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

03 October 2016 | ESMA/2016/1422

European Securities and Markets Authority

Date: 03 October 2016

## 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>

EU Transparency Register: 550494915045-08 – contact:  Ms. Beata Sivak: BSivak@lseg.com

**About London Stock Exchange Group**

London Stock Exchange Group (LSE.L) is a diversified international market infrastructure and capital markets business sitting at the heart of the world's financial community. The Group can trace its history back to 1698.

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< 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>
LSEG appreciates that ESMA has taken a balanced approach to the non-equity consolidated tape, hoping to achieve a reasonably good coverage of the non-equity space, while maintaining commercial attractiveness for the potential CT providers.

We have no objection to the proposed breakdown per asset class, provided that the asset class allocation is consistent across all venues. Aligning the asset class groupings with the transparency regime is also welcome.

We agree that the greater granularity, the higher potential attractiveness to provide CT, however this may require users subscribing to several different tapes, in order to capture the market fully.
<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>
LSEG disagrees with the threshold. While breakdown per asset class is sensible, the introduction of the threshold goes against the spirit of a consolidated tape.

A CTP should provide complete coverage across all trading venues and APAs in the asset class or classes it has approval to operate in. This is because:

1) The purpose of a CTP regime is to provide complete coverage across the market, not partial coverage - the same principle adopted in the equity CTP approach by the Commission. Even if the market is fragmented, the regulation provides appropriate tools in order to detect the post trade flow (through trading venues and APAs) that has to be included in the tape;
2) Excluding the smallest venues/APAs from the CTP is potentially anti-competitive and potentially reinforces the market position of the existing largest venues / participants;
3) Although the threshold approach may reduce costs for the CTP by it not having to connect to multiple data feeds, it is not clear whether the cost savings would be material and in any event, any additional costs can be reflected in the CTP tariff schedule, in accordance with the principles established by the reasonable commercial basis (RCB) requirement;
4) The threshold proposal itself introduces an overly complex and costly process, offsetting any costs saved by not simply including all data feeds in the first place.

In conclusion, ESMA's approach risks reducing competition from new entrants in the APA and trading venue space, as they are unlikely to be taken up by a CTP for some time. Users signing up to a CTP would expect a whole market view of the trades – in the case of a highly fragmented

market, ESMA's approach may mean that a significant proportion of business, when considered cumulatively, is not provided by a CTP.
<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>
See our comments above. LSEG (Trading venue / APA) would not have the data necessary – both total volume / total number of transactions reported in the Union – to make a judgement on the level of threshold.
<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>
As above, we disagree with the proposed threshold approach. However, if ESMA adopts the threshold approach, LSEG believes that for the reasons stated above, ESMA would be best placed to perform the calculations and should be responsible for monitoring which data sources should be included. As a second preference, the CTP provider could perform the calculations and be responsible for monitoring which data sources to include; the onus should not be on the trading venues or APAs.

LSEG would make the post trade data available to any CTP provider on a reasonable commercial basis and it would be CTP provider's decision whether to carry the data or not.
<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>
We disagree with the proposed threshold approach. However, the six month reference period proposed by ESMA would substantially delay the inclusion of the new APA or TV in CTP, for instance, in the example provided in paragraph 18. This could be alleviated by considering a quarterly reference period for calculations.
<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>

The principle seems sensible, but on the basis that the CTP is intended to cover the entire market, we suggest a period of three months should be considered.
<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>
We disagree with the proposed threshold approach. However, if ESMA adopts the threshold approach, the principle of exclusion after failing to meet the thresholds for at least three consecutive periods seems sensible, however, we consider that the periods should be three months instead of six.
<ESMA_QUESTION_MIFID_NET_7>