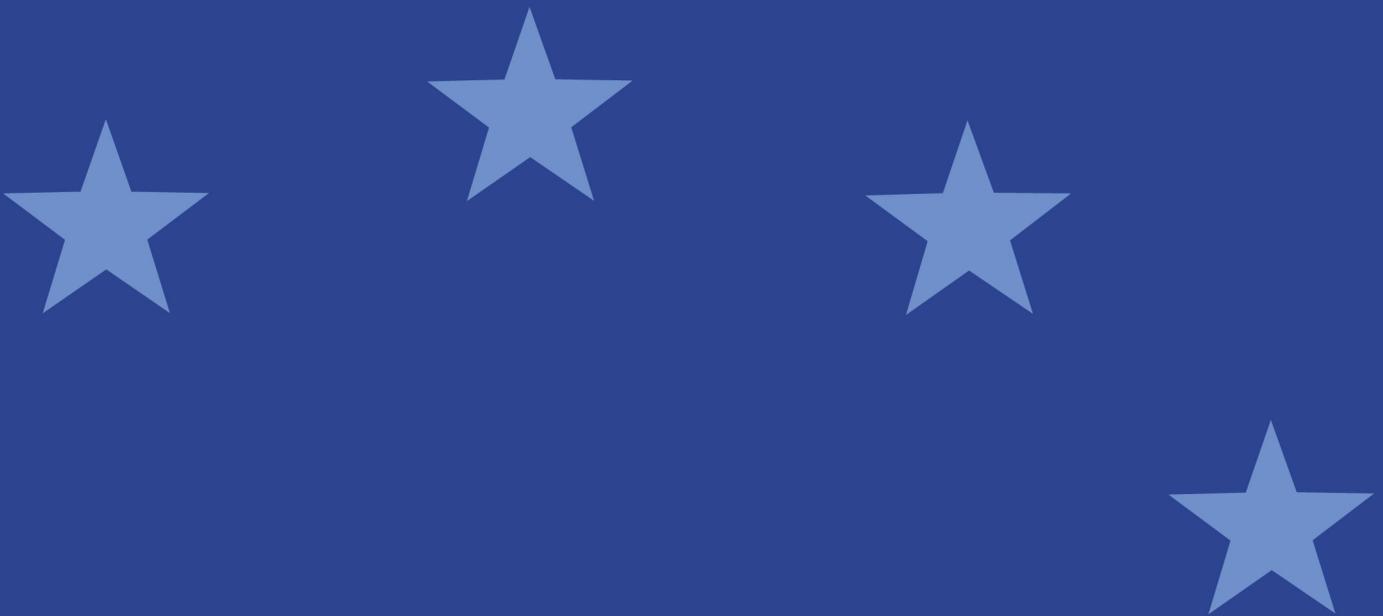




European Securities and  
Markets Authority

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



## 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](http://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](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## General information about respondent

Name of the company / organisation	ICMA
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_CP\_RVIEW\_1>

On behalf of the International Capital Market Association (ICMA), we are pleased to provide feedback regarding ESMA's consultation on the review of RTS 1 and RTS 2. ICMA's MiFID II/R Working Group transparency taskforce (Taskforce) is grateful for the opportunity to respond to ESMA's consultation paper. Taskforce member response is based on consensus view and relates solely to bonds (RTS 2). The Taskforce response to this consultation represents a subset of the full Taskforce, buy-side, and sell-side investment firms. There is a unique value in conveying broad views from across bond market participants and we hope this response is informative and useful.

<ESMA\_COMMENT\_CP\_RVIEW\_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\_RVIEW\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_2>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_6>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_7>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_9>

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

<ESMA\_QUESTION\_RVIEW\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_10>

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

<ESMA\_QUESTION\_RVIEW\_11>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_12>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_13>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_14>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_15>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_16>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_17>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_17>

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

<ESMA\_QUESTION\_RVIEW\_18>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_19>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_20>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_21>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_21>

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

<ESMA\_QUESTION\_RVIEW\_22>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_24>

ICMA does not agree with proposed amendments of amending table 1 of Annex I. No changes should be made to Table 1, Annex 1, regarding Hybrid systems.

ICMA believes ESMA does not need to provide further guidance regarding hybrid systems. The trading systems described in RTS 2 are adequate and NCAs determine on a case- by-case basis whether firms are meeting their MiFID II/R obligations. Any further definitions by ESMA could end up stifling innovation and the advancement and evolution of bond market trading practices.

Furthermore, frequent batch auctions are not relevant to bond trading. As such, ICMA is not responding to this portion of question 39.

Additionally, ICMA would like to remind ESMA that ICMA bond market participant members believe ESMA's focus should be aimed at the post-trade transparency regime, instead of pre-trade transparency regime.

Lastly, ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_25>

ICMA does not agree with ESMA's proposal.

ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

Moreover, ICMA would like to reaffirm its position that MiFIR-based pre-trade transparency does not bring any benefits to either institutional or retail market participants. Currently, market participants source liquidity through axes and inventory. Bond market participants are currently in the process of adopting [ICMA's guide to definitions and best practice for bond pricing distribution](#). As such, ICMA believes MiFIR pre-trade transparency obligations should be removed.

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_26>

ICMA does not agree to any targeted improvements or changes. Moreover, ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_26>

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

<ESMA\_QUESTION\_RVIEW\_27>

While ICMA does not agree to any proposed 'substantive' changes to MiFIR at this time, ICMA considers minor changes that are 'practical' in nature could be useful. As the changes in Article 13 are practical in nature, ICMA agrees with the proposed change to Article 13.

However, in general, ICMA understands the Commission is reviewing MiFID II/R and therefore, most changes proposed by ESMA to MiFID II/R could be considered premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_27>

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

<ESMA\_QUESTION\_RVIEW\_28>

ICMA does not agree to any proposed changes. ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_29>

There is clearly a need to remove non-price forming data from reported trades, e.g., Inter-affiliate. Industry participants as well as ESMA cannot fully understand the bond liquidity picture if there is the 'noise' of non-price forming trades.

The answers regarding points b, c, and d follow:

- ICMA agrees with deleting b.
- Regarding point c, ICMA agrees 'Give ups' should continue to be excluded. but disagrees with the mapping as stated. The 'Give up' definition should be included in the RTS 22 level two or level three guidance.
- Regarding point d, ICMA considers the mapping is also incorrect. The more relevant RTS 22 definition can be found in Article 2.5.O.

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_31>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_32>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_33>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_34>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_35>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_36>  
ICMA not responding  
<ESMA\_QUESTION\_RVIEW\_36>

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

<ESMA\_QUESTION\_RVIEW\_37>

ICMA does not agree to any proposed flag deletions, amendments, or additions. ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_37>

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

<ESMA\_QUESTION\_RVIEW\_38>

ICMA does not agree to any proposed flag deletions, amendments, or additions. ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_39>

As ICMA believes there should not be any flag deletions, amendments, or additions, ICMA agrees with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments. Moreover, ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be considered premature.

**Nevertheless, ICMA considers portfolio constituents should be included in the existing 'TPAC' flag.**

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_40>

ICMA does not agree to any proposed flag deletions, amendments, or additions. ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

Furthermore, in relation to pre-trade transparency, ICMA finds MiFIR-based pre-trade transparency does not bring any benefits to either institutional or retail bond market participants. Currently, market participants source liquidity through axes and inventory. Bond market participants are currently in the process of adopting [ICMA's guide to definitions and best practice for bond pricing distribution](#). ICMA believes MiFIR pre-trade transparency obligations should be removed.

<ESMA\_QUESTION\_RVIEW\_40>

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

<ESMA\_QUESTION\_RVIEW\_41>

ICMA does not agree to any proposed flag deletions, amendments, or additions. ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).



Additionally, ICMA transparency taskforce members believe there is no added value for bond market participants for such flags.

<ESMA\_QUESTION\_RVIEW\_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\_RVIEW\_42>

ICMA understands the Commission is reviewing MiFID II/R and therefore, any changes proposed by ESMA to MiFID II/R could be premature, particularly before the Commission has published recommended modifications (which may be considerable).

This is particularly pertinent, when considering any changes to reporting timings. ICMA transparency taskforce members consider ESMA should not undertake significant changes to MiFID II/R until the Commission has published their recommended modifications. ESMA will be better positioned to suggest amendments to MiFID II/R at that time.

<ESMA\_QUESTION\_RVIEW\_42>

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

<ESMA\_QUESTION\_RVIEW\_43>

ICMA not responding

<ESMA\_QUESTION\_RVIEW\_43>