

EFAMA response to the ESMA Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments

The European Fund and Asset Management Association¹, EFAMA, supports every efforts made to enhance financial markets regulation which reinforces the stability and the transparency of the financial system.

In that perspective, EFAMA welcomes the opportunity to comment on the ESMA Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity financial instruments.

We consider that a consolidate tape (“CT”) is a key positive factor for price formation and transparency.

Prior to replying to the consultation, we wish to make the following general remarks.

1. General Comments

1.1. The need for global CTPs.

EFAMA supports the proposals to require a functioning consolidated tape for post-trade data through the use of Approved Publication Arrangements (“APAs”) and Consolidated Tape Providers (“CTPs”), as well as harmonised data standards. We also support commercial solutions for CTPs in principle, but fear that commercial drivers towards comprehensive CTPs will be insufficient.

We therefore consider that ESMA could mandate preferably a single CTP or (more realistically) two CTPs if there is no commercial solution is offered, either globally or on specific instruments.

Indeed, in case of a lack of a global offering or an offering limited to some asset class, if ESMA does not mandate a consolidate tape for all asset classes in MiFID II/MiFIR, end-users will continue purchasing real-time market data from trading venues across Europe, incurring not just the “elevated”

¹ **EFAMA** is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 61 corporate members EUR 21 trillion in assets under management of which EUR 12.6 trillion managed by 56,000 investment funds at end 2015. Just over 30,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 25,900 funds composed of AIFs (Alternative Investment Funds). For more information about EFAMA, please visit www.efama.org

prices for market data but also the administrative costs and profit margins if the data has been purchased via a data vendor.

In that perspective, a review clause should also be included in the upcoming RTS for this purpose to ensure that an *ad-hoc* review is organised.

1.2. Delay for disclosure

Article 8 of the Final Draft Regulatory Technical Standards (RTS 2) allows for the deferred publication for 48 hours for transactions that have been deemed to be illiquid and benefit from the large in scale (LIS) and size specific to the financial instrument (SSTI) waivers. In addition, subject to the approval of the relevant National Competent Authority ("NCA"), publication of the details of the transaction can be extended by four weeks.

In that perspective, we deem crucial that the rules imposed on APA, trading venues and CTP respect the option to retain disclosure.

Additionally, we urge ESMA to take into account the need for asset managers to achieve best execution for very large bond trades, specifically their ability to achieve best price to the benefits of the end investor and the difficulty to anticipate large bond trades and multi-jurisdictional reality of such large bond trades.

Consequently, we are asking ESMA to adopt the following proposal:

1. If a bond has been deemed to be illiquid and benefits from the LIS and SSTI waivers, publication of the details of the transaction would be automatically delayed for their public disclosure beyond 48 hours, and up to four weeks, without needing an ex-ante agreement from NCAs.
2. The broker which takes part to the transaction informs the NCA ex-ante of the trade and the large size nature of the transaction without the need of an ex-ante approval and discloses the trade to the public once the transaction is settled; and
3. The counterparty asking for the delayed disclosure would disclose within 48 hours only the price of the slices but not the quantity of these slices, if these slices are higher than a pre-determined threshold.

2. Detailed reply.

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

We welcome the proposal to introduce a non-equity consolidated tape (CT) for non-equities as it would reduce the costs of market data, improve trading transparency and execution services efficiency.

With the recognition of the benefits of having a CT for non-equities, we do not understand the rationale behind point 3. Indeed, from our standpoint, we would expect that regulators would encourage, if not mandate, CTP to standardise their offering and to have the largest possible scope of assets covered. This would allow the competent authorities to have a "one-stop shop" information centre to assess systemic risk.

Similarly, even if we understand the willingness to develop competition for every type of product and service offered in Europe, we believe that fewer CTP would facilitate the control of the markets.

Even if we recognise the option to specialise as expressed in point 6, we strongly encourage ESMA to recommend as often as possible the development of global solutions for reporting. This would among other benefits reduce implementation costs and reporting costs.

In addition, to further reduce costs, we urge ESMA to facilitate joint offering of equities reporting and non-equities reporting through the automatic authorisation of equity CTP that would extend its activities to non-equities CT.

Regarding specialised offering, we welcome ESMA's focus in ensuring that there is a viable business case for providing a non-equity CT. Nevertheless, we are of the view that if, within the two years of the entry into force of the CT rules, no provider of data is offering a CT on non-equities assets, ESMA should mandate at least two CTPs that should have an offering available within 6 months.

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

We do not believe that the proposed criteria are relevant and we would encourage ESMA to avoid having any threshold, in order for authorities to have the most complete possible overview of financial markets.

Should ESMA insist on defining a threshold for CT, it should rather be based on the criteria used to define liquid assets under transparency rules.

From a CTP's perspective, the CTP should gather and provide as detailed information as possible to ensure proper price formation.

From a user's perspective, it is important that CTPs have the capacity to offer an instrument-by-instrument based product, if the market participant would like to purchase the data in this format. APAs and trading venues should not be allowed to bundle any data streams that feed into a CT.

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

As expressed above in our reply to Q2, we do not see benefits in restricting transparency by imposing threshold.

Should those thresholds be mandated, we are of the strong opinion that the thresholds should be defined by asset classes and based on liquidity criteria used to set the MiFID II transparency regime.

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

We believe that both entities should run their calculations and that the CTP should be able to reconcile the figures provided to ensure consistency in data published.

This approach would allow CTPs to match data and centralise information at CTP level, before communicating to authorities and markets.

We would therefore recommend ESMA to provide the denominators needed for the calculations alongside the transparency calculations to allow trading venues and APAs to make these assessments.

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

We consider that there should not be any grace period after the acceptance of the CTP by ESMA.

Having a grace period would deprive the market from a welcome visibility on the liquidity and would deprive the authorities from the information they need to assess market risks.

Regarding the thresholds proposed in point 21, we consider that those criteria are too complex to be practically applicable. The thresholds and liquidity criteria should be the ones used to define liquidity from a transparency purpose.

We would therefore recommend ESMA to enforce a global application of its criteria in order to facilitate implementation, ensure legal certainty and make market analysis feasible.

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

Member Views Requested

We understand the rationale to exclude a source that is not active after a certain period of time.

However, we have a few concerns with that approach:

- A CTP that acted as a source should be automatically subject to the reporting rules;
- A CTP that is no longer active should be able to maintain data availability for 5 years in order to be able to build up and maintain track records of instruments.

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