AMAFI / 24-65
30 September 2024

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

ESMA'S THIRD CONSULTATION PACKAGE

AMAFI's answer

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

I. General Comments

AMAFI welcomes the opportunity to answer ESMA's consultation on its proposals for the amendment or elaboration of several RTS/ITS it has been mandated to develop in the context of the MiFID-MiFIR review. We note that the consultation primarily addresses technical aspects related to the simplification of the transparency frameworks, as mandated by Level 1.

While many of ESMA's proposals bring more clarity and some simplification to the current regime, others however fail to do so and are even likely to harm the liquidity/competitiveness of EU markets. It is particularly the case for those regarding the pre-trade transparency for systematic internalisers and the calculation of SMS thresholds provisions.

As we provide our feedback, the European Commission has now a mandate to enhance market competitiveness and simplify regulation. We encourage ESMA to consider solutions that align with these objectives, ultimately contributing to more attractive and competitive EU capital markets.

II. AMAFI'S ANSWERS TO ESMA'S QUESTIONS

SECTION 2 – INTRODUCTION

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?

AMAFI is generally supportive of Option 2, which concerns the use of alternative data for transparency calculations. However, we have concerns about the lack of clarity on the specific data sources ("*other data available*") and what this would entail in practice. Additionally, without having access to the proposed changes in RTS 22 regarding the Reporting and Data Transmission (RDT) system, it is difficult to fully assess the impact of this option. Based on the current information, and pending further details, we are provisionally in favor of Option 2 but reserve judgment until we better understand its full implications.

SECTION 3 – CDR 2017/567 (CHAPTER 1) – PROPOSED TECHNICAL ADVICE

3.1 - LIQUID MARKET DEFINITION – ARTICLE 2(17)(B) OF MIFID

3.1.3.1 - COMMON ELEMENTS OF THE LIQUIDITY ASSESSMENT FOR EQUITY AND EQUITY-LIKE INSTRUMENTS

Q2: Do You Agree With The Proposal On The Start Day Of Application Of The Transparency Calculations? Please Explain.

AMAFI supports ESMA's proposal on transparency calculations, as it provides valuable clarification. However, we recommend ESMA to also address, in addition to IPOs, new ISINs arising from corporate actions such as stock splits and mergers, as these also impact liquidity.

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.

AMAFI agrees with the proposal concerning the denominator for (i) ADT, (ii) ADNTE, and (iii) specifying the daily traded parameter. This proposal helps clarify the method of calculation.

However, it is crucial to ensure that the numerator for ADT reflects only accessible liquidity, which excludes non-addressable liquidity and OTC transactions.

3.1.3.2 - Distinct elements of the liquidity assessment for equity and equity-like instruments

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

AMAFI appreciates the simplification that using market capitalisation for liquidity determination offers. While it may not be the most precise measure, it provides a practical solution. We encourage ESMA to consider a more detailed review of free float in the near future, including clearer definitions and consistent monitoring, considering that the notion of “free float” is not precise enough, and may be subject to interpretation. For the time being, we support the current proposal as a reasonable interim approach.

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

AMAFI does not see major issues with the liquidity determination for Depositary Receipts, ETFs, and certificates. Transparency is already applied on regulated markets, and liquidity classification is unlikely to affect large trades or disrupt market mechanisms, especially for ETFs. We support the proposal and recommend ongoing monitoring to remedy unintended effects.

3.1.3.3 - Provision of reference and quantiative data relevant for the liquidity assessment

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.

AMAFI supports the proposal to remove the field "*holdings exceeding 5% of total voting rights*" from the legal text. This field provides limited value, as similar information is already reported elsewhere, such as under MAD-MAR for threshold disclosures. Its removal would simplify the reporting processes without losing essential information.

However, we recommend also removing this field from the XML schema. If it is not feasible, it is crucial to provide clear technical specifications to ensure reports are not rejected when the field is left blank or filled with placeholder values.

Section 4 – CDR 2017/587 (RTS 1)

4.1 – Pre-trade transparency for trading venues

4.1.3.1 Pre-trade transparency obligations – Article 3 of 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.

N/A

4.1.3.2 The most relevant market in terms of liquidity – Article 4 of RTS 1

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

AMAFI agrees with ESMA's proposed amendments to Article 4 regarding the "*most relevant market in terms of liquidity*" as they offer helpful clarification.

4.1.3.3 Negotiated transactions – Articles 5 and 6 of RTS 1

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

AMAFI is in favor of the proposed amendment to Article 6 of RTS 1, as it aligns the text with the changes already partly made by RTS 1 and the definition of the concept of a transaction. This amendment ensures consistency with previous updates, which we support.

4.1.3.4 LIS – Article 7 of RTS 1

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

AMAFI agrees that the proposed amendments to Article 7 of RTS 1 provide helpful clarification. However, to be comprehensive, we suggest including a point on situations where the Large in Scale (LIS) threshold cannot be calculated due to data temporarily unavailable. In such cases, ESMA's Guidelines state that the lowest LIS threshold should apply, and it would be beneficial to explicitly include this provision in the text.

4.1.3.5 OMF – Article 8 of RTS 1

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

AMAFI supports the proposed amendments to Article 8 of RTS 1. These changes will enhance transparency and address the current inconsistencies in implementation across EU Member States. Harmonising these rules is beneficial for ensuring a clearer and more uniform trading environment.

4.2 – Pre-trade transparency for systematic internalisers

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 pre-trade transparent? Please explain

AMAFI acknowledges the importance of aligning pre-trade transparency requirements for Systematic Internalisers (SIs) with international best practices while maintaining the EU's competitiveness. We appreciate ESMA's efforts to address these issues, but we have concerns about the potential impact of the proposed changes.

While the European Commission has outlined a framework for quoting sizes, ESMA's approach introduces complexities, particularly with the recalibration of the Standard Market Size (SMS). The proposed changes suggest smaller initial tranches and a more intricate system of bands, which may complicate implementation and understanding, particularly for non-European investors.

In contrast, major markets such as the US and the UK have streamlined their transparency requirements, which has contributed to their competitive edge. For example, the US has significantly reduced the number of quoting bands, making their system simpler and more accessible.

To enhance both clarity and competitiveness, AMAFI recommends that ESMA align more closely with the European Commission's framework and avoid introducing additional complexities. A simplified approach, possibly including fewer bands or clearer thresholds, would help maintain the EU's attractiveness compared to other major financial centers.

We encourage ESMA to carefully evaluate the benefits of any changes to ensure they provide clear advantages to the market without introducing unnecessary complexity. Simplifying the system and ensuring that it is in line with global best practices would support both market efficiency and EU competitiveness.

The analysis of the data of one of the main APA used for off exchange equity transactions (CBOE UK and NL) shows that for the 2 main European equity markets (France and Germany), the majority of the off exchange volumes on their instruments are reported to the UK APA rather than the Dutch APA. We can conclude that for French and German equity instruments, the majority of the SI volumes are operated by UK SIs (who are not subject to these quoting requirement changes) rather by EU SIs (who will be impacted by these changes and will no longer be on a level playing field with their UK competitors). In addition, because of the Share Trading Obligation, EU investors can only interact with EU SIs when trading EEA shares.

Systematic internalisers, unlike trading venues, provide liquidity by committing their capital. The SI activity by definition generates P&L. In contrast no trading risk is taken by the operators of trading venues. The average trade size of lit trading venues is no more than EUR5k on the most liquid instruments (significantly lower than the new quoting obligations for SIs). Moreover, the activity done at auctions (in particular at the closing auction) should not be taken into account in the SMS calculation as:

- the volume during these phases is disproportionate (auctions are often the main mechanism to trade when there is an index rebalancing),
- the price of the auction is only known after the trade while SIs quotes have to be in line with market conditions.

We understand that ESMA is bound by the EC quoting guidance, however we recommend that ESMA update the SI quoting requirements using the lowest threshold allowed by the EC and does not include auction volume in the AVT calculation.

4.2.3.1. Shares

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.

AMAFI welcomes the opportunity to address the question of pre-trade transparency thresholds for equities, DRs, and ETFs.

We suggest keeping the current SMS thresholds rather than increasing them to avoid creating additional competitive differences between the EU and the UK.

Maintaining the current thresholds will also prevent operational issues that could arise from having different rules in the EU and the UK. For ETFs and DRs in particular, given that they are often not subject to trading obligations, keeping the existing thresholds makes sense and supports a fair and consistent market.

In summary, we recommend not changing the SMS thresholds to avoid unnecessary complexity and maintain a level playing field.

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

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

4.2.3.2.2 DRs

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.

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

4.2.3.2.3 ETFs

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

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

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

Please refer to our answer to Q.13.

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

N/A

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

AMAFI supports the proposed approach in Article 11b.

We acknowledge the intention behind this proposal, which aims to address potential double reporting issues when two SIs interact. The scenario where one SI reports a trade while seeking coverage from another SI, which in turn also reports the trade, indeed creates challenges in ensuring accurate and non-redundant reporting.

The introduction of the DPE (Designated Reporting Entity) model as outlined by ESMA seems to provide a solution to this issue. Under the DPE model, the responsibility for post-trade reporting will be clearly assigned to the seller, which should mitigate the risk of double reporting and simplify the process for APAs and regulators.

4.3 – Post-trade transparency

4.3.3.1 Post-trade transparency obligations – Article 12 of RTS 1

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

While the proposed amendments to Article 12 of RTS 1 may appear minor, they introduce significant changes to post-trade reporting infrastructures. These adjustments, particularly the reorganisation of data flows and taxonomy, will have a material impact on trading platforms and potentially end clients. The changes in Table 3 of Annex 1, such as renaming columns and altering report formats, could lead to substantial compliance costs. Given that post-trade data flows are already largely standardised and harmonised, AMAFI recommends that ESMA proceed with caution, limiting its amendments to the absolute necessity, as the tangible benefits of the proposed ones seem minor.

4.3.3.2 Post-trade transparency obligations - Reports

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

Please refer to our answer to Q.25.

Additionally, AMAFI believes it is crucial to take into account the well-established practices within the industry, even if clarification by ESMA is welcomed. The industry has demonstrated its ability to comply with transparency rules by following standards developed by and for the market. Introducing changes that deviate from these widely adopted rules is not desirable and could result in significant implementation costs. We encourage ESMA to recognise and align with these existing practices to avoid imposing changes that add little value but create undue complexity and expense.

4.3.3.3 Post-trade transparency obligations – Flags

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

AMAFI agrees with the proposed amendments.

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

AMAFI agrees with the removal of the SIZE, ILQD, and RPRI flags. The information they provide is easily accessible through other data, making these flags unnecessary. We support ESMA's effort to simplify the flagging system.

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

AMAFI agrees with the removal of the ACTX flag.

4.3.3.5 Real-time publication of transactions – Article 14 of RTS 1

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.

AMAFI believes that the current one-minute threshold for transparency strikes a reasonable balance between real-time reporting and operational constraints, especially for transactions requiring manual validation. While most electronically executed trades are reported almost instantly, further reducing the reporting time may introduce unnecessary pressure on systems without significant added value. We recommend that APAs provide data on current reporting times to determine if any adjustment is necessary, but at this stage, we do not see a need to reduce the time below one minute.

4.3.3.6 Deferred publication of transactions – Article 15 of RTS 1

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

AMAFI agrees with the proposed amendments to Article 15 of RTS 1. The updated provisions effectively address scenarios involving both DPE and non-DPE firms, ensuring clear accountability for post-trade transparency. We find the wording appropriate and have no objection.

4.4 – Trading obligation for investment firms with respect to shares

4.5 – Provisions common to pre-trade and post-trade transparency calculations

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.

AMAFI supports Option C. This option, which includes layers for both technical trades and waivers, offers a more rational approach and avoids the duplication of reporting. It clarifies the transparency calculation methodology effectively.

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

Please refer to our answer to Q. 32.

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

N/A

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

N/A

Section 8 – New RTS on input/output data for shares and ETFs CTP

8. 1 – Mandte

8. 2 – Data to be transmitted to the CTP to be operational (input) and data disseminated by the CTP (output)

8. 2.1 – Regulatory data

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

AMAFI generally agrees with the proposal for the data related to the status of individual financial instruments.

However, we would like to highlight a technical point regarding instruments that can be traded in different currencies within the same trading system, potentially leading to different statuses. The current table may not fully account for this scenario, so is not complete enough. We recommend maintaining flexibility to ensure the system reflects market organisation across different data providers.

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

N/A

8. 2.2 – Core market data pre-trade CTP

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.

AMAFI supports ESMA's proposed approach but raises concerns about the granularity of the reporting down to the microsecond. While such precision may be feasible for market activities, it poses significant challenges for Systematic Internalisers (SIs) and Designated Publishing Entities (DPEs) in Equity. The complexity and burden of capturing and disseminating data at this level of detail could be considerable, particularly for smaller entities. The stringent requirements may create barriers to entry and lead to a concentration of activity among those with advanced systems.

To address these issues, AMAFI recommends a more proportional approach. We suggest differentiating between fully electronic systems, where microsecond precision is generally manageable, and systems involving manual processes (e.g., voice trading, high touch, block trades). For manual workflows, such precision is impractical.

We propose that ESMA introduce a differentiated treatment for electronic and manual systems. This would facilitate a more practical implementation of the reporting requirements. Specifically, allowing additional time for manual processes and flagging them accordingly in the CTP, as opposed to electronic trades, would help ensure that reporting remains manageable for smaller players while maintaining data integrity.

Similar distinctions and flagging mechanisms are already present in other RTS. We recommend that these flags be used by ESMA for supervisory purposes rather than being made public, to avoid potential negative impacts on market participants.

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

Please refer to our answer to Q.57.

Additionally, AMAFI supports the proposal for the output table but highlights the importance of the proper sequencing of data. To ensure that the CTP delivers accurate and organised information, the output data should be sequenced based on execution timestamps. This will prevent disorganisation in the displayed data and improve the efficiency of the CTP.

8. 2.3 – Core market data post-trade CTP

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

Please refer to our answer to Q.57.

Section 9 – Flags in CDR 2017/583 (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?

AMAFI generally supports the proposed amendments to flags in Table 3 of Annex II of RTS 2. Regarding the Flag 'ACTX', we agree that it could be deleted due to its limited practical use.