



European Securities and
Markets Authority

Reply form for the Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the scope of the consolidated tape for non-equity financial instruments, 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_MIFID_NET_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;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MiFID_NET_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_MiFID_NET_ESMA_REPLYFORM or

ESMA_MiFID_NET_ESMA_ANNEX1

Deadline

Responses must reach us by **05 December 2016**.

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 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 heading 'Legal notice'.



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MIFID_NET_0>

Deutsche Börse Group (DBG) supports ESMA's new proposal on CTPs per asset class, and rules for inclusion and dismissal of instruments and sources to the CTPs.

< ESMA_COMMENT_MIFID_NET_0>



Q1. Do you agree with ESMA’s proposal to allow non-equity CTPs to specialize their offering? Do you agree to the level of specialisation proposed or would you recommend a less granular or more granular approach?

<ESMA_QUESTION_MIFID_NET_1>

All current CTP regimes (US, Canada) are organized per asset class already¹

The idea of data consolidation had been introduced early in the debate at L1 of MiFID II but wrongly referring to a “Consolidated Tape” applied in the US. In the US, however, in fact several Tapes exist – each at least for a different asset class and as well several tapes even for equities (*each of the equity tapes specializing on a unique scope of equity instruments*). Those details had been blended out and the discussion at L1 evolved to focus on “one Consolidated Tape for all instruments” in the EU. This shortcoming may now be healed on L2 with the sensible proposal by ESMA. In this respect DBG strongly supports ESMA’s suggestion to allow specialization of CTP offerings according to asset class. We deem this to be a most sensible approach, which is in line with what DBG has argued since L1.

The proposal of CTPs per asset class has the following advantages:

ESMA’s proposal allows for a practicable and sensible data aggregation into manageable CTPs

If we are not mistaken ESMA recently referred to approx. 20-25mn financial instruments which will be affected by transparency requirements under MiFID II. Equity and equity-like instruments thereof represent approx. 7000 instruments only – the remaining instruments consequently comprise of non-equity instruments. Expecting a single CTP entity to undertake the significant and disproportionate challenge of aggregating and disseminating streaming real-time data for up to 25mn instruments and from potentially several hundred data sources, while at the same time no clear market demand exists for this, will not lead to a successful implementation of a CTP. Allowing for CTPs to develop per asset class is a sensible, efficient and proportionate approach.

ESMA’s proposal focuses as well on market data user needs

ESMA takes into consideration if asset class specific CTPs might be inferior to a full CTPs as regards convenience. This worry is ungrounded – to the contrary. Demand to receive full data for up to 25 mn instruments in one real-time data feed should be clearly non-existent while it would be extremely costly and disproportionate effort to technically receive and digest such a Tape. Only very few would be able to do so - if at all. ESMA’s proposal once adopted would allow for efficient access to aggregated data in an easily consumable way for everybody: users either directly access data provided by the CTP directly or they access the CTPs data via a Market Data Vendor. A Market Data Vendor, in his role as an “re-distributor” may offer access to one, several or even all CTPs.

¹ In the US data aggregation across fragmented markets is being organized as follows.

Real-time **equity data is aggregated per listing Exchange resulting in three Central Tapes, A, B, and C operated by different providers.** Consolidated Tape Association (CTA) and Consolidated Quotation Plan (CQ), for Tape A and B and the UTP Plan.

Besides those three equity Consolidated Tapes, there is **one Consolidated Tape for bonds, called TRACE. TRACE includes post-trade data on Corporate Bonds, ABS, MBS,** and newly SEC decided to include **Treasury Bonds** as well. All Data is being published with 15 minutes delay, as such significantly less delayed than most bond data may be delayed under MiFID II going forward.

Finally, there is a further CTP called **OPRA which is a consolidated Tape for Options data in the US.** OPRA is operated by the **Options Price Reporting Authority which consists of 14 Options exchanges** in the US.

In Canada the Toronto Stock Exchange operates the CTP for the Canadian Equity Market.



ESMAs proposal should encourage potential consolidators to step forward

ESMAs proposal will make regulatory requirements as introduced in MiFID II become more practicable and manageable. This could encourage more entities to consider the role of a CTP provider like in the US, where CTPs per asset class are operated by different providers. DBG is strongly convinced that there is no alternative to ESMAs proposal of CTPs per asset class.

Asset classes as suggested by ESMA do not match with data disaggregation requirements

For the avoidance of doubt, DBG would like to point out that only those instruments should be “consolidated” for which a fragmented market exists. In case certain instruments are not fragmented, data sources may have the opportunity to exclude them from a CTP in case they can provide evidence that trading in a particular instrument is not fragmented. We deem an opt-out clause to be an alternative to introducing a third asset classification besides RTS 2 and RTS 14. (Please see as well our answer to Q2.)

As regards the level of granularity defined by ESMA, DBG realises that ESMA is diverting from the data disaggregation structures as defined in RTS 14 while referring to those asset class structures are defined under RTS 2 Table 4 of Annex II and which slightly differ in terms of granularity into both directions. This would introduce additional requirements – currently not foreseen under RTS 14 – for trading venues and APAs. As an example: while Art 1 1. (iii) of RTS 14 refers to bonds and structured finance products, RTS 2 and ESMAs new proposal refers to “bonds (except ETCs and ETNs and structured finance products)” while classifying the latter in brackets as two separate groups at the side. Referring directly to RTS 14 instead, would allow for a clearer set-up of data packages to be made available under MiFID II which then could be consolidated without any further requirement to be addressed to the venues. However, this would not be 100% in line with the current set-up for calculating thresholds according to RTS 2.

DBG agrees that CTPs should be allowed to specialize in one or multiple asset classes

DBG supports ESMAs proposal to allow for a free decision of a CTP which combination of asset classes – in line with RTS 14 – a CTP would like to specialize in. This may vary between one or all asset classes.

<ESMA_QUESTION_MIFID_NET_1>

Q2. Do you agree that the threshold determining whether a trading venue or APA needs to be included in the CT should be based both on the volume and the number of transactions? If not, please explain and present an alternative approach.

<ESMA_QUESTION_MIFID_NET_2>

DBG comments are based on the assumption that Non-Equity Tapes should provide price transparency

While at the time of the initial discussions at L1 DBG already pointed out that we were missing clearly defined use cases for an equity CTP, while at the same time, Market Data Vendors were already providing consolidated equity data, we of course understand that this CP is not the right space to revert back to the discussion. However, we would have the same question again at this point in time.

Usually, form follows function when designing structural set-ups. The following comments as such are therefore based on the assumption that the Non-Equity Tapes should mainly bring new transparency to the currently mostly dark markets (the latter comment of course does not apply to non-equity instruments traded on Regulated Markets which are already made transparent as of today). Please note as well, that DBG expects Market Data Vendors to provide data consolidation on the (mostly new) non-equity data as well, once such data becomes available, similar to the set-up currently experienced in the equity market.



DBG in principle supports ESMA's proposal allowing CTPs to exclude trading venues and APAs of insufficient size

During this discussion DBG as well as other market participants suggested as well to focus on a reduced scope, meaning that some smaller equity trading venues should not become mandatory for the inclusion of their data into a tape. While we understood this to be a sensible approach for equity data at that point in time as well as today, we of course support it now for non-equity data as well. In this respect and in line with our comments above DBG in principle supports ESMA's proposal allowing CTPs to exclude trading venues and APAs of insufficient size.

Volume supported as main criteria for data source identification

Without a deeper analysis based on numbers it seems difficult to provide concluding comments to the question at hand. However, looking at it from a theoretical point of view we would suggest to keep it simple. DBG has a certain tendency to recommend to look at one or the other (volume or number of trades). We agree, however, this could result in the exclusion of certain, less liquid instruments which are traded in smaller lots and less volume overall even within a certain amount of time. We agree that data on less liquids could be of interest too to certain market participants.

DBG in principle agrees with ESMA's view that the entire data stream should be included – opt-outs should be possible

DBG in principle agrees with ESMA's view that the entire data stream in a particular asset class of a trading venue or APA should be included in the CT. This should be triggered once the size of the source - taking into account all instruments of that specific asset class distributed by the source - exceeds a certain threshold. We agree that this will be more straight forward than going down to instrument level which would at some point in time become unmanageable, increasing cost as well as risk. However, we would appreciate if there may be an opt-out for selected instruments which are not traded in a fragmented market and for which the data source can provide respective evidence that those could be allowed an opt out triggered by the data source. An example may be certain Futures which currently fall under the definition of equity derivative, and which would then have to be consolidated together with equity options data (for which in the US a Single Tape – OPRA - exists) while they are not being part of a fragmented market. We deem such an opt out clause a better way than further diverting from asset class levels as defined within RTS 14 or RTS 2. Alternatively, there could be a third granularity being introduced at EU level which would neither align with RTS 2 nor RTS 14.

<ESMA_QUESTION_MIFID_NET_2>

Q3. Do you agree with the proposed level for the threshold? In particular, do you agree that the threshold is set at the same level across all asset classes and for both the volume and number of transactions? If not, please explain why and propose an alternative approach.

<ESMA_QUESTION_MIFID_NET_3>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_MIFID_NET_3>

Q4. Which entity should perform the calculations? Should it be the data source, i.e. trading venues and APAs, or the CTP?

<ESMA_QUESTION_MIFID_NET_4>

DBG would strongly appreciate ESMA taking the active role in the provision and calculation of respective thresholds as ESMA will be in the position to have the overall information regarding volume and number of transactions within the EU. In line with this we would see ESMA as well in a role of maintaining a public list of CTP data sources. Consequently, we do not agree as regards Art 1 4. And 5. Of the Draft RTS.]

<ESMA_QUESTION_MIFID_NET_4>

Q5. Do you agree with the proposed calculation and publication frequency? Do you agree that only trading venues and APAs that have reported transactions covering the full reference period of 6 months should be required to carry out the assessment? If not, please explain why and propose an alternative solution.

<ESMA_QUESTION_MIFID_NET_5>

DBG supports ESMA's approach as regards a granted period of time for the inclusion of new data sources

DBG strongly appreciates ESMA's considerate proposal as regards the suggested structured model for the non-equity data consolidation. As in the case of an equity data source inclusion into a CTP, it is of essence that the CTP provider has sufficient time for integrating the new source, both technically (which may be a challenge with 6 months already depending on IT set-up and capacity planning) as well as from an administrative point of view. Going any shorter than six months would not be sensible and as such would not be supported by DBG.

As regards the proposed time lines we would ideally see a period of 1 year rather than 6 months in order to provide for a steady hand. Please refer as well to our comments made to Q 6 below.

<ESMA_QUESTION_MIFID_NET_5>

Q6. Do you consider it appropriate to provide for a grace period of up to 6 months after the first assessment date for including new sources into the data stream? Do you consider the proposed length appropriate?

<ESMA_QUESTION_MIFID_NET_6>

Sufficient time period for technical and administrative inclusion of new data sources required

DBG strongly supports ESMA's proposal as regards sufficient time for the technical integration of relevant data sources. In this respect, we deem 6 months to be the minimum period for any data source integration taking into account IT requirements.

We would like to stress as well that the structured review of thresholds within selected time periods (and resulting in the identification of relevant data sources) in principle supports an efficient inclusion of new sources into a data feed. However, we are concerned about one scenario where multiple new sources would need to be integrated all of them within a 6 month time frame. This could result in a scenario in which a CTP may not be able to deliver in time. We would therefore strongly recommend that ESMA defines a process which allows for a lengthening of the period in case necessary, unless ESMA decides on a longer period of 1 year already from the beginning.

<ESMA_QUESTION_MIFID_NET_6>

Q7. Do you agree that a source be only excluded if the thresholds are not met for at least three consecutive periods? If not, what do you consider to be the appropriate length of time?

<ESMA_QUESTION_MIFID_NET_7>

Avoidance of frequent changes required / deletion of Art 1 8. Of Draft RTS

DBG would like to point out that inclusions and exclusion of data sources usually require sufficient time for technical as well as administrative reasons. In this respect ESMA's proposal to exclude a data source only



after 3 consecutive months of missing the threshold levels goes into the right direction. We consider this to be the minimum time frame for that purpose.

We do not consent with ESMA, however, that the re-inclusion of a data source which once had been included will generally require less time. Depending on time elapsed in between, it is more than likely that the data source will have to be treated the same way as a new data source just for the avoidance of doubt. Consequently, we would like to see Art 1 8 be deleted completely.

<ESMA_QUESTION_MIFID_NET_7>