

BETTER FINANCE’s response to ESMA’s MiFIR Review Consultation Package 3 – the technical advice (Section 3), RTS 1 (Section 4), the RTS on input / output data for shares and ETFs CTP (Section 8) and the flags under RTS 2.

—Date: 30 September 2024

— Ref: ESMA’s MiFIR Review - Consultation Package 3: Technical Advice, RTS 1, CTP Data Standards, and RTS 2 Flags (2024)

—Link: <https://www.esma.europa.eu/press-news/consultations/mifir-review-consultation-package-3-technical-advice-section-3-rts-1>

Executive Summary

Introduction to the Consultation

In light of the MiFIR/MiFID II review (entered into force on 28 March 2024, with transposition deadlines for MiFID II amendments set on 29 September 2025), this consultation package addresses key aspects of equity market transparency, focusing on proposed technical standards and amendments to existing regulations. While BETTER FINANCE recognises the importance of this consultation, we note that its highly technical nature limits the ability of retail investors to provide direct, actionable feedback, as it primarily targets market operators (data providers, investment firms, venues, etc.). The complexity of the regulatory changes makes it challenging for retail stakeholders to fully engage. Nonetheless, we support ESMA’s overarching goal to enhance transparency, efficiency, and competitiveness in EU financial markets, as outlined in the MiFIR/D Level 1 review. Our feedback focuses on the following key areas:

Equity Transparency (RTS 1): Proposed amendments to improve pre-trade and post-trade transparency for equity instruments (e.g. shares, ETFs). The goal is to clarify data reporting standards and improve the assessment of liquidity.

Consolidated Tape Providers (CTP) – Input/Output Data Standards (RTS 8): New technical standards for the equity consolidated tape aim to enhance post-trade transparency. This would provide retail investors and other market participants with more reliable, actionable market data for better-informed decisions, particularly regarding liquidity and market depth across order books.

Flags under RTS 2: A review of the current flagging system, particularly for Systematic Internalisers (SIs), aims to improve clarity and relevance, offering more precise information about liquidity and transaction types.

The inputs provided to this consultation will help ESMA in shaping final technical standards for equity-related provisions that are to be submitted to the European Commission by December 2024.

Key BETTER FINANCE Feedback

BETTER FINANCE remains committed to protecting retail investors' interests by advocating for transparency, access to market data, and accurate price formation in equity markets. This consultation response ensures that the proposed amendments and technical standards introduced in the MiFIR review align with the goals of fostering a transparent and consumer-friendly financial market. Central to BETTER FINANCE's position is ensuring that retail investors are not disadvantaged when accessing liquidity data, price formation mechanisms, and execution conditions. The feedback emphasises the importance of pre- and post-trade transparency, granular data reporting, and protection for retail investors in a dynamic and evolving financial landscape.

Key Question Summaries

Q6: Reporting of Shareholder Holdings Exceeding 5%

BETTER FINANCE opposes removing the requirement to report shareholder holdings above 5%. This data is essential for understanding the influence of large shareholders on corporate governance and liquidity. Without this information, retail investors would face significant disadvantages in assessing market dynamics and shareholder control.

Q7: Pre-Trade Transparency in Tables 1a and 1b

BETTER FINANCE supports a review of Tables 1a and 1b to improve pre-trade transparency. Clear distinctions are needed between venues that contribute actively to price formation and those that rely on passive liquidity, which affects price formation and retail investors' ability to access accurate data.

Q12: Pre-Trade Transparency Threshold for Systematic Internalisers (SIs)

BETTER FINANCE stresses the need for greater transparency in SIs, advocating for their obligations to be more closely aligned with those of multilateral, regulated or "lit" venues. This would prevent SIs from increasingly raising opaque alternatives and ensure that retail investors have a full view of available liquidity and price formation.

Q13: Adjustments to AVT Buckets and Standard Market Size (SMS)

While supporting the introduction of new AVT buckets, BETTER FINANCE advises against significantly raising the Standard Market Size (SMS), as this could shift retail trades toward Systematic Internalisers (SIs), reducing transaction flow in multilateral lit markets, which would impact overall market transparency. A tiered approach may be

considered as an option to balance retail investor protection, transparency needs, and the accommodation of larger trades in bilateral and OTC markets.

Q27: Amendments to Table 4 of RTS 1 (Post-Trade Transparency)

BETTER FINANCE supports the proposed amendments but emphasises the need for granular SI flags and the addition of a midpoint execution flag to enhance transparency. This would provide retail investors with clear insights into liquidity and price improvements, ensuring best execution.

Q28: Retention of SIZE, ILQD, and RPRI ‘Flags’

BETTER FINANCE opposes the removal of these flags, as they are critical for assessing market liquidity and trade context. Removing these flags would reduce transparency and hinder retail investors’ ability to assess price formation. The flags should be refined, not removed.

Q57: Pre-Trade Data for the Consolidated Tape Provider (CTP)

BETTER FINANCE supports and recommends including order entry timestamps in the data provided to the CTP to ensure Best Bid and Offer (BBO) data is accurately reordered, enabling to mitigate distortions caused by network latency. This basic element, adjustment is notably crucial for providing retail investors with a true reflection of market liquidity.

Q58: Proposal for the Output Table

BETTER FINANCE supports streamlining the output table but insists on maintaining granularity. Fields such as the order entry timestamp should be retained to ensure accurate liquidity and price formation data, allowing retail investors to make informed decisions based on clear, reliable market information.

For more detailed insights, refer to the consultation questionnaire (BETTER FINANCE full answer below) and supporting documents available on [ESMA’s webpage](#).

Reply form

on the Consultation Paper 3



Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 September 2024**.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_CP3_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP3_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP3_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading 'Data protection'.

General information about respondent

Name of the company / organisation	BETTER FINANCE
Activity	Other (Consumer / Investor protection)
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe / Belgium

Questions

2.1 CDR 2017/567

Q1 Should the use of alternative data to perform the calculations (i.e. as described under Option 2 above) be feasible, what would be the costs and the benefits of such a change for different categories of market participants, including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects? Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?

<ESMA_QUESTION_CP3_1>

<ESMA_QUESTION_CP3_1>

Q2 Do you agree with the proposal on the start day of application of the transparency calculations? Please explain.

<ESMA_QUESTION_CP3_2>

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<ESMA_QUESTION_CP3_2>

Q3 Do you agree with the proposal on the denominator of the (i) ADT, (ii) ADNTE and (iii) for specifying daily traded parameter? Please explain.

<ESMA_QUESTION_CP3_3>

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<ESMA_QUESTION_CP3_3>

Q4 Do you agree with the proposal on the liquidity determination for shares? Please explain.

<ESMA_QUESTION_CP3_4>

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<ESMA_QUESTION_CP3_4>

Q5 Do you agree with the proposal on the liquidity determination for other similar financial instruments? Please explain.

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Q6 Do you agree with the proposal to remove the field “holdings exceeding 5% of total voting rights” from the legal text but keeping it in the XML schema of the reporting without being obliged to report such information? Please explain.

<ESMA_QUESTION_CP3_6>

BETTER FINANCE recognises the importance of balancing complexity with transparency in corporate reporting, particularly regarding liquidity. Reporting holdings exceeding 5% of total voting rights is essential for understanding the influence of large shareholders on both governance and liquidity. Significant movements, such as the liquidation of a large shareholder's position, can affect market dynamics and corporate control, making it crucial for retail investors to access this information to anticipate potential shifts. Simplifying reporting should not equate removing this requirement as it risks limiting retail investors' ability to assess the impact of large shareholders on market liquidity and related governance issues. Without this data, liquidity assessments may be incomplete, affecting regulatory decisions and disadvantaging investors. BETTER FINANCE recommends keeping this information within the mandatory reporting framework to ensure transparency. If kept in the XML schema, clear and accessible reporting is vital to maintain confidence in market liquidity and governance structures to inform prospective and minority shareholders.<ESMA_QUESTION_CP3_6>

2.2 RTS 1

Q7 Do you in general agree with the content of the proposed Tables 1a and 1b? Please specify (i) which fields you consider as not necessary (ii) any amendments that you consider necessary to the columns “Description and details to be published”, “Type of execution or publication venue”, “Type of trading system” to ensure that the information to be provided is clear and unambiguous (iii) the instruments and the circumstances when it is necessary to report the field price with a price notation different from “MONE” – Monetary value.

<ESMA_QUESTION_CP3_7>

BETTER FINANCE supports the transparency efforts outlined in the consultation, as retail investors rely on sound price formation mechanisms to make informed decisions. However, Tables 1a and 1b should be reviewed to better capture true pre-trade transparency, and enforce it. Currently, the framework does not sufficiently address venues classified as pre-trade transparent but that may import prices from other markets, creating passive liquidity. This misrepresentation impacts price formation and distorts the best available prices seen by retail investors. Amendments should clarify whether venues actively contribute to price formation or passively rely on external sources. Moreover, this distinction is vital for the accuracy of the European Best Bid and Offer (EBBO) in the Consolidated Tape (CT), as failure to reflect genuine liquidity could undermine price discovery. Retail investors need clear, transparent data that accurately represents market conditions to ensure best execution and informed decision-making. <ESMA_QUESTION_CP3_7>

Q8 Do you agree with the proposed amendments to Article 4? Please explain.

<ESMA_QUESTION_CP3_8>

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<ESMA_QUESTION_CP3_8>

Q9 Do you agree with the proposed amendment to Article 6 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_9>

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Q10 Do you agree with the proposed amendments to Article 7 of RTS 1? Please explain.

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<ESMA_QUESTION_CP3_10>

Q11 Do you agree with the proposed amendments to Article 8 of RTS 1? Please explain.

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Q12 How could ESMA take into account international best practices and competitiveness for the determination of the threshold up to which SIs have to be pre-trade transparent? Please explain.

<ESMA_QUESTION_CP3_12>
BETTER FINANCE advocates for aligning SIs transparency requirements more closely with those of trading venues to address growing concerns about market opacity. In the EU, SIs play a significant role in liquidity (80% of SI trades in 2020 being below the standard market size (SMS)), indicating that many trades come from retail investors. However, this internalisation of trades without sufficient transparency pulls liquidity away from lit venues, distorting price formation and potentially leading to worse execution conditions for investors. ESMA could enforce similar, more closely aligned transparency measures taking stock of that of the USA, where SIs are properly identified and in post-trade data reporting, notably via the CT. This would provide investors, both local and foreign, with a clear view of liquidity, ensuring that SIs do not become opaque alternatives to regulated trading venues. Adopting these practices would improve price discovery, enhance market competitiveness, and safeguard retail investors, fostering a healthier and more transparent market environment in the EU. <ESMA_QUESTION_CP3_12>

Q13 Do you agree with the new AVT buckets and related SMS? Would you set a higher SMS for the AVT bucket [0-10000] (e.g. 10,000)? Please explain.

<ESMA_QUESTION_CP3_13>
BETTER FINANCE supports a review of the SMS methodology to ensure it reflects both the liquidity risk and turnover of stocks while protecting retail investors' access to transparent liquidity. We welcome the introduction of new AVT buckets, which allow for a more granular approach, but caution against raising the SMS threshold too significantly. Retail investors, who typically engage in smaller trades, may find their trades pushed toward Systematic Internalisers (SIs) operating with reduced transparency, distorting the true liquidity picture and compromising best execution.
We recognize the importance of aligning SMS thresholds with the Large in Scale (LIS) threshold for larger AVT buckets to support liquidity for institutional trades, provided this alignment does not undermine retail investors' access to transparent venues. Potentially, a proportional / tiered approach to SMS can be considered, where higher LIS alignment is

reserved for larger liquidity trades, while moderate increases apply to smaller buckets, thus maintaining transparency for retail trades. Additionally, we still strongly advocate for enhanced transparency obligations for SIs, also for trades below the SMS threshold, to ensure that retail investors benefit from both best execution practices and assessment, and for market transparency. ESMA needs to strike a balance between supporting liquidity for larger trades and safeguarding retail investors trades from being excessively captured towards opaque trading venues.<ESMA_QUESTION_CP3_13>

Q14 Do you agree with ESMA's proposal of the new threshold#1 for shares? Please explain.

<ESMA_QUESTION_CP3_14>
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Q15 Do you agree with ESMA's proposal of the new threshold#2 for shares? Please explain.

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Q16 Do you agree with the new AVT buckets and related SMS? Would you set a lower SMS for the AVT bucket [0-10000) (e.g. 5,000)? Please explain.

<ESMA_QUESTION_CP3_16>
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Q17 Do you agree with ESMA's proposal of the new threshold#1 for DRs? Please explain.

<ESMA_QUESTION_CP3_17>
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Q18 Do you agree with ESMA's proposal of the new threshold#2 for DRs? Please explain.

<ESMA_QUESTION_CP3_18>

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Q19 Do you agree with the new AVT buckets and related SMS? Please explain.

<ESMA_QUESTION_CP3_19>

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Q20 Do you agree with ESMA's proposal of the new threshold#1 for ETFs? Please explain.

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Q21 Do you agree with ESMA's proposal of the new threshold#2 for ETFs? Please explain.

<ESMA_QUESTION_CP3_21>

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Q22 Do you agree with the proposed amendments to Article 11 of RTS 1? Please explain.

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Q23 Do you agree with the proposed new Article 11a of RTS 1? Please explain.

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Q24 Do you agree with the proposed new Article 11b of RTS 1? Please explain.

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Q25 Do you agree with the proposed amendments to Article 12 of RTS 1? Please explain.

<ESMA_QUESTION_CP3_25>

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Q26 Do you agree with the proposed amendments to Table 3 of Annex I of RTS 1? Please explain.

<ESMA_QUESTION_CP3_26>

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Q27 Do you agree with the proposed amendments to Table 4 of Annex I of RTS 1? Please explain.

<ESMA_QUESTION_CP3_27>

BETTER FINANCE supports the proposed amendments to Table 4 of annex I of RTS 1, recognising the need to simplify the flagging process for clearer and more efficient post-trade transparency. However, we believe that the transaction flags should be reviewed greatly to ensure market participants have a granular view of liquidity, especially in the context of the Consolidated Tape (CT). We this advocate for maintaining granular SI flags and introducing a dedicated flag for midpoint executions by SIs, as these changes would significantly enhance transparency. This would ensure that retail investors have access to critical information on price improvements and market liquidity, thereby supporting best execution while keeping the market clear and transparent without adding unnecessary complexity. <ESMA_QUESTION_CP3_27>

Q28 Would you consider that the SIZE, ILQD, RPRI flags could be removed? Please, explain.

<ESMA_QUESTION_CP3_28>

BETTER FINANCE does not support the removal of the SIZE, ILQD, and RPRI flags, as they provide important information on Systematic Internalisers' (SIs) executions, particularly related to size, illiquidity, and reference price transactions. These flags are crucial for giving investors, especially retail investors, a clear and informed view of market liquidity, helping them assess conditions and understand the context of specific trades. While these flags may have limited use, they offer valuable granular insights that are essential for best execution and market analysis. Removing them would reduce the quality of information available to market participants and negatively impact transparency around liquidity and price formation. Instead, we suggest reviewing and refining these flags to ensure they

continue to serve a useful role. Additionally, in light of the Level 1 review and new midpoint matching possibilities for SIs, we recommend introducing a MId flag for midpoint executions, which would further enhance transparency and support retail investors.<ESMA_QUESTION_CP3_28>

Q29 Would you consider that the ACTX flag could be removed? Please, explain.

<ESMA_QUESTION_CP3_29>
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<ESMA_QUESTION_CP3_29>

Q30 Would you further reduce the maximum time for disclosing pre-trade transparency “as close to real-time as technically possible”? If so, what maximum limit would you suggest? Please explain.

<ESMA_QUESTION_CP3_30>
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Q31 Do you agree with the proposed amendments to Article 15 of RTS 1? If not, please explain.

<ESMA_QUESTION_CP3_31>
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<ESMA_QUESTION_CP3_31>

Q32 Which option do you prefer: Option A (status quo), Option B (add layer for technical trades), Option C (add layer for technical trades and waivers)? Please explain.

<ESMA_QUESTION_CP3_32>
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<ESMA_QUESTION_CP3_32>

Q33 Do you agree with the proposed amendments to Annex IV of RTS 1 in relation to Option B and Option C? Please explain.

<ESMA_QUESTION_CP3_33>
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<ESMA_QUESTION_CP3_33>

**Q34 Do you agree with the proposed amendments to Articles 16 to 19 of RTS 1?
Please explain.**

<ESMA_QUESTION_CP3_34>

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<ESMA_QUESTION_CP3_34>

**Q35 Do you agree with the proposed different application dates for the different
provisions in Article 20 of RTS 1? Please explain.**

<ESMA_QUESTION_CP3_35>

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<ESMA_QUESTION_CP3_35>

2.3 Input / Output data RTS (equity CTP)

Q55 Do you agree with the proposal for the Data related to the status of individual financial instruments? If not, please explain.

<ESMA_QUESTION_CP3_55>
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<ESMA_QUESTION_CP3_55>

Q56 Do you agree with the proposal for the data related to the status of status of systems matching orders? Would you consider that other identifiers of the trading system type should be used? Please explain?

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<ESMA_QUESTION_CP3_56>

Q57 Do you agree that the pre-trade data to the CTP should be that included in Table 1b in section 4.1.3.1 except for fields 8 and 9? Please explain.

<ESMA_QUESTION_CP3_57>
BETTER FINANCE supports the inclusion of pre-trade data in Table 1b for the Consolidated Tape Provider (CTP) but emphasizes the need for a comprehensive and transparent Consolidated Tape. Limiting the pre-trade data to just Best Bid and Offer (BBO) 1 already raised, as it restricts the full scope of data that investors - especially retail investors - need to make informed decisions. A broader range of data would ensure that the Consolidated Tape serves its intended purpose of enhancing transparency and access to liquidity information across EU markets and provide a source of quality assessment for best execution. Additionally, it is crucial to include the order entry timestamp to allow the CTP to reorder BBO based on the actual order time, mitigating issues related to network latency and “geographical disparities”. Without this, the data may provide a distorted view of liquidity, favouring contributors located closer to the CTP. By ensuring accurate reordering and broader data inclusion, the CTP can provide a true and useful view of European market liquidity, improving the quality of information for all market participants and protecting retail investors’ interests.<ESMA_QUESTION_CP3_57>

Q58 Do you agree with the proposal for the output table? Please explain.

<ESMA_QUESTION_CP3_58>
BETTER FINANCE supports efforts to streamline the output table, but stresses the need to retain sufficient granularity to provide retail investors with comprehensive and accurate

market data. Simplification should not come at the cost of critical details that reflect price formation and liquidity. We believe it remain essential to include fields such as the “order entry timestamp”, which would allow the Consolidated Tape Provider (CTP) to reorder incoming data based on the actual order time, for example and to fulfil its purpose. This would ensure that market participants receive a precise and transparent view of liquidity, free from the distortions caused by network latency or geographical disparities. Incorporating such details ensures that retail investors have access to reliable and comprehensive data, helping them make informed decisions and achieve best execution. The CTP can still serve all market participants while maintaining the integrity and accuracy of the orders by balancing streamlined output with necessary transparency and clear, layered (investor-friendly), accessible and complete data.<ESMA_QUESTION_CP3_58>

Q59 Do you agree with the proposal for the input and output tables for the post-trade equity CTP? Please explain.

<ESMA_QUESTION_CP3_59>

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<ESMA_QUESTION_CP3_59>

2.4 Flags in RTS 2

Q60 Do you agree with the proposed amendments to flags in Table 3 of Annex II or RTS 2? In particular, do you consider that the flag 'ACTX' should be deleted?

<ESMA_QUESTION_CP3_60>

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<ESMA_QUESTION_CP3_60>