FESE response to ESMA consultation on the review of RTS 22 and 24

Brussels, Friday 17th January 2025

Scope of the reporting

Q1. Are any other adjustments needed to enable comprehensive and accurate reporting of transactions which will enter into scope of the revised Article 26(2)?

Overall, FESE agrees with the objective of expanding this regime to a larger number of OTC derivatives instruments, and we appreciate the intent to rationalise the content of the information that is required across the board for the various regulations that are currently in effect and require reporting.

Amendment of RTS 22

Q2. Does the existing divergence in the implementation of the MRMTL concept under Art. 4 and Art. 26 of MiFIR results in any practical challenges for the market participants? If so, please explain the nature of these challenges and provide examples.

Currently, this divergence has not created any practical operational issues for us. As trading venues, we submit transaction reports for the non-MiFID firms trading on our trading venues to the NCA supervising each trading venue. This setup is stable and does not depend on the MRMTL concept.

Q3. To what extent the rules applied for the determination of the RCA and RCA_MIC are relevant for your operations? Do you agree with the potential alignment of the RCA rules with the RCA_MIC rules for equities? Please provide details in your answer.

FESE is not sure whether aligning the definitions of the two concepts is really necessary, especially considering that they are already aligned in 95% of cases. As mentioned by ESMA in paragraph 32 of the consultation paper, there is clear merit in keeping the RCA of the venue of admission for the sake of data quality. Therefore, we suggest the following for equity instruments: the RCA for the relevant instrument, as per RTS 22, shall be based on the venue of admission provided that this new field 6b in RTS 23 is defined not on the basis of the selection of an RM but of the venue where the issuer raised capital. Combined with the field “date and time of first admission to trading”, this approach would ensure the selection, from the start, of the most reliable trading venue and the associated competent authority.

This solution would also align with the proposal from ESMA regarding equity instruments in the first year of admission (see our response to Q4). It means that as soon as an instrument is listed, the competent authority is determined by the location of the venue of admission and the date and time when the instrument is first listed. The decision on

the competent authority would be definitive and has the benefit of designating the authority that most likely approved the prospectus of the instrument.

Q4. Do you agree with the proposed RCA determination rule for emission allowances and CIUs other than ETFs? Please provide details in your answer.

Q5. Do you agree with the proposed RCA determination rule for equities for which no sufficient data is available to calculate the turnover? Please provide details in your answer.

Initial admission to trading can take place on both regulated markets and MTFs (e.g., SME Growth Markets); therefore, we believe there is no need to differentiate between the two. We recommend that ESMA extend the new field 6b in RTS 23 (i.e., "venue of first admission to trading") to encompass all trading venues. This would allow field 6b, along with field 11 (i.e., "date and time of admission to trading or date of first trade"), to be utilised in determining the MRMTL when there is no sufficient data to calculate the turnover. When it is newly listed, the focus should also be on where the issuer has specifically requested the security to be admitted. Please also refer to our response to Q3, where we propose that this solution be adopted not only for the first year of trading.

This also aligns with our comments made in response to Question 8 of ESMA's MiFIR third consultation package regarding transparency calculations. We wish to recall that there are various methods for raising capital in capital markets beyond IPOs, such as private placements, direct listings and dual listings, as well as corporate actions which may also result in the creation of a new ISIN. We believe it would be valuable for ESMA to provide a comprehensive list of relevant operations that constitute a first admission to trading. To exclude irrelevant trading venues, we suggest incorporating a criterion stating that the listing or corporate action must have occurred "at the request of the issuer." This would ensure the exclusion of "sole admissions to trading," where no capital is raised and no issuer request is made, along with trading venues where no capital is raised, which is also relevant for the CTP revenue distribution scheme.

We also want to highlight that new ISINs can also arise from listings that are not IPOs, such as mergers and splits, and other corporate actions. In these cases, it is important to establish a clear link between the old and new ISINs to help ESMA ensure continuity with the MRMTL before the corporate action.

Q6. Do you agree with the proposed RCA determination rules for the derivative contracts falling under Article 8a(2) of MiFIR? Please provide details in your answer.

Q7. Do you agree with the proposed amendments to RCA determination rules for index derivatives and depositary receipts?

No, FESE does not agree with the proposed amendments to RCA determination rules for index derivatives for the following reasons:

- Jurisdictional disconnection: It is relatively easier for regulators in different jurisdictions to share data among themselves, but it is a very complex procedure for trading venues to report to an authority located in a different jurisdiction. Also, we believe that the rule does not preclude competent authorities from receiving

the necessary data. There are existing mechanisms, such as information-sharing agreements and cross-border regulatory cooperation, that ensure relevant data can be shared between authorities as needed.

- Fragmentation of data: Changing RCA determinations can result in fragmented data across multiple jurisdictions. For example, if derivatives on CAC40 are traded on various international venues, the data will be dispersed across different jurisdictions, making it difficult for any single authority to get a complete picture. In contrast, basing the RCA on the trading venue ensures that the authority with direct oversight of market activities is responsible for monitoring and regulating derivatives, potentially leading to more effective and immediate regulatory actions.
- Burdens in reporting and oversight: Changing the standardised data collection system might increase regulatory and administrative costs due to the need for adjustments in reporting systems and processes. Trading venues may have to report to multiple authorities, including current NCAs, if the jurisdiction of the index were considered. Besides, changing the reporting authority only for index derivatives would be discrepant from the reporting system for all other instruments, i.e., the format.

Q8. Do you have any further comment or suggestion in relation to the inclusion of a new field to capture the effective date in transaction reports?

Effective date

The concept of "effective date" is not applicable to some asset classes, such as bonds and equities.

We have understood that ESMA is considering requiring the intended Settlement Date to be populated in the new "Effective Date" field to capture the intended Settlement Date of the transaction. If this is the expectation, this requirement should be explicitly specified in the updated RTS 22 Annex to provide regulatory certainty to reporting firms of the information they should report.

Other considerations

FESE advocates for maintaining the transaction reporting regime as simple as possible, balancing the need for information to ensure market integrity and supervision without overwhelming supervised entities with requirements beyond that sufficiency point.

While full alignment between different transaction reporting regimes may sometimes be desirable, it is crucial to strike the right balance to avoid collecting data that might have limited value to regulators.

The proposal for a revised RTS 22 includes over 125 fields, nearly doubling the current version's 65 fields. We suggest a thorough assessment of the necessity for each additional field and a cost-benefit analysis to find a balanced approach that does not hinder the EU market's competitiveness on the global stage.

Q9. Do you agree that the concept of effective date applies also to transactions in shares? If yes, should the intended settlement date be considered as the effective date? Please provide details in your answer.

No, FESE does not agree that the concept of effective date should also apply to transactions in shares and, more generally, does not agree with using different rules to interpret the effective date for different asset classes. Indeed, the concept of 'effective date' is used for interest calculation and does not seem appropriate for shares. While we

understand the logic behind requiring this for securities such as swaps, we question the need for this field for the likes of shares. There is a concern that this could cause confusion with the legal interpretation of when a transaction in a share is executed, as this is different to the intended settlement date.

In general, for transactions in shares, the obligations for the executing counterparties of the transaction become effective from the moment the transaction is executed on the trading venue, according to the rules of the trading venue, and consequently, it is immediately reported back to the involved counterparties. This date is already reported as part of the field 'Trading date time' and for this reason, to avoid duplications, we would not support the inclusion of a new field.

Q10. Do you agree with the inclusion of this new field according to the analysed scenario? Please specify if you see additional cases to take into consideration in the definition of this new field.

Please see answer to Q8.

Additionally, the specific example provided in the CP refers to a case where the reporting entity (i.e. the trading venue on behalf of a member or firm not subject to MiFIR) is obliged to report according the text of MiFIR Art. 26.5, which states: '*The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by any member, participant or user not subject to this Regulation in accordance with paragraphs 1 and 3.*'

The third party that submits the report acts merely as an IT provider and hence does not need to be identified from a transaction reporting perspective. Therefore, it is unclear if the value this field adds, given the reporting obligation is legally mandated, overweight the burden of including an additional field and the associated set of validation rules.

Validation rules need to be revised accordingly to ensure a homogeneous application.

Q11. Do you agree with the assessment that the TVTIC reporting requirement applies to all type of on venue executed transactions (e.g., negotiated trades)?

Yes, FESE agrees with this assessment. All transactions executed under the rules of a trading venue should be associated with a unique TVTIC (per day and MIC code).

Q12. Do you have views on how to improve the consistency of the reporting of TVTICs? Please provide your view on the proposal of making mandatory the reporting of such information in validation rules when the MIC code is provided.

FESE agrees that the TVTIC should be a mandatory field when an EEA MIC is reported. We support the proposal to implement this requirement through ad hoc validation rules when a MIC code is specified in the transaction report. This is already the case for trading venues that generate transaction reports for non-MiFID firms.

However, we would suggest that regulation should not enforce a specific format for the generation of the TVTIC, but allow the operator of the trading venue to generate a proper TVTIC based on the characteristics of its own trading system architecture. We are not in favour of mandating "a methodology for generating such a code in an harmonised manner" as enforcing a specific format for all trading venues (on top of the general requirement that the TVTIC should be unique, consistent and persistent per MIC and trading day) could create unnecessary IT complexity, without adding specific benefits. The main goal of this indicator is to have a unique trade identifier at the level of a single trading venue.

Each trading venue should remain responsible for ensuring that a proper TVTIC is generated for each of its own MICs, applying the rule that best fits the characteristics of its own systems.

Q13. Do you have views on how to improve the consistency of the TVTIC (non-EEA TV TIC) generation process for transactions executed in non-EEA venues? Please provide your view on the proposed syntax methodology based on the already reported fields or suggest alternatives.

For the sake of consistency and data usability maximization, FESE would advocate for a functional approach in this regard (i.e. same business, same rules). Hence, it would make sense to ensure that the same set of data is collected for every transaction subject to transaction reporting in the EU, whether executed on-venue, off-venue, or in non-EEU venues.

However, requiring non-EEA venues to generate and disseminate a TVTIC could be beyond the reach of ESMA as it remains unclear how such a duty could be enforced on entities outside of the supervisory scope of ESMA. From a market integrity perspective, one could question whether the benefit of the eventual rejection of transactions carried out on non-EEA venues lacking a TVTIC would be preferable to accepting such reports despite lacking the TVTIC. In this regard, keeping the status quo or making this filed voluntary might be sub-optimal options to explore in order to ensure market integrity does not deteriorate.

Validation rules need to be revised accordingly to ensure a homogeneous application.

Q14. Do you agree with the proposal of identifying the non-EEA TV as the primary entity responsible for the creation of the non-EEA TV TIC code and for disseminating it?

Yes, we believe that this approach, which is already in place for EEA TVs, would centralise the generation of the TIC, strongly improving data quality. Leaving the creation of the code to market participants would not ensure the uniqueness of the code by MIC, and involving a third party in the generation of the TIC does not seem feasible without the risk of lowering data quality.

Q15. Do you have any further comment or suggestion in relation to the definition of a new transaction identification code (TIC) for off-venue transactions? Please provide your view for the proposed syntax methodology for creating the TIC based on the already reported fields or suggest alternatives.

As a general remark, we believe this could be helpful for the competent authorities and would align MiFIR transaction reporting to other EU regulatory reporting regimes such as EMIR and SFTR.

From a transaction reporting perspective, there should be a common approach to how on-venue and off-venue transactions are reported to ensure homogeneous market surveillance by supervisors.

However, this ability might be hindered when it comes to reportable transactions carried out on non-EEA venues, as stated in previous answers. We would suggest reflecting on whether there is merit in pursuing a change, despite the fact that it could deliver incomplete results, or whether the data currently collected provides sufficient information for supervisory purposes to ensure market integrity does not deteriorate.

Validation rules need to be revised accordingly to ensure a homogeneous application.

Q16. Do you agree with the proposal of identifying the "market facing" firm acting as the seller as the primary entity responsible for the creation of the TIC code of off-venue transactions and for disseminating it to the other "market facing" firm acting as the buyer?

Should the revised TVTIC generation regime be endorsed, we would support the approach of placing the responsibility to generate the TVTIC for off-venue transactions onto a market facing firm (i.e. any of the counterparties to a transaction).

However, FESE is agnostic on which of the counterparties (i.e. seller or buyer) it needs to be placed onto, especially considering that it will not impact the reportability of the transaction nor the criteria to accept / reject a reported transaction.

Q17. Do you have any further comment or suggestion in relation to the inclusion of a new field (INTC identifier) to capture in detail the aggregate orders? Please provide views on the proposed methodology for defining a common syntax or suggest valuable alternatives.

The reporting of allocations remains a very operationally challenging activity for trading venues. The requirement to track additional data points, such as the INTC identifier, will increase the operational burden yet further. FESE believes that creating a new field solely to combine data from existing fields is unnecessary and inefficient. ESMA should limit transaction reporting by trading venues to the "market-side", i.e. without any allocations. This would level the playing field with OTC trading, where MiFID counterparties of non-MiFID firms do not have to report their counterparties' allocations.

FESE would like to underline the difficulties and costs associated with collecting information from external sources and would appreciate that the regulators take into account the special situation faced by trading venues. As operators of trading venues, FESE members are required to report under Art. 26 MiFIR on behalf of non-MiFIR firms. However, since trading venues would not possess the relevant information to produce the relevant INTC identifier, our non-MiFIR members would be required to provide this identifier to the respective trading venue. Previous experience has shown that relying on members' input to be able to provide comprehensive transaction reporting data entails significant effort for both the trading venue and the non-MiFIR member. As a result: (1) data quality might be compromised, or the transaction reporting might be incomplete upon transmission; (2) trading venues cannot validate the accuracy of the third-party information they receive; and (3) – data privacy rules may be violated.

Additionally, the inclusion of the INTC identifier implies the need to upgrade the systems used, as is the case with any newly added field. Introducing a new field in the transactions reporting file has an IT impact (including validation rules) and thus a cost-benefit assessment would be required.

Q18. Do you agree that the executing investment firm should be responsible for generating consistently the INTC identifier?

The reporting of allocations remains a very operationally challenging activity for trading venues. The requirement to track additional data points, such as the INTC identifier, will increase the operational burden yet further. FESE believes that creating a new field solely to combine data from existing fields is unnecessary and inefficient.

ESMA should limit transaction reporting by trading venues to the "market-side", i.e. without any allocations. This would level the playing field with OTC trading, where MiFID counterparties of non-MiFID firms do not have to report their counterparties' allocations.

FESE would highlight that if the executing investment firm is made responsible for generating the INTC identifier, this will not cover the Article 26(5) scenario, in which

trading venues would still need to produce the INTC identifier. Unless or until Article 26(5) is limited to market-side reports, as advocated by ESMA, this will remain the case.

Q19. Do you agree with the proposal of how to report such additional field to identify and link chains in transaction reports? Please provide views on the key information to be considered for defining a common methodology for the syntax. Otherwise, please suggest alternatives for defining it and improve the linking process among chains.

FESE members foresee a challenge with the outlined approach since it implies that there will be a need for the systems used to be upgraded if new codes are added. Hence, we do not support ESMA's suggestion to introduce an additional code since the TVTIC should be sufficient to fulfil the explored requirement. ESMA shall also ensure that the new requested data is not yet reported in other reporting files as orders reporting (RTS 24). Introducing an additional code would only lead to high implementation costs and additional complexity.

Although, as already outlined in our response to Q13, requiring non-EEA venues to generate and pass through the code could be beyond the reach of ESMA and NCAs. From a market integrity perspective one could question whether the benefit of the eventual rejection of reported transactions lacking the Chain Identifier would be preferable to accepting such reports despite the absence of the code. In this regard, keeping the status quo or making this field voluntary might be options to explore.

Q20. Do you agree with the proposal of identifying the entity executing the transaction as the primary entity responsible for the creation of such code and for disseminating it?

In line with the answer to Q18, should the inclusion of a new Chain Identifier field be endorsed, we would support the approach of placing the responsibility to generate it on the participant that originates the transmission of orders to ensure proper identification.

However, in line with the answer to Q16, the definition of which firm within the chain bears responsibility for the creation of the code should not impact the reportability of the transaction nor the criteria to accept/reject a reported transaction.

Q21. Do you agree with the proposed reference to Art. 3(3) of Benchmark Regulation to define the relevant categories of indices?

FESE supports this proposal as it can bring more clarity and legal certainty.

Q22. Do you see a need to specify the 'date by which the transaction data are to be reported' different from the date of application of the relevant RTS 22 or have other comments with regards to the proposed timeline? If so, please specify.

We do not see the need for a distinction between the application date and the date by which the transaction data is to be reported, hence we would agree with the proposal to align both.

In addition, given that the MiFIR Review covers many other aspects relevant to trading venues, it is critical, from a project implementation point of view, that timelines are aligned wherever possible. This is particularly important for all changes related to regulatory reporting, such as RTS 22, 23 and 24, as well as the pre- and post-trade transparency provisions in both RTS 1 and 2, which are interrelated. A harmonised approach seems to be the most practical and appropriate solution, providing the market

with sufficient time to implement the changes, thus minimising potential problematic issues and additional risks.

While alignment across all these RTS is highly preferable, as a general remark we wish to state that lead times of 18 months are generally more suitable over 12 months. These would provide market participants with sufficient time to implement all the required system changes, for the sake of data quality and a smooth industry transition.

Q23. Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on transaction reporting?

Q24. Do you agree with the proposed alignment of fields with EMIR/SFTR requirements as presented in the table above? Are there any other fields that should be aligned?

FESE supports the general approach to aligning the reporting requirements to achieve greater consistency as it may enhance comparability and clarity.

In terms of specific fields, we would like to draw your attention to the wording of fields 51 and 52, which includes the expression '[…] and similar products'. We suggest avoiding this sort of open categories (e.g. similar) as they bring uncertainty and leave room for subjective interpretation, leading to divergent implementation and compliance with the RTS. A more exhaustive typification would be preferable.

For field 53 (Option Style): in cases where a specific instrument (Ex Corporate Warrant CFI start with RW*) cannot use the values EURO/AMER/BERM, there is the risk of rejection. We suggest it should be possible to maintain the value OTHR.

Q25. Do you agree with the proposed approach for the alignment of reporting of the information related to the direction of the transaction?

Regardless of the approach eventually endorsed, clarifying ambiguous or not straightforward cases should prove beneficial. Changes should be limited to those cases for which the current approach is suboptimal.

Validation rules need to be revised accordingly to ensure a homogeneous application.

Q26. Do you agree with the proposed approach for the alignment of reporting of the information related to price?

Please see the answer to Q25.

Q27. Do you agree with the proposed alignment of the concept of complex trades with EMIR?

In line with the answer to Q24, alignment of concepts between the reporting regimes may prove useful as it may enhance comparability and clarity. In this case, while this approach is still valid, the MiFIR approach to complex trades seems clearer.

Q28. Do you agree with adding the field 'Package transaction price' to align the reporting under MiFIR with EMIR Refit and CDE Technical Guidance?

Yes, we agree and support this option. The lack of a field to report the net price for the whole package has been highlighted previously by some FESE Members with their respective NCA.

On a related note, while a 'Package transaction price' might prove useful, ARMs should not be required to validate if such price is calculated correctly by the reporting entity.

Q29. Do you agree with the proposed additional fields to allow for the reporting of the ISO 24165 Digital Token Identifier for DLT financial instruments and underlyings?

We caution against requiring multiple identifiers to identify the same financial instrument. ISIN should be sufficient for MiFIR transaction reporting.

In the long run, we agree that an identifier for digital instruments would be preferable. However, at this stage, we are indifferent as to whether ESMA should already take a decision to define the "Digital Token Identifier" (DTI) as the European standard, considering the following:

- Early stage of different token identifiers: The use of any digital identifier is still in the early stages, and there are more identifiers beyond the "Digital Token Identifier (DTI – provided by the DTI Foundation). For example, in Germany, there is also the International Token Identification Number (ITIN) issued by ITSA. Therefore, we are uncertain whether the DTI is the most appropriate standard to use at this stage.
- Clarification of application: We understand that there was an assessment of whether the DTI should be applied in the following contexts:
    - Transaction reports for financial instruments that are natively issued on a blockchain.
    - Financial instruments that are re-issued in a tokenised form.
    - Crypto-assets that are not financial instruments under MiCA.
- Experience with DTI: While the DTI was used the ECB trials, there was no client demand yet. However, it can be integrated into our data records, alongside existing identifiers in use, such as ISIN, WKN, CFI.
- Use of DTI in the MiCA context: Some FESE Members are already considering to use the DTI in the context of MiCA.
- Client demand: Identifiers would be valuable to classify specific instruments and help clients in their compliance efforts in the long-run, as the volume of digital financial instruments grows. Currently, we see no market demand for an identifier.
- Relationship towards other codes/identifiers: The ISIN remains the key identifier for securities and should not be questioned. A DTI could complement it by including additional technological details (e.g. the DLT/protocol/on-chain/ledger used to issue the instrument). In the long-run, this would mean two identifiers for securities.
- Costs of DTI: Currently, DTIs come at costs.
- Two additional form fields: Adding the DLT "financial instrument code" and "underlying identification code" to database appears feasible to some FESE Members.

Q30. Do you agree with the proposed amendments to Art. 4 to extend the transmission of order agreement also to cases of acting on own account? Please detail your answer.

FESE Members agree with ESMA's proposal.

Should the sending of orders by an investment firm acting on its own account (DEAL) to other firms for execution be compatible with the concept of transmission of orders, there seem to be no logical reason not to treat them similarly.

Q31. Do you agree with the proposed amendments to Art. 7 to include specific cases of portfolio and fund managers? Please detail your answer.

Similar to the answer to Q30, should the case of both portfolio and fund managers be alike, they need to be treated similarly. Also, should the current example 69 of the ESMA Guidelines and the Q6 of the Q&A provide for an efficient and acceptable approach to reporting investment decisions by portfolio and fund managers on behalf of a client or fund respectively, it might prove useful to reflect this in RTS.

In any case, we would not go against the current meaning of Art. 7.2 by which the portfolio or the fund manager are to be identified as the decision makers which is the ultimate activity they undertake. From a legal perspective, the client or the fund could be said to be the buyer or seller of the transaction as they hold the economic impact of the transaction (i.e. beneficial ownership).

Validation rules need to be revised accordingly to ensure a homogeneous application.

In this context, we also note that Regulation (EU) 2024/791 ("MiFIR Review") Article 1(46) envisages a review of the scope of reporting firms to include AIFMs and UCITS ManCos. Currently, trading venues are required to report for such firms where they execute transactions on their venues, which represents a significant operational burden for trading venues. Furthermore, it must be considered that having oversight only of on-venue transactions for such firms represents a gap for competent authorities. Therefore, we support the change in scope to include AIFMs and UCITS ManCos as reporting firms.

In this regard, FESE members would reference both Point 4.1.4 of ESMA's final report on RTS 22 and 23 from March 2021, and Recital 40 and Art. 52(14b) of Regulation (EU) 2024/791 ("new MiFIR").

Q32. Do you have any comments on the proposed approach to updating the 'Instrument details' section in the Annex to the RTS 22? Please flag any additional aspects that may need to be considered.

As expressed in the text of the CP, it seems that at the time of publication of the CP ESMA does not have all the elements to develop a complete proposal. In the absence of such a complete proposal, it is hard to provide useful feedback. We would therefore suggest not implementing partial changes to RTS 22 in order to minimise uncertainty and complexity derived from different dates of application for interdependent regulatory requirements (e.g. RTS 23).

Also, we would advocate against excessive atomization of data to be collected and exceptions for the treatment and systematization of such data (e.g., paragraph 114 refers to IRS's effective and expiry dates as not considered reference data and thus to be reported under RTS 22; however, they are not to be put together, making it more difficult to gather a comprehensive view of the report).

From a market integrity and efficiency perspective, it seems reasonable to implement a full block of changes at once unless doing so could seriously damage the overall functioning of the market.

As a general remark, to avoid duplication in reporting and possible issues with overall data quality, it is very important to maintain the current approach, where referential data for instruments already present in the FIRDS system (RTS 23) are not duplicated in transaction reports.

Q33. Do you support the inclusion of the new fields listed above? Please provide details in your answer.

The reporting of allocations remains a very operationally challenging activity for trading venues. The requirement to track additional data points, such as the INTC identifier, will increase the operational burden yet further. FESE believe that creating a new field solely to combine data from existing fields is unnecessary and inefficient.

ESMA should limit transaction reporting by trading venues to the "market-side", i.e. without any allocations. This would level the playing field with OTC trading, where MiFID counterparties of non-MiFID firms do not have to report their counterparties' allocations.

As a general comment, it should be highlighted that trading venues who report transactions on behalf of non-MiFID firms should not be accountable for these fields, since trading venues would not be in a position to verify them, but can only rely on the information provided by their clients. Trading venues are bearing significant costs for data validation and processes in place for the potential sanctioning of their members.

We do not support the proposal to include the client category in the reporting details. Client-related information is already clearly specified in RTS 22. In addition, third-country clients might not be permitted to provide personal data including any categorisation making the compliance of trading venues with Article 26(5) MiFIR to report on behalf of third-country clients even more difficult.

Given the nature of the data, ARMs should not be required to validate the content of any of these fields.

Regarding the validity timestamp – Action type: it is not clear from the proposal what logic ESMA is expecting reporting firms to follow. We strongly encourage ESMA to define this precisely in the technical standards to ensure firms report this field consistently and in line with regulatory expectations.

Q34. Do you agree with the amendments listed above for the existing fields? Please provide details in your answer.

It is not clear whether the changes to Field 35 'Net Amount' should apply to certain types of instruments (e.g. shares) where the concept of clean price, coupons or nominal value might not be applicable. The indicator NOAP implies the data is not available while for certain instruments this is not accurate and rather the field is not populated because the data is non-existent.

Should this change be endorsed, validation rules need to be revised accordingly to ensure a homogeneous application.

Q35. Do you support suppressing the reporting of the field listed above? Please provide details in your answer.

FESE members consider appropriate to remove the short selling indicator under field 63. It is difficult to retrieve the information of net short sale on the basis of single transactions.

Q36. Do you agree with the proposal of including in the list of exempted transactions under Art. 2(5) the disposal or selling of financial instruments ordered by a court procedure or decided by insolvency administrator in the context of a liquidation/bankruptcy/insolvency procedure?

Yes. If the exemption implies that these reports need to be rejected if submitted, the validation rules need to be revised accordingly to ensure proper management.

Q37. Do you consider that the exemption in Art. 2(5) should take into consideration also other similar instances as described? Please elaborate your answer.

Securities Financing Transactions (SFTs) should be completely removed from the scope of MiFIR transaction reporting. Currently, SFTs executed by ESCB members are in scope for MiFIR transaction reporting.

SFTs executed with ESCB members are already exempt from SFTR, the dedicated SFT reporting framework (see ECB Opinion on the MiFIR Review, June 2022, point 7.3). This exemption should be consistently extended to MiFIR transaction reporting.

The UK FCA has already removed SFTs from the scope of UK MiFIR transaction reporting (see FCA Handbook Notice No 96). This review is the appropriate time for ESMA to remove SFTs from the scope of MiFIR transaction reporting completely.

Q38. Do you agree with the assessment and the proposal of expanding the perimeter of the exempted transactions to auctions in emission allowances?

In line with the answer to Q36, should the exemption imply that these reports need to be rejected if submitted, the validation rules need to be revised accordingly to ensure proper management.

Q39. Do you agree with the proposal of narrowing the perimeter of the exempted novations to transactions having clearing purposes?

Yes, we agree. However, given the nature of the data, ARMs should not be required to validate its correctness.

Q40. Please provide your views on the format for reporting and any challenges you foresee 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 the potential transition to JSON.

We note that ESMA is considering the use of JSON format for reporting in a number of areas (i.e. RTS 3, 21, 22, 23 & 24). 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 will lead to additional complexity and unnecessary costs. The conclusion not to change to JSON

formatting in the Final Report on Commodities (published on 16 December 2024) is already a dent in this approach, and would therefore make it questionable that ESMA reaches a different conclusion for other RTS reporting. It is critical that a thorough cost / benefit analysis is carried out by ESMA before proceeding with such a significant change. FESE is not convinced that a switch to JSON will result in improvements to the regulatory reporting process.

Fundamentally, any evolution towards the JSON format must, as a prerequisite, receive full endorsement from all NCAs and a commitment that they will also adjust their practices and requirements in favour of this new unique format. It should be noted that for the current XML, format there is an XSD which allows many of the required validations to be automated. If no such schema exists in JSON, then hundreds of existing validations would have to be migrated to being implemented manually.

FESE Members have experienced inefficiencies linked to NCAs that 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 (12 months at a minimum after full completion of the JSON transformation rules) and it is necessary that any evolutions towards this are only 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.

Q41. Should the use of transaction data to perform the calculations be feasible, what would be the costs and the benefits of using this data and discontinuing the specific reporting flows (FITRS and/or DVCAP), including in relation to the change and run costs of reporting systems, data quality assurance, and other relevant aspects?

As a general remark, FESE understands ESMA's rationale in the merit in streamlining the submission of the necessary quantitative data under RTS 1, 2 and 3 in the same process & report and the consequent avoidance of submission of duplicative data, in different submissions at different points in time.

With regards to non-equities, we agree with the discontinuation of these reporting flows, especially since the MiFIR Review has moved the non-equities transparency regime to rely on static thresholds and characteristics.

However, for equities, feedback from FESE Members indicates that they do not anticipate significant cost savings from the proposal in relation to equities. Instead, they are concerned about potential data quality issues arising from relying solely on transaction reporting. In this context, we believe it may be more valuable for ESMA to focus first on refining transaction reporting. Once that is achieved, further consideration can be given to potential efficiencies.

Other reservations, which FESE already shared in the ESMA CP3 consultation, included:

- 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 the ESMA CP3 consultation for 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.

We hence believe it would be better that the reporting obligation remains with the trading venues.

In conclusion, we believe there is value in ESMA focusing on refining transaction reporting in the first stage, before considering potential efficiencies. We note from the Final Report published on RTS1 that it seems a decision has already been made to discontinue the reporting of these files. This somewhat undermines this consultation process since we would have thought that feedback should be reviewed and considered before any conclusions are reached. We urge ESMA to strive to adequately address the data quality issues. Given that such a proposal would represent a significant change to existing processes, it must also be ensured that all reports are thoroughly reviewed and rationalised, while also minimising the ad-hoc and annual data requests currently issued by ESMA.

As mentioned above, our concerns are more focused on equities. In contrast, for non-equities, we support the discontinuation of these reporting flows, particularly given the MiFIR Review has shifted the non-equities transparency regime to rely on static thresholds and characteristics.

Q42. Do you have any comments on the methodological approach outlined above?

With regards to equities, we appreciate the additional information provided by ESMA in this consultation on the proof of concept but we are concerned that the assessment indicates that the data results are not sufficiently high to deliver an outcome that is accurate enough to base trading metrics on. We would like to comment on some aspects of the approach and results for the proof of concept:

- There appear to be issues with determining the LIS threshold, as the discrepancy between the two set of reports seems quite large. This margin of error is more likely for the LIS thresholds than it is for the SMS thresholds. Indeed, for the LIS thresholds shares are distributed across six buckets, whereas for the SMS threshold almost 100% of shares fall into the first bucket with an ADT below 20K (see page 60) as provided in the ESMA consultation paper on equity transparency (RTS 1 and CDR 2017/567), volume caps (RTS 3), and circuit breakers (new RTS). We therefore question whether reconciliation between the databases is feasible at this stage.
- The low results from the LIS threshold could also potentially reflect an underlying issue with the use of waivers. Investment firms may not have full visibility of the waivers used in trading systems, which could result in trading venues having to provide more details back to clients, possibly requiring further system updates—something that seems counterintuitive. In our view, it would make more sense for us, as the source of this data, to continue providing it directly to ESMA.

- Regarding waivers, as per the new Art. 26 MiFIR, Field 61 is simplified (deleting "applicable waiver under which the trade has taken place") and could only be used for DVCAP to identify those transactions under the RPW. However, we wonder whether this information, however, should still be retained for regulators to track volumes under waivers.

As a side note, FESE would like to draw ESMA's attention to the deadlines for data submission attached to various parts of MiFIR, and the issues that currently arise and will continue in the future; in particular, in the case of transaction reporting and transparency calculations. The alignment of transaction reporting with reference data deadlines at T+1 is problematic. We are already encountering cases of rejections for incorrect or outdated reference data for transaction reporting, because updated reference data has not been processed and disseminated quickly enough. ESMA should be aware that rejections will keep on happening in the future.

We suggest all these issues need to be addressed before ESMA can realistically progress this proposal.

Q43. 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?

With regards to equities, as per the above, we suggest ESMA should work on further refining transaction reporting first and then once this has been delivered, there could be further consideration of where efficiencies could be achieved.

CP on the amendment of RTS 24

Q44. Do you agree with the proposal of adopting JSON as standard and format of order book data keeping and transmission? Please justify your answer.

Please refer to our response to Q40 for our general views on ESMA's proposals to use JSON for various regulatory reporting requirements under multiple RTS.

Q45. Please provide your views on the format of reporting and any challenges you foresee with the use of JSON format compared to XML. Please provide estimates of the costs, timelines, and benefits (short and long term) related to the potential implementation of JSON syntax.

Please refer to our response to Q40 for our general views on ESMA's proposals to use JSON for various regulatory reporting requirements under multiple RTS.

In the context of RTS 24, without pre-empting ESMA's holistic decision on JSON for regulatory reporting, FESE believes that XML templates following the ISO 20022 methodology would also offer flexibility for amending information, easier validation by trading venues, and simpler processing for regulators.

However, moving to either a common XML format or JSON would incur costs, which are difficult to estimate without further clarity on the specific changes required. It is important to ensure that these templates do not impose unnecessary burdens or costs on NCAs and trading venues, as these could ultimately be passed on to market participants.

Based on our experience with RTS 24 reporting, we believe clear rules for XML schema upgrades are needed. The current 'big-bang' approach used by most regulators is

challenging, and we strongly recommend making it mandatory for regulators to provide a transition phase when the schema is updated.

Additionally, the following points must be considered:

- Template changes should not apply retrospectively, as the costs would be prohibitive.
- A transition phase is essential to allow the market time to adapt to new requirements.
- Other execution venues, such as Systematic Internalisers (SIs), should ultimately also be included in these requirements.

Inclusion of SIs in scope

We note that the MiFIR review under the Listing Act has not mandated a common template for investment firms under Article 25(1). However, we strongly believe that standardised pre-trade information requirements should apply to all execution venues, including SIs, which would also allow for simpler processing for regulators.

Under the amended MAR regulation, the Commission is required to deliver a report seven years after its entry into force on the functioning of the mechanism to exchange order data under MAR Art. 25a, including the potential inclusion of SIs. Applying common templates to SIs would certainly facilitate their future inclusion, which FESE strongly advocates to ensure effective market surveillance and a level playing field with trading venues. All transactions, whether on multilateral or bilateral systems, can be negotiated under unequal or manipulated terms or involve potential insider trading. Given that SIs now represent a significant share of trading, not requiring the same information from them as from regulated markets and MTFs poses a risk to market integrity.

Q46. Do you have any comments on the proposed approach to updating the field list in the Annex to align with the proposed RTS 22 fields? Please flag any additional aspects that may need to be considered.

We are fully supportive of maintaining alignment between reporting under RTS 24 and RTS 22. This is completely logical and should be done to maintain data consistency and avoid degradation in data quality.

Q47. Do you support the inclusion of the new fields listed above?

Q48. Do you agree with the amendments listed above for the existing fields?

Q49. Do you have further suggestions to improve or streamline the other fields in RTS 24?