

APARMA Submission to ESMA Consultation Package CP2

APARMA submitted the following responses to ESMA in August 2024.

RTS on input and output data of CTPs:

Q4: Do you consider that the proposed minimum requirements for the technical criteria related to performance are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.

The proposed minimum requirement contains requirements around speeds that will be hard to achieve and costly to implement. ESMA appears to be asking for speeds that are unnecessarily fast for the markets impacted. It is also unclear whether the proposed minimum requirements are for data contributors or for the CTP itself. In case the requirements are for data contributors, then the rationale is unclear for different sizes of data contributor being subject to the same requirements.

APARMA would be interested to learn how these metrics will be measured and monitored.

We note that the geographical location of both the CTP and each DC has bearing on these requirements and the ability to achieve and hence cost to adhere to them.

Q8: Do you agree with the proposed definition of "transmission of data as close to real time as technically possible"? If not, please explain.

We believe the post-trade data transmission time should not start from 'the timestamp of the order' or 'the timestamp of the execution' set in Article 3 of the draft RTS on input and output data of CTPs. Considering the interaction time between investment firms and APAs, it would not be technically possible to fulfil the proposed speed. The wording in the draft RTS would mean a binding requirement on an APA that it cannot control.

Additionally, business clocks of investment firms which are not DPEs, SIs and TV participants are not synced in accordance with Article 22c of MiFIR and the proposed RTS on clock synchronisation. Therefore, the currently proposed wording of 'the timestamp of the order' and 'the timestamp of the execution' will lead to different clocks to calculate the transmission speed of input data.

We acknowledge that, in accordance with Article 22b(3)(c) and Article 22a(1) of MiFIR, ESMA is mandated to define 'what constitutes the transmission of data [from data contributors to the data centre of the CTP] as close to real time as technically possible', so we suggest not to use the execution timestamp.

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Irrespective of start or end point in time, APARMA notes that 200ms is an inappropriate processing timing for Non-Equity markets.

Q9: Should ESMA consider specific rules for real-time transmission of transactions subject to deferred publication?

Considering that (i) deferred publication is handled as a bulk update, which may squeeze all deferred data into the CTP input data together; and (ii) deferred publication is not so time sensitive anymore, we believe deferred data should only need to meet the current publication time deadline set in Article 14 of RTS 1 and Article 7 of RTS 2.

Q10: Do you agree with the baseline proposal of adopting JSON as standards and format of data to be transmitted to the CTPs, or do you prefer alternative proposals? Please justify your answer and, if needed, provide additional advantages and disadvantages related to each proposal.

The ESMA Study on data formats and transmission protocols notes that JSON benefits from ISO 20022 adherence and well-established flexibility, however it “has a lower level of adoption in the context of market data feeds”. We note that this low level of adoption in the context of market data feeds means that protocols will need to be established and thoroughly tested to ensure reliability for data consumers.

By comparison, a well-adopted means of communication such as the FIX protocol benefits from many years of building and testing by market participants, which is reflected in its overall reliability. Building and developing systems which replicate this level of reliability will take significant time and investment from all market participants, and we currently do not see merit in switching to JSON.

Whilst we appreciate ESMA’s support of innovation in the market, if ESMA decides to continue pursuing JSON for this purpose, the low current adoption of JSON for market data feeds should be considered when establishing timelines for implementation, in particular to allow for thorough industry testing. An extended period should also be considered during which ESMA receives the CTP data, but the data is not made public.

Q12: Do you find more suitable to prescribe one single format across the 3 CTPs (equity, derivatives, bonds) or to prescribe distinct formats according for different asset classes?

Yes, due to the multi-asset-class nature of APAs (as one of the key types of data contributors), it would be more efficient to adopt one single format across different asset classes. This will also result in a standardised format for data users who would normally like to consume market data from all 3 CTPs.

Q13: Do you support the proposals on core and regulatory data? In particular, are there other relevant fields to be added to the regulatory data? Furthermore, would you

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propose the inclusion of supplementary fields for input core market data beyond those intended for dissemination by the CTP?

Q14: Do you support the proposal of machine-readable and human-readable formats outlined in this section?

We support the inclusion of provisions for both machine- and human-readability of CTP data on the understanding that a "Graphical User Interface" (GUI) is related to providing access to retail investors or academia. This GUI should consequently be limited to the audience for which it is required, and limited to the dissemination of core and regulatory data in a simple tabular format.

Q15: Do you agree with the proposal of data quality measures and enforcement standards for input data?

Any data quality measures introduced, whilst important to ensure the quality of the tape, should not result in any delays to the publication of data while the CTP is working with the data contributor to confirm the accuracy of the submission.

Data quality measures should be linked to revenue share arrangements in both Bonds & Equities to support data quality after the CTP has recovered costs.

APAs, as significant data contributors to the CTP, warrant inclusion in a revenue share scheme, to compensate them for the valuable data that they provide to the CTP.

Q16: Do you agree with the proposal of data quality measures for output data?

APARMA members would like to better understand what level of data quality measures will be published, recognising that data quality of data from APAs is a consequence of both the APA and its clients' actions. For this reason, APARMA also recommends that individual contributor names are not disclosed in any public data or commentary on data quality. Further, APAs and their clients have a joint responsibility for timeliness, and it is important that the brand of the APA is protected from potential negative impact of issues that may be caused by its clients.

RTS on the revenue distribution scheme of CTPs:

Q18: Do you agree with the above assessment? If not, please explain.

Given the importance APAs play to the entire reporting ecosystem and the volume of activity they collectively provide towards transparency, we believe they should be included in a revenue share and as such be recognised as part of such a group.

Q25: Do you agree with the proposed timeline for the update of the list of data contributors and the identified issues? How could the issues be solved? Please explain.

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Given the importance APAs play to the entire reporting ecosystem and the volume of activity they collectively provide towards transparency, we believe they should be included in revenue share and as such be recognised as part of such a group.

Q28: Would you consider appropriate that the weight (percentages) sum to 10 (100%)? If not, please explain and provide your alternative proposal for the weights (percentages).

We consider the proposals overly complex. The key objectives should focus on volume and data quality. This could be evolved over time and more sophisticated models applied but initially we suggest keeping to a simpler approach.

Q30: Do you agree with the proposed text? Have you identified any missing points or issues?

Given the importance APAs play to the entire reporting ecosystem and the volume of activity they collectively provide towards transparency, we believe they should be included in revenue share and as such be recognised as part of such a group.

Q31: Do you agree with ESMA's proposal on the criteria for a potential suspension of redistribution in case of serious and repeated breach by the CTP? If not, which alternative or/and additional criteria would you consider relevant?

We support the proposals as outlined in points 152 & 153 of the CP. It is important that the data contributor has a defined process to appeal against any decisions.

Given the importance APAs play to the entire reporting ecosystem and the volume of activity they collectively provide towards transparency, we believe they should be included in revenue share and as such be recognised as part of such a group.

RTS on the synchronisation of business clocks

Q37: Do you agree with the proposed approach on synchronisation to reference time? If not, please explain.

We refer to our response to CP2 Q8 earlier, whereby some investment firms do not need to follow the same clock synchronisation rules.

RTS/ITS on the authorisation and organisational requirements for DRSPs

Q45: Do you have any further comments or suggestions on the draft RTS? Please elaborate your answer.

We appreciate that ESMA clarifies that DORA will supersede all sectoral legislation (including MiFID II/MiFIR) in the domain of digital operational resilience, and ESMA is proposing to remove several articles in the organisational requirements chapter of RTS

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13 for DRSPs (para. 208 of the CP). However, given that (i) the final report of this RTS 13 revision will only be published in December 2024 and (ii) DORA will apply from 17 January 2025, we believe there will be a timing issue potentially resulting in two sets of regulations applying to a similar situation. Examples of this are the reporting of incidents (both existing under the now in force RTS 13 (CDR 2017/571 – Article 9(4)) as well as under DORA) and the provisions regarding business continuity (CDR 2017/571 – Article 7(3)(f)). We would really appreciate it if ESMA could further publish an official statement in Q4 2024 to clarify this matter.

We would also appreciate it if ESMA could please confirm that DORA, which is not specifically focused on outsourcing, is understood by ESMA as superseding any Article 9 outsourcing requirements in respect of ICT services provided by ICT third-party service providers. In addition, we note that the term ‘critical or important function’ is being incorporated by reference into the RTS from DORA and were wondering whether the reference in paragraph 7 of Article 9 should be to ‘critical or important function’ rather than ‘critical function’.

Q47: Do you foresee specific conflicts of interests that may arise between (i) CTP and data contributors and (ii) CTP and clients and users?

We would like to highlight that Article 27b(2) of MiFIR leaves room for the selected CTP offering trading venue and APA services via the same legal entity. Given the conflict of interest between the CTP and data contributors, we believe this situation (if any) should be prohibited by ESMA during the authorisation process.

Q48: What other elements, if any, should be included in the RTS on authorisation of CTPs?

We understand that ESMA is planning to create a new RTS on CTP authorisation with an aim to cover those CTP-related requirements that are currently under RTS 13 (para. 222 of the CP). Noting Article 13 of RTS 13 regarding ‘Other services provided by CTPs’, we believe any other services offered by the selected CTPs should be properly controlled due to the monopoly position.

In addition, given the importance of the consolidated tape, the inherent lack of substitutability as a monopoly provider and the reliance on that provider by the entire market, any outsourcing arrangements utilised by the CTP should be subject to the same level of scrutiny as the CTP itself, and be considered in the context of DORA.

Criteria to assess CTP applicants

Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?

To ensure a level playing field the CTP should not be allowed to use the same legal entity to offer any other ancillary services.

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Q52: Should the CTP include representation of other stakeholders within their governance structure?

Yes, we support the proposal for an Advisory Committee that represents all stakeholders of the CTP. CTP applicants should articulate how they will appoint the committee to ensure balanced representation, and how they will ensure the recommendations of the committee are adopted.

Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?

As explained in Q47 and Q51 respectively, we believe a proper legal separation is a practical solution to address potential conflicts of interest.

Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach? What additional commitments and measures would you consider appropriate?

APARMA agrees in principle provided data quality is linked to a revenue share for both bonds and equities and all data contributors, including APAs, benefit from such a scheme. Any additional data quality commitments or measures proposed by the CTP should be consulted on with data contributors and agreed with them in advance.

The CTP under no circumstances should make changes to the data it receives from data contributors. Any suspected errors should be notified back to the data contributors for review whilst at the same time the incoming trade report should continue to be made public. This may result in the data contributors making changes to in-house systems to prevent reoccurrence and bifurcated data sets. Any potential CTP demonstrating core data manipulation of any kind should not be permitted and should be required to revoke such plans before selection.

Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?

We cross refer to our earlier answers regarding appropriate latency e.g. in CP2 Q8.

Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection criterion), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk. Do you agree with this approach? What additional commitments and measures would you consider appropriate?

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Due the key role played by the selected CTP, we would like to propose that the CTPs (in addition to the DORA framework) should be supervised as 'Financial market infrastructures' in Annex of NIS 2 Directive (Directive (EU) 2022/2555) and CER Directive (Directive (EU) 2022/2557).

Annex II – Cost Benefit Analysis:

Q66: Do you expect the benefits from the proposed real time data transmission requirement for input data to outweigh the operational costs borne by data contributors?

We would like to reemphasise our response to CP2 Q8. Due to the necessary interactions between investment firms and APAs, the current proposal is not technically feasible. Therefore, a cost benefit analysis is not possible at this time.

Whilst there are benefits to real-time data distribution, there are also very real additional operational costs of implementation. This is another reason why a revenue share should be adopted to offset these additional costs.

Q67: Do you think that the input and output data fields strike a balance between reporting burden for data contributors/CTPs and benefits for CT users?

Provided an open-source solution is adopted for input and output data the burden for data contributors will be kept to a minimum whilst simultaneously allowing easy access to data.

Q69: Which costs do you expect to implement the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.

We expect the revenue distribution to become effective only once the CTP has achieved cost recovery. We do not envisage significant costs in the set up or on-going management of a revenue share scheme from the CTP provider.

Q70: Which costs do you expect to implement the suspension and the resumption of the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.

Until such time as more details of the proposed revenue share scheme to data contributors are made known by the winning CTP applicant, we are unable to answer this question.

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About APARMA

The APA & ARM Association, APARMA, represents common APA and ARM interests on regulations and laws impacting APA and ARM businesses in the EU and UK and the associated supervisory framework to ensure efficient dialogue with regulatory policymakers. APARMA focuses on developing and supporting the adoption of best practices with the common aim of improving industry data quality. APARMA aims to assist authorities and regulators with advice on practicalities related to implementing laws and rules, bearing in mind the practicalities of the data sets involved. Its six members are affiliates of Bloomberg, Cboe Europe, London Stock Exchange, MarketAxess, Nasdaq Nordic and Tradeweb Markets.



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