esma European Securities and Markets Authority

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

9 July 2021

European Securities and Markets Authority

Date: 9 July 2021

Responding to this paper

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

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_RVEW_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

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

ESMA_CP_RVEW_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_CP_RVEW_ESMA_REPLYFORM or

ESMA_CP_RVEW_ANNEX1

Deadline

Responses must reach us by 1 October 2021.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	DWS Group GmbH & Co. KGaA
Activity	Investment Services
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_RVEW_1>
For Q1-3 and Q6-43 -- we refer to the response by the German investment fund association BVI, which we contributed to and fully support.
<ESMA_COMMENT_CP_RVEW _1>

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

<ESMA_QUESTION_RVEW_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_1>

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

<ESMA_QUESTION_RVEW_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_2>

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

<ESMA_QUESTION_RVEW_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_3>

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

<ESMA_QUESTION_RVEW_4>
We consider FBA as an important market innovation. Since their introduction, these systems have led to better execution prices and saved money for our investors. Any change would require a detailed cost-benefit analysis to be able to evaluate the effects of the change better.

We see no need for a separate description of FBA and periodic auctions, as they are quite similar and should be treated the same for transparency purposes. For the majority of stocks, there is only a very small number of orders participating in the opening and closing auction and in some cases, there are actually no orders at all.

Our understanding is that the current pre-trade transparency requirements for periodic auction trading systems have not been developed to cover a situation in which many orders are submitted during the auction call; therefore they would be well suited for FBA as well.

In addition to our points above, we refer to the response by the German investment fund association BVI.<ESMA_QUESTION_RVEW_4>

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

<ESMA_QUESTION_RVEW_5>
We recommend this issue not be reopened. We cannot identify new developments around auctions since the Feb 2020 EMSA consultation on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the DVC mechanism and the trading obligations for shares.

Both options would change the function of FBAs fundamentally, with liquidity redirecting to less transparent alternatives. This would represent a backward step for the market structure. It would also deny EU investors the protection from latency arbitrage afforded by FBAs, as well as putting them at a disadvantage to overseas investors, who could still access functioning FBAs in non-EU jurisdictions.
<ESMA_QUESTION_RVEW_5>

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

<ESMA_QUESTION_RVEW_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_6>

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

<ESMA_QUESTION_RVEW_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_7>

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

<ESMA_QUESTION_RVEW_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_8>

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

<ESMA_QUESTION_RVEW_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_9>

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

<ESMA_QUESTION_RVEW_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_10>

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

<ESMA_QUESTION_RVEW_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_11>

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

<ESMA_QUESTION_RVEW_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_12>

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

<ESMA_QUESTION_RVEW_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_13>

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

<ESMA_QUESTION_RVEW_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_14>

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

<ESMA_QUESTION_RVEW_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_15>

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

<ESMA_QUESTION_RVEW_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_16>

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

<ESMA_QUESTION_RVEW_17>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_17>

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

<ESMA_QUESTION_RVEW_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_18>

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

<ESMA_QUESTION_RVEW_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_19>

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

<ESMA_QUESTION_RVEW_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_20>

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

<ESMA_QUESTION_RVEW_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_21>

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

<ESMA_QUESTION_RVEW_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_22>

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

<ESMA_QUESTION_RVEW_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_23>

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

<ESMA_QUESTION_RVEW_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_24>

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

<ESMA_QUESTION_RVEW_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_25>

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

<ESMA_QUESTION_RVEW_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_26>

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

<ESMA_QUESTION_RVEW_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_27>

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

<ESMA_QUESTION_RVEW_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_28>

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

<ESMA_QUESTION_RVEW_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_29>

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

<ESMA_QUESTION_RVEW_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_30>

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

<ESMA_QUESTION_RVEW_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_31>

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

<ESMA_QUESTION_RVEW_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_32>

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

<ESMA_QUESTION_RVEW_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_33>

Q34 : Do you agree with ESMA's proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives

(Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_34>

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

<ESMA_QUESTION_RVEW_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_35>

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

<ESMA_QUESTION_RVEW_36>
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<ESMA_QUESTION_RVEW_36>

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

<ESMA_QUESTION_RVEW_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_37>

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

<ESMA_QUESTION_RVEW_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_38>

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

<ESMA_QUESTION_RVEW_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_39>

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

<ESMA_QUESTION_RVEW_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_40>

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

<ESMA_QUESTION_RVEW_41>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_41>

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

<ESMA_QUESTION_RVEW_42>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_42>

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

<ESMA_QUESTION_RVEW_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_43>