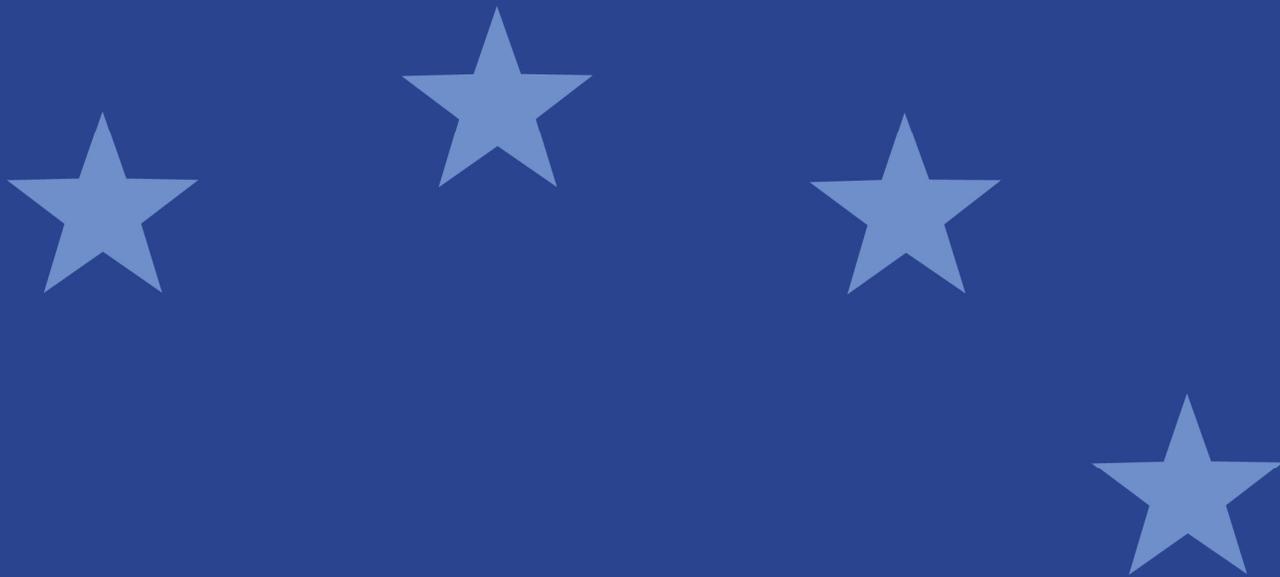


# Reply form for the ESMA MiFID II/MiFIR Consultation Paper





European Securities and  
Markets Authority

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Date: 22 May 2014



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA MiFID II/MiFIR Consultation Paper, published on the ESMA website ([here](#)).

### **Instructions**

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA\_QUESTION\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **1 August 2014**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

### **Publication of responses**

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.**

Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.



## 1. Overview

## 2. Investor protection

### 2.1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

**Q1: Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?**

<ESMA\_QUESTION\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_1>

### 2.2. Investment advice and the use of distribution channels

**Q2: Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?**

<ESMA\_QUESTION\_2>  
We agree. It is important to recognise that advice can be given through different distribution channels for example via the internet, smart phone and emails. It is important that where newsletters and investment tip sheets are distributed or made available widely available to the public, that these do not constitute personal recommendations and fall within the scope of investment advice.  
<ESMA\_QUESTION\_2>

### 2.3. Compliance function

**Q3: Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?**

<ESMA\_QUESTION\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_3>

**Q4: Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?**

<ESMA\_QUESTION\_4>  
In the requirement for permanent monitoring we believe a firm should be able to identify those areas of greatest risk and allocate monitoring resources accordingly.  
<ESMA\_QUESTION\_4>

## 2.4. Complaints-handling

**Q5: Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?**

<ESMA\_QUESTION\_5>

While we agree that effective and fair complaints handling is important for all client categories, complaints procedures need to be applied proportionately to these categories. We strongly urge that the proposed requirements should focus only on retail clients rather than professional clients. Professional clients have other means to address disputes for example credit institutions, investment firms, insurance companies, pension funds or other companies will have access to legal advice either in-house or externally. Further, information asymmetry, a weakness in the retail sector, can be effectively managed in the professional sector as they will often have access to similar information to that of the financial services provider.

In the UK, the financial services industry complies with stringent requirements regarding the handling of complaints. The FCA sets down these requirements in the Dispute Resolution (DISP) rules section of their handbook and these will shortly be updated to comply with the incoming Alternative Dispute Resolution (ADR) Directive. These rules require financial services firms to inform consumers of the existence of the Financial Ombudsman Service (FOS) both at the point of sale and when a complaint is received. The FOS then has the ability to hear complaints from consumers and micro-enterprises, trusts and charities that have a balance turnover of £1 million.

<ESMA\_QUESTION\_5>

## 2.5. Record-keeping (other than recording of telephone conversations or other electronic communications)

**Q6: Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.**

<ESMA\_QUESTION\_6>

The list of records appears to be appropriate and comprehensive. We do not believe additional requirements are necessary.

<ESMA\_QUESTION\_6>

**Q7: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.**

<ESMA\_QUESTION\_7>

The proposals are consistent with CESR Level 3 recommendations published in 2007. Apart from updating this list, we do not expect there to be any additional costs/ or benefits as a result of this.

<ESMA\_QUESTION\_7>

## 2.6. Recording of telephone conversations and electronic communications

**Q8: What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?**

<ESMA\_QUESTION\_8>

The measures proposed appear adequate. We also agree that there is a need for flexibility to take into future innovation and advances in technology. <ESMA\_QUESTION\_8>

**Q9: Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?**

<ESMA\_QUESTION\_9>

The requirement to periodically monitor records is not contained in the Level 1 text and we do not believe it should be mandated by ESMA that an aspect of the firm's business is monitored more frequently than another. This decision should lie with the firm who should determine those areas of the business in which risk is perceived.

<ESMA\_QUESTION\_9>

**Q10: Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?**

<ESMA\_QUESTION\_10>

<ESMA\_QUESTION\_10>

**Q11: Should clients be required to sign these minutes or notes?**

<ESMA\_QUESTION\_11>

We agree that clients should be provided with a copy of the meeting note in a timely manner. This would give them the opportunity to object to anything contained in the note of the meeting. However, we do not believe that clients should be required to sign meetings/ notes following a face to face conversation. We do not believe that this requirement will generate any significant benefit to the client, and believe that such a process would only create the impression that the firm was attempting to exclude themselves from any legal liability regarding the information provided.

<ESMA\_QUESTION\_11>

**Q12: Do you agree with the proposals for storage and retention set out in the above draft technical advice?**

<ESMA\_QUESTION\_12>

We urge for consistency regarding the period the firm is required to keep recordings. The current requirement that firms need to hold records for a period of 5 years, and where requested by the competent authority, for a period of 7 years, is contradictory. It is more appropriate to have a period of either 5 or 7 years but not both.

As technology is consistently evolving, we question whether it is and will be possible to retain records in a format that does not allow the original record to be altered or deleted? Instead, we suggest that firms use technology which allows investigators to track the changes made.

<ESMA\_QUESTION\_12>

**Q13: More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?**

<ESMA\_QUESTION\_13>

In ESMA's guidance it is stated that there is a need for solutions to be "technology neutral". Considering the use of skype, Apple Facetime and other webcam based technology that allows face to face communication remotely, it would be helpful to clarify whether face to face standards would apply here. <ES-MA\_QUESTION\_13>

## 2.7. Product governance

**Q14: Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.**

<ESMA\_QUESTION\_14>

Extending the distribution requirements to the secondary markets could prove challenging and impractical. Secondary market distribution is very different to primary market distribution. There is often no direct link between the manufacturer and the advisory entity, nor is there control over the secondary market trading of issued securities due to the lack of a contractual relationship with the distributor.

<ESMA\_QUESTION\_14>

**Q15: When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?**

<ESMA\_QUESTION\_15>

Distributors should not distribute a product where they do not understand it sufficiently and/or do not have all relevant information to enable them to do so. There are currently requirements in place that help to achieve this and MiFID suitability rules require a distributor to ensure it has received sufficient information on the product being recommended to its clients. Distributors' due diligence procedures also equip them with sufficient information, removing the need for additional requirements. It is also important that distributors do not simply rely on the information provided by the manufacturer, but conduct their own analysis of the product and what information they require. <ESMA\_QUESTION\_15>

**Q16: Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?**

<ESMA\_QUESTION\_16>

There is regular dialogue between distributors and manufacturer, usually set down in contractual agreements. Any further requirements must ensure that the frequency of reporting is manageable and that any reporting is consistent with distributors' confidentiality obligations.

We suggest that it would be valuable for distributors to disclose complaints **and/or mis-selling claims in respect of the product**. However, it is important that any such obligation for distributors does not create uncertainty as to where legal or regulatory liabilities may fall between the manufacturer and the distributor. <ESMA\_QUESTION\_16>

**Q17: What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product's target market)?**

<ESMA\_QUESTION\_17>

A manufacturer will not normally have access to the distributors risk assessment of the client or an overview of the clients' entire portfolio, so it would be difficult for a manufacturer to access whether a product has been mis-sold. It would be more practical for a competent authority and/or the distributors own compliance function to identify mis-selling issues and to act on those findings.

However if a manufacturer becomes aware of a product not sold as envisaged then it would be appropriate for them to consult immediately with the distributor and with the manufacturer's other distributors of the same product and agree an action plan with the distributor. If the action plan is ineffective then consider terminating the arrangement and in extremis consider withdrawing the product entirely.

. <ESMA\_QUESTION\_17>

**Q18: What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?**

<ESMA\_QUESTION\_18>

If the action a distributor takes in such circumstances is to be prescribed by regulation then it is important to maintain flexibility. What constitutes appropriate action should be dependent on whether there is a material risk or an error on the part of the distributor.

]

However, where there is a potential risk to the identified target market, then appropriate actions by the distributor may include; discussing and assess an action plan with the manufacturer, to inform and communicate with existing investors, to include enhanced risk warnings for new investors and in extreme cases consider withdrawing the product completely. <ESMA\_QUESTION\_18>

**Q19: Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.**

<ESMA\_QUESTION\_19>

It is vital to have a clear view of respective duties of manufacturer and distributor and that product governance obligations are proportionate and targeted appropriately. This approach will help minimise the risk that manufacturers are penalised for the failings of their distributors or vice versa.

<ESMA\_QUESTION\_19>

**Q20: Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.**

<ESMA\_QUESTION\_20>

With respect to "white labelling" by the distributor – guidelines on responsibilities in relation for example fund naming and risk warnings would be helpful

<ESMA\_QUESTION\_20>

**Q21: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?**

<ESMA\_QUESTION\_21>

Changes in costs would be due to an increase of frequency of review required of distributors by manufacturers and the introduction of additional reporting requirements to regulators. <ESMA\_QUESTION\_21>

## **2.8. Safeguarding of client assets**



**Q22: Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?**

<ESMA\_QUESTION\_22>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_22>

**Q23: What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm's compliance with its obligations regarding the safeguarding of client instruments and funds?**

<ESMA\_QUESTION\_23>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_23>

**Q24: Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?**

<ESMA\_QUESTION\_24>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_24>

**Q25: Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?**

<ESMA\_QUESTION\_25>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_25>

**Q26: Do you agree with the proposal to require a reasonable link between the client's obligation and the financial instruments or funds subject to TTCA?**

<ESMA\_QUESTION\_26>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_26>

**Q27: Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?**

<ESMA\_QUESTION\_27>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_27>

**Q28: Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?**

<ESMA\_QUESTION\_28>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_28>



**Q29: Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?**

<ESMA\_QUESTION\_29>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_29>

**Q30: Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?**

<ESMA\_QUESTION\_30>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_30>

**Q31: Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?**

<ESMA\_QUESTION\_31>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_31>

**Q32: Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?**

<ESMA\_QUESTION\_32>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_32>

**Q33: Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.**

<ESMA\_QUESTION\_33>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_33>

**Q34: Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?**

<ESMA\_QUESTION\_34>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_34>

**Q35: Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?**

<ESMA\_QUESTION\_35>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_35>

**Q36: Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?**

<ESMA\_QUESTION\_36>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_36>

**Q37: Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?**

<ESMA\_QUESTION\_37>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_37>

**Q38: Do you place any client funds in a credit institution within your group? If so, what proportion of the total?**

<ESMA\_QUESTION\_38>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_38>

**Q39: What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?**

<ESMA\_QUESTION\_39>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_39>

**Q40: What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?**

<ESMA\_QUESTION\_40>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_40>

**Q41: What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?**

<ESMA\_QUESTION\_41>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_41>

**Q42: Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?**

<ESMA\_QUESTION\_42>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_42>

**Q43: Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?**

<ESMA\_QUESTION\_43>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_43>

**Q44: What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?**

<ESMA\_QUESTION\_44>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_44>

**Q45: Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?**

<ESMA\_QUESTION\_45>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_45>

**Q46: Should the option of ‘other equivalent measures’ for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?**

<ESMA\_QUESTION\_46>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_46>

**Q47: Should firms be required to develop additional systems to mitigate the risks of ‘other equivalent measures’ and require specific risk disclosures to clients where a firm must rely on such ‘other equivalent measures’, where not already covered by the Article 32(4) of the MiFID Implementing Directive?**

<ESMA\_QUESTION\_47>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_47>

**Q48: What would be the on-going costs of making disclosures to clients when relying on ‘other equivalent measures’?**

<ESMA\_QUESTION\_48>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_48>

**Q49: Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client’s financial instruments to settle the transactions of another client, including:**

<ESMA\_QUESTION\_49>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_49>

**Q50: Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?**

<ESMA\_QUESTION\_50>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_50>

**Q51: Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?**

<ESMA\_QUESTION\_51>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_51>

**Q52: Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?**

<ESMA\_QUESTION\_52>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_52>

**Q53: Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?**

<ESMA\_QUESTION\_53>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_53>

## **2.9. Conflicts of interest**

**Q54: Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.**

<ESMA\_QUESTION\_54>  
Yes firms should be required to have effective procedures in place at all times to address conflicts of interest, and there should be a periodical assessment of this policy. However, there is a risk that setting a once a year expectation means that this is only done once a year, so a more flexible approach would be more appropriate. <ESMA\_QUESTION\_54>

**Q55: Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.**

<ESMA\_QUESTION\_55>  
Article 21 is broad enough to capture a wide range of conflicts of interest while at the same time being flexible enough to support the on-going work by national supervisors. We do not believe any further situations need to be identified. <ESMA\_QUESTION\_55>



**Q56: Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.**

<ESMA\_QUESTION\_56>

This distinction is clear. <ESMA\_QUESTION\_56>

**Q57: Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.**

<ESMA\_QUESTION\_57>

Yes we agree.

<ESMA\_QUESTION\_57>

## **2.10. Underwriting and placing – conflicts of interest and provision of information to clients**

**Q58: Are there additional details or requirements you believe should be included?**

<ESMA\_QUESTION\_58>

<ESMA\_QUESTION\_58>

**Q59: Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client's interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?**

<ESMA\_QUESTION\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_59>

**Q60: Have you already put in place organisational arrangements that comply with these requirements?**

<ESMA\_QUESTION\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_60>

**Q61: How would you need to change your processes to meet the requirements?**

<ESMA\_QUESTION\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_61>

**Q62: What costs would you incur in order to meet these requirements?**



<ESMA\_QUESTION\_62>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_62>

## 2.11. Remuneration

**Q63: Do you agree with the definition of the scope of the requirements as proposed? If not, why not?**

<ESMA\_QUESTION\_63>

We agree with the scope of the requirements on the basis that remuneration provisions should apply to all relevant persons who can have a material impact on investment and ancillary services provided by the firm. <ESMA\_QUESTION\_63>

**Q64: Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?**

<ESMA\_QUESTION\_64>

There is no specific requirement in the L1 text of MiFID2 regarding how firms should remunerate their staff and we do not believe that ESMA should be specifying how this is done. While we agree that the approach to ensuring that the fixed and variable components of the total remuneration should be appropriately balanced, we also believe that the approach to remuneration should be flexible. Firms need to be able to use their judgement to determine a balanced approach that fits their business models and target markets.

Furthermore, the principles laid down in Articles 9(3)(c), 16(3) and 23(1) provide sufficient direction to firms and these principles should govern decisions relating to a firm's variable remuneration policy.

<ESMA\_QUESTION\_64>

## 2.12. Fair, clear and not misleading information

**Q65: Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?**

<ESMA\_QUESTION\_65>

The ABI supports the principle that information to clients should be fair, clear and not misleading;

### Up-to-date Information:

Both MiFID and PRIIPs have regimes to review and revise information in relation to the product. This includes triggers as well as the means for providing that updated information. However, to avoid duplication and inconsistencies, there needs to be harmonisation between the regimes to ensure information provided to the clients is "up-to-date".

### Same Language:

We understand the intention by ESMA is "the same Member State language" rather than the same terminology. We agree with this statement, but suggest that ESMA make this clearer. There is a risk that this could be interpreted that the same terminology should be used across all client communication media, which would not work in practice.



Font Size:

We agree that the font size for indicating risk should be equal to the predominant size used throughout the information provided. Characters should also be of a readable size which is in line with the PRIIPs KID.

<ESMA\_QUESTION\_65>

**Q66: Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?**

<ESMA\_QUESTION\_66>

We have reservations about this suggestion as with certain products it could be challenging to produce a future performance statement especially where there are a range of variables involved. This would mean the forecasting analysis for certain products will not produce a meaningful comparison to investors. Instead we suggest that distributors are best placed to understand the client's level of understanding the requirements for performance information.

However, in order to avoid any duplication, it is important that this obligation is aligned with PRIIPs and the requirement to provide appropriate performance scenarios and the assumptions made to produce them in the KID. <ESMA\_QUESTION\_66>

**Q67: Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?**

<ESMA\_QUESTION\_67>

Yes we agree that information to professional clients should be fair, clear and not misleading. There is no need for further conditions. <ESMA\_QUESTION\_67>

## **2.13. Information to clients about investment advice and financial instruments**

**Q68: Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?**

<ESMA\_QUESTION\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_68>

**Q69: Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?**

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

**Q70: Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.**

<ESMA\_QUESTION\_70>



TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_70>

## 2.14. Information to clients on costs and charges

**Q71: Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?**

<ESMA\_QUESTION\_71>  
<ESMA\_QUESTION\_71>

**Q72: Do you agree with the scope of the point of sale information requirements?**

<ESMA\_QUESTION\_72>

While we support the principle of providing aggregated costs to improve transparency for investors, disclosure should focus on the costs known in advance and not estimated costs. There are problems with trying to provide clients with certain costs up front for example they are likely to be variable and may change following pre-sale disclosure of the costs.

It is also key that a manufacturer is not obliged to disclose any costs imposed by a distributor, as the manufacturer will not have access to these details or information. If these costs are to be “estimated” then they will need to be clearly disclosed to the investor that these are estimated costs, although “estimated” costs run the risk of misleading investors and causing confusion. In the event that these requirements are adopted, then all KIIDs will need to be amended to reflect this, and we do not feel it is appropriate to amend both the UCITS and PRIIPs Directives via MiFID.

<ESMA\_QUESTION\_72>

**Q73: Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?**

<ESMA\_QUESTION\_73>

We agree that this should be part of the disclosure requirements if there is a continuing relationship between the distributor and investor. Under the PRIIPs regime there is a requirement to provide post sale information, if relevant, and we would not want to devalue the information within the KID. This needs to be taken into consideration to avoid potential duplication and inconsistencies between the two regimes.

<ESMA\_QUESTION\_73>

**Q74: Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.**

<ESMA\_QUESTION\_74>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_74>

**Q75: Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.**

<ESMA\_QUESTION\_75>

This would be consistent between the information provided by the UCITS KIID and the eventual PRIIPs KID which is not personalised. It is important to avoid any potential duplication and inconsistencies



between the two regimes. The provision on costs and charges on a generic level would provide flexibility where certain information is not available to the distributor.

<ESMA\_QUESTION\_75>

**Q76: Do you have any other comments on the methodology for calculating the point of sale figures?**

<ESMA\_QUESTION\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_76>

**Q77: Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?**

<ESMA\_QUESTION\_77>

We would like to have clarification over what is meant by “illustration”? If there is a requirement to show the effect of charges then that is possible. However if there is a requirement to show fund growth too then we start questioning what is a realistic assumption of growth which could be mis-leading for the customers. <ESMA\_QUESTION\_77>

**Q78: What costs would you incur in order to meet these requirements?**

<ESMA\_QUESTION\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_78>

## **2.15. The legitimacy of inducements to be paid to/by a third person**

**Q79: Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.**

<ESMA\_QUESTION\_79>

We believe that the examples in the current list are too limited. The requirement for seminars or conferences to have a link to a specific financial instrument or investment service would exclude attendance at market events where topics from across the industry are discussed. These events offer a chance for peers to get together and discuss various topics and they can be of great value to those in attendance, as well as their customers. Such events do however have to be managed correctly to ensure the recipient’s behaviour is not unduly influenced.

<ESMA\_QUESTION\_79>

**Q80: Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?**

<ESMA\_QUESTION\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_80>

**Q81: Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.**

<ESMA\_QUESTION\_81>

<ESMA\_QUESTION\_81>

**Q82: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.**

<ESMA\_QUESTION\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_82>

## **2.16. Investment advice on independent basis**

**Q83: Do you agree with the approach proposed in the technical advice above in order to ensure investment firm's compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.**

<ESMA\_QUESTION\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_83>

**Q84: What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?**

<ESMA\_QUESTION\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_84>

**Q85: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.**

<ESMA\_QUESTION\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_85>

## **2.17. Suitability**

**Q86: Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?**

<ESMA\_QUESTION\_86>



We would question whether it is necessary to include this level of detail in the implementing directive. We would prefer the previous approach taken by ESMA to produce guidelines on Suitability because we do not feel that this level of detail is necessary in the implementing directive.

<ESMA\_QUESTION\_86>

**Q87: Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?**

<ESMA\_QUESTION\_87>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_87>

**Q88: What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently ‘personalised’ to have added value for the client, drawing on any initiatives in national markets?**

<ESMA\_QUESTION\_88>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_88>

**Q89: Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?**

<ESMA\_QUESTION\_89>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_89>

## **2.18. Appropriateness**

**Q90: Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?**

<ESMA\_QUESTION\_90>

As providers of insurance investment products, we are extremely concerned that non-UCITS collective investments will be classed as complex. While we agree that these funds should be judged for their non-complex status against an enhanced set of criteria, they should not automatically be treated as complex. The re-classification of these (outside the UCITS directive) would prevent investors investing in funds specifically designed by manufacturers to be non-complex. We also believe that this would contradict Article 43 of AIFMD which allows individual member states to set the criteria for AIF to be sold to the retail public in their jurisdiction.

By automatically treating all shares in non-UCITS collective investment undertakings as complex this will create a disparity between shares and units in non-UCITS collective investment undertakings creating an unlevel playfield for those firms that offer those products. For example units in non-UCITS collective investment undertakings are not explicitly identified in one of the other Article 25 (4)(a) exclusions and would therefore be assessed using the other non-complex criteria. This creates an anomaly that identical non-UCITS collective investment undertakings could be classed differently, simply due to the legal structure of the undertaking and not due to its complexity. This is a poor customer outcome and could cause

confusion. For example if a customer looking to invest in similar UCITS and non-UCITS collective investments would not be assessed for appropriateness for the UCITS but would be assessed for the non-UCITS. This could lead to the customer being under the false impression that the UCITS is lower risk, or that the firm has approved the non-UCITS as being suitable by conducting the test.

In the long term requiring an appropriateness test for all non-UCITS collective investment undertakings may lead to many firms restricting access to these types of funds to advised business only. This could restrict the range of investments available to customers who do not wish to take financial advice

<ESMA\_QUESTION\_90>

**Q91: Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?**

<ESMA\_QUESTION\_91>  
No <ESMA\_QUESTION\_91>

## 2.19. Client agreement

**Q92: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.**

<ESMA\_QUESTION\_92>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_92>

**Q93: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?**

<ESMA\_QUESTION\_93>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_93>

**Q94: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?**

<ESMA\_QUESTION\_94>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_94>

**Q95: Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?**

<ESMA\_QUESTION\_95>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_95>



## 2.20.

## 2.21. Reporting to clients

**Q96: Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?**

<ESMA\_QUESTION\_96>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_96>

**Q97: Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?**

<ESMA\_QUESTION\_97>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_97>

**Q98: Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?**

<ESMA\_QUESTION\_98>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_98>

**Q99: Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?**

<ESMA\_QUESTION\_99>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_99>

**Q100: What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?**

<ESMA\_QUESTION\_100>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_100>

## 2.22. Best execution

**Q101: Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA's objective of facilitating clear disclosures to clients?**

<ESMA\_QUESTION\_101>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_101>

**Q102: Do your policies and your review procedures already the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.**

<ESMA\_QUESTION\_102>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_102>

## 2.23. Client order-handling

**Q103: Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.**

<ESMA\_QUESTION\_103>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_103>

## 2.24. Transactions executed with eligible counterparties

**Q104: Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?**

<ESMA\_QUESTION\_104>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_104>

**Q105: For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:**

<ESMA\_QUESTION\_105>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_105>

**Q106: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?**



<ESMA\_QUESTION\_106>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_106>

## **2.25. Product intervention**

### **Q107: Do you agree with the criteria proposed?**

<ESMA\_QUESTION\_107>

We generally agree with the proposals and support the need for flexibility. We would like to see transparency on behalf of the competent authority on the reasons for regulatory interventions, the basis and the scope for such intervention and any cross-border impacts. Adequate accounts of the direct and especially the indirect consequences of product intervention would also need to be demonstrated on behalf of the competent authority.

<ESMA\_QUESTION\_107>

### **Q108: Are there any additional criteria that you would suggest adding?**

<ESMA\_QUESTION\_108>

The list of criteria appears extensive; we do not believe additional criteria are necessary.

<ESMA\_QUESTION\_108>



### 3. Transparency

#### 3.1. Liquid market for equity and equity-like instruments

**Q109: Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.**

<ESMA\_QUESTION\_109>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_109>

**Q110: Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer's home market? Please provide reasons for your answer.**

<ESMA\_QUESTION\_110>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_110>

**Q111: Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.**

<ESMA\_QUESTION\_111>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_111>

**Q112: Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.**

<ESMA\_QUESTION\_112>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_112>

**Q113: Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.**

<ESMA\_QUESTION\_113>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_113>

**Q114: Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.**

<ESMA\_QUESTION\_114>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_114>



**Q115: Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).**

<ESMA\_QUESTION\_115>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_115>

**Q116: Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?**

<ESMA\_QUESTION\_116>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_116>

**Q117: Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.**

<ESMA\_QUESTION\_117>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_117>

**Q118: Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.**

<ESMA\_QUESTION\_118>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_118>

**Q119: Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.**

<ESMA\_QUESTION\_119>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_119>

**Q120: Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?**

<ESMA\_QUESTION\_120>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_120>

### **3.2. Delineation between bonds, structured finance products and money market instruments**

**Q121: Do you agree with ESMA's assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?**

<ESMA\_QUESTION\_121>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_121>

### 3.3. The definition of systematic internaliser

**Q122:** For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.

<ESMA\_QUESTION\_122>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_122>

**Q123:** Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?

<ESMA\_QUESTION\_123>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_123>

**Q124:** For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.

<ESMA\_QUESTION\_124>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_124>

**Q125:** Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_125>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_125>

**Q126:** ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:

<ESMA\_QUESTION\_126>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_126>

**Q127:** Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?



<ESMA\_QUESTION\_127>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_127>

**Q128: For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.**

<ESMA\_QUESTION\_128>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_128>

**Q129: With regard to the ‘substantial basis’ criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.**

<ESMA\_QUESTION\_129>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_129>

**Q130: Do you agree with ESMA’s proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.**

<ESMA\_QUESTION\_130>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_130>

**Q131: For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.**

<ESMA\_QUESTION\_131>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_131>

**Q132: Do you agree with ESMA’s proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?**

<ESMA\_QUESTION\_132>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_132>

**Q133: Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?**

<ESMA\_QUESTION\_133>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_133>



**Q134: Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.**

<ESMA\_QUESTION\_134>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_134>

**Q135: Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.**

<ESMA\_QUESTION\_135>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_135>

**Q136: What thresholds would you consider as adequate for the emission allowance market?**

<ESMA\_QUESTION\_136>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_136>

### **3.4. Transactions in several securities and orders subject to conditions other than the current market price**

**Q137: Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?**

<ESMA\_QUESTION\_137>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_137>

### **3.5. Exceptional market circumstances and conditions for updating quotes**

**Q138: Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA's view on the conditions for updating the quotes? Please give reasons for your answer.**

<ESMA\_QUESTION\_138>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_138>

### **3.6. Orders considerably exceeding the norm**

**Q139: Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?**

<ESMA\_QUESTION\_139>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_139>

### **3.7. Prices falling within a public range close to market conditions**

**Q140: Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.**

<ESMA\_QUESTION\_140>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_140>

### **3.8. Pre-trade transparency for systematic internalisers in non-equity instruments**

**Q141: Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?**

<ESMA\_QUESTION\_141>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_141>

**Q142: Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?**

<ESMA\_QUESTION\_142>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_142>

## 4. Data publication

### 4.1. Access to systematic internalisers' quotes

**Q143: Do you agree with the proposed definition of “regular and continuous” publication of quotes? If not, what would definition you suggest?**

<ESMA\_QUESTION\_143>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_143>

**Q144: Do you agree with the proposed definition of “normal trading hours”? Should the publication time be extended?**

<ESMA\_QUESTION\_144>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_144>

**Q145: Do you agree with the proposal regarding the means of publication of quotes?**

<ESMA\_QUESTION\_145>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_145>

**Q146: Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?**

<ESMA\_QUESTION\_146>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_146>

**Q147: Is there any other mean of communication that should be considered by ESMA?**

<ESMA\_QUESTION\_147>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_147>

**Q148: Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?**

<ESMA\_QUESTION\_148>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_148>

**Q149: Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?**

<ESMA\_QUESTION\_149>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_149>



**Q150: Do you agree with the imposing the publication on a ‘machine-readable’ and ‘human readable’ to investment firms publishing their quotes only through their own website?**

<ESMA\_QUESTION\_150>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_150>

**Q151: Do you agree with the requirements to consider that the publication is ‘easily accessible’?**

<ESMA\_QUESTION\_151>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_151>

## **4.2. Publication of unexecuted client limit orders on shares traded on a venue**

**Q152: Do you think that publication of unexecuted orders through a data reporting service or through an investment firm’s website would effectively facilitate execution?**

<ESMA\_QUESTION\_152>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_152>

**Q153: Do you agree with this proposal. If not, what would you suggest?**

<ESMA\_QUESTION\_153>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_153>

## **4.3. Reasonable commercial basis (RCB)**

**Q154: Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?**

<ESMA\_QUESTION\_154>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_154>

**Q155: Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?**

<ESMA\_QUESTION\_155>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_155>

**Q156: To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?**

<ESMA\_QUESTION\_156>



TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_156>

**Q157: What are your views on controlling charges by fixing a limit on the share of revenue that market data services can represent?**

<ESMA\_QUESTION\_157>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_157>

**Q158: Which percentage range for a revenue limit would you consider reasonable?**

<ESMA\_QUESTION\_158>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_158>

**Q159: If the definition of “reasonable commercial basis” is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?**

<ESMA\_QUESTION\_159>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_159>

**Q160: Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?**

<ESMA\_QUESTION\_160>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_160>

**Q161: Do you believe that if there are excessive prices in any of the other markets, the same definition of “reasonable commercial basis” would be appropriate, or that they should be treated differently? If the latter, what definition should be used?**

<ESMA\_QUESTION\_161>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_161>

**Q162: Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.**

<ESMA\_QUESTION\_162>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_162>

**Q163: What are your views on the costs of the different approaches?**

<ESMA\_QUESTION\_163>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_163>

**Q164: Is there some other approach you believe would be better? Why?**

<ESMA\_QUESTION\_164>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_164>

**Q165: Do you think that the offering of a ‘per-user’ pricing model designed to prevent multiple charging for the same information should be mandatory?**

<ESMA\_QUESTION\_165>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_165>

**Q166: If yes, in which circumstances?**

<ESMA\_QUESTION\_166>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_166>

## 5. Micro-structural issues

### 5.1. Algorithmic and high frequency trading (HFT)

**Q167: Which would be your preferred option? Why?**

<ESMA\_QUESTION\_167>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_167>

**Q168: Can you identify any other advantages or disadvantages of the options put forward?**

<ESMA\_QUESTION\_168>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_168>

**Q169: How would you reduce the impact of the disadvantages identified in your preferred option?**

<ESMA\_QUESTION\_169>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_169>

**Q170: If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.**

<ESMA\_QUESTION\_170>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_170>

**Q171: Do you agree with the above assessment? If not, please elaborate.**

<ESMA\_QUESTION\_171>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_171>

### 5.2. Direct electronic access (DEA)

**Q172: Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?**

<ESMA\_QUESTION\_172>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_172>

**Q173: Is there any other activity that should be covered by the term “DEA”, other than DMA and SA? In particular, should AOR be considered within the DEA definition?**

<ESMA\_QUESTION\_173>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_173>

**Q174: Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?**

<ESMA\_QUESTION\_174>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_174>

**Q175: Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?**

<ESMA\_QUESTION\_175>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_175>

## 6. Requirements applying on and to trading venues

### 6.1. SME Growth Markets

**Q176: Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?**

<ESMA\_QUESTION\_176>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_176>

**Q177: Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?**

<ESMA\_QUESTION\_177>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_177>

**Q178: Do you agree with the approach described above (in the box Error! Reference source not found.), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?**

<ESMA\_QUESTION\_178>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_178>

**Q179: Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?**

<ESMA\_QUESTION\_179>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_179>

**Q180: Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the “at least 50% criterion” do you consider the most appropriate? Please give reasons for your answer.**

<ESMA\_QUESTION\_180>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_180>

**Q181: Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?**

<ESMA\_QUESTION\_181>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_181>



**Q182: Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are “appropriate”?**

<ESMA\_QUESTION\_182>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_182>

**Q183: Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM’s regulatory regime is effective?**

<ESMA\_QUESTION\_183>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_183>

**Q184: Do you think that there should be an appropriateness test for an SME-GM issuer’s management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?**

<ESMA\_QUESTION\_184>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_184>

**Q185: Do you think that there should be an appropriateness test for an SME-GM issuer’s systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?**

<ESMA\_QUESTION\_185>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_185>

**Q186: Do you agree with Error! Reference source not found., Error! Reference source not found. or Error! Reference source not found. Error! Reference source not found.?**

<ESMA\_QUESTION\_186>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_186>

**Q187: Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?**

<ESMA\_QUESTION\_187>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_187>

**Q188: Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?**

<ESMA\_QUESTION\_188>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_188>

**Q189: Do you agree that SME-GMs should be able to take either a ‘top down’ or a ‘bottom up’ approach to their admission documents where a Prospectus is not required?**

<ESMA\_QUESTION\_189>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_189>

**Q190: Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?**

<ESMA\_QUESTION\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_190>

**Q191: If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?**

<ESMA\_QUESTION\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_191>

**Q192: Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?**

<ESMA\_QUESTION\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_192>

**Q193: Do you agree with this initial assessment by ESMA?**

<ESMA\_QUESTION\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_193>

**Q194: In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?**

<ESMA\_QUESTION\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_194>

**Q195: How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?**

<ESMA\_QUESTION\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_195>

**Q196: Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph Error! Reference source not found.) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?**

<ESMA\_QUESTION\_196>



TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_196>

**Q197: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?**

<ESMA\_QUESTION\_197>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_197>

**Q198: What is your view on the possible requirements for the dissemination and storage of information?**

<ESMA\_QUESTION\_198>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_198>

**Q199: How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?**

<ESMA\_QUESTION\_199>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_199>

**Q200: How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?**

<ESMA\_QUESTION\_200>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_200>

**Q201: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?**

<ESMA\_QUESTION\_201>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_201>

## **6.2. Suspension and removal of financial instruments from trading**

**Q202: Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?**

<ESMA\_QUESTION\_202>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_202>

**Q203: Do you agree that NCAs would also need to consider the criteria described in paragraph Error! Reference source not found. Error! Reference source not found. and Error! Reference source not found., when making an assessment of relevant costs or risks?**

<ESMA\_QUESTION\_203>



TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_203>

**Q204: Which specific circumstances would you include in the list? Do you agree with the proposed examples?**

<ESMA\_QUESTION\_204>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_204>

### **6.3. Substantial importance of a trading venue in a host Member State**

**Q205: Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?**

<ESMA\_QUESTION\_205>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_205>

**Q206: Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?**

<ESMA\_QUESTION\_206>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_206>

### **6.4. Monitoring of compliance – information requirements for trading venues**

**Q207: Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?**

<ESMA\_QUESTION\_207>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_207>

### **6.5. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour**

**Q208: Do you support the approach suggested by ESMA?**

<ESMA\_QUESTION\_208>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_208>

**Q209: Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?**

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

**Q210: What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers' dealings or major shareholders' notifications)? Are there other public sources of information that could be useful for this purpose?**

<ESMA\_QUESTION\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_210>

**Q211: Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?**

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

**Q212: Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?**

<ESMA\_QUESTION\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_212>

## 7. Commodity derivatives

### 7.1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

**Q213: Do you agree with ESMA’s approach on specifying contracts that “must” be physically settled and contracts that “can” be physically settled?**

<ESMA\_QUESTION\_213>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_213>

**Q214: Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.**

<ESMA\_QUESTION\_214>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_214>

**Q215: Do you agree with ESMA’s approach on specifying contracts that must be physically settled?**

<ESMA\_QUESTION\_215>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_215>

**Q216: How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.**

<ESMA\_QUESTION\_216>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_216>

**Q217: Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.**

<ESMA\_QUESTION\_217>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_217>

**Q218: How do you understand and how would you describe the concepts of “force majeure” and “other bona fide inability to settle” in this context?**

<ESMA\_QUESTION\_218>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_218>



**Q219: Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?**

<ESMA\_QUESTION\_219>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_219>

**Q220: Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?**

<ESMA\_QUESTION\_220>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_220>

**Q221: Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?**

<ESMA\_QUESTION\_221>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_221>

**Q222: Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?**

<ESMA\_QUESTION\_222>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_222>

**Q223: Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?**

<ESMA\_QUESTION\_223>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_223>

**Q224: Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?**

<ESMA\_QUESTION\_224>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_224>

**Q225: Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?**

<ESMA\_QUESTION\_225>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_225>

**Q226: Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?**

<ESMA\_QUESTION\_226>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_226>

**Q227: What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?**

<ESMA\_QUESTION\_227>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_227>

**Q228: What do you understand by the terms “reason of default or other termination event” and how does this differ from “except in the case of force majeure, default or other bona fide inability to perform”?**

<ESMA\_QUESTION\_228>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_228>

## 7.2. Position reporting thresholds

**Q229: Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.**

<ESMA\_QUESTION\_229>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_229>

**Q230: Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.**

<ESMA\_QUESTION\_230>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_230>

**Q231: Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?**

<ESMA\_QUESTION\_231>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_231>

## 7.3. Position management powers of ESMA



**Q232: Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?**

<ESMA\_QUESTION\_232>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_232>

**Q233: What other factors and criteria should be taken into account?**

<ESMA\_QUESTION\_233>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_233>

**Q234: Do you agree with ESMA's definition of a market fulfilling its economic function?**

<ESMA\_QUESTION\_234>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_234>

**Q235: Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?**

<ESMA\_QUESTION\_235>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_235>

**Q236: What other factors and criteria should be taken into account?**

<ESMA\_QUESTION\_236>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_236>

**Q237: Do you consider that the above factors sufficiently take account of “the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives”? If not, what further factors would you propose?**

<ESMA\_QUESTION\_237>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_237>

**Q238: Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?**

<ESMA\_QUESTION\_238>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_238>

**Q239: What other factors and criteria should be taken into account?**

<ESMA\_QUESTION\_239>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_239>



**Q240: Do you agree that some factors are more important than others in determining what an “appropriate reduction of a position” is within a given market? If yes, which are the most important factors for ESMA to consider?**

<ESMA\_QUESTION\_240>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_240>

**Q241: Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?**

<ESMA\_QUESTION\_241>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_241>

**Q242: What other criteria and factors should be taken into account?**

<ESMA\_QUESTION\_242>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_242>

**Q243: If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?**

<ESMA\_QUESTION\_243>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_243>

## 8. Portfolio compression

**Q244: What are your views on the proposed approach for legal documentation and portfolio compression criteria?**

<ESMA\_QUESTION\_244>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_244>

**Q245: What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?**

<ESMA\_QUESTION\_245>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_245>