

Reply form: MiFIR Review

RTS 2, RTS on reasonable commercial basis and RTS 23

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments 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.

ESMA will consider all comments received by **28 August 2024**.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_CP1_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). 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 close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading '[Data protection](#)'..

1. General information about respondent

Name of the company / organisation	Swedish Securities Market Association
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Sweden

2. Questions

CP on the amendment of RTS 2

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

<ESMA_QUESTION_CP1_1>

SSMA agrees to the definition of CLOB trading systems.

<ESMA_QUESTION_CP1_1>

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

<ESMA_QUESTION_CP1_2>

No, there is no need to include other trading systems.

<ESMA_QUESTION_CP1_2>

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.

<ESMA_QUESTION_CP1_3>

SSMA agrees to the description of periodic auction trading systems.

<ESMA_QUESTION_CP1_3>

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

<ESMA_QUESTION_CP1_4>

SSMA agrees to the use of ESA 2010.

<ESMA_QUESTION_CP1_4>

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.

<ESMA_QUESTION_CP1_5>

The SSMA has no comments at this stage to the LiS pre-trade thresholds.

<ESMA_QUESTION_CP1_5>

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.

<ESMA_QUESTION_CP1_6>

The SSMA has no comments to proposals regarding SFP/EUA.

<ESMA_QUESTION_CP1_6>

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.

<ESMA_QUESTION_CP1_7>

See responses to Q 11 - Q 13.

No, we do not agree to the proposals regarding determination of liquidity which only focus on the issuance size. In our view this is an overly simplistic way of assessing liquidity.

The SSMA is concerned with the effects that ESMA's proposals may have on smaller bond markets and EUs attractiveness as a whole. We therefore urge ESMA to adopt a more calibrated approach when it comes to issuance size and the transaction sizes on level 2, taking the characteristics of markets into account.

We note that the level 1 text explicitly allow ESMA to consider "*other relevant criteria*" than issuance size and transaction size as well as develop technical standards for "*bonds or classes thereof*". One such criteria to be considered in the calibration is **currency or nationality of the issuer** (EUR/USD/GBP vs. smaller currencies). For sovereign bonds/covered bonds, **duration/maturity** should be considered. There is more risk in longer maturities and using the same thresholds would likely lead to decreased market liquidity in longer issues as risk willingness would

decrease. For corporate bonds, the **credit rating** (high yield and investment grade) should be considered for the same reasons.

The SSMA also wants to draw ESMA's attention to the fact that the above criteria are included in the proposed UK transparency regime and consider that it is important to ensure that the EU-rules are not drafted in a way that will put EU investment firms in a less favourable position than their UK competitors.

The SSMA has no comments to proposals regarding SFP/EUA.

<ESMA_QUESTION_CP1_7>

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

<ESMA_QUESTION_CP1_8>

The SSMA has no comments at this stage to the fields in table 5.

<ESMA_QUESTION_CP1_8>

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?

<ESMA_QUESTION_CP1_9>

The SSMA agrees to the proposal not to change the concept “as close to real time as technically possible.”

<ESMA_QUESTION_CP1_9>

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

<ESMA_QUESTION_CP1_10>

The SSMA agrees to the proposals regarding reporting of OTC transactions.

<ESMA_QUESTION_CP1_10>

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

<ESMA_QUESTION_CP1_11>

See responses to Q 7, Q 12 and Q 13.

No, we do not agree to the proposals regarding determination of liquidity which only focus on the issuance size. In our view this is an overly simplistic way of assessing liquidity.

The SSMA is concerned with the effects that ESMA's proposals may have on smaller bond markets and EUs attractiveness as a whole. We therefore urge ESMA to adopt a more calibrated approach to when it comes to issuance size and the transaction sizes on level 2, taking the characteristics of markets into account.

We note that the level 1 text explicitly allow ESMA to consider "other relevant criteria" than issuance size and transaction size as well as develop technical standards for "bonds or classes thereof". One such criteria to be considered in the calibration is **currency or nationality of the issuer** (EUR/USD/GBP vs. smaller currencies). For sovereign bonds/covered bonds, **duration/maturity** should be considered. For corporate bonds, the **credit rating** (high yield and investment grade) should be considered.

The SSMA also wants to draw ESMA's attention to the fact that the above criteria are included in the proposed UK transparency regime and consider that it is important to ensure that the EU-rules are not drafted in a way that will put EU investment firms in a less favourable position than their UK competitors.

As regards the liquidity assessment, we also want to highlight the need to consider the practice of **tap issues**, when it comes to the outstanding amount of a certain bond. Tap issues may be structured differently depending on the type of issuer, instrument and regulatory requirements.¹

Considering that issuance size is expressed in euro, it must be clarified in RTS 2 (or the feedback statement) how to handle conversion rates for bonds denominated in non-euro currencies. Apart from Sweden this is relevant to Denmark, Bulgaria, Poland, Romania, Czech Republic and Hungary. For operational issues, it is very important to ensure that all market participants use the same conversion rate (e.g., the one published by the ECB) and that the rate is fixed and updated at a yearly or quarterly basis (i.e., not intraday).

It is also important that market participants use the same source of information ("**a golden source**") when it comes to the outstanding amount of bonds so that trades in the same ISIN are not treated differently depending on the source of information. It is also a pre-requisite that the responsibility for ensuring correct data is clearly addressed to mitigate any liability concerns and that this lies on the information provider.

¹ To our understanding it is only when tap issues are considered as secondary market transactions (investment firm vs client) they are subject to transparency requirements under MiFIR. Primary market issuances are excluded (issuer vs investment firm).

<ESMA_QUESTION_CP1_11>

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.

<ESMA_QUESTION_CP1_12>

See responses to Q 7, Q 11 and Q 13.

No. The SSMA is concerned with the impact that ESMA's proposal for size thresholds may have on non-euro, i.e. local currency, markets (such as Sweden) where there are only a limited number of market makers taking on risk on their balance sheet and thereby using their balance sheets to provide the market with market liquidity meaning that they are more vulnerable to a higher degree of transparency as it could make it harder for them to trade out of the risk.

To calibrate the proposal, the SSMA therefore suggests that for **sovereign bonds and covered bonds**, duration/maturity is taken into consideration and/or that the threshold for the "small" bucket is lowered. According to SSMA's members, the transaction size thresholds for real time transparency for sovereign bonds should be divided by ten (i.e., 0,5 mEUR) and for covered bonds lowered by half (i.e., 2,5 mEUR) in order not to have a too large negative impact on market functioning.

Also, for **corporate bonds** the "small" bucket is equally concerning. In fact, according to our members it will mean that almost the entire Swedish high yield market would be subject to real time transparency. This will have a detrimental effect on the ability of market makers to take on risk and, as a result, have a negative impact on liquidity which in the long run could be negative for the capital market as a source of funding. In order to consider the needs of smaller local currency corporate bond markets, we therefore propose to change the transaction size in the small bucket for corporate bonds to approximately 0,2 mEUR. It could also be considered to differentiate the thresholds between high yield (HY) and investment grade (IG) with lower thresholds for HY. To our understanding such a distinction is made in TRACE, and in the recent proposal put forward in the UK.

<ESMA_QUESTION_CP1_12>

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

<ESMA_QUESTION_CP1_13>

See responses to Q 7, Q 11 and Q 12.

The SSMA does not agree. The price deferral in bucket 3 and 4 should be changed so that it corresponds to the level 1 text, i.e. End of Day should be T+2 and T+1.

<ESMA_QUESTION_CP1_13>

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?

<ESMA_QUESTION_CP1_14>

No comments re. SFP/EUA.

<ESMA_QUESTION_CP1_14>

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

<ESMA_QUESTION_CP1_15>

No comments re. SFP/EUA.

<ESMA_QUESTION_CP1_15>

Q16 Do you agree with the maximum duration proposed?

<ESMA_QUESTION_CP1_16>

No comments re. SFP/EUA.

<ESMA_QUESTION_CP1_16>

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?

<ESMA_QUESTION_CP1_17>

No comments re. SFP/EUA.

<ESMA_QUESTION_CP1_17>

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

<ESMA_QUESTION_CP1_18>

No comments re. SFP/EUA.

<ESMA_QUESTION_CP1_18>

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

<ESMA_QUESTION_CP1_19>

No comments re. ETC/ETN

<ESMA_QUESTION_CP1_19>

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

<ESMA_QUESTION_CP1_20>

No comments re. ETC/ETN

<ESMA_QUESTION_CP1_20>

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

<ESMA_QUESTION_CP1_21>

No comments re. ETC/ETN

<ESMA_QUESTION_CP1_21>

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

<ESMA_QUESTION_CP1_22>

The SSMA supports the possibility for supplementary deferral, particularly in the form of aggregation. However, this will not fix the problem of too much transparency in the smaller buckets, see above.

<ESMA_QUESTION_CP1_22>

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

<ESMA_QUESTION_CP1_23>

The SSMA supports the proposal not to make changes to the temporary suspension.

<ESMA_QUESTION_CP1_23>

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

<ESMA_QUESTION_CP1_24>

General comments

The SSMA welcomes the opportunity to respond to ESMA's consultation regarding RTS 2. In addition to the comments in this document, we refer to the response by the Nordic Securities Association (NSA), representing trade associations in Sweden, Denmark, Finland and Norway.

Whilst the SSMA can support the general ambition to simplify the post trade transparency regime in MIFIR, we want to underline that it is very important to avoid that the amendments to the RTS 2 damage the well-functioning of the bond markets in the EU. In particular, the SSMA is concerned with the impact that ESMA's proposal may have on non-euro, i.e., local currency markets. In Sweden for example, there are only a limited number of market makers using their balance sheets to provide the market with market liquidity which means that they are more vulnerable to a high degree of transparency as it could make it harder for them to trade out of the risk.

In its forthcoming work we would therefore like to encourage ESMA not to focus on the share of the bond market (expressed in percentages) that "should be subject to a certain degree of transparency" but to take a more market-oriented approach and carefully listen to input from market makers as regards their need to be able to handle risk when using their own balance sheets. This ability is crucial for the well-functioning of the bond market and, consequently, the real economy as a whole.

Based on the above, the SSMA urges ESMA to take a more calibrated approach as regards the combined effect that the issuance size and transaction sizes could have on market functioning. We note that the level 1 text allows consideration of "other relevant criteria", and we argue that one such criteria could be currency. In addition to this, for corporate bonds our view is that credit rating (high yield and investment grade) is a relevant criteria and for sovereign bonds/covered bonds, we support changes to the deferral regime that would allow for duration/maturity to be taken into consideration. Longer maturity equals more risk for a market maker, hence a need for longer deferral and/or other thresholds.

The SSMA notes that criteria such as currency, maturity and credit rating are considered as relevant criteria in other jurisdictions outside EU and wants to underline the importance of not imposing rules that puts EU investment firms at a competitive disadvantage as compared to their peers in the UK or US. In fact, if the EU transparency requirements are more stringent than in the UK it will become more difficult for EU market makers to provide attractive quotes to their clients. Best execution requirements could then force institutional clients in the EU to execute their transactions outside of the EU. This would not be an outcome in line with the ambition of the Capital Markets Union, i.e. to increase the attractiveness of EU capital markets. TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_24>

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.

<ESMA_QUESTION_CP1_25>

No comments at this stage.

<ESMA_QUESTION_CP1_25>

CP on the RTS on reasonable commercial basis

Q26 Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

<ESMA_QUESTION_CP1_26>

SSMA do not agree. The general approach to specify cost elements is good but the production and dissemination of raw market data is a low-cost effort as seen by multiple reports, and only direct costs should be accounted for. A joint cost approach allows for data provider to redistribute resources in a way that the cost mass increases. Also, it becomes unclear and administratively cumbersome for data providers to assess proportionality of joint costs, an exercise which surely will raise the overall cost of market data and other services provided.

Furthermore, in determining the margin, as described in point 196., the use of words like “disproportionally” and “reasonably” are vague. The margin should not be set in relation to unrelated offers or services as that allows for data providers to raise such margins and project them onto the margin for market data. We propose ESMA to establish cost and margin benchmarks on the data collected from vendors and determine what reasonable means based on those.

SSMA further support the NSA response as it’s very detailed and well written.

<ESMA_QUESTION_CP1_26>

Q27 Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

<ESMA_QUESTION_CP1_27>

ESMA broadly agrees with the approach, but the problem is what can be added as costs under each category. It will give exchanges a too large degree of freedom on what costs they add under each category and how they are attributable to costs for producing market data. There is also a risk that charges will increase in other areas, which we have already started to identify. It is necessary to have a broad perspective on all areas where monopolistic exchanges charge their members.

ESMA support the NSA response.

<ESMA_QUESTION_CP1_27>

Q28 Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software...) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

<ESMA_QUESTION_CP1_28>

ESMA believes it must be specified in detail, otherwise it will risk to not have the intended outcome of lower market data fees. Also see Q27.

ESMA support the NSA response.

<ESMA_QUESTION_CP1_28>

Q29 Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

<ESMA_QUESTION_CP1_29>

ESMA do not agree, we think that Article 3, point 2.c. shall be removed entirely for the reasons stated in Q26. Services and offers other than production and dissemination of market data could have very different price mechanics and is a poor proxy. Point a, and b are enough to determine the principles, unless ESMA is endowed by a mandate to set a limit, which would then be added to the principles.

<ESMA_QUESTION_CP1_29>

Q30 Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

<ESMA_QUESTION_CP1_30>
SSMA support the NSA response.
<ESMA_QUESTION_CP1_30>

Q31 What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

<ESMA_QUESTION_CP1_31>
SSMA support the NSA response.
<ESMA_QUESTION_CP1_31>

Q32 What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

<ESMA_QUESTION_CP1_32>
SSMA support the NSA response. Very good to refer to the contrary relationship between increasing market data fees and the decreasing costs in underlying technology to store and transport digital information.
<ESMA_QUESTION_CP1_32>

Q33 Do you agree with ESMA's proposal on how to set up fee categories. Please justify your answer.

<ESMA_QUESTION_CP1_33>
SSMA support the NSA response. Raw market data should be a low-cost product with no or very few limitations, to lower level-of-entry, ease-of-access and to promote innovation and competitiveness among value added services generated from the raw market data. The afore mentioned is now heavily restricted by data providers with IP rights to unique, but systemically important data. On the contrary, the data providers would be able to set price and margin however they want on value added data, as they would then also compete with other providers for similar offerings. This is the core issue to why the raw market data is so heavily protected and lobbied for, because the data providers know that if they would lose ability to restrict and control raw market data, they would also in extension have to compete in other areas they now control with monopoly.

<ESMA_QUESTION_CP1_33>

Q34 Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

<ESMA_QUESTION_CP1_34>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_34>

Q35 Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

<ESMA_QUESTION_CP1_35>

SSMA support the NSA response with one specific addition under the current regime.

Due to the history on banking practises, evolution and consolidation, there exist bank company groups across Europe having partnerships with smaller regional banks, sharing the same IT infrastructure but not necessarily fulfilling the definition of “Affiliate”. This definition is usually constructed with a requirement of legal ownership with the affiliated entity. Having no standardized alternative for those constructions creates a situation where the cost of market data for each such partner is too cumbersome to bear.

The only data provider we know, that has implemented a solution to this is Deutsche Boerse which identifies and defines Banking Group Members as:

Banking Group A group of legally independent savings banks or cooperative banks (in particular mutual savings bank and agricultural credit cooperative banks) of a country or a region which are band together via an umbrella association provided that a Central Institute acts for and on behalf of such savings banks or cooperative banks and (i) enters into a Market Data Dissemination Agreement with Deutsche Börse AG, (ii) notifies the Banking Group Members to Deutsche Börse AG via MD+S interactive, (iii) guarantees the compliance with the obligations under the Market Data Dissemination Agreement by the Banking Group Members and (iv) takes the responsibility for the central Reporting as well as for the remuneration of the Information Usage by the Banking Group Members. Banking Group Member A bank which belongs to a Banking Group. CEF® Systems CEF® Systems are Real-time Data Feeds of Deutsche Börse AG via which Real-time Data is disseminated to the Customers of Deutsche Börse AG. Central Institute Customer which for and on behalf of a Banking Group (i) notifies the Banking Group Members to Deutsche Börse AG via MD+S interactive, (ii) guarantees the compliance with the obligations under the Market Data Dissemination Agreement by the Banking Group Members and (iii) takes the responsibility for the central Reporting as well as for the remuneration of the Information Usage by the Banking Group Members.

This is handled in the pricing policy as below:

*Onward Dissemination by
Banking Group Members*

The Central Institute (or the Customer if the Central Institute is not the party to contract) will be charged four times Distribution Licence Fees for the right of Banking Group Members to disseminate the Licensed Information onward.

We know that Euronext have identified this and are looking at a similar practise.

We propose ESMA to include “Central Institute Customer” and “Banking Group” as definitions in the guidelines with the following proposals for wording.

Central Institute Customer which for and on behalf of a Banking Group (i) notifies the Banking Group Members to the data provider (ii) guarantees the compliance with the obligations under the Market Data Dissemination Agreement by the Banking Group Members and (iii) takes the responsibility for the central Reporting as well as for the remuneration of the Information Usage by the Banking Group Members.

Banking Group A group of legally independent savings banks or cooperative banks (in particular mutual savings bank and agricultural credit cooperative banks) of a country or a region which are band together via an umbrella association provided that a Central Institute acts for and on behalf of such savings banks or cooperative banks.

We clearly understand also that this should not be used as way to systematically lower market data fees by constructing “banking groups” but rather as a possibility to empower smaller regional banks and cooperative banks with access to exchange trading and market data access for its customers.

<ESMA_QUESTION_CP1_35>

Q36 Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

<ESMA_QUESTION_CP1_36>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_36>

Q37 According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the

usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

<ESMA_QUESTION_CP1_37>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_37>

Q38 Do you agree with ESMA's proposal on penalties? Please elaborate your answer.

<ESMA_QUESTION_CP1_38>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_38>

Q39 Do you agree with ESMA's proposal on audits? Please elaborate your answer.

<ESMA_QUESTION_CP1_39>

SSMA think It should be clearly regulated how long back in time an audit can be conducted. It should be maximum 3 years and it should only be the last 3 years. It should also not be allowed to conduct an audit over the same period twice.

SSMA also support the NSA response with some additions.

We support Article 15(1) as this makes its clear that an audit isn't something that should be done out of pre-assumptions but serious indications and be established by clear evidence. We feel that this is far from today's practise, and we welcome this. It would also limit the audit to the specific claim of infringement and not all products and services as is also today's practise.

Moreover, we'd like to add a point to Article 15 where the market data client is allowed to exercise its right to the auditor being a representative of the data provider by permanent employment and not through a third party or consultancy. The reason is that third parties may have conflict of interest from result-based provision and knowledge about the market data client, to be used as inside knowledge in future audits by other data providers.

Lastly, we've seen development in the industry for clients of market data providers, that also sell other technology services. If the client wants to audit the technology provider (DORA being the specific example) then the client must pay for the time and resources incurred by the provider for such audit. This development should be highlighted in market data audits as well so that the same principles applies both ways. Market data clients time and resources are also valuable, and client spend not only time from market data professionals, but also IT, Legal, system owners and busi-

ness owners. An audit can become a lengthy process and having exposure to several data providers which is usually the case, it's a considerable effort which should be compensated. That would also enforce Article 15(1) to not incentivise audits unless there's a clear infringement.

<ESMA_QUESTION_CP1_39>

Q40 Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

<ESMA_QUESTION_CP1_40>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_40>

Q41 Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

<ESMA_QUESTION_CP1_41>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_41>

Q42 Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA_QUESTION_CP1_42>

SSMA agree that standard terminology and definitions are good and something to strive for. We have identified some areas of concern.

Access fee – we think this is very problematic since connectivity costs is an area where exchanges recently have started to both broaden and increase their fees. This must therefore be very clear and carefully introduced.

Derived data – exchanges have too much freedom in their interpretation of what is derived data. This must be regulated in detail. In principle it should be very difficult to charge for derived data since there is a lot of other information and intellectual property that goes into this type of data from the member, and it is hard to see the link to the raw data and why exchanges should be paid for it.

Active user – only users that actively use market data should be charged and the charge should be for user-ID.

Delayed data – must be access to all data easily and free of charge after 15 minutes. No separate agreement or licensing should be needed.

End of day data and historical data must also be clearly defined and free of charge in the same way as delayed data.

SSMA also generally support the NSA response. Pleas also see the addition of definitions in Q35.

<ESMA_QUESTION_CP1_42>

Q43 Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

<ESMA_QUESTION_CP1_43>

SSMA does not think it is possible to have unit of count for systems. SSMA prefer that user-ID is used instead, which will also make netting easier. We do not think a new access fee should be introduced either. It could lead to a new situation of having to pay twice for the same service.

SSMA support the NSA response.

<ESMA_QUESTION_CP1_43>

Q44 Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.

<ESMA_QUESTION_CP1_44>

SSMA does not presently foresee any other types of connections. Will it be the same for the future CTP solution?

SSMA support the NSA response.

<ESMA_QUESTION_CP1_44>

Q45 Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA_QUESTION_CP1_45>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_45>

Q46 Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

<ESMA_QUESTION_CP1_46>

SSMA support the NSA response.

<ESMA_QUESTION_CP1_46>

Q47 Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

<ESMA_QUESTION_CP1_47>

SSMA agrees.

<ESMA_QUESTION_CP1_47>

Q48 ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

<ESMA_QUESTION_CP1_48>

SSMA agrees.

<ESMA_QUESTION_CP1_48>

Q49 Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA_QUESTION_CP1_49>

For SSMA market data is a key function in the financial markets. It is therefore important that it is cheap and easy to access market data for all different market participants and clients. The development has however been the opposite towards very complex pricelists, data policies and different

unclear data licenses with the effect of continuous increased market data charges from data providers. Therefore, data access has been limited for certain client groups. From a CMU perspective it is also important that all client categories get access to high quality market data.

On back of this statement SSMA welcomes this initiative to turn the Market Data Guidelines into binding regulation. We have some concerns, but they are reflected in our response in the consultation questions.

SSMA also want to again mention earlier comments. Complex pricelists with complicated licensing create huge problem to see the full picture of the data cost pressure. It also makes comparisons extremely difficult. Therefore, harmonization and enforcement of the suggested standardisation will be very important. The RTS needs also to secure that the same costs are not charged twice.

<ESMA_QUESTION_CP1_49>

Q50 What level of resources (financial and other) would be required to implement and comply with the 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.

<ESMA_QUESTION_CP1_50>

SSMA has no strong view since it is difficult at this point to fully understand what the full potential impact of the new RTS will be.

<ESMA_QUESTION_CP1_50>

CP on the amendment of RTS 23

Q51 Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

<ESMA_QUESTION_CP1_51>

SSMA agrees. We do not want to increase the frequency and it cannot be delayed after 9 pm for this to work in practice. Otherwise, there is risk that trades end up in a pending status. SSMA thinks it is good that venues have stricter rules and that they must send reference data the day before any instrument is admitted to trading.

<ESMA_QUESTION_CP1_51>

Q52 For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

<ESMA_QUESTION_CP1_52>

SSMA is of the opinion that it works well and think it should be kept as it is. Categories must be very clear to prevent risks that they are interpreted differently by different participants, which could lead to different CFI codes for the same instrument.

<ESMA_QUESTION_CP1_52>

Q53 Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

<ESMA_QUESTION_CP1_53>

Yes, SSMA believes that the granularity level is sufficient.

<ESMA_QUESTION_CP1_53>

Q54 How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.

<ESMA_QUESTION_CP1_54>

SSMA do not think it should impact the reference data. More analysis is needed on what information is required. The new scope of which instruments will be subject to reporting will lead to fewer reported instruments and less data reported. There is a risk of overlapping reference data and identifiers, which could lead to problems if they are in conflict of each other. Information that the member creates by itself should not be included in the reference data.

<ESMA_QUESTION_CP1_54>

Q55 Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives' contract type classification?

<ESMA_QUESTION_CP1_55>

SSMA thinks it should be fine to delete this field. It is very important that CFI code remains the same. SSMA members have experienced situation where the same ISIN can have different CFI codes. The CFI code should be a part of the ISIN code.

<ESMA_QUESTION_CP1_55>

Q56 Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.

<ESMA_QUESTION_CP1_56>

SSMA do not want more new fields, which will make reporting more complicated. It is fine with alignment if there are no new or more fields added. FIRDS and FIRTS should also be aligned. It would also be good if all APA reporting was aligned.

<ESMA_QUESTION_CP1_56>

Q57 As it concerns “underlying type” classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?

<ESMA_QUESTION_CP1_57>

SSMA agrees, it works in the same way as today.

<ESMA_QUESTION_CP1_57>

Q58 Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?

<ESMA_QUESTION_CP1_58>

SSMA sees no room for this at this stage. Any alignment should be done at the same time and together with the updated RTS 26. Changes or alignments should be done with the sole purpose to simplify transaction reporting. We need to see the new RTS 26 to be able to respond in detail.

<ESMA_QUESTION_CP1_58>

Q59 Do you have suggestions on how the fields mentioned above may be improved and streamlined?

<ESMA_QUESTION_CP1_59>

SSMA sees no need for any changes, all relevant information is already there.

<ESMA_QUESTION_CP1_59>

Q60 Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?

<ESMA_QUESTION_CP1_60>

SSMA has no comment to this question.

<ESMA_QUESTION_CP1_60>

Q61 Do you see a need to specify the ‘date by which the reference data are to be reported’ different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA_QUESTION_CP1_61>

SSMA understands the proposal to be at least 18 months implementation period and believe that is manageable, but it cannot be any shorter. The implementation date should also be aligned with the timeline for reference data reporting. SSMA prefer that related changes are coordinated to the same date. As it is now new ISINs will be introduced earlier, which could create problem.

<ESMA_QUESTION_CP1_61>

Q62 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 reference data?

<ESMA_QUESTION_CP1_62>

SSMA believes alignment is positive, but we miss the UPI in the listed standards. All standards should be included and visible in Firds. All standards should also be easily and publicly accessible without any cost.

<ESMA_QUESTION_CP1_62>

Q63 Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?

<ESMA_QUESTION_CP1_63>

SSMA has the following comments on some fields:

Field 19 should be optional as in EMIR.

Field 20 good that this aligned with EMIR.

Field 22 this should be the same in Mifir as in EMIR.

Field 25 this field is taken away in EMIR, which should also be done in Mifir.

Field 28 good that this aligned with EMIR.

SSMA do not see any problem with the rest of the fields.

<ESMA_QUESTION_CP1_63>

Q64 Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?

<ESMA_QUESTION_CP1_64>

SSMA sees potential problems with this approach depending on the technical solution and how the integration is done. Will this affect the reporting routines, or will there be a central solution? SSMA would like to see more clarification on how this is intended to work in practice.

<ESMA_QUESTION_CP1_64>

Q65 Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?

<ESMA_QUESTION_CP1_65>

SSMA believes there could be a problem with a new flag for CSDR, especially if it is unclear on how it should be populated and used. New fields always add to the complexity and will lead to implementation costs.

SSMA also sees difficulties in specifying the MIC which is regarded as most relevant. This will mean that the MIC will change back and forth between different venues over time. Where and when will this information be published and how will it be accessed? It will be very important with a simple solution for this purpose. It is also important with a historic record of dates when the MIC changes.

<ESMA_QUESTION_CP1_65>

Q66 Do you support inclusion of the new fields listed above?

<ESMA_QUESTION_CP1_66>

SSMA has the following views on the new fields:

1 SSMA question why this should be reported. It is not needed for Mifir reporting. It is also complicated to find and populate this information technically.

2 Same as for # 1.

#3 Why is this needed and what is the purpose with this field? Should not be included.

4 It is very important that this field will be anonymous in FIRDS, otherwise it will be very transparent which firm has traded in which instruments. Especially when DPEs will also send reference data for instruments for transparency reporting.

6 Is ok.

<ESMA_QUESTION_CP1_66>

Q67 Do you agree with the amendment listed above for the existing fields?

<ESMA_QUESTION_CP1_67>

SSMA has the following views on the amended list:

1 Is ok.

2 Is not needed, see Q 68

3 Could be useful.

4 Is ok.

5 Same as # 3 in Q 66. SSMA does not see the need and should not be amended.

6 Is ok.

<ESMA_QUESTION_CP1_67>

Q68 With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?

<ESMA_QUESTION_CP1_68>

SSMA prefer option 2 since we believe it will be easier to implement. There is a problem today, which could be lessened with general ISIN codes. It must also be very clear which dates that should be registered.

<ESMA_QUESTION_CP1_68>

Q69 Do you support suppressing the reporting of the fields listed above?

<ESMA_QUESTION_CP1_69>

SSMA agrees, they are not used today.

<ESMA_QUESTION_CP1_69>

Q70 Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

<ESMA_QUESTION_CP1_70>

SSMA do not see any major problems in using JSON for reporting of reference data. We do however believe that validation of data is more difficult in JSON, which will be a problem when it comes to transaction reporting. SSMA therefore do not want to change to JSON for TRS reporting.

<ESMA_QUESTION_CP1_70>

Q71 In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?

<ESMA_QUESTION_CP1_71>

No, SSMA does not think any other adjustments are needed. However, it is important that this information is anonymized – see Q 66.

<ESMA_QUESTION_CP1_71>

Q72 With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?

<ESMA_QUESTION_CP1_72>

SSMA believes there is a problem with timing when the different legal acts come into force. In this case between DPE rules and DPE register.

DPE should only report unlisted instruments. The relevant information included should be LEI, asset class, date of application and date for eventual withdrawal. This information should be accessible in an easy data format, we do not want Excel lists.

<ESMA_QUESTION_CP1_72>

Q73 Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?

<ESMA_QUESTION_CP1_73>

SSMA think DPEs should only have to report reference data for unlisted instruments.

Today there is a huge overreporting of reference data since all venues report all reference data for all instruments every day. It should be enough to report when something changes.

As a general comment to the RTS 23 reference data part SSMA also believes that any regulatory changes, especially to reporting standards, should be done with great care. Our experience is that all regulatory changes and updates will lead to high implementation costs. There are usually several connected systems and routines that need to be updated and integrated to work properly. More complex changes will lead to higher implementation costs. SSMA therefore think it is important to have changes with the least technical impact to keep the costs as low as possible. It is also important that changes are coordinated with other updates/changes in other legal frameworks to prevent implementation of related changes at different dates.

<ESMA_QUESTION_CP1_73>