esma European Securities and Markets Authority

Reply form for the Consultation Paper on the RTS 1 and RTS 2 Review

9 July 2021

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the RTS 1 and RTS 2 review 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_RVEW_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and

- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;

- indicate the specific question to which the comment relates;

- contain a clear rationale; and

- describe any alternatives ESMA should consider.

Naming protocol

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

ESMA_CP_RVEW_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_CP_RVEW_ESMA_REPLYFORM or

ESMA_CP_RVEW_ANNEX1

Deadline

Responses must reach us by 1 October 2021.

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 headings 'Legal notice' and 'Data protection'.

General information about respondent

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

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_RVEW_1>
Deutsche Börse Group (DBG) welcomes the opportunity to provide its views on ESMA's review of RTS 1 and RTS 2. ESMA's recent reports and own analysis as well as respective feedback from industry participants have shown that transparency objectives and disclosure obligations still suffer from inconsistencies, inadequacies and ambiguities when it comes to content to be provided and formats and methodologies to be used. While we share ESMA's views that some of these shortcomings require changes of MiFID II/R directly, we explicitly welcome ESMA's efforts to address some of them by targeted amendments to the respective technical standards. We also do support ESMA in its efforts to facilitate a more concise and consistent view of trading activities across asset classes and do very much agree that as a necessary first step remaining gaps in data content, reporting formats and classification of trading systems need to be harmonized to the extent reasonable. As an important caveat, we ask ESMA to consider the significant differences between markets and asset classes that require a targeted approach that addresses these specificities and supports and fosters a stepwise increase in transparency. We do acknowledge that ESMA is mindful of these differences by seeking stakeholders' views on the appropriateness and applicability of a harmonized approach across asset classes and provide our views in the respective parts of the consultation.

We would like to raise ESMAs attention to the following remarks that reflect our main concerns, considerations and policy proposals.

- DBG **agrees with ESMA's proposal to increase the pre-trade LIS threshold as well as the deferred publication thresholds for ETFs.** While this change would go in the right direction, we urge ESMA to complement this measure with additional steps to further promote transparency for on-venue trading of ETFs and to level the playing field between RFQ trading systems and lit order book trading systems. **ESMA may consider implementing a pre-trade transparency regime for RFQ trading systems similar to that for lit order book trading systems**. This would require the publication and dissemination of each quote submitted in response to a sub-LIS RFQ immediately after the reception of the quote by the RFQ trading system.
- **DBG agrees with ESMA's statement that a clearer regime and more consistent reporting and flagging of non-price forming transactions shall be achieved via targeted amendments to RTS 1.** We also agree that concepts like non-addressable liquidity or technical trades do not require formal definition at Level 1 or Level 2 of the regulation. We agree that both Article 2 and Article 6 of RTS 1 shall be reviewed to simplify the legal regime for market participants and the alignment with Article 2(5) of RTS 22 appears sensible.
- DBG welcomes ESMA's proposal to set tailored pre-trade transparency requirements for Frequent Batch Auctions (FBAs) in order to provide more meaningful pre-trade information to investors. However, **the proposed definition of FBA, the amended definition of periodic auction trading systems as well as the interplay between both definitions require further considerations** to ensure a consistent and frictionless classification regime and adjacent transparency requirements that meet the specifics of the respective systems more accurately. **It is important that the FBA definition captures only those auctions that meet all of the characteristics outlined in the consultation paper.** ESMA had rightly identified very short durations and the absence of human intervention as critical design features of any auction trading system that shall be covered by the

FBA definition. While we acknowledge that quantifying an appropriate threshold to cater for the short duration of an auction is far from trivial, we urgently call to consider integrating this feature into the proposed definition. Further, the definition should also reflect that for an appropriate delineation of existing systems a reference to manual intervention shall be included in the FBA definition. Finally, we question the reference to "during continuous trading hours" as this is not consistent with the definition of periodic auction trading systems which does not determine any specific session to run those auctions. Hence, we would ask for "during continuous trading" to be removed from the FBA definition.

As regards the definition of periodic auction trading systems, **we reject ESMA's proposal to providing an exhaustive list of auctions falling under the definition.** Rather, we urge ESMA to maintain the current definition for periodic auction systems, i.e. a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. This definition has established proven and well-working auction mechanisms and does not require modifications. **Should ESMA nonetheless want to pursue with adding an exhaustive list of systems, we call for "intraday auctions" to be included to avoid any confusion**.

With a view to ESMA's considerations to apply the concept of FBA for systems within the realm of RTS 2, **we are concerned that such a direct transposition does not appropriately cater for the structural distinctions between equity and non-equity markets and may lead to unintended consequences.** We therefore recommend to developing a more precise definition of FBA in the non-equity space.

- Considering our comments on the FBA definition and the trading systems covered**, we cannot recommend a suitable option for the pre trade transparency requirements for FBAs.** As per the description proposed by ESMA in this consultation, we have identified that some of the trading systems that would fit to the definition already provide a level of pre trade transparency which is optimal and calibrated to the needs of the investors, be it more in line with Option 1 or more in line with Option 2. **We would therefore advise to provide the operators of FBAs at least with the flexibility to choose between the two options. Both options fit different situations and products and a one size fits all approach would not be beneficial.**

- Regarding ESMAs proposal to require a specific format and standardise further the pre-trade information to be disclosed, we welcome its intention to further harmonize transparency data and to make them consistent and comparable across different sources. While we generally support a further alignment of requirements in the pre-trade data sets, **we consider a common format as not required, and to the contrary potentially harmful**. **It is important to make a clear distinction between "data format" and "information content" and we assume that ESMA intends to harmonize the "information content" rather than the "data format"**. This is an important difference as the binary format is the way how real-time information is transported and published by trading venues, systematic internalisers (SIs), approved publication arrangements (APAs), and market data vendors. Transporting large volumes of transaction data, and even more so quote data in a text format would significantly slow down any real time data dissemination.

- Regarding changes to Article 17(2) of RTS 1 on the dates of application of transparency calculations (Article 17), **we ask ESMA to adjust as well RTS 11 on the tick size regime and to align both regulations with application of yearly calculations from the first Monday of April.**

- **We disagree with ESMA's proposal to delete the ACTX flag**. The ACTX flag is the only flag for post-trade transparency purposes that allows to identify OTC transactions; removing it would deprive market participants from information of the actual amount of transactions in these markets. Since the OTC already is an opaque market, further reducing its level of post-trade transparency does not appear appropriate and contrary to the goal of MiFID II/MiFIR to increase the overall transparency in equity markets. Hence, DBG would welcome ESMA to reconsider its proposal and to not remove the ACTX flag from the list of flags for the purpose of post-trade transparency.

- **DBG agrees with ESMA's proposal not to introduce additional flags for certain types of transactions**. Regarding trades brought on a venue purely for clearing purposes, we understand that those transactions shall be included in the list of transactions under Article 2, Article 6 and Article 13 as non-price forming transactions. **Those transactions would hence be covered under another classification for transactions whereas the specific flagging of addressable**

transactions is not requested in MiFID II/MiFIR. Regarding inter-affiliate group transactions, we also understand that those transactions would de facto be considered as non-addressable liquidity, where it is not excluded that some are actually addressable liquidity. It is also unclear to us how the perimeter for those transactions would be defined and, particularly because those transactions are internal to a group, if internalised transactions from clients between different entities of a single company would be captured especially when covering EU and non-EU clients/entities.

- **DBG strongly appreciates ESMA's motivation to base the order of flags on the current approach of the MMT standard**. However, ESMA's new proposal introduces a structure of levels and sub-levels, thereby taking some design principles from MMT while making some key structural changes; **those changes render ESMA's proposals incompatible with MMT without substantial changes to the latter.** As MMT has been adopted by most major trading venues, APAs and data vendors, this would require significant rework of technology systems which imposes substantial implementation costs (and time) to the industry.

- **DBG appreciates ESMA's announcement to conduct a targeted review of the threshold methodology for derivatives, other than commodity derivatives.** We are committed to transparent markets and share the goal of MiFID II/MiFIR to shift more trading activities in derivatives from opaque OTC markets to trading venues. However, after three years of experience with the current design of the transparency regime as per RTS 2 we would like to highlight where **we consider improvements regarding the methodology for exchange-traded derivatives (ETDs) as necessary.** Even though ETDs are already characterized by high levels of pre- and post-trade transparency, the current methodology for the threshold calculation for certain sub-asset classes of equity derivatives and interest rate derivatives leads to outcomes that either limit or reverse the transparency ambition. In our view, **the methodology for the transparency calculations as per RTS 2 seems to be especially flawed for the sub-asset classes bond options and stock futures. Moreover, we see also room for improvement for stock index options and stock index futures**. A re-calibration of the existing large in scale (LIS) calculation methodology would allow ESMA to determine LIS thresholds, tiered even more specifically to individual market specifics of each of the aforementioned asset classes. We therefore propose improvements to the methodology for the threshold calculations for equity and interest rate derivatives in order to achieve a better transparency situation for these sub-asset classes.

    In addition to the proposals to improve the current methodology for the threshold calculation, we would like to address ESMA's understanding about the applicability of aggregation of orders to reach the large in scale thresholds. While we acknowledge ESMA's concern that allowing order aggregation also for trading venues may affect market transparency, we believe the opposite is true. **DBG therefore suggests amending Article 3 RTS 2 such that trading venues may allow exchange members to use the system of a regulated exchange to aggregate the liquidity provisioning side of off-book trades executed on a trading venue to reach LIS limits** in order to serve a LIS demand for liquidity that does neither represent an active part of the exchange nor does it adversely impact the liquidity of the orderbook.

- As regards the changes to Art. 13 RTS 2, **DBG agrees with ESMA's proposal to amend Article 13(17) of RTS 2 such that the application date of the new transparency thresholds is always on a Monday. However, DBG does not consider the first Monday of June as appropriate application date.** The reason is that the first Monday of June may come too close to the quarterly expiry week in June, which always takes place across all trading venues in the third week in June, and thus impose further stress on market participants. We therefore believe that a change of trading parameters before the expiry week bears the risk of creating uncertainties amongst market participants and ultimately might destabilise the functioning of financial markets. To prevent these potentially detrimental effects, **we urgently request ESMA to move the effective date of the updated transparency calculations for non-equity instruments across all EU trading venues to a date after the June expiry week,** i.e. first Monday following the third Friday in June, which would in 2022 correspond to 20 June.

- **For commodity derivatives, we acknowledge ESMA's proposals on the liquidity assessment, transparency requirements and segmentation criteria and have identified some areas that are worth further consideration.** First of all, we consider it important that both the liquidity assessment and the LIS threshold calculation should be performed on the basis of order book data

alone. Secondly, with regard to the liquidity assessment, we suggest using a combination of average daily number of trades (ADNT), average daily volume traded in lots (ADAL) and standard trade size. Please look at our response to Q30 for detailed comments on their calibration. Thirdly, with regard to the LIS and SSTI thresholds, DBG is concerned that the ADVL approach has severe flaws and the percentile approach, if slightly adjusted, is the least flawed methodology and hence might be preferable.
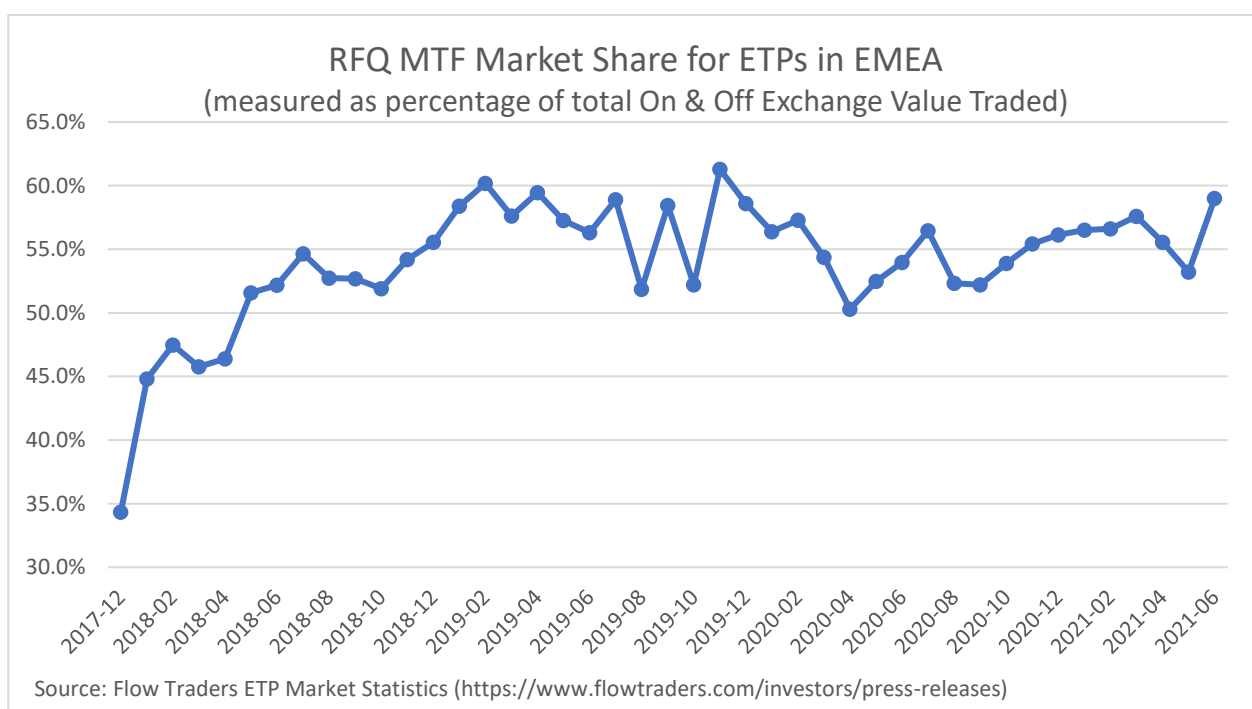
- As regards ESMAs proposal for an implementation period for trading venues, we would like to highlight that the system complexity of exchanges requires that any technical or operational changes are planned months beforehand. For this reason, exchanges have technical release cycles in place to plan, test and implement technical changes appropriately and securely, also in alignment with market participants, who often are required to also update their systems following technical changes of exchanges. It is critical that exchanges and their participants have sufficient time to follow these steps. **DBG therefore strongly suggest providing trading venues with a timeframe of at least 18 months to implement ESMA's envisaged amendments.**

<ESMA_COMMENT_CP_RVEW _1>

Q1 : Do you agree with the proposed amendment to Article 7(2) of RTS 1? If not, please explain your concerns about the proposed increase of the threshold.

<ESMA_QUESTION_RVEW_1>
Consistent with our response to the ESMA Consultation Paper on *MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the DVC and the trading obligations for shares*, DBG **agrees with ESMA's proposal to increase the pre-trade LIS threshold for ETFs to EUR 3,000,000.** We would reiterate that, while this change would go in the right direction, we urge ESMA to complement this measure with additional steps to further promote transparency for on-venue trading of ETFs. Notably, we noticed that the trend towards Request For Quote (RFQ) systems has not reversed considering that, according to data published by Flow Traders, the market share of value traded on EMEA RFQ MTFs in ETPs increased from 34.3% in December 2017 to 59.0% in June 2021 (see figure).

RFQ MTF Market Share for ETPs in EMEA
(measured as percentage of total On & Off Exchange Value Traded)

Source: Flow Traders ETP Market Statistics (https://www.flowtraders.com/investors/press-releases)

This development is worrisome as RFQ trading systems provide less transparency than lit order book trading systems due to their very nature of facilitating non-public requests. Since RFQ trading systems provide investors with actionable ETF price information only on request rather than on a continuous basis, their transparency level is significantly lower than that of lit order book trading systems which continuously provide investors with actionable price information. Specifically, the publication of quotes does not take place continuously whenever quote updates are received by the RFQ trading system, but only for a brief instant in the form of a snapshot of the most recent quote update from each quote respondent before a transaction is concluded. Furthermore, this quote snapshot may not be published if the requester does not accept a quote response. As a consequence, we believe that transparency in European ETF trading has actually suffered from this shift in volumes following the introduction of MiFID II. To improve transparency in European ETF trading and to level the playing field between RFQ trading systems and lit order book trading systems, ESMA may consider implementing a pre-trade transparency regime for RFQ trading systems similar to that for lit order book trading systems. This would require the publication and dissemination of each quote submitted in response to a sub-LIS RFQ immediately after the reception of the quote by the RFQ trading system.

While the decline in transparency is an issue, we also believe that this development may have a detrimental impact on the accessibility and liquidity of the overall ETF market in the long term. From our perspective,

RFQ systems primarily add value when it comes to facilitating the execution of large block orders in ETFs. However, as RFQ systems become more widely adopted even for very small ETF transaction sizes, the liquidity and price quality provided on lit order book systems may decrease as a consequence of the declining demand for this type of trading system. While this would have a negative impact on all types of investors, we believe that retail investors would likely suffer the most from this development as alternative trading systems such as RFQ systems are typically not readily accessible to this investor group. Hence, robust lit order book systems are essential for retail investors to access and trade ETFs in an effective way.

We would therefore suggest that ESMA further investigates the liquidity shift from lit order book trading to RFQ trading and assesses its potential long-term impact on ETF market structure. We would also ask ESMA to identify potential mitigating measures if this trend is perceived to be not compliant with ESMA's objective to ensure the quality and robustness of the ETF price determination mechanism for all types of investors. From our perspective, introducing a minimum transaction size for RFQ executions in combination with an improved pre-trade transparency regime for RFQ trading systems could serve as an effective mitigating measure to ensure that lit order book trading can continue to play its pivotal role in enabling efficient and cost-effective access to ETFs for all types of investors. Such a minimum transaction size could be based on the LIS threshold for ETFs.

<ESMA_QUESTION_RVEW_1>

Q2 : Do you agree with the proposed amendment to Table 5 of Annex II of RTS 1? If not, please explain why you are concerned about the proposed increase of the thresholds.

<ESMA_QUESTION_RVEW_2>
Yes, DBG agrees with ESMA's proposal to increase the applicable deferred publication threshold for ETFs in order to improve real time post trade transparency in ETF instruments and request for real-time publication for transactions that are below EUR 15,000,000 instead of EUR 10,000,000.
<ESMA_QUESTION_RVEW_2>

Q3 : Do you agree with ESMA's amendments to Articles 2, 6 and 13 of RTS 1 described above? If not, please explain why.

<ESMA_QUESTION_RVEW_3>
DBG agrees with ESMA's statement that a clearer regime and more consistent reporting and flagging of non-price forming transactions shall be achieved via targeted amendments to RTS 1. We also agree that concepts like non-addressable liquidity or technical trades do not require formal definition be it at Level 1 or Level 2 of the regulation. We are in particular concerned about requests to define addressable liquidity; addressable liquidity was indirectly introduced with the share trading obligation (Article 23 MiFIR) without being defined other than with a reference to non-addressable liquidity as a subset of transactions not contributing to the price discovery process. We do appreciate the clarification brought by ESMA in the Consultation Paper but also note that views diverge between industry players. We would in general caution against the idea that addressable liquidity is limited to limit order books hence ringfenced to pre- and post-trade transparent trades and trading venues' trading hours. This overly simplified view risks unforeseen major consequences on equity market structure: where MiFID II/MiFIR looked at increasing market transparency, a narrow definition of addressable liquidity would be at odds with this main objective and question the concept of efficient price discovery process.

Moreover, addressable liquidity and non-addressable liquidity are not a prerequisite categorisation before the one of price forming versus non price forming (to the contrary). Addressable liquidity refers to the interactive nature of liquidity and encompasses both categories. For example, a significant number of non-price forming transactions (like those executed under the reference price waiver for instance) are addressable; or trades occurring outside of trading hours can be of addressable nature; or large in scale transactions can be addressable - the potentially absence of information content of those trades does not mean they are not addressable.

Regarding the amendments proposed, it is crucial that the streamlining of the regime brings more clarity and transparency without sacrificing the granularity of information provided and especially not reducing the scope of reported transactions which are price forming. We agree that both Article 2 and Article 6 of RTS 1 shall be reviewed to simplify the legal regime for market participants and the alignment with Article 2(5) of RTS 22 appears sensible. We would however insist that post trade transparency is maintained for transactions like benchmark transactions for instance. We also notice that the list currently set under RTS 1 Article 2 would not cover transactions resulting from systems matching pegged orders to the midpoint of the reference market or with price band limitations pegged at the best bid and offer of the reference market, like those under the reference price waiver.
<ESMA_QUESTION_RVEW_3>

> ### Q4 : Do you agree with the proposed description of FBA trading systems and the updated description of periodic auction trading systems? If not, please explain why and which elements should be added to the description and/or removed.

<ESMA_QUESTION_RVEW_4>
DBG welcomes ESMA's proposal to have tailored pre-trade transparency requirements for FBAs, as they could result in the disclosure of more meaningful pre-trade information to investors. However, considering the list of criteria provided by ESMA to identify FBAs in comparison to conventional periodic auctions, we believe it is crucial that the definition captures only those auctions that meet all of the characteristics outlined in paragraph 61 of the consultation paper. **The definition proposed for FBAs raises the concern that some auction models will be wrongfully classified as an FBA**. It would capture for example auction systems that currently do not fit the definition of a periodic auction and have effective pre trade transparency measures in place. It would also lead to auction systems previously classified periodic auctions, now neither being covered by the FBA definition nor being covered by the periodic auction definition. Hence, DBG believes that it is important to have a more precise definition of FBAs in order for the relevant pre-trade transparency requirements to successfully contribute to price formation.

We have identified at least two dimensions of the definition of FBAs proposed by ESMA which are problematic:

1. The duration of the auction
As specified by ESMA in paragraph 69 the "description captures two of the three main characteristics of FBAs, i.e. the auctions take place during the trading day and are triggered following the submission of orders by members or participants". This means there is no longer a reference to the short duration of an FBA. Although we appreciate that it is difficult to set a maximum or average length for an auction, we believe it is of utmost importance that there is some reference to the duration of the auction. Indeed, **the description as it stands would now cover systems with auctions lasting potentially longer than the conventional periodic auctions**. This would be in stark contrast with the description provided by ESMA in paragraph 61: "FBAs have a shorter duration than conventional periodic auctions, often only lasting for some milliseconds". The problem is exacerbated by the complete removal of a reference to the absence of human intervention from the definition. According to ESMA, "since some trading venues set the trading price at the beginning of an auction, the reference to an auction system operated without human intervention has been removed from the description". To our knowledge for equity instruments all FBAs (as per the criteria established by ESMA) function without human intervention in the price setting; removing "operated without human intervention" from the definition has two consequences. First it means that all systems with and without manual intervention are captured by the definition of FBAs. Second, it negates further the dimension of duration as the mention of "using a trading algorithm operated without human intervention" would ensure that systems running on a much slower pace than FBAs because of a human intervention are not captured by the definition. **We hence would urge ESMA to review the description of FBAs to include to the least the reference to human intervention but also to acknowledge and include the duration dimension of FBAs.**

The incomplete definition of FBAs proposed by ESMA if applied would cover trading systems which until now were not even captured by the definition of "periodic auctions". Because the purpose of RTS1 Annex 1 Table 1 is to define the pre trade transparency requirements, we are concerned that systems already

displaying extensive pre trade information would now be constrained and provide information which is less relevant to market participants (see our response to Q5).

2. During continuous trading hours
We question the mention of "during continuous trading hours". First, following the reasoning from ESMA (see paragraph 61), FBAs would not qualify as such if they were to run in parallel with conventional periodic auctions, which qualify as "periodic auctions" but not "continuous trading". On this, replacing "during continuous trading hours" with "during the trading day" wouldn't solve the issue since periodic auctions could potentially run any time including outside trading hours. Second, the mention of "during continuous trading hours" is not consistent with the definition of periodic auction trading systems which does neither include nor exclude any specific session to run those auctions. Hence, **we would ask for "during continuous trading" to be removed from the definition**.

Regarding the **description of periodic auction trading systems,** DBG believes that there is no need to narrow down the definition of a periodic auction. Instead it is preferable to maintain the current definition and potentially simply adding one sentence to the current definition, stating that periodic auction systems do not include FBAs (E.g. 'a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. **Periodic auctions trading systems do not include frequent batch auctions (row 4)'**). We do not see any merit in providing an exhaustive list of auctions falling under the definition besides the description itself; to the contrary we are concerned that <u>a dedicated list of auctions can lead to unintended consequences</u>. Providing such a narrow list increases the potential that auctions neither fall under the definition of an FBA nor fall under the definition of a periodic auction. Typically, intraday auctions which are neither opening auctions, nor closing auctions or auctions following a volatility interruption, are not mentioned. Those intraday auctions taking place usually at midday are scheduled and do interrupt continuous trading.

As aforementioned, and should ESMA nonetheless want to pursue with adding an exhaustive list of systems, **we call for "intraday auctions" to be included to avoid any confusion**, as follows: "Periodic auction trading systems include opening auctions, closing auctions, **intraday auctions** and auctions following a volatility interruption, but not frequent batch auctions".
<ESMA_QUESTION_RVEW_4>

> **Q5 : Which of the two options for the pre-trade transparency requirements for FBA trading systems do you prefer? Please explain in case you are supportive of a different approach than the two options presented.**

<ESMA_QUESTION_RVEW_5>
In regard to the concerns raised in our response to Q4, we cannot recommend a suitable option for the pre trade transparency requirements for FBAs. Considering the FBA definition as proposed by ESMA in this consultation, and the trading systems which would fall under it, we have identified that some of them already provide a level of pre trade transparency which is optimal and calibrated to the needs of the investors, be it more in line with Option 1 or more in line with Option 2.

Indeed, for equity instruments, market participants may have already access to quotes in real time with price and volume. In that case the Option 1 described by ESMA would bring less transparency. However, we can also imagine that FBAs fulfilling the requirements under Option 1 provide for the appropriate amount of transparency and hence should be able to have that possibility too; notwithstanding the fact that under Option 1 and for FBAs, the price information available remains of limited relevance provided that for most venues the price will either be the midpoint or within the best bid and offer on the primary market or own definition of EBBO, resulting in limited or no contribution to price formation. But to the least, we would advise to provide the operators of FBAs with the flexibility to choose between the two options. Both options fit different situations and products and a one size fits all approach to them would not be beneficial.
<ESMA_QUESTION_RVEW_5>

> **Q6 : Do you agree with ESMA's proposals for 'hybrid systems'? If not, please explain why and which elements should be added and/or removed.**

<ESMA_QUESTION_RVEW_6>
DBAG agrees with ESMAs proposal to split hybrid systems and any other systems in two different categories. This is in line with DBG's interpretation of the current regulation which is already implemented in DBG's post-trade transparency implemented measures.
<ESMA_QUESTION_RVEW_6>

Q7 : Do you agree with aligning both Table 1, Annex I of RTS 1 and Table describing the type of system and the related information to be made public in accordance with Article 2, of Annex I of RTS 2, to describe the same systems (with the exception of voice trading systems) and pre-trade transparency requirements? If not, please explain why.

<ESMA_QUESTION_RVEW_7>
DBG does not agree with the proposal from ESMA to align both RTS 1 and RTS 2 to describe the same systems. Where we admit that alignment is possible to a certain extent, we believe properties of equity instruments vs non equity instruments and the microstructure of trading models that developed for the different asset classes require keeping the classification and definitions specific (please see also our response to Q24).

Regarding the point made by ESMA on 'trading at last' or 'trading at close' functionalities, we concur with the description of a short continuous trading phase after the closing auction in which orders are executed at the closing price. In the case of Xetra Trade-at-Close, orders are continuously matched at the closing auction price and the matching price as well as the number of resting orders and the quantity available (cumulated volume available on the bid or the ask side) are displayed. It is unclear to us what ESMA means by "ESMA expects such functionalities to disclose […] including information on the side of the order imbalance" as this information is reflected in the cumulated volume available at the bid or ask side of the book. We consider that displaying the resting volume is also providing the side of the order imbalance.
<ESMA_QUESTION_RVEW_7>

Q8 : Do you agree with ESMA's proposals to require a specific format and standardise further the pre-trade information to be disclosed? If not, please explain why. If yes, please clarify which elements should be amended, added and/or removed, if any.

<ESMA_QUESTION_RVEW_8>
Format versus information content
DBAG understands ESMA's intention to further harmonize data transparency, in order to be able to compare data from different sources. While we generally support a further alignment of requirements in the pre-trade data sets, we consider a common format as not being required, and to the contrary being rather problematic. It is important to make a clear distinction between "data format" and "information content" and we assume that ESMA intends to harmonize the "information content" rather than the "data format". As an example: the information the field identifier "Date and Time" is supposed to provide, does not depend on the way this information is provided - e.g. in a text format (as suggested in RTS 1 and RTS 2) compared to a binary format.

This is an important difference as the binary format is the way how real-time information is being transported and published by trading venues, SIs, APAs, and market data vendors. Transporting large volumes of transaction data, and even more so quote data in a text format would significantly slow down any real time data dissemination. Market data distribution is a latency sensitive process and undergoes constant optimization that also includes data formatting. Binary encoding implementations permit data to be transmitted in any order. We believe ESMA's intent is to allow firms to use an appropriate data or transmission format provided the Table 4 format can easily be derived from it. In the same context we would like to refer to paragraph 140 in ESMA's consultation paper. We further note that ESMA has provided guidance in this regard in Q&A (question 2c in the Q&A on transparency topics) and wishes to see this captured within the legislation.

We therefore propose the following alternative wording to paragraph 1 of Article 3 (paragraph 102 of the consultation): "The information is to be made public in accordance with the type of trading systems they operate as set out in Table 1 of Annex I and in a manner that allows the data to be represented in the formats as set out in Tables 1a and 1b of Annex I". In the same context, we suggest similar wording for article 9 (paragraph 103 of the consultation): "(e) the arrangement allows the data to be represented in the formats as set out in Tables 1a and 1b of Annex I".

Furthermore, we would like to point out that ESMA's new wording proposal on the depth of trading goes beyond the current level 2 regulation. We propose to not change the regulation any further and as such promote the adapted wording as follows and in line with Annex I, Table 1, Information to be made public: "Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices <u>for at least the five best bid and offers."</u>

Further comments on detailed data fields proposed in Table 4 by ESMA

Field 4 Major currency - While there are certain instruments being issued in other currencies than the large ones (e.g. in the UK there are instruments listed as well as traded in pence while others are listed and traded in GBP) we are aware that there is a lack of comprehensive currency codes today. However, it is our understanding that ISO could issue additional codes on request. ESMA might want to take this into consideration. We therefore cannot support the proposed amendment of field 4, nor field 5.

Field 5 - Price currency – please see our comments to field 4, above.

Field 9 - Number of orders and quotes – the current wording is misleading, and we suggest a rewording as follows: "The number of aggregated orders or quotes per price level (where aggregated information is required under Table 1 of Annex 1)". As there is no display of the counterparty the only difference exists on price level. Our proposal defines the current state of the art transparency provision, besides order by order.

Field 11 – Publication data and time – we consider it generally difficult to have different requirements across venues, be it trading venues or SIs and especially regarding the time of publication. Considering that today many trading is electronic trading, regardless if executed on a trading venue or an SI, we would strongly suggest aligning the requirements as well for the granularity of the time stamps. Diverging regulatory requirements as regards timeliness create general issues for the concrete sequencing of trades and the consolidation of data from different execution venues. This would result in incorrect displayed data blurring the correct picture of the market at one point in time. The structural issues around the reliability (and timeliness) of trade reporting must be solved first, enabling and requiring SIs and OTC to report in a timely manner (while adapting as well RTS 25 Annex), before addressing a real-time CT.

General comments
Finally, DBAG highly appreciates ESMA's considerate approach to not create additional technical challenges to the industry. We furthermore appreciate and agree with ESMA that new requirements need to apply to trading venues and SI's alike.
<ESMA_QUESTION_RVEW_8>

> **Q9 : Do you agree with the changes proposed by ESMA to amend Article 15 (3) of RTS 1? If not, please explain your rationale.**

<ESMA_QUESTION_RVEW_9>
DBG agrees with ESMA that the publication of deferred trades shall be brought forward. However, ESMA suggests publishing the information "no later than the opening of the trading day of the most relevant market in terms of liquidity […]". This requirement means an adjustment on an instrument by instrument level as the most relevant market in terms of liquidity must be identified with its opening time. This brings unnecessary complexity both for venues and market participants. We would therefore propose to publish the information earlier than noon but at the same time for all reporting entities like 9am: "no later than 9am local time […]".
<ESMA_QUESTION_RVEW_9>

Q10 : Do you agree with the proposed amendments to Article 17? If not, please explain.

<ESMA_QUESTION_RVEW_10>
Regarding the dates of application of transparency calculations (Article 17), DBG agrees with the proposal to modify Article 17(2) of RTS 1 for the date of application of transparency calculations to be modified from the 1 April to the first Monday of April of each year. We understand it means that the annual update on the most relevant market in terms of liquidity, the average daily turnover for the purpose of identifying large in scale orders and the standard market size will apply on the first Monday of April.

We would signal to ESMA, that this decision does have an impact beyond RTS 1 and requires adjustment because of an operational risk due to discrepancies between regulations. Indeed, regarding tick sizes, Article 3(4) of RTS 11 stipulates that "Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from 1 April following that publication." Leaving RTS 11 unchanged would require two updates of our systems which entails a significant operational risk for trading venues and in general confusion for all market participants. We then very much urge ESMA to modify RTS 11 to align both regulations, as follows: "Trading venues shall apply the tick sizes of the liquidity band corresponding to the average daily number of transactions as published in accordance with paragraph 1 from ~~1~~ the first Monday of April following that publication."

Regarding the clarification on exchange rate, we object to the recommended rule. DBAG is currently using the ECB rate of the day before the actual business day to convert the thresholds for every single ISIN. The rule should give leeway for solution which use better information than an exchange rate which could be nearly one year old.
<ESMA_QUESTION_RVEW_10>

Q11 : Do you agree with the proposed amendment of Article 11(3)(c) of RTS 1? Please explain.

<ESMA_QUESTION_RVEW_11>
Although DBG understands the purpose of the amendment from ESMA, we believe that post-trade LIS transactions shall not be excluded from the calculations when determining the SMS. Those transactions shall be included in order to reflect the total liquidity on the market and provide an accurate picture to determine a meaningful SMS threshold.
<ESMA_QUESTION_RVEW_11>

Q12 : Do you agree with the changes proposed to Table 3 of Annex I of RTS 1 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?

<ESMA_QUESTION_RVEW_12>
As per our response to Q8, ESMA shall clarify that firms are allowed to use relevant data or transmission format from Table 3. ESMA has provided guidance in this regard in Q&A (Q+A 2 (c) in the Q&A on transparency topics) and we would appreciate this aspect to be reflected in the legislation. Moreover, ESMA has not proposed any wording changes to Article 12; hence in order to align with Articles 3 and 9 and to explain the new field number column in Table 3, we propose the following to add in Article 12 paragraph 1: "Investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public, by reference to each transaction, data representing the details set out in Tables 2 and 3 of Annex I and applicable flags listed in Table 4 of Annex I."

Field names and sequential order
DBAG strongly supports ESMA's aim to further improve data quality in the EU. However, it is important to differentiate between the information content to be provided and the format, as explained in our response

to Q8. In the same context we would question ESMA's notion to the "order of the data fields" especially regarding the comment from the Call for Evidence (CfE). Data from trading venues is consolidated by users, be it direct users or indirect users. In our view, which is widely shared, the order of data fields is not relevant when it comes to information provision and information usage by third parties. DBAG therefore cannot support ESMA's proposal described in paragraphs 134 and 135 to standardise in RTS 1 the order and the name of the fields to be used in the publication of the post-trade reports as per Table 3 in Annex I of the draft amending RTS 1 provided in Annex VI, and neither in RTS 2. We of course stand ready for any discussion if that would be considered helpful by ESMA.

Fields Trading date and time
We do agree with ESMA on the deletion of the reference to OTF in RTS as described in paragraph 136 of the CP. However, we cannot agree with the proposal as described under paragraph 139 that a CTP shall be required to consolidate at one sec granularity. The less granular the time stamp, the less correctly sequenced millions of transactions taking place in micro-seconds will be consolidated into a single stream of data displayed to end users. The order of incurred transactions will most likely divert significantly from any originally occurred sequence. We do support, however, further alignment of all data sources, e.g. including SIs, to adhere to a clock synchronisation as proposed by ESMA. Clock synchronisation and granularity of time stamps are two sides of the same coin but cannot replace each other. While clock synchronisation of time stamps to the transaction event is important to identify the correct transaction time itself, the granularity defines the exact time and allows for the correct sequencing of single transaction events when consolidating data from different data sources. The less granular the time stamp (e.g. sec vs ms) the less accurate a consolidation by a CTP will be. Both measures together are necessary and must originate from the data source directly (e.g. RM, MTF, OTF, SI, OTC via APA) in order to be effective.

ESMA, therefore, should harmonize the legal requirements (e.g. all seconds, or all ms) addressing the source, not at the CTP. Furthermore, a L2 requirement would be more adequate in our view than a L3 measure.

As regards paragraphs 140 and 141 while we strongly support ESMAs comments as regards the format not being formally described (see as well our response to Q8). we would like to clarify that the mentioned difficulties of aggregation rather refer to the unsatisfying situation of not sufficiently granular time stamps as aforementioned, rather than to any other issue.

Price – "No price submitted"
DBAG would like to indicate that we see certain challenges, as regards the display of a text field (NOAP) in a data field which is generally reserved for numeric/decimals. Considering that trade flags are usually components of standard trade messages, it would be more convenient to have "NOAP" as trade flag rather than price field value. The informational content for post-trade transparency purposes would be equivalent.

Price currency
As regards the issue of currencies, ESMA's proposals are not consistent. While in some cases transactions are proposed to be converted into other currencies (or sub-currencies), a conversion should not take place for others. We understand that this is most likely due to avoidance of complexities and non-availability of comprehensive ISO data, but would like to point out to the potential consequences for a comprehensive picture of potential consequences and the overall data quality.

While under paragraph 142 ESMA proposes to not convert any transactions (in EUR denominated instruments) in another currency into EUR, paragraph 144 suggests currency conversion where ISO codes seemingly are not available for smaller currencies. In consequence, there would be currency conversions in some cases, while not in others.
As regards paragraph 142: in the context of transparency provision on transactions executed in another currency than the EUR it initially seems natural to not interfere with a currency conversion, as it would artificially change the "report". However, as the publication is all about transparency to the public, a currency conversion might be sensible. In data displays, transactions in the same instrument, but in another currency are often displayed in other areas, which would lead to certain parts of the transactions not being properly consolidated. This could vary of course from consolidator to consolidator.

As regards paragraph 144: ESMA refers to the ISO 3 letter code which would only be available for major currencies. We would like to link this to paragraph 142 according to which publication of transactions in non-major currencies without conversion would not be possible either. While there are certain instruments issued in other currencies than the large ones (e.g. in the UK there are instruments listed as well as traded in pence while others are listed and traded in GBP), we are aware that there is a lack of comprehensive currency codes today. However, it is our understanding, that ISO could issue additional codes on request. ESMA might want to take this into consideration. We therefore do not support the proposed amendment under paragraph 144.

Price notations
The introduction of a new data field will of course have a cost impact and require sufficient time for the industry to adapt. Please note that adaptions in exchange feeds may take 1-1,5 years on average.

Third Country Trading Venue Execution
DBG generally supports the enhanced transparency of adding information as regards the third country trading platform, which will help to make clear distinctions between off-venue transactions and transactions executed on equivalent trading systems outside of the EU. We agree as well with the proposed MIC or ALPHANUM-25. We support the same approach for RTS 2.
<ESMA_QUESTION_RVEW_12>

> **Q13 : Do you agree with ESMA's proposal not to change Tables 1 and 2 of Annex III of RTS 1? If not, and you consider that certain modifications shall be made, please explain.**

<ESMA_QUESTION_RVEW_13>
Yes, DBG agrees with ESMA's proposal not to change Tables 1 and 2 of Annex III of RTS 1.
<ESMA_QUESTION_RVEW_13>

> **Q14 : Do you agree with ESMA's proposal on the new Tables 1 and 2 of Annex IV of RTS 1? If not, please explain and provide any alternative proposal you might have.**

<ESMA_QUESTION_RVEW_14>
DBG would like to underline the significant technical impact on RTS files and subsequent systems for the transparency calculation that ESMA's proposal on the new Tables 1 and 2 of Annex IV of RTS 1 would have (especially considering the short indicative timeline provided by ESMA in its consultation paper). A significant amount of information is currently not available in our systems and would require new logics to be implemented, like for the distinction between all types of waivers and "sub-waivers" (NTW1, NTW2 and NTW3). We ask ESMA to take these considerations into account.
<ESMA_QUESTION_RVEW_14>

> **Q15 : Please provide concrete examples or scenarios when the price cannot be determined as described or cases of the need to set a zero price for the different types of instruments: shares, ETFs, depositary receipts, certificates, other equity-like financial instruments.**

<ESMA_QUESTION_RVEW_15>
DBG considers that the most problematic case for providing a price is the case 1 (price for the day corresponding to the 'Date of admission to trading or first trading date'). In the case of shares, while it would appear possible to provide an estimate for an IPO, the task is a lot more difficult in the case of a secondary listing, especially for non-EU shares. The Open Market segment of DBG Cash Market offers secondary listings for instruments which are mostly illiquid and for which we cannot provide a reference price due to reasons like the availability of price, the rights to use that price or the exchange rate. Moreover, due to the relative illiquidity of those instruments, no transaction may occur on our trading venue up to a reporting date, and consequently, no price can be determined in the next days.

As a consequence, we would propose that default values apply until trading venues are able to provide a price referring to a price forming transaction. It appears to us that trading on the basis of default parameters like a non-liquid flag, EUR 10,000 for the SMS and EUR 15,000 for the LIS for shares is acceptable as long as no transaction has been executed.
<ESMA_QUESTION_RVEW_15>

Q16 : Do you agree with the deletion of the SI flags 'SIZE', 'ILQD' and 'RPRI'? If not, please explain what you consider to be their added value.

<ESMA_QUESTION_RVEW_16>
DBG understands the rationale behind ESMA's proposal to delete three SI flags. We would however question this proposal for the following reasons: firstly, it does not appear a sufficient reason to delete a flag because it is "rarely used" and second because the lack of analysis based on those flags might be the result of the small use of those flags rather than their pertinence. Regarding the first point, rather than proposing to delete the flags, we would call for a better enforcement and compliance with the current regulation. As pointed out by ESMA, the price improvement flag shall demonstrate the contribution to the price formation process of SIs, in particular combined with the ILQD and the SIZE flags which identify instruments and trades where SIs do not display pre trade transparency. Where ESMA would propose to clarify the use of some flags and remove some which are redundant, we do not see why flags bringing more transparency on SIs' activity shall be removed. Further, where SIs would use currently and systematically those flags, valuable analyses on price formation could be conducted.
<ESMA_QUESTION_RVEW_16>

Q17 : Do you agree with the deletion of the ACTX flag? If not, please explain what you consider to be its added value.

<ESMA_QUESTION_RVEW_17>
DBG does not agree with ESMA's proposal to delete the ACTX flag. As per RTS 1, the ACTX flag applies to *"transactions where an investment firm has brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price."* The ACTX flag therefore does not apply to transactions executed on a trading venue. Instead, the ACTX flag reveals if a transaction was arranged and executed OTC. As the ACTX flag is the only flag for post-trade transparency purposes that allows to identify OTC, removing this flag would deprive market participants from information of the true level of transactions in these markets. Since the OTC already is an opaque market, further reducing its level of post-trade transparency does not appear appropriate and contrary to the goal of MiFID II/MiFIR to increase the overall transparency in equity markets. Hence, DBG would welcome ESMA to reconsider its proposal and to not remove the ACTX flag from the list of flags for the purpose of post-trade transparency.
<ESMA_QUESTION_RVEW_17>

Q18 : Do you agree with the approach suggested for non-price forming transactions? If not, please explain.

<ESMA_QUESTION_RVEW_18>
DBG generally agrees with ESMA's approach for harmonization of non-price forming transactions flags in RTS 1. We understand that ESMA proposes a mutual exclusivity of "BENC", "PORT", and "CONT" flags. From our perspective, such flags can be applied simultaneously. DBG would also like to remark that trade flags represent one part of the solution. Definitions of rules on how to properly use the flags (reporting guidelines) as well as supervisory enforcement are equally important. Communication and education of stakeholders (reporting organizations, APAs, auditors, etc) around flags and flag usage rules are very much needed as well.

<ESMA_QUESTION_RVEW_18>

Q19 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver flag for on-book transactions? If not, please explain. Should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVEW_19>
No, DBG does not agree with ESMAs proposal. According to the solution outlined by ESMA, initial partial fills for LIS orders would not transport any "WAIV" flag in order to avoid information leakage on remaining hidden quantity in the book. Only the very last final partial fill would transport the "WAIV" flag. This would consequently provide an understated and misleading picture of the volume actually executed that is waived from pre-trade transparency. At the same time, we do understand that flagging all orders would raise an issue with information leakage and hence do not recommend such flagging.
<ESMA_QUESTION_RVEW_19>

Q20 : Do you agree with ESMA's proposal to introduce a pre-trade LIS waiver for off-book transactions? If not, please explain.

<ESMA_QUESTION_RVEW_20>
Yes, DBG agrees with ESMA's proposal to introduce a pre-trade LIS waiver flag for off book transactions brought onto a venue. With respect to the proposed NTLS flag, we do not believe it is suitable since most of the block trades could end under that one which is aimed to be used for OTC transactions brought onto a venue.
<ESMA_QUESTION_RVEW_20>

Q21 : Do you agree with the proposal not to add such additional flags? If not, please explain why those flags are needed in your view.

<ESMA_QUESTION_RVEW_21>
Yes, DBG agrees with ESMA's proposal not to introduce the additional flags mentioned. Regarding trades brought on a venue purely for clearing purposes, we understand that those transactions shall be included in the list of transactions under Article 2, Article 6 and Article 13 as non-price forming transactions. We are not aware of a regulatory requirement to flag specifically for transactions brought on a venue for clearing purposes only, or to flag for non-addressable liquidity. We do in general consider that non addressable transactions do, as explained by ESMA, cover different types of transactions, be it price forming or non-price forming transactions, technical trades, etc.; those transactions would hence be covered under another classification for transactions whereas the specific flagging of addressable transactions is not requested in MiFID II/MiFIR.

Regarding out of trading reporting hours, we agree with ESMA's conclusion. We would understand that the underlying purpose of the flag is that any transaction outside of trading hours is non-addressable and shall neither be reported nor considered in traded volume calculations. We disagree with this assumption: trades that would take place after the closing auction would all be captured by this flag, although being addressable in many cases, like for on venue trade at close systems for instance. We, moreover, are not aware of a regulatory requirement for flagging those transactions which would be captured already under an existing flagging as "outside trading hours" only refers to a point in time and not the nature or the purpose of the transaction.

Regarding inter-affiliate group transactions, we also understand that those transactions would de facto be considered as non-addressable liquidity, where it is not excluded that some are actually addressable liquidity. It is also unclear to us how the perimeter for those transactions would be defined and, particularly because those transactions are internal to a group, if internalised transactions from clients between different entities of a single company would be captured especially when covering EU and non-EU clients/entities.
<ESMA_QUESTION_RVEW_21>

Q22 : Do you recommend adding/deleting/amending any other flags? If yes, please explain.

<ESMA_QUESTION_RVEW_22>
DBG believes that from a data management perspective, it is not advisable to ask for an alphanumeric entry in a numeric field (price field). This was true with the "PNDG" entry and it is true again with the proposed "NOAP" entry. Many systems operated by vendors cannot cope with this piece of information. Considering that trade flags are usually components of standard trade messages, it would be more convenient to have that "PNDG" and "NOAP" as trade flags rather than price field value. The informational content for post-trade transparency purposes would be equivalent.
<ESMA_QUESTION_RVEW_22>

Q23 : Do you agree with the proposal to prescribe the order of the population of flags? If not, please explain and provide an alternative proposal.

<ESMA_QUESTION_RVEW_23>
DBG strongly appreciates ESMA's motivation to base the order of flags on the current approach of the MMT standard. This sheds positive lights on the past efforts by the MMT working group initiated by FESE and supported by market data vendors; MMT was then established as an independent standard under the roof of FIX for comprehensive industry recognition to develop a workable standard for the industry along the industry value chains. However, ESMA's new proposal introduces a structure of levels and sub-levels, appearing to be taking some design principles from MMT while making some key structural changes; those changes render ESMA's proposals incompatible with MMT without substantial changes to the latter (different data hierarchy), plus suggest additional provisions on data representation.

Given the existing implementation footprint of MMT (MMT adopted by most major trading venues, APAs and data vendors), this would require significant rework of technology systems which imposes a substantial implementation cost (and time) to the industry. Trading venues, APAs, vendors, ASPs, order management systems of buy- and sell-side stakeholders would be highly impacted. It is worth noting that explicit trade flags and the order of these flags are only relevant at the end of the value chain when human beings consume the data on a screen (display). All upstream data processing stages are invisible and should be left to the discretion of venues, APAs, vendors, etc. Otherwise, the proposed provisions will slow down data distribution (and thus conflicts with the MiFID provisions on data distribution latency), significantly increase the bandwidth requirements to transport the data and make the setup more expensive without any transparency benefits. This does not support making EU financial markets more competitive.

As regards the format for data display and provision, we refer to our proposed changes to Article 12 paragraph 1. In this context please see our response as well to Q8 which explains that it is beneficial for firms to use an appropriate data or transmission format provided the relevant data formats in Annex I can easily be derived from it. We would like to repeat that point here specifically in the context of trade flags. In our response to Q8 we have proposed wording to Article 12 paragraph 1 which we believe meets this requirement:

> *"Investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public, by reference to each transaction, data representing the details set out in Tables 2 and 3 of Annex I and applicable flags listed in Table 4 of Annex I."*

As regards validation rules, we feel ESMA should list the rules for combining trade flags and allow industry participants to implement those rules to the best interest of all stakeholders. We also note that the proposed structure would prohibit some combinations of trade flags that we believe are actually valid (i.e. BENC, PORT and CONT, referencing our response to Q18). Based on our understanding of the intended usage of trade flags under the proposed RTS changes, we believe that there should be a concise list of rules for preventing invalid combinations of trade flags and we would appreciate to see that list included in the RTS.

Furthermore, the current MMT standard is designed to cope with the evolution of regulatory requirements, while minimizing the change management costs. FIX MMT will deliver a new release in a timely manner as soon as the final RTS 1 and RTS 2 provisions will be known.
<ESMA_QUESTION_RVEW_23>

Q24 : Do you agree with the proposed amendments above? If not, please do not reiterate the arguments made under the previous question asked for equity instruments and please rather explain why those amendments are not suitable for non-equity financial instruments.

<ESMA_QUESTION_RVEW_24>
DBG does not agree with the proposal from ESMA to align both RTS 1 and RTS 2 to describe the same systems. As stated in the response to Q4, we believe that it is crucial that the FBA definition in RTS 1 captures specifically those FBAs that could benefit from more meaningful pre-trade information, i.e. those auctions that meet the characteristics outlined in paragraph 61 of the consultation paper.

Introducing the concept into RTS 2 will exacerbate the unintended consequences. It is rather recommended to develop a more precise definition of FBA. Alongside we urge ESMA to maintain the current definition for periodic auction systems as per RTS 2, i.e. a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention. This definition has established proven and well-working auction mechanisms.

As stated in paragraph 233 of the consultation paper, equity and non-equity markets are fundamentally different. For commodity derivative markets for example, auctions have been used to avoid a shift of trades to the uncleared OTC environment. As these auctions are also triggered by potentially matching orders, they could be considered FBAs under the new definition. However, given that these auctions serve opposite purposes, it should be avoided they become subject to a one size fits all approach in terms of pre-trade transparency requirements. With respect to securitized derivatives and bonds, existing continuous auction trading models provide liquidity in non-equity-markets. By sharpening the pre-trade transparency requirements to trading venues by defining them as FBAs, ESMA would add to the already existing imbalance between SIs and trading venues in the non-equity-environment.

In sum, to capture those FBAs that would benefit from more meaningful pre-trade information, we believe it is sufficient for this trading model to be integrated in the list of trading systems in RTS1, but not in RTS 2.
<ESMA_QUESTION_RVEW_24>

Q25 : Do you agree with the proposal to specify the fields to be populated for pre-trade transparency purposes? If not, please explain. In case you support the proposal, please comment on the fields proposed, in particular whether you would consider them necessary and/or whether additional information is required.

<ESMA_QUESTION_RVEW_25>
DBG would point out that data from trading venues has been consolidated until now with limited regulatory requirements. We understand that the proposed amendments by ESMA are aimed at improving data quality, which is generally supported by DBG. However, data quality issues are not experienced within trading venue data space, otherwise such data would not be available on vendor screens, and neither in a consolidated format, but in the OTC, SI space, which is generally acknowledged by the industry.

Adding additional data fields to pre-trade transparency for trading venues will add significantly to the data volume circulating within EU markets. Please note that today more than 90% of data volumes and message count is being generated by pre-trade messages of trading venues. Adding all the additional data fields to pre-trade messages will certainly add to a) higher latency and b) significantly higher amount of pre-trade data with impact on data cost for the industry. As regards point a) we consider that the additional requirements only targeted at trading venues, while leaving SIs outside the regulation, will increase the unlevel playing field not only as regards transparency requirements, but as well as regards competition for order flow as additional latency will be introduced for trading venues order and quotes.

We hold the strong view that all market participants in the EU should generally equally contribute to pre-trade transparency within EU markets. Excluding SI`s from the mandate to publish pre-trade transparency according to the same standards for non-equity instruments that apply to trading venues will, however, hinder data consumers to retrieve all required pre-trade information. DBG would therefore like to encourage ESMA to extend the mandate for a standardized publication of pre-trade transparency data also to SIs, or otherwise do not introduce it for trading venues either.

Format versus information content

DBG understands ESMA intends to further harmonize transparency data provided. While we generally have no hesitation for a further alignment of requirements in the pre-trade data sets, we consider a common format as not being required, and to the contrary being rather problematic. It is important to make a clear distinction between "data format" and "information content" and we assume that ESMA intends to harmonize the "information content" rather than the "data format". As an example: the information the field identifier "Date and Time" is supposed to provide, does not depend on the way how this information is provided - e.g. in a text format (as suggested in RTS 1 and RTS 2) compared to a binary format. This is an important difference as the binary format is the way how real-time information is being transported and published by Trading Venues, SIs, APAs, and Market Data Vendors. Transporting large volumes of transaction data, and even more so quote data in a text format would significantly slow down any r/t data dissemination. Market data distribution is a latency sensitive process and undergoes constant optimization that also includes data formatting. Binary encoding implementations permit data to be transmitted in any order. We believe ESMA's intent is to allow firms to use an appropriate data or transmission format provided the Table 7 format can easily be derived from it. In the same context we would like to refer to our answer in Q8 and ESMA's paragraph 140 in this consultation. We further note that ESMA has provided general guidance in this regard in Q&A (question 2c in the Q&A on transparency topics) and wish to see this captured within the legislation.

Furthermore, we would like to point out that ESMA's new wording proposal on the depth of trading goes beyond the current Level 2 regulation. We propose to not change the regulation any further and as such promote the adapted wording as follows "Market operators and investment firms operating a trading venue shall make public the range of bid and offer prices and the depth of trading interest at those prices <u>for at least the five best bid and offers.</u>" Any additional data increase will heavily weigh on bandwidth requirements, while providing information which is hardly used by the public.

Further comments on detailed data fields proposed in Table 7 by ESMA

Again, we would like to reiterate that we would expect to find a level playing field within the EU for all venues alike, being it trading venues, or execution venues such as Sis.

Field 2 – Instrument identification code - we realize that ESMA has included the Instrument identification code for pre-trade, but not the Instrument identification instrument type. "OTHR" is now missing besides ISIN, we propose to allow for both expressions as well for pre-trade data. In this context we would like to reiterate that DBG would generally appreciate same levels of transparency as well for Sis.

Field 5 - Price currency – as a general note: while there are certain instruments issued in other currencies than the large ones (e.g. in the UK there are instruments listed as well as traded in pence while others are listed and traded in GBP) we are aware that there is a lack of comprehensive currency codes today. However, it is our understanding, that ISO could issue additional codes on request. ESMA might like to take this into consideration. We therefore would currently not support the proposed amendment of field 5.

Field 10 – Quantity in measurement unit – this information would need to be calculated in order to be made transparent which would artificially slow down the pre-trade information of the trading venue in question. We therefore would not support this.
Field 11 – **Notation of the quantity in measurement unit** – again this is information which is being made available within the static reference data at the beginning of each trading day. Adding this redundant information to the trading venues pre-trade data feeds, would significantly add to data load and slow down the data submission, we therefore explicitly do not support this requirement.

Field 13 – Notional currency – this information is static information which is being provided within reference data. Adding this information to each and every quote will significantly inflate pre-trade data. We therefore recommend to not include this as the information is already available.

Field 14 – Notional currency 2 - this information is static information which is being provided within reference data. Adding this information to each and every quote will significantly inflate pre-trade data. We recommend to not include this as the information is already available.

Field 16 – Venue - as pointed out above, we hold the view that all venues in the EU should generally equally contribute to pre-trade transparency within EU markets, including SIs.

Field 17 - Number of orders and quotes – the current wording is misleading, and we suggest a rewording as follows: "The number of aggregated orders or quotes per price level". The above proposal defines the current state of the art transparency provision, besides order by order.

Field 19 – Publication date and time – we consider it generally difficult to have different requirements across venues, be it Trading Venues or Sis and especially once it comes to the time of publication. Taking into account that today many trading is electronic trading, regardless if executed on a trading venue or an SI, we would strongly suggest aligning the requirements as well for the granularity of the time stamps. Diverging regulatory requirements as regards timeliness create general issues for the concrete sequencing of trades and the consolidation of data from different execution venues. This would result in incorrect displayed data blurring the correct picture of the market at one point in time. The structural issues around the reliability (and timeliness) of trade reporting must be solved first, enabling and requiring SIs and OTC to report in a timely manner (while adapting as well RTS 25 Annex), before addressing a real-time CT.
<ESMA_QUESTION_RVEW_25>

> **Q26 : Please indicate, if applicable, which medium-term targeted improvements you would like to see to the threshold calibrations in RTS 2.**

<ESMA_QUESTION_RVEW_26>
DBG appreciates ESMA's announcement to conduct a targeted review of the threshold methodology for derivatives, other than commodity derivatives. As exchange, we are committed to transparent markets and share the goal of MiFID II/MiFIR to shift more trading activities in derivatives from opaque OTC markets to trading venues. However, after three years of experience with the current design of the transparency regime as per RTS 2 we would like to highlight where we consider improvements regarding the methodology for exchange-traded derivatives (ETDs) as necessary. Even though, ETDs are already characterized by high levels of pre- and post-trade transparency, the current methodology for the threshold calculation for certain sub-asset classes of equity derivatives and interest rate derivatives leads to outcomes that either limit or reverse the transparency ambition.

In our view, the methodology for the transparency calculations as per RTS 2 seems to be especially flawed for the sub-asset classes bond options and stock futures. Moreover, we see also room for improvement for stock index options and stock index futures. A re-calibration of the existing LIS calculation methodology would allow ESMA to determine LIS thresholds, tiered even more specifically to individual market specifics of each of the aforementioned asset classes. In the following, we therefore propose improvements to the methodology for the threshold calculations for equity and interest rate derivatives in order to achieve a better transparency situation for the above-mentioned sub-asset classes.

Besides proposals to improve the methodology for equity derivatives and interest rate derivatives, we would like to suggest towards ESMA allowing order aggregation for trading venues as another important aspect to increase the overall transparency and facilitate on-exchange trading. Please find more below.

(1) Methodology for Equity Derivatives

1.1 Stock index options and stock index futures

The current RTS 2 methodology for setting LIS-thresholds for equity derivatives is based on the average daily notional amount (ADNA), calculated over the period of one year. RTS 2 assigns for equity derivatives certain ranges of ADNA based on which LIS-thresholds are determined. Depending on the respective equity derivatives sub-asset class, RTS 2 provides either four or five possible ADNA-ranges for LIS-threshold designation. However, RTS 2 does not explain why certain sub-asset classes are provided with either four or five ADNA-ranges. For example, stock index options are only provided with four ADNA-ranges, whereas stock index futures, for example, have five ADNA-ranges according to which LIS-thresholds are assigned.

DBG considers the current levels of granularity as insufficient. For example, stock index options which have evolved from EUR 200 million ≤ ADNA < EUR 600 million to ADNA ≥ EUR 600 million experience a significant jump in the applicable LIS-threshold from EUR 5.5 million to EUR 20 million. Similar jumps in LIS-thresholds from EUR 5.5 million to EUR 20 million are also foreseen by RTS 2 for stock index futures.

The reason why the current levels of granularity are considered as insufficient is because the ADNA is defined by Table 4 Annex II RTS 2 as the notional amount of traded contracts. Hence, the ADNA of a stock index option or stock index future can not only change due to more or less traded contracts over the period of one year. Changes in the ADNA can also occur, if the notional amount changes due to spot price movements of the underlying index. For example, a stock index option has in the first year an ADNA of EUR 590 million. In the second year, the number of traded contracts in the stock index option are equal to the previous year. However, in the second year the spot price of the underlying has increased by 10%. Despite constant trading activities measured by the number of contracts, the ADNA of the stock index option is in the second year therefore 10% higher as in the first year and above the threshold of EUR 600 million. As a consequence, the stock index option is equipped with a significantly higher threshold, despite no changes in the trading activities.

These jumps in the applicable thresholds can have significant impacts on affected products. For example, the 2021 ESMA transparency calculations classified Options on the EURO STOXX® Banks Index (OESB), into the highest ADNA-range for stock index options. As a result, the applicable LIS-threshold increased from EUR 5.5 million to EUR 20 million, which translated into an increase of the minimum block trade size (MBTS) for OESB from 3000 contracts to 6000 contracts. This increase led to a situation where market participants were not able to appropriately manage their risk exposure in bank assets, as uncertainty prevailed as to whether the order-book could absorb orders above 3000 contracts, which previously had been executed off-book. If an asset manager, for example, intended to trade at the previous MBTS of 3000 but was now using the new MBTS of 6000, he would end up adding as much risk as he tried to reduce and that would likely deter him from trading and risk could stay unhedged. Following the implementation of the new thresholds, trading data and market feedback in that particular instance show that market participants avoid submitting orders between 3000 and 6000 contracts into the order book as execution cannot be guaranteed at a given price. Market participants therefore need to split their order into smaller ones, which in turn increases their trading costs and disincentivizes on-exchange trading activities.

To avoid such consequences for stock index options and stock index futures, whose ADNA fluctuates around the current ADNA-ranges and where slight increases in their underlying spot price can lead to significantly higher LIS-thresholds, DBG suggest adding more granularity to the current ADNA-ranges. DBG proposes to extend the ADNA-ranges for stock index options and stock index futures to 6 and 7, respectively, as indicated below. DBG is of the opinion that more granularity for stock index options and stock index futures with respect to the ADNA-ranges will reduce the steps between the LIS-thresholds and thereby facilitate a smoother transition towards higher LIS-thresholds.

New Stock index Options	LIS Pre Trade	LIS Post Trade
	RTS 2 Threshold	RTS 2 Threshold
<100 m	25,000	1,500,000
100m<=ADNA<=200m	2,500,000	25,000,000
200m<=ADNA<=600m	5,000,000	50,000,000
600m<=ADNA<=2b	10,000,000	100,000,000

	LIS Pre Trade	LIS Post Trade
2b<=ADNA<=4b	15,000,000	120,000,000
ADNA >= 4b	20,000,000	160,000,000

New Stock index Futures/Forwards	LIS Pre Trade RTS 2 Threshold	LIS Post Trade RTS 2 Threshold
<100 m	25,000	1,500,000
100m<=ADNA<=1b	550,000	5,500,000
1b<=ADNA<=2b	2,500,000	25,000,000
2b<=ADNA<=3b	5,500,000	55,000,000
3b<=ADNA<=5b	7,500,000	75,000,000
5b<=ADNA<=10b	20,000,000	160,000,000
ADNA >=10b	30,000,000	240,000,000

1.2 Stock Futures

Despite the introduction of the MiFID II/MiFIR transparency regime in 2018, the overwhelming majority of trades in stock futures are still concluded off-book via block trading. The reason is that trading in stock futures is characterized by irregular trading activities, even for liquid products. Stock futures are mostly traded around certain events, for example dividend dates. Around these dates, relatively high trading volumes can be attributed to only a few trades.

Yet, despite only a few trades are being concluded per year in individual stock futures, the methodology for setting LIS-thresholds only focuses on the ADNA as guiding number for the LIS-threshold determination. This leads to a situation, where stock futures with sometimes only a few trades per year are equipped with the highest available LIS-threshold for stock futures. DBG therefore believes that the ADNA, as measure of trade magnitude, does not appropriately reflect the liquidity situation of stock futures.

As a result, RTS 2 applies LIS-thresholds to stock futures that are explicitly high, disturbing the off-book block-trading driven market of stock futures. Due to the high LIS-thresholds, smaller market participants, intending to make precise adjustments to their small portfolios but also market markers that aim to accurately hedge their options exposure are driven out of the stock futures market, since order-book liquidity is virtually not existent for stock futures and off-book thresholds are too high for their trading needs. As these participants are still required to address their individual risk exposures, most of these smaller participants either have to leave their risks unaddressed or need to turn to OTC-markets, where they are served bespoke solutions offered by banks. Against this background, DBG has observed declining volumes in stock futures since the introduction of the transparency regime in 2018.

DBG therefore suggests amending the liquidity measure for stock futures. DBG believes that a measure of trade frequency to determine the liquidity of stock futures, instead of the current measure of magnitude, i.e. the ADNA, would reflect the trading activities in stock futures more accurately. Hence, we propose to replace the ADNA with the number of trades per year for stock futures. DBG considers the number of trades per year as measure to determine the applicable LIS-thresholds for stock futures as more in line with the actual market structure. Ultimately, DBG believes that the number of trades per year as guiding measure for the LIS-threshold determination will lead to more accurate LIS-thresholds and therefore help to shift volumes from OTC markets back to stock futures executed on transparent regulated markets.

(2) Methodology for Interest Rate Derivatives

Bond Options

ESMA correctly acknowledges in the consultation paper that trading in European exchange-traded fixed income options (or bond options in the RTS 2 terminology), such as, for example, Options on Euro-Schatz Futures, Options on Euro-Bund Futures or Options on BTP-Futures, is mostly conducted in large trade sizes. There are essentially two reasons, why trading in bond options is characterized by large trade sizes:

(1) Trading in bond options is driven by institutional investors, who employ these products to hedge against or take directional positions to address yield movements of the underlying fictitious bond yield (please find more information regarding the underlying of bond options in our response to Q33). Due to the professional nature of investors who have large portfolios to hedge and trade, trade sizes are generally large in bond options.

(2) Bond futures and options on bond futures at DBG have varying tenors from 2 to 30 years with respect to the underlying cash bonds. Short-dated bond derivatives show the lowest sensitivities to changes in bond yields while longer-dated bond derivatives have higher sensitivities. Far greater sizes are therefore required in low duration products to achieve the same economic payoff for a given change in yield. This results in larger trade sizes for DBG fixed income futures and options on underlying's with a lower duration. Low duration products require higher trade sizes to achieve same economic pay-off.

Against this background, the current 70th trade percentile-oriented methodology for the LIS-threshold determination for bond options leads to a situation where especially those bond options with lower durations and thus larger trade sizes, for example options on Euro-Schatz Futures, are equipped with extraordinarily high LIS-thresholds. On the other hand, bond options in with longer durations, such as options on Euro-Bund Futures, which generally have lower trade sizes and thus also a relatively liquid order-book, are attached with relatively low LIS-thresholds.

The methodology therefore in particular negatively impacts the market structure and the trading dynamics in products with longer durations. For example, trade sizes in options on Euro-Schatz Schatz futures further increased after ESMA mandated a LIS threshold that equates 1,250 contracts (prior to 2018 DBG had set the block trade size at 300 contracts). Fewer market makers serviced investors at less favourable prices for greater size creating a negative feedback loop in which investors refrain from trading and the median trade sizes further increased.

DBG therefore considers the uniform methodology of assessing the LIS-thresholds based on the trade percentile as not adequate in bond options as the sizes traded at market depend heavily on the duration and sensitivity of a given point of the yield curve. As a result, bond options with an already liquid order-book situation receive relatively low LIS-thresholds and vice versa, which is not in line with the intention of the transparency regime for derivatives to bring more trading activities to the order-book. DBG therefore strongly recommends scaling the 70th trade percentile down for products with lower durations to reverse the negative volume and liquidity impact on the market.

Depending on the tenor of the underlying, DBG proposes to scale the trade-percentile for the LIS-threshold determination as follows:

Tenor of underlying	Percentile to apply for LIS determination
2 years	30
5 years	50
10 years and greater	70

3) Aggregation of orders
In addition to the proposals to improve the current methodology for the threshold calculation, we would like to address ESMA's understanding about the applicability of aggregation of orders to reach the large in scale

("LIS") thresholds. According to ESMA's view, orders cannot be aggregated by trading venues to meet the LIS thresholds, as Article 3 RTS 2 specifies that an order is only LIS when it is above the LIS thresholds at point of order entry.

On the other side, certain market participants are allowed to aggregate client orders outside of the order book of trading venues to meet the LIS threshold, execute this as a single block trade on exchange, split the block trade after execution in pieces below the LIS threshold and distribute the resulting splits to several members / clients in a post trade event, de facto allowing these types of market participants to maintain a stronghold and act as a gatekeeper between the lit market and the entirely OTC-traded markets.

One of the main goals of the transparency regime introduced with the MiFID II / MiFIR legislation, is to move trading flow into lit trading facilities to increase transparency of price discovery and execution in order to support robustness of financial markets.

Against this background, DBG considers the current provisions regarding aggregation as a deviation from this goal as it allows order aggregation and thereby also price formation to a large degree to continue to take place outside of regulated trading venues, and only a small portion reaches trading venues in the form of off-book transactions executed on the exchange. This, in turn, prevents the migration of OTC-flow but also off-book flow (i.e. large in scale) on a trading venue into lit on-exchange price discovery and execution mechanisms. This will further manifest the information asymmetry between central limit orderbooks and LIS negotiations or OTC, ultimately limiting the growth potential for lit on-exchange mechanisms designed to support the goal of the transparency regime introduced with the MiFID II / MiFIR legislation. The ESMA statement on the applicability of aggregation, represents a deviation from the goal of the transparency regime.

While we acknowledge ESMA's concern that allowing order aggregation also for trading venues may affect market transparency, we believe the opposite is true. Currently, more than 80 per cent[1] of the notional volume in derivatives is executed OTC and outside the environment of trading venues. As ESMA's Annual Statistical Reports on EU Derivatives Markets from 2017 to 2020 show, this number has remained approximately constant since 2017, despite the introduction of MiFID II/MiFIR. From the perspective of a regulated market, several aspects can be identified, where OTC markets benefit from less stringent rules compared to trading venues, incentivizing trading activities outside of lit trading venues. Allowing order aggregation for certain market participants, who are active in OTC markets and on exchanges can act as gatekeepers, and to a large part can continue to conduct price negotiations outside the regulated environment of trading venues will maintain the status depicted in the ESMA report. We acknowledge the need for the market to gain pre-trade transparency waivers for LIS trading and we believe that trading venues should be able to appropriately compete with OTC market practices in order to be able to facilitate the shift of trading activities from opaque OTC markets to transparent trading venues, especially for derivatives which are prone to high OTC or off book trading.

DBG therefore suggests amending Article 3 RTS 2 such that trading venues may allow exchange members, to use the system of a regulated exchange to aggregate the liquidity provisioning side of off-book trades executed on a trading venue to reach LIS limits in order to serve a LIS demand for liquidity that does neither represent an active part of the exchange nor does it adversely impact the liquidity of the orderbook. This would create a comparable approach in regards of what exchange participants are allowed to undertake as aggregation vis-à-vis other market participants.
<ESMA_QUESTION_RVEW_26>

Q27 : Do you agree with the proposed changes to Article 13? If not, please explain.

<ESMA_QUESTION_RVEW_27>
DBG agrees with ESMA's proposal to amend Article 13(17) of RTS 2 such that the application date of the new transparency thresholds is always on a Monday.

---

[1] Please see ESMA's Annual Statistical Reports on EU Derivatives Markets from 2017 to 2020.

However, DBG does not consider the first Monday of June as appropriate application date. The reason is that the first Monday of June may come too close to the quarterly expiry week in June, which always takes place across all trading venues in the third week in June, and thus impose further stress on market participants. For example, in 2022 the application date of the new thresholds would be 06 June, according to ESMA's proposal. This would be one week before the quarterly equity derivatives expiry and two business days prior to the last trading day of fixed income futures in June.

When an expiry of positions approaches, market participants tend to close their existing positions in products with the soon to expire maturity and open positions in the same products with a maturity date further in the future (a so-called rolling of positions). Wherever pre- and post-trade thresholds will be decreased as a result of the updated transparency calculations, the effects on market participants directly before expiry week should be neglectable. However, where pre- and post-trade thresholds will be increased as a result of ESMA's most recent publication, this bears the risk that market participants might no longer be able to roll their positions as initially intended. For example, where an LIS threshold used to be 50 and is now to be increased to 75, a member holding a position of 50 will become unable to trade out of this position exactly during the week, when the participant is on average most likely to want to trade out of the position. While it is of course possible for market participants to adapt their trading behaviour to increased thresholds in the mid- to long-term, we strongly recommend to not force an ad hoc amendment of trading behaviour upon members, by implementing new pre- and post-trade thresholds directly before the expiry week.

We therefore believe that a change of trading parameters before the expiry week bears the risk of creating uncertainties amongst market participants and ultimately might destabilise the functioning of financial markets. To prevent these potentially detrimental effects, we urgently request ESMA to move the effective date of the updated transparency calculations for non-equity instruments across all EU trading venues to a date after the June expiry week, i.e. first Monday following the third Friday in June, which would in 2022 correspond to 20 June.
<ESMA_QUESTION_RVEW_27>

Q28 : Do you agree with the proposed changes to Article 4? If not, please explain.

<ESMA_QUESTION_RVEW_28>
DBG agrees with ESMA's proposal to transfer the Q&A provisions on minimum size of orders held in an order management facility to Art. 4 RTS 2.
<ESMA_QUESTION_RVEW_28>

Q29 : Do you agree with the proposed changes to Article 12? If not, please explain. Please do not reiterate the general comments made in the equity section and try to focus on arguments that are specific to non-equity financial instruments.

<ESMA_QUESTION_RVEW_29>
ESMA proposes to amend Art. 12 RTS 2 such that redundancies in the legislative text are removed. The amendments entail no practical changes for non-equities. DBG therefore agrees with the proposed changes to Art. 12 RTS 2.
<ESMA_QUESTION_RVEW_29>

Q30 : Please provide your comments on the analysis and proposals related to the liquidity framework applicable to commodity derivatives, EA and DEA detailed in Section 4.2 and summarised in Section 4.2.5. Please list the proposals with their ID (#1 to #9) for ease of reference.

<ESMA_QUESTION_RVEW_30>
As an introductory remark, we believe there is one important issue that touches upon a number of the below proposals, i.e. both the liquidity assessment as well as the LIS threshold calculation should be performed on the basis of on-book (or screen) data alone.

For the data collection, however, DBG believes it was important for ESMA to compare data from screen trading, pre-arranged trading as well as the uncleared environment. This is because assessing the differences between these environments in terms of for example liquidity and standard trade sizes, will help assess the potential impact of a new LIS waiver threshold methodology.

The assessment whether a market is liquid or not and whether a trade is large in scale or not, should, however, evidently be based on order book data alone. This is because it is the order book that needs to be liquid enough to support a LIS threshold. The trades pre-arranged off order book do not directly contribute to the liquidity of the order book and hence should not be considered when assessing the liquidity of a contract. Also, whether a trade is large in scale or not should be assessed on the basis of order book data alone. This is because trade sizes are typically significantly larger off book and hence will give a misleading picture of what may be considered as "large-in-scale" on order book.

Proposal Commodity Derivatives 1: Yes, we agree and support the proposal.

Proposal Commodity Derivatives 2 [ADNT] Maintain the criterion "average daily number of trades" (do not switch to "median daily number of trades): Yes, on the basis of the data provided by ESMA, we agree and support the proposal.

Proposal Commodity Derivatives 3: [ADNT] Increase the parameter of the ADNT to 50 trades per day for all commodity, C10, EA and DEA sub-classes

First of all, it is important to reiterate that only actual on-screen transactions count for determining whether a market is liquid or not. This is particularly valid for calculating ADNT.

Appreciative of the analysis of the implications of using different thresholds across different asset classes, we remain of the view that 100 trades per day would be a more suitable threshold.

Even when the data scope is limited to on-book data, 50 trades per day, which roughly corresponds to a frequency of one trade every 10 minutes, would be too low because of two reasons:

1. Trading is rarely uniformly distributed throughout the day,
2. ESMA disagrees that liquidity should be assessed on a venue-per-venue basis. This means that the proposed ADNT of 50 trades corresponds to one trade every 10 minutes across all venues. As not all traders have access to software that bundles liquidity of all venues onto one screen even 5 minutes (ADNT 100) remains a low number and
3. Moving to 100 trades per day means that there will be more observations to base the LIS threshold on and the counterintuitive effects of the percentile approach to calculate the LIS threshold will be further reduced. (Please refer to our response to Proposal Commodity Derivatives 6 on LIS/SSTI.)

We furthermore appreciate the impact analysis from ESMA, as DBG does not have a complete view over the venue-aggregated data. We acknowledge the impact from moving from 50 to 100 trades per day might be limited for for example gas, but also notice it does bring a significant change as to which power contracts are to be classified as liquid or illiquid.

Finally, we agree with ESMA that the same parameter should be used for all asset classes. While acknowledging that liquidity is a very complex matter to assess and simple parameters as ADNT and ADNA all have their weaknesses, we would not opt for setting parameters in such a way that a certain amount of trading activity would be deemed liquid. Liquidity has to be determined by opportunity to trade, not by the goal of treating a certain percentage of trading activity as liquid.

Proposal Commodity Derivatives 4: [ADNA] Replace the criterion "average daily notional amount" with the criterion "standard trade size" calculated as the most frequently traded size (mode) and set the parameter of the STS_mode at 5 lots for futures: any class for which the most frequently traded size is lower than or equal to 5 lots would be deemed liquid (provided the other quantitative liquidity criterion is also fulfilled).

First of all, DBG reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining whether a market is liquid or not. This is valid for both the STS and ADNA criteria,

We support the introduction of the STS criterion, as it is indeed a remedy to one of the two most important issues with using ADNA, i.e. The ADNA does not allow distinguishing between (1) a market with on average few trades of large sizes (potentially illiquid); and (2) a market with on average numerous trades of small sizes (potentially liquid). Those two markets could have the same average daily notional amount while exhibiting different liquidity profiles. However, from this follows that the STS liquidity criterion should complement the ADNA liquidity criterion and not replace it. If the criterion referring to volume (currently ADNA) would be removed, the STS criterion remedies a problem with a criterion that is no longer present, i.e. ADNA.

The reason why the STS should complement a criterion referring to volume is because the STS should not be considered as a direct measure of assessing liquidity. This is because the assumption that the more liquid an instrument the smaller the STS does not always hold true. A market characterised by small commercial hedgers will for example typically trade smaller sizes than markets that primarily see large commercial hedgers as well as financial firms providing access to other market participants. Moreover, there are large differences between short term maturities such as daily futures and weekly futures compared to calendar futures. The STS of short term maturities tends to be higher than for long term maturities because the firsts are used as final portfolio adjustment before delivery and transactions in these contracts involve lower notional amounts (i.e., trading limits admit more lots and arbitrage operations require more volumes than for longer maturities) As a consequence the long-term maturities will artificially be more quickly deemed liquid than short-term maturities.

Finally, adding the STS mode with a threshold of 5 lots is particularly important for ensuring that options markets in commodities are classified appropriately. Almost no screen trading takes place in the options contracts which exist in for example gas, power or emissions derivatives. Under some of the methodologies discussed by ESMA in the consultation document, an extremely inappropriately high LIS threshold ranging from 200 lots to 1000 lots could apply to these options markets if they are classed as liquid. The implementation of such unreasonably high LIS thresholds would have serious negative consequences for the orderly functioning of these markets.

As a result, Group 1 always reflects the contracts that are truly liquid.

Finally, it is important that the criterion referring to volume (currently ADNA) will no longer be expressed in notional values but in lots. As proposed by ESMA in its Proposal Commodity Derivatives Nr. 7, we believe that we should look at Average Daily Amount of Lots traded, i.e. ADAL, to have an appropriate reflection of the volume traded in a given contract.

Proposal Commodity Derivatives 5: [ADNA] Set the same parameter of the STS_mode for all contract types, including options (5 lots):
Yes we support this proposal. As options are not a commonly used derivative in commodity markets, as already referred to in our introductory comment, it is of no surprise that they are deemed illiquid. We do not see why a different parameter should apply to options. Please also refer to our answer to Proposal Commodity Derivatives 4 regarding the need to also use ADAL as part of the liquidity assessment.

Proposal Commodity Derivatives 6: [LIS/SSTI] LIS and SSTI thresholds are equal to a set percentage of the average daily volumes (in lots), rounded to the nearest 5 lots and bounded by a floor and a cap.
As a preliminary comment, DBG reiterates its introductory comment that it is crucial that only actual on-screen transactions count for determining the LIS threshold.

Although we appreciate the efforts to consider new methodologies of setting a LIS threshold, DBG disagrees with the new proposal.

We agree that indeed the following issues with the current approach need to be addressed:

1. The percentile approach leads to a counter-intuitive effect in the sense that it leads by construction to higher thresholds for the least liquid classes compared to the most liquid classes, which contradicts the original objective.
2. The volumes are converted to EUR (and threshold are set in EUR)
3. The level of the floor is such that most liquid classes have an LIS equal to the floor
4. The rounding rules in Article 13(12) of RTS 2 inflate the size of the thresholds.

However, having investigated the proposal to use ADVL and also having looked into alternative methodologies, DBG believes we might throw the baby out with the bathwater when completely removing the percentile approach.

1. As stated in paragraph 302 of the consultation, the counter-intuitive effect of the percentile approach is partially linked to the use of ADNA as a liquidity criterion. ESMA expects that adding the STS_mode 5 liquidity criterion will largely remove this issue. We believe that if also the ADNT is properly calibrated (100 trades per day) the issue might be removed entirely. (Please also refer to our response to Proposal Commodity Derivatives 3.)
2. Converting the LIS thresholds into lots will remove the second issue.
3. Removing the minimum floor, for which we do not see a proper justification, will remove the third problem. We do not see a need to impose a minimum floor as the calibration of a LIS threshold requires significant caution not to set the limit too high. This is for the obvious reason that a LIS threshold that is set too high will push trades off-book, in the uncleared OTC environment, instead of on-book. Imposing one minimum floor across all commodity markets, fully disregards this need for caution.
4. Also, the rounding rules can be easily adjusted as has already been proven by ESMA's data collection. It used small trade size bins (1 lot until 20 lots, 5 lots until 100 lots and 50 lots thereafter).

It might therefore be unnecessary to entirely change the current percentile approach.

The use of the ADVL approach for the calculation of the LIS threshold completely dissociates large-in-scale and normal market size, introducing new contentive effects for liquid markets (in the sense of ADNT and STS). The ADVL approach creates an almost-linear relation between the LIS threshold and the number of transactions while ignoring normal trade sizes. In a market with an ADNT of 1000 and only 1-lot trades (i.e. STS=1), 5% of ADVL means 50 lots (i.e., 50 times the largest trade seen in this contract), while 95% percentile means 1 lot. This effect can be seen in ESMA's simulation for the most liquid contracts, which systematically reach the cap defined by ESMA. In this example, a 50 lots trade seems excessively large compared to normal deal sizes. Since the counterintuitive effect of the percentile approach can be corrected with an adequate value of ADNT and the combination of both the average daily notional amount traded in lots (ADAL) and the STS mode 5 criterion, the percentile approach seems a more appropriate approach to establish the level where a trade can be considered large-in-scale.

We investigated other alternatives but concluded that the percentile approach is probably the least flawed methodology. However, it is unclear to us where the 95th percentile, mentioned in paragraph 309 page 106 of the consultation paper, originates from. We would strongly recommend maintaining the percentile at 70 or – preferably – adopting a phased-in approach starting at 30% and gradually moving it up to 70%. This would be more suited given the need for a cautious approach not to push trades to the uncleared OTC environment.

Proposal Commodity Derivatives 7: [Units or Lots] Set the liquidity framework in lots (STS_mode parameter set in lots, volumes reported to ESMA in lots, LIS and SSTI thresholds published in lots) accompanied by Level 3 measures to address the risk of downward revisions of the lot sizes.
We agree with ESMA that using lots is the more pragmatic way forward.

Proposal Commodity Derivatives 8: [Reporting to FITRS] number of transactions shall be reported to FITRS per trade-size bins which are defined in the new Annex V of RTS 2. Total volumes in lots

and total volumes in underlying units shall also be reported to FITRS as specified in the new Annex V of RTS 2.

ESMA suggests two new fields to the quantitative data, 'Total volume in lots' (where applicable) and 'Total Volume' to FITRS. As a general comment, reporting of LOTS as such are welcome. However, as Transparency Quantitative data reporting for Non-Equity is made using what is called 'bins' (i.e. reported values are assigned a bin size depending on value of transaction) additional guidelines would be needed on how to assign 'bins' when using LOT sizes instead of notional amount. Such a requirement on further technical reporting instructions not covered by the RTS would somewhat diverge from one of the key points from ESMA in the RTS 2 consultation which is that none of the reporting tables for quantitative data is regulated in the RTS today, but rather in separate 'reporting instructions' issued by ESMA. It is important that proper reporting guidelines are issued to complement the updated RTS to facilitate a harmonized understanding of the updated requirements.

Proposal Commodity Derivatives 9: [data scope] The transparency calculations continue to be performed with all data (on-venue, SI and OTC):
We are strongly of the view that the liquidity assessment and LIS threshold calculation should be performed on the basis of order book data only. See our introductory comment. In the context of the data collection, DBG did advise to also look at off-book data and ideally also data on the OTC uncleared market. This recommendation was made with the intention to enable ESMA to reflect on the differences between on- and off-book trading as discussed in the introductory comment. However, the assessment itself should be based on order book data alone.
<ESMA_QUESTION_RVEW_30>

> **Q31 : Do you agree with the changes proposed to Table 2 of Annex II of RTS 2 (List of details for the purpose of post-trade transparency) presented above? If not, please explain and provide any alternative proposal you might have. Are there other issues to be addressed and how?**

<ESMA_QUESTION_RVEW_31>
DBG appreciates ESMAs decision to not change Table 1.

Format vs information content of post-trade transparency
Similar to our response to Q 8 as well Q 25 (pre-trade transparency format) we would like to ensure that the intention is for firms to be permitted to use an appropriate data or transmission format provided the Table format proposed by ESMA can easily be derived from it. We note that ESMA has provided guidance in this regard in Q&A (Q+A 2 (c) in the Q&A on transparency topics) and wish to see this captured within the legislation.

DBAG strongly supports ESMA's aim to further improve data quality in the EU. However, it is important to differentiate between the information content to be provided, as well as the format, as lined out in our answer to Q. 8 above in more detail. In the same context we are surprised about ESMAs notion to the "order of the data fields" and especially as regards the comment by CfE. Since decades trading venue data is being fully consolidated by thousands of users, be it direct users or indirect users. In our view – which we think is not different to the general understanding in the industry – the order of data fields is absolutely not important when it comes to information provision and information usage by third parties. DBAG therefore cannot support ESMAs proposal as described within paragraph 356 (and referring to as well to paragraphs 134 and 135 of this consultation paper) to standardise in RTS 2 the order and the name of the fields to be used in the publication of the post-trade reports in RTS 2. We of course stand ready for any discussion if that would be considered helpful by ESMA.

We would like to point out as well, that it is generally less critical to add additional information within post-trade data compared to pre-trade data (see our concerns as comments to Q25) while we would of course suggest to keep the real-time data message load to the really necessary (non-redundant) information only. This would as well help to keep down cost.

Further comments on detailed data fields proposed in by ESMA

Fields: Trading date and time
We cannot agree with ESMA on their proposal as described under paragraph 357 which states that a CTP (assumingly for bonds) shall be required to consolidate at 1 sec granularity. The less granular the time stamp, the less correctly sequenced millions of transactions taking place in micro - seconds will be consolidated into a single stream of data displayed to end users and with unclear impact on users. The order of incurred transactions will most likely divert significantly from any originally occurred sequence. We do support, however, further alignment of all data sources, e.g. including SI, to adhere to a clock synchronisation as proposed by ESMA. Clock synchronisation and granularity of time stamps are two sides of the same coin but cannot replace each other. While clock synchronisation of time stamps to the transaction event is important to identify the correct transaction time itself, the granularity defines the exact time and allows for the correct sequencing of single transaction events when consolidating data from different data sources. The less granular the time stamp (e.g. sec vs msec) the less accurate a consolidation by a CTP will be. Both measures together are necessary. They must originate from the data source directly (e.g. RM, MTF, OTF, SI, OTC via APA) in order to be effective. ESMA, therefore, should harmonize the legal requirements (e.g. all seconds, or all msec) addressing the source, not at the CTP. Furthermore, a L2 requirement would be more adequate in our view than a L3 measure. As regards ESMAs paragraphs 140 and 141 which we assume will apply as well for RTS 2 we strongly support ESMAs comments as regards the format not being formally described (see as well our answers to Q8 and Q25). We would like to clarify, however, that the mentioned difficulties of aggregation rather refer to the unsatisfying situation of not sufficiently granular time stamps as lined out above in this paragraph, rather than to any other issue.

Field: Third Country Trading Venue Execution
DBG generally supports the enhanced transparency of adding information as regards the third country trading platform, which will help to make clear distinctions between off-venue transactions and transactions executed on equivalent trading systems outside of the EU. We agree as well with the proposed MIC or ALPHANUM-25. We support the same approach for both, RTS 1 and RTS 2.

Field: Price – "No price submitted"
DBG would like to indicate that we see certain challenges, as regards the display of a text field (PNDG, NOAP) in a data field which is generally reserved for numerics/decimals. Considering that trade flags are usually components of standard trade messages, it would be more convenient to have "PNDG" and "NOAP" as trade flags rather than price field values. The informational content for post-trade transparency purposes would be equivalent.

Field: Price currency
While there are certain instruments being issued in other currencies than the large ones (e.g. in the UK there are instruments listed as well as traded in pence while others are listed and traded in GBP), we are aware that there is a lack of comprehensive currency codes today. However, we would expect, that ISO could issue additional codes on request. ESMA might like to take this into consideration. We therefore would currently not support the proposed amendment.

Field: Strike Price
Again, we see certain challenges as regards the display of a text field (PNDG, NOAP) in a data field which is generally reserved for numerics / decimals.

Field: Notional amount / Notional currency 1 and 2
DBG is not in favor of adding information to the pre-trade messages, which are already available within the static reference data. Adding redundant information to trade messages will lead to increasing data volumes and increasing cost.

Field: Notation of the quantity – this information is part of the static reference data, and along our concerns expressed above, we recommend to avoid the introduction of the redundant information in each and every message.

Field: Notional currency – This information is static information which is being provided within reference data. DBG would like to avoid publishing redundant information.
<ESMA_QUESTION_RVEW_31>

> **Q32 : Do you agree with the changes proposed to Table 4 of Annex II of RTS 2 (Measure of volume) presented above? Do you think that it now provides more clarity? If not, please explain and provide any alternative proposal you might have.**

<ESMA_QUESTION_RVEW_32>
ESMA proposes to replace the term "Notional amount of traded contracts" in Table 4 of Annex II of RTS 2 with the definitions of the notional amount provided by Article 3a(1)(a) for futures and Article 3a(1)(b) for options of Delegated Regulation (EU) No 148/2013 (3).

In Article 3a(1)(a) the notional amount of futures is defined as *"(…) the reference amount from which contractual payments are determined in derivative markets".* According to our understanding, this definition encompasses the multiplication of the current market price with the tick value of the respective future contract as method to obtain the notional volume for futures. Based on this understanding, we agree to ESMA's proposal.
<ESMA_QUESTION_RVEW_32>

> **Q33 : Do you agree with ESMA's proposals on Table 1 (Symbol) and Table 2 of Annex IV of RTS 2? If not, please explain and provide any alternative proposal you might have.**

<ESMA_QUESTION_RVEW_33>
ESMA proposes with respect to interest rate derivatives to modify field 22 of Table 2 of Annex IV of RTS 2 such that for options on a bond future the ISIN code of the ultimate underlying bond has to be inserted into field 22.

DBG would like to raise that options on bond futures, such as, for example, Options on Euro-Bobl Futures, Options on Euro-Bund Futures, Options on Euro-Buxl Futures or Options on Euro-Schatz Futures, such an ISIN cannot be provided. The reason is that these options have as underlying a bond future. These bond futures however are specified as futures on a fictitious underlying government bond with a given term range and a fixed coupon. This means that upon delivery of such futures, a bond from a basket of existing government bonds, that qualify for delivery based on their issuance size and maturity, can be chosen. The individual bonds within the basket may vary significantly as to their coupons and residual time to maturity. When it comes to the physical delivery of a futures position, the seller of the futures must decide which government bond from the basket will be chosen to fulfill the delivery obligation. As the direct underlying is fictitious and bond futures are not referring to a unique underlying, a ISIN code of the ultimate underlying bond cannot be provided to field 22.

Against this background, if field 22 could only be filled with ISINs of bonds, this would therefore create uncertainties and confusion with regards to the underlying of options on bond futures. Ultimately, this would also lead to potentially false transparency calculations for options on bond futures as the underlyings for these products would not be recognized by field 22.

To improve the accuracy of the transparency calculations, DBG instead proposes to amend field 22 of Table 2 Annex IV such that this field can also be populated with the ISIN of bond futures, if they serve as underlying for options on bond futures.
<ESMA_QUESTION_RVEW_33>

> **Q34 : Do you agree with ESMA's proposals on the segmentation criteria for bonds (Table 2.2), securitised derivatives (Table 4.1), interest rate derivatives (Table 5.1), equity derivatives (Table 6.1), credit derivatives (Table 9.2 and 9.3) and emission**

allowances (Table 12.1) of Annex III of RTS 2? If not, please explain and provide any alternative proposal you might have.

<ESMA_QUESTION_RVEW_34>
DBG supports ESMA's proposal to include a clarification of the reference data required for the segmentation.

With regard to the segmentation criteria for bond options proposed in table 5.1, DBG does not agree with removing bond futures/forwards as underlying in segmentation criterion 1. As outlined in our response to Q33, options on bond futures generally have bond futures as underlying, which cannot be linked to a specific bond. Therefore, any segmentation of options on bond futures along underlying bonds will be not feasible. Hence, DBG strongly recommends to not remove bond futures/forwards from the segmentation criteria 1 for bond options. Instead, in line with our response to Q34 it is suggested to recognize bond futures as underlying for options on bond futures in field 22, which would allow to keep bond futures/forwards as segmentation criteria for options on bond futures.
<ESMA_QUESTION_RVEW_34>

> **Q35 : Please provide your comments in relation to the proposals related to the segmentation criteria applicable to commodity derivatives summarised in Table 11. Please list the proposals with their ID for ease of reference. Do you have other proposals related to the segmentation criteria applicable to commodity derivatives and C10 derivatives?**

<ESMA_QUESTION_RVEW_35>
SC_Commo_1: Settlement location should be a segmentation criterion for gas (in addition to electricity), and reported with an EIC code.
We agree that the settlement location should be a segmentation criterion for natural gas and that for electricity and natural gas the settlement location should be reported with market standard (EIC code) instead of a free text. We also agree with aligning the reporting of this field with EMIR reporting to trade repositories, apart from contracts with delivery outside of the EU.

SC_Commo_2: Settlement location should not be a segmentation criterion for energy other than gas and electricity (unless a standard is provided by stakeholders.
Although there might not be any energy contracts other than electricity and gas in the EU at this stage, we believe it is important for RTS 2 to be future-proof and to keep the settlement location criterion for all energy contracts. Furthermore, we believe it is justified to require the use of a reporting standard which can be determined at a later stage, when those contracts emerge.

SC_Commo_3: Add the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts:
We strongly support adding the duration of the delivery period as a new segmentation criterion for electricity and natural gas contracts for the reasons laid down in the consultation paper. However, there are two important remarks.

1) We are strongly of the view that this segmentation criterion should be added for all commodity derivative contracts. This is because the more granular the liquidity assessment the closer it will be to reality.

2) To avoid confusion, instead of duration of the delivery period, it would be better to use the term "contract term" (e.g. monthly, yearly, daily). This way, there will be no artificial split between contracts that are delivered 30 days and contracts that are delivered 31 days. We believe there is a need for the industry to work closely together with ESMA to discuss how we deal with such cases.

SC_Commo_4: Align wording of the list of energy types with RTS 23 (in particular add renewable energy):
While DBG does not disagree with adding "renewable energy" we wonder which types of energy exactly ESMA had in mind, as for example solar power and wind power futures from our perspective are C10 derivatives.

SC_Commo_5: For energy sub-asset classes, delete the segmentation criterion "load type":
DBG agrees with the analysis and supports the proposal to delete segmentation criterion 4.

SC_Commo_6: For energy sub asset-classes, the segmentation criterion "underlying energy" should not apply to natural gas:
DBG disagrees that "underlying energy" should not apply to natural gas. It is important that a distinction can be made between for example LNG, hydrogen and natural gas. As it would indeed not make sense to make the distinction via the segmentation criterion "delivery zone", it should be made possible via the segmentation criterion "underlying energy".

SC_Commo_7: For commodity swaps, align the segmentation criterion "settlement type" with RTS 23:
No comments.

SC_Commo_8: For agricultural sub asset- classes, split the segmentation criterion "underlying agricultural commodity" in two:
DBG agrees with splitting segmentation criterion 1 in two.

SC_Commo 9: For freight derivatives, amend the values listed after segmentation criterion "contract type" and delete the contract type FFA from the reference data table:
DBG agrees with deleting the contract type FFA as futures and FFAs are used interchangeably.

SC_Commo_10: Define reporting standards for RTS 2#12 "specification of the size related to the freight sub- type" and RTS 2#13 "specific route or time charter average":
DBG agrees that containerships should be considered as a further sub product of dry freight. DBG also agrees with having fix lists for the segmentation criterion 4 (specification of the size related to the freight sub-type) and the segmentation criterion 5 (specific route or time charter average). However, both should include a field called "other" to ensure that when new sizes of ships emerge, as well as new routes, they can be categorised properly. Particularly routes are subject to a lot of change, hence it would certainly be beneficial to have such a category. Furthermore, DBG noted there is only a list of routes or time charters for wet freight. We would recommend to ESMA to also have a list detailing the different routes and time charters for dry freight.
<ESMA_QUESTION_RVEW_35>

> **Q36 : Do you agree with ESMA's proposal on the new Table of Annex V of RTS 2 (Details of the data to be provided for the purpose of determining a liquid market, the LIS and SSTI thresholds for non-equity financial instruments)? If not, please explain and provide any alternative proposal you might have.**

<ESMA_QUESTION_RVEW_36>
It is difficult to provide solid feedback, as the quantitative data to be provided depends on the final proposal on the IL and LIS waiver threshold methodologies for commodity derivatives, emission allowances and derivatives thereof. Once this proposal is final, DBG would be very appreciative of a dialogue with ESMA conversation on the quantitative data to be provided for the purpose of the transparency calculations.

This being said, we question the added value to provide for these additional fields, when it comes to non-equity instruments that are not commodity derivatives, emission allowances and derivatives thereof. DBG considers the already provided quantitative data for the transparency calculations as of high quality and sufficient to conduct the transparency calculations for those instruments. Against this background, extending the quantitative data for the transparency calculations appears unjustified and of no added value.
<ESMA_QUESTION_RVEW_36>

> **Q37 : Do you agree with ESMA's proposal to delete the ACTX flag? Please explain.**

<ESMA_QUESTION_RVEW_37>

DBG does not agree with ESMA's proposal to delete the ACTX flag. As per RTS 2, the ACTX flag applies to *"transactions where an investment firm has brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price."* The ACTX flag therefore does not apply to transactions executed on a trading venue. Instead, the ACTX flag reveals, if a transaction was arranged and executed OTC. As the ACTX flag is the only flag for post-trade transparency purposes that allows to identify OTC activities, removing this flag would deprive market participants from information of the true level of transactions in these markets. Since OTC already is an opaque market, further reducing their levels of post-trade transparency does not appear appropriate and contrary to the goal of RTS 2 to increase the overall transparency in non-equity markets. Hence, DBG would welcome ESMA to reconsider its proposal and to not remove the ACTX flag from the list of flags for the purpose of post-trade transparency.
<ESMA_QUESTION_RVEW_37>

Q38 : Do you agree with ESMA's proposal to merge the current non-equity deferral flags into one general flag?

<ESMA_QUESTION_RVEW_38>
ESMA proposes to merge the currently existing non-equity deferrals flags, i.e. the LIS deferral ('LRGS'), the illiquid deferral ('ILQD') and the SSTI deferral ('SIZE'), into one general deferral flag ('DEFR'), as ESMA has observed that these flags are often used inconsistently and are also applied to flag transactions benefitting from a waiver.

DBG does not agree with ESMA that these inconsistencies should be addressed via a new general deferral flag. A removal of the currently existing non-equity deferral flags will deprive market participants from valuable post-trade information. As these flags indicate, which deferral applies to a respective non-equity instrument, market participants can draw conclusions on the applicable LIS-threshold and how this threshold may develop. For example, a LIS-threshold is determined differently for products benefitting from a LIS-deferral compared to an illiquid deferral. Having this information, market participants can form expectations about the future transparency threshold development more easily. Rather than removing these deferrals flags, DBG therefore suggests enforcing compliance with the current flag regime more strictly in order to improve post-trade transparency data while maintaining the benefits of the status quo.
<ESMA_QUESTION_RVEW_38>

Q39 : Do you agree with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments? If not, please explain.

<ESMA_QUESTION_RVEW_39>
DBG agrees with ESMA's proposal not to change the existing flags regarding non-price forming transactions in non-equity financial instruments.
<ESMA_QUESTION_RVEW_39>

Q40 : Do stakeholders agree with ESMA's proposal to introduce a general waiver flag for non-equity transactions benefitting from a waiver? For LIS, should it be limited to completely filled LIS orders?

<ESMA_QUESTION_RVEW_40>
ESMA suggests introducing a new flag 'WAIV' to mark non-equity transactions benefitting from LIS, SSTI or illiquid waivers to avoid cases where the 'LRGS' or 'ILQD' deferral flags are used to indicate that a transaction benefitted from a waiver.

DBG does not deem such a new flag as necessary. First of all, in line with our response to Q38, DBG holds the view that rather than introducing new flags, ESMA should focus on enforcing compliance with the currently existing flags. Second, a flag to mark non-equity transactions benefitting from LIS, SSTI or illiquid waivers does not provide any added value to market participants. Exchanges employ the LIS and the illiquid waiver to waive the pre-trade transparency requirements for their off-book trading models. When concluding

transactions off-book, market participants are therefore already aware of the fact that these transactions must benefit from a waiver, otherwise an off-book transaction would not be possible Attaching an additional 'WAIV' flag to off-book transactions would thus only be redundant information. Against this background, DBG does not agree with ESMA to introduce a general waiver flag for non-equity transactions benefitting from a waiver.
<ESMA_QUESTION_RVEW_40>

Q41 : Do you agree with ESMA's proposal to introduce a flag for pre-arranged non-equity transactions?

<ESMA_QUESTION_RVEW_41>
ESMA proposes to introduce a flag for pre-arranged transactions formalized on trading venues to allow NCAs and market participants to identify these transactions. In the consultation paper, ESMA acknowledges that MiFIR does not provide specific provisions for pre-arranged transactions for non-equity instruments. It is therefore referred to Q&A 11 on negotiated trades in the ESMA Q&A on transparency issues, where it is clarified that for non-equity instruments that are not subject to the trading obligation for derivatives, pre-arranged transactions are only possible under the LIS-waiver, the illiquid waiver, the package order waiver or the EFP waiver.

As mentioned in our response to Q40, exchanges employ these waivers to enable their off-book trading models. Off-book trading models generally allow market participants to execute pre-arranged transaction within the environment of an exchange. Off-book transactions are therefore the equivalent of pre-arranged transactions formalized on trading venues.

The market data feeds of exchanges already allow market participants and NCAs to identify off-book transactions, i.e. pre-arranged transactions formalized on trading venues. These feeds provide valuable, often real-time information on transactions concluded at an exchange, including whether a transaction was formalized in the order-book or via off-book models.

Hence, DBG does not agree with ESMA's proposal to introduce a flag for pre-arranged non-equity transactions as market participants and NCAs can already identify such pre-arranged transactions formalized on trading venues, even in real-time.
<ESMA_QUESTION_RVEW_41>

Q42 : Do you agree with the proposal on the delayed implementation of certain provisions of the amended RTS 1 & 2 ? Do you have proposals to minimize the delay?

<ESMA_QUESTION_RVEW_42>
ESMA suggests an implementation period for trading venues of the proposed amended reporting provisions of 6 months. DBG would like to highlight that the system complexity of exchanges requires that any technical or operational changes are planned months beforehand. For this reason, exchanges have technical release cycles in place to plan, test and implement technical changes appropriately and securely, also in alignment with market participants, who often are required to also update their systems following technical changes of exchanges. Typically, exchanges have two release cycles per year within which technical changes are being rolled out. However, in order for a technical change to be included in a release cycle, these changes need to be scripted, designed and internally aligned, before they can enter the roll-out phase via release cycles. It is critical that exchanges have sufficient time to follow these steps. Otherwise, the system stability can be at risk in the worst case. DBG therefore strongly suggest providing trading venues with a timeframe of at least 18 months to implement ESMA's envisaged amendments. A minimum implementation period of six months as suggested by ESMA will be not sufficient at all, taking implementation cycles and efforts at organized trading venues into account, which will have to ensure as well that all their customers are ready to participate and have access to any new adapted feeds.
<ESMA_QUESTION_RVEW_42>

Q43 (CBA) : Can you identify any other costs and benefits not covered in the CBA below? Please elaborate.

<ESMA_QUESTION_RVEW_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_RVEW_43>