21 May 2024
ESMA74-2134169708-7262

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	German Investment Funds Association BVI
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Germany

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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_1>

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

<ESMA_QUESTION_CP1_2>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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 clarify how to classify sovereign, other public and corporate issuers.

<ESMA_QUESTION_CP1_4>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
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<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>
We broadly welcome the aim of the MiFIR review and therefore the intention of ESMA to either enhance the transparency and the simplification of the deferral regime for bonds. We support a more targeted reform especially of the bond deferrals regime that maintains the Sell-Side's market making and risk trading capacity in the fixed income space. However, we do not support the ESMA proposal in respect to the liquidity thresholds (please see p. 39 table 7) and the deferral regime for bonds (please see p. 45, tables 10-12).

We are generally supportive of a Buy-Side approach which calibrates the liquidity thresholds and the price and volume deferral regime for bonds in a more sensitive way, allowing Buy- and Sell-Side firms to trade in more transparency vs. trade out times in favour of an optimal pricing for their clients especially for large and illiquid trades. Our Buy-Side approach takes into consideration the Trade Out of Risk timeframes relevant to price in the market making and risk trading capacity of the liquidity providers. We will provide a detailed Buy-Side approach with in-depth figures as soon as possible after having reached agreement within the membership.

Our proposal aims to achieve more balance between mitigation of undue risk for liquidity providers and the execution of big (institutional) trade sizes by the Buy-Side-firms on behalf of their clients compared to the ESMA approach.

We would currently highlight the principals of our approach as follows:

- ESMA's public and corporate bond grouping approach is not calibrated fully to market needs. On the public bonds side we believe that at least the 6 largest sovereign issuers (DE/IT/FR/ES/US/UK) need to be in their own grouping. Putting these in the same grouping as other sovereign issuers is highly distortive and produces unacceptable results when trying to determine thresholds/deferrals. On corporate bonds we see the need to split the categories into liquid currencies (EUR/GBP/USD) and other currencies. For simplicity of administration reasons, we,however, do not suggest to split corporate bonds futher between IG/HY credit quality.
- Categories 0 and 5 should be divided liquid and illiquid in both public and corporate bond corporate bonds in order to better reflect the nature of the trading of bond trade sizes.

- Issuance (liquidity) size thresholds and trade size thresholds should be based on observations from the data using ADVs and trade size distributions across the different groupings. This suggests that for instance the trade (liquidity) size thresholds for certain issuers need to be larger.
- On the deferrals side we believe based on implied trade out times that that longer volume deferrals in Cat 1/ 2 are required.

<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>
Please note our answer to question 11
<ESMA_QUESTION_CP1_12>

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

<ESMA_QUESTION_CP1_13>
Please note our answer to question 11
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_15>

Q16 Do you agree with the maximum duration proposed?

<ESMA_QUESTION_CP1_16>

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<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_18>

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

<ESMA_QUESTION_CP1_19>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
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Q22 What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

<ESMA_QUESTION_CP1_22>

We disagree with any deferral periods for submitting aggregated trade data as aggregated data can't be processed by the CTP until it is disaggregated on a trade by trade basis.

<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>
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<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>
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>
TYPE YOUR TEXT HERE
<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>

We are glad to be invited to provide constructive and pertinent feedback on this part of the consultation. This is an opportunity for financial legislation to address the market failures associated with monopolistic market structures for market data.

The Reasonable Commercial Basis principle is simple enough to understand. However its correct application, given the complexity and sophistication of market data providers, is much more challenging. This is why we take the liberty to provide detailed feedback on key provisions where we fear that while the intent of the provision is obvious enough, it can in practice be circumvented.

We support in full the responses of the Nordic Securities Association (NSA) to this consulation to which we contributed and which may address some of the issues in more detail.

We believe that at this juncture, it is critical to articulate an enforceable RCB principle i) in order to avoid recourse to other parts of the law: i.e competition investigations which are costly and can take years to resolve, and ii) in light of the Consolidated Tape (CT) which should operate on an RCB principle. The accessibility and affordability of market dat directly or via the CT is key for our industry, and we believe a key contributor to the competitiveness and attractiveness of our capital markets. Capital market participants should not be held hostage to an unfairly priced data feed or consolidated tape. A robust RCB legislation mitigates against that.

In summary, we have identified a few areas which if unaddressed, contribute to weakening the RCB:

- Recognition that market data is a by-product of trading (cost categories should reflect this)
- Value-based pricing is prohibited (recital 12)
- Margin setting under Article 3 of the draft RTS can be improved
- Unfair commercial practices, especially on audit practices.
- Content, format of data

Furthermore, we support the proposal to extend regulation to provide for a level playing field. We also take the opportunity to congratulate ESMA for specifically invalidating existing value-based provision in the level 2 texts (CDR 2017/565, 2017/567):

The MiFIR Review removes the mandate for the Commission to clarify what constitutes a reasonable commercial basis. As a result, the provisions contained in CDR 2017/565 and 2017/567, permitting the set of fees on the base of the value of the data represented to the user, will no longer be applicable once the RTS on RCB starts applying.

We were very pleased that the revised MiFID text called for ESMA RTS to strengthen the ESMA MD GL and to *specify the elements included in the calculation of cost*. These elements should be limited to the costs associated with *producing and disseminating* the data..

While the cost category proposal in the draft RTS is elegantly laid out, we fear that it fails the first and most critical test: providing a view on actual costs of producing and disseminating data. The proposal lays out broad categories with shared costs to be 'appropriately apportioned'.

This fatally avoids a key tenet held by all users of data, which is that data is a by-product of trading. By not answering this question, the RTS opens the way for a generous interpretation of appropriately apportioned cost, since then cost of matching trades can also be considered a cost of market data production.

We see that another regulator, the UK FCA, in its 2020 report on wholesale data, had already reviewed this issue and confirmed that market data is a by-product of trading:

How does trading data work?

3.7 Many trading venues receive orders from different participants offering to buy and sell specific volumes of financial instruments (in particular more liquid asset classes) at different prices (collectively these buy and sell indications are called 'order books') via their electronic trading system. ***The trading venue system then matches buy and sell orders and facilitates the execution of trades, with additional trading data being produced as a by-product of the participant interaction****. Trading data may also be generated (mostly for less liquid asset classes) via non-order book formats such as requests for quotations (RFQs).*

Therefore, we cannot agree with the suggested approach. We believe it will make the RCB principle tooth-less, resulting only in a reporting burden on exchanges, but not making a material difference on market data fees.

This methodology reflects our belief that in conducting a cost analysis, it is both realistic and appropriate to segregate the costs of producing market data, for example, from the costs of other general aspects of an exchange's operation, including the receiving and matching of orders for execution.

We can suggest two potential solutions:

1. Retaining the existing cost categories, but amending article 2(1):

Article 2

Cost of producing and disseminating market data

1. *The cost of producing and disseminating market data shall be calculated by market data providers and only include costs that are directly associated with the production and dissemination of market data. These costs shall explicitly exclude any cost associated with operating a trading platform (the matching of buyers and sellers). The calculation of costs shall include the following cost categories:*

   For articles 2-4 we recommend the following amendment to be applied to all 3 sub-articles:

2. *Infrastructure costs which are shared with other services not directly related to the production and dissemination of market data shall be appropriately apportioned considering the usage of the relevant infrastructure by each service. When attributing costs for the production of market data, it is understood that market data is by-product of trading so that any joint production costs should be*

limited to the aggregation and formatting of the data but none of the costs associated with receiving and executing orders.

Article 5 and 6 should be deleted in the present form as they allow for undefined additional costs. It is precisely this type of open-ended language that should be avoided to prevent misuse of the cost methodology.

Limiting the cost elements to expenses directly associated with offering market data and connectivity. These expenses include, but are not limited to, networking equipment, servers, fiber optic network circuits, software licenses, data center space, data center power, data center security, and HR headcount. [1]Based on the Methodology of the IEX market data report we can construe a precise list of cost items which should be included in the calculation. Such a table should form part of a binding annex to the envisaged RTS. This embodies a cost-based approach which should only reflect the cost of administering and distributing market data. Once the production, packaging, contractual framework and downstream entitled distribution setup are in place, serving each incremental consumer is not associated with many additional costs for the provider/data source. This service provision is in stark contrast to the supply of standard manufactured goods or many other services, where the cost of input is strongly correlated with the amount of output: e.g. you need to buy more coal to produce more energy.

[1] This is the approach identified by IEX in their 2019 report on cost of exchange services

<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>

See our answer to Q. 26 The RTS should contain a list of the defined cost items which can be included in the calculation. In this respect we support the NSA proposal of a fixed list of cost items which can be included in the RCB calculation.

<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>

No, as only the directly attributable resources (i.e., infrastructure, personnel, software…) to produce market data should be considered cost of production. The trading venues should not be permitted to charge general overhead or cost of the trading system operation. The RTS should contain a list of the defined cost items which can be included in the calculation**.** See also our answer to Q. 26 and Q.27.

<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>

On Article 3, we propose the following wording:

Article 3

Principles in setting a reasonable margin for market data

1. The margin attributable to the production and dissemination of market data shall be the net profit generated from the production and dissemination of market data.

2. The margin attributable to the production and dissemination of market data shall:

a. be set as a percentage of the costs of production and dissemination of market data.

b. ~~not exceed disproportionately~~ shall only exceed the costs of market data production and dissemination by a small margin;

c. for market data providers who offer services other than the production and distribution of market data, be reasonable when compared to the net profit attributable to the overall business conducted by the data provider. Given the low incremental cost of producing market data for trading venues, market data profit margins should be within xx% of the profit margins in the market data vendor business.

3. The margin attributable to the production and dissemination of market data shall be achieved by setting fees for market data which enable data access to the maximum number of market data clients. Primary data providers (trading venues) manage data that is a natural monopoly. Once the conditions under Article 3(2)b are fulfilled, providers should price market data to attract the broadest range of market participants.

4. The reasonable margin for market data shall be set once, and shall increase or decrease in line with the EU inflation index thereafter (Harmonized index of consumer prices HICP; available at: https://ec.europa.eu/eurostat/databrowser/view/ei_cphi_m/default/table?lang=en

<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>
In this respect we support the NSA proposal.
<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>

There are several issues to be considered:

1. Various and overlapping fee types, different and unclear definitions, as well as restrictive and opaque market data policies.

2. Abusive contractual conditions, including lack of transparency and requirements to sign NDAs

3. Issues in relation to access to the fastest data via co-location as “the closest co-location” cannot be offered to all. It could be considered to stipulate what is the fastest access available and then this should be available to all the customers who wish to purchase this.

Cf. 1. At present complex and blurred market data policies and pricelists with unreasonable terms and conditions which differentiate between value-based user categories and are burdensome in all respects dominate the market. For example, fragmentation of licenses for the use of market data occurs when an area of usage of market data, which was covered by one license in one year, requires two or multiple licenses in the following year. Furthermore, licenses overlap whereby users pay for the same data several times. I.e. non-display data license used for trading and non-display data license used for not trading related risk management handling purposes. Additionally, when new licenses are usually is introduced for an area of usage of market data, which previously did not require a license at all. In both cases, the license fragmentation allows the data sources and providers to raise the total costs of the use of market data for the investment firms, without necessarily raising any existing license fee, by either splitting an existing license fee into two or multiple license fees, or by introducing new license fees altogether. In some cases, the data sources and providers may argue that their practice of splitting existing licenses or introducing new licenses is unbundling rather than fragmentation. Specifically, they may argue that they are making their system of licenses more use-case specific, i.e. aimed specifically at the needs of data user, which should result in cheaper licenses for those specific use-cases. But the data sources providers are, in fact, fragmenting licenses by ensuring that each use-case requires multiple new licenses. The fragmentation becomes indisputable when looking at the development over time of the license systems of the data providers. Here it can be seen that over time the same use-case requires many additional licenses at significantly increased cost. Hence, there was never any intention by the data provider to provide cheaper use-case specific licenses through unbundling. Rather, the intention was to increase revenue through fragmenting. Furthermore, the restrictions in usage for various license types are designed to make it impossible for data users to go without any overlapping data licenses offered by the data sources and providers. Previously, the differentiation of licenses for the use of market data was largely based articulated around display and redistribution licenses. Some years ago, non-display licenses for computer-to-computer data feeds came in scope. The various licenses are defined in many ways across the trading venues, which highlights the lack of standardization in the industry.

However, display data can be generally described as data being consumed on a screen by a human user, whereas non-display data is directly fed into applications, i.e. non-displayed. Each of those two categories have now seen the number of licenses significantly increased by new fees introduced by the trading venues. The new fees may be differentiated according to the specific use of the data, e.g. the particular type calculations performed on the data such as indices or benchmarks, or the creation of more advanced so-called derived data. Furthermore the time of use leads to new licenses, e.g. delayed data which by law is free to use after 15 min is deemed as licensable as "historical data" after t+0 , see also further elaboration in the sections below.

Double agreements are commonplace for data users who receive data from data vendors. Typically, data users still must enter into the standard agreements with the exchange, e.g. a data distribution agreement and perhaps specific agreements for types of data, and an agreement with the data vendor, e.g. a master agreement with schedules. This leads to a situation, where all the terms and conditions set by the exchanges that would apply, if the data user received data directly from the exchange, still apply and remain enforceable, e.g. through audits, although the data is received through a data vendor. In addition, the data user also has to comply with any additional terms and conditions set by the data vendor. In sum, receiving data though a data vendor does not lead to more flexible terms and conditions for the use of market data.

We strongly encourage ESMA to ensure that such behavior is stopped with the new regulatory framework. However, we are concerned that i.e. the data vendors, benchmark providers, CRAs, ESG-providers are not in scope for the regulation as 1) we see those data providers are exploiting the fact that they are not in scope and 2) if they are not in scope, it would create an incentive for data providers in scope of the regulation, to direct their data business into data providers within their group, which are not in scope for the regulation. This development is already ongoing with increasing pace due to the vertical and horizontal consolidation in capital market infrastructure. The behavior of vendors, benchmark providers and CRAs is also described in UK FCAs reports, where some of the key findings related to these providers' business cases replicates the problems as these also are related to market data (although in a value-added format in contrast to the trading venues' raw market data). They face a rather similar market power and ability to acquire monopoly rent as trading venues.

Market data vendors (including CRAs and ESG providers) play a key role in the distribution of trading data and other sources of market data. Data vendors generally provide desktop or web-based products with sets of content such as order, trade and reference data from multiple exchanges, research, analysis, GDP, CRA, benchmarks and statistical data and news. Data vendors may be able to get data from third parties, while other content is developed or owned by the data vendor. There are only a few vendors, and the persistent and significant market share is concentrated around Bloomberg and LSEG (Refinitiv) limiting efficient competition. Also, the vertical integration increases this effect and limit competition and choices. The challenges are i.e. that vendors are bundling core services with data services, which may make it difficult for users to switch to alternative data products/services and potentially sustaining higher levels of market power of data vendors. The vendors are imposing complex and restrictive terms and conditions around data usage, e.g. higher costs for users for minor variations in terms of use and not publishing price lists or methodologies. There are high barriers to entry, making it difficult to enter the data vendor market and there are high charges upon renewal of contracts. Additionally, where exchange offers are both aggregated and non-aggregated data due to requirements in MiFIR, other data providers only offer aggregated data as they are not obligated to disaggregate. Furthermore, for access to i.e. exchange market data through a vendor, users need to

contract directly with the market data source generator (the exchange) as well as with the vendor. As mentioned, there is only very limited switching between vendors. This is not at least due to the switching costs, the request from clients to use certain vendors (network effect), the limited amount of "relevant" vendors etc. From the supply side, smaller vendors face that the client base is "sticky" which prevent these vendors from expanding their activities and gaining significant market share.

Benchmarks are used by a wide range of market participants, typically as a reference for index tracking funds, to evaluate an active manager's performance (where the fund performance is measured against a selected index), or in structured products, in which case the pay out of the product is directly linked to the performance of the index33. Indices are calculated on a variety of input data and methodologies, where one way of classifying an index is by the asset class of the underlying assets (such as equities, fixed income, commodities, interest rates, foreign exchange etc.). Other approaches are geographic markets, sectors, themes such as ESG. Users mainly access benchmarks and indices either directly from providers or indirectly via vendors. The supply of indices and benchmarks is provided by index providers or benchmark administrators. These benchmark and index providers develop, calculate and maintain a range of indices and earn revenue from licensing the benchmark/index use to clients. A benchmark provider holding trading data have an incentive to increase prices or hinder data access to firms who could use them to design alternative benchmarks. This could create barriers to entry or expansion and reduce overall choice in the market. This market power to "nudge" the development is not the only market power benchmark providers have:

On the demand-side there are significant preference for established benchmarks and indices ("must-have"): If end clients tend to prefer products that are referenced to well established benchmarks and indicies and brand recognition is key to success, strong market positions may tend to reinforce themselves. These preferences may also limit new entrants to the market.

With that in mind, we welcome the ESMA proposal to recommend the European Commission to use its legislative power to create a level playing field between the market data providers subject to MiFIR2 and those providers which are not in scope for MiFIR2 as suggested in point 235. However, we strongly recommend that the scope will cover all data providers and not only vendors, but also benchmark providers, CRAs, ESG-providers, as all of these data providers exploit that they are not in scope. We suggest that the regulatory framework should be created in a futureproof way so the description of data providers is generic and can embrace new kind of data providers – a recent example of a "newcomer" is ESG-data providers.

Cf. 2. The Exchanges have imposed abusive conditions in their license agreements. Conditions in the market data license agreements are, to a very high extent, biased in favor of the Exchanges, while buyside and sell side investment firms have no bargaining power in the agreement negotiations. In this context, the investment firms are forced to sign NDAs and there is no transparency in the negotiation. The Exchanges can impose such conditions due to their position as unavoidable trading partners holding the key to the market via an essential facility. In essence, these are contractual conditions that would never be accepted in a market with effective competition. The conduct of the Exchanges leads to discrimination, as dissimilar conditions are applied to similar transactions. Specifically, the underlying product sold by the Exchanges, i.e. access to the use of market data, is similar regardless of who buys access to the product and what the product is used for. This means that transactions with different investment firms or other buyers of market data, but concerning the same packages of market data, are, in fact, similar from the point of view of the Exchanges. But the Exchanges apply dissimilar, and often arbitrary, conditions to such similar transactions.

The dissimilar conditions arise from special licenses for various uses of the market data. This may, for example, entail licenses covering the use of market data for derived data, i.e. the creation of own data based on raw market data, or the use of market data for external distribution, i.e. distributing the raw market data to a client. In sum, the dissimilar, and often arbitrary treatment, of similar transactions leads to discrimination between investment firms who need the market data for different uses. This will distort competition and create competitive advantages and disadvantages among investment firms and other buyers of market data in an arbitrary manner.
<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>
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<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>

We believe that Article 5 as it is currently expressed is flawed, as it opens an approach to reintroduce value based pricing, which is prohibited in the Level 1 text.

Any categorisation should be strictly limited to legal entity (i.e professional clients) vs natural persons (non-professional clients), where there is a clear difference in both amount of data consumed, and their use of data. Any further categorization of data *within* the professional client category is tantamount to value-based pricing. The cost of producing and disseminating market data does not differ among customers. If anything, costs should have decreased during the past decade due to development in the underlying technology used in distributing the market data and the hardware.

We suggest the following wording:

Article 5

Differentials in fees

1. When applying differentials in fees, market data providers may not recur to categorisation of clients other than professional vs non-professional clients as defined in (MIFID). The number of professional clients shall be determined only on the basis of the legal entity using the data. The legal entity shall be identified with the Legal Entity Identifier (LEI -ISO 17442). The non-professional client shall be identified as a single natural person. Employees of professional clients do not count as non-professional clients.

2. The margin, established in accordance with Article 3, is the same for all clients.

3. Where there are significant different extra costs for the provision of the market data to the same client, because of non-standard delivery requirements, including lower latency requirements; market data providers may add an increment to the applicable fee determined by the extra costs incurred.
<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>

Regarding redistribution of market data, the number of professional clients shall be determined only based on the legal entity using the data. To the extent that a legal entity is redistributing the data, e.g. within a group, it needs to disclose the names or number of the legal entities it is redistributing the data to enable the market data provider to license these legal entities directly. To the extent that a legal entity is redistributing the data and elects to disclose only the number of the legal entities it is redistributing the data to, the redistribution legal entity must take out the required number of licenses for these legal entities. The disclosure of the number of non-professional clients to which a professional client is redistributing data can be based on a reasonable estimate. Basing the professional user numbers on the number of legal entities using the data provides for an easy to administer and fair system of cost attribution as larger groups with multiple legal entities pay more than small groups with a single or small number of legal entities. By identifying the professional users based on their LEI, there is no argument on whether a certain department or other unit of a group a legal entity is or not. For non-professional clients a reasonable fact-based estimate of the number of data users should be sufficient. Establishing the exact number of natural person users is a considerable and in part futile effort because of the volatility of the day-to-day number of users / employees as well as administrative hurdles (GDPR disclosure limits or no data source on the number of TV viewers watching on screen price feeds). Already the establishment of the number of natural person users within legal entities for the purposes of calculating today's display user licenses is a nightmare as evidenced by the administration of e.g. Bloomberg user IDs.

With reference to paragraphs 234-235 of the consultation textwe support the proposal for the European Commission to use its legislative power to create a level playing field between the market data providers subject to MiFIR2 and those providers which are not in scope for MiFIR2 . A new legislative proposal in this area should take care to cover all data providers and not only vendors, but also benchmark providers, CRAs, ESG-providers. These currently do not fall in scope of MIFIR and the Reasonable Commercial Basis principle. We suggest that the regulatory framework should be created in a futureproof way to provide a description of data providers that is generic and can embrace new kind of data providers, and could be based on the DORA ICT definition as a starting point.. This would capture relatively new data types like ESG data providers, where we find similar issues of natural monopolies, poor data quality and very high margins for regulatory-mandated data. The matter is urgent as already today non-EU based trading venues providing market data to EU based users are not subject to the user protection requirements of MiFID/MIFIR.
<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>

- We support all of the provisions introduced by ESMA while proposing some changes to articles 14-16 as per the below.

- Some aspects that still need to be considered:

    - In practice, data providers establish the business contracts in non-EU law (usually US law). There is a difference in how non-EU law and EU law deal with the burden of proof: even If ESMA introduces a reverse in the burden of proof to favor data users, we fear that the contracts being established in US law, the burden of proof would still fall on data users in those jurisdictions.

    - For the same reasons, the legal fees being extremely high in the US, data users usually never go to a US court to challenge a contract with a data provider.

    - Consequently, unless the contracts with EU data users are not mandatorily established in EU law, the provisions introduced by ESMA might have limited impact.

    - ESMA's state of play missed clauses under which data providers require data users to delete all of the historic data obtained din the past if they were to terminate the business relationship. This is an abusive clause that should be dealt with by ESMA under the RTS.

    - We reiterate the importance of unbundling.

<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>
We support NSA considerations.
<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>

Yes, most exchanges offer the “per Natural User” option (per physical user) – however, each customer has to go through a very cumbersome process to get pre-approved to participate in the netting program which is necessary to avoid double counting of the same natural person using different applications which use the same market data feed. This is why investment firms would only request to report as a per-user (instead of per user ID) if they can see a considerable benefit (especially looking at the resource intensive procedure to meet all natural person user identification requirements. It is a process which lacks transparency and standardization since each data vendors will report the investment firm’s users accesses directly to the exchange and the investment firm will report its users directly to the exchange. It is then the exchange which tries to match all the different reports to verify that they are providing identical information. This is why this per-user process must be simplified or be abolished by including all physical users in the enterprise license which is sour primary suggestion. If,however, the per natural user count can’t be abolished for professional clients we may suggest the following approach for reporting each real time accesses per physical users using the “per-user model”:

The situation today can be described as the following:

- **Situation today:** The exchanges are performing the “per-user model” meaning the netting reconciliation (matching) based on the information from the data user (an investment firm) and one or more data vendors. The data user collects each real-time subscription from different internal entitlement systems and reconciles those into a single internal inventory system. Each vendor has its own entitlement system which may contain divergent information due to technical registration issues or miscommunication with the data user (requesting to cancel accesses), the data vendor registers the data user’s users with different client ids and their registrations may be done on an uneven, period way compared to the data-users. This leads to different reporting to the exchanges and therefor problems with the netting reconciliation. There is no transparency in the process, since as data-users we have no access to view the data vendor’s registration of their users in their internal systems. Each exchange has its own “per-user” reporting procedure, where some might use an Excel Sheet to be sent by email while others have their own reporting website.

- **Proposal**: There should be one centralized “per-user” reporting platform where each market data user connects using its unique identifier and would have access to view the information that each data vendor holds regarding their users for each exchange, and thereafter be able to compare with its own inventory of subscriptions. Each data vendor connects using its unique identifier and would have access to view the information that each of its customers holds, and thereafter be able to compare with its own registration of subscriptions. Each exchange connects using its unique identifier and would have access to view the information that each customer of theirs and each data vendors of theirs have respectively – and thereafter be able to view the reconciliation (netting) report as prepared by the data user (since it is the responsibility of the data user to report, as part of the signed exchange agreement).

  The respective market data users, the relevant data vendors and exchanges should be able to connect their internal entitlement system using an API to upload user subscription files (instead of having to enter users manually). The data users will also need to include their “single data user key” (to identify each physical user by using a single ID – or have the platform generate such unique key

for each physical user, to avoid breaches with GDPR) to make the link between the vendors various user ids for this single physical user). All three parties would have then access to the same information (note: data vendors should not be able to view accesses from other data vendors). The systems should have a matching facility (netting reconciliation) and when there is a mismatch the data user can investigate where this reconciliation failed and ask the data vendor to correct the information or amend its own reported information if incorrect. The netting reconciliation must be based on both entitlement and active usage reports. There is a need for an audit trail to prove access to data use (usage file) and as to what corrected (including an explanation). This tool should have a communication function, to avoid a lot of emails back and forth between the different parties – and it could serve as explanation as part of the audit trail. This proposal will provide the needed transparency, a simple process compared to today and a possibility to act instantaneously in case of different/wrong information provided.

<ESMA_QUESTION_CP1_37>

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

<ESMA_QUESTION_CP1_38>

We suggest the following wording:

Article 14

Penalties

I. *Market data providers shall clearly indicate in the market data agreement the infringements to which penalties are applicable.*

The amount of penalties shall not unreasonably exceed the fees the client would have paid in case of compliance with the market data agreement.

II. *A penalty payment request shall be made only within a reasonable time, not exceeding two years, from the infringement occurrence, and shall be based on clear evidence of the infringement occurrence.*

Article 15

Audit

1. *Audits may be requested by market data providers in case of serious indications of infringement of the market data contract to ascertain whether a breach occurred. An infringement of the market data agreement cannot be presumed but needs to be established on the basis of clear evidence (no reverse burden of proof). During an audit, information requests shall be limited to what is strictly necessary to collect evidence in respect of the alleged infringement.*

2. *An audit shall cover a reasonable period of time*, not exceeding two years.

3. An audit shall not take place later than six months after the termination date of the agreement.

Article 16

Market data agreement amendment

The market data provider shall give notice to the market data client of any unilateral change to the terms and conditions of the market data agreement, including terms and conditions relating to fees, at least one year in advance of the relevant amendment entering into force. Where the amendment results in a change of the fees or may have significant impacts on the client, the market data agreement shall foresee the right of withdrawal for the client without additional fees or penalties.

In case of dispute, the market data provider shall continue the services based on the agreed terms of the agreement until the dispute has been resolved by an order of a public court of first instance or a court of arbitration.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_38>

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

<ESMA_QUESTION_CP1_39>
Please see our answer to Q.38.
<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>
Please see our answer to Q.38.
<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>
Please see also the answer of NSA.
<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>
Please see also the answer of NSA.
<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>
The concept of the "user-id" and the "device" as "unit of count" for the display and non-display data respectively, should be abolished . There should be a single per professional user / legal

entity based “enterprise” license encompassing both display use for all employees / clients of a firm , and non-display use in all applications and systems within the firm. Display licenses should only exist for non-professional clients which are natural persons in the majority.
<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>
Please see answer to Q.43.
<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>
Please see our answer to Q. 26, and the NSA statement.
<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>
Please see our answer to Q.36 and the NSA statement. We are of the opinion that delayed dat is free to use without fee or license requirements after 15 minutes. The use of so-called historical data licenses which convert free delayed dat at the end of t+0 into payable dat licenses should be expressly prohibited.
<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>
Yes, please see our answer to Q.46 and the NSA statement too.
<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>
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<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>
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<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>
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<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>
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<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>

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<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>
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<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>
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<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>
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<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>
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<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>
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<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>
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<ESMA_QUESTION_CP1_58>

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

<ESMA_QUESTION_CP1_59>
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<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>
We generally welcome the Delegated Act (DA) proposal by the EU Commission[3] to use the OTC ISIN as an ISO-identifier for the purpose of the MiFIR transparency requirements. Since 2002, the BVI has advocated for automation in the financial market based on ISO standards, in particular the use of ISO identification numbers. BVI was instrumental in the EU's regulatory decision on the production of the OTC ISIN through the (newly) created ANNA-DSB in 2016 and for ensuring that use of the identifier in reporting is offered in as cost effective a manner as possible.

In respect to the EU Commission proposal, we would like to make the following comments:

- **Credit Default Swaps (CDS)**

With respect to the CDS recommendation, we assume that there will be no changes made to the existing definitions of these products and therefore embrace the proposal.

- **Interest Rate Swaps (IRS)**

When considering changes to the definition of the Interest Rate Swaps, we note that the fields 1 – 14 are already part of the existing OTC ISIN definition and therefore support their inclusion in the DA. We also advise that field 15 of the IRS proposal is an ISO 4914 (UPI) standard and this field is also part of the OTC ISIN and therefore involves no change to the OTC ISIN. Since no change is expected in this regard, we support this proposal.

With respect to the revised definition of date/term attributes (fields 16 – 18), we agree with the proposal to remove the Expiry Date since; by eliminating the daily rolling of the OTC ISIN for IRS products, a more stable OTC identifier is made available to the market participants. The restriction of Term of Contract to whole year terms will result in a single OTC ISIN being assigned to all broken dated contracts but with each benchmark swap having its own unique ISIN. This approach to reduce the number of ISINs but only for broken dated swaps is acceptable to us in the interests of a compromise.

We further welcome the EU Commission's proposal to distinguish between spot starting swaps and forward starting swaps. The EU Commission proposes to do this via the introduction of a Forward Term Indicator. However, we would like to propose that the Forward Term Indicator should be replaced with an attribute that supports the definition of whole year forward terms. Therefore, it would be possible to distinguish between the standardised 5Y 5Y Forward and a broken dated forward starting contract. Such a distinction is important to our members.

We acknowledge that the additional (stable) attributes (fields 19 – 32) are helpful to define precisely the swap being traded. However, our members trade generally IRSs with normal market conventions and therefore population of these values will likely be problematic because they may not be stored in the asset manager IT 'systems. Therefore, we support the addition of these attributes only if the DSB will provide default values for these attributes based on market convention, so that these values do not need to be provided by market participants who trade on standard terms.

- **Alignment of transaction reporting with MiFIR and EMIR**

We strongly agree that the same OTC ISIN should apply across transparency, MiFIR transaction reporting and EMIR. Using the same OTC ISIN implementation will reduce the cost of regulatory compliance to our members.

We strongly encourage also ESMA to take the above-mentioned comments into considerations and support the Commission view to use the OTC ISIN as an ISO-identifier for the purpose of the MiFIR transparency requirements.

[3] Over-the-counter (OTC) derivatives identifying reference data for the purpose of public transparency (europa.eu)

<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>
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<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>
We strongly agree with list of identifiers and the ISO 20022 dictionary for data elements presented in recital 351 (p. 100). Since 2002, the BVI has advocated for automation in the financial market based on ISO standards, in particular the use of ISO identification numbers. BVI was instrumental in the EU's regulatory decision on the production of the OTC ISIN through the (newly) created ANNA-DSB in 2016 and for ensuring that use of the identifier in reporting is offered in as cost effective a manner as possible.
<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>
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<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>
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<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>
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<ESMA_QUESTION_CP1_65>

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

<ESMA_QUESTION_CP1_66>
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<ESMA_QUESTION_CP1_66>

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

<ESMA_QUESTION_CP1_67>
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<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>
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<ESMA_QUESTION_CP1_68>

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

<ESMA_QUESTION_CP1_69>
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<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>
No, we do not see generally any challenges with the use of JSON format compared to XML. BVI supported in the past XML and JSON usage as part of our general support of ISO 20022 based messaging. However,

more importantly than a single protocol would be a single CTP established taxonomy/ ontology which would apply to all transmission standards and would be flexible to future challenges. Standardizing the way in which information is transmitted to the CTP can promote the interoperability of that information.

The formats that the CTP will use to digitally receive information we refer to as data transmission formats. For certain information, submitted data may refer to one or more schemas, taxonomies, or ontology models that describe the syntax, structure, or semantic meaning of the data. These can be used to validate and explain the data. A high-quality machine-readable description of the syntax and structure of a data asset allows for automated verification of the associated data asset. A high-quality machine-readable description of semantic meaning of a data asset ensures that the specific meaning remains clear as the data asset is transmitted to multiple parties. For the suggested joint CTP standard(s) for data transmission and schema and taxonomy formats, we propose to establish that the data transmission or schema and taxonomy formats have, at a minimum, four properties.

Specifically, the proposed properties would be that the CTP required data transmission and schema and taxonomy formats will:

- Render data fully searchable and machine-readable;
- Enable high quality data through schemas, with accompanying metadata documented in one or more machine-readable taxonomy or ontology models, which clearly define the semantic meaning of all the data needed by the CTP, including but not limited to the underlying regulatory CTP information collection requirements in MiFIR;
- Ensure that a data element or data asset that exists to satisfy an underlying CTP information collection requirement be consistently identified as such in associated machine-readable metadata; and
- Be non-proprietary or available under an open license.

Under our proposal, any data transmission or schema and taxonomy format that has these properties would be consistent with the proposed CTP established data transmission standards. There are currently various data transmission formats that generally have these properties – for example, there are methods of using Comma Separated Values (CSV) or other delimiter-separated files, eXtensible Markup Language (XML), and Java Script Object Notation (JSON) in manners that satisfy these properties.

We propose that the CTP establishes one or more joint data transmission standards that refer to lists of properties rather than any specific data transmission or schema and taxonomy formats for several reasons. Firstly, any data transmission or schema and taxonomy format data standards with all the properties of the CTP standards would satisfy all the CTP processing requirements. Second, data transmission or schema and taxonomy formats that have these properties are likely to be interoperable with each other. Interoperability is an important consideration for the CTP operation. Finally, under this approach, the CTP could take in new open-source file formats as they are developed, and maintain consistency with the CTP joint standards, provided that the new formats have the listed properties; the CTP data transmission rules would not need to be amended to specify new formats.
<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>
TYPE YOUR TEXT HERE
<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>
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<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>
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<ESMA_QUESTION_CP1_73>