

MIFID II - MIFIR RTS ON EQUITY TRANSPARENCY, VOLUME CAP, CIRCUIT BREAKERS, SI, EQUITY CTP AND THE FLAGS FOR NON-EQUITY TRANSPARENCY

ESMA'S THIRD CONSULTATION PACKAGE – 2ND SET

AMAFI'S ANSWER

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

GENERAL COMMENTS

AMAFI welcomes the opportunity to answer the second set of ESMA's consultation on its proposals for the amendment or elaboration of several RTS/ITS it has been mandated to develop in the context of the revised MiFID-MiFIR (see AMAFI / 24-65 for our answer to the consultation on the first set of proposals).

The second set concerns the ITS on systematic internalisers, the RTS 3 on the volume cap above which the waiver applied by trading venues should be suspended, and RTS 7 on circuit breakers and amendments to DORA.

AMAFI'S ANSWERS TO ESMA'S QUESTIONS

SECTION 5 – NEW COMMISSION IMPLEMENTING REGULATION (ITS ON THE CONTENT AND FORMAT OF THE SYSTEMATIC INTERNALISER NOTIFICATION)

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

AMAFI generally supports ESMA's approach but has identified several areas that require clarification.

Secondly, there is uncertainty surrounding the relationship between the statuses of SI and DPE, including their respective purposes. The specific roles and reporting obligations of each remain unclear, particularly in light of the recent changes to the transparency rules introduced by MiFID II (2024/790) and MiFIR (2024/791), which have reduced the incentive for firms to maintain their SI status. Additionally, the process for transitioning from SI to DPE needs to be more clearly defined. To address this, a clear decision tree and further guidance from ESMA would be beneficial in clarifying how SI and DPE statuses interact.

Given these uncertainties, AMAFI also recommends establishing an overlap period during which both SI and DPE statuses can coexist. This would be especially helpful for firms facing challenges during the transition, allowing them the necessary time to adjust to the new requirements and ensure compliant trade reporting.

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.

The inclusion of a MIC code for APAs appears unnecessary and could be confusing. Since APAs are not trading venues, applying a MIC code—typically designated for trading venues—does not seem appropriate. Furthermore, as ESMA has indicated, the introduction of the DPE status makes this requirement less relevant because transparency publications will be handled by the new DPEs.

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.

AMAFI does not have an opinion on this topic.

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

AMAFI does not have an opinion on this topic.

SECTION 6 – COMMISSION DELEGATED REGULATION 2017/577 (RTS 3) – VOLUME CAP

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

AMAFI generally agrees with the amendments to RTS 3.

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.

AMAFI supports the transition to JSON, as it offers more flexibility and is easier to update compared to XML. JSON is also more readable and simplifies IT processes. However, the move will incur costs, particularly related to updating IT systems and ensuring consistent implementation. While the exact costs will vary, harmonising the format across all MiFIR reports will reduce complexity and bring long-term efficiency gains.

Additionally, in deciding which format is appropriate, it is crucial that ESMA ensures that it fully respects data confidentiality and security requirements, given the sensitive nature of the information involved.

We believe that JSON should be made mandatory to ensure consistency across all MiFIR reporting. However, we question whether establishing the format at Level 2 is the most appropriate approach. While JSON is currently the preferred option, future technological advancements may present more efficient and cost-effective alternatives. Setting JSON at Level 2 could restrict our ability to adapt to better formats if they emerge, as amending the regulatory framework would require considerable time and effort.

Conversely, placing the format at Level 3 would allow flexibility but could create inconsistencies if different NCAs choose not to endorse it, complicating reporting for firms operating across multiple jurisdictions.

Therefore, while we recognise the associated risks, we believe that maintaining JSON at Level 2 is the best strategy for ensuring alignment across the market. However, we encourage ESMA to facilitate future transitions to more efficient formats, if new technologies become available.

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.

AMAFI does not have a strong position on this point. However, from an operational perspective, a monthly reporting cycle (option b) may offer a more balanced approach, reducing the burden without compromising the quality of the data submitted.

SECTION 7 – RECAST OF COMMISSION DELEGATED REGULATION 2017/584 (RTS 7) - NEW REQUIREMENTS ON CIRCUIT BREAKERS AND AMENDMENTS DUE TO DORA FRAMEWORK

7.1 – CIRCUIT BREAKERS

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

Yes, AMAFI agrees with these definitions.

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

AMAFI generally agrees with the approach, but it is important that it is acknowledged through the RTS that there should be flexibility and that there are instances where the use of only static or only dynamic circuit breakers can have merits due to the specificities of the market.

There needs to be sufficient flexibility provided so that specific characteristics are taken into account. Any process established for trading venues to provide information to their NCAs on this should also not be overly burdensome.

Furthermore, in certain situations, neither static nor dynamic circuit breakers are the right mechanisms to ensure price continuity. The discretion that ESMA leaves to trading venues to determine the parameters should extend to the mechanisms themselves where the market operator can explain and justify these specific situations.

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.

AMAFI believes there needs to be a balanced and practical approach taken to ensure a trading venue establishes a clear and appropriate methodology on the calibration of its circuit breakers. In particular, we suggest this should be done at asset class level or for a specific group of instruments, as it is not practical to expect it to be done for each individual financial instrument.

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

AMAFI is generally fine with the information that must be disclosed except for Art 19(1)(d) and (f) as set out below. However, while we support transparency to the market in this regard, there should be flexibility provided as to where information on the functioning and effects of circuit breakers has to be disclosed, as even if not published on the website, it can still be publicly available.

In addition, it is critical that any sensitive information should not be required to be disclosed as there is a risk that this could impact trading behaviours and potentially be misused. This would compromise and undermine the ability of trading venues to ensure the orderly functioning of their markets. Therefore, it is important that discretion is left with the trading venues as to the detail of the information that should be disclosed.

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.

AMAFI does not believe it is necessary to disclose this information on the website of trading venues as it is already disclosed in real time.

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

Yes, AMAFI agrees with this proposal.

7.1. 7 – PROPOSAL – AMENDMENTS TO RTS 7 IN LIGHT OF DORA PROVISIONS

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

AMAFI does not have an opinion on this topic.

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

AMAFI does not have an opinion on this topic.

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

AMAFI does not have an opinion on this topic.

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.

AMAFI does not have an opinion on this topic.

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

AMAFI does not have an opinion on this topic.

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

AMAFI does not have an opinion on this topic.

