# FESE response to the ESMA third consultation package on the MiFIR review

Brussels, Tuesday 15th October 2024

## 1. CDR 2017/567

**Q1:** Should the use of alternative data to perform the calculations (i.e. as described under Option 2 above) be feasible, what would be the costs and the benefits of such a change for different categories of market participants, including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects? Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?

> On the one hand, FESE considers that there could be merit in streamlining the submission of the necessary quantitative data under RTS 1, 2 and 3 and include all submissions in the same process & report. This would avoid the submission of duplicative data, in different submissions at different points in time, and improve data quality. Given that this implies a significant change to existing processes, this proposal should only be progressed on the condition that all reports are completely reviewed and rationalised, minimising also the ad-hoc/yearly data requests that ESMA is currently issuing, as these are consuming a lot of time internally.
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> However, FESE has some reservations about Option 2's outcomes:
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> - First, not submitting the information for the sole purpose of transparency calculations does not mean that trading venues will not have to submit the same data for different purposes. As described in Option C for Article 17 and Table 2 Annex IV, trading venues would still have to submit detailed information to ESMA, and it is unclear if this information would then be sourced from transaction reporting or requested directly from trading venues. In any case, trading venues will still report data to the ESMA systems, starting with reference data as per RTS 23.
> - Second, we consider that ESMA has the possibility to use both data under transaction reporting and under FITRS to perform some data checks and reconciliation between sources. If trading venues no longer report to FITRS and DVCAP, this check will not be possible.
> - Third, whereas the quality of data provided by trading venues is rather high, we cannot vouch for data provided by other sources and would not recommend removing the most reliable data provider.
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> We hence believe it would be better that the reporting obligation remains with the trading venues.

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

FESE agrees with the proposal on the start day of application of the transparency application, meaning that the date shall be the one specified in Field 11 of Table 3 of Annex in RTS 23, in conjunction with the "venue of admission to trading" as per the new Field 6b. We would refer, on this latter point, to our response to Q66 to the 'MiFIR Review Consultation Package of RTS 2 on transparency for bonds, structured finance products and emission allowances, draft RTS on reasonable commercial basis and review of RTS 23 on supply of reference data', as well as to Q8 of the present document.

This should also be linked to the use of the estimates provided by this venue (then validated by ESMA) to perform the relevant transparency calculations (tick size, LIS…). In other words, the estimates when provided by the competent authority of the relevant trading venue where the IPO is taking place should be the ones considered by ESMA on the first of the three dates. This would avoid reliance on incorrect data that is usually sent to ESMA by the MTFs - this is one of the biggest current issues with the FITRS.

In addition, it is not clear to us what the proposal is for new ISINs arising from other cases such as: i) listings that are not IPOs such as mergers or splits; ii) other corporate actions. In this case, there should be some link between the old and new ISIN so that ESMA can ensure continuity with the MRMTL before the corporate action.

**Q3:** Do you agree with the proposal on the denominator of the (i) ADT, (ii) ADNTE and (iii) for specifying daily traded parameter? Please explain.

FESE agrees with the proposals from ESMA; we would however appreciate more information on how the days when an instrument is traded are considered and accounted for.

It should be noted that transparency calculations - or other data strictly interlinked with these metrics - are also used for the determination of the tick size (i.e. the ADT for the LIS parameter, and the ADNTE on MRMTL for the tick size). A consistent methodology should be used across all these indicators.

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

The liquid market concept is pivotal to the transparency of EU equity markets: it determines the application of pre-trade transparency obligations for SIs and some instances of the use of the negotiated deal waiver "dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator".

We believe the current thresholds proposed by ESMA are too low to actually foster more liquidity in EU equity markets by increasing the amount of liquidity visible to both EU and foreign investors. When looking at the numbers of stocks that would be deemed liquid as per ESMA's analysis, it is a very small percentage of the overall number of stocks admitted on EU markets, hence we question how this will help improve transparency in the market at all. Setting the thresholds at a level that increases the visibility of EU liquidity is especially important in the context where the double volume cap is being replaced by a single cap, and so where the negotiated deal waiver may be more significantly used.

Therefore, we believe ESMA should carry out further analysis to ensure that the revised approach will have a meaningful and positive impact on transparency in EU markets.

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

> FESE agrees with the proposal on the liquidity determination for other similar financial instruments. It would be helpful if ESMA clarifies the instruments that fall into this category.

**Q6:** Do you agree with the proposal to remove the field "holdings exceeding 5% of total voting rights" from the legal text but keeping it in the XML schema of the reporting without being obliged to report such information? Pease explain.

> FESE agrees with the proposal under the condition that the field will effectively be optional and that leaving it empty will not return an error message. Alternatively, the field could be removed altogether, as there is no value added for retaining it.

## 2. RTS 1

**Q7:** Do you in general agree with the content of the proposed Tables 1a and 1b? Please specify (i) which fields you consider as not necessary (ii) any amendments that you consider necessary to the columns "Description and details to be published", "Type of execution or publication venue", "Type of trading system" to ensure that the information to be provided is clear and unambiguous (iii) the instruments and the circumstances when it is necessary to report the field price with a price notation different from "MONE" – Monetary value

> Generally, FESE believes that there would be value in ESMA reviewing more extensively the transparency requirements applicable to trading venues. We believe it forms an integral part of its mandate in Level 1 *("The details of pre-trade data, the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2)")*.
>
> In particular, as highlighted in ESMA's 2019 report on frequent batch auctions and subsequent reports, FESE is concerned about the growth of trading systems which are defacto importing their execution prices from other sources with limited pre trade transparency whereas not captured under a pre trade transparency waiver. This liquidity, which does not contribute to the price formation process, accounts for more than 7% of continuous trading in European equities.
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> We had understood from ESMA's 2022 report that this would be looked at further following the MiFIR Review, and we are therefore surprised that this does not seem to be addressed in this consultation. We believe that this non-price forming trading activity should not be considered pre-trade transparent and that the information to be made public for each type of trading system in Table 1 of Annex 1 of RTS 1 should be amended as set out below.
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> If the situation is not addressed, this will be particularly problematic for the Consolidated Tape for equities & ETFs, as de facto it means that the EBBO displayed by the CT will be flawed with information on best bids and offers not necessarily representative of actual pre-trade transparent interests.

| Row | Type of trading system | Description of the trading system | Information to be made public |
|---|---|---|---|
| 1 | Continuous auction order book trading system | A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis. | The aggregate number of orders and the shares, depositary receipts, ETFs, certificates and other similar financial instruments that they represent at each price level for at least the five best bid and offer price levels **sent to the venue's order book and present on the venue's order book.** |
| 2 | Quote-driven trading system | A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself. | The best bid and offer by price of each market maker in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system, together with the volumes attaching to those prices, **sent to the venue's order book and present on its order book**. The quotes made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or oneway prices may be allowed for a limited time. |
| 3 | Periodic auction trading system | A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. | The price at which the auction trading system would best satisfy its trading algorithm in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system and the volume that would potentially be executable at that price by participants in that system **and based exclusively on the prices and sizes of orders sent to the venue's order book and present on its order book**. |
| 4 | Request for quote trading system | A system where a quote or quotes are provided in response to a request for quote submitted by one or more members or participants. The quote is executable exclusively by the requesting member or participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request. | The quotes and the attached volumes from any member or participant **sent to the venue's system and present on the venue's system** which, if accepted, would lead to a transaction under the system's rules. All submitted quotes **on the system** in response to a request for quote may be published at the same time but not later than when they become executable. |
| 5 | Hybrid trading system | A system falling into two or more of the types of trading systems referred to in rows 1 to 4 of this Table. | For hybrid systems that combine different trading systems at the same time, the requirements correspond to the pre-trade trade transparency requirements applicable to each type of trading system that forms the hybrid system. For hybrid systems that combine two or more trading systems |

| | | | subsequently, the requirements correspond to the pretrade transparency requirements applicable to the respective trading system operated at a particular point in time. |
|---|---|---|---|
| 6 | Any other trading system | Any other type of trading system not covered by rows 1 to 5. | Adequate information as to the level of orders or quotes and of trading interest in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on the trading system, **sent to the venue's system and present on the venue's system**; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that instrument, if the characteristics of the price discovery mechanism so permit. |

Regarding Table 1b, it appears that a number of questions arise, and clarifications from ESMA would be highly welcome:

- The table includes some referential data which, in our view, should not be reported for all published records (e.g. price currency, price notation, quantity currency). This information could maybe be reported separately – in another table - but including it for each individual record would increase significantly the size of the reports.
- It is generally unclear how the information should be reported. In the case of a Continuous Order book trading system, it appears that ESMA expects the different limits of the order book to be reported separately, with each limit corresponding to one record and all 10 limits simultaneously published (5 bids and 5 asks) with the same timestamp, and all other qualitative information repeated. Our understanding comes from field 3 (Side) stating BUY or SELL, applying to each record and the confusion around field 1 (Submission date and time). For the size of the record and ease of processing, we strongly recommend that all 5 limits for each side of the order book be reported as a block with a single timestamp, allowing to have all information in one line/record. This solution – currently adopted by trading venues – has the advantage of providing a complete picture of the order book for each timestamp while significantly reducing the file size. In addition, when fewer than 5 limits on each side of the book are available, there is no confusion about whether some records have been missed or lost.
- Also in relation to field 3, for an auction, we wonder why should the indicative price be published twice, rather than having a specific value on top of BUY and SELL (i.e. "INDPRICE").
- Fields #1 (Submission date and time) and #7 (Quantity) do not clearly specify the requirement for a CLOB system where orders are aggregated by price. Information shall be clear about aggregation of sizes for the respective price for example (reference to Field 4 – Price). For field 1, we strongly urge ESMA, like for all fields, to define exactly what shall be provided for each type of trading system. Indeed, in relation to the aforementioned point, the description for continuous auction order book trading system explains what shall not be done, but not what shall be done. Given that the submission date and time for aggregated orders makes no sense, we would suggest the following revision, including a renaming of the said field (in bold): (Submission date and time **reference**); **For continuous auction order book trading systems, the date and time at which an update in the order book triggered a modification of the best bid and offer price levels be it a price or a size.**

- The field 11 "Trading system" is not easily applicable. Firstly, changes in RTS 2 should not apply to RTS 1, especially because Article 8 MiFIR does not apply to equity instruments and because RTS 1 Annex 1 Table 1 currently provides a taxonomy of the different trading systems which would not fit the values proposed in Table 1b, namely the reference to CLOB. Secondly, it should be clear that trading venues should provide the generic name that applies to their trading system, not to the trading phase which the discrepancy between current RTS 1 Annex 1 Table 1 and Field 11 does not help clarifying. So for a CLOB, this value would be displayed during the whole session, whether during continuous trading, periodic auction or trading halts; for a hybrid system, the same would apply. In this sense, it is not obvious that this information is particularly relevant, as it might be misleading.
- Figure 3, which outlines the information to be made public in periodic auction trading systems, appears incorrect. According to RTS 1 Annex 1 Table 1, only "the price at which the auction trading system would best satisfy its trading algorithm […] and the volume potentially that would potentially be executable at that price […]" shall be reported. Consequently, only one price and one volume should be published. In no case should bid or ask prices or sizes be provided. These requirements are not compliant with Table 1 – note that if no indicative price and volume can be displayed, no information should be provided, as the auction could not conclude. Requests for information on the order book in the case of an uncrossed book are unfounded and not compliant with the legal text.

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

FESE agrees with the clarification on the start date for the transparency calculations and the simplification for new instruments with insufficient activity to perform the calculations. However, we are concerned about the field "venue of admission" in Table 3 of Annex RTS 23 and the selection process suggested by ESMA. Even considering IPOs only as per paragraph 67, these can actually take place on regulated markets as well as MTFs. The case of SME Growth Markets shows that companies can also raise capital on an MTF. As a consequence, we would suggest the following:

- ESMA should consider IPOs and other ways of raising capital on capital markets such as private placement and direct listings. Moreover, some corporate actions could imply the creation of a new ISIN, and it is crucial that the transparency calculations are based on the metrics assessed from the trading venue where the corporate action is initiated. ESMA would need to list all instances where capital is raised on a capital market or where there is a corporate action as events involving the selection of the "venue of admission".

- Following the above point, ESMA should make the new field 6b available to all trading venues. Aware that this could cause confusion among trading venues as to whether they should declare themselves as the "venue for admission to trading", we would suggest defining the new field in RTS 23 differently. In order to distinguish between an IPO, a private placement, a direct listing, or a dual listing, ESMA could provide a list of all relevant operations which comprise a first admission to trading and, in order to exclude the irrelevant trading venues, include as a criterion the necessity that the listing or the corporate action took place "at the request of the issuer". This would guarantee that "sole admissions to trading," where no capital is raised and no issuer request was submitted, are excluded, or that trading venues where no capital is raised are ticking the box.

We would hence reformulate Article 4(4) as follows: *"Until the most relevant market in terms of liquidity for a specific financial instrument is determined in accordance with the procedure specified in paragraphs 1 to 3, the most relevant market in terms of liquidity shall be the ~~regulated market~~ **trading venue** where that financial instrument is*

*first admitted to trading or first traded, or in cases where the financial instrument is not made available for trading on a regulated market in the Union, the multilateral trading facility where that financial instrument is first admitted to trading or first traded, based on fields 11 (Date and time of admission to trading or date of first trade) and 6b (Venue of admission to trading) in Table 3 of Annex of Commission Delegated Regulation (EU) 2017/585. The Venue of admission to trading is defined as the trading venue where the IPO, private placement, direct listing or dual listing took place, as well as the corporate action, and where the operation took place at the request of the issuer where applicable."*

In addition, the text is not fully clear as it only refers to the determination of the MRMTL but does not explicitly state that, until calculations based on real data are done (6 weeks after the IPO or relevant corporate action), the estimates from the market where the IPO or the relevant corporate action occurred would be used. If this is the idea, FESE supports this approach but suggests it should be made clearer in the text.

Furthermore, we reiterate our point in Q2 regarding new ISINs arising from other cases such as: i) listings that are not IPOs such as mergers/splits; and ii) other corporate actions. In this case, there should be some link between the old and new ISIN so that ESMA can ensure continuity with the MRMTL before the corporate action.

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

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

FESE agrees with the proposals from ESMA and suggests that, regarding the point developed in paragraph 78, the approach for the estimate of the average daily turnover accounting for "other previous or similar financial instrument of the same issuer" should also apply to the calculation of the estimate of the average daily number of transactions in RTS 11. In this case, the same instrument might see its ADNT reset whereas there was no change of ISIN and hence no change in the ADNTE.

Also, it is not clear what the LIS should be in case the yearly calculations are not performed (which happens quite regularly on FITRS). As of today, ESMA Q&As define that if no calculation is available, the lowest LIS is applied. Since ESMA is reviewing RTS 1, we suggest it would make sense to clarify this in the text.

A similar situation applies to estimates; in many cases, ESMA does not publish estimates in due time, so we fall back to default parameters as defined in the Q&A or in the post-trade transparency manual. We would also raise the case of discrepancies between FITRS values in the XML files and the website; ESMA should clarify in the ESMA Q&As which value supersedes.

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

Yes, FESE agrees. This new wording clarifies a long-outstanding point related to the need to disclose the hidden part of an iceberg before executing it, as this does not happen in most trading systems (in this case, a trade is generated instantaneously instead).

**Q12:** How could ESMA take into account international best practices and competitiveness for the determination of the threshold up to which SIs have to be pretrade transparent? Please explain.

While it is reasonable to review and consider international best practices when determining these thresholds, we strongly argue it is still most relevant to consider the role of SIs in the EU.

SIs have become standard alternatives to trading venues in the EU, please see https://www.bmlltech.com/news/market-insight/bmll-market-lens-liquidity-maps. They account for more than 13% of EU liquidity (source: BigXYT, Jun 2024) and are indeed considered eligible execution venues for the purpose of the share trading obligation. Other jurisdictions may have different market structures, so there must be a clear focus on the European market structure. Taking into consideration the established importance of SIs in the EU liquidity landscape, their transparency requirements should be brought closer to those applicable to trading venues: indeed, without it, local investors as well as foreign ones are deprived of a view over a significant portion of available liquidity in EU stocks.

**Q13:** Do you agree with the new AVT buckets and related SMS? Would you set a higher SMS for the AVT bucket [0-10000) (e.g. 10,000)? Please explain.

FESE does not agree with the new AVT buckets and related SMS. **We believe that the SMS concept and threshold should be brought closer to the large-in-scale threshold.** As underlined in Recital 13 of the MiFIR Review, despite their important role, Systematic Internalisers do not sufficiently contribute to transparency. SIs represent today a major source of liquidity, accounting for more than 13% of the average value traded in European equities in June 2024 (source: BigXYT). They are deemed eligible execution venues for the purpose of the share trading obligation. The currently proposed SMS is not consistent with the objective of improving transparency. The exemptions of SIs from most of the pre-trade transparency requirements due to the combined effect of the liquid market definition and SMS threshold definition are problematic, as they may mislead European investors and foreign investors into perceiving European liquidity as disproportionately low versus the reality.

Indeed, please find below the estimated impact of proposed transaction bands using Euronext and Xetra stocks as an example:

| Average value of transactions band | 0-10000 | 10000-12000 | 12000-14000 | 14000-16000 | 16000-18000 | 18000-20000 | 20000-40000 | 40000-60000 | 60000-80000 | 80000-100000 | 100000-120000 | 120000-140000 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Estimated # of Euronext-listed stocks per band | 434 | 27 | 16 | 7 | 6 | 4 | 3 | 0 | 0 | 0 | 0 | 0 |
| Estimated # of Xetra-listed stocks per band | 220 | 27 | 11 | 4 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |

The SMS methodology should be reviewed and brought closer to the LIS: the ranges of SMS should be based on the liquidity of the stock (i.e. the ability to absorb large incoming

orders) rather than on the average size of transactions, which is not a relevant proxy for liquidity and market impact risk.

**FESE Proposal:**

SMS to be defined based on ADT as per the below:

| ADT | 0-50000 | 50000-100000 | 100000-500000 | 500000-1000000 | 1000000-5000000 | 5000000-25000000 | 25000000-50000000 | 50000000-100000000 | 100000000 and above |
|---|---|---|---|---|---|---|---|---|---|
| *LIS* | *15000* | *30000* | *60000* | *100000* | *200000* | *300000* | *400000* | *500000* | *650000* |
| **New proposed SMS** | **7500** | **10000** | **20000** | **40000** | **70000** | **110000** | **150000** | **200000** | **25000** |
| SI transparency threshold (2*SMS) | 15000 | 20000 | 40000 | 80000 | 140000 | 220000 | 300000 | 400000 | 50000 |
| Estimated # of Euronext-listed stocks per band if all Euronext-listed stocks considered as liquid | 1159 | 196 | 442 | 125 | 251 | 180 | 49 | 44 | 81 |
| Estimated # of Euronext-listed stocks per band (only including stocks falling into the liquid market definition) | 177 | 41 | 77 | 31 | 57 | 43 | 19 | 19 | 33 |
| Estimated # or Xetra-listed stocks per band | 157 | 42 | 68 | 36 | 84 | 86 | 36 | 26 | 55 |

As a final note, should the current SMS methodology be maintained, we believe that:
- The threshold should definitely be raised for the bucket 0-10.000 EUR. The 'new' SMS is half of the current SMS for the first bucket: the definition of the SMS shall be adjusted, and not set equal to the midpoint of the bucket (this is very arbitrary).
- ESMA should consider other means to determine the SMS, such as basing it on the distribution of trade sizes for the ISINs in each bucket (i.e. 75% percentile?).

- Looking at the table on page 64, the ratio between the bucket top range and the 2x SMS threshold, for bucket 1, looks totally inconsistent with the other buckets (5.000 vs 10.000 for bucket 1; 11.000 vs. 12.000 for bucket 2, etc.).

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

See our response to Q13.

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

**Q16:** Do you agree with the new AVT buckets and related SMS? Would you set a lower SMS for the AVT bucket [0-10000) (e.g. 5,000)? Please explain.

Consistent with our response to Q13, FESE believes that the AVT is not the correct measure to define the standard market size. If the current methodology were to be maintained, we would urge ESMA to consider our remarks in the second part of our response to Q13.

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

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

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

Similar to our response to Q13 on shares, we suggest further analysis to determine thresholds that will result in increased transparency for ETFs in the market. The proposed approach will have little meaningful impact, and we believe it is a missed opportunity to improve the situation.

The ETF market already faces challenges in this respect due to the shift of flow to RFQ models. A large majority of trading now occurs on RFQ trading systems, which is very concerning because of their extremely limited transparency in comparison with lit order book trading systems. This, combined with the growing market share of SIs, is leading to less transparent flows, which may have a detrimental impact on the price formation process, as well as on the accessibility and liquidity of the overall ETF market, in the long term. We urge ESMA to consider this further and propose changes that will have a more positive impact on transparency to the benefit of both investors and the overall market.

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

Please see the response to Q19.

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

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

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

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

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

Consistent with our response to Q8 in the ESMA Consultation Paper on the amendment of RTS 2, we would have some concerns about some of the changes proposed to post-trade fields.

In particular, we do not support the introduction of a column-naming convention. This approach would not be practical for market data disseminated via technical protocols and would have a significant impact on existing market data fees, especially in relation to trade messages. Trading venues should continue to have flexibility to technically organise their 'key' public data feeds in a competitive environment, in the way they determine to be most efficient.

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

FESE would have general comments and remarks on Table 3 Annex 1 RTS 1:

- Table 3 continues to include referential data (as per the current MiFID approach) that we understand is already reported elsewhere (price currency, price notation, trading system etc.).
- Current market data feeds use short codes or even numbers to identify specific fields. This is to ensure efficiency in data transmission. Usage of the exact same field identifiers does make sense for the display on websites but not for market data feeds used by DRSPs. The current consumers of DRSPs (trading members, market data vendors) are already capable of interpreting these data without any problem.
- Discrepancies in the regulation lead to issues: Although RTS 1 (even in the version proposed in the consultations) offers up to 17 digits after the decimal point for quantity and price, according XML DATEQU only allows up to 5 digits after the decimal point for "Vol Ccy". This leads to severe problems for the upload of DATEQU XML files to ESMA (rejections).

In addition, FESE would have some comments/remarks on specific fields:

- Field #8 "venue of execution": We suggest that the SI should be identified via a delayed post-trade report (e.g. delay of 1 month) and this shall happen via a MIC for each SI and potentially each relevant asset class, not via the simplistic value SINT. This is important so as not to deprive investors from valuable information on available liquidity. Indeed, at some point, being able to obtain information on where liquidity is executed in the EU by identifying the relevant SI is critical. It is worth mentioning that this is already the case in the US, where similar types of execution brokers are identified for the purpose of post-trade transparency. For a comparison of the subsequent quality of information available in the US and the

EU, please see, for instance, the US liquidity map (https://www.bmlltech.com/news/market-insight/bmll-market-lens-us-liquidity-maps) and the EU liquidity map (https://www.bmlltech.com/news/market-insight/bmll-market-lens-liquidity-maps).

- Field #10 "trading systems": The values for this field shall solely be based on the taxonomy established in Table 1 of Annex 1, which is not modified following changes in the Level 1 texts – those are only for non-equity instruments. We believe that the value CLOB shall not be included as only defined in RTS 2.
- Field #14 "Flags": The format proposed by ESMA is not in line with FIX MMT. It is essential to adopt a harmonised approach, so we suggest ESMA further reviews this to ensure consistency with FIX MMT format, content and architecture. MMT is based on an architecture at different levels that should be reflected here.

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

The RTS 1 review is first and foremost an opportunity to clean the information published to the market, in order to provide local and foreign investors with the most granular view possible of liquidity available in EU equities. This is especially critical in the context of the CT. Hence, we believe the transaction flags should be extensively reviewed as per the below.

In particular, we would highlight that granular SI flags should be retained, and in addition, a new midpoint flag is critical, along with a new flag to identify the side of the SI (with a delay in the disclosure if necessary). Note that some of those flags have been adopted in the UK and apply since April 2024 (https://www.fca.org.uk/publication/policy/ps23-4.pdf and https://www.handbook.fca.org.uk/instrument/2023/FCA_2023_19.pdf), such as the 'CLSE' and 'TNCP' flags. These two flags, along with 'NI', are also included in MMT.

| Flag | Name | Type of execution or publication venue | Description |
|------|------|----------------------------------------|-------------|
| | | | |
| **New Flags that should be included** | | | |
| MIDP | Midpoint transaction | APA | Transactions executed at midpoint for the purpose of Article 17a.2 of Regulation (EU) No 791/2024 |
| LIST | Large in scale waiver | RM, MTF | Transaction executed as a result of the application of the large in scale waiver for at least one of the matched orders for the purpose of Article 4.1 c) of Regulation (EU) No 600/2014 except if deferred publication applies |
| BAGR | Transactions where the SI is on the buy side | APA | Transactions where the systematic internaliser is on the buy side |

| | | | |
|---|---|---|---|
| **SAGR** | **Transactions where the SI is on the sell side** | **APA** | **Transactions where the systematic internaliser is on the sell side** |
| **TNCP** | **Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag** | **RM, MTF, APA** | **Transaction not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2. except from transactions flagged as CONT, BENC and PORT** |
| **CLSE** | **Benchmark Transaction Executed at the Market Closing Price** | **RM, MTF, APA** | **Transaction executed at the market closing price benchmark** |
| **NI** | **Non-Immediate Publication** | **RM, MTF, APA** | **Transaction for which publication has been deferred for other reasons than their size for the purpose of Article 7.1 of Regulation (EU) No 600/2014** |
| | | | |
| **Flags that should be amended** | | | |
| NPFT | Non-price forming transactions flag | RM, MTF, **APA** | Non-price forming transactions as set out in Article 2(5) of Delegated Regulation (EU) 2017/590. |
| PRIC | Negotiated transaction subject to conditions other than the current market price flag | RM, MTF | Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6, **except from transactions flagged as CONT, BENC and PORT.** |
| | | | |
| **Flags that should be maintained** | | | |
| ACTX | Agency cross transactions flag | APA | Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price. |
| ALGO | Algorithmic transaction flag | RM, MTF | Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1), point (39), of Directive 2014/65/EU. |
| AMND | Amendment flag | RM, MTF, APA | When a previously published transaction is amended. |

| | | | |
|---|---|---|---|
| BENC | Benchmark transactions flag | RM, MTF, APA | Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or timeweighted average price. |
| CANC | Cancellation flag | RM, MTF, APA | When a previously published transaction is cancelled. |
| CONT | Contingent transactions flag | RM, MTF, APA | Transactions that are contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot. |
| ILQD | Illiquid instrument transaction flag | APA | Transactions in illiquid instruments as determined in accordance with Articles 1 to 5 of Commission Delegated Regulation [MiFIR Level 2] executed on a systematic internaliser. |
| LRGS | Post-trade large in scale transaction flag | RM, MTF, APA | Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15. |
| NLIQ | Negotiated transaction in liquid financial instruments flag | RM, MTF | Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014. |
| OILQ | Negotiated transaction in illiquid financial instruments flag | RM, MTF | Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014. |
| PORT | portfolio transactions flag | RM, MTF, APA | Transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price. |
| RFPT | Reference price transaction flag | RM, MTF | Transactions which are executed under systems operating in accordance with Article 4(1), point (a), of Regulation (EU) No 600/2014. |
| RPRI | Transactions which have received price improvement flag | APA | Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014. |

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|---|---|---|---|
| SDIV | Special dividend transaction flag | RM, MTF, APA | Transactions that are either: executed during the exdividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cumdividend period where the dividend or other form of distribution accrues to the seller instead of the buyer. | |
| SIZE | Transaction above the standard market size flag | APA | Transactions executed on a systematic internaliser where the size of the incoming order was twice above the standard market size as determined in accordance with Article 11a. | |

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

FESE disagrees with the deletion of the SI flags 'SIZE', 'ILQD', and 'RPRI'. Steps should be taken to improve the consistency and completeness of SI data quality to increase visibility in this space. The deletion of these three SI flags may facilitate easier flagging of SI trades but would ultimately fall short of addressing the underlying issue and constitute a concerning development from a level playing field perspective.

We understand that the unambiguous identification of a trade executed via an SI is done via the MIC (SINT) field. While we appreciate the attempt at simplification, the three pre-trade transparency waiver flags applicable to SIs are not being replaced by any alternative flag, and the "NTLS" flag if adopted would be designed to be applied to on-venue trades only.

In addition, we believe that:
- Given the new midpoint matching possibilities open for SIs as a result of the level 1 review, a new MIDP flag should be included, and
- To allow market participants to appropriately conduct transaction costs analysis, and especially toxicity analysis, SIs transaction publication should be flagged to indicate the direction of the transaction (i.e. if SI is on the buy or sell-side). Even if this specific flag is only published with a one-month delay, it would already be highly valuable for the industry.
-

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

FESE disagrees with the deletion of the ACTX flag. According to RTS 1, the ACTX flag applies to "transactions where an investment firm has brought together two clients' orders with the purchase and sale conducted as one transaction and involving the same volume and price." Therefore, the ACTX flag does not apply to transactions executed on a trading venue but indicates if a transaction was arranged and executed OTC.

As the ACTX flag is the only flag for post-trade transparency that identifies OTC transactions, removing it would deprive market participants of crucial information about the true level of transactions in these markets. Given that the OTC market is already opaque, further reducing its post-trade transparency is inappropriate and contrary to the goal of MiFID II/MiFIR to increase overall transparency in equity markets. Therefore, FESE urges ESMA to reconsider its proposal and retain the ACTX flag for post-trade transparency.

**Q30:** Would you further reduce the maximum time for disclosing pre-trade transparency "as close to real-time as technically possible"? If so, what maximum limit would you suggest? Please explain.

> FESE Members believe that the existing definition of "as close to real-time as technically possible" of up to 1 minute is fit-for-purpose for disclosing pre-trade transparency and would not support a reduction. We also wish to underline that the maximum delay should, in any case, be equal for all execution venues, including SIs.
>
> Should ESMA establish more ambitious maximum thresholds, these should uniquely be limited to the submission of data to the CTP context. Please refer to our responses to Q8 of the ESMA consultation on the CTP for our specific views in relation to the CTP.

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

> Yes, FESE agrees.

**Q32:** Which option do you prefer: Option A (status quo), Option B (add layer for technical trades), Option C (add layer for technical trades and waivers)? Please explain.

> FESE recommends adding a layer for both technical trades and waivers, Option C. Introducing a flag in the reporting to identify non-price forming transactions and collecting the turnover and number of transactions on a per waiver type would allow ESMA to improve data quality, ensure a consistent treatment of technical trades during the performance of the transparency calculations, and use FITRS for the volume cap calculations. In our view, this data submission would then eliminate the need for any duplicative reporting (such as RTS 1, 2 and 3 quantitative data).

**Q33:** Do you agree with the proposed amendments to Annex IV of RTS 1 in relation to Option B and Option C? Please explain.

> 

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

> 

**Q35:** Do you agree with the proposed different application dates for the different provisions in Article 20 of RTS 1? Please explain.

> From a practical perspective, setting out different application dates for different provisions of equity transparency makes implementation extremely challenging. Not only are there multiple different timelines indicated, but they also potentially differ from the timelines for changes in RTS2. Again, from a project implementation viewpoint, this significantly increases costs and resource requirements to make such changes for different project times.
>
> Furthermore, we note ESMA indicates that the timelines for the provisions in its technical advice regarding the definition of a liquid market should be aligned with that of RTS1, but this lacks sufficient clarity as it is unclear which applicable date is being referenced. Given there are links to RTS23, it would make sense for these timelines to align.

We urge ESMA to try to align timelines wherever possible, and it is critical to provide sufficient time and ensure a consistent approach for implementation once the final details are published.

Lastly, we would also like to make some general remarks regarding equity transparency and its impact on European market structure. ESMA has engaged in a very ambitious exercise to streamline information on EU capital markets through an extensive review of technical requirements for reporting and publication. Yet, there is no proposal to further increase the information available to investors on EU equities markets. Compared to other jurisdictions, there is a transparency gap between US and EU markets. Lit multilateral venues on equities account for 60% of turnover in the US vs 40% in the EU (source: BMLL, July 2024). Even dark off-exchange facilities in the US disclose more information than their EU equivalent (systematic internalisers).

Furthermore, the US disclosure framework is being strengthened, notably through the review of RegNMS by the SEC in May of this year. So far, this approach has proven to be attractive for both local and foreign investors. For FESE, a key question is how can we truly attract further investment inflows in a market where only 40% of the available liquidity is visible to local and foreign investors.

We believe the current MiFID/R RTS work presents a major opportunity to enhance and upgrade, pragmatically and consistently, the level of information available to investors on EU equity markets. This is in line with the Level 1 mandate, but we question whether this has really been achieved with the current proposals. Therefore, we urge ESMA to consider our feedback in detail and take into account our suggestions in the final technical standards.

## 3. New ITS

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

While the proposed approach seems to fulfil the mandate for a standard template to be used by firms for the notification to their NCA when they meet the definition of an SI, we suggest some additional information should also be required. FESE believes there has to be a more robust notification process for SIs, taking into account in particular that there are no additional requirements set out in Art 15 of MiFIR. These oblige systematic internalisers to establish and implement transparent and non-discriminatory rules and objective criteria for the efficient execution of orders. In addition, SIs should have arrangements for the sound management of their technical operations, including the establishment of effective contingency arrangements to cope with risks of systems disruption. In our view, it is important that this information is provided to the NCA upon registering as an SI.

Currently, there is an unlevel playing field between the authorisation requirements for trading venues compared with those for SIs. For example, ITS19 requires substantial information to be provided by the operator of an MTF. It is not clear why similar information is not required of SIs when they represent today a major source of liquidity, accounting for more than 13% of the average value traded in European equities in June 2024 (source: BigXYT) and are deemed eligible execution venues for the purpose of the share trading obligation. Hence, in our view, a description of the business model and how regulatory compliance is maintained with the above requirements should at least be provided by SIs to maintain a level playing field with Regulated Markets and MTFs.

In addition, we stress that the RTS should carefully consider the implications of both the newly designated publishing entity and the updated SI definition, which unfortunately will not include quantitative measures of the substantiality of their trading.

Lastly, whilst not explicitly related to the notification process, it is also imperative that competent authorities enforce on a regular and ongoing basis the new SI requirements on transparent and non-discriminatory rules for the execution of orders.

**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.

As per our response to Q36, we believe that additional information relating to the functioning of the SI and details relevant to the new requirements as per Art 15 need to be included.

In addition, we suggest the SI should be identified via a MIC. We believe this is important so as not to deprive investors of valuable information on available liquidity. It would be relevant for post-trade transparency and could be used via delayed post-trade reports if need be (even with a 1-month delay). Indeed, being able to get at some point information on where liquidity is executed in the EU by being able to identify on which SI this is done is critical.

It is worth mentioning that this is already the case in the US, where similar types of execution brokers are identified for the purposes of post-trade transparency. For more visibility on the variation in the quality of information available in the US and the EU as a result please see for instance the US liquidity map https://www.bmlltech.com/news/market-insight/bmll-market-lens-us-liquidity-maps and the EU liquidity map https://www.bmlltech.com/news/market-lens-liquidity-maps.

Therefore requiring a MIC to be assigned to each individual SI and included in the SI notification process would be a pre-requisite to enable this additional and valuable information to be provided to the market.

**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.

N/A

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

Please see our response to Q36 & Q37.

## 4. RTS 3

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

In general, FESE agrees with the proposed amendments to RTS 3 with the exception of the reference in Art 6(3) to use a "sufficiently granular trading venue identifier" to identify the volumes executed under a reference price waiver. This segregation is done on the basis of the post-trade flags, coherently with the rest of the rules, and not by using a trading venue identifier. Using such an approach would not work for example for a dark venue that is using the same MIC of the lit book.

**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 (shortand long term) related to potential transition to JSON.

FESE notes that ESMA is considering the use of JSON format for reporting in a number of areas (i.e. RTS3, RTS21, RTS23). It is critical that any approach ESMA decides to take in relation to reporting formats must be holistic and seek to progressively extend to all areas and reporting layers; otherwise, it will not produce benefits and instead would lead to additional complexity and unnecessary cost. Fundamentally, any evolution towards the JSON format must as a prerequisite receive full endorsement from all NCAs and commitment that they will also adjust their practices and requirements in favour of a new unique format. Some NCAs currently sometimes require and request different reporting formats for operational reasons for the same reporting purposes. A broader evolution towards JSON can only be meaningful and successful if such discrepancies can be dismantled in favour of a unique format that is used by all.

Lastly, given that this would be a significant structural change, it is important that sufficient implementation time is provided for this transition (between 6 – 12 months at a minimum) and it is necessary that any evolutions towards this only be taken in a context where it can be confirmed to the industry by ESMA that JSON would be the go-to format for the foreseeable future and that at a minimum no new reporting format would be introduced or required in the coming 5 to 8 years.

Hence, it is crucial that trading venues are informed as quickly as possible of the decision to keep biweekly or switch to monthly reports. In the second case, they have additional adjustments to make to their reporting process and it will be challenging to be ready to produce the relevant reports by 29 September 2025. Trading venues would also need clarification as to whether on 29 September 2025, they will have to resubmit all reports for the past 12 months under the new volume-cap definition. In that case, extracting a significant amount of data will require time for the process itself and associated data checks.

**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.

FESE Members would prefer option B.

Switching to monthly data submissions reduces the operational workload and costs for trading venues. Moreover, it would simplify data processing and allow for systems' optimisation which would enable better data management, improved system performance, and data quality. However, trading venues would reap those benefits only after the transition to the new reporting schedule is achieved, which will require significant changes to the existing systems and processes. It is important that sufficient time is given to trading venues to develop and implement the necessary changes in their data warehouse and reporting systems.

## 5. RTS 7

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

FESE generally agrees with the proposed Article 1.

FESE supports ESMA's approach to circuit breakers by adopting most of the provisions from the October 2023 ESMA Supervisory briefing on the calibration of circuit breakers. While

the RTS should specify the principles that the regulated markets are to consider for establishing the main technical parameters, discretion should be left to market operators on which mechanisms to use and how to calibrate them on the basis of their specific trading environment.

FESE however recommends further specifying the definition of "algorithmic trading systems". The proposed definition is overly broad and might require exchange staff to know all about all the users' algorithmic trading systems, which could be difficult to implement or give rise to enforcement risks for matters outside of the exchange's control. Other areas of MiFID II cover market participant systems used for algorithmic trading, whilst draft RTS 7 intends to focus specifically on the trading venue systems. We suggest clarifying the scope of Article 1(1)(a) by introducing the following changes (in bold and italic): *"(a) 'Algorithmic trading systems' means any arrangements or systems **of the trading venue** that allow or enable algorithmic trading."*

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

FESE agrees with the proposed general principles in the establishment of circuit breakers. Flexibility and adaptability to the local market environment are key.

Trading venues can deploy circuit breakers in the form of trading halts or price collars by choosing the mechanism that they consider suits best their market conditions. We appreciate the clarification on the alternative between trading halts and price collars, contrary to the relevant part in the Supervisory Briefing for liquid instruments. If trading halts and price collars are appropriately calibrated, they can be used interchangeably.

Furthermore, the draft RTS requires that trading venues, independently of their choice to deploy trading halts or price collars, establish both static and dynamic circuit breakers. We concur with ESMA's conclusion that there might be instances where the use of only static or only dynamic circuit breakers can have merits due to the specificities of the market. We suggest there needs to be flexibility provided here and any process established for trading venues to provide information to their NCAs on this should not be overly burdensome. As an example, the requirement for both static and dynamic circuit breakers should be relaxed when the fair price of an instrument may change significantly due to the nature of the product, such as in the case of option contracts. Another instance is when there are additional trading constraints, such as the case of securitised derivatives using the RFE (Request For Execution) model, where trades can only be executed within Liquidity Provider quotes.

FESE would, finally, argue that trading venues could also adopt different mechanisms than static and/or dynamic reference prices to manage excess volatility episodes for certain types of instruments and/or trading models where circuit breakers are not the right mechanism to ensure price continuity. This would be common practice for example on European derivative exchanges for products where the price discovery is normally driven by external factors, such as for options products as referenced above. 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 that neither static nor dynamic reference prices apply. FESE would ask ESMA to consider this specificity and to include it in Article 17(2) as follows (in **bold**): "[…] unless the trading venue demonstrates to its national competent authority that due to market-specific circumstances volatility is adequately managed deploying only a static or a dynamic reference price **or neither**."; as well as in Article 17(3) as follows (in **bold**): "[…] The assessment should specifically encompass cases where the trading venue has decided to rely either on a static or on a dynamic reference price **or to rely neither on a static nor on a dynamic reference price**". The trading venue should assess the products where this

is the case and demonstrate how price continuity is ensured in case a circuit breaker should apply or not at all.

**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.

While FESE appreciates the general approach proposed, given that trading venues already take into account the requirements listed in Article 48 of MiFID II when developing their methodology for the implementation of different circuit breakers, there needs to be a reasonable approach taken. It should be noted that these requirements are rigorous and onerous and we suggest there needs to be a balanced and appropriate approach to ensuring a trading venue establishes a clear and appropriate methodology for the calibration of its circuit breakers. In particular, it is important that the approach taken should be done at the asset class level or for a specific group of instruments, as it is not practical to expect it to be done per each individual financial instrument.

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

Firstly, regarding access to information on circuit breakers, FESE would not agree with the first sentence in Article 19(1): "Trading venues shall disclose on their website information regarding the functioning and effects of circuit breakers." We would ask for the information regarding the functionality and effects of circuit breakers to be in general publicly and easily available and for free albeit not necessarily only via a website. As an example, some exchanges have in place other channels which are free and openly available for all and provide more comprehensive information when it comes to reference data and parameters at the individual contract level, like access to a free API. On some exchanges, information regarding the functioning and effects of circuit breakers is already disclosed in real-time through the market data feed. We would suggest to ESMA to replace the sentence "Trading venues shall disclose on their website information […]" with "Trading venues shall make available publicly, easily accessible and for free information […]".

Secondly, regarding the information provided, FESE supports increasing transparency in the area of circuit breakers, including the changes to MiFID Article 48. The new wording states that regulated markets should publicly disclose information about the circumstances leading to the halting or constraining of trading and on the principles for establishing the main technical parameters used to do so. FESE considers it useful for market participants and policymakers alike to get additional information on these mechanisms. They create trust and certainty by providing transparent information on all instruments that are traded. Fundamentally, price formation and transparency are beneficial to all market users. This is why exchanges' objective is to protect the orderliness of markets by applying carefully calibrated circuit breakers, among other existing trading mechanisms. However, Recital 19 of ESMA's draft RTS 7 could be understood as prohibiting the public disclosure of circuit breaker parameters by exchanges. As such, FESE would propose modifying Recital 19 of the draft ESMA RTS to state that trading venues are not required to disclose further information beyond what is mandated in the revised MiFID II text. In other words, trading venues should be able to disclose further parameters to the public if they wish so, at their own discretion.

In addition, specifically in relation to Art 19(1)(d), in cases where boundaries change frequently throughout the day (e.g. dynamic collars on derivatives), we suggest the requirement should be satisfied by communicating the logic used to determine the collar ranges, rather than providing the specific collars. This approach should meet the regulatory requirement and at the same time reduce the impact on real-time market data.

**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.

FESE does not believe that ESMA should further specify the type of information that should be disclosed.

We would assume it is at the exchanges' discretion to decide which information should be provided as per Article 19(1)(f), given that ESMA is not specifying the exact details or granularity of the abovementioned "information". Our understanding is that the minimum expectation from ESMA regarding this "information" does not go beyond what is already requested in the draft RTS as well as in the latest ESMA Supervisory Briefing published in October 2023. We would refer in particular to paragraph 246 of the Consultation Paper and the fact that the regulator "does not propose mandatory disclosure of the parameters underpinning the activation of trading halts, as it could be argued that such granular disclosure could entail unwanted effects on trading behaviours affecting orderly trading or even be potentially misused by market participants (e.g. to artificially trigger a circuit breaker)."

In general, it is important to avoid disclosing sensitive information that would undermine lit markets. Disclosing such information would be detrimental to market integrity as it might (i) make circuit breakers exploitable due to the widely available and detailed knowledge of their functioning, (ii) push under the spotlight specific market participants, and (iii) result in a possible shift towards OTC markets or systematic internalisers that do not have circuit breakers in place. There are compelling reasons to maintain confidentiality around the frequency of exchanges' trading halts and the alerts these systems produce. Disclosure of statistics on circuit breakers risks eroding market confidence due to the difficulties for the wider public to interpret their meaning, fuelling unnuanced sentiment on such numbers being too high or too low. In response, exchanges would have to consider the perception of the frequency alerts triggered by the wider public when calibrating its systems and controls, distracting from their principal responsibility to provide fair and orderly markets. If ESMA is nevertheless adamant on the disclosure of statistics on circuit breakers, FESE strongly advises limiting such disclosure to publication by competent authorities and under extraordinary circumstances. Our suggested approach is in line with MiFID II level 1 legislation and allows ESMA and NCAs to weigh the advantages and disadvantages of disclosure, and ensure that the provided information is concise, comprehensive and provides the necessary context.

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

FESE generally agrees with the suggested template for reporting information to NCAs. We would emphasise again that it is important we can group instruments together. In addition, we stress that operationally it should be possible to leave fields open when for example a section doesn't apply to a trading venue. To underline this point, it would be appropriate to include "where applicable" in those fields of the template where the provision of information is optional.

In relation to cases where the venue must provide a rationale for using only dynamic circuit breakers, it is important that one single answer is acceptable for this, as it would not be possible to set out in detail the mechanism for each instrument.

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

Yes, FESE agrees with ESMA's proposal. DORA is the reference legislation in the finance sector when it comes to digital operational resilience. Therefore, provisions outside of DORA covering this policy area should be amended or, ideally, repealed to avoid overlapping and possibly contrasting requirements.

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

Yes, FESE agrees. Testing requirements are already broadly covered under DORA.

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

FESE supports the proposed amendments. However, FESE suggests deleting Article 23 of RTS 7 completely. This article deals with incident reporting, which is a policy area that was already covered in the DORA Level 1 discussions. DORA reflects a more recent and adjusted policy position that should serve as guidance. Therefore, ESMA could consider removing Article 23 of RTS 7 as it is outdated.

**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.

In line with the feedback given in the previous responses, FESE agrees with ESMA's approach but also encourages the Authority to consider deleting the additional requirements beyond those that overlap with DORA, since DORA provides a more recent policy position on digital operational resilience than RTS 7. This is especially true for Articles 6 and 16 of RTS 7, which could be deleted in their entirety.

However, Article 6 of the draft RTS makes use of a broad definition of trading venue services in scope of the reporting requirement. In Article 6(2)(a) one of the regulatory notice requirements for outsourcing is "where the service provider provides the same service to other trading venues". This is a very broadly defined provision and could cover, for example, shared use of software commonly used by businesses such as Microsoft Office, shared office lease, office cleaning services or an office taxi service, if another exchange also uses such services. FESE suggests aligning the draft RTS with Article 40(b) of MiFID II, which refers to "essential operating services".

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

N/A

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

N/A

## 6. New RTS

**Q55.** Do you agree with the proposal for the Data related to the status of individual financial instruments? If not, please explain.

Regarding regulatory data, we generally urge that requests for the exchanges' internal operating data be kept as limited as possible. First, those data may create noise not relevant for many data users, while standardizing such information should by no means result in restrictions for trading models or mechanisms.

However, FESE agrees with ESMA's understanding that any data related to the status of individual financial instruments should refer to the trading venue, identified by the segment MIC, or the operating MIC (in case segment MIC would not be available). It must be noted though that, in terms of individual financial instruments, the same instrument can be traded in several currencies within the same system/MIC, yet it may have different statuses, meaning that one currency could be halted while trading continues in another. This may, nevertheless, differ from trading venue to trading venue. We therefore suggest maintaining some degree of flexibility, especially taking note of different trading models and systems within the industry.

As regards "instrument status start date and time" and "instrument status end date and time," for the avoidance of doubt, we need to clarify that this information is generally not available simultaneously. Usually, a status message is sent when the event occurs, but without an end date. In reality, at best, this information is not available before the end of the event, i.e. it is only available ex-post.

At best, as pointed out above, the "instrument status end date and time" would be sent once/if available (which is not the case for all FESE exchanges), but without reference to the earlier start date, which would make the technical setup much more complex. Alternatively, and in most cases, the resumption of trading and the availability of trading data would be interpreted as a signal of reinstatement activity. This issue also relates to the new logic ESMA suggested to introduce to the reporting under RTS 23; Fields 10, 11 and 12 would contain several values for the whole life cycle of the instrument. This logic of storing information by permanently re-screening the past records for the same instrument adds significant processing time and storage constraints on trading venues' systems (see our response to the relevant ESMA consultation paper). Any changes to the current systems would delve deeper into existing processes at exchanges, significantly adding to the cost burden and requiring sufficient time to adapt to regulatory requirements, without providing major benefits compared to the current system. Alternatively, the resumption of trading could be interpreted as a signal of reinstatement activity. Hence, FESE strongly appreciates ESMA's comment in paragraph 277 that this information should be provided to the extent possible.

In the context of trading phases on exchanges, we would like to inform you that these also occur at the instrument level, not just at the trading system level as proposed by ESMA. Therefore, for most exchanges, status messages will be complemented by information on different trading phases, which may vary by MIC, instrument, and the currency in which the instrument is traded.

Besides, FESE advocates that regulatory data should not be specified within RTS 1 (or RTS 2), and that both RTS 1 and RTS 2 should remain distinct from the RTS defining CTP input and output data. This will support clear regulation and facilitate correct and easy implementation of such regulation (reducing the burden of cross-referencing for implementing parties, such as IT developers and others) while minimising risks of misinterpretation and errors. On a similar note, we do not support the mandatory inclusion of regulatory data in RTS 1 either, as it seems targeted at the CTP. It must be ensured

that operational trading systems are not disrupted by overly standardised transparency requirements for already highly standardised trading venues.

Furthermore, it is important to allow sufficient implementation time, while considering the complexities that new requirements may entail.

**Q56.** Do you agree with the proposal for the data related to the status of systems matching orders? Would you consider that other identifiers of the trading system type should be used? Please explain.

Regarding regulatory data, FESE needs to inform that the requested information is often not yet available in the form proposed by ESMA, and if available, it is not as granular and harmonised as suggested. Creating such information within data feeds are expected to be extremely costly and time-intensive, as it would require adapting internal systems and processes at the same time. We hence urge that requests for the exchanges' internal operating data be kept as limited as possible and focus on what is truly necessary to be provided in a proportionate scenario, while considering any already existing alternatives.

We would also like to point out that, point 281 refers to trading venue trading phases as "interesting information for investors" and to be displayed by the CTP. However, we would like to recall that the CTP is not intended for trading purposes, and thus such information would be unnecessary and burdensome for data contribution, and create significant noise and data overload for data users when using the CTP.

In terms of data related to the status of systems matching orders, we believe that the concept of "system trading status" is overly precise while not covering all cases neither at such detail level. We suggest maintaining some degree of flexibility to ensure that the approach taken is appropriate considering the specific market organisation of certain data providers.

Furthermore, exchange trading phases are hardly ever tied to the trading system itself, but rather are distinct per instrument identified by MIC, ISIN and currency. Trading phases per instrument may vary independently from the trading system. The only system trading status to be expected per trading system is one informing about the trading system being closed.

Regarding outages, it is important to understand that there are good reasons why information on outages cannot be included in data feeds. Information boards exist on exchange homepages, while such messages are not included within exchange data feeds. First, in case an outage occurs, the necessary activities and processes to identify the outage, affected components, cause, and expected resumption of the business occur outside of data feeds and are highly manual-driven. Direct access to data feeds by humans to submit outage information is avoided to reduce manual risks that could compromise data quality.

Furthermore, there may be an outage in data dissemination, in which case no information would be available once it is to be submitted via the data feed. This would mean that the publication of the status would not be possible if integrated into the data feed. Hence, we recommend abstaining from requesting information on outages via trading venue data feeds and remain focused on the best practices as developed together with ESMA for now. Alternatively or complementary, the CTP should be included in the exchange outage communication and display any relevant information on its website, providing a consolidated view.

**Q57:** Do you agree that the pre-trade data to the CTP should be that included in Table 1b in section 4.1.3.1 except for fields 8 and 9? Please explain.

FESE strongly appreciates the clarification in paragraph 285 that for the CTP for shares and ETFs only the first bid and offer are being requested, as outlined in L1. It is important that this is kept as well within the RTS.

It is vital to ensure that the data requested from providers for the consolidated tape aligns with the agreed perimeter on pre-trade data (anonymized real-time pre-trade EBBO on the first level of depth). Data providers should not be requested to provide more data than what is needed for the CTP to be operational according to the L1 agreement.

In particular, depth of book should correspond to the level of depth that the CTP needs to provide to the end customer, i.e. only the best bid and offer and corresponding volumes. Anything different would not be in line with the L1 text and would also be highly inefficient, unnecessarily increasing costs across the value chain, including for trading venues and the CTP, which would ultimately be passed on to data users. For background, it should be noted, hypothetically, that the provision of BBO5: (i) would require at least 3 times more bandwidth (compared to BBO1 only); (ii)would introduce additional latency during daily peaks due to higher volatility at lower limits during these moments; and (iii) the CTP would need to process and filter unnecessarily two-thirds of all data received from the provider.

In line with the above, FESE agrees with ESMA that, as outlined in the L1, only the first bid and offer are being requested. We understand that this is why field 9 of Table 1b, relating to aggregated orders, specifies "where aggregated information is required under Table 1". We agree that field 9 should not apply to the pre-trade data to be submitted to the CTP. However, from a readability perspective, it would make sense in our view for this to be laid out with more clarity in the RTS, perhaps drawing on the explanation provided in paragraph 286 of the CP.

As regards field 8, it seems unclear to us why ESMA would like to exclude the "Quantity Currency". Trading venues may trade one and the same instrument in different currencies, and hence this data field would be required to make a necessary distinction. Hence, we advocate for including field 8.

We also believe it is critical to introduce additional requirements for the ordering (sequencing) of BBO by the CTP. This task could be facilitated if the input data also included a "date and time reference", i.e. the date and time at which an update in the order book triggered a modification of the best bid and offer price levels, be it a price or a size (please see as well our comment under Q7). Not requiring the re-ordering of data messages would convey a fallacious representation of the BBO reality across European markets. Please see our response to Q58, where we elaborate on this important matter.

Furthermore, we strongly caution against any requirements by ESMA that would significantly interfere with the trading and information processes at trading venues or the logic of trading venue data feeds. Such requirements could disrupt currently well-functioning trading systems and data provisions. At best, it would involve significant effort and time for implementation if really needed. In any case, a proper cost-benefit analysis would be necessary beforehand. For example, requests for implementing new transparency logic within data feeds, such as informing about outages (which would be new and complex), or industry-wide alignments of trading phase publications (as discussed by some associations), are considered overly intrusive and unnecessary, and would be highly costly, especially for smaller exchanges. Similarly, the inclusion of any instrument reference data, other that ISIN, woud severely impact current feed logics. Please note that exchange data is already consolidated by Market Data Vendors without problems

In the same context, we would like to pledge for a clear distinction of RTS1 and the RTS containing harmonization requirements and regulatory data to be submitted to the CTP. Furthermore, we strongly recommend having a clearly distinct list of input and output data for the CTP separate from RTS 1, with regulatory data being mandatorily only for the

provision to the CTP. This would make it easier for market participants to access clear and undisputed information when implementing. Additionally, data harmonisation should ideally be requested only for provision to the CTP in order to not disrupt existing and functioning transparency provisions.

Finally, FESE Members are concerned about the risk of too frequent requests for amendments by the Expert Stakeholder Group of RTS 1 (and RTS 2) data. Such changes are costly for the entire industry, impacting not only exchanges' data feeds but also their internal systems as well as external stakeholders, including direct customers and market data vendors. Therefore, we propose that any changes to the input/output data content for the CTP be incorporated into the actual CTP RTS. Any requirements to change exchanges' feeds should be planned well in advance, e.g., with a minimum lead time of one year.

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

FESE members highly appreciate that field 7 (most relevant market in terms of liquidity) will have to be included by the CTP, and is not based on the input data.

Importance of additional requirements for the ordering of BBO by the CTP

Indeed, the published BBO (properly sequenced by the CTP) could eliminate the impact of network latency variability and/or geography ensuring a display of the data in the correct order. It would ensure accuracy while providing a continuous feed with an end-to-end latency of 200-300 milliseconds, as proposed in the ESMA CP on CTP and DRSPs.

In contrast, not requiring re-ordering messages would convey a fallacious representation of the BBO reality across European markets introducing systematic flaws to the data quality of the CTP, as: (i) the quality of the data would be overly dependent on the latency variability inherent in networks and geographical distances, and (ii) it would provide a view of the EBBO as perceived from the location of the CTP data centres, creating an unfair competitive advantage for data contributors located closer to the CTP data centres, as their BBO will reach the CTP first with more chance to set the EBBO. This is because, in contrast to the US, where trading venues are located within a 65 km triangle, European data contributors are very geographically dispersed: the average and median distances between the 5 main trading data centres is 1300 km.

Furthermore, as regards timestamps to be included by the CTP, the output data should also contain the execution time stamps for post-trade data (the latter from both trading venues and APAs, respectively from Ifs).

**Q59:** Do you agree with the proposal for the input and output tables for the post-trade equity CTP? Please explain.

Yes, generally FESE agrees with the proposal for the input and output tables for the post-trade equity CT subject to these being aligned with the changes we recommend in previous questions.

FESE members see merit in adding selected further data fields for APA data to the input data: alert flags, in case of unclear data quality of a transaction, cancel, amend, confirm on a similar note.

As regards CTP output data, we consider the additional input data by APAs to be relevant. This is important to inform the market about unclear data quality of OTC data while not holding back any information. As trading venues apply market surveillance and provide market data based on hard-coded systems and strict rules, there are no similar data fields in the case of exchange data to be expected. Furthermore, there may be merit, in

considering a similar "Alert flag" for the CTP as well, in case the CTP would detect any shortcomings in the context of contributed data or affecting the CTPs ability to provide a 100% secure EBBO.

As regards time stamps, FESE members would also encourage that timestamps for data reception and dissemination by the CTP should be added, compared to what has been defined on L1.

## 7. RTS 2

**Q60:** Do you agree with the proposed amendments to flags in Table 3 of Annex II or RTS 2? In particular, do you consider that the flag 'ACTX' should be deleted?

FESE agrees with the proposed amendments to the flags in Table 3.

In relation to the ACTX flag, it could still be useful for specifying the type of transaction for post-trade transparency purposes, which helps market participants accurately interpret trade data.