big XYT

AFME believes that the pre-trade transparency options proposed by ESMA set an inappropriate expectation for FBAs to publicise side and size of submitted orders which represents a major signalling risk and will ultimately result in reduced returns for investors, particularly those who trade in size. ESMA itself notes that such an approach would reveal sensitive information and AFME would therefore strongly caution against applying such a requirement.

We would like to highlight that the criticisms levelled at FBAs in order to justify applying additional transparency requirements could also be applied to standard auctions which often result in no match and can also be based on the submission of only a few orders. We note that ESMA has yet to raise any concern with the speed at which other execution mechanisms operate, for example central limit order books which are faster than FBAs.

With this being the case, it seems inappropriate for ESMA to propose a separate description of FBAs alongside a set of pre-trade transparency requirements which go beyond those applied to standard periodic auctions. ESMA's role is to protect investors and promote stable and orderly markets, this does not include preferencing one trading modality over another. AFME also notes that ESMA have not conducted a cost-benefit analysis regarding the impact of the proposed significant changes on stakeholders who are both directly and indirectly affected, as well as the indirect costs or market effects that the changes may create. We strongly recommend that ESMA consider the impact to trading costs, especially for asset managers and pension funds who trade in large sizes.

Finally, we note that competition in auctions is a recent phenomenon and AFME is concerned that through the changes proposed in its consultation, ESMA is essentially eliminating FBAs by opting for a regime which

favours auctions run by national exchanges. In our view, ESMA should avoid such an approach and instead recognise the value provided by FBAs which are run by pan-European trading venues.

<ESMA_QUESTION_RVIEW_4>

Q5 : Which of the two options for the pre-trade transparency requirements for FBA trading systems do you prefer? Please explain in case you are supportive of a different approach than the two options presented.

<ESMA_QUESTION_RVIEW_5>

Please see AFME's response to Question 4. AFME does not support the introduction of additional and separate pre-trade requirements for FBAs.

<ESMA_QUESTION_RVIEW_5>

Q6 : Do you agree with ESMA's proposals for 'hybrid systems'? If not, please explain why and which elements should be added and/or removed.

<ESMA_QUESTION_RVIEW_6>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_6>

Q7 : Do you agree with aligning both Table 1, Annex I of RTS 1 and Table describing the type of system and the related information to be made public in accordance with Article 2, of Annex I of RTS 2, to describe the same systems (with the exception of voice trading systems) and pre-trade transparency requirements? If not, please explain why.

<ESMA_QUESTION_RVIEW_7>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_7>

Q8 : Do you agree with ESMA's proposals to require a specific format and standardise further the pre-trade information to be disclosed? If not, please explain why. If yes, please clarify which elements should be amended, added and/or removed, if any.

<ESMA_QUESTION_RVIEW_8>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_8>

Q9 : Do you agree with the changes proposed by ESMA to amend Article 15 (3) of RTS 1? If not, please explain your rationale.

<ESMA_QUESTION_RVIEW_9>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_9>

Q10 : Do you agree with the proposed amendments to Article 17? If not, please explain.

<ESMA_QUESTION_RVIEW_10>

AFME is supportive of ESMA's proposal that the transparency calculations start to apply from the first Monday of April following the publication of the calculations.

For instances where the application of an exchange rate is required, we support ESMA's proposal to apply the European Central Bank (ECB) Euro foreign exchange reference rate as of 31 December of the previous year when an order is in a financial instrument which is not denominated in Euros.

<ESMA_QUESTION_RVIEW_10>

Q11 : Do you agree with the proposed amendment of Article 11(3)(c) of RTS 1? Please explain.

<ESMA_QUESTION_RVIEW_11>

AFME supports the proposed amendment to Article 11(3)(c).

<ESMA_QUESTION_RVIEW_11>

Q12 : Do you agree with the changes proposed to Table 3 of Annex I of RTS 1 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA_QUESTION_RVIEW_12>

We agree with the inclusion of the field to identify a TCTV, however, we do not recognise the issue ESMA raises with regard to unavailable MIC codes. We are currently unaware of any TCTV without a MIC code and therefore consider that an alphanumeric identifier to be surplus to requirements.

AFME would however, like to ensure that firms are able to provide accurate reports in the event that a new venue emerges which does not have a MIC code. In the event that this circumstance emerges, we believe that the option of a free text field provides an appropriate level of flexibility without involving a process where firms have to refer back to ESMA's Opinion on TCTVs.

<ESMA_QUESTION_RVIEW_12>

Q13 : Do you agree with ESMA's proposal not to change Tables 1 and 2 of Annex III of RTS 1? If not, and you consider that certain modifications shall be made, please explain.

<ESMA_QUESTION_RVIEW_13>

Yes, AFME agrees.

<ESMA_QUESTION_RVIEW_13>

Q14 : Do you agree with ESMA's proposal on the new Tables 1 and 2 of Annex IV of RTS 1? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVIEW_14>

Yes, AFME agrees.

<ESMA_QUESTION_RVIEW_14>

Q15 : Please provide concrete examples or scenarios when the price cannot be determined as described or cases of the need to set a zero price for the different types of instruments: shares, ETFs, depositary receipts, certificates, other equity-like financial instruments.

<ESMA_QUESTION_RVIEW_15>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_15>

Q16 : Do you agree with the deletion of the SI flags 'SIZE', 'ILQD' and 'RPRI'? If not, please explain what you consider to be their added value.

<ESMA_QUESTION_RVIEW_16>

AFME supports the streamlining of available flags for the purposes of post-trade reporting, however we are concerned that the removal of certain flags might limit the ability to conduct data analysis.

In particular, AFME is concerned that the removal of the 'RPRI' flag will prevent the identification of trades which have received a price improvement. With the understanding that this flag is required to conduct analysis on trades executed by SIs (e.g. AMF's May 2020 paper on Quantifying SI activity), AFME would not support its removal.<ESMA_QUESTION_RVIEW_16>

Q17 : Do you agree with the deletion of the ACTX flag? If not, please explain what you consider to be its added value.

<ESMA_QUESTION_RVIEW_17>

AFME does not support the deletion of the ACTX flag. Certain firms, particularly agency-only brokers, utilise this flag to identify permissible client crosses which include trades received incidentally which are subject to the Article 23 exemption as portfolio and/or benchmark trades.

<ESMA_QUESTION_RVIEW_17>

Q18 : Do you agree with the approach suggested for non-price forming transactions? If not, please explain.

<ESMA_QUESTION_RVIEW_18>

In the event that ESMA does not add flags to identify inter-affiliate trades, trades published out of reporting hours and trades brought on a venue purely for clearing purposes, AFME is concerned that the removal of the 'TNCP' flag will result in certain firms being unable to appropriately flag certain non-price forming trades.

Therefore, if ESMA decides not to add the flags discussed in paragraphs 215-217 within the consultation paper, AFME requests that ESMA retains the 'TNCP' flag to ensure that all non-price forming trades can continue to be flagged.

Although we do not object to the introduction of the 'CONT' flag, AFME believes that data reported for the purposes of post-trade transparency should include information that is meaningful to market participants. We therefore suggest that ESMA considers whether contingent trades should be exempted for the purposes of post-trade transparency while remaining within scope of the transaction reporting regime.

<ESMA_QUESTION_RVIEW_18>

Q19 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver flag for on-book transactions? If not, please explain. Should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVIEW_19>

AFME supports the introduction of a pre-trade LIS waiver flag for on-book transactions if this is required in order to allow ESMA to accurately identify the amount of trading taking place under the LIS waiver.

We agree with ESMA that for partially filled orders, there is a significant risk of information leakage. Therefore, with ESMA's proposal to limit the use of this flag to completely filled LIS orders.

<ESMA_QUESTION_RVIEW_19>

Q20 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver for off-book transactions? If not, please explain.

<ESMA_QUESTION_RVIEW_20>

AFME supports the introduction of a pre-trade LIS waiver flag for off-book transactions if this is required in order to allow ESMA to accurately identify the amount of trading taking place under the LIS waiver.

We agree with ESMA that for partially filled orders, there is a significant risk of information leakage. Therefore, with ESMA's proposal to limit the use of this flag to completely filled LIS orders.

<ESMA_QUESTION_RVIEW_20>

Q21 : Do you agree with the proposal not to add such additional flags? If not, please explain why those flags are needed in your view.

<ESMA_QUESTION_RVIEW_21>

No, AFME does not agree with ESMA's decision not to add flags to identify trades brought on a venue purely for clearing purposes, out of trading reporting hours or inter-affiliate group transactions. We set out the responses for our position below.

Inter-affiliate trades for the purpose of risk transfers

With respect to ESMA's proposal not to include an inter-affiliate flag for risk transfers, we want to reiterate our position that we do not think inter-affiliate trades that occur for the purpose of intra-group risk management should be post-trade reported and that they should be excluded under Article 2, Article 6 and Article 13 of RTS 1 (see our response to Q3). This is because the activity that these trades represent is to balance risk between group entities. It does not represent activity that could or would have been entered into with any other party, nor relate to the liquidity of a financial instrument. On that basis, it is, as FIX suggest, intra-group housekeeping activity, and publication of it would give a misleading view of available liquidity in a particular instrument. We also do not believe that these transactions should be restructured (or otherwise flagged) as BENC or PORT transactions as ESMA suggest. To keep the post-trade data clean, the BENC and PORT flags should only be used for benchmark and portfolio activity that represents addressable liquidity.

However, if despite our serious concern, ESMA decides not to exempt these trades from publication entirely, we strongly recommend, at a minimum, that the market requires a flag for them. This flag would enable the market to filter the trades out so that it can have a true understanding of available liquidity.

We would like to make clear that whilst our view is that these types of transactions should be not be reported for the purposes of post-trade transparency, we believe that investment firms should be required to report these transactions in accordance with their obligations set out under Article 26, MiFIR.

Trades brought on a venue purely for clearing purposes

Some trading venues offer a service whereby counterparties are able to settle otherwise bilateral trades via a CCP. The mechanics of this process require the trade to be settled by being brought on the trading venue, after which it will be submitted by the venue to the CCP. AFME strongly believes that these trades should be specifically flagged or not included for the purpose of post trade transparency so that they can be easily removed when attempting to identify addressable liquidity. These trades are composed of an aggregated positions resulting from an earlier market activity that will already have been subject to post trade transparency rules and trade reported as a result.

Our understanding is that ESMA's mandate in the context of this consultation does not allow for these trades to become exempt for the purposes of transparency. AFME therefore proposes that ESMA applies an interim solution whereby trades brought on a venue purely for clearing purposes are specifically flagged so that they can be filtered in order to identify addressable liquidity.

Out of trading reporting hours

Regarding trades that have been published the business day after the trade date, due to the trade being published to an APA or trading venue outside of operating hours, AFME does not agree that the fields in Table 3 of Annex, RTS 1 provide sufficient information to determine that these trades should be classified as 'out of trading reporting hours'. Currently, market participants and regulators are unable to filter these trades in a systematic manner meaning that the identification of addressable liquidity remains impossible.

<ESMA_QUESTION_RVIEW_21>

Q22 : Do you recommend adding/deleting/amending any other flags? If yes, please explain.

<ESMA_QUESTION_RVIEW_22>

Under ESMA's proposal, a flag will be provided for all types of pre-trade waiver except for trades benefiting from the Order Management Facility (OMF) waiver. AFME believes that it will be consistent and beneficial for ESMA introduce a flag to identify these types of trades. This would allow NCAs and ESMA to conduct a full analysis on the size and type of trading that takes place under each waiver. In the case of an OMF flag, competent authorities will be able to analyse the number of hidden orders executed on trading venues.

<ESMA_QUESTION_RVIEW_22>

Q23 : Do you agree with the proposal to prescribe the order of the population of flags? If not, please explain and provide an alternative proposal.

<ESMA_QUESTION_RVIEW_23>

AFME does not support the proposal to prescribe the order of the population of flags. We appreciate ESMA's intention is to improve stakeholders ability to read the information provided by post-trade transparency and to ease the consolidation of data by a CTP, however we believe that ESMA's proposal represents an unnecessary step.

Current technology permits firms to consume post-trade transparency in the order that they wish. Therefore, the proposed changes would bring about additional complexity in implementation that would amount to no benefit to market stakeholders.

<ESMA_QUESTION_RVIEW_23>

Q24 : Do you agree with the proposed amendments above? If not, please do not reiterate the arguments made under the previous question asked for equity instruments and please rather explain why those amendments are not suitable for non-equity financial instruments.

<ESMA_QUESTION_RVIEW_24>

AFME members state that with the exception of the definition of periodic auction, the current definitions of trading systems outlined in annex 1 of RTS 2 are sufficient as they are and do not require further enhancement or alignment with the description of trading systems outlined in RTS 1. Instead, AFME members propose that the definition of periodic auctions as a trading system is deleted from annex 1 of RTS 2, as this trading system is not relevant to the trading of cash bonds. Furthermore, AFME members disagree with ESMA's proposal to add a description of Frequent Batch Auction trading systems into annex 1 of RTS 2, for similar reasons as to why the definition of periodic auction should be removed, frequent batch auction trading systems do not exist within fixed income markets.

The current difference in the definitions and descriptions of trading systems outlined in annex 1 of RTS 1 & RTS 2 respects and reflects the clear and distinct differences in the way in which equity and non-equity instruments trade. AFME members forecast that harmonising the description of trading systems across RTS 1 and RTS 2 will simply result in ambiguity between and across market participants. Furthermore ESMA's proposal to take a more stringent approach to the concept of any other trading system by defining the definition of hybrid trading system as outlined in section 6.6 of Annex VI on page 202 – 203 of this consultation could potentially result in stifling future innovation, for example as evolution within the market continues to rapidly progress, any defined term may rapidly become outdated and rigid, meaning the proposed descriptions could result in unforeseen barriers of entry into the market as they do not provide sufficient flexibility to accommodate potential market developments.

Furthermore, a full cost benefit analysis (CBA) would need to be conducted prior to any modifications or alterations to the definitions of trading systems outlined in annex 1 of RTS 2. This includes a review of the SI regime to ensure it is working as intended.

<ESMA_QUESTION_RVIEW_24>

Q25 : Do you agree with the proposal to specify the fields to be populated for pre-trade transparency purposes? If not, please explain. In case you support the proposal, please comment on the fields proposed, in particular whether you would consider them necessary and/or whether additional information is required.

<ESMA_QUESTION_RVIEW_25>

AFME members note the on-going debate throughout the MiFID II/MiFIR review so far as to whether pre-trade transparency should be retained. As stated in previous consultation responses, since the implementation of MiFID II, within bond trading firms do not use pre-trade transparency information preferring to

utilize consistently updated market data streams for the purpose of price discovery together with axes and runs published by dealers. AFME members consider it deleterious at this point in time to make changes to the pre-trade transparency requirements to find that subsequently the obligation is removed in its entirety.

Furthermore, providing specifics on how to populate the pre-trade transparency fields as outlined in table 7 (page 86 – 92) of this consultation paper could again severely restrict and interfere with future evolution and innovation of the EU bond market. Instead, if pre-trade transparency data is to be maintained, AFME members suggests that ESMA utilize industry data standards such as the FIX standard data protocol which is already in operation and has been developed by an array of experts across the industry

<ESMA_QUESTION_RVIEW_25>

Q26 : Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.

<ESMA_QUESTION_RVIEW_26>

From a cash bond perspective, AFME members agree with ESMA's findings in the first bullet point under paragraph 245 on page 93 ***'that the thresholds for fixed income products (e.g., sovereigns) are too high for smaller markets'*** and would welcome a distinction based on the size of the market or the liquidity of the bonds traded within this sub-asset class of bonds. In comparison to the other bullet points outlined by ESMA on page 93 from a fixed income cash bond perspective, AFME urges ESMA to focus on and prioritise this issue.

In addition to the above, AFME members refer to ESMA's previous proposal (outlined in their 2020 Consultation paper on MiFID II/MiFIR review report on the transparency regime for non-equity instruments and the DTO), to have one post-trade size threshold for deferrals by deleting the post-trade SSTI threshold and retaining and revising the LIS threshold. AFME members restate their support for having one post-trade threshold provided it is set at a level where there is no significant jump in the level of transparency and that in deleting the post-trade SSTI threshold reassurances are provided that the LIS threshold would be revised down to 80%. As it is vital for the deferrals regime to be maintained and remain well balanced and so transparency must be carefully calibrated and well timed in order to allow the market to continue to function.

In relation to the above suggestions, AFME acknowledges and agrees with ESMA that given the possible amendments to the level 1 text including those proposed by ESMA and the European Commission in the final report on MiFID II/MiFIR transparency regime applicable to non-equity financial instruments as part of the MiFID review, that no large-scale fundamental revisions to the RTS including alterations to the LIS and SSTI thresholds can be undertaken at this time and, if after the MiFID review, ESMA feels it appropriate to carry out a targeted review of specific issues in a subsequent review of RTS 2, AFME encourages ESMA to liaise with industry participants to which AFME remains available to assist with such a consultation.

<ESMA_QUESTION_RVIEW_26>

Q27 : Do you agree with the proposed changes to Article 13? If not, please explain.

<ESMA_QUESTION_RVIEW_27>

AFME members consider ESMA's proposal to amend the date of application of the transparency calculations in Article 13 (17) and 13 (18) from the first of each month to the first Monday of each month as stated to be a logical revision.

<ESMA_QUESTION_RVIEW_27>

Q28 : Do you agree with the proposed changes to Article 4? If not, please explain.

<ESMA_QUESTION_RVIEW_28>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_28>

Q29 : Do you agree with the proposed changes to Article 12? If not, please explain. Please do not reiterate the general comments made in the equity section and try to focus on arguments that are specific to non-equity financial instruments.

<ESMA_QUESTION_RVIEW_29>

AFME members support ESMA's proposal to remove Article 12 (b), as we do not anticipate that deleting this reference will result in any material impact to the application and/ or functioning of Article 12 of RTS 2 given asset management firms and UCITS are technically excluded from the transparency requirements by virtue of their regulatory status.

However, as outlined in AFME's response to Q3 AFME members do not agree that give-up/give-in transactions are covered by the reference to clearing or settlement transactions outlined under Article 2 (5) of RTS 22, technically such mapping does not work/ is incorrect. As a result, AFME does not support ESMA's proposal to delete the definition of give-up/give-in transactions outlined in Article 12 (c) of RTS 2. AFME FI members support the proposal outlined by AFME's equities colleagues in response to Q3 to instead retain and enhance the definition of give-up/give-in transactions as follows:

'give-up transaction' or 'give-in transaction' means a transaction where:

- i. an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or**
- ii. following a request for market data, an investment firm passes a risk trade to, or receives a risk trade from, another investment firm or third country financial institution.**

This would ensure consistent application across RTS 1 & RTS 2.

With regards to Article 12 (d), AFME does not agree that transfers of financial instruments such as collateral are covered by the reference to clearing or settlement transactions outlined under Article 2 (5) of RTS 22 and propose that Article 12 (d) is also maintained within RTS 2. However, if ESMA is still inclined to map transfers of financial instruments such as collateral outlined under Article 12 (d) to RTS 22, we propose this is better covered by Article 2 (5) (o) of RTS 22 "*an acquisition or disposal that is solely a result of a transfer of collateral*". Nevertheless, such a mapping to Article 2 (5) (o) may require level three guidance as the definition is a lot narrower.

In relation to Inter-affiliate risk transfer trades, as stated in AFME's response to Q3 & Q21, inter-affiliate trades that occur for the purposes of inter-group risk management should not be included in post-trade transparency and in the tape. For RTS 2, this exclusion should be listed under Article 12 This is because the activity that these trades represent is to balance risk between group entities. It does not represent activity that could or would have been entered into with any other party and is not relevant when considering overall liquidity for bonds.

<ESMA_QUESTION_RVIEW_29>

Q30 : Please provide your comments on the analysis and proposals related to the liquidity framework applicable to commodity derivatives, EA and DEA detailed in Section 4.2 and summarised in Section 4.2.5. Please list the proposals with their ID (#1 to #9) for ease of reference.

<ESMA_QUESTION_RVIEW_30>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_30>

Q31 : Do you agree with the changes proposed to Table 2 of Annex II of RTS 2 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA_QUESTION_RVIEW_31>

From a cash bond perspective, AFME does not consider that the changes proposed in table 2 of annex II of RTS 2, as presented on page 122 – 125 will have any adverse effects on fixed income bond trading.

<ESMA_QUESTION_RVIEW_31>

Q32 : Do you agree with the changes proposed to Table 4 of Annex II of RTS 2 (Measure of volume) presented above? Do you think that it now provides more clarity? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVIEW_32>

AFME members observe that the proposed changes to table 4 of annex II of RTS 2 aligns with the proposed changes outlined in question 31, thus ensuring consistency throughout the RTS. Nevertheless, AFME members question the use of the terminology “*notional amount of traded contract*” in the context of bonds, given bonds are securities agreements.

<ESMA_QUESTION_RVIEW_32>

Q33 : Do you agree with ESMA’s proposals on Table 1 (Symbol) and Table 2 of Annex IV of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVIEW_33>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_33>

Q34 : Do you agree with ESMA’s proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives (Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVIEW_34>

AFME and its members support ESMA’s proposals on the segmentation criteria for bonds outlined in Table 2.2 of Annex III of RTS 2.

<ESMA_QUESTION_RVIEW_34>

Q35 : Please provide your comments in relation to the proposals related to the segmentation criteria applicable to commodity derivatives summarised in Table 11. Please list the proposals with their ID for ease of reference. Do you have other proposals related to the segmentation criteria applicable to commodity derivatives and C10 derivatives?

<ESMA_QUESTION_RVIEW_35>

AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_35>

Q36 : Do you agree with ESMA's proposal on the new Table of Annex V of RTS 2 (Details of the data to be provided for the purpose of determining a liquid market, the LIS and SSTI thresholds for non-equity financial instruments)? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVIEW_36>

AFME members reiterate that investment firms do not report directly into FITRS, this is a requirement for APAs and given this question directly relates to data that is reported into FITRS, AFME is not responding to this question and will leave it to the APAs to opine on.

<ESMA_QUESTION_RVIEW_36>

Q37 : Do you agree with ESMA's proposal to delete the ACTX flag? Please explain.

<ESMA_QUESTION_RVIEW_37>

AFME members agree with ESMA's proposal to delete the ACTX flag.

<ESMA_QUESTION_RVIEW_37>

Q38 : Do you agree with ESMA's proposal to merge the current non-equity deferral flags into one general flag?

<ESMA_QUESTION_RVIEW_38>

AFME members disagree with ESMA's proposal to merge the current non-equity deferral flags into one general flag and question the extent and completeness of the cost-benefit analysis undertaken concerning this position.

At this point in time, and given the many differing proposals outlined in numerous ESMA and EC MiFID II/MiFIR consultations (feeding into the MiFID review) regarding alterations to the deferrals regime AFME members would caution against making any non-material changes to the deferral flags until any future changes to the deferral regime for bonds is agreed and finalised.

As stated in previous consultation responses, MiFID II introduced deferrals because it was recognised that real time transparency can expose liquidity providers to undue risks, especially when trading in illiquid instruments or transactions above a certain size, given the longer timeframes to unwind the trade or hedge. As a result, we reiterate that it is crucial for the deferral regime to be maintained and remain well balanced.

AFME remains available to work with ESMA and the wider industry to further explore the possibility of simplifying the transparency regime and the post-trade size thresholds for deferrals. Any alterations to the current regime should only be considered after an adequate cost benefit analysis is executed to ensure

the protection of liquidity providers from undue risk. Any decision made after such cost-benefit analysis with market participants should be implemented cautiously via a phased-in approach, as the MiFID II/R transparency regime for non-equity instruments incorporates a vast array of different asset classes and product types.

If changes to the deferrals regime are agreed and finalised under the MiFID II review, and, ESMA still considers it optimal to merge the non-equity deferral flags into one general flag AFME members consider this would be a preferable time for ESMA to reconsult with market participants.
<ESMA_QUESTION_RVIEW_38>

Q39 : Do you agree with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments? If not, please explain.

<ESMA_QUESTION_RVIEW_39>

AFME members conclude that investment firms do not use this flag, therefore have no comment on this question.

<ESMA_QUESTION_RVIEW_39>

Q40 : Do stakeholders agree with ESMA's proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver? For LIS, should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVIEW_40>

AFME members note that this question is in relation to waivers which are only relevant to trading venues and therefore assume this question is aimed at trading venues to opine on. On this basis AFME is not responding to this question.

<ESMA_QUESTION_RVIEW_40>

Q41 : Do you agree with ESMA's proposal to introduce a flag for pre-arranged non-equity transactions?

<ESMA_QUESTION_RVIEW_41>

AFME members acknowledge that the proposal to introduce a flag for pre-arranged non-equity transactions does not impact investment firms as they do not use this flag. However, in principle we do not support increasing the number of flags at this current point in time without a wider review being undertaken.

<ESMA_QUESTION_RVIEW_41>

Q42 : Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2 ? Do you have proposals to minimize the delay?

<ESMA_QUESTION_RVIEW_42>

AFME members consider that for RTS 2 the proposals outlined under section 5 to delay the implementation of certain provisions within the amended RTS 2 to be reasonable provided they have no negative implications on firms abilities to apply and complete their MiFID II transparency requirements.

With regard to RTS 1, AFME believes that a 6 month implementation timeframe may be too short and instead would recommend allowing a year in order to ensure that firms' have adequate time to implement and test required system changes. However, this should not prevent firms who are comfortable with implementing changes in a shorter timeframe from applying new flags in at an earlier stage. In particular,

AFME believes that the application of updated post-trade transparency flags for RTS 1 should be permitted as soon as possible. This is key to ensuring that the desired improvements to the post-trade transparency regime are realised in a reasonable timeframe.

<ESMA_QUESTION_RVIEW_42>

Q43 (CBA) : Can you identify any other costs and benefits not covered in the CBA below? Please elaborate.

<ESMA_QUESTION_RVIEW_43>

In reference to the VII cross benefit analysis undertaken for flags for both RTS 1 and RTS 2, AFME members consider that the merging of flags could lose a level of detail/granularity offered by the separate flags, potentially making it difficult to analyse data and thus resulting in a reduction in data quality.

<ESMA_QUESTION_RVIEW_43>