

MIFIR RTS 2: NON-EQUITY TRANSPARENCY

ESMA'S CONSULTATION

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.

As part of the review of MiFIR, which was published in the OJEU on 8 March 2024, rules on the pre- and post-trade transparency in non-equity markets have been enhanced. ESMA has been mandated to further specify these obligations through draft RTS. In particular, ESMA proposes to amend RTS 2 to deliver on its mandates for bonds, structured finance products (SFPs) and emission allowances (EUA), a separate proposal addressing its transparency mandate for derivatives.

AMAFI would like to thank ESMA for this consultation on the amendment of RTS 2. Transparency on non-equity markets, especially bonds, is a very important matter as, depending on its calibration, transparency is prone to impacting liquidity, and hence the funding of the economy through the bond markets. With this challenge in mind, and at a time when it is recognised that markets should play a bigger role in financing the transformations Europe is going through, AMAFI provides hereafter its answers to ESMA's consultation paper.

3.1 – DEFINITIONS OF CENTRAL LIMIT ORDER BOOKS AND PERIODIC AUCTIONS TRADING SYSTEMS

Q1: Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

AMAFI agrees with the proposed definition of CLOB trading systems.

Q2: Do you consider that the definition should include other trading systems? Please elaborate.

No, AMAFI does not believe that the definition should include other trading systems.

However, it is essential that the definition not only cover current CLOB trading systems but also anticipate potential future developments. For instance, it should encompass systems using patterns such as the Ad Hoc Electronic Auction Design (AHEAD). The proposed definition appears sufficiently broad though to accommodate these developments.

Q3: Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

Yes, AMAFI believes the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant and should be used in the revised RTS. It accurately defines the key characteristics of periodic auction trading systems.

3.3 – DEFINITIONS OF BONDS

Q4: Do you agree to use ESA 2010 to classify bond issuers? If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

AMAFI agrees to use ESA 2010 to classify bond issuers.

That said, the CP is unclear as to who will be responsible for the classification: ESMA, Approved Publication Arrangements (APAs) or investment firms?

According to us, this classification should be performed by ESMA and included in the ESMA database (i.e. FIRDS) to ensure harmonisation within the EU, at the risk otherwise of discrepancy across APAs.

3.4 – PRE-TRADE TRANSPARENCY WAIVERS

Q5: Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

AMAFI agrees with the proposed LIS pre-trade transparency thresholds for bonds put forward by ESMA.

It should be noted that a question may arise regarding market makers on platforms like Tradeweb who continuously provide price indications. These flows are aggregated by Tradeweb into indications of interest (IOIs), and the resulting data are sold to clients at significant costs. Providing this analysis is confirmed, this point should be addressed in the ESMA consultation concerning the cost of market data.

Q6: Do you agree with the proposed LiS pre-trade thresholds for SFPs and EUAs? In your answer, please also consider the analysis provided in section 4.2.2.

AMAFI agrees with the proposed LIS pre-trade transparency thresholds for SFPs and EUAs proposed by ESMA.

Q7: Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

AMAFI acknowledges the static liquidity threshold for bonds, as established by Level 1 of MiFIR, which relies on issuance size. While we generally support this approach, we believe that the criterion for assessing liquidity has been significantly simplified and needs further refinement.

The broad categories used by ESMA, such as “Sovereign and other public bonds,” “Corporate, convertible and other bonds,” and “Covered bonds,” appear too general. To ensure more accurate liquidity assessments, we suggest a more nuanced categorisation. Our detailed recommendations for refining the classification of bonds are outlined in our response to Q11.

4.1 – POST-TRADE TRANSPARENCY FIELDS

Q8: Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

AMAFI fully supports the changes to post-trade fields summarised in Table 5 of ESMA's proposal. We believe these changes will significantly enhance the accuracy and reliability of post-trade data across the EU, aligning with the objectives set out in the Level 1 text.

However, we would like to raise a couple of points for consideration:

- “Trading System” Field (Table 2 of Annex II): We have concerns regarding the “Format” column in the “Trading System” field. In our view, this column may not be necessary for the Consolidated Tape (CT) and could potentially add unnecessary complexity. We recommend a review of this field to assess its relevance and impact on the CT’s functioning.
- Data Quality Controls: We suggest that ESMA considers harmonising the data quality controls required from APAs when receiving post-trade data. Standardised controls would help ensure consistency and enhance the overall quality of the data reported.

Q9: Do you agree not to change the concept of “as close to real-time as technically possible”? If not, what would be in your view the maximum permissible delay?

Yes, AMAFI sees no justification for altering the concept of “as close to real-time as technically possible” and supports its retention.

Q10: Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

AMAFI supports the proposed changes for OTC transaction reporting and the introduction of the Designated Publishing Entity in Level 1 of MiFIR.

However, AMAFI respectfully requests that ESMA provide the industry with a decision tree, in the form of a Q&A, outlining the responsible entity for reporting in various scenarios.

4.2 – POST-TRADE DEFERRALS FOR BONDS, STRUCTURE FINANCE PRODUCTS AND EMISSION ALLOWANCES

Q11: Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

Regarding bonds, we are skeptical about the proposed approach to calibrate the liquidity thresholds, which may hurt the liquidity of certain bonds and make the EU less attractive and price-competitive compared to other jurisdictions with a more refined transparency framework (e.g. the UK is envisaging 4 levels of granularity: sovereign vs corpora / currency or nationality of the issue / Investment Grade vs High Yield classification / size of the issue). A more refined classification of bonds, and hence a better balance between liquidity and transparency may lead EU investors to see some advantage in placing their orders on UK platforms rather than EU platforms, as UK transparency rules, and not the EU rules, would apply to their transactions in such instance.

In addition, we consider that questions Q11, Q12, and Q13 cannot be addressed independently, given that:

- The new deferred regime is based on maximum deferrals (price and volume), according to five categories of transactions, based on a size/liquidity pairing.
- It is then up to ESMA to define what constitutes a liquid bond, the size of transactions (average, large, and very large), and the associated deferrals.

Several questions arise regarding the method proposed:

- On the granularity proposed by ESMA for defining bond categories ("Sovereign and other public bonds", "Corporate, convertible and other bonds" and "Covered bonds"): is this granularity appropriate, or should there be a finer distinction, for example, between "investment grade" and "high yield" and between currencies (EUR/GBP/USD versus other currencies, all these elements affecting liquidity)? We note that Level 1 allows further refining, as it clearly provides that ESMA is expected to develop draft regulatory standards applying to "bonds, or classes thereof", "structured finance products and emission allowances, or classes thereof", without limiting the level of granularity of such "classes".
- On the methodology to determine the liquidity thresholds: Level 1 restricts the consideration of the liquidity of a bond to the issuance size. Within that remit, one should yet strive to ensure that the outcome of such consideration would be close to the one if the trade frequency and size of the transactions absorbed by the market were considered, which are effectively the two criteria on which the liquidity of an instrument is assessed by market participants. The study recently published by AMF ([Bond transparency: How to calibrate publication deferrals? | AMF \(amf-france.org\)](#)) is worth considering, as it analyses the time to trade out of risk, i.e. the "transaction absorption time". Such analysis should be carried out at the EU level, for the different "classes" of bonds (that need to be refined, see above), with the objective to optimise the difference between the "transaction absorption time" for trades above and below each threshold. This fact-based methodology would provide the necessary balance between transparency and liquidity provided by market makers.

Q12: Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

Please refer to our answer to Q11.

Q13: Do you agree with the maximum deferral period set out in the tables above?

Please refer to our answer to Q11.

We consider that the proposal for authorised deferral for prices of large transactions is inadequate.

Considering that the new transparency regime will in itself shorten the deferral periods, especially for "Corporate, Convertible and Other bonds" and "Covered bonds", for which no "supplementary deferral regime" is allowed, the calibration of deferrals should be tackled with great caution.

AMAFI considers that no change should be made to the maximum deferral times permitted by law before the impact of the new transparency regime can be assessed. This is particularly important for large transactions in corporate bonds, as the protection offered to liquidity providers by the volume

deferral is key: through the price of a transaction, market participants get clear indication of the direction of the transaction and the magnitude of the volume. Making it transparent as early as the end of the trading day increases the risk for liquidity providers to have other market participants to act against them, which will reduce their willingness to offer competitive prices for such transactions.

Additionally, we want to highlight an important issue: removing the supplementary deferral capability for non-equity instruments other than sovereign bonds will impact derivatives, although their post-trade transparency regime will be addressed in a separate consultation.

Indeed, the proposed deletion of Article 11(1)(c) MiFIR would eliminate the extended deferral periods for derivatives from the application date of the revised RTS 2. Given that the current consultation paper does not cover transparency for OTC derivatives— which will be covered in a separate consultation paper later this year or early next year—we believe that these changes will unintentionally affect OTC derivatives.

The intention behind the changes seems to be to replace the existing deferral framework for bonds, structured finance products, and emission allowances with a new framework specified in the revised MiFIR. Therefore, to avoid preempting the forthcoming discussions on derivatives transparency, we recommend that this issue be deferred and addressed globally in separate consultation on derivatives, or alternatively that the amendment of RTS2 is limited, for the time being, to “bonds, structured finance products, and emission allowances excluding government bonds”.

Q14: Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

AMAFI supports the static approach of classifying all Structured Finance Products (SFPs) as illiquid at this stage.

However, we reckon that the market for SFPs might evolve, especially with the EU's renewed focus on revitalising securitization under the Savings and Investment Union. Therefore, we suggest incorporating a mechanism for future re-evaluation of SFP liquidity to reflect potential market changes.

Q15: Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?

AMAFI considers that in the current market context ESMA's proposal not to introduce changes to the threshold size applicable to SFPs would be relevant. However, considering the intention to develop the securitization market in the EU, we believe that some flexibility should be introduced. This would be consistent with Article 11.3.(c) of MiFIR, disposing that national competent authorities may “regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral”.

Q16: Do you agree with the maximum duration proposed?

Same answer as Q15.

Q17: Do you agree with a static determination of liquidity and determine that all EUA are liquid? If not, can you suggest any alternative methodology on how to define liquidity for EUAs?

AMAFI supports this proposal.

Q18: Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

Yes, AMAFI agrees with the proposed framework for the deferral regime for EUAs.

Q19: Do you agree with the classification of ETCs and ETNs as types of bonds?

Yes, AMAFI agrees with the classification of ETCs and ETNs as types of bonds.

Q20: Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

Yes, AMAFI agrees with the liquidity determination for ETCs and ETNs.

Q21: Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

Yes, AMAFI agrees with the pre- and post-trade thresholds.

4.3 – SUPPLEMENTARY DEFERRALS

Q22: What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

AMAFI supports option (a) for the supplementary deferral regime due to its simplicity, as it involves omitting the publication of transaction volumes for up to 6 months. However, given that prices will still be published within a relatively short period (e.g., 4 weeks for "Very large" transactions), this approach may offer limited additional protection for liquidity providers.

Option (b), which proposes aggregation of transactions per ISIN based on size and liquidity, does not address the fundamental issue of price transparency and may therefore provide minimal additional benefit. Thus, we see option (a) as more practical and effective in its current form.

5.1 – TEMPORARY SUSPENSION OF TRANSPARENCY OBLIGATIONS

Q23: Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?

AMAFI agrees not to make any changes to the framework for the temporary suspension of transparency obligations as currently set out in RTS 2. The mechanism has not been triggered since its implementation, and the market has not faced conditions that would significantly impact the liquidity of an entire bond class. Therefore, we support continuing to calculate the liquidity thresholds based on the average monthly volume in nominal value.

5.2 – ESCB EXEMPTIONS

Q24: Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

As detailed in our previous responses, the proposed amendments to RTS 2 on bond transparency do not sufficiently protect liquidity providers, contrary to the stated objective of providing “for an adequate level of transparency to market participants while at the same time ensuring that liquidity providers are not exposed to undue risk”. This is crucial given the ambitions for a European Savings and Investment Union able to provide greater financing to the economy. This is also key in terms of strategic autonomy: there is a real risk of liquidity being pushed away from the EU, to jurisdictions providing a better balance between transparency and liquidity.

Q25: What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

It is difficult to estimate the level of resources required to implement and comply with the draft amended RTS, as changes will be interconnected with other regulatory evolutions and will primarily need to be implemented by trading venues and APAs, potentially leading to increased fees for market participants.

In addition to the direct implementation costs, we are concerned about the potential costs related to the impact on liquidity for certain categories of bonds in the Union, which could affect market participants and liquidity providers in particular.

