

Reply form: MiFIR Review

RTS 2, RTS on reasonable commercial basis and RTS 23

Responding to this paper

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

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

ESMA will consider all comments received by **28 August 2024**.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_CP1_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_ABCD.

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

Publication of responses

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

Data protection

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

1. General information about respondent

Name of the company / organisation	Cboe Europe B.V.
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	INetherlands/Europe and United Kingdom

2. Questions

CP on the amendment of RTS 2

Q1 Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

<ESMA_QUESTION_CP1_1>

Re: Cboe Europe B.V. response to the public consultation regarding the proposed RTS on the amendments to RTS2

Dear Sirs/Madams,

We are writing in response to the consultation regarding the proposed regulatory technical standards related to pre- and post-trade transparency requirements for non-equity instruments under Articles 9, 11 and 20 of the MiFIR review (**RTS2**).

Cboe Europe B.V. (**Cboe**) is glad to share its views on the consultation paper drafted by ESMA (**CP**) on this Regulatory Technical Standard (**RTS**), as articulated through section 1 to 166 (**Sections**). Cboe acknowledges the importance, and supports the creation, of a legislation framework on this matter. Upon careful review, CEBV would like to offer the following comments and observations.

Appreciating the opportunity to provide feedback on the proposed definition of a Central Limit Order Book (**CLOB**) trading system under RTS2, Cboe would like to address several key points regarding the current definitions under consultation. Cboe considers that the proposed definition of the CLOB, which encompasses both continuous auction order book trading systems and those combining elements of continuous auction and periodic auction trading systems, is generally sound as it captures the fundamental nature of CLOBs.

As a general remark, nevertheless, Cboe invites ESMA and the regulators to review and delete the reference to the term 'auction' from the concept of 'Continuous **auction** order book trading system', as it might mislead readers to refer to auction systems limited in time, such as periodic auction trading systems. This is also due to the fact that in any case, continuous auction order book trading systems operate more like

a continuous trading platform, where the matching is immediate and ongoing. The reference to 'Continuous order book trading system' ensures a better separation from the concept of 'Periodic auction trading systems' and does not diminish the importance that the trading algorithm places on matching buy and sell orders based on the best available price on a continuous basis without human intervention. With regard to both 'Continuous auction order book trading systems' and 'Periodic auction trading systems' it could also be stressed within their description that both these systems aim to ensure transparency on the amount of liquidity that is posted on the bid and offer of the order book for relevant instruments in relation to instruments subject to RTS2.

Cboe also deems that the following enhancements could be considered:

Inclusion of quote-driven trading systems

Including quote-driven systems in the CLOB definition would ensure a comprehensive representation of trading mechanisms and facilitate regulatory oversight across different trading models. This is particularly relevant given the role that quote-driven systems play in financial markets infrastructure.

Acceptance of Pre-Arranged Trades (Cross Orders)

Cboe would recommend expanding the proposed CLOB definition to encompass trading systems that accept pre-arranged trades, or cross orders, under the rules of a trading venue operating a CLOB. This inclusion would ensure that all pre-arranged trades, including those below the large-in-scale threshold, are not exempt from pre-trade transparency requirements. Lacking this element, certain crossing trading systems could operate outside the intended regulatory perimeter, implying loss of market transparency information.

Periodic Auctions and Pre-Trade Transparency

The current amendments to the definition include the addition of periodic auctions models within the CLOB. Whilst Cboe acknowledged that this aligns with pre-trade transparency obligations per the definitions included under RTS1, Cboe would like to highlight that this change would bring to the necessity to publish multiple depths of relevant periodic auction book - as may be captured by said definition. This could also lead to the necessity to amend Market Model Typology (MMT), which currently distinguishes between various models and which aggregation could lead to confusion and inconsistency. Cboe asks that ESMA remain open to the above considerations and assesses further any unforeseen implications that may arise from the current proposal.

<ESMA_QUESTION_CP1_1>

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

<ESMA_QUESTION_CP1_2>

Cboe would like to note that, as indicated in the response to the previous question, quote-driven trading systems should also be included within the definition. As it is known, these trading systems offer automatic execution capabilities without requiring human intervention during the execution process and support the efficiency and speed of transaction execution. Though quote-driven systems often involve human market

makers providing quotes, the subsequent matching and execution of orders are carried out automatically: this is not dissimilar from any trading model where decisions to place orders and manage strategies normally involves human traders whereby execution is in fact automated. Cboe considers that due to these characteristics, quote-driven trading systems align with one of the core attributes of the CLOB, as defined in the current draft. This can be achieved by incorporating a subparagraph (c) within the definition that explicitly recognizes these systems, e.g.:

(c) a quote-driven trading system where automated execution of trades occurs based on quotes provided by market makers.

<ESMA_QUESTION_CP1_2>

Q3 Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

<ESMA_QUESTION_CP1_3>

Cboe agrees that the description of periodic auction trading systems provided for in Annex I of RTS2 is relevant and appropriate for specifying the characteristics of these trading systems in the revised draft of RTS2.

<ESMA_QUESTION_CP1_3>

Q4 Do you agree to use ESA 2010 to classify bond issuers If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

<ESMA_QUESTION_CP1_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_4>

Q5 Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

<ESMA_QUESTION_CP1_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_5>

Q6 Do you agree with the proposed LiS pre-trade thresholds for SFPs and EUAs? In your answer, please also consider the analysis provided in section 4.2.2.

<ESMA_QUESTION_CP1_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_6>

Q7 Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

<ESMA_QUESTION_CP1_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_7>

Q8 Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

<ESMA_QUESTION_CP1_8>

While supporting the suggested changes to the post-trade fields in Table 2 of Annex II of RTS2 as summarized in Table 5, Cboe would like to stress as follows.

As a general remark, although the RTS1 consultation is not part of this CP, Cboe expects that changes to RTS2 are accompanied by equivalent changes to RTS1. Cboe considers consistency across both RTS1 and RTS2, including in relation to relevant reporting field, as fundamental to maintain a harmonized regulatory framework and minimizing discrepancies in reporting standards across different trading platforms.

Further, Cboe acknowledging that the proposed changes may be practically implemented. However, as the amendments are not merely a matter of adding/changing fields or flags in a separate manner from the order execution lifecycle, Cboe asks that ESMA coordinates and confirms any intended changes with the FIX Trading Community body for the purpose of industry standard validation and quality assurance. Cboe also requests that sufficient time be allocated for the implementation of these changes. This is due to the fact that any of these changes will impact transactions' lifecycle, from order entry to processing and reporting. Data feeds between trading venues, data reporting service providers, investment firms, market data vendors, and independent software vendors will also need to be adapted accordingly. Therefore, Cboe asks for these requirements to be mandated at least one year after the final version of RTS2 has been adopted and published in the Official Journal. This timeframe will provide all market participants with the necessary clarity on the requirements, allowing to start development work with full awareness of the specifications and for comprehensive adaptations across all affected systems and processes.

<ESMA_QUESTION_CP1_8>

Q9 Do you agree not to change the concept of “as close to real-time as technically possible”? If not, what would be in your view the maximum permissible delay?

<ESMA_QUESTION_CP1_9>

Cboe generally agrees with the current concept of “*as close to real-time as technically possible*”, which allows for a maximum delay of 5 minutes and widely accommodating different technical capabilities and possible issues of market participants. Cboe also notes that this is not a matter of particular concern in relation to non-equity trading and within the context of this CP.

<ESMA_QUESTION_CP1_9>

Q10 Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

<ESMA_QUESTION_CP1_10>

Cboe notes that ESMA’s July publication on the DPE timelines was helpful though advanced notice on the file format of the permanent register should be provided as soon as possible. Whilst Cboe already supports “package trade” flag through MMT, ESMA should continue to utilise existing flags ahead of introducing new/separate ones. To provide further suggestions, it might be useful to consider that the FCA in the UK relaxed SI requirements for APA validation. This helped with the DRR success in the UK given that the current reporting logic results in APAs publishing SI MICs for firms they have no commercial relationship with.

<ESMA_QUESTION_CP1_10>

Q11 Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

<ESMA_QUESTION_CP1_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_11>

Q12 Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

<ESMA_QUESTION_CP1_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_12>

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

<ESMA_QUESTION_CP1_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_13>

Q14 Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

<ESMA_QUESTION_CP1_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_14>

Q15 Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?

<ESMA_QUESTION_CP1_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_15>

Q16 Do you agree with the maximum duration proposed?

<ESMA_QUESTION_CP1_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_16>

Q17 Do you agree with a static determination of liquidity and determine that all EUA are liquid? If not, can you suggest any alternative methodology on how to define liquidity for EUAs?

<ESMA_QUESTION_CP1_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_17>

Q18 Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

<ESMA_QUESTION_CP1_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_18>

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

<ESMA_QUESTION_CP1_19>

Cboe recognises that ETCs and ETNs may be considered as debt-instruments based on the underlying assets. On these grounds, Cboe agrees with and supports the proposed classification of ETCs and ETNs as types of debt instruments, based on the observations and conclusions drawn by ESMA. However, Cboe would also like to stress that from a trading perspective, ETCs and ETNs exhibit equity-like behavior: more broadly, their creation, redemption, and trading mechanisms align closely with those of ETFs, making them comparable in terms of market dynamics and liquidity to equity-like instruments. For these reasons, Cboe advocates for ESMA and the regulators to ensure that an equivalent level of transparency is ensured for both ETCs/ETNs as well as it is currently for ETFs and equity-like instruments. Should they not be treated as such, they would be excluded from the Equities Consolidated Tapes, potentially benefitting from less transparency compared to similar instruments (e.g. ETFs). For instance, due to the envisaged structure of the Consolidated Tapes, investors might prefer not to seek out specific Debt/Bonds Consolidated Tapes for the purpose of obtaining data on ETCs and ETNs alone.

<ESMA_QUESTION_CP1_19>

Q20 Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

<ESMA_QUESTION_CP1_20>

Cboe also agrees with ESMA's assessment to classify ETCs and ETNs as illiquid. Cboe considers this approach to be consistent with historical data available, to align with the treatment of similar financial products, and to enhance market transparency.

<ESMA_QUESTION_CP1_20>

Q21 Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

<ESMA_QUESTION_CP1_21>

Cboe has no major concerns about the pre- and post-trade thresholds suggested by ESMA.

<ESMA_QUESTION_CP1_21>

Q22 What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

<ESMA_QUESTION_CP1_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_22>

Q23 Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?

<ESMA_QUESTION_CP1_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP1_23>

Q24 Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA_QUESTION_CP1_24>

Cboe acknowledges that unfortunately this CP has not been conducted concurrently with the consultation on RTS1, now included within the third issued Consultation Paper on RTSs related to the MiFIR Review, despite both standards address pre- and post-trade transparency. Cboe considers this separation to be a missed opportunity for a holistic evaluation by the industry of the proposed changes and their impacts. A joint consultation on RTS1 and RTS2, with appropriate timelines and space to provide feedbacks, would have facilitated a more integrated review process, allowing market participants to better assess and compare implications of the changes, overlapping issues, and potential inconsistencies across both standards. In light of this, Cboe strongly suggests that similar consultations in the future be bundled where appropriate, especially when they cover similar or related aspects of the regulatory landscape. This would not only streamline the consultation process but also ensure a more comprehensive and coherent approach to regulatory changes, as participation to the consultation process enhances and supports the implementation of rules within the market already since the inception of said rules.

<ESMA_QUESTION_CP1_24>

Q25 What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA_QUESTION_CP1_25>

Cboe anticipates that significant resources will be necessary to implement and comply with the new requirements. Given the complexity and scope of changes that were already needed to comply with RTS1 and RTS2 as per 2023, the required effort and related costs of compliance with the revised RTS 2 rules, as anticipated in this CP, are expected to be considerable. This includes both one-off and ongoing costs. Notably, first - to fully understand and interpret the new regulatory requirements – internal consultation and engagement of internal compliance, regulatory, data, and legal advisory functions will be necessary.

This might imply that internal resources are taken from the execution and finalisation of other projects, as prioritisation is placed on regulatory compliance. Potentially, certain market participants might also avail themselves of external consultation and advisory services. Implementing the changes presented in this CP, along with other presented in the third consultation paper issued, will require extensive updates to our current IT infrastructure, software systems, and reporting mechanisms. This will involve development and integration costs to ensure compliance with the new reporting standards. This will further require additional investments in training staff and ensuring they are aware and familiar with the new requirements. This could, potentially, also include developing and disseminating new training materials.

Post-implementation, continuous maintenance of the systems including the new changes will also be required, to ensure they remain compliant with all new updates and changes. In this context, ongoing costs will also be incurred, including in relation to the resources necessary for regular compliance checks and monitoring, quality assurance testing, and other reviews necessary to ensure all operations are aligned with the new standards. Reporting to ESMA and national competent authorities might require additional dedicated resources to manage the workload and ensure accuracy in reporting.

Given these reasons, Cboe strongly advocates for a sufficient implementation timeline to allow for a smoother transition and to mitigate the impact on our operations, as also requested under Question 24.
<ESMA_QUESTION_CP1_25>

CP on the RTS on reasonable commercial basis

Q26 Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

<ESMA_QUESTION_CP1_26>

Re: Cboe's response to the public consultation regarding the proposed RTS on reasonable commercial basis

Dear Sirs/Madams,

We are writing in response to the consultation regarding the proposed regulatory technical standards covering the mandate under Article 13 in relation to the obligation to make pre-and post-trade data available on a reasonable commercial basis (**RCB**) (**RTS**).

Cboe appreciates the opportunity to share its views and provide feedback on the CP drafted by ESMA on this RTS, as articulated through section 166 to 298 (**RCB Sections**). Upon careful review, Cboe would like to offer the following comments and observations.

Cboe generally agrees with ESMA's approach to converting the guidelines into a new RTS, as required by revised MiFIR; however, Cboe strongly believes the new **RTS should make every effort to avoid introducing mechanisms that essentially amount to rate setting** (under any different guise). Cboe deems that

instead, in the new RCB RTS, ESMA should recognise the limitations of using costs and margin in isolation to determine reasonable market data fees and should attribute a heavier weight to the role of competitive market pressures. Cboe's position is based on the below considerations:

1) As an initial matter, it must be stated (and recognised by ESMA) that market data has utility to end users because of the role trading venues play. They ensure fair and orderly markets, which enable the production of accurate, reliable, high-quality data. This, in turn attracts order flow that results in participants interacting on a platform: these activities, intertwined as they are, create value for end users. In this context, Cboe wishes to also emphasise and restate that market participants are not required to buy market data from every provider.

2) Per Section 194, ESMA has not received a price setting mandate in relation to market data rates or fees. Accordingly it would be entirely inappropriate for ESMA to take the role of a rate setter. Consequently, Cboe feels it is also important to recognise that the guidelines represent the limit of what can (or indeed should) be achieved through regulation alone.

3) As anticipated, Cboe has reservations about the extent to which costs and margin can be used in isolation as a means of determining reasonable market data fees. Where possible, competitive market pressures - when allowed to operate effectively - are to be considered as the key drivers of behaviours in achieving the distribution of market data on a reasonable commercial basis. 'Reasonable Commercial Basis' should be understood to embody the principles that more efficient operators should be entitled to higher margins, and operators should be entitled to retain a proportion of any efficiency gains achieved over time. In addition, reasonable margin must allow exchanges the flexibility to be rewarded for intangible capabilities that attract users. Whether it's the goodwill created by a data service provider with tremendous customer service, subject matter expertise, commitment to leading technology or any number of tangible or intangible benefits that a customer receives when interacting with one company versus another – these intangibles (and innumerable others) must not be lost in a rote RCB accounting exercise.

For the reasons above, Cboe believes that ESMA's focus, based on its mandate, should be on ensuring that existing measures such as disaggregation are enforced, and that the selection of the consolidated tape provider ensures that the market is presented with meaningful choice in the purchase of market data. The strengthening of the guidelines into a new RTS will be helpful in providing appropriate transparency to inform that choice, including over costs and margins.

To the extent that margins are a factor, Cboe agrees with Section 196 of ESMA's CP that the overall margin of the business can be informative of what is deemed to be a reasonable margin, but it should not necessarily be a binding constraint. However, to create a fair and sustainable cost structure that promotes efficiency and competitiveness, on top of transparency in the trading industry, a hybrid cost and performance model could be sought. Cboe believes that a pure cost model might benefit inefficient operators who may carry a higher cost base, and undermine the incentives to improve efficiency.

<ESMA_QUESTION_CP1_26>

Q27 Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

<ESMA_QUESTION_CP1_27>

Yes, Cboe agrees that the identified cost categories sufficiently capture the key components necessary for a cost calculation. However, as noted to our answer to Question 26, Cboe does not believe a pure cost-based approach is likely to deliver sustainably fair and efficient outcomes.

In addition, Cboe invites ESMA to:

- Either include an additional category in relation to the cost of storage (e.g. cloud costs), or
- At least ensure that the related costs are encapsulated within infrastructure costs; and
- Clearly specify that supervision costs are to be considered as administrative fees (i.e. within the fifth category).

However, to create a fair and sustainable cost structure that promotes efficiency and competitiveness, on top of transparency in the trading industry a hybrid cost and performance model should be sought. Cboe believes that a pure cost model can benefit inefficient operators who may carry a higher cost base, and undermine the incentives to improve efficiency. “Reasonable Commercial Basis” should be understood to embody the principles that more efficient operators should be entitled to higher margins, and operators should be entitled to retain a proportion of any efficiency gains achieved over time.

<ESMA_QUESTION_CP1_27>

Q28 Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software...) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

<ESMA_QUESTION_CP1_28>

Cboe generally agrees with the principle of apportioning costs that are used to support multiple services, but it also notes its applicability would depend on the service. For example, a cost may be shared between two services (such as a server hosting processes for two services). However, in the absence of the second service, the server would still be required to support the distribution of market data.

<ESMA_QUESTION_CP1_28>

Q29 Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

<ESMA_QUESTION_CP1_29>

Yes, Cboe agrees net profit can be used as a proxy for margin.

Cboe would like to stress, however, that – to ensure long term efficiency and competitiveness – ‘Reasonable Commercial Basis’ should be understood to embody the principles that more efficient operators should be entitled to higher margins than less efficient operators, and that operators should be entitled to retain a proportion of any efficiency gains achieved over time.

A margin might also be considered reasonable (or not) against the context of prevailing fees/margins amongst competing providers of data, taking into consideration the relative breadth/utility of the data being provided. Additional elements can include the terms and conditions on which the data is made available which may help promote broader distribution of market data (for example, if an exchange waived market data fees for retail investors).

<ESMA_QUESTION_CP1_29>

Q30 Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

<ESMA_QUESTION_CP1_30>

Yes, Cboe broadly agrees with the templates provided.

Specifically:

- Within Annex I, Cboe understands that the information to be provided in relation to the Market data Policy should remain broadly aligned with the ones currently expected in accordance with the Guidelines currently applicable;
- Within Annex II:
 - As to Section 2, Cboe suggests to include references to the current fee schedule and the license structure which is based on usage;
 - As to Section 3, Cboe notes that it could be considered to merge parts 3.A, 3.B, and 3.C to ensure full alignment with the cost categories suggested by ESMA in this CP but also to ensure synthesis. Cboe considers in fact that the separation of data requested, between the general description of the system architecture and of the infrastructure to be included under part 3.A and the information on relevant components per part 3.B could be better delimited on the basis of the categories suggested under Section 180 CP.
 - As to Section 4, Cboe suggests to include as pre-determined the different types of data to be offered (e.g. full book, top book, last sale, auction imbalance, etc.) in accordance with data included within Section 2. Cboe also strongly recommends for a separation be created between data consumed by retail and professional clients.
 - As to Section 6, Cboe notes that no differential fees are envisaged for connectivity while connectivity itself is usually not a bundled service. For these reasons, Cboe asks for this additional component to be accounted for in the third row of the table, also in line with and on the basis of the considerations noted under Cboe’s answer to Question 33.

<ESMA_QUESTION_CP1_30>

Q31 What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

<ESMA_QUESTION_CP1_31>

Cboe believes that failure to provide disaggregated data (e.g. disaggregating closing auctions from continuous trading) is the biggest obstacle to non-discriminatory data access. By bundling continuous data with Closing price data, operators undermine competition and choice, penalising users that could otherwise exercise choice for individual market data components.

Therefore, Cboe advocates for a stricter interpretation and a mandatory applicability of Article 1 of the RTS on the specification of the offering of pre-and post-trade data and the level of disaggregation of data supplementing MiFIR (**RTS 14**). RTS 14 already requires market operators and trading venue to make information published in accordance with Articles 3, 4 and 6 to 11 of MiFIR available to the public by offering pre-trade and post-trade data disaggregated, in accordance with: (a) the nature of the asset class (i.e. shares, depositary receipts, ETFs, certificates and other similar financial instruments, bonds and structured finance products, emission allowances, derivatives), (b) the country of issue for shares and sovereign debt, (c) the currency in which the financial instrument is traded; and (d) scheduled daily auctions as opposed to continuous trading. However, this is only required upon request.

By making individual market data components available on a disaggregated basis, Cboe believes that data access would be less discriminatory.

<ESMA_QUESTION_CP1_31>

Q32 What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

<ESMA_QUESTION_CP1_32>

Please note that data provision typically has the same cost regardless of user type, but volume of data (level 1 vs level 2), total number of quotes and trades as well as distribution methods can have an impact (e.g. TCP vs multicast etc.).

<ESMA_QUESTION_CP1_32>

Q33 Do you agree with ESMA's proposal on how to set up fee categories. Please justify your answer.

<ESMA_QUESTION_CP1_33>

While Cboe agrees that categories may have different margin level and creating fee differences by category is possible, Cboe is concerned that the CP suggests that User Categories may **only** be created by reference to differential costs in the production and dissemination of data to different User Categories, and without any regard to the rights set out in each Use Category.

It is worth noting that Article 13 of the reviewed MiFIR Regulation does not prohibit differential pricing for different classes of user, nor does it require different categories to be determined solely based on different costs for each use case. Notably, the reviewed legislation also does not prohibit the creation of categories based on the differential economic value of data associated with different user categories. In its consideration instead, ESMA's proposal goes well beyond the requirements of the new MiFIR Regulation. In light of the inconsistencies with the Level 1 legislation, Cboe fears the proposals made by ESMA for RTS RCB could distort the market for data in unproductive ways – creating incentives for exchanges to invest in costs that serve a subset of clients, rather than broadly investing in market data operations that can benefit all customers.

Moreover, Cboe would like to stress that the costs of production do not necessarily change based on a User Category as market data is often disseminated at source and then redistributed by third party market data vendors and connectivity providers. Applying strict categories of use cases constrained by production costs would make it difficult to offer differential pricing for individual users vs firms, or professional vs non-professional investors. These are categories of use that are longstanding and globally recognised. These terms are also memorialised through the proposed standardised defined terms, as included within the currently applicable market data guidelines.

Helpfully, the suggested text for the new RTS does not focus on costs or value when it comes to creating User Categories. The RTS draft actually provides that the creation of categories should be based on “*factual elements*” that are “*verifiable*” and “*sufficiently general*”. These are common sense elements that should be respected and adopted without overcomplicating the process of categorising users.

To support the above considerations, Cboe makes reference to the following arguments:

- If Recital 12 of MiFIR had legal force (which it does not), it would only prohibit charging based on the value that data represents to an **individual** user. Cboe agrees with this principle. In Cboe's view, User Categorisation should **not be based on the value** that market data represents **to a specific User within an overall User Category**. The new RTS should instead try to avoid that a User with the **same use case as another User** in that category is subject to a different licence fee solely by virtue of the value being derived by that specific User. It should hence ensure that users with the same use case within a category are not charged different license fees solely because one user derives more value from the data than another.
- Cboe recognises that referencing the cost of production and a reasonable margin as the underlying components of RCB is a useful method for assessing a provider's overall approach to the sale of market data. However, in Cboe's view it is not a useful method or **metric** to apply on a per User Category basis because there may not be a specific production cost for each User Category as further described below.
- Trading venues should be able to decide how to apportion cost recovery across different User Categories based on the set of rights required, whilst adhering to non-discriminatory and fair treatment requirements to all Users within a given Category. Hence it cannot be the case that

different sets of licensing rights all have equal value or can only be differentiated in relation to cost of production, as this defeats the essential purpose of creating different licensing rights for substantially different uses. Licensing (packages of rights) are structured to allow customers to select only the rights they need and serves the purpose to ensure the lowest level users have the lowest fees. From this perspective, Cboe notes that a Display Licence vs a Non Display Licence grants an entirely different set of rights to the User which should be reflected in the amount of the licence charged (to all Users in that category).

- Relying on costs differentials alone may preclude common and legitimate practices such as: (i) the differentiation of displayed use by professional and non-professional end-users, (ii) the differentiation of displayed use (where the number of individual users is a natural count) from non-displayed use, (iii) the differentiation of internal use vs. redistribution, and (iv) the differentiation between using data in support of equity-trading (contributing positively to the exchange liquidity ecosystem, and therefore a use that exchanges may want to incentivise or cross-subsidise) vs other activities (such as trading in CFDs or other OTC/derived products). On these grounds, Cboe also strongly believes that a trading venue should remain free to make its data available to non-professionals investors without consideration whilst charging a fee to professional ones.
- Whilst some of the cost differentials ESMA has pointed out in the CP (namely volume of data) are already reflected in current price tariffs (e.g. level 1 data is typically priced cheaper than level 2), Cboe notes that the other measures such as connectivity and transmission channels are priced separately due to having distinct infrastructure and connectivity costs, and would do little in the way of addressing Users that connect via a market data vendor to receive market data.
- The legitimacy and desirability of differentiating professional from non-professional users – without reference to any cost differential – is evidenced in the recent EU regulation on the introduction of Consolidated Tapes.
- Cboe also deems that ESMA should consider that, should economic differentiation between User Categories not be permitted, providers may seek to create and aggregate a single set of rights that all Users would then be obliged to purchase at the tariff applicable to the entire set of rights that are available from the provider in question. This would be hugely inefficient and introduce additional unnecessary costs to Users who would be obliged to buy a set of rights they have no need for simply because there are no alternatives available.
- Absent the ability to differentiate derived product use case from regular displayed use, trading venues cannot democratise access to data for retail investors (with the purpose of encouraging participation in equity markets) without simultaneously subsidising the distribution of OTC products that substitute for cash equities.
- Cboe accepts the premise that the **unconstrained** creation of categories or use cases, becoming ever more fine-grained in their definitions -so as to contravene the spirit of the rules- is a practice requiring attention. However, Cboe considers the practice of creating “*one category for any given cost-basis*” as an answer to be unduly restrictive. As Cboe noted also previously, it would preclude licensing practices that are considered legitimate in every other jurisdiction globally and would materially disrupt the ecosystem of trading venues and market data vendors, which the market depends upon.
- ESMA recognises the challenges in Section 236-237 on the topic of redistribution, and the risk that exchanges may find they have only one customer who in turn provides data to all others. The proposed “solution”, whereby all end users are obliged to contract directly with the exchange (and/or receive data directly from the exchange) is overly burdensome relative to treating redistribution as a use case different to internal-use, and with its own fees.

- Furthermore, Cboe is of the view that ensuring existing rules on market data unbundling are applied (such as the disaggregated data requirements to offer continuous trading distinct from auction data) would allow users to: (i) have much more choice, and (ii) better align their needs whilst lowering costs due to the constraint enshrined in the current rules. From this perspective, Cboe deems that enforcing rules whereby the sum of the disaggregated datasets cannot be more expensive than the aggregated dataset should be preferred.

It is also unclear whether ESMA believes the concept of 'reasonable margin' can reflect the economic differentiation between types of licensing rights which are then reflected in different User Categories. For all the reasons noted above, Cboe believes ESMA should provide additional guidance and commentary in this area as a matter of priority.

<ESMA_QUESTION_CP1_33>

Q34 Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

<ESMA_QUESTION_CP1_34>

Cboe broadly agrees with ESMA's analysis concerning the redistribution of market data but would like to offer the following comments to further clarify its position.

Cboe considers that redistribution of market data can indeed lower costs and bring efficiency to the market, particularly for clients who do not have direct access to primary market data sources. By leveraging third-party data vendors, these clients can gain access to essential market data without the need for direct connections to multiple exchanges or other market data providers, which would otherwise be costly and technically challenging.

However, Cboe also recognises that a significant number of clients receive market data through third-party data vendors. These vendors impose their own fees for the services they provide, which often include a markup on the pass-through exchange user fees. This can lead to an accumulation of costs for the end-users, particularly if the markup is substantial or if the vendor's pricing structure lacks transparency.

The categories of data use, such as further redistribution or non-display, apply to clients accessing data through these third-party vendors just as they do to those receiving data directly from the source. Therefore, these clients are still contributing to the cost recovery of the original market data provider, despite the additional layer of fees imposed by the vendors. It is important to note that stock exchanges are unlikely to drive market data providers out of the market, as these entities typically offer a range of services and complementary information that extends beyond raw market data. This diversified service offering ensures their continued relevance and demand within the financial ecosystem.

While Cboe understands ESMA and the regulators' objective to lower costs, Cboe considers it important to acknowledge that vendors do not always provide the same level of transparency in their fee structures as stock exchanges and other primary market data providers do. This lack of transparency can contribute to significant costs within the distribution chain, which ultimately affects the end-user. To the question: is

the cost associated with data redistribution proportional to the benefits it brings? Cboe notes that, while redistribution facilitates access and can lower direct costs for some users, the significant price addition imposed by vendors may offset these benefits, leading to a net increase in the overall cost of market data for the end-users.

<ESMA_QUESTION_CP1_34>

Q35 Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

<ESMA_QUESTION_CP1_35>

Cboe would like to highlight that not all data agreements allow for use of a disaggregated dataset – such as continuous vs auctions and this creates a distortion to competition where the aggregated data set contains a component that is not substitutable but is combined with data that can be sourced from other providers. On this topic, Cboe has provided further details to its answer under Q.31.

<ESMA_QUESTION_CP1_35>

Q36 Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

<ESMA_QUESTION_CP1_36>

Cboe recognises that most, if not all, exchanges have their Data Agreement (pre-contractual information), Data Price List and Policies on their public website. The requirement for these resources to be publicly available ensure that market data is accessible and transparent, which is crucial for maintaining fair and non-discriminatory access to market data.

However, it is important to recognise that financial institutions that acquire and license market data are highly sophisticated customers, often with specialised data procurement and legal teams, and are well versed in navigating exchange policies - without requiring additional regulatory interventions. No retail investors take a direct exchange license, as they are meant for distribution to investment firms and other professional investors, not to individuals.

Cboe has also concerns regarding the net benefits versus the costs of implementing these proposals. The draft RTS introduces several new requirements, including those related to penalties, audit practices, and contractual notifications. It is unclear to Cboe whether the costs associated with implementing these measures will be outweighed by their benefits or whether these additional regulatory burdens will genuinely contribute to the growth and efficiency of the market without inadvertently creating barriers to market participation.

<ESMA_QUESTION_CP1_36>

Q37 According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

<ESMA_QUESTION_CP1_37>

Yes, Cboe has operated a per-user (netting) model since 2012 for its European Equities market data. This requires the customer to report their usage directly to Cboe.

Obstacles in effective implementation typically arise when a customer has multiple data vendors. In such instances the customer needs to report their users directly to Cboe and we inform the data vendors that the customer is non-billable. This requires administration as the alternative to have one of their data vendors charge the fee, and not the other, creates an uneven playing field between the two (or more) vendors. Cboe would therefore note the need to reconcile (often manually) spreadsheet reports across vendors to ensure the end user was only charged once increasing administrative costs for the exchange.

<ESMA_QUESTION_CP1_37>

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

<ESMA_QUESTION_CP1_38>

Cboe supports ESMA’s proposal on penalties as it is considered to be balanced and aligned with the previous guidance provided in the Guidelines and it strikes an appropriate balance between enforcing compliance with data agreements and protecting market participants from unjustified penalties or overly burdensome audit practices.

<ESMA_QUESTION_CP1_38>

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

<ESMA_QUESTION_CP1_39>

Cboe generally supports ESMA’s proposal on audits, particularly the emphasis on ensuring that auditing practices are proportionate, transparent, and not overly burdensome. The proposed safeguards, such as prohibiting the reverse burden of proof, limiting information requests to what is strictly necessary, and allowing the audited party to challenge the audit outcome, are important steps towards fair and balanced audit processes.

One area of potential concern is the proposals’ requirements for “clear evidence” of “serious indications of infringement” or outliers as a prerequisite for requesting an audit. Cboe is concerned that this evidentiary test is too restrictive as audits can be performed to verify the accuracy of records of use in situations where it is not self-evident that those records are inaccurate in themselves and an infringement is occurring or has occurred. It should be remarked, in fact, that audits are not solely a response to suspected

infringements; they also serve as a routine check to ensure the accuracy of records and adherence to contractual obligations, even when there is no immediate suspicion of wrongdoing. For these reasons, Cboe does not believe audits should only be permitted where an allegation of infringement is made. Cboe also believes the text should reflect the ability to conduct audits in situations where even long standing use can be subject to periodic audits as a good administrative practice.

Cboe suggest that the requirement for “*clear evidence*” be revised to also include an element where an audit can be conducted where a provider has “*reasonable belief*” of non-compliance. Cboe specifically finds the term “*clear evidence*” too difficult to interpret or implement absent further guidance which would require legal interpretation of the rules of evidence in multiple jurisdictions. The term “*reasonable belief*” aligns more closely with the standards commonly used in civil procedural law, such as the concept of “*reasonable suspicion*,” which allows for actions to be taken based on a lower threshold of evidence than what would be required to prove a case in court. This would also align better and closer to the wording or Article 15 of the proposed draft RTS RCB, which refer to the fact that: “*Audits may be requested by market data providers in case of **serious indications of infringement** of the market data contract to ascertain whether a breach occurred*”.

Another consideration that Cboe notes is the compatibility of the proposed audit rights with existing contractual agreements, particularly those involving third-party data providers. ESMA should note that the ability to audit is also part of some contractual agreements with third party data providers, so the introduction of new audit rights could conflict with existing obligations and be incompatible with obligations already in place with third party providers.

<ESMA_QUESTION_CP1_39>

Q40 Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

<ESMA_QUESTION_CP1_40>

Cboe insists that all discounts and waivers be made transparent within fee tariffs and terms applied, and enforced equally across users.

<ESMA_QUESTION_CP1_40>

Q41 Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

<ESMA_QUESTION_CP1_41>

Yes, Cboe agrees with the template set out in Annex 1.

<ESMA_QUESTION_CP1_41>

Q42 Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA_QUESTION_CP1_42>

Cboe believes the definition of a ‘non-professional user’ could be simplified. By way of example, Cboe would welcome the following definition: *“an individual who views or uses the data in a personal capacity for their own personal investment activities, and not as a principal, officer, partner, employee, contractor or agent of any business, or on behalf of any other individual or business.”*

Cboe does not believe the definition of “physical connection” adds any benefit or further clarity in the context of market data policies. Market data policies are typically technology agnostic given the rapid pace of change (e.g. cloud, microwave, fibre). Exchanges typically charge connectivity separate to directly connected participants whereas market data is licensed to all, including those receiving the data indirectly via market data vendors or other third parties.

<ESMA_QUESTION_CP1_42>

Q43 Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

<ESMA_QUESTION_CP1_43>

Where a user does not opt for “netting”, which can only be achieved by direct reporting to the exchange, and accesses the data via a market data vendor (such as a Bloomberg Terminal), referring to the user-ID as a continued acceptable unit of count is admissible.

Cboe strongly feels that “device” as a unit of count for non-display is an accepted practice if a venue decides to do so, but it should not be an obligation for all venues to offer it. The reason is that unlike the “per User ID”, which has clear cost benefits due to the netting of multiple data sources per natural user, “device” has a broad interpretation. Given the realities of most investment firms’ infrastructure set up (and their continued search for improvements to redundancy and resilience), most investment firms are automatically put in the top fee band due to the multiple “devices” employed, even if they have a singular use. Cboe does not use “Device” as a unit of count and instead charges “per segment”. The pan-European composition of the equities and ETFs available on Cboe’s exchange means there are 18 country “segments” reflecting where the primary listing of that instrument is domiciled. By structuring our non-display licence by this unit of count, if a regional broker only wanted to trade a single market or region, they would pay a significantly cheaper fee. For example, a broker only interested in French stocks would pay 1/10th the cost of a full licence. A change to device as a unit of count would likely result in fee increases for these clients.

<ESMA_QUESTION_CP1_43>

Q44 Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.

<ESMA_QUESTION_CP1_44>

Cboe does not believe the definition of “physical connection” adds any benefit or further clarity in the context of market data policies. Market data policies are typically technology agnostic given the rapid pace of change (cloud, microwave, fibre). Exchanges typically charge connectivity separate to directly connected participants whereas market data is licensed to all, including those receiving the data indirectly via market data vendors or other third parties.

<ESMA_QUESTION_CP1_44>

Q45 Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA_QUESTION_CP1_45>

No, the information in Annex 1 should be considered as sufficient, according to Cboe.

<ESMA_QUESTION_CP1_45>

Q46 Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

<ESMA_QUESTION_CP1_46>

Cboe agrees with the proposals for post-trade (1 minute updates to a file / file available until midnight T+1). However, Cboe sees limited value in providing similar updates for pre-trade data, which would create unnecessary complexity in data extraction given the number of quote update messages.

Furthermore, n bid/ask updates may take place within a one minute period. We understand the reasoning behind the proposal for pre-trade but we think that a GUI/web-site based view of either real-time or 15 minute delayed bid/ask is the best solution allowing for users to understand current market prices. Additionally, Market Data Vendors often delay the real-time feeds and can provide streaming 15 minute delayed data feeds to institutional firms, who will typically not source the free data from an exchange web-site.

<ESMA_QUESTION_CP1_46>

Q47 Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

<ESMA_QUESTION_CP1_47>

While understanding ESMA's concerns regarding the accessibility of delayed market data and the impact of burdensome registration processes, Cboe would like to offer a balanced perspective on the proposal to eliminate registration requirements.

Cboe believes that there may be useful administrative reasons for requiring users to register. These may be related to: (i) user tracking and data usage monitoring, for which registration allows market data providers to ensure that data is used in compliance with relevant regulations and contractual agreements and could help providers gather insights into user behaviour and data demand to inform future service improvements; (ii) security and compliance reasons, wishing to maintain a secure environment by verifying user identities and ensuring that data is accessed by legitimate users only; as well as (iii) providing tailored services and support based on their specific needs and usage patterns.

Cboe does not believe registration should be mandatory either, as it would then represent a barrier to accessing delayed market data. However, market data providers should retain the option to request registration, especially if it serves a clear administrative or compliance purpose and as long as data provider's systems are designed in a way that does not impede access to the data. For these reasons, Cboe invites ESMA to refrain from including a prohibition of registration requirements within the RTS. Instead, Cboe suggests that ESMA enforces a simple and user-friendly registration process that does not create an unnecessary burden on users.

<ESMA_QUESTION_CP1_47>

Q48 ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

<ESMA_QUESTION_CP1_48>

Cboe advocates for a longer period of time: this should be at least six (6) months to accommodate the extensive changes required under the new RTS RCB. The implementation of the new RTS RCB will require significant updates to disclosures, client documentation and amendment of Market Data Policies. An extended preparatory period will also allow the industry to better understand and prepare to the envisaged changes, given the technical and operational adjustments required.

<ESMA_QUESTION_CP1_48>

Q49 Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA_QUESTION_CP1_49>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_49>

Q50 What level of resources (financial and other) would be required to implement and comply with the RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA_QUESTION_CP1_50>

A key concern of Cboe's relates to the interpretation of pre-trade data requirements and the potential cost implications. Depending on this interpretation, there could be costs arising from the necessity to develop a streaming feed for retail users. This would add costs and unnecessary burden, as the development and maintenance of a real-time streaming feed, particularly for retail users, would require substantial investment in infrastructure, technology, and ongoing operational support..

As an alternative, providing retail investors with access to a graphical user interface (GUI) that displays current or delayed market prices, along with machine readable post-trade data file outlined above would be a more cost-effective and practical solution. .

Cboe also deems it important to consider how retail investors typically interact with market data when making investments. Any retail investor who wants to place a trade will do so through their broker, where they will see the prevailing market price at the time of order submission. They are unlikely to be aware of the broker's routing strategy (i.e. to know which venue's free data to look at).

<ESMA_QUESTION_CP1_50>

CP on the amendment of RTS 23

Q51 Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

<ESMA_QUESTION_CP1_51>

Re: Cboe's response to the public consultation regarding the proposed RTS on the amendments to RTS23

Dear Sirs/Madams,

We are writing in response to the consultation regarding the mandate under Article 27 of the MiFIR review on the obligation to supply instrument reference data (**RTS23**) and the amendment to said RTS23.

Cboe appreciates the opportunity to share its views and provide feedback on the CP drafted by ESMA on this RTS, as articulated through Section 299 to 390. Cboe acknowledges the importance and supports the review of these technical standards. Upon careful review, Cboe would like to offer the following comments and observations.

Cboe believes that the intended approach may streamline the reporting process but also decrease the number of rejections in relevant reports, improving the overall accuracy and efficiency of data reporting. As such, Cboe agrees with the proposal to align the reporting frequency for reference data daily as outlined in the amendments to RTS23 and to implement daily reporting of reference data for both transaction reporting and transparency purposes as it could enhance the attainment of complete and more accurate reporting of reference data.

Based on the proposal, Cboe believes that implementing a unified daily reporting schedule would require minor changes to its current processes, as Cboe already reports reference data for symbols that have traded each day. The approach envisaged by ESMA would nevertheless require also the introduction of an additional step with comparison to the current one, consisting in the verification of the previous market day. Thus, appropriate timing for implementation should be provided to the industry.

<ESMA_QUESTION_CP1_51>

Q52 For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

<ESMA_QUESTION_CP1_52>

Given the complexities involved with the classification of financial instruments and financial products, Cboe considers it fundamental to assess both granularity and accuracy as leading components for identifiers used in relation to transparency purposes. For these reasons, Cboe believes that while the MiFIR identifier is specifically designed for transparency calculations, it is less granular than the CFI code. The use of CFI code should then be preferred. Cboe would also like to emphasise that it may be beneficial to retain the MiFIR identifier, as currently defined, due to its specific utility in transparency calculations. Cboe deems that aligning the classification fields across various regulatory frameworks will ultimately streamline reporting processes on one side and support the effective implementation of transparency obligations on the other side, ensuring that the intended objectives of the MiFIR framework are met.

Moreover, in relation to the CFI code, Cboe would also like to flag that this code, as attributed to certain financial instruments and financial products, can cause misalignments due to the lack of universally accepted (or previously approved/vetted) interpretations. This may lead to inconsistency in its application. To address any discrepancies in the application of the CFI coding, Cboe advocates for a concerted effort to harmonise the use of CFI codes across entities. Finally, Cboe would also like to incentivise a more collaborative alignment on the use of CFI codes between ESMA and other organisations, which could enhance the reliability and consistency of the classification process. <ESMA_QUESTION_CP1_52>

Q53 Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

<ESMA_QUESTION_CP1_53>

Kindly refer to the answer provided above. In summary, Cboe believes that retaining the MiFIR identifier for relevant transparency calculations would be beneficial.

<ESMA_QUESTION_CP1_53>

Q54 How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.

<ESMA_QUESTION_CP1_54>

In regards of ESMA's suggestion to limit the scope of transparency for derivatives to exchange-traded derivatives on regulated markets and certain interest rate and credit derivatives, Cboe supports ESMA's proposal to move the relevant set of reference data under RTS23 reporting requirements and welcomes the simplification this could create, even where it would lead to a reduction to reference data set.

Given these changes, Cboe deems it important to evaluate the implications for the transparency reference data currently outlined in RTS 2. The rationale provided by ESMA in relation to the reduction of the reference data set could support the aim to simplify reporting requirements and reduce the administrative burden on market participants. In this light, Cboe does agree that a reduction as envisaged would lead to a more focused and effective data reporting system that eliminates unnecessary data collection and processing. Cboe also agrees with the principle of aligning the reference data requirements with the new scope of covered instruments. Additionally, Cboe asks that the transition to any new reporting framework be managed in a way that minimises disruption and ensures a smooth adoption process for the entire industry.

<ESMA_QUESTION_CP1_54>

Q55 Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives' contract type classification?

<ESMA_QUESTION_CP1_55>

Cboe is in agreement with the proposal to delete Field 5 of Annex IV of RTS 2, pertaining to the classification of the contract type for derivatives with the "DERV" MiFIR identifier, and to replace this field with a relevant CFI code. Cboe appreciates and agrees with ESMA's analysis that the CFI code can be adapted to retrieve the necessary information regarding derivatives' contract type classification. This renders Field 5 redundant. As reducing redundancies in data fields helps minimise the reporting burden on all market participants and contributes to a more efficient data management process, Cboe considers that adopting the CFI code for the classification of derivatives' contract types is a welcome initiative.

However, as noted above within Cboe's answer to question 52, consistency and accuracy of CFI coding needs to be ensured across different reporting regardless of jurisdictional and regulatory interpretation; as such Cboe calls for a collaborative alignment on the use of CFI codes between ESMA and other organizations, to eliminate ambiguity in determining the appropriate CFI code.

<ESMA_QUESTION_CP1_55>

Q56 Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.

<ESMA_QUESTION_CP1_56>

Overall, Cboe supports the proposed changes where they aim to reduce duplication and overlap. In this optic, Cboe agrees with the proposed alignment between RTS 23 and RTS 2 and welcomes in particular the initiative to eliminate duplicative fields and to rely on the CFI code, as also noted in prior questions.

<ESMA_QUESTION_CP1_56>

Q57 As it concerns "underlying type" classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?

<ESMA_QUESTION_CP1_57>

Cboe supports the changes related to both the classification of the "underlying type" and the reliance on the CFI code (along with other reporting fields) as these changes contribute to eliminate redundant or overlapping fields (e.g. Field 13 of RTS 23 and Fields 20, 30, and 31 of RTS 2). Similarly, Cboe supports the removal of Field 26 from RTS 2 and the integration of its specifications into CFI attributes as they support the goal of simplifying reporting.

Concerning Field 27, Cboe would like to note that the current approach adopted by RTS 2 and the CFI code for classifying equity derivatives and swaps makes exact mapping difficult. For instance, in accordance with the CFI standard, underlying types and payout calculations are classified as separate attributes. Cboe thus encourages ESMA to revisit these changes and to consider more thoroughly the practical consequences of adopting of new standards.

<ESMA_QUESTION_CP1_57>

Q58 Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?

<ESMA_QUESTION_CP1_58>

While simplifications and alignment of reference data for transaction reporting and transparency purposes are generally welcome, Cboe considers it important to fully assess the costs and impacts of such changes. Simplifications could reduce complexity but the transition might imply significant costs for the industry, particularly in terms of system changes (e.g planning, resource allocation to ensure adoption, potential disruption of operations previously planned). Therefore, any proposed changes should undergo thorough cost-benefit analysis to balance the potential long-term benefits with the immediate financial and operational impacts. Cboe also makes reference to the recent RTS1 and RTS2 changes, which the industry was mandated to adopt by 1 January 2024. To provide a practical indication of the extensive efforts that compliance with these requirements necessitated, ESMA should consider that this was an intensive year long process, prioritised in comparison to other internal and external enhancements and product development ones, which required various departments' focus.

<ESMA_QUESTION_CP1_58>

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

<ESMA_QUESTION_CP1_59>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_59>

Q60 Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?

<ESMA_QUESTION_CP1_60>

Cboe appreciates the initiative to improve transparency and consistency in transaction reporting and transparency requirements within the OTC derivatives market and recognises the importance of aligning RTS reporting standards with the regulatory framework set by the current Article 27(1) of the revised MiFIR. In this light, Cboe concurs with the assessment of the necessary adjustments to RTS23 to accommodate the proposed identifying reference data. While supporting these measures, Cboe notes this is not a core area for its business.

<ESMA_QUESTION_CP1_60>

Q61 Do you see a need to specify the 'date by which the reference data are to be reported' different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA_QUESTION_CP1_61>

Cboe does not see any arguments against the proposed approach as it provides a clear and structured proposal for market participants to adopt the new requirements. Specifically, Cboe considers the recommendation to set the 'date by which reference data are to be reported' as identical to the date of application of the revised RTS23 as sensible, since it allows for synchronised implementation across relevant regulatory frameworks.

Also considering other similar precedent, however, Cboe requests that the timeline finally adopted ensures market participants have sufficient time to understand and integrate the new requirements into their systems and processes effectively. For these reasons, Cboe advocate for at least a period of 18-month from the publication of technical standards to be provided to the industry to report reference data as indicated in this CP and at least a 12-months following the availability of the full technical documentation. These timings will facilitate a considerate and smooth transition and enhance compliance readiness.

<ESMA_QUESTION_CP1_61>

Q62 Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on reference data?

<ESMA_QUESTION_CP1_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_62>

Q63 Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?

<ESMA_QUESTION_CP1_63>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_63>

Q64 Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?

<ESMA_QUESTION_CP1_64>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_64>

Q65 Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument

is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?

<ESMA_QUESTION_CP1_65>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_65>

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

<ESMA_QUESTION_CP1_66>

Cboe invites ESMA to consider that it is only necessary to identify a benchmark administrator in the event that a relevant product is index-linked (i.e. passive product) or “used” for the purposes set under Regulation 1011/2016/EU (**BMR**) (whereby also the term “used” refers strictly to the definition made available under Article 3(1)(7) BMR). Specifically, Cboe would like to stress that whereby the reporting is referred to an active product, in many cases benchmark administrators are not even aware of the fact that an index that is being used as a comparison, and it may not be a BMR use, as determined under Article 3(10)(7). Besides these considerations, Cboe generally supports the initiatives related to the new described fields, as they do incentivise transparency.

As concerns the proposal of including the LEI code of benchmark administrators, Cboe also invites ESMA to note that third countries benchmark administrators often do not have one.

<ESMA_QUESTION_CP1_66>

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

<ESMA_QUESTION_CP1_67>

Cboe agrees with the proposed amendments to the existing fields in the RTS 23 Table 3 of the Annex as they intend to ensure comprehensive descriptions and consistency across the fields in question.

<ESMA_QUESTION_CP1_67>

Q68 With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?

<ESMA_QUESTION_CP1_68>

In regard to the monitoring of de-listing and re-admission events per fields 10, 11, and 12, Cboe supports option (i). This option ensures reporting of all previous trading periods, meeting regulatory and supervisory requirements, as well as efficient, effective and straightforward implementation, as data already included within the databases of trading venues might be use for the reporting.

<ESMA_QUESTION_CP1_68>

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

<ESMA_QUESTION_CP1_69>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP1_69>

Q70 Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

<ESMA_QUESTION_CP1_70>

From a technical standpoint, Cboe notes that the adoption of the JSON format would significantly enhance the reporting process - compared to XML. In our view, JSON has superior integration capacity with programming languages widely used in the financial industry (e.g. Python), it also simplifies data handling, parsing, and serialization. JSON also considerably reduces the complexity of our existing XML report generation code, also thanks to its simpler syntax, which improves efficiency and reduces the likelihood of errors. As an additional benefit, the shift to JSON would enable the industry to leverage tools such as jq, which facilitate easier manipulation and querying of data, potentially making troubleshooting and data analysis more straightforward. So overall, Cboe considers that the transition to JSON could bring improved efficiency and enhanced data quality.

However, it should also be considered that migrating to JSON would require the creation of a specific internal project with allocated resources and would involve the development and testing of new code as well as the update of existing test cases. This migration could be implemented within few months - whereby the actual timeline may extend due to competing priorities and the need for resource allocation. Relevant costs would include the initial investment in development, testing, and staff adaptation to ensure a smooth transition to the new format. This may also involve costs associated with updating documentation and processes to align with the new format, while the ongoing maintenance costs may decrease due to the simplified codebase and improved tooling.

One notable challenge that Cboe would like to highlight is the possible divergence between the existing reporting standards and the one that ESMA is suggesting to introduce, which could cause divergence from the standards expected by other regulators (even within the EMEA region), which currently utilise XML. This divergence would then require entities that operate across multiple jurisdictions to maintaining dual codebases for both XML and JSON, increasing the complexity and effort required for ongoing support and updates. This would remain a risk while a requirement to support both formats in the broader industry is dropped.

<ESMA_QUESTION_CP1_70>

Q71 In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?

<ESMA_QUESTION_CP1_71>

Whilst the inclusion of a field to identify the DPE may be considered as a critical adjustment, Cboe has taken note of the suggested changes. Cboe believes that these adjustments may support a more comprehensive and accurate reporting by DPEs but has no further comments as to other needed adjustments.

<ESMA_QUESTION_CP1_71>

Q72 With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?

<ESMA_QUESTION_CP1_72>

In establishing the categorisation of classes of financial instruments for the purpose of the DPE register, Cboe considers it important to follow the principles of consistency, simplicity and alignment with existing financial instrument classifications under MiFIR and MiFID II. The proposed approach of categorising instruments based on broad categories—such as shares, depositary receipts, ETFs, certificates, bonds, derivatives, and emission allowances— could be a sensible starting point. Then, the diversity of instruments within each class could be further reflected in relation to certain categories.

To maximise the usability and interoperability of the DPE register with other relevant systems, Cboe advises to include additional data fields beyond the LEI code for identifying DPEs; e.g.:

- ISIN: To link specific financial instruments directly to the relevant DPE;
- DPE status activation date: To indicate when the DPE status becomes effective for each financial instrument class;
- Jurisdictional information: To clarify the geographic scope of the DPE's reporting obligations.

A mechanism to track changes in the DPE register may also be considered by ESMA, including the addition or removal of DPE status for specific items.

However, Cboe also recognises that the transition to this new framework may present significant challenges, not last in relation to interpretation, implementation and timing of the transition process. The introduction of DPE responsibilities, particularly in the absence of systematic internalisers, will require careful planning for the industry and notification to market participants. For these reasons, Cboe recommends that ESMA develop and publish a detailed implementation roadmap outlining key milestones and deadlines for the transition to the DPE framework and provides appropriate timelines for the industry to implement these changes. Before full implementation, ESMA should also facilitate ideally a testing phase where DPEs can submit reference data under the new framework. This would allow for the validation of the DPE register's usability and the identification of any interoperability issues with other systems.

<ESMA_QUESTION_CP1_72>

Q73 Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?

<ESMA_QUESTION_CP1_73>

Cboe appreciates the intent of the initiative is to improve transparency in OTC derivatives transactions. While supporting these measures, Cboe notes that this is not a core area for its business.

Thank you for the opportunity to provide feedback with regard to this CP – Cboe looks forward to engaging and collaborating with the European Institutions to continue to build trusted markets.

<ESMA_QUESTION_CP1_73>