

ESMA CONSULTATION PAPER ON THE REVIEW OF RTS 1 (EQUITY TRANSPARENCY) AND RTS 2 (NON-EQUITY TRANSPARENCY)

AMAFI contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP) on the review of RTS 1 (equity transparency) and RTS 2 (non-equity transparency).

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following general comments.

GENERAL COMMENTS

AMAFI welcomes ESMA's consultation paper on its proposal for amending RTS 1 and RTS 2. AMAFI had expressed its views on some of the proposed amendments in the process of the MiFID II/ MiFIR review reports published by ESMA.

AMAFI is in line with most of ESMA's proposals aiming at simplifying reporting and modifying the flagging system. We believe that such a harmonisation would allow market participants and supervisors alike to gain a better grasp of the reality of the markets. In particular, stakeholders should be able to operate a firmer distinction between addressable liquidity and technical trades, including give-in/give-up transactions. This would constitute an essential pre-requisite for the establishment of an EU consolidated tape. Furthermore, AMAFI recommends that ESMA issues guidance to NCAs for a more coherent approach on the appropriate use of flags by reporting entities.

On the other hand, AMAFI considers that it does not fall within the scope of this technical consultation to modify MiFIR transparency rules for ETFs. With that in mind, most AMAFI members are opposed to ESMA's proposals on this matter. Most members consider that ESMA's approach fails to acknowledge the uneven effects such an increase would have on different segments of the ETFs markets across the EU and poses risks in terms of liquidity, especially for ETFs with a non-equity instrument as the underlying asset.

Lastly, AMAFI would like to bring attention to the fact that the proposed changes will entail important costs for investment firms and trading venues. It is therefore crucial that the schedule of the implementation of the proposed changes remains coherent with the ongoing review of MiFIR. AMAFI would like to avoid a situation where important investments that were committed by investment firms to comply with the proposed changes are called into question by future amendments to MiFIR.

ANSWERS

Question 1: 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.

As stated in the general comments above, we believe that this proposal should not be in scope of this consultation.

Furthermore, most AMAFI members are not in favour of increasing the pre-trade transparency threshold for ETFs to EUR 3,000,000. They believe that ESMA's approach fails to acknowledge the uneven effects such an increase would have on different segments of the ETFs markets across the EU. Most AMAFI members also warn that the increase poses risks in terms of liquidity, especially for ETFs with a non-equity instrument as the underlying asset, where firms have a harder time hedging the pertaining risk exposure. Additionally, this increase would limit the ability of SIs to match LIS orders at midpoint.

More generally, the heterogeneity of the development of markets for ETFs depending on each EU member state and on the underlying assets calls for considering either *ad hoc* enforcement of the transparency regime across NCAs and depending on the underlying assets, or for a harmonised approach with the less impact on the liquidity of the less developed markets.

Question 2: 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.

As stated in the general comments above, we believe that this proposal should not be in scope of this consultation.

Most AMAFI members do not agree with the proposed amendment to Table 5 of Annex II of RTS 1. They believe that the increase of the qualifying size to EUR 15,000,000 will expose market makers trading ETFs with less liquid underlying assets to a greater risk, thus threatening to inflict a negative effect on liquidity, and a transfer of the additional risk management cost on investors. Under the current threshold, the duration of 60 minutes already proves insufficient to hedge the risk resulting from some transactions on ETFs with the less liquid underlying assets.

Question 3: Do you agree with ESMA's amendments to Articles 2, 6 and 13 of RTS 1 described above? If not, please explain why.

AMAFI is in line with the proposed amendments. We believe that a common reference to the transactions listed under article 2(5) of Commission delegated regulation (EU) 2017/590 allows for a more simplified classification of the transactions defined in articles 2, 6 and 13 of RTS 1.

AMAFI believes that ESMA proposal to remove the give-in/give up definition from RTS1 and consider such transactions as in scope of RTS22 Art 2(5) has a number of short comings and may lead to unintended consequences.

Assuming firms are ready to qualify those transactions as "transaction for the purpose of clearing and settlement", such trades would also be exempted from transaction reporting requirements to national competent authorities. This would create a supervisory gap whereby regulators would not be notified of a hedging position being moved from an executing broker to a swap financing broker, breaking the audit trail of change of ownership.

We also have concerns regarding the ability of a firm to qualify such transactions as "for the purpose of clearing and settlement". The current definition already refers to "post-trade processing" and a vast number of investment firms, including AMAFI members, have had legal advice that their current give-in/give up

transactions were in scope for post trade transparency, as non-price forming using the TNCP flag. Removing any reference to give-in/give up is likely to lead to the same conclusions.

ESMA tried to address the issue through the 2019 ESMA Q&A on RFMD trades, which gave firms some confidence they could report RFMD give-ups as XOFF, TNCP instead of SI or benchmarks transactions. Under the current ESMA proposal, the TNCP flag would be removed, which means those transactions are likely to be reported as SI price forming or Benchmark (non-price forming) transactions, effectively identifying vastly different transactions under the same flags. The trade reporting of these post trade transactions as SI for instance would significantly inflate the SI volumes and give a wrong interpretation to the market of the addressable SI liquidity, therefore this would be a missed opportunity to clean post-trade data and make sure transactions with economic interests are clearly differentiated from technical transactions, which give-in/give up are.

We would therefore suggest ESMA to keep and amend the give-in/give up definition and keep explicit reference to Articles 2, 6 and 13. Such transactions should also be subject to mandatory reporting to NCAs and therefore not be included in RTS 22 article 2(5).

We would suggest the following for a definition: 'give-up transaction' or 'give-in transaction' means

- (i) **A transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;**
- (ii) **A transaction where an investment firm, following its client's request for market data (RFMD) enters into transactions on its own account and passes the resulting trade to another investment firm which holds the positions for or enters into a swap with the client.**

It is worth noting that the trades performed by the investment firm receiving the RFMD (the executing broker) will be made post trade transparent by the venue or by the investment firm itself when required.

AMAFI also believes there is a rationale in exempting those intra-group transactions for which the purpose is the consolidation of risk positions across several entities of the same group (whether branches or subsidiaries). The investment firm should be able to evidence the true purpose of such transactions and to report the transaction when required. However, for the purpose of post trade transparency, we recommend that these non-price forming transactions which do not consist of addressable liquidity should not be published. By not publishing them we would avoid polluting the tape while guaranteeing they are being reported to NCAs.

In the event that give up give in and non-price forming trades must be published, we recommend that these trades are -consistently by investment firms- flagged in order to be able to filter them out from the tape and to be able to more accurately identify the genuine SI, Benchmark and Portfolio trades...

Question 4: 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.

AMAFI agrees with the proposed definition of FBA trading systems, as well as the update proposed for the definition of periodic auction trading systems.

Question 5: 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.

AMAFI is not responding to this question.

Question 6: Do you agree with ESMA's proposals for 'hybrid systems'? If not, please explain why and which elements should be added and/or removed.

AMAFI agrees with ESMA's proposals for hybrid systems.

Question 7: 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.

AMAFI agrees with aligning both Table 1, Annex I of RTS 1 and Table 1, Annex I of RTS 2.

Question 8: 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.

AMAFI cautions against ESMA's proposals in this area. Although there is some merit to attempting to harmonise the pre-trade information disclosed, AMAFI does not agree with all ESMA's proposals in this area.

Question 9: Do you agree with the changes proposed by ESMA to amend Article 15 (3) of RTS 1? If not, please explain your rationale.

AMAFI acknowledges the changes that occurred in trading practices since the original drafting of article 15 of RTS 1 and agrees with the proposed amendment to article 15(3).

Question 10: Do you agree with the proposed amendments to Article 17? If not, please explain.

AMAFI welcomes the proposed amendment for article 17(2), as well as the introduction of paragraphs (6) and (7).

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

AMAFI agrees with the proposed amendment for article 11(3)(c), as it provides more clarity regarding the exclusion of LIS trades from the SMS calculations.

Question 12: 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?

AMAFI agrees with the changes proposed to Table 3 of Annex I of RTS 1

However, we do not see the issue with third country venues no having a MIC code and believe adding a field for the sole purpose of identifying TCTV may be costly to implement technically. In the unlikely event a TCTV would not have a MIC code, the use of a free text may be appropriate. Furthermore, AMAFI believes that, from a data management perspective, it is not prudent to ask for an alphanumeric entry in a numeric field (price field). This was the case with the "PNDG" entry and is again here with the proposed "NOAP". Many systems operated by vendors cannot cope with this type of information. Considering that trade flags are usually components of standard trade messages, it would be more convenient to have "PNDG" and

“NOAP” as trade flags rather than price field value. The informational content for post-trade transparency purposes would be equivalent.

Question 13: 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.

AMAFI agrees that tables 1 and 2 of Annex III do not call for changes.

Question 14: 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.

There could be significant technical impact on the RTS file and subsequent systems for the transparency calculation that ESMA’s proposal on the new Tables 1 and 2 of Annex IV of RTS 1 would have (especially considering the short indicative timeline provided by ESMA in its consultation paper). AMAFI urges ESMA to take these considerations into account.

Furthermore, AMAFI would note that, if the changes were to be implemented, it would be necessary to clarify how transactions benefiting from a combination of pre-trade waivers (i.e., LIS and OMF) would have to be reported.

Question 15: 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.

AMAFI is not responding to this question.

Question 16: 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.

AMAFI is rather concerned with the accuracy of the use of flags and wonders if the deletion of the abovementioned flags would contribute to a more accurate use of flags. Considering the existence of use cases for the information required by those flags as mentioned by ESMA, AMAFI does not perceive the interest in deleting them. In particular, the removal of the RPRI flag may impair the ability to determine to which extent SIs improve execution price for their clients.

Question 17: Do you agree with the deletion of the ACTX flag? If not, please explain what you consider to be its added value.

AMAFI recommends keeping the ACTX flag considering its potential use by small brokers for ad hoc client-crosses falling under the exemptions contained in article 23 MiFIR.

Question 18: Do you agree with the approach suggested for non-price forming transactions? If not, please explain.

AMAFI agrees with the rationale behind ESMA’s proposals to simplify non-price forming transactions’ flagging. We believe that this approach provides more clarity on this matter. However, we believe that the removal of the TNCP flag would deprive reporting entities of a flag to report give-in/give-up transactions. AMAFI recommended earlier in this response not to delete the references to those transactions in RTS 1 and believes that it is important that reporting entities can still report them.

Furthermore, AMAFI suggests that ESMA issues guidance to NCAs for a more consistent and coherent approach when monitoring the use of non-price forming transactions flags.

Question 19: 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?

AMAFI agrees with ESMA's proposal to introduce a specific pre-trade LIS waiver flag for on-book transactions. If ESMA were to introduce such a flag, AMAFI would recommend that it limits it to completely filled LIS orders.

Question 20: Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver for offbook transactions? If not, please explain

See answer above.

Question 21: Do you agree with the proposal not to add such additional flags? If not, please explain why those flags are needed in your view.

AMAFI agrees with ESMA's proposal not to add the three mentioned additional flags.

However, we call on ESMA to replicate the clarification made about inter-affiliate group transactions being exempted from post-trade transparency in a Q&A or some other form of guidance. In addition, mechanisms for which the purpose is settlements netting and CCP clearing should be removed from the consolidated tape or well flagged to be clearly identified. These on venue, off-book transactions are generally done after market hours and are subsequent to trades that have occurred during the day.

Not removing these transactions from the tape or not flagging them correctly in order to be able to filter them out would be a missed opportunity to clean up post-trade data in order to make sure transactions with economic interests are clearly differentiated from technical transactions like inter affiliate trades or trades for which the sole purpose is clearing and settlement.

Question 22: Do you recommend adding/deleting/amending any other flags? If yes, please explain.

AMAFI has no further proposals related to other flags.

Question 23: Do you agree with the proposal to prescribe the order of the population of flags? If not, please explain and provide an alternative proposal.

AMAFI disagrees with ESMA's proposal to align the order of the population of flags with the current approach in the FIX MMT standard. This change would entail important costs with no foreseeable benefit for transparency.

Question 24: 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.

AMAFI agrees with the proposed amendments.

Question 25: 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.

AMAFI does not agree with ESMA's proposal in this area. The consequences of these proposals in terms of added complexity and costs to both trading venues and data subscribers would be significant.

Question 26: Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.

In a previous response to ESMA's consultation paper on the transparency regime for non-equity instruments, AMAFI had expressed its opposition to ESMA's proposals to delete the pre-trade SSTI waiver and lower the LIS thresholds. AMAFI maintains its position that the current calibration allows MiFIR to maintain a fragile balance protecting liquidity providers from undue risks, and that a modification without a robust impact assessment could compromise the current balance.

Question 27: Do you agree with the proposed changes to Article 13? If not, please explain

AMAFI agrees with the proposed changes to Article 13.

Question 28: Do you agree with the proposed changes to Article 4? If not, please explain

AMAFI agrees with the proposed changes to article 4 of RTS 2.

Question 29: 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.

AMAFI agrees with the proposed amendments to article 12 of RTS 2.

Question 30: 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.

AMAFI is not responding to this question.

Question 31: 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? 125

AMAFI agrees with the proposed changes.

Question 32: 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.

AMAFI is in line with the harmonisation of the measure of volume with a clear reference to the field contained in table 2 detailing the information for the purpose of post-trade transparency.

Question 33: 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.

AMAFI is not responding to this question.

Question 34: 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.

AMAFI is not responding to this question.

Question 35: 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?

AMAFI is not responding to this question.

Question 36: 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.

AMAFI agrees with ESMA's proposal.

Question 37: Do you agree with ESMA's proposal to delete the ACTX flag? Please explain

AMAFI agrees with ESMA's proposal.

Question 38: Do you agree with ESMA's proposal to merge the current non-equity deferral flags into one general flag?

AMAFI agrees with ESMA's proposal.

Question 39: 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.

AMAFI agrees with ESMA's assessment.

Question 40: 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?

AMAFI agrees with ESMA's proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver. We also believe that for LIS, it should be limited to completely filled LIS orders.

Question 41: Do you agree with ESMA’s proposal to introduce a flag for pre-arranged nonequity transactions?

AMAFI does not believe that the addition of a flag for pre-arranged non-equity transactions would have an added value.

Question 42: Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2? Do you have proposals to minimise the delay?

There is a need for sufficient time be provided to trading venues for the updating of FIRDS and FITRS submissions. Sufficient time should also be provided for any updates to the trading venue pre- and post-trade transparency publication systems, especially since existing data subscribers will also have to update their systems to consume new fields, field values and field formats. Some of the recommendations are potentially very disruptive and will trigger substantial IT engineering efforts. The suggested entry into force date by 2023 looks over-ambitious. We would consider a 12 to 18 months implementation period as the minimum.

Question 43 (CBA): Can you identify any other costs and benefits not covered in the CBA below? Please elaborate.

