European Securities and Markets Authority

Reply form for the Consultation Paper on the RTS 2 Annual Review

12 May 2021

Internal

Date: 12 May 2021

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for non-equity instruments and the trading obligations for derivatives MiFID II/ MiFIR review report 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_CP_MIFID_NQT_1> - 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_MIFID_NQT_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_CP_MIFID_NQT_ESMA_REPLYFORM or

ESMA_CP_MIFID_NQT_ANNEX1

Deadline

Responses must reach us by 11 June 2021.

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

Field Code Changed

Publication of responses

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

Data protection

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

Field Code Changed

General information about respondent

Name of the company / organisation	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>
Deutsche Börse Group (DBG) appreciates the opportunity to respond to ESMA's consultation on the annual review of RTS 2 regarding the liquidity determination of bonds and the determination of pre-trade SSTI-thresholds.
In general, we agree with ESMA's conclusion that the objective of MiFID II/MiFIR to increase transparency in particular in the bond market has not yet materialized. DBG agrees with ESMA's assessment that the current level of pre- and post-trade transparency for bonds is very low given that too many bonds are defined as illiquid. Thus, DBG welcomes ESMA's proposals to make the transparency regime for non-equities more efficient and supports the proposals to move to the next stage for the liquidity determination for bonds. Nevertheless, we would like to emphasize again our support for ESMA's recommendation on the transparency regime for non-equity instruments from fall 2020 to remove the SSTI waiver and to replace it with a reference to LIS thresholds instead. We agree with ESMA that this approach would have a bigger impact on improving transparency than the move to the next stage in the current phased-in regime. Generally, we would also recommend a review of the liquidity assessment of bonds to increase the number of bonds that are deemed liquid and subject to transparency requirements.
DBG trusts that our comments are seen as a useful contribution to increase the functioning and effectiveness of the transparency regime for non-equity instruments, in particular bonds, and remain at the disposal of ESMA for any questions and additional feedback.
<ESMA_COMMENT_CP_MIFID_NQT_1>

Q1. Do you agree with ESMA's proposal to move to stage 3 for the determination of the liquidity assessment of bonds? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_1>
As already highlighted in our response to the ESMA consultation on the transparency regime for non-equity instruments in 2020, DBG agrees with ESMA's assessment that the overall pre-trade transparency regime for bonds is not effective as too many bonds are defined as "illiquid". This shows that the liquidity determination process is not effective and has not delivered on the MIFIR objective to increase transparency in bonds markets (see points 20 and 21 in the current consultation paper). Therefore, we supported and welcomed ESMA's decision in 2020 to move to the stage 2 for the liquidity test of bonds to increase the share of bonds defined as liquid, although leading only to a limited increase in transparency (0.32-0.48% of total bonds under stage 2 compared to 0.21-0.31% of total bonds under stage 1). Even though the impact of the move to stage 3 would be limited again as pointed out in point 25 of the current consultation paper (less than 3% of bonds would be considered liquid compared to approx. 2% under stage 2), in order to further increase the transparency of bonds we also support ESMA's proposal to move to stage 3.
Nevertheless, as pointed out in our response to the ESMA consultation on the transparency regime for non-equity instruments in 2020 as well, a broader review of the methodology to perform the transparency calculations might be necessary. Since the liquidity assessment criteria are reviewed on a yearly basis, we would recommend running simulations with next year's calibration (stage 4), in order to understand whether the impact on the number of liquid bonds will be substantial or not. Additionally, simulations with different transparency thresholds should be conducted to better understand the impact of the MiFID II thresholds. Lastly, a full assessment of the underlying data should be performed, taking also into consideration the ratio of volume traded under a pre-trade transparency waiver, and the data adjusted when required (before running new transparency calculations).
We would like to remind as well of the currently discussed consolidated tape (CT) for equities and bonds, which should provide for comprehensive and meaningful transparency to the public, including the retail investor. Transparency of bond markets across the EU shall increase trust and reduce cost of financing. In this context, we deem it important as well, that the phased approach by ESMA is being accelerated in order improve the availability of a meaningful set of bonds on the CT.
<ESMA_QUESTION_CP_MIFID_NQT_1>

Q2. Do you agree with ESMA's proposal not to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments except bonds? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_2>
As highlighted in our response to the ESMA consultation on the transparency regime for non-equity instruments in 2020, DBG supports ESMA's recommendation in its final report on that matter to remove the SSTI waiver and replace it with a reference to the pre-trade LIS thresholds potentially lowering them depending on the asset class. Under this approach, the move to the next stage for the determination of SSTI thresholds would not be relevant any longer.
However, in order to ensure increased transparency until ESMA's recommendation has been implemented, DBG appreciates the efforts by ESMA and NCAs to improve the data quality of many asset classes which so far prevented ESMA to conduct annual transparency calculations for instruments other than bonds to the full extent. Nevertheless, we would not agree that it is currently premature to assess a move to stage 2 for these instruments at this point in time. Rather, we would support a move to stage 2 for the determination of SSTI thresholds.
<ESMA_QUESTION_CP_MIFID_NQT_2>

Q3. Do you agree with ESMA's proposal to move to stage 3 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs)? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_3>

Please also see our response to the previous question regarding DBG's support of ESMA's recommendation to remove the SSTI waiver and to replace it with a reference to the LIS thresholds which would make the move to the next stage for the determination of SSTI thresholds for bonds obsolete. However, in order to ensure increased transparency in the bond market and foster a level playing field between different execution venues until ESMA's recommendation has been picked up and implemented on Level 1 and Level 2, DBG supports ESMA's proposal to move to stage 3 in the meantime, concurring with ESMA's analysis of such a move in the consultation paper.
<ESMA_QUESTION_CP_MIFID_NQT_3>