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| Reply form for the  Consultation Paper on MiFID II / MiFIR |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on MiFID II / MiFIR (reference ESMA/2014/1570), published on the ESMA website.

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. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

1. use this form and send your responses in Word format (do not send pdf files except for annexes);
2. do not remove the tags of type <ESMA\_QUESTION\_CP\_MIFID\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. 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:

1. if they respond to the question stated;
2. contain a clear rationale, and
3. describe any alternatives that ESMA should consider.

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

Naming protocol:

In order to facilitate the handling of stakeholders responses please save your document using the following format: ESMA\_CP\_MIFID\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

**E.g.** if the respondent were ESMA, the name of the reply form would be ESMA\_CP\_MIFID \_ESMA\_REPLYFORM or ESMA\_CP\_MIFID\_ESMA\_ANNEX1

Deadline

Responses must reach us by **2 March 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your in-put/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 under the headings ’Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Boerse Stuttgart Holding GmbH |
| Confidential[[1]](#footnote-1) |  |
| Activity: | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

Boerse Stuttgart would like to thank you for this opportunity to answer the questions raised in ESMA’s Consultation Paper on MiFID II/MiFIR (2014/1570).

Boerse Stuttgart is Europe's leading stock exchange organisation for private investors. It is organized as a regulated market, ensuring safety and effectiveness in trading. With the European Warrant Exchange, known by its abbreviated name of Euwax, it is also Europe's most attractive trading place for leverage and investment products.

Boerse Stuttgart owes its premier position to the ongoing enhancement of its product portfolio and its customer-friendly, one-stop approach. Alongside leverage and investment products, investors can trade equities, bonds, investment fund units, and participation certificates. Trading is safe, fast, simple, and extremely efficient. Today, Boerse Stuttgart is Germany's leading player in the field of intermediary-based stock exchange trading. Especially as regards corporate bonds and investment fund units, Boerse Stuttgart leads the German market.

< ESMA\_COMMENT\_CP\_MIFID\_1>

1. Investor protection
2. Do you agree with the list of information set out in draft RTS to be provided to the competent authority of the home Member State? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_1>

1. Do you agree with the conditions, set out in this CP, under which a firm that is a natural person or a legal person managed by a single natural person can be authorised? If no, which criteria should be added or deleted?

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

1. Do you agree with the criteria proposed by ESMA on the topic of the requirements applicable to shareholders and members with qualifying holdings? If no, which criteria should be added or deleted?

<ESMA\_QUESTION\_CP\_MIFID\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_3>

1. Do you agree with the approach proposed by ESMA on the topic of obstacles which may prevent effective exercise of the supervisory functions of the competent authority?

<ESMA\_QUESTION\_CP\_MIFID\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_4>

1. Do you consider that the format set out in the ITS allow for a correct transmission of the information requested from the applicant to the competent authority? If no, what modification do you propose?

<ESMA\_QUESTION\_CP\_MIFID\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_5>

1. Do you agree consider that the sending of an acknowledgement of receipt is useful, and do you agree with the proposed content of this document? If no, what changes do you proposed to this process?

<ESMA\_QUESTION\_CP\_MIFID\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_6>

1. Do you have any comment on the authorisation procedure proposed in the ITS included in Annex B?

<ESMA\_QUESTION\_CP\_MIFID\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_7>

1. Do you agree with the information required when an investment firm intends to provide investment services or activities within the territory of another Member State under the right of freedom to provide investment services or activities? Do you consider that additional information is required?

<ESMA\_QUESTION\_CP\_MIFID\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_8>

1. Do you agree with the content of information to be notified when an investment firm or credit institution intends to provide investment services or activities through the use of a tied agent located in the home Member State?

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

1. Do you consider useful to request additional information when an investment firm or market operator operating an MTF or an OTF intends to provide arrangements to another Member State as to facilitate access to and trading on the markets that it operates by remote users, members or participants established in their territory? If not which type of information do you consider useful to be notified?

<ESMA\_QUESTION\_CP\_MIFID\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_10>

1. Do you agree with the content of information to be provided on a branch passport notification?

<ESMA\_QUESTION\_CP\_MIFID\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_11>

1. Do you find it useful that a separate passport notification to be submitted for each tied agent the branch intends to use?

<ESMA\_QUESTION\_CP\_MIFID\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_12>

1. Do you agree with the proposal to have same provisions on the information required for tied agents established in another Member State irrespective of the establishment or not of a branch?

<ESMA\_QUESTION\_CP\_MIFID\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_13>

1. Do you agree that any changes in the contact details of the investment firm that provides investment services under the right of establishment shall be notified as a change in the particulars of the branch passport notification or as a change of the tied agent passport notification under the right of establishment?

<ESMA\_QUESTION\_CP\_MIFID\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_14>

1. Do you agree that credit institutions needs to notify any changes in the particulars of the passport notifications already communicated?

<ESMA\_QUESTION\_CP\_MIFID\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_15>

1. Is there any other information which should be requested as part of the notification process either under the freedom to provide investment services or activities or the right of establishment, or any information that is unnecessary, overly burdensome or duplicative?

<ESMA\_QUESTION\_CP\_MIFID\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_16>

1. Do you agree that common templates should be used in the passport notifications?

<ESMA\_QUESTION\_CP\_MIFID\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_17>

1. Do you agree that common procedures and templates to be followed by both investment firms and credit institutions when changes in the particulars of passport notifications occur?

<ESMA\_QUESTION\_CP\_MIFID\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_18>

1. Do you agree that the deadline to forward to the competent authority of the host Member State the passport notification can commence only when the competent authority of the home Member States receives all the necessary information?

<ESMA\_QUESTION\_CP\_MIFID\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_20>

1. Do you find it useful that the competent authority of the host Member State acknowledge receipt of the branch passport notification and the tied agent passport notification under the right of establishment both to the competent authority and the investment firm?

<ESMA\_QUESTION\_CP\_MIFID\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_21>

1. Do you agree with the proposal that a separate passport notification shall be submitted for each tied agent established in another Member State?

<ESMA\_QUESTION\_CP\_MIFID\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_22>

1. Do you find it useful the investment firm to provide a separate passport notification for each tied agent its branch intends to use in accordance with Article 35(2)(c) of MiFID II? Changes in the particulars of passport notification

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

1. Do you agree to notify changes in the particulars of the initial passport notification using the same form, as the one of the initial notification, completing the new information only in the relevant fields to be amended?

<ESMA\_QUESTION\_CP\_MIFID\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_24>

1. Do you agree that all activities and financial instruments (current and intended) should be completed in the form, when changes in the investment services, activities, ancillary services or financial instruments are to be notified?

<ESMA\_QUESTION\_CP\_MIFID\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_25>

1. Do you agree to notify changes in the particulars of the initial notification for the provision of arrangements to facilitate access to an MTF or OTF?

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

1. Do you agree with the use of a separate form for the communication of the information on the termination of the operations of a branch or the cessation of the use of a tied agent established in another Member State?

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

1. Do you agree with the list of information to be requested by ESMA to apply to third country firms? If no, which items should be added or deleted. Please provide details on your answer.

<ESMA\_QUESTION\_CP\_MIFID\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_28>

1. Do you agree with ESMA’s proposal on the form of the information to provide to clients? Please provide details on your answer.

<ESMA\_QUESTION\_CP\_MIFID\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_29>

1. Do you agree with the approach taken by ESMA? Would a different period of measurement be more useful for the published reports?

<ESMA\_QUESTION\_CP\_MIFID\_30>

Boerse Stuttgart agrees with ESMA’s approach and has no further suggestions regarding the period of measurement.

<ESMA\_QUESTION\_CP\_MIFID\_30>

1. Do you agree that it is reasonable to split trades into ranges according to the nature of different classes of financial instruments? If not, why?

<ESMA\_QUESTION\_CP\_MIFID\_31>

Boerse Stuttgart agrees with ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_31>

1. Are there other metrics that would be useful for measuring likelihood of execution?

<ESMA\_QUESTION\_CP\_MIFID\_32>

Boerse Stuttgart welcomes the opportunity to provide further metrics/indicators for measuring the likelihood of execution. We recommend including the average quote presence in percent of the trading period and the average bid and ask volume over the trading period in Euros as additional metrics. These metrics offer a further proxy for the likelihood of execution.

With respect to RTS 6 Article 6, we would like to add that the variation of the metrics between trading periods makes it necessary to establish further reporting ranges to reflect the variations between the different trading periods. To our knowledge, some banks have already established best execution policies based on different trading periods. This more granular approach enables customer orders to be executed at the most favorable conditions over the entire trading day. At least three calculation periods should be reported:

1. One calculation period for the main trading period and
2. two additional calculation periods.

* one for the time before the main trading period and
* one for the time following the main trading period.

Correspondingly, an additional paragraph should be inserted in RTS 6 Article 6:

4. Execution venues shall report the execution of purchases and sales specified in Article 3 (4)(a) and (b) in the ranges specified below:

1. Period 1 – Early Trading Time

Defined as the trading time beginning with the start of trading and ending with the microsecond before the Main Trading Time starts;

1. Period 2 – Main Trading Time

Defined as the trading time beginning with the microsecond after the end of Early Trading Time and ending with the microsecond before the Late Trading Time starts;

1. Period 3 – Late Trading Time

Defined as the trading time beginning with the microsecond after the end of the Main Trading Time and ending with the end of trading.

We would like to bring to ESMA’s notice to the following chart, which best exemplifies the suggested additional metrics and their variation between different trading periods:



Finally, with regard to ESMA’s observation that non-vertically integrated venues may find it difficult to report costs such as clearing or settlement services (see CP p. 41 no. 16), we want to emphasize that, in our view, execution venues should not be obliged to report settlement costs. Since financial institutions have different costs for the settlement of orders, it is impossible for execution venues to estimate settlement costs correctly (e.g., orders can be split into various settlement notes). In this case, each settlement note is charged separately. Further, some financial institutions undertake bilateral aggregation and so reduce the number of settlement notes per order.

<ESMA\_QUESTION\_CP\_MIFID\_32>

1. Are those metrics meaningful or are there any additional data or metrics that ESMA should consider?

<ESMA\_QUESTION\_CP\_MIFID\_33>

Boerse Stuttgart thinks that the proposed metrics are meaningful, but recommends two further metrics as proxies for the likelihood of execution: the average quote presence and the average bid and ask volume. We also recommend introducing further reporting ranges to reflect the variations between the different trading periods (please see our answer to Q32).

<ESMA\_QUESTION\_CP\_MIFID\_33>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_34>

Boerse Stuttgart agrees with ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_34>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_35>

Boerse Stuttgart agrees with ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_35>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_36>

Boerse Stuttgart agrees with ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_36>

1. Transparency
2. Do you agree with the proposal to add to the current table a definition of request for quote trading systems and to establish precise pre-trade transparency requirements for trading venues operating those systems? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_37>

1. Do you agree with the proposal to determine on an annual basis the most relevant market in terms of liquidity as the trading venue with the highest turnover in the relevant financial instrument by excluding transactions executed under some pre-trade transparency waivers? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_38>

1. Do you agree with the proposed exhaustive list of negotiated transactions not contributing to the price formation process? What is your view on including non-standard or special settlement trades in the list? Would you support including non-standard settlement transactions only for managing settlement failures? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_39>

1. Do you agree with ESMA’s definition of the key characteristics of orders held on order management facilities? Do you agree with the proposed minimum sizes? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_40>

1. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for shares and depositary receipts? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_41>

1. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for ETFs? Would you support an alternative approach based on a single large in scale threshold of €1 million to apply to all ETFs regardless of their liquidity? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_42>

1. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for certificates? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

1. Do you agree with the proposed approach on stubs? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_44>

1. Do you agree with the proposed conditions and standards that the publication arrangements used by systematic internalisers should comply with? Should systematic internalisers be required to publish with each quote the publication of the time the quote has been entered or updated? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_45>

1. Do you agree with the proposed definition of when a price reflects prevailing conditions? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_46>

1. Do you agree with the proposed classes by average value of transactions and applicable standard market size? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_47>

1. Do you agree with the proposed list of transactions not contributing to the price discovery process in the context of the trading obligation for shares? Do you agree that the list should be exhaustive? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_48>

1. Do you agree with the proposed list of information that trading venues and investment firms shall made public? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_49>

1. Do you consider that it is necessary to include the date and time of publication among the fields included in Table 1 Annex 1 of Draft RTS 8? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_50>

1. Do you agree with the proposed list of flags that trading venues and investment firms shall made public? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_51>

1. Do you agree with the proposed definitions of normal trading hours for market operators and for OTC? Do you agree with shortening the maximum possible delay to one minute? Do you think some types of transactions, such as portfolio trades should benefit from longer delays? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_52>

1. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 20? Do you think other types of transactions should be included? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_53>

1. Do you agree with the proposed classes and thresholds for large in scale transactions in shares and depositary receipts? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_54>

1. Do you agree with the proposed classes and thresholds for large in scale transactions in ETFs? Should instead a single large in scale threshold and deferral period apply to all ETFs regardless of the liquidity of the financial instrument as described in the alternative approach above? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_55>

1. Do you agree with the proposed classes and thresholds for large in scale transactions in certificates? Please provide reasons for your answers

<ESMA\_QUESTION\_CP\_MIFID\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_56>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer for SFPs and for each of type of bonds identified (European Sovereign Bonds, Non-European Sovereign Bonds, Other European Public Bonds, Financial Convertible Bonds, Non-Financial Convertible Bonds, Covered Bonds, Senior Corporate Bonds-Financial, Senior Corporate Bonds Non-Financial, Subordinated Corporate Bonds-Financial, Subordinated Corporate Bonds Non-Financial) addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes with respect to those selected (i.e. bond type, debt seniority, issuer sub-type and issuance size)?
   2. Would you use different parameters (different from average number of trades per day, average nominal amount per day and number of days traded) or the same parameters but different thresholds in order to define a bond or a SFP as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or viceversa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_57>

In general, Boerse Stuttgart strongly supports the use of the COFIA approach and the benefits that it will bring to market participants, including national regulators, investment firms, and operators of trading venues. However, we do not agree with the proposed segmentation in RTS 9, Annex Section 1, Tables 1-2. We believe that a more granular approach is necessary.

ESMA appears to have concluded from the work undertaken that the size of the issue is a good proxy for the liquidity of the bond. However, we see a serious risk in the proposal that, as ESMA itself notes, “bonds belong to a liquid class that are illiquid in reality” (see MiFID/MiFIR Consultation Paper, p. 103).

* ESMA should take into account the time to maturity when calibrating the necessary thresholds. The trading activity in a bond generally decreases with its time to maturity, i.e., those bonds with a maturity of less than one year should be classified as illiquid.
* Another important factor ESMA should consider more carefully is whether a bond is rated "investment grade" by rating agencies or not. For example, the market characteristics of European Sovereign Bonds differ significantly. While there is a highly liquid market for the bonds of certain countries (e.g., for German Sovereign Bonds), the bonds of other European countries (e.g., Greece) tend to be illiquid. This is even more important for corporate bonds which normally have a significant lower issuance size than sovereign bonds. Bonds with a high risk of default, i.e., those with a credit rating of ‘BB’, ‘B, ‘CCC’, etc., should be classified as illiquid.

We urge ESMA to amend its final RTS accordingly to strike an appropriate balance between transparency and liquidity. This becomes even more important as bonds markets are typically market maker markets. Market makers facilitate trading by providing liquidity to facilitate market efficiency and functioning. We see changes in the behaviour of market makers and proprietary traders. Their activity has reportedly diminished or assumed more marginal importance for banks in most jurisdictions (e.g., Bank for International Settlements (2014): Market-making and proprietary trading: industry trends, drivers and policy implications“ CGFS Papers No 52, available at: <http://www.bis.org/publ/cgfs52.pdf>). Therefore, we see a definite risk that the market quality in bonds trading will deteriorate under an incorrectly calibrated regime, leading to an increase in the cost of capital for issuers.

<ESMA\_QUESTION\_CP\_MIFID\_57>

1. Do you agree with the definitions of the bond classes provided in ESMA’s proposal (please refer to Annex III of RTS 9)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_58>

We agree in principle with the proposed definitions of bond classes, which are fairly accurate and easy to apply. However, it is not clear who will be responsible for determining the category to which an instrument belongs. Boerse Stuttgart would like to suggest that the responsibility for applying the different categories lie with the issuer. Alternatively, ESMA could ensure that the necessary data is available via ESMA’s database in advance of the bond’s first day of trading. Likewise, all updates should be published several days in advance of their effective date.

<ESMA\_QUESTION\_CP\_MIFID\_58>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer per asset class identified (investment certificates, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights, structured medium-term-notes and other warrants) addressing the following points:
   1. Would you use additional qualitative criteria to define the sub-classes?
   2. Would you use different parameters or the same parameters (i.e. average daily volume and number of trades per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you qualify certain sub-classes as illiquid? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_59>

Boerse Stuttgart agrees with ESMA’s definition of a liquid market for securitised derivatives.

<ESMA\_QUESTION\_CP\_MIFID\_59>

1. Do you agree with the definition of securitised derivatives provided in ESMA’s proposal (please refer to Annex III of the RTS)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_60>

Boerse Stuttgart agrees with ESMA’s definition of securitised derivatives.

<ESMA\_QUESTION\_CP\_MIFID\_60>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer for each of the asset classes identified (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to- Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) addressing the following points:
   1. Would you use different criteria to define the sub-classes (e.g. currency, tenor, etc.)?
   2. Would you use different parameters (among those provided by Level 1, i.e. the average frequency and size of transactions, the number and type of market participants, the average size of spreads, where available) or the same parameters but different thresholds in order to define a sub-class as liquid (state also your preference for option 1 vs. option 2, i.e. application of the tenor criteria as a range as in ESMA’s preferred option or taking into account broken dates. In the latter case please also provide suggestions regarding what should be set as the non-broken dates)?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_61>

1. Do you agree with the definitions of the interest rate derivatives classes provided in ESMA’s proposal (please refer to Annex III of draft RTS 9)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_62>

1. With regard to the definition of liquid classes for equity derivatives, which one is your preferred option? Please be specific in relation to each of the asset classes identified and provide a reason for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_63>

1. If you do not agree with ESMA’s proposal for the definition of a liquid market, please specify for each of the asset classes identified (stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs), futures on other underlying values (i.e. volatility index or ETFs):
   1. your alternative proposal
   2. which qualitative criteria would you use to define the sub-classes
   3. which parameters and related threshold values would you use in order to define a sub-class as liquid.

<ESMA\_QUESTION\_CP\_MIFID\_64>

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<ESMA\_QUESTION\_CP\_MIFID\_64>

1. Do you agree with the definitions of the equity derivatives classes provided in ESMA’s proposal (please refer to Annex III of draft RTS 9)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_65>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criterion to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_66>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criteria to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_67>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type and underlying (identified addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_68>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer per asset class identified (EUA, CER, EUAA, ERU) addressing the following points:
   1. Would you use additional qualitative criteria to define the sub-classes?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average number of tons of carbon dioxide traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you qualify as liquid certain sub-classes qualified as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_69>

1. Do you agree with ESMA’s proposal with regard to the content of pre-trade transparency? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_70>

1. Do you agree with ESMA’s proposal with regard to the order management facilities waiver? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_71>

1. ESMA seeks further input on how to frame the obligation to make indicative prices public for the purpose of the Technical Standards. Which methodology do you prefer? Do you have other proposals?

<ESMA\_QUESTION\_CP\_MIFID\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_72>

1. Do you consider it necessary to include the date and time of publication among the fields included in Annex II, Table 1 of RTS 9? Do you consider that other relevant fields should be added to such a list? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_73>

1. Do you agree with ESMA’s proposal on the applicable flags in the context of post-trade transparency? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_74>

1. Do you agree with ESMA’s proposal? Please specify in your answer if you agree with:
   1. a 3-year initial implementation period
   2. a maximum delay of 15 minutes during this period
   3. a maximum delay of 5 minutes thereafter. Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_75>

1. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 21? Do you think other types of transactions should be included? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_76>

1. Do you agree with ESMA’s proposal for bonds and SFPs? Please specify, for each type of bonds identified, if you agree on the following points, providing reasons for your answer and if you disagree providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA\_QUESTION\_CP\_MIFID\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_77>

1. Do you agree with ESMA’s proposal for interest rate derivatives? Please specify, for each sub-class (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to- Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) if you agree on the following points providing reasons for your answer and, if you disagree, providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale and size specific to the instrument threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1), provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2), provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed (c) irrespective of your preference for option 1 or 2 and, with particular reference to OTC traded interest rates derivatives, provide feedback on the granularity of the tenor buckets defined. In other words, would you use a different level of granularity for maturities shorter than 1 year with respect to those set which are: 1 day- 1.5 months, 1.5-3 months, 3-6 months, 6 months – 1 year? Would you group maturities longer than 1 year into buckets (e.g. 1-2 years, 2-5 years, 5-10 years, 10-30 years and above 30 years)?

<ESMA\_QUESTION\_CP\_MIFID\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_78>

1. Do you agree with ESMA’s proposal for commodity derivatives? Please specify, for each type of commodity derivatives, i.e. agricultural, metals and energy, if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA\_QUESTION\_CP\_MIFID\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_79>

1. Do you agree with ESMA’s proposal for equity derivatives? Please specify, for each type of equity derivatives [stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs), futures on other underlying values (i.e. volatility index or ETFs)], if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA\_QUESTION\_CP\_MIFID\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_80>

1. Do you agree with ESMA’s proposal for securitised derivatives? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA\_QUESTION\_CP\_MIFID\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_81>

1. Do you agree with ESMA’s proposal for emission allowances? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:
   1. deferral period set to 48 hours
   2. size specific to the instrument threshold set as 50% of the large in scale threshold
   3. volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9
   4. pre-trade and post-trade thresholds set at the same size
   5. large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA\_QUESTION\_CP\_MIFID\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_82>

1. Do you agree with ESMA’s proposal in relation to the supplementary deferral regime at the discrection of the NCA? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_83>

1. Do you agree with ESMA’s proposal with regard to the temporary suspension of transparency requirements? Please provide feedback on the following points:
   1. the measure used to calculate the volume as specified in Annex II, Table 3
   2. the methodology as to assess a drop in liquidity
   3. the percentages determined for liquid and illiquid instruments to assess the drop in liquidity. Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_84>

1. Do you agree with ESMA’s proposal with regard to the exemptions from transaprency requirements in respect of transactions executed by a member of the ESCB? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_85>

1. Do you agree with the articles on the double volume cap mechanism in the proposed draft RTS 10? Please provide reasons to support your answer.

<ESMA\_QUESTION\_CP\_MIFID\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_86>

1. Do you agree with the proposed draft RTS in respect of implementing Article 22 MiFIR? Please provide reasons to support your answer.

<ESMA\_QUESTION\_CP\_MIFID\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_87>

1. Are there any other criteria that ESMA should take into account when assessing whether there are sufficient third-party buying and selling interest in the class of derivatives or subset so that such a class of derivatives is considered sufficiently liquid to trade only on venues?

<ESMA\_QUESTION\_CP\_MIFID\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_88>

1. Do you have any other comments on ESMA’s proposed overall approach?

<ESMA\_QUESTION\_CP\_MIFID\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_89>

1. Do you agree with the proposed draft RTS in relation to the criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU?

<ESMA\_QUESTION\_CP\_MIFID\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_90>

1. Should the scope of the draft RTS be expanded to contracts involving European branches of non-EU non-financial counterparties?

<ESMA\_QUESTION\_CP\_MIFID\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_91>

1. Please indicate what are the main costs and benefits that you envisage in implementing of the proposal.

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

1. Microstructural issues
2. Should the list of disruptive scenarios to be considered for the business continuity arrangements expanded or reduced? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_93>

1. With respect to the section on Testing of algorithms and systems and change management, do you need clarification or have any suggestions on how testing scenarios can be improved?

<ESMA\_QUESTION\_CP\_MIFID\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_94>

1. Do you have any further suggestions or comments on the pre-trade and post-trade controls as proposed above?

<ESMA\_QUESTION\_CP\_MIFID\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_95>

1. In particular, do you agree with including “market impact assessment” as a pre-trade control that investment firms should have in place?

<ESMA\_QUESTION\_CP\_MIFID\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_96>

1. Do you agree with the proposal regarding monitoring for the prevention and identification of potential market abuse?

<ESMA\_QUESTION\_CP\_MIFID\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_97>

1. Do you have any comments on Organisational Requirements for Investment Firms as set out above?

<ESMA\_QUESTION\_CP\_MIFID\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_98>

1. Do you have any additional comments or questions that need to be raised with regards to the Consultation Paper?

<ESMA\_QUESTION\_CP\_MIFID\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_99>

1. Do you have any comments on Organisational Requirements for trading venues as set out above? Is there any element that should be clarified? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_100>

Boerse Stuttgart welcomes the opportunity to provide suggestions on ESMA’s proposal for organisational requirements for trading venues. Our response follows the structure of the Articles in RTS 14.

Governance and staffing (Articles 5-6)

Boerse Stuttgart agrees with ESMA’s proposal in this area. As a regulated market under the German Exchange Act, we already fulfill most of the proposed obligations.

Outsourcing (Article 7)

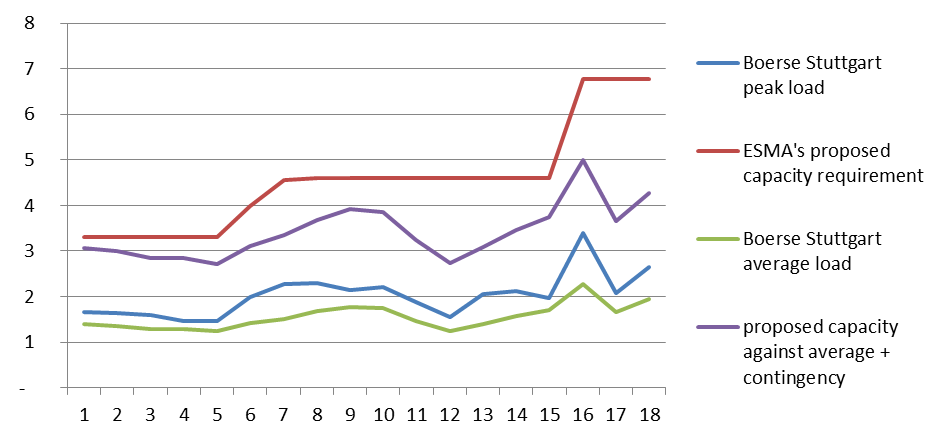
Please refer to our answer to question 101.

Due diligence (Article 8)

Regarding annual due diligence for members or participants at trading venues, we appreciate the fact that ESMA recognizes that it is appropriate for trading venues to apply a risk-based approach to the annual due diligence assessment of its members, as referred to in paragraph 19 (iii) of the CP and in Recital 9. However, this requirement has not been brought forward into the content of Article 8 (3). We are therefore unclear about whether ESMA intends to require all trading venues to assess all members on an annual basis. As highlighted earlier, this would be quite onerous. We therefore urge ESMA to incorporate the risk-based approach into Article 8, which requires trading venues to undertake a risk-based assessment each year to determine the level and frequency of the review of its members.

Trading venues’ capacity (Article 12)

Boerse Stuttgart generally agrees with ESMA’s approach to ensuring the robustness and resilience of trading systems. The policy objective focuses on orders and message volumes, whereas the technical proposal refers only to messages across the entire trading infrastructure. We interpret this to mean that the focus will be on message types relevant to ensuring proper operation and reliable order management over the whole order or trade lifecycle (e.g., ‘no transaction lost,’ as stated in the discussion paper). We strongly recommend that a distinction be made between continuous load and peak load when defining trading venues’ capacity (see RTS Chapter III Section 3 Article 12). Peak loads occur rarely and are short-term events; they can be handled by systems with sufficient headroom (which is less than twice the highest peak ever recorded. A reasonable baseline and procedure should be defined in the interests of potential downsizing. For example, at Boerse Stuttgart, the most important driver of trading system capacity requirements is the number of instruments traded and the resulting quotation load. This number depends on the issuing activities of our customers. With regard to the asset class of securitized derivatives, the number of instruments issued varies significantly on a monthly basis.



This figure outlines different capacity scenarios for Boerse Stuttgart’s trading system over a period of 18 months. The reference point for trading system load is 2013. The figure illustrates the difference between ESMA’s proposed capacity requirement, which is twice the highest peak ever recorded, and the average baseline plus a reasonable contingency (e.g., 10%). The latter would permit trading venues to downsize their system capacities for reasons of cost efficiency, while still ensuring sufficient capacity to cope with volatile markets situations. From the figure for the final month of the timeline, it is clear that the capacity required by ESMA is more than three times the average load and twice the capacity needed to cover the average plus contingency.

RTS 14 Chapter III Section 3 Article 12 should thus be amended as follows: 1. Trading venues shall ensure that their trading systems have sufficient capacity to accommodate at least twice the *average* ~~highest~~ number of messages per second and per value *on a yearly basis* as the maximum recorded on that system in one day *on a yearly basis* ~~(historical peak)~~.

As an alternative to the proposed definitions for trading system capacity baselines, it might be more useful to consider Service Level Agreements between trading venues and their members and participants. The procedure for informing the NCA is reasonable in conjunction with the statements in the draft regulatory standards.

On-going monitoring of performance and capacity of the trading system (Article 14)

As noted earlier, the monitoring obligations depend upon a clear and unambiguous definition of the relevant baselines (especially for the monitoring of percentage loads). Depending on the message type, several different baselines may be useful. Monitoring obligations for order management over the whole lifecycle need to be more focused than those for other message types (e.g., for messages for informational purposes).

Periodic review of the performance and capacity of the trading systems (Article 15)

The obligation to conduct yearly stress tests could place an extraordinary burden on trading venues, depending on the number of members and participants at the venue, given that any test will have to include communication lines. This requires the venue to schedule end-to-end tests with all stakeholders. In particular, members active on several different markets will need to perform stress tests against several different trading venues and their systems.

In order to minimize the burden on trading participants and venues, we urge ESMA to modify the proposed draft RTS (see RTS Chapter III Section 3 Article 15). Trading venues should be allowed to simulate members’ activities with a focus on the communication lines by calculating the maximum message loads that can occur depending on the bandwidth of the communication lines. In our opinion, there is no additional benefit to performing end-to-end tests with real members or participants in the test context.

RTS 14 Chapter III Section 3 Article 15 should be amended as follows: 1. (…) As part of the review programme, trading venues shall run stress tests, where the design of adverse scenarios shall contemplate the functioning of the system under:

1. (…)
2. unexpected behaviour of critical constituent elements of the trading system, associated systems and communication lines. *The latter can be evaluated by simulating the members’ activities with the given member connectivity setup.* (…)

<ESMA\_QUESTION\_CP\_MIFID\_100>

1. Is there any element in particular that should be clarified with respect to the outsourcing obligations for trading venues?

<ESMA\_QUESTION\_CP\_MIFID\_101>

In our view, ESMA’s proposal goes too far as regards the rights of NCAs to access the offices of the outsource provider. We believe that ensuring a degree of co-operation is sufficient, and that requests for information should be processed either via the trading venue or via the authority responsible for the service provider. Either of these solutions will enable the authority of the trading venue to obtain the needed information. Furthermore, in cases where the trading venue and the service provider are both authorised within the EU, we believe that co-operation between the relevant authorities is a more appropriate approach. From a practical perspective as well, it is unclear how exactly the proposed requirements are to be fulfilled (e.g., minimum requirements, frequency of inspection, required type of cooperation, timespan of access to data).

Furthermore, we question the need for authorisation for outsourcing of ‘critical’ functions. Our view is that the trading venue should be required to provide notification with relevant information as outlined in the RTS; however, explicit authorisation should not be required. Instead the relevant authority should have the right to object to the outsourcing if it has determined that the provider is not in compliance with RTS 14, Article 7(1). We also request that ESMA further describe the relevant criteria and procedures and how it intends to define ‘critical operational functions.’

<ESMA\_QUESTION\_CP\_MIFID\_101>

1. Is there any additional element to be addressed with respect to the testing obligations?

<ESMA\_QUESTION\_CP\_MIFID\_102>

Boerse Stuttgart believes that when setting up compliance testing environments (simulations) the focus should be on instrument groups and functionality. Further, we think that it is only necessary to evaluate one instrument at a time in the group. Creating larger simulations only increases complexity and costs, without any additional benefit. This is even more so in light of capacity and latency issues. In contrast, we do not think that stress testing does will serve any purpose. It does not reveal any usable information, since what is key is the stress under specific conditions and this is something that can only be tested one-on-one and not in an open environment.

As regards the testing of algorithms, our view is that the only effective way to test an algorithm is with the participants’ involvement. Although an exchange can require that participants submit their algorithms to testing in simulated trade, it cannot certify the algorithms themselves, as it has access to neither their codes nor their parameters. Thus, the participants are solely responsible for the algorithms: exchanges can at most ensure that they have procedures in place to bar individual participants, traders, and/or algorithms from affecting the market. A more efficient way to prevent incidents is for participants themselves to improve pre-trade risk management. In contrast, testing, though it may contribute to a false sense of security, in reality offers little protection.

In particular, exchanges cannot possibly fulfill the requirements of Article 11(2). The simulation of disorderly trading behavior (a concept that requires further definition) is highly dependent on participants’ reactions, especially since the testing environment will not be restricted to any one group of participants. Even with the best intentions, an exchange cannot guarantee that it will succeed in simulating the conditions of disorderly trading. One potential solution is to consider an environment that “replays” production data. However, since members’ behavior is likely to be different in a testing environment as compared with a production environment, market activity will have to be simulated using market specific behavior gathered from live production environments.

<ESMA\_QUESTION\_CP\_MIFID\_102>

1. In particular, do you agree with the proposals regarding the conditions to provide DEA?

<ESMA\_QUESTION\_CP\_MIFID\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_103>

1. Do you agree with the proposed draft RTS? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_104>

Boerse Stuttgart does not agree with the proposed draft RTS. Before we answer the question in detail, we would like to explain Boerse Stuttgart’s market model to show that it has already implemented the regulatory intentions. Further, we would like to direct ESMA’s attention to the joint petition of Börse Berlin, Börse Düsseldorf, Börse München, Börse Hamburg, Börse Hannover, Börse Stuttgart, Tradegate Exchange, and Bundesverband der Wertpapierfirmen included below and in the annex to our response.

The market model of the German regional exchanges is oriented towards a single market-maker. That means that all the securities can be monitored by a market-maker known as – depending on the exchange – a Quality-Liquidity-Provider (QLP) or as a “Skontroführer” (pricing intermediary). The exchanges impose specific obligations on these market-makers. Thus, the QLP at Boerse Stuttgart is legally required, both by the regulations of the exchange and by its contract with the exchange, to generate price indications and quotes on a continuous basis as well as to continuously supply liquidity. These obligations hold for the entire time that the securities in question are traded.

In the market model of the German regional exchanges, all client orders are executed either at the best bid (ask) or within the spread as long as they are within the promised volume. A short-term retraction of the liquidity provided is not permitted. This model has proven its worth over a long period; neither the clients nor the regulatory authorities have raised any objections to it. Hence, this model should also be taken into consideration when drawing up the MiFID II regulations.

QLPs and ”Skontroführer” fulfill obligations that extend far beyond those of a “normal” market maker. The latter is merely obliged to generate nonbinding price indications on a continuous basis for the securities responsible for and binding bid and sell quotes at the request of the QLP. However, the “normal” market-maker does not directly influence the price determination process. This is the essential difference between his role and that of a QLP. The latter’s tasks are comparable with those of the ”Skontroführer”. For Boerse Stuttgart, this means:

Trade at the exchange takes place according to a hybrid market model. This model is characterized by the fact that – in contrast to purely computerized exchanges – the price determination process and the matching of orders does not take place exclusively through a fully automated system. Rather, the process of price determination is supported at Boerse Stuttgart by various actions of the QLP. The price determination then occurs via the electronic trading system of the exchange.

The QLP is an authorized firm that is required to fulfill numerous obligations as detailed in the exchange regulations (cf. § 33 (3), BörsO, §§ 6 ff. of the implementation provisions of the exchange). The QLP plays a role in the entire process prior to the actual price determination. Its role is not limited – as is the case with the “normal” market-makers – to generating price indications and quotes. The QLP has an organizational role within the price determination process. Insofar as other “normal” market-makers have committed themselves to providing quotes, the QLP controls that they provide the minimum volumes and spread of the market-maker quotes, assesses the incoming quotes for their credibility, and, following a successful nonbinding price indication, requests binding quotes from the market-makers (cf. §§ 8 (2) and (3), 22 (1), 36 (1) of the implementation provisions of the exchange). The QLP does not just assess the incoming market-maker nonbinding price indications for their credibility; it also assesses the potential execution price by comparing it with the previous price levels (cf. § 8 (1) of the implementation provisions of the exchange). If this price is credible, the QLP triggers the price determination by the electronic trading system of the exchange. Furthermore, the QLP is authorized to initiate a circuit breaker (cf. § 8 (2) of the implementation provisions of the exchange) if it notes extreme variation from the last price determined. This ensures the price quality and reduces excessive price fluctuations. Hence this hybrid market model, due to its conscious inclusion of human agents, is capable of recognizing irregularities that would remain undetected in purely computerized market.

Joint petition of Börse Berlin, Börse Düsseldorf, Börse München, Börse Hamburg, Börse Hannover, Börse Stuttgart, Tradegate Exchange, and Bundesverband der Wertpapierfirmen

MiFID II “Draft regulatory technical standards on market making, market making agreements and marking making schemes”

Consultation Paper ESMA/2014/1570, Chapter 4.3 & Annex B, RTS 15 of December 19, 2014

The petitioners who are securities exchanges throughout Germany[[2]](#footnote-2) together with bwf, a trade association promoting the common professional interests of market makers and independent trading houses in Germany, welcome the opportunity to comment on ESMA’s Consultation Paper on MiFID II / MiFIR of 19 December 2014. As already stated in our last petition from July 31, 2014[[3]](#footnote-3) (on ESMA’s Discussion Paper on MiFID II/MiFIR[[4]](#footnote-4)), we still have serious concerns regarding ESMA’s current proposal for “draft regulatory technical standards on market making, market making arrangements and market making schemes.”[[5]](#footnote-5) If adopted in their present form, these standards have the potential to create severe and unjustifiable negative consequences for established and legally recognized “hybrid” market models with liquidity providing functions.

The main reason for our concern is ESMA’s interpretation of the expression “fair and non-discriminatory” in RTS 15, Article 9 (as applied to access to market making schemes) and its insufficient consideration of situations where it would be unreasonable to require an exchange to introduce a market making system.

Regulatory objective

ESMA notes in Recital 1 of RTS 15 that one of the main goals of MiFID II concerning the contractual obligations of firms with market making strategies based on algorithmic trading is to introduce “an element of predictability to the apparent liquidity in the order book”[[6]](#footnote-6) and to enable market participants *“*to transfer risks efficiently during stressed market conditions” thanks to the activity of market makers.[[7]](#footnote-7)

In the Level I text, Recital 59 clarifies that the obligations for algorithmic traders pursuing a market making strategy are to be understood in the context of a more general attempt to regulate “risks arising from algorithmic trading.” Further, Recital 60 emphasizes that the pursuit of a market making strategy “should be understood in a way specific to its context and purpose” and should *not* be confused with a general definition of market making activities.[[8]](#footnote-8)

These Level I provisions and the practical consequences arising from them, as identified by ESMA, require that all elements of the proposed technical regulatory standard 15 contribute to:

* Reducing the risks arising from algorithmic trading, and
* Promoting and ensuring the continuous and predictable provision of liquidity to the market.

Between any two alternatives proposed, the regulatory framework that better serves these goals is clearly preferable. Equally important, an intervention in the current market structures is only justified if it contributes to at least one of these goals.

Fair and non-discriminatory market making schemes (RTS 15, Article 9)

According to Article 48 Paragraph 12 (f) MiFID II, ESMA’s mandate is to identify “requirements to ensure that market making schemes are fair and non-discriminatory.” In the draft RTS 15, ESMA calls for a transparent procedure with publicly disclosed conditions. This procedure must ensure that “all members engaged in a market making agreement who perform equally in terms of presence, price and size” receive “the same incentives, terms and conditions” and do so “according to published, non discriminatory and objective criteria.” We concur wholeheartedly with this objective. However, we disagree with the wording of RTS 15, Article 9, Paragraph 4, which states “exchanges shall not limit the number of participants in a market making scheme.” Our rationale is as follows:

First, an “unlimited-access-clause” is not a criterion for determining that the admission procedure is “fair and non-discriminatory.” Were this the case, any arrangement where the number of participants is limited – either naturally or by choice – would be per se “unfair.”

Second, the requirement that the number of participants in a market making scheme must not be limited, irrespective of the characteristics of the security in question, is contrary to the broader goals established in Level I and further specified by ESMA itself.

In particular, in the case of less liquid and illiquid securities market makers become even more important. As can be seen from today’s markets, less liquid securities are unattractive for algorithmic traders “pursuing market making strategies” in accordance with Article 17 (3) MiFID II. Consequently, an incentive scheme for securities that do not fall into the “blue chip” category has to provide for a degree of “liquidity concentration” if it is to be attractive to traders and if it is to be sustainable.[[9]](#footnote-9)

In this context, we would like to note that the need for a more nuanced approach that takes into consideration a security’s “base liquidity” has also received support from academic scholars. In response to ESMA’s earlier Discussion Paper, the chair of e-Finance at the Goethe University, Frankfurt called for a “monopolistic*”* approach that ensures that sufficient liquidity is available even for less liquid securities.[[10]](#footnote-10) We, the signatories of this petition, strongly support this view. Further, we note that, for a large number of more or less illiquid instruments, the goal of ensuring sufficient liquidity might best be achieved with market models outside the “minimum standards” established for “market making schemes” in Article 48, MiFID II.[[11]](#footnote-11)

In addition to having a potentially deleterious effect on the provision of liquidity, unlimited access to “market making schemes” irrespective of whether the security in question is liquid or illiquid is also likely to have other unintended consequences. Even assuming that exchanges succeed in attracting a sufficient number of participants to market making schemes for less liquid securities by offering suitable incentives, they will not be able to ensure price quality: competition among the firms (all of whom will be functioning under identical quoting obligations) for matching the limited number of orders in this category will lead to speed of execution rather than price being the decisive factor in trade. Consequently, the technological “arms race” that has so far been a characteristic only of high frequency trading may also become a concern in this field. This would be contrary to the intent of the regulation, which originally aimed at a reduction in the risks arising from algorithmic trading.

Situations in which it is unreasonable for an exchange to have a market-making scheme in place (RTS 15, Articles 6 and 7)

In addition to calling for the creation of criteria for the fair and non-discriminatory operation of market making schemes, Article 48 Paragraph 12 (f) MiFID II also calls for the clarification of the conditions under which the introduction of a market making scheme might be inappropriate, especially in view of the “nature and scale” of the trading activity. This provision aims to concretize Article 48 (2) (b) MiFID II, which notes that the obligation to introduce market-making schemes applies only if such an introduction is appropriate to the nature and scale of the activity.

However, ESMA has not as yet provided sufficient guidance on the circumstances under which firms would be exempted from this requirement with regard to either the specific market model (“nature of trade”) or to the conditions of liquidity (“scale of trade”). The proposal for RTS 15, Article 7 merely notes that exchanges that do not permit algorithmic trade on their systems should be exempted from having to introduce market making schemes. It is true that ESMA’s mandate also includes to take into consideration whether an exchange permits algorithmic trade. However, one can already derive an “exception” for exchanges that do not permit algorithmic trade from the conditions for introducing a market making strategy listed in Article 17 (3) MiFID II. As for determining whether an exchange permits or enables algorithmic trade, ESMA has substantially widened the definition of the concept in Article 1 (1) RTS 15 (indeed, it has practically redefined it) when it notes that the characteristic features of algorithmic trade are electronic transmission and matching of orders. By this definition, almost all of the trade currently conducted on European exchanges must be classified as “algorithmic.” This clearly cannot have been the legislator’s intent. ESMA lacks the authority to exceed the legislator’s intent in framing technical standards. The latter has explicitly specified in Article 4 Paragraph 1 (39) MiFID II what is to be understood under “algorithmic trade.” We therefore request that ESMA either strike out Article 1 (1) RTS 15 or revise it to conform to the legally binding provisions of Article 4 Paragraph 1 (39) MiFID II.

By making the question of whether or not an exchange is required to introduce a market making system solely dependent on whether or not it permits and/or enables algorithmic trade on its systems, ESMA has clearly failed to fulfill its mandate as specified in Article 48 Paragraph 12 (f) MiFID II. While the legislator clearly intended the latter to be one criterion, it was to be so in the context of further conditions to be defined by ESMA. These conditions were to be modulated to the nature and scale of trade at the exchange; they were to be decisive for determining whether the introduction of a market making system was warranted.

In passing the legislation containing Article 48 Paragraph 12 (f) MiFID II, the legislator was clearly aware that some exchanges operated in regulatory environments with higher standards (either due to national legislation or legal norms or private contracts) for liquidity and price quality and higher levels of protection against the risks of algorithmic trade and algorithmic high frequency trade than were envisaged in the MiFID II legislation. These exchanges frequently integrate liquidity providers into their market models and the latter are legally required (either by law or by contract) to ensure a consistently high quality of trade and protection. These market models are thus distinguished from the market making systems as defined by ESMA in the current draft RTS 15 not only in terms of offering higher levels of quality and protection but also in terms of their legal form.

If, as ESMA recommends, the question of whether an exchange must introduce a market making system is made solely dependent on whether it permits and/or enables algorithmic trade on its systems (Article 6 RTS 15), even exchanges that already offer levels of protection against algorithmic trade and high frequency trade in excess of the requirements of MiFID II and already ensure the continuous and predictable provision of liquidity will be forced to introduce market making systems. The sole purpose of these systems, however, was to close a regulatory gap by introducing minimum standards for the provision of liquidity by de facto market makers on the basis of algorithmic trade, whereas this was never an issue at established and proven trading systems with market making functions.

It would therefore be unreasonable to require the introduction of a market making system at exchanges that, either through their market model or through the contractual and/or legal obligations they impose on liquidity providers, have already ensured that trading takes place in a fair and regulated manner as well as made sure that the risks of algorithmic trade and algorithmic high frequency trade are contained and that liquidity is provided on a continuous and predictable basis. It would similarly be unreasonable to require the introduction of a market making scheme if this were to lead to a worsening of the quality of trade or to an increased vulnerability to the risks of algorithmic trade and algorithmic high frequency trade. Furthermore, as was already mentioned in our discussion of RTS 15, Article 9, the chances that the introduction of market making systems will lead to an increased readiness to provide liquidity for less liquid or illiquid securities are slight. On the contrary, the established market models, which have specialized in the provision of liquidity for less liquid securities and are based on the principle that different securities firms should be exclusively responsible for different securities, have proven their worth even under the most challenging of market conditions. Compulsory introduction of market making schemes – especially if, as proposed in Article 9, Paragraph 4, RTS 15, they entail unlimited access to these systems – will almost certainly worsen the liquidity situation for the majority of securities traded on these schemes. The proposal thus stands in a manifest contradiction to the primary goal of ensuring liquidity.

We therefore urge that Article 7 RTS 15 be reformulated as follows:

*“As an exemption to the provisions of Article 6, exchanges shall not be required to introduce market making systems:*

*a) For systems or specific segments of systems for which they neither permit nor enable algorithmic trading, or if*

*b) The introduction of a market making system would, in the exchange’s assessment, lead to a worsening in the quality of trade and/or liquidity for a particular security*, or if

*c) The introduction of a market making system would, in the exchange’s assessment, lead to an increased vulnerability to the risks of algorithmic trade and algorithmic high frequency trade at the exchange.*

*In case of points b) and c), the exchange is responsible for ensuring that its market model imposes obligations on market participants pursuing a market making strategy which do not fall below those specified in Article 4.”*

Summing up, we once again explicitly request ESMA to consider a revision of RTS 15 in light of the arguments presented here. In particular, we request that it consider the possibility of limiting the number of participants in market maker schemes in the case of less liquid securities and the possibility of exempting certain exchanges – or certain trading segments of theses exchanges – from the requirement to introduce market maker schemes where these appear to be unwarranted given the nature and scale of the trade.

Failing such a revision, we fear that RTS 15 will, especially in the case of less liquid securities, fail to meet the primary regulatory goal of a continuous and predictable provision of liquidity, that the liquidity situation for these securities will worsen dramatically in the future, and that, beyond this, the spread of algorithmic high frequency trade will be further encouraged.

Given that the proposed standards pose a concrete threat to established and proven market models that have succeeded, even during a global financial crisis, in providing sufficient liquidity at all times even for less liquid securities and that these models could be replaced by lower regulatory standards (which, furthermore, have yet to prove themselves under real-life conditions), we are forced to underscore that such a far-reaching regulatory intervention requires the legislator’s explicit authorization and may not be a side-effect of the implementation of a “technical” regulatory standard.

The legislator, however, explicitly did not envisage a fundamental change in proven market structures in the field of market making when formulating guidelines for the various algorithmic market making strategies of “shadow market makers,” who had hitherto operated in a regulatory grey area. This is clear from the fact that the definition of “algorithmic market making strategies” in Recital 60 of MiFID II is clearly distincted from the definition of market making found in other European legislation.

We therefore request ESMA to bear in mind when redrafting RTS 15 that its mandate does not extend to the development of draft technical standards for market making activities under MiFID II as such, but simply concerns the need to close a regulatory gap by defining the minimum standards for a specific, limited range of algorithmic trading with market making characteristics that has, so far, not been subject to any obligation regarding its provision of liquidity to the markets.

<ESMA\_QUESTION\_CP\_MIFID\_104>

1. Should an investment firm pursuing a market making strategy for 30% of the daily trading hours during one trading day be subject to the obligation to sign a market making agreement? Please give reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_105>

1. Should a market maker be obliged to remain present in the market for higher or lower than the proposed 50% of trading hours? Please specify in your response the type of instrument/s to which you refer.

<ESMA\_QUESTION\_CP\_MIFID\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_106>

1. Do you agree with the proposed circumstances included as “exceptional circumstances”? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_107>

1. Have you any additional proposal to ensure that market making schemes are fair and non-discriminatory? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_108>

Boerse Stuttgart does not agree with ESMA’s proposal how the terms “fair and non-discriminatory” should be defined. Please see our answer to question Q104. The following will provide a summary of the key issues:

First, an “unlimited-access-clause” is not a criterion for determining that the admission procedure is “fair and non-discriminatory.” Were this the case, any arrangement where the number of participants is limited – either naturally or by choice – would be per se “unfair.”

Second, the requirement that the number of participants in a market making scheme must not be limited, irrespective of the characteristics of the security in question, is contrary to the broader goals established in Level I and further specified by ESMA itself.

<ESMA\_QUESTION\_CP\_MIFID\_108>

1. Do you agree with the proposed regulatory technical standards? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_109>

1. Do you agree with the counting methodology proposed in the Annex in relation to the various order types? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_110>

1. Is the definition of “orders” sufficiently precise or does it need to be further supplemented? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_111>

1. Is more clarification needed with respect to the calculation method in terms of volume?

<ESMA\_QUESTION\_CP\_MIFID\_112>

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<ESMA\_QUESTION\_CP\_MIFID\_112>

1. Do you agree that the determination of the maximum OTR should be made at least once a year? Please specify the arguments for your view.

<ESMA\_QUESTION\_CP\_MIFID\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_113>

1. Should the monitoring of the ratio of unexecuted orders to transactions by the trading venue cover all trading phases of the trading session including auctions, or just the continuous phase? Should the monitoring take place on at least a monthly basis? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_114>

1. Do you agree with the proposal included in the Technical Annex regarding the different order types? Is there any other type of order that should be reflected? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_115>

1. Do you agree with the proposed draft RTS with respect to co-location services? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_116>

1. Do you agree with the proposed draft RTS with respect to fee structures? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_117>

1. At which point rebates would be high enough to encourage improper trading? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_118>

1. Is there any other type of incentives that should be described in the draft RTS?

<ESMA\_QUESTION\_CP\_MIFID\_119>

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<ESMA\_QUESTION\_CP\_MIFID\_119>

1. Can you provide further evidence about fee structures supporting payments for an “early look”? In particular, do you agree with ESMA’s preliminary view regarding the differentiation between that activity and the provision of data feeds at different latencies?

<ESMA\_QUESTION\_CP\_MIFID\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_120>

1. Can you provide examples of fee structures that would support non-genuine orders, payments for uneven access to market data or any other type of abusive behaviour? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_121>

1. Is the distinction between volume discounts and cliff edge type fee structures in this RTS sufficiently clear? Please elaborate

<ESMA\_QUESTION\_CP\_MIFID\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_122>

1. Do you agree that the average number of trades per day should be considered on the most relevant market in terms of liquidity? Or should it be considered on another market such as the primary listing market (the trading venue where the financial instrument was originally listed)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_123>

Boerse Stuttgart would like to make a general comment on tick sizes before answering questions 123 to 131. Our understanding is that the intention was always to introduce a harmonized tick size regime in Europe. Unfortunately, this is not the case as the new regulation does not apply to SIs and OTC. Essentially this means that SIs can execute client orders at a better price than their publicly disclosed quotes. If, for example, an SI’s quote is 48.10 EUR to 48.30 EUR, the SI can execute at any price point, i.e., 48.11 EUR, 48.12 EUR, etc., while trading venues can only execute at 48.15 EUR and 48.20 EUR, etc. (assuming that the tick size is 0.05 EUR). As a result, liquidity may move away from public markets, which is contrary to the intentions of MiFID II. Boerse Stuttgart is aware that the Level 1 text cannot be changed at this stage; however we do have a suggestion for how this could be addressed at least to an extent in the Level 2 text. We propose that SIs be permitted to execute only one tick better than the quoted price for which they must comply with the instrument’s minimum tick size. For example, if the SI’s quote for a share (respectively also for ETFs, ETPs and ETNs) is 48.10 EUR to 48.30 EUR and the tick size for this instrument is 0.05 EUR, the SI should be permitted to execute only at either 48.15 EUR or 48.25 EUR and not at any price point within the bid and offer quote of 48.10 EUR to 48.30 EUR. This would be a fairer solution and create a more level-playing field.

Boerse Stuttgart agrees with ESMA’s approach as the trading venue with the highest average number of trades per day is in most cases automatically the “reference-market” to which all market makers, designated sponsors, etc. are linked. We believe that any other approach would lead to poorer results.

<ESMA\_QUESTION\_CP\_MIFID\_123>

1. Do you believe a more granular approach (i.e. additional liquidity bands) would be more suitable for very liquid stocks and/or for poorly liquid stocks? Do you consider the proposed tick sizes adequate in particular with respect to the smaller price ranges and less liquid instruments as well as higher price ranges and highly liquid instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_124>

Boerse Stuttgart does not think that a more granular approach would be more suitable. Further, we feel that the proposed approach is already too granular for shares and needs to be consolidated as regards the price bands. In particular, instruments falling into the price bands between 0 <= ... < 2 should, irrespective of their liquidity band, have a minimum tick size of 0.001. ESMA should also reconsider whether the benefits of additional categories for a price band above 500 and a liquidity band of 0–100 trades per day justify the higher administrative costs given the small number of shares in these categories.

<ESMA\_QUESTION\_CP\_MIFID\_124>

1. Do you agree with the approach regarding instruments admitted to trading in fixing segments and shares newly admitted to trading? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_125>

Boerse Stuttgart agrees with ESMA’s approach regarding shares newly admitted to trading. We think that benchmarking newly issued shares with the trading history of shares with similar characteristics followed by a re-evaluation after six weeks is the proper approach.

We would like to highlight the importance of ensuring that data for new shares is available via ESMA’s database in advance of the security’s first day of trading in order to ensure that other venues can also implement the same tick size from the first day of trading. Likewise, all updates should be published several days in advance of their effective date.

<ESMA\_QUESTION\_CP\_MIFID\_125>

1. Do you agree with the proposed approach regarding corporate actions? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_126>

Boerse Stuttgart agrees with ESMA’s approach as it is practical and easy to implement.

<ESMA\_QUESTION\_CP\_MIFID\_126>

1. In your view, are there any other particular or exceptional circumstances for which the tick size may have to be specifically adjusted? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_127>

Boerse Stuttgart does not see any other particular or exceptional circumstances for which the tick size may have to be specifically adjusted.

<ESMA\_QUESTION\_CP\_MIFID\_127>

1. In your view, should other equity-like financial instruments be considered for the purpose of the new tick size regime? If yes, which ones and how should their tick size regime be determined? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_128>

Boerse Stuttgart does not think that other equity-like financial instruments should be considered for the purpose of the new tick size regime.

<ESMA\_QUESTION\_CP\_MIFID\_128>

1. To what extent does an annual revision of the liquidity bands (number and bounds) allow interacting efficiently with the market microstructure? Can you propose other way to interact efficiently with the market microstructure? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_129>

Boerse Stuttgart believes that an annual revision of the liquidity bands is sufficient. However, we recommend that ESMA conduct an initial review after six months (the number of trades should be re-calculated and the effects on spread-to-tick-ratios, queuing time, OTRs, etc. should be measured as well). If the new tick size regime has led to a degradation of market microstructure, ESMA should consider revising it at this time.

<ESMA\_QUESTION\_CP\_MIFID\_129>

1. Do you envisage any short-term impacts following the implementation of the new regime that might need technical adjustments? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_130>

Yes, Boerse Stuttgart envisages short-term impacts, as trading venues as well as market participants will need to make changes to their systems. Some market participants may face technical hurdles to implementation as a result of the more granular tick size regime (e.g., four digits for instruments with a low price range). Further, Boerse Stuttgart believes that it is essential that ESMA publish a detailed description informing the market about tick size changes made outside of the annual review – either because of corporate actions or because, as suggested earlier, a change was necessary in response to degradation of market microstructure. We believe that ESMA needs to provide a list featuring the respective liquidity class on a per instrument basis on its website. This list should be updated daily so that trading venues can ensure the right tick size is applied. In our view, there is still a lot of work to be done on the communication process in case tick sizes change during the year.

<ESMA\_QUESTION\_CP\_MIFID\_130>

1. Do you agree with the definition of the “corporate action”? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_131>

No, Boerse Stuttgart does not agree with the definition of the “corporate action.” For example, we miss a reference to dividends and capital increase/decrease. We suggest changing the wording in RTS Article 1.1 (8) so that the list does not appear exhaustive.

<ESMA\_QUESTION\_CP\_MIFID\_131>

1. Do you agree with the proposed regulatory technical standards?

<ESMA\_QUESTION\_CP\_MIFID\_132>

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<ESMA\_QUESTION\_CP\_MIFID\_132>

1. Which would be an adequate threshold in terms of turnover for the purposes of considering a market as “material in terms of liquidity”?

<ESMA\_QUESTION\_CP\_MIFID\_133>

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<ESMA\_QUESTION\_CP\_MIFID\_133>

1. Data publication and access
2. Do you agree with ESMA’s proposal to allow the competent authority to whom the ARM submitted the transaction report to request the ARM to undertake periodic reconciliations? Please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_134>

1. Do you agree with ESMA’s proposal to establish maximum recovery times for DRSPs? Do you agree with the time periods proposed by ESMA for APAs and CTPs (six hours) and ARMs (close of next working day)? Please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_135>

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<ESMA\_QUESTION\_CP\_MIFID\_135>

1. Do you agree with the proposal to permit DRSPs to be able to establish their own operational hours provided they pre-establish their hours and make their operational hours public? Please provide reasons. Alternatively, please suggest an alternative method for setting operating hours.

<ESMA\_QUESTION\_CP\_MIFID\_136>

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<ESMA\_QUESTION\_CP\_MIFID\_136>

1. Do you agree with the draft technical standards in relation to data reporting services providers? Please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

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<ESMA\_QUESTION\_CP\_MIFID\_138>

1. Do you agree with this definition of machine-readable format, especially with respect to the requirement for data to be accessible using free open source software, and the 1-month notice prior to any change in the instructions?

<ESMA\_QUESTION\_CP\_MIFID\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_139>

1. Do you agree with the draft RTS’s treatment of this issue?

<ESMA\_QUESTION\_CP\_MIFID\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_140>

1. Do you agree that CTPs should assign trade IDs and add them to trade reports? Do you consider necessary to introduce a similar requirement for APAs?

<ESMA\_QUESTION\_CP\_MIFID\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_141>

1. Do you agree with ESMA’s proposal? In particular, do you consider it appropriate to require for trades taking place on a trading venue the publication time as assigned by the trading venue or would you recommend another timestamp (e.g. CTP timestamp), and if yes why?

<ESMA\_QUESTION\_CP\_MIFID\_142>

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<ESMA\_QUESTION\_CP\_MIFID\_142>

1. Do you agree with ESMA’s suggestions on timestamp accuracy required of APAs? What alternative would you recommend for the timestamp accuracy of APAs?

<ESMA\_QUESTION\_CP\_MIFID\_143>

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<ESMA\_QUESTION\_CP\_MIFID\_143>

1. Do you agree with ESMA’s proposal? Do you think that the CTP should identify the original APA collecting the information form the investment firm or the last source reporting it to the CTP? Please explain your rationale.

<ESMA\_QUESTION\_CP\_MIFID\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_144>

1. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA\_QUESTION\_CP\_MIFID\_145>

Boerse Stuttgart is fully committed to offering pre- and post-trade data in a sufficiently disaggregated fashion. However, one must balance the disaggregation costs of trading venues against the added value for customers. We feel that disaggregation by asset class – in line with ESMA’s proposal of eight asset classes (Art. 1, RTS 22) – is sufficient. It is important to note that financial data vendors are responsible for the majority of data products distributed to the end customer. In this case, trading venues are just one source of raw information. Since financial data vendors already offer several customized data feeds (including some that are also disaggregated along different dimensions), there is no need for further disaggregation by trading venues. On the contrary, we think that, with the implementation of Art. 2, RTS 22 (“Other disaggregation”), data prices of exchanges may increase for financial data vendors and for the end customer. For example, exchanges may have to buy additional licenses (e.g., for the composition of major indices). This will create an upward pressure on data prices of exchanges. Further, the chances that financial data vendors will offer a greater variety of disaggregated products than is the case at present are quite low. If financial data vendors are forced to offer a variety of data packages, the administrative costs (e.g., for buying and reporting) will be passed on to the end user.

<ESMA\_QUESTION\_CP\_MIFID\_145>

1. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA\_QUESTION\_CP\_MIFID\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_146>

1. With the exception of transaction with SIs, do you agree that the obligation to publish the transaction should always fall on the seller? Are there circumstances under which the buyer should be allowed to publish the transaction?

<ESMA\_QUESTION\_CP\_MIFID\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_147>

1. Do you agree with the elements of the draft RTS that cover a CCP’s ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_148>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_148>

1. Do you agree with the elements of the draft RTS that cover a trading venue’s ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_149>

1. In particular, do you agree with ESMA’s assessment that the inability to acquire the necessary human resources in due time should not have the same relevance for trading venues as it has regarding CCPs?

<ESMA\_QUESTION\_CP\_MIFID\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_150>

1. Do you agree with the elements of the draft RTS that cover an CA’s ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_151>

1. Do you agree with the elements of the draft RTS that cover the conditions under which access is granted? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_152>

1. Do you agree with the elements of the draft RTS that cover fees? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_153>

1. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that do you envisage in case of implementation of the proposal.

<ESMA\_QUESTION\_CP\_MIFID\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_154>

1. Do you agree with the elements of the draft RTS specified in Annex X that cover notification procedures? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_155>

1. Do you agree with the elements of the draft RTS specified in [Annex X] that cover the calculation of notional amount? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_156>

1. Do you agree with the elements of the draft RTS that cover relevant benchmark information? If not, please explain why and, where possible, propose an alternative approach. In particular, how could information requirements reflect the different nature and characteristics of benchmarks?

<ESMA\_QUESTION\_CP\_MIFID\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_157>

1. Do you agree with the elements of the draft RTS that cover licensing conditions? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

1. Do you agree with the elements of the draft RTS that cover new benchmarks? If not, please explain why and, where possible, propose an alternative approach.

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

1. Requirements applying on and to trading venues
2. Do you agree with the attached draft technical standard on admission to trading?

<ESMA\_QUESTION\_CP\_MIFID\_160>

Boerse Stuttgart does not agree with the attached draft technical standard on admission to trading. For further details please refer to our responses to Q161 and Q162.

<ESMA\_QUESTION\_CP\_MIFID\_160>

1. In particular, do you agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law?

<ESMA\_QUESTION\_CP\_MIFID\_161>

Boerse Stuttgart does not agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law. In several countries, including Germany, local competent authorities are responsible for fulfilling the arrangements proposed by ESMA.

In Germany, the Federal Financial Supervisory Authority (BaFin) is responsible for verifying the obligations and prohibitions in accordance with the German Securities Trading Act (WpHG). We do not see how introducing a second regulator for regulated markets in addition to the Federal Financial Supervisory Authority will lead to greater efficiency.

RTS 25 Ch. VI Article 4 should be amended as follows:

1. *In case the following verifying process is not based at another competent authority,* regulated markets shall adopt and publish on their website a policy that determines how they verify compliance by an issuer of a transferable security with its obligations under Regulation (EU) No 596/2014, Directive 2003/71/EC and Directive 2004/109/EC.
2. Regulated markets shall, *provided there is no competent authority responsible for the following part of the verification process*, that compliance with the obligations specified in paragraph 1 is checked effectively according to the nature of the obligation under review.
3. Regulated markets shall, *provided there is no competent authority responsible for the following part of the verification process*, ensure that the policy describes:
   1. The processes the regulated market employs to achieve the outcome specified in paragraph 1
   2. How an issuer may best demonstrate compliance with the obligations specified in paragraph 1 to the regulated market

Regulated markets shall, *provided there is no competent authority responsible for the following part of the verification process*, ensure that an issuer is made aware of its obligations upon admission to trading of that issuer’s transferable security and upon the request of the issuer.

<ESMA\_QUESTION\_CP\_MIFID\_161>

1. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA\_QUESTION\_CP\_MIFID\_162>

Boerse Stuttgart does not agree with the arrangements proposed by ESMA for facilitating access to information published under Union law, for the same reason as mentioned above in Q161.

RTS 25 Ch. VI Article 5 should be amended as follows:

Regulated markets shall, *provided there is no competent authority,* facilitate access to information which has been made public under the conditions established by Regulation (EU) No 596/2014, Directive 2003/71/EC and Directive 2004/109/EC to members and participants. A description of how the regulated market facilitates access to this information should be easily accessible, free of charge and published on the website of the regulated market.

<ESMA\_QUESTION\_CP\_MIFID\_162>

1. Do you agree with the proposed RTS? What and how should it be changed?

<ESMA\_QUESTION\_CP\_MIFID\_163>

Boerse Stuttgart agrees with the proposed RTS.

<ESMA\_QUESTION\_CP\_MIFID\_163>

1. Do you agree with the approach of providing an exhaustive list of details that the MTF/OTF should fulfil?

<ESMA\_QUESTION\_CP\_MIFID\_164>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_164>

1. Do you agree with the proposed list? Are there any other factors that should be considered?

<ESMA\_QUESTION\_CP\_MIFID\_165>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_165>

1. Do you think that there should be one standard format to provide the information to the competent authority? Do you agree with the proposed format?

<ESMA\_QUESTION\_CP\_MIFID\_166>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_166>

1. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?

<ESMA\_QUESTION\_CP\_MIFID\_167>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_167>

1. Commodity derivatives
2. Do you agree with the approach suggested by ESMA in relation to the overall application of the thresholds? If you do not agree please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_168>

Boerse Stuttgart would like to make a general comment on the position limit arrangements of MiFID II/MiFIR. We ask ESMA to clarify that securitised derivatives (e.g., exchange traded products and certified derivatives) which have commodities (or transferable securities, currencies, interest rates or yields or other indices or measures) underlying are not covered by the position limit arrangements of MiFID II/MiFIR. This kind of instruments has different characteristics compared to ‘traditional derivatives’ (e.g. futures, options). In particular securitised derivatives are not “subject to regular margin calls, usually follow the same sort of settlement rules as other transferable securities that trade on cash markets.” (see Discussion Paper ESMA/2014/548, Section “Introduction to the non-equity section and scope of non-equity 3.5.financial instruments”, No. 27, p. 110). Therefore, they have no significant overall risk profile. Since MiFID II/MiFIR aims in particular to prevent market abuse and systematic risk regarding commodity derivatives, we believe ESMA’s mandate do not provide any indication that the regulator’s intent was to extent the position limit arrangements beyond ‘traditional derivatives’.

<ESMA\_QUESTION\_CP\_MIFID\_168>

1. Do you agree with ESMA’s approach to include non-EU activities with regard to the scope of the main business?

<ESMA\_QUESTION\_CP\_MIFID\_169>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_169>

1. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA\_QUESTION\_CP\_MIFID\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_170>

1. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA\_QUESTION\_CP\_MIFID\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_171>

1. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA\_QUESTION\_CP\_MIFID\_172>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_172>

1. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_173>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_173>

1. Do you agree with ESMA’s intention to use an accounting capital measure?

<ESMA\_QUESTION\_CP\_MIFID\_174>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_174>

1. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA\_QUESTION\_CP\_MIFID\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_175>

1. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_176>

1. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA\_QUESTION\_CP\_MIFID\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_177>

1. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA\_QUESTION\_CP\_MIFID\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_178>

1. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_179>

1. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA\_QUESTION\_CP\_MIFID\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_180>

1. Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?

<ESMA\_QUESTION\_CP\_MIFID\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_181>

1. Do you agree with ESMA’s conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_182>

1. Do you have any comments on the proposed framework of the methodology for calculating position limits?

<ESMA\_QUESTION\_CP\_MIFID\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_183>

1. Would a baseline of 25% of deliverable supply be suitable for all commodity derivatives to meet position limit objectives? For which commodity derivatives would 25% not be suitable and why? What baseline would be suitable and why?

<ESMA\_QUESTION\_CP\_MIFID\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_184>

1. Would a maximum of 40% position limit be suitable for all commodity derivatives to meet position limit objectives. For which commodity derivatives would 40% not be suitable and why? What maximum position limit would be suitable and why?

<ESMA\_QUESTION\_CP\_MIFID\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_185>

1. Are +/- 15% parameters for altering the baseline position limit suitable for all commodity derivatives? For which commodity derivatives would such parameters not be suitable and why? What parameters would be suitable and why?

<ESMA\_QUESTION\_CP\_MIFID\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_186>

1. Are +/- 15% parameters suitable for all the factors being considered? For which factors should such parameters be changed, what to, and why?

<ESMA\_QUESTION\_CP\_MIFID\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_187>

1. Do you consider the methodology for setting the spot month position limit should differ in any way from the methodology for setting the other months position limit? If so, in what way?

<ESMA\_QUESTION\_CP\_MIFID\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_188>

1. How do you suggest establishing a methodology that balances providing greater flexibility for new and illiquid contracts whilst still providing a level of constraint in a clear and quantifiable way? What limit would you consider as appropriate per product class? Could the assessment of whether a contract is illiquid, triggering a potential wider limit, be based on the technical standard ESMA is proposing for non-equity transparency?

<ESMA\_QUESTION\_CP\_MIFID\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_189>

1. What wider factors should competent authorities consider for specific commodity markets for adjusting the level of deliverable supply calculated by trading venues?

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

1. What are the specific features of certain commodity derivatives which might impact on deliverable supply?

<ESMA\_QUESTION\_CP\_MIFID\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_191>

1. How should ‘less-liquid’ be considered and defined in the context of position limits and meeting the position limit objectives?

<ESMA\_QUESTION\_CP\_MIFID\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_192>

1. What participation features in specific commodity markets around the organisation, structure, or behaviour should competent authorities take into account?

<ESMA\_QUESTION\_CP\_MIFID\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_193>

1. How could the calculation methodology enable competent authorities to more accurately take into account specific factors or characteristics of commodity derivatives, their underlying markets and commodities?

<ESMA\_QUESTION\_CP\_MIFID\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_194>

1. For what time period can a contract be considered as “new” and therefore benefit from higher position limits?

<ESMA\_QUESTION\_CP\_MIFID\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_195>

1. Should the application of less-liquid parameters be based on the age of the commodity derivative or the ongoing liquidity of that contract.

<ESMA\_QUESTION\_CP\_MIFID\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_196>

1. Do you have any further comments regarding the above proposals on how the factors will be taken into account for the position limit calculation methodology?

<ESMA\_QUESTION\_CP\_MIFID\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_197>

1. Do you agree with ESMA’s proposal to not include asset-class specific elements in the methodology?

<ESMA\_QUESTION\_CP\_MIFID\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_198>

1. How are the seven factors (listed under Article 57(3)(a) to (g) and discussed above) currently taken into account in the setting and management of existing position limits?

<ESMA\_QUESTION\_CP\_MIFID\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_199>

1. Do you agree with the proposed draft RTS regarding risk reducing positions?

<ESMA\_QUESTION\_CP\_MIFID\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_200>

1. Do you have any comments regarding ESMA’s proposal regarding what is a non-financial entity?

<ESMA\_QUESTION\_CP\_MIFID\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_201>

1. Do you agree with the proposed draft RTS regarding the aggregation of a person’s positions?

<ESMA\_QUESTION\_CP\_MIFID\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_202>

1. Do you agree with ESMA’s proposal that a person’s position in a commodity derivative should be aggregated on a ‘whole’ position basis with those that are under the beneficial ownership of the position holder? If not, please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_203>

1. Do you agree with the proposed draft RTS regarding the criteria for determining whether a contract is an economically equivalent OTC contract?

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

1. Do you agree with the proposed draft RTS regarding the definition of same derivative contract?

<ESMA\_QUESTION\_CP\_MIFID\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_205>

1. Do you agree with the proposed draft RTS regarding the definition of significant volume for the purpose of article 57(6)?

<ESMA\_QUESTION\_CP\_MIFID\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_206>

1. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA\_QUESTION\_CP\_MIFID\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_207>

1. Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?

<ESMA\_QUESTION\_CP\_MIFID\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_208>

1. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA\_QUESTION\_CP\_MIFID\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_209>

1. Do you agree with the reporting format for CoT reports?

<ESMA\_QUESTION\_CP\_MIFID\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_210>

1. Do you agree with the reporting format for the daily Position Reports?

<ESMA\_QUESTION\_CP\_MIFID\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_211>

1. What other reporting arrangements should ESMA consider specifying to facilitate position reporting arrangements?

<ESMA\_QUESTION\_CP\_MIFID\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_212>

1. Market data reporting
2. Which of the formats specified in paragraph 2 would pose you the most substantial implementation challenge from technical and compliance point of view for transaction and/or reference data reporting? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_213>

1. Do you anticipate any difficulties with the proposed definition for a transaction and execution?

<ESMA\_QUESTION\_CP\_MIFID\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_214>

1. In your view, is there any other outcome or activity that should be excluded from the definition of transaction or execution? Please justify.

<ESMA\_QUESTION\_CP\_MIFID\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_215>

1. Do you foresee any difficulties with the suggested approach? Please justify.

<ESMA\_QUESTION\_CP\_MIFID\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_216>

1. Do you agree with ESMA’s proposed approach to simplify transaction reporting? Please provide details of your reasons.

<ESMA\_QUESTION\_CP\_MIFID\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_217>

1. We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

<ESMA\_QUESTION\_CP\_MIFID\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_218>

1. Do you agree with the proposed approach to flag trading capacities?

<ESMA\_QUESTION\_CP\_MIFID\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_219>

1. Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details

<ESMA\_QUESTION\_CP\_MIFID\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_220>

1. Do you agree with ESMA’s approach for deciding whether financial instruments based on baskets or indices are reportable?

<ESMA\_QUESTION\_CP\_MIFID\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_221>

1. Do you agree with the proposed standards for identifying these instruments in the transaction reports?

<ESMA\_QUESTION\_CP\_MIFID\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_222>

1. Do you foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity? If so, do you have any alternative proposals?

<ESMA\_QUESTION\_CP\_MIFID\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_223>

1. Do you anticipate any significant difficulties related to the implementation of LEI validation?

<ESMA\_QUESTION\_CP\_MIFID\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_224>

1. Do you foresee any difficulties with the proposed requirements? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_225>

1. Are there any cases other than the AGGREGATED scenario where the client ID information could not be submitted to the trading venue operator at the time of order submission? If yes, please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_226>

1. Do you agree with the proposed approach to flag liquidity provision activity?

<ESMA\_QUESTION\_CP\_MIFID\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_227>

1. Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

<ESMA\_QUESTION\_CP\_MIFID\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_228>

1. Is the approach taken, particularly in relation to maintaining prices of implied orders, in line with industry practice? Please describe any differences?

<ESMA\_QUESTION\_CP\_MIFID\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_229>

1. Do you agree on the proposed content and format for records of orders to be maintained proposed in this Consultation Paper? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_230>

1. In your view, are there additional key pieces of information that an investment firm that engages in a high-frequency algorithmic trading technique has to maintain to comply with its record-keeping obligations under Article 17 of MiFID II? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_231>

1. Do you agree with the proposed record-keeping period of five years?

<ESMA\_QUESTION\_CP\_MIFID\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_232>

1. Do you agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation? Please elaborate.

<ESMA\_QUESTION\_CP\_MIFID\_233>

We agree in principle with the proposed criteria for calibrating the level of accuracy. Boerse Stuttgart already has in place a high availability solution in order to guarantee synchronised time within the systems it operates. However, unambiguous and relevant standards still have to be defined.

<ESMA\_QUESTION\_CP\_MIFID\_233>

1. Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.

<ESMA\_QUESTION\_CP\_MIFID\_234>

We welcome ESMA’s suggestion that all stakeholders, including members and participants, should synchronise their clocks with that of the respective trading venue. However, this may pose a challenge for members, as many of them are active in different market places in several time zones. The greater the number of markets in which a member is active, the more requirements he will have to fulfill. To be precise, the baseline for a member will probably be the market with the highest standard. Boerse Stuttgart foresees certain difficulties, as changes in the baseline of a trading venue will impact participants and they will have to synchronize their internal systems. Participants may end up having to implement substantial changes, even if they only transact a small proportion of their total order flow on this trading venue.

Investment firms will thus have to balance the economic benefit against the costs of upgrading their systems. This may lead to them moving their liquidity to a venue that does not insist on an upgrade. The result – unpredictable shifts in liquidity – will lead to an increase in risk for investment firms that are tied to a particular venue.

In contrast, if a participant at a trading venue decides, in the interests of efficiency, to implement the baseline for all his systems, he could face reporting issues at trading venues that use a lower standard. Higher standards for accuracy and granularity will result in higher volumes of data processing and, correspondingly, raise transportation, computing, and storage costs. Furthermore, in application layers, the techniques for logging in order to process the given timestamp in an accurate and precise manner could lead to further costs in addition to infrastructure costs.

<ESMA\_QUESTION\_CP\_MIFID\_234>

1. Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.

<ESMA\_QUESTION\_CP\_MIFID\_235>

Boerse Stuttgart does not agree with the proposed list of instrument reference data fields and population of the fields. Regarding the transfer of instrument reference data fields and the list proposed in this context, it must be borne in mind that the primary responsibility for carrying out this transfer lies with the trading venues. However, trading venues can only assume responsibility for the correctness, completeness, and timely delivery of data relevant for trade and not for data that is the responsibility of third parties.

Article 4 of MAR also notes that the particular target group should be taken into consideration when settling the obligations concerning the transmission of data.

In the interests of transparency, operators of a regulated market, an MTF, or an OTF should notify the competent authority immediately of details of the financial instruments they have admitted to trade or for which there has been a request for admission to trade or which are currently being traded on their trading venue. They should also notify the authority a second time when the instrument is removed from trade. Notifications should include, as appropriate, the names and identifiers of the financial instruments concerned and the date and time of the request for admission to trade, admission to trade, and of the first trade.

These regulations have been devised bearing in mind the fact that, in some cases (specifically, in case of so-called second quotations, where issuers are not involved into the listing process), trading venues do not possess the data to be transmitted.

This is also seen in Article 51 MiFID, which notes that a transferable security that has been admitted to trade on a regulated market can subsequently be admitted to trade on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of Directive 2003/71/EC. The regulated market is responsible for informing the issuer that its securities are now being traded on its market. The issuer is not under any obligation to provide information required under Paragraph 3 Article 51 MiFID directly to any regulated market that has admitted its securities to trade without its consent.

Likewise, Article 17 MAR notes that only issuers involved in the listing process are obliged to disclose inside information, as they have either applied for or received permission to trade their financial instruments on the regulated market of an EU member state (or, in case of financial instruments traded on multilateral or organized electronic trading systems, only issuers who have either applied for or received permission to trade their financial instruments on a multilateral or organized electronic trading system in an EU member state). Here also, the particular target group and its respective area of responsibility are taken into account when settling commitments.

Further, both Article 27 of MiFIR and Article 4 of MAR contain requirements regarding the provision of reference data to the relevant authorities. In light of the fact that the two provisions have the same goal and, furthermore, that the reference data elements to be provided are the same in both cases, the two requirements need to be harmonised with each other.

Finally, ESMA should take appropriate steps to ensure that the data provided is used only within the limits of the regulatory objectives and that it is not used for commercial purposes by a third party.

<ESMA\_QUESTION\_CP\_MIFID\_235>

1. Do you agree with ESMA‘s proposal to submit a single instrument reference data full file once per day? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_236>

Boerse Stuttgart agrees with ESMA’s proposal to submit a single instrument reference data full file once per day. ESMA’s proposal rightly balances the obligation to supply financial instrument reference data against the complexity, data quality, completeness, and volume of the financial instruments reference data.

However, in this context, we recommend a modification to RTS 33 Ch. II Article 4 [RTS of reference data]. Article 4 should not mention a specific time; rather, it should specify that transmission should take place after trading hours in general. This is more in keeping with statements made by ESMA in its previous Consultation Paper. In Consultation Paper number 20 (under section 8.6. Obligation to supply financial instrument reference data), ESMA noted that it expects the transmission of data to take place after trading hours. Since trading venues have different trading hours, it is impractical to require a connection at a specific time (i.e., at 21:00 CET).

RTS 33 Ch. II Article 4 should thus be amended as follows: Trading venues and systematic internalisers shall submit instrument reference data to the Home competent authority once per working day ~~and no later than 21:00 CET~~ *after the end of the trading day but before the end of the day*.

<ESMA\_QUESTION\_CP\_MIFID\_236>

1. Do you agree that, where a specified list as defined in Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data is submitted when the first quote/order is placed or the first trade occurs on that venue? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_237>

Boerse Stuttgart agrees that where a specified list as defined in RTS 33 Ch. I Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data should be submitted when the first quote/order is placed or the first trade occurs on that venue.

In addition, an alternative starting point for the transmission of instrument reference data should be considered. Trading venues often have regulations concerning the organisation of the Regulated Unofficial Market. These regulations – regarding an alternative starting point – are comparable with the regulations concerning the admission of securities to trade in the regulated market. These regulations as well as section 48 of the Börsengesetz (Stock Exchange Act) determine the terms and conditions for trading on the Regulated Unofficial Market at the Stuttgart Stock Exchange and specify the terms for admitting securities to trade on the Regulated Unofficial Market. Where comparable regulations exist, trading venues should have the freedom to determine that the moment that securities were admitted to trade rather than the moment that the first quote/order was placed or the first trade was executed on that venue will be considered the starting point for the transmission of instrument reference data.

RTS 33 Ch. I Article 2 should thus be amended as follows: ‘Trading commencement’ means the moment at which an order or a quote is placed on a given trading venue or systematic internaliser*,* ~~or~~ from the moment of the first trade takes place *or to a specific point in time as defined by the trading venue*.

<ESMA\_QUESTION\_CP\_MIFID\_237>

1. Do you agree with ESMA proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of new financial instruments.

<ESMA\_QUESTION\_CP\_MIFID\_238>

Boerse Stuttgart agrees with ESMA’s proposed approach to the use of instrument code types.

<ESMA\_QUESTION\_CP\_MIFID\_238>

1. Post-trading issues
2. What are your views on the pre-check to be performed by trading venues for orders related to derivative transactions subject to the clearing obligation and the proposed time frame?

<ESMA\_QUESTION\_CP\_MIFID\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_239>

1. What are your views on the categories of transactions and the proposed timeframe for submitting executed transactions to the CCP?

<ESMA\_QUESTION\_CP\_MIFID\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_240>

1. What are your views on the proposal that the clearing member should receive the information related to the bilateral derivative contracts submitted for clearing and the timeframe?

<ESMA\_QUESTION\_CP\_MIFID\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_241>

1. What are your views on having a common timeframe for all categories of derivative transactions? Do you agree with the proposed timeframe?

<ESMA\_QUESTION\_CP\_MIFID\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_242>

1. What are your views on the proposed treatment of rejected transactions?

<ESMA\_QUESTION\_CP\_MIFID\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_243>

1. Do you agree with the proposed draft RTS? Do you believe it addresses the stakeholders concerns on the lack of indirect clearing services offering? If not, please provide detailed explanations on the reasons why a particular provision would limit such a development as well as possible alternatives.

<ESMA\_QUESTION\_CP\_MIFID\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_244>

1. Do you believe that a gross omnibus account segregation, according to which the clearing member is required to record the collateral value of the assets, rather than the assets held for the benefit of indirect clients, achieves together with other requirements included in the draft RTS a protection of equivalent effect to the indirect clients as the one envisaged for clients under EMIR?

<ESMA\_QUESTION\_CP\_MIFID\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_245>

1. The field will used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account. [↑](#footnote-ref-1)
2. All of the participating exchanges run at least one “hybrid” market model based on auction systems with market maker support in accordance with Article 17(5) MiFID I Implementing Regulation. For the majority of the petitioners, market maker supported trading is the sole or prevailing form of trading. Depending on the market model, market making firms may be referred to by different names, e.g. “Designated Sponsors”, “Skontroführer”, “Spezialisten” or “Quality-Liquidity-Providers”. [↑](#footnote-ref-2)
3. <http://www.esma.europa.eu/system/files/esma_mifid2_dp_bwf_joint-petition-german-exchanges-with-bwf.pdf>. [↑](#footnote-ref-3)
4. <http://www.esma.europa.eu/system/files/2014-548_discussion_paper_mifid-mifir.pdf>. [↑](#footnote-ref-4)
5. Consultation Paper ESMA/2014/1570 Annex B, RTS 15. [↑](#footnote-ref-5)
6. ESMA previously described the purpose of articles 17 and 48 of MiFID II with respect to market making strategies as being “to reduce the impact of potentially systematic volatility peaks in instruments where algorithmic traders are present.”Discussion Paper ESMA/2014/548, Chapter 4.4, Paragraph 52. [↑](#footnote-ref-6)
7. While we fully agree with the first goal, we are less certain that the second can be directly derived from the Level I text. ESMA’s wording might create the impression that “new risks” from “advanced technologies” mainly arise from market participants *other* than algorithmic traders pursuing a market making strategy, whereas our understanding of the MiFID II text is that it is the risk arising from the hitherto unregulated de facto market makers that needs to be addressed first. [↑](#footnote-ref-7)
8. For instance, Recital 60 refers to the definition of “market making activities” in Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps. In the interests of eliminating ambiguity, we therefore recommend that ESMA avoid the use of the expressions “market making” and “market maker” in RTS 15 and refer, instead, to “market making strategy” and “firm pursuing a market making based on algorithmic trading.” [↑](#footnote-ref-8)
9. ESMA’s remark in the Consultation Paper that respondents to the Discussion Paper were against the possible limitation of the number of participants in market making schemes (see CP, Chapter 4.3, Paragraph 40) must be seen in context, since the initial proposal in the Discussion Paper was that market-making schemes would apply only to liquid instruments. [↑](#footnote-ref-9)
10. Answer to ESMA question 281: “As only liquid instruments should be in the scope of the market making arrangements/schemes, a non-discriminatory access to market making arrangements and consistent incentives/informational/technological advantages should be provided across all market makers. This obviously should be different in case of less-liquids (that are not in the scope here) as for less-liquids mostly only monopolistic positions of the liquidity providers provide a real incentive to assure liquidity provision.” Source:

    <http://www.esma.europa.eu/system/files/esma_mifid2_dp_chair_of_efinance_goethe_university_frankfurt_replyform.docx>. [↑](#footnote-ref-10)
11. Please refer to the discussion of RTS 15, Article 7 below. [↑](#footnote-ref-11)