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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:

* if they respond to the question stated;
* contain a clear rationale, and
* 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 | Euronext |
| Confidential[[1]](#footnote-1) |  |
| Activity: | Regulated markets, exchanges & trading systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

< ESMA\_COMMENT\_CP\_MIFID\_1>

* Investor protection

1. 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>

No, Euronext does not agree with the overall approach taken by ESMA. While we agree with the introduction of common reporting standards under Article 3, we have fundamental issues with the proposal to apply more detailed publication requirements to order and quote driven markets, in comparison to other market models.

* Damaging investor protection: applying unlevel requirements across different trading models

We fundamentally question provisions in RTS 6 which provide for much more detailed and stringent publication requirements for pre-trade transparent order and quote driven markets in comparison to other market models. We do not see any justification for investors to be more informed in respect of the market quality of pre-trade transparent order and quote driven markets than that of other market models, especially since the objectives of RTS 6 are to ensure that investors have the means to compare the quality of execution provided by the different venues on which the same instrument is traded. Without a harmonisation of the requirements, it will be impossible for investors to compare market quality across those venues.

In this respect, we are particularly concerned that hybrid models are covered by very few requirements, considering that the more detailed provisions in RTS 6 apply only to order and quote driven markets. As such we would strongly urge hybrid models to be covered by similar requirements than those applicable to other models, i.e. subjecting them to the exact same requirements as order driven and quote driven markets. **This also links in directly with the comments we make in answer to Q37 in respect of the proposed pre-trade transparency requirements for different trading systems.** As explained under Q37, the proposed definition of a hybrid system provides an opt-out from any transparency which we think should be closed and replaced with equivalent transparency obligations to order and quote driven markets. We would then suggest that the amendment we make to hybrid systems below makes reference to Table 3 of the RTS 8 Annex.

We also have the following supplementary points to make:

* Recital (6) and Article 2(9):

In identifying the **various transaction types** to be considered, it is not clear how this is brought forward into the other Articles. In particular, it is not clear whether all transaction types are within the scope of each Article. For example, in Article 3 we question whether the transaction data can include off order book trades given the relevant order data may not be available.

* Recital (6):

We welcome the alignment of the transaction type definition with the taxonomy developed for post-trade transparency purposes but believe it requires further refining. In particular, we would like clarity as to whether trades under the n**egotiated trade waiver** should be grouped into a single category or remain under each sub-category. In addition, in respect of the most relevant trade flags for the purpose of assessing execution quality, we would suggest not including all of the trade flags. This is in order not to produce overly granular data which risks being of little benefit to investors or investment firms.

* Recital (8):

We would like clarification of the reference to **‘failed trades’**. We interpret failed trades as “miss-trades” or trades that have been annulled by the trading venue (with the effect that the counterparties do not have to deliver/pay). We presume it is referring to cancelled orders as per Article 3(3)(c) however this is not clear. We wish to state that ‘cancelled orders’ are not the same as ‘failed orders’. Furthermore we question the inclusion of such data on cancelled orders as orders can be cancelled for a wide range of reasons and it is not necessarily an indication of poor execution quality.

* Article 3(1)(d):

We believe that including information on **volatility interruptions** is not useful for the purposes of best execution. This is because such mechanisms are in place in order to try and prevent disorderly trading: they should not be seen negatively or deter investment firms from venues that may have additional volatility interruptions by virtue of having more stringent controls than other markets.

* Article 3:

We believe consideration should be given as to whether or **not transaction volume and value should be single or double counted.** ESMA suggests including market makers “that execute directly with clients rather than using a trading venue central order book” in the list of execution venues. We are of the view that this is not the intention of the Level 1 text as market makers are not included in the definition of ‘trading venue’ in Article 4(1)(24). Furthermore, Article 27(3) of the Directive refers to the obligation on “trading venues and systematic internalisers” in relation to financial instruments subject to the trading obligation, and on “execution venues” for all other financial instruments. We therefore believe that the intention was to capture both trading venues and systematic internalisers under the broader definition of execution venue.

Furthermore, we believe this could be misleading as some market makers execute directly with clients in addition to using a trading venue’s order book. Moreover, the off-order book executions may be carried out under the rules of a trading venue and reported into that venue, and therefore will already be included in the data of that venue. Therefore, we ask ESMA to clarify that only market makers who undertake all their market making activity outside of a trading venue, i.e. on a purely OTC basis are included in the scope of this proposal. We are also concerned with the proposal by ESMA to include execution details at specific point-in-time levels. We believe that such information could be:

* Misleading as it will not include the specificities of each order;
* Not comparable unless the same order types are executed at the exact same time on competing venues. As this is very unlikely, the information will in fact be redundant as it will not be indicative of general trends. Furthermore, it is potentially only suitable for liquid markets with regular executions;
* Not consistent as ESMA has proposed using UTC time which does not take into account daylight savings time.

We believe that aggregated data showing general trends is more beneficial, and therefore urge ESMA to re-consider this proposal and restrict the publication to aggregate data only. Furthermore we believe that daily is too frequent and suggest that capturing data over a longer period would be more appropriate for identifying general market trends.

Lastly, we have a general comment to make on the extensiveness of the proposed publication requirements which we believe are far too detailed to be of real benefit to investors. In particular we believe that the large number of data fields will be far in excess of what a retail investor would find beneficial in order to assess execution and in relation to institutional investors, our experience to date is that these investors source and analyse data to suit their own business needs which clearly varies between firms and therefore are likely to continue to obtain and analyse data from other sources. For these reasons, we urge ESMA to take a more gradual approach, reducing the number of data fields to be introduced at the initial stage which can then be reviewed several months after implementation and supplemented if there is a need.

**Amendment proposal**

RTS 6

Recitals

**~~(7) Order driven execution venues permit the publication of additional measures of potential execution quality based on the availability of additional pre- and post-trade data. Therefore order driven markets shall report additional data on execution quality which will support the creation of supplementation execution quality metrics which rely on the existence of full pre and post-trade transparency data. For example, these execution venues shall report metrics on their average effective and realised spreads, best bids and offers, depth weighted spreads, book depths or order to trade ratios when applicable~~**.

(…)

(10) The speed of execution will be measured differently depending on the market mechanism and order type and these differences will be reflected in the reporting. The measurement of the speed of execution for order driven markets shall be the time elapsed between receipt of an order and its execution. Flags for different order and transaction types will provide sufficient context for the assessment of speed of execution. To provide a viable benchmark, execution venues operation order driven markets will also be required to publish the average speed of execution for unmodified passive orders at first limit. A different measure of the speed of execution is requirement in quote driven markets to reflect the time between a client submitting a request for quote and the execution venue providing it, as well as the time elapsed between the client’s acceptance of that quote and the subsequent execution. The provision of mean and median time elapsed between a request for quote and execution may help, diminishing the impact of client behaviour on the speed of execution in quote driven markets as well as give some useful information on market stress periods. **Hybrid markets (as defined in Table 3 RTS 8) will have to report both metrics required from order driven markets and for quote driven markets.**

Article 4 - Additional data to be published by order driven execution venues **and hybrid markets (as defined in Table 3 RTS 8)**

1. Order driven execution venues

(…)

(p) average speed of execution for unmodified passive orders at first limit.

Article 5 - Additional data to be published by quote driven execution venues **and hybrid markets (as defined in Table 3 RTS 8)**

1. Quote driven execution venues

(…)

(b) the mean and median time elapsed between a request for a quote and provision of that quote, for all quotes in a given financial instrument when applicable.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_36>

* Transparency

1. 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>

* Strong opposition to equities’ RFQ systems

Euronext can only agree with the proposal to add a definition of RFQ for ETFs, not for equities. In respect of ETFs, we agree that a provision of RFQ, with specific pre-trade transparency requirements, is aligned with current market trends and would ensure that this activity is brought within regulatory scope. In contrast, Euronext strongly disagrees with the proposal to include a definition of RFQ trading systems in respect of equities. We note the absence in the Consultation Paper’s Section 3.1 of any rationale explaining the extension of RFQ to equities, based either on ESMA’s assessment or feedback from the industry. This in contrast to the ETF situation described above.

Within the context of ETFs, allowing only certain participants to interact against one another in the context of an RFQ system reflects the fundamental quote driven characteristic of those markets. However, this type of market structure is fundamentally not necessary for the equities’ market – given its order driven nature – and more importantly would allow a circumvention of the MIFID II principles. This is because these systems – applied to equities - could create a loophole in terms of pre-trade transparency and the overall multilateral nature of exchanges. Specifically, they could be used to enable semi-lit private pools of liquidity, allowing only certain participants to interact against one another, to be recognised as lit and multilateral venues. This would be in complete contradiction with the goals of the MIFID Review, and all the more bizarre given there is no need for these types of venues for equity instruments, which, in Europe, are order driven.

* Clarifying the nature of hybrid systems in Annex 1, Table 3 of RTS 8

In respect of the Table’s fourth row covering hybrid systems, we strongly oppose providing suspension of transparency based on situations when *‘the characteristics of the price discovery mechanism so permit’* We are concerned that such an open-ended provision will be used by venues operating such systems to systematically request suspension of the transparency provisions. We strongly urge regulators to ensure that the rationale underpinning trading on hybrid platforms ensures that transactions are executed on the basis of pricing intentions generated by the interaction of buying and selling interest on the venue concerned. Our **proposed amendment below deletes this reference**, replacing it with the requirements from the order and quote driven rows. An **alternative approach** would be to distinguish between liquid and illiquid shares as follows:

* Hybrid trading models for illiquid shares – maintenance of existing row in RTS 8 Table 3;
* Hybrid trading models for liquid shares – applying our amendment to this category of shares only.

This would result in appropriate levels of transparency for liquid shares, whilst preserving any models potentially required for illiquid shares. We would also strongly recommend providing **ESMA with a role** to review requests for an exemption from transparency in respect of illiquid shares in order to ensure a level playing field across the European Union.

In addition, we would suggest, in all of the systems and models categories identified for the purpose of pre-trade transparency requirement definition to replace “advertised” by “present”, in order to ensure that the prices and quantity displayed by these platforms deemed to be pre-trade transparent are actual prices and quantity generated by participants active on these platforms and not simply imported from other markets.

Finally, we note that ESMA has rejected the call we and others made to ensure that when a trading venue imports a price from another venue, that activity should fall under the RPW and be subject to the double volume cap mechanism. MiFID II/ MiFIR aims to better control the volumes executed under the reference price waiver using quantitative limits. However, in the absence of change in the rules concerning the so-called hybrid platforms, there is a risk that volumes executed today under the reference price waiver will shift to platforms considered to be pre-trade transparent but which actually operate under a model identical to the one used by dark platforms, thereby reinforcing the status quo. It should be made clear that in cases where prices are simply imported from lit venues the activity must fall under the reference price waiver and be subject to the double volume cap mechanism. Left unchanged, the flexible definition of pre-trade transparency obligations for “hybrid” systems will simply allow a reoccurrence of previous examples under MiFID I. In this context, platforms have operated trading models that are functionally identical to dark platforms, under the reference price waiver, but with these platforms still recognised from a regulatory perspective as being pre-trade transparent.

**Amendment proposal**

RTS 8

Table 3 – Information to be made public in accordance with Article 3

|  |  |  |
| --- | --- | --- |
| Type of system | Description of system | Summary of information to be made public |
| Continuous auction order book trading system | A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis. | The aggregated number of orders and the shares, depositary receipts, ETFs, certificates they represent at each price level, for at least the five best bid and offer price levels continuously throughout normal trading hours**, corresponding to the trading interest that are present on the market**. |
| Quote-driven trading system | A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself. | The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices continuously throughout normal trading hours**, corresponding to the trading interest that are present on the market**.  The quote made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time. |
| Periodic auction trading system | A system that matches orders on the basis of a period auction and a trading algorithm operated without human intervention. | The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at the price by participant sin that system continuously throughout normal trading hours. |
| Request for quote trading system **for ETFs and certificates only** | A trading system where a quote or quotes are published in response to a request for quote submitted by one or more members or participants. The quote is executable exclusively by the requesting member or market participant may conclude a transaction by accepting the quote or quotes provided to it on request. | The bids and offers together with the volumes submitted by each responding entity during normal trading hours. |
| Trading system not covered by first 4 rows | A hybrid system falling into two or more of the first four rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by the first three rows. | **~~Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best vid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery process so permit.~~**  **The aggregated number of orders and the shares, depositary receipts, ETFs, certificates they represent at each price level, for at least the five best bid and offer price levels continuously throughout normal trading hours, corresponding to the trading interest that are present on the market, together with the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices continuously throughout normal trading hours, corresponding to the trading interest that are present on the market.**  **The quote made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.** |

<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>

We agree with the proposal in paragraph 19 of the CP except with regard to transactions executed under the order management facility waiver since the visible peak of reserve orders actually contributes to the information content to be used as a reference price. Such transactions should therefore be included. We have noted that ESMA follows this line of argumentation in Article 4(4) of Draft RTS 8 by limiting the exclusion to all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014, but not extending the exclusion to orders held in an order management facility of the trading venue (Article 4(1)(d) of Regulation (EU) No 600/2014).

Moreover, we would like to clarify that transactions on RFQ systems and transactions executed under RFQ protocols should be excluded when determining the most relevant market in terms of liquidity. The reason for excluding RFQ transactions is that only the requesting member or participant of such a quote request is in the position to conclude transactions by accepting the quote or quotes exclusively provided to it on request, but not all members or participants of such systems as is the case in open order book and auction trading on regulated markets and MTFs. Similarly, should the definition of hybrid model pre-transparency requirements remain the same under Table 3 RTS 8, these should be excluded from the calculation, considering that such a definition does not guarantee the price forming character of venues operating under these models.

Moreover, ESMA should consider linking these proposals to the quality of execution within the relevant sections of investor protection.

**Proposed amendment:**

**Article 4(4) of Draft RTS 8:**

‘The calculation of the turnover shall exclude all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014 **and all transactions executed on RFQ systems or under RFQ protocols and under hybrid markets as defined in Table 3 RTS 8.’**

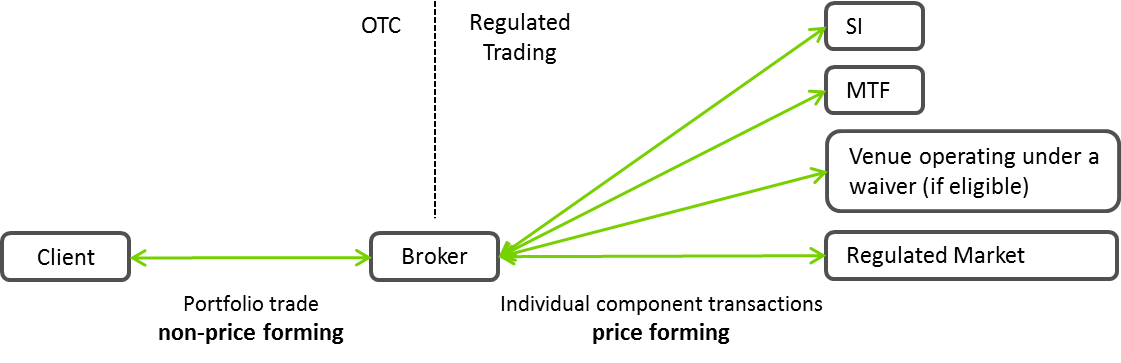
<ESMA\_QUESTION\_CP\_MIFID\_38>

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>

Euronext agrees with the decision to establish an exhaustive list, however we strongly call for a further clarification of how the exemptions for **portfolio, benchmark and delta neutral trades** will be framed. As a framing point, we agree with the general principle that non-price forming trades should be exempted from: (i) the cap on trading under the negotiated deal waiver and (ii) the share trading mandate. In respect of portfolio, benchmark and delta neutral trades, we strongly recommend that ESMA further clarify that only the non-price forming elements of such trades can benefit from the above exemptions.

As these three types of trades are currently defined extremely loosely, the vast majority of EU cash equity volumes could theoretically be executed under them. If the current wording proposed to define these three types of trades is retained, then de facto OTC trading will still be allowed for the vast majority of trading volumes in EU cash equity. As illustrated in the diagram below, there should be a clear requirement that the price forming components of one of these trade types is conducted on a MIFID venue with relevant transparency provisions. Only the client-broker leg of the transaction should be eligible to the exemptions described above.



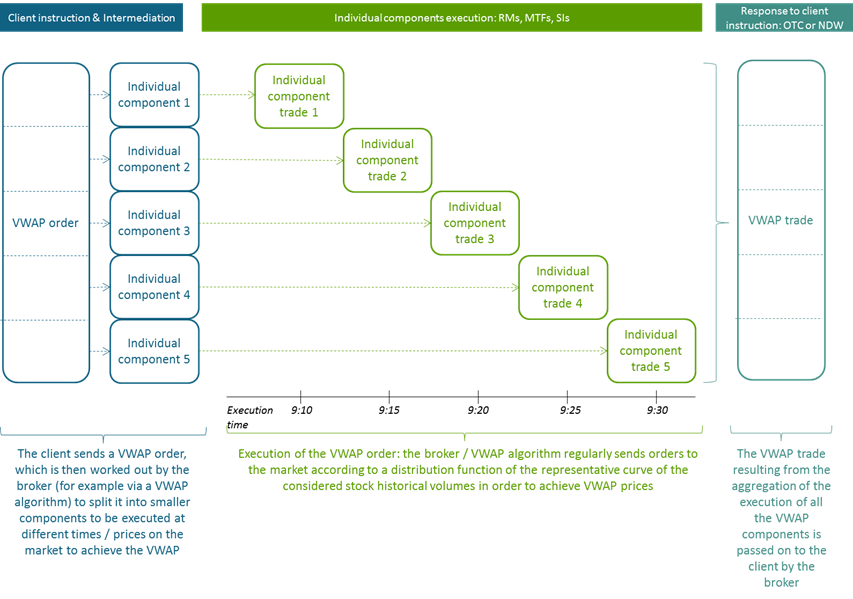
We are concerned that the current approach outlined by ESMA does not make that clear and would lead, instead, to the situation below. In this scenario, **the broker would be able to claim that the exemption applied both to the client-broker leg as well as the execution of the individual orders** (when the execution of the whole transaction involves the execution of several sub-components), meaning the latter could be executed on an OTC basis or under the non-capped part of the NDW (for non-price forming trades).



In the absence of a restrictive definition of these types of trades, the volume cap and trading mandate could be circumvented by using the ‘uncapped’ part of the NDW or OTC. This is clearly against the Level 1 text which only mandates an exemption (i) from the NDW cap for illiquid securities and non-price forming trades and (ii) from the trading mandate for non-price forming trades. In order to ensure that the spirit of the text is respected, and therefore to close the above loophole, the definitions of these three types of trades should be further clarified. It should distinguish between: (i) the benchmark, portfolio and delta neutral overall operations and, (ii) the individual components of these operations (when the operation is not executed as a ‘single block’ but through different ‘smaller’ components).

Whilst in its entirety, a benchmark, portfolio or delta neutral operation should be allowed to be effected in the dark (i.e. OTC or under the NDW under the non-price forming category for the client-broker leg/overall operation), when it is executed in several individual components, these individual components (i.e. trades) of these operations (necessary to achieve a benchmark price / a portfolio operation / a delta neutral operation) should be executed on venues, since they are price-forming.

With this distinction, the conduct of benchmark, portfolio and delta neutral operations will still be possible (by enabling the operation to be considered, as a whole, as executable in the dark) whilst protecting the price formation process by ensuring that the individual components (trades) necessary to execute the overall operation are executed on trading venues (with waivers available where applicable).



It is worth also noting that for benchmark, portfolio and delta neutral operations that are executed in several components, this distinction between the whole transaction and its individual components will lead to a reporting/publication of these transactions as follows:

1. One reporting/publication for the overall operation under NDW or OTC; and,
2. One reporting/publication for each of its individual components on lit markets.

As such, the adoption and implementation of dedicated flags to identify  the different types of non-price forming trades will enable both regulators and the market more generally to subtract trades flagged as benchmark, portfolio or delta neutral trades reported / published under the NDW for the purpose of calculating the overall turnover in a cash equity instrument.

In addition, for the non-price forming trades category, considering that these transactions can either be executed on a RM/MTF under the NDW or on an OTC basis, we would recommend clarifying in the table that OTC is allowed for these types of trades. This will ensure that when executed OTC, these trades are covered by the same post-trade transparency requirements than when they are executed under the NDW. Otherwise, there is a risk that: (i) investors/overall market and regulators will have less visibility over the types of transactions conducted OTC and (ii) the NDW will be put at a competitive disadvantage versus OTC trading as it will be covered by stricter post-trade transparency requirements.

Moreover, and in order to close any loopholes, we suggest totally aligning the definition of transactions not subject to current market prices under the systematic internaliser regime with those retained for the purpose of the trading mandate exemptions. Otherwise, this will likely lead to misuse of the SI category and potential growth of dark trading, as the current definition currently is much broader than that proposed for the purpose of the trading mandate and NDW.

Last, in order to avoid lack of clarity, we suggest encompassing all technical trades (which are non-price forming in their nature) within the non-price forming trade category, which will facilitate flagging (as the distinction between technical vs. non-price forming trades may be difficult, precisely due to the non-price forming character of technical trades), we suggest retaining the ‘T’ technical trade flag and to delete the ‘G’ non-price forming trade flag, in order to fully align the definition and flagging of price-forming trades whether executed under the NDW or an OTC basis.

Similarly, we would suggest avoiding the potential for an open door for dark trading within the NDW dedicated to non-price forming transactions by deleting the reference to *‘transaction contingent on technical characteristics which are unrelated to the current market valuation of that financial instrument’* from the list of trades eligible to the NDW. The list should be as exhaustive and precise as possible, as well as the list of transactions exempted from the trading mandate, if the goal is to avoid the creation of any loopholes. Given this type of transaction is, as it stands, broadly defined it could serve as a home for ‘standard price forming trades’ which should have been executed on a lit market.

**Amendment proposal**

RTS 8

**Recital 2-bis**

**Whilst in its entirety, a benchmark, portfolio or delta neutral trade shall be allowed to be executed on an OTC basis or under the Negotiated Deal Waiver, the individual components (individual trades) necessary to the execution of this trade shall fall within the trading mandate and be executed on pre-trade transparent venues, as they are price-forming, unless meeting the eligibility criteria for other pre-trade transparency waivers due to their size or other intrinsic characteristics. A benchmark, portfolio or delta neutral trade is eligible to OTC trading and to the Negotiated Deal Waiver only if it is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to execution venues, do or would not represent the initial interest in its entirety.**

**Article 6 – Negotiated transactions subject to conditions other than the current market price**

* + - 1. (…)

1. the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price**, and is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to a pre-trade transparent execution venue for execution, do or would not represent the initial interest in its entirety**;
2. the transaction is part of a portfolio trade that involves the execution of 10 or more shares from the same client and at the same time and the single components of the trade are **~~meant to be~~** executed only as single lot and **the trade is constituted by several non-dissociable and non-substitutable components which, when individually sent to a pre-trade transparent execution venue for execution, do not represent the initial interest in its entirety**;
3. the transaction is contingent to a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot**, and is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to a pre-trade transparent execution venue for execution, do or would not represent the initial interest in its entirety**;

**~~(e) the transaction is contingent on technical characteristics which are unrelated to the current market valuation of that financial instrument.~~**

<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>

Yes, Euronext agrees with the main characteristics of orders held in an order management facility. Our understanding is that a stop order does not need to be displayed upon triggering and that an iceberg order does not need to be displayed prior to execution, except for its peak size. We therefore agree with the minimum size (1) being the minimum tradable quantity of the venue for stop orders and (2) being €10,000 for iceberg orders, i.e. reserve orders. However, in order to avoid creating a potential loophole to the volume cap, the list of eligible orders to the OMF waiver should be exhaustive, i.e. exclude the current reference to ‘other orders’ in Article 7, paragraph 3 of RTS 8 should be limited.

Amendment proposal

RTS 8

Article 7

* + - 1. Reserve orders~~,~~ and stop orders ~~and other orders~~ that comply with the first paragraph shall be considered as orders held in an order management facility.

<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>

We agree. We would suggest clarifying that all volumes (lit, dark, OTC) should be taken into consideration for the purpose of this calculation in order to take into account the whole liquidity in a specific instruments. This would avoid the creation of distortions between those products traded mostly on venues and those traded in the dark.

<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>

We do not agree with the classes and thresholds proposed by ESMA. We question the merit of having such a detailed table for ETFs with different ADT classes, especially because in our opinion ADT is not an appropriate proxy for measuring liquidity in ETFs. This is because liquidity in ETF markets is derived from the liquidity of the underlying market, which ADT fails to capture. We also consider that having different pre-trade LIS thresholds for ETFs would be too complex from an operational point of view and difficult to read for market participants.

However, we fully support the alternative approach based on a single LIS threshold of €1 million. We consider it to be a more straightforward and simple approach to have a single table with a single threshold for all ETFs regardless of their liquidity. We think that a threshold of €1 million is adequate with regard to current levels of pre-trade transparency in ETFs. In addition, we note that this number is supported by a wide range of ETF market participants.

<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>

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<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>

We believe that stubs should remain dark. However, we consider it essential to specify in the Level 2 texts that the LIS threshold is applied to “child” orders and not to “parent” orders. This is because, in contrast to parent orders, child orders are actually sent to the market and can, depending on their size, have an impact on market prices. Parent orders, which are either sliced or modified, do not directly interact with the market. Therefore, thresholds should not be calculated on the basis of parent orders: even though the size of the parent order may be superior to the LIS threshold, this order is not communicated to the market and can be sliced into smaller child orders which will not face market impact. Applying the LIS threshold to parent orders would amount to exempting child orders from pre-trade transparency which could have, without any risk of market impact, contributed to the price formation process. Similarly, the threshold should apply to child orders stemming from a single parent order from one counterparty. This would ensure that orders from several counterparties are not aggregated in the view of attaining a size above the LIS threshold and, therefore, escape pre-trade transparency rules.

<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>

Yes, we agree that an SI should be required to publish a timestamp with each quote. In the absence of a timestamp, issues might arise if the quote is changed close to the point in time when an order from a client is entered but may then not match the new quote of the SI because of the change. The timestamp is vital information for a client to analyse ex-post the quality of prices quoted by the SI .

In addition, standards for SIs should be the same as for venues - post-trade flags, for instance, should be harmonised and developed to identify 'lit' SI transactions and other transactions (for example, price improvement and above SMS) with harmonised time stamps. Otherwise, it will be impossible to account for the type of trades undertaken on SIs, and to control the exact volumes executed in a lit manner on SIs vs. those executed without pre-trade transparency. This is important since SIs could become a new home for dark trading in the context of the trading mandate and volume cap on RPW/NDW for transactions in liquid instruments.

**Amendment proposal**

Table 2

List of flags for the purpose of post-trade transparency

|  |  |  |  |
| --- | --- | --- | --- |
| Flag | Name | Type of execution venue | Definition |
| (…) | (…) | (…) | (…) |
| ‘T’ | Technical trades | RM, MTF OTC | Transaction not contributing to the price formation process as per Article 2, **or transaction not contributing to the price formation process as per Article 15(3) of Regulation (EU) 600/2014, and not covered by existing flags within this table**. |
| ‘L’ | Large in scale | RM, MTF, **OTC** | A transaction executed (i) under a pre-trade transparency waiver in accordance with Article 4(1)(c) of Regulation (EU) 600/2014 **and which have benefited from deferred publication under Article 7 of Regulation (EU) 600/2014,  or (ii) on a systematic internaliser with no pre-trade transparency because the size of the incoming order was above the Standard Market Size, as defined in this Regulation, or (iii) on a systematic internaliser with no complete pre-trade transparency due to the fact that the incoming order considerably exceeded the norm, as defined Article 17(2) of Regulation (EU)  600/2014.** |
| ‘N’ | Negotiated transactions in liquid financial instruments | RM, MTF**, OTC** | Transaction executed in accordance with Article 4(1)(b)(i) of Regulation (EU) 600/2014 **or transaction in liquid instruments executed on a systematic internaliser** **with a price improvement in accordance with Article 15(2) of of Regulation (EU)  600/2014** |

<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>

We agree that a price reflects prevailing market conditions if it is close to comparable quotes for the same financial instrument on other trading venues. However, we strongly urge ESMA to consider extending this definition. **It should be clarified that only prices executed at price levels in line with the applicable tick size of that financial instrument should be deemed to reflect prevailing market conditions.** The reason for this proposal is that the introduction of a harmonized tick size regime in Europe will unfortunately not be applicable to SIs.

Allowing SIs to execute at any price means that they will not be in line with the harmonized tick size of the respective financial instrument. Furthermore, they may also price improve over bid and offer prices posted on regulated markets and MTFs at virtually no cost because their quotes do not need to meet the minimum tick size.

For instance, consider a financial instrument (share or ETF) with a price of 145 EUR and a corresponding tick size of 0.02 EUR. Assume that the instrument is currently quoted with a bid offer spread of 145 to 147 EUR on a regulated market. To become top of book, any participant of the RM would have to improve the current bid or offer price by at least 0.02 EUR. On the contrary an SI would be able to improve the price of the regulated market at a fraction of that cost, for instance by posting quotes at price increments of 0.01 EUR, 0.005 EUR or even smaller.

We fear that with such regulation, trading volumes will move away from public markets to SIs due to regulatory tick size arbitrage. This would certainly not reflect the spirit of this regulation. Although we know that applying a harmonized tick size regime to SIs has not been included the Level 1 text, we strongly believe that extending the definition as proposed above presents a valid alternative to ensure a level playing field between RMs, MTFs and SIs.

Furthermore, we suggest that the same logic should be applied when permitting SIs to execute orders at a better price than those quoted at the time of reception of the order. This means that they should only be allowed to price improve over the price quoted at the time of reception of the order at price levels in line with the instrument's minimum tick size.

<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>

We support the rationale behind ESMA’s goal of increasing transparency in equity markets. However, we would support a variant of Option 2 and advocate that SMS is set at € 15,000. In principle, we see no reason why the transparency obligations on the SI should not be totally aligned with the LIS table applicable to trading on multilateral platforms. This is because there is no reason to apply a more flexible transparency regimes to SIs than the one applicable to which market-makers active on multilateral platforms. This is especially the case given that, in contrast to market-makers on multilateral platforms, SIs can choose to whom they will provide quotes.

We are concerned that SIs do not truly contribute to price formation. This is truly problematic considering that as they stand, and considering the volume caps that will apply to dark trading on multilateral platforms and to the trading mandate, SIs will become an increasingly attractive option for accommodating current BCN-type activity. In order to address such a development, which would go against the Level 1 framework agreement, a key point for regulators and policymakers should be to ensure the bilateral nature of SI activity. We are extremely concerned that some recitals in MiFID/R may be used by market participants to argue that riskless counterparty trading can be undertaken by SIs, thus providing an alternative home for current OTC broker crossing business. Such a development, combined with the relatively light transparency regime applied to SIs (especially when compared to functionally equivalent market makers on multilateral trading venues) together with their new ability to provide price improvement under MIFID II, would effectively see the re-introduction of an OTF category within the equities space. This is because, if ultimately allowed for the SI, riskless principal trading would *de facto* enable the matching of two client orders by interposing the SI own account between them for a fraction of time, i.e. taking very limited market/counterparty risk. Clearly, this would go against the political, technical and legal agreement underpinning the Level 1 text. We note that ESMA has acknowledged this is an issue but that it cannot provide further clarity in the RTS as it has no relevant empowerment to do so: we therefore strongly urge ESMA to raise this further with the European Commission so that it can be addressed appropriately.

Finally, we see no reason for SIs to benefit from reduced transparency requirements in terms of the LIS threshold than participants on multilateral platforms. This is especially the case in an environment where, due to the share trading mandate and double volume cap, one can reasonably expect SIs to be become increasingly used. While we would strongly suggest an alignment of the quantitative LIS thresholds between the SI and the other trading venues, as a bare minimum we believe the methodology for the calculation should be changed, with ADT also applied to the SI instead of AVT.

The weakness of the AVT approach is simply that as liquidity increases for the share in question, so does the average size of transaction and with it a consequently lower SMS threshold above which you can trade in the dark. This is completely counter-intuitive.

**Amendment proposal**

RTS 8

Annex II: Standard market sizes, orders large in scale compared with normal market size and deferred publication thresholds and delays

Table 1Standard market sizes (in EUR)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Class in terms of average **~~value of transactions (AVT)~~ daily turnover (ADT)** | **~~AVT < 20 000~~**  **ADT < 100 000** | **~~20 000 ≤ AVT ≤ 40 000~~**  **100 000 ≤ ADT ≤ 500 000** | **~~40 000 ≤ AVT ≤ 60 000~~**  **500 000 ≤ ADT ≤ 1 000 000** | **~~60 000 ≤ AVT ≤ 80 000~~**  **1 000 000 ≤ ADT ≤ 5 000 000** | **~~80 000 ≤ AVT ≤ 100 000~~**  **1 000 000 ≤ ADT ≤ 5 000 000** | **~~100 000 ≤ AVT ≤ 120 000~~**  **5 000 000 ≤ ADT ≤ 25 000 000** | **~~120 000 ≤ AVT ≤ 140 000~~**  **25 000 000 ≤ ADT ≤ 50 000 000** | **~~Etc.~~**  **50 000 000 ≤ ADT ≤ 100 000 000** |
| Standard market size | 10 000 | 30 000 | 50 000 | 70 000 | 90 000 | 110 000 | 130 000 | **~~Etc.~~**  **150 000** |

<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>

Euronext supports establishing an exhaustive list of the types of transactions which should be excluded from the trading mandate for equities. We consider this to be the most effective way to ensure that there are no loopholes allowing a circumvention of the equities trading mandate. In order to respond to market needs, any such definition should rely on an analysis and pragmatic typology of the types of transactions currently executed on an OTC basis. We believe that a definition solely based on general principles would not be appropriate, as it would open opportunities to circumvent the trading mandate.

Therefore, we consider that the definition of transaction types considered as “non-addressable” for the purpose of the equities trading mandate could rely on the work done by CESR (Committee of European Securities Regulators, now ESMA) in 2010[[2]](#footnote-2) and the standards developed by the “Market Model Typology” (MMT) initiative. This initiative, now governed by FIX Protocol Limited[[3]](#footnote-3), aims at supporting harmonised transaction reporting standards across the industry, including OTC transactions. Research undertaken by the Association for Financial Markets in Europe (AFME)[[4]](#footnote-4) and Aite Group[[5]](#footnote-5) also give a good overview of the type of transactions which are currently executed over-the-counter (OTC). These standards and research were used as a basis to establish a detailed typology of OTC transactions, on which we suggest regulators could rely to determine which OTC transactions can be considered as **“non-addressable” for the purpose of the equities trading mandate.**

We believe that **standard transactions**, which are currently in great proportion executed OTC, should be subject to the trading mandate to the extent that their characteristics do not justify execution outside regulated platforms. These include in particular**:**

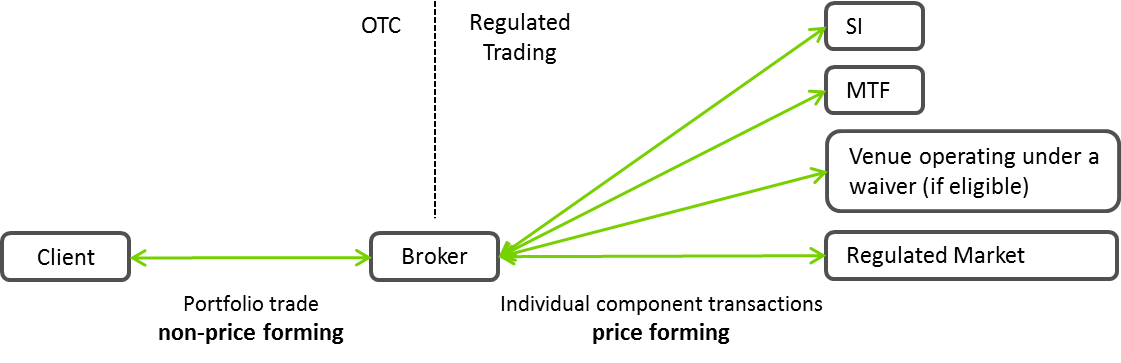
1. **Cross trades or agency trades**, which correspond to the matching of two client orders (otherwise BCNs will simply continue their activity OTC or under the SI category);
2. **Riskless principal or matched principal trades**,corresponding to the interposition of the intermediary’s own account between two client orders or between a client order and the market; and,
3. **Principal trades** where the intermediary matches a client order against its proprietary capital.

These transactions should all be executed on regulated platforms. This is because they are not technical in nature and should take part in the price formation process and be accessible to the market as a whole. In other terms, they should not remain in the OTC space. Therefore we welcome the exclusion of these trade types from the non-exhaustive list.

In addition, similarly to the points highlighted in our response to Q39, whilst overall the list of transactions proposed by ESMA under RTS 8 captures all circumstances under which OTC trading is legitimate, we strongly call for a further clarification of how the **exemptions for portfolio, benchmark and delta neutral trades will be framed**. As a framing point, we agree with the general principle that non-price forming trades should be exempted from (i) the cap on trading under the negotiated deal waiver and (ii) the share trading mandate. In respect of portfolio, benchmark and delta neutral trades, we strongly recommend that ESMA further clarify that only the non-price forming elements of such trades can benefit from the above exemptions.

As these three types of trades are currently defined extremely loosely, the vast majority of EU cash equity volumes could theoretically be executed under them. If the current wording proposed to define these 3 types of trades is retained, then de facto OTC trading will still be allowed for the vast majority of trading volumes in EU cash equity.

As illustrated in the diagram below, there should be a clear requirement that the price forming components of one of these trade types is conducted on a MIFID venue with relevant transparency provisions. Only the client-broker leg of the transaction should be eligible to the exemptions described above.



We are concerned that the current approach does not make that clear and would lead instead to the situation below. In this scenario, the broker would able to claim that the exemption applied both to the client-broker leg as well as the execution of the individual orders (when the execution of the whole transaction involves the execution of several sub-components), meaning the latter could be executed on an OTC basis or under the non-capped part of the NDW (for non-price forming trades).

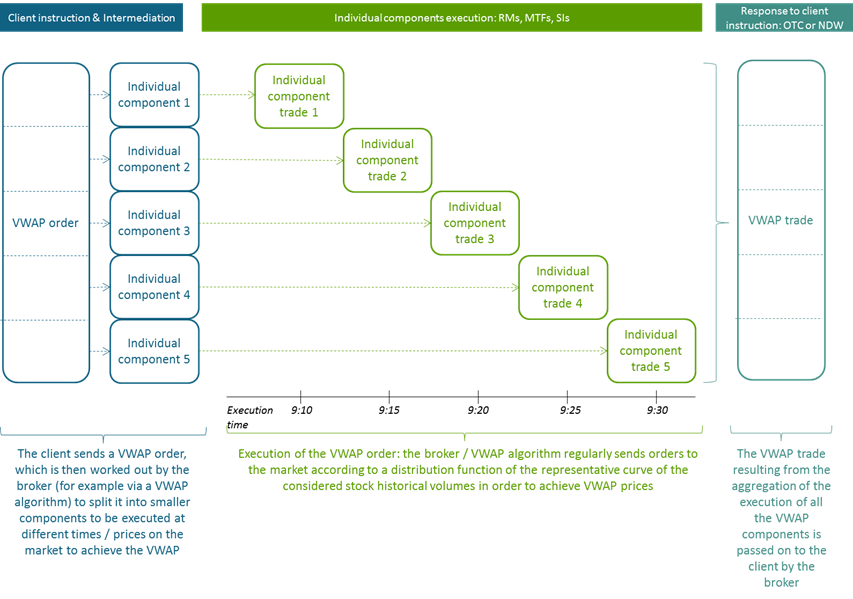


In the absence of a restrictive definition of these types of trades, the trading mandate could be easily be circumvented. This is clearly against the Level 1 text which only mandates an exemption (i) from the NDW cap for illiquid securities and non-price forming trades and (ii) from the trading mandate for non-price trades.

In order to ensure that the spirit of the text is respected, and therefore to close the above loophole, the definitions of these three types of trades should be further clarified. It should distinguish between (i) the benchmark, portfolio and delta neutral overall operations and (ii) the individual components of these operations (when the operation is not executed as a ‘single block’ but through different ‘smaller’ components).

Whilst in its entirety, a benchmark, portfolio or delta neutral operation should be allowed to be effected in the dark (i.e. OTC or under the NDW under the non-price forming category for the client-broker leg/overall operation), when it is executed in several individual components, these individual components (i.e. trades) of these operations (necessary to achieve a benchmark price / a portfolio operation / a delta neutral operation) should be executed on venues, since they are price-forming.

With this distinction, the conduct of benchmark, portfolio and delta neutral operations will still be possible (by enabling the operation to be considered, as a whole, as executable in the dark) whilst protecting the price formation process by ensuring that the individual components (trades) necessary to execute the overall operation are executed on trading venues (with waivers available where applicable).



It is worth also noting that for benchmark, portfolio and delta neutral operations that are executed in several components, this distinction between the whole transaction and its individual components will lead to a reporting/publication of these transactions as follows:

1. One reporting/publication for the overall operation under NDW or OTC; and,
2. One reporting/publication for each of its individual components on lit markets.

As such, the adoption and implementation of dedicated flags to identify  the different types of non-price forming trades will enable both regulators and the market more generally to subtract trades flagged as benchmark, portfolio or delta neutral trades reported / published under the NDW for the purpose of calculating the overall turnover in a cash equity instrument.

In addition, for the non-price forming trades category, considering that these transactions can either be executed on a RM/MTF under the NDW or on an OTC basis, we would recommend clarifying in the table that OTC is allowed for these types of trades. This will ensure that when executed OTC, these trades are covered by the same post-trade transparency requirements than when they are executed under the NDW. Otherwise, there is a risk that: (i) investors/overall market and regulators will have less visibility over the types of transactions conducted OTC and (ii) the NDW will be put at a competitive disadvantage versus OTC trading as it will be covered by stricter post-trade transparency requirements.

Moreover, and in order to close any loopholes, we suggest totally aligning the definition of transactions not subject to current market prices under the systematic internaliser regime with those retained for the purpose of the trading mandate exemptions. Otherwise, this will likely lead to misuse of the SI category and potential growth of dark trading, as the current definition currently is much broader than that proposed for the purpose of the trading mandate and NDW.

Finally, in order to avoid any lack of clarity, we suggest encompassing all technical trades (which are non-price forming in their nature) within the non-price forming trade category, which will facilitate flagging (as the distinction between technical vs. non-price forming trades may be difficult, precisely due to the non-price forming character of technical trades), we suggest retaining the ‘T’ technical trade flag and to delete the ‘G’ non-price forming trade flag, in order to fully align the definition and flagging of price-forming trades whether executed under the NDW or an OTC basis.

**Amendment proposal**

RTS 8

**Recital 2-bis**

**Whilst in its entirety, a benchmark, portfolio or delta neutral trade shall be allowed to be executed on an OTC basis or under the Negotiated Deal Waiver, the individual components (individual trades) necessary to the execution of this trade shall fall within the trading mandate and be executed on pre-trade transparent venues, as they are price-forming, unless meeting the eligibility criteria for other pre-trade transparency waivers due to their size or other intrinsic characteristics. A benchmark, portfolio or delta neutral trade is eligible to OTC trading and to the Negotiated Deal Waiver only if it is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to execution venues, do or would not represent the initial interest in its entirety.**

**Article 2: Transactions not contributing to the price discovery process**

* + - 1. (…)

1. The transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price**, and is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to a pre-trade transparent execution venue for execution, do or would not represent the initial interest in its entirety**;
2. The transaction is part of a portfolio trade that involves the execution of 10 or more shares from the same client and at the same time and the single components of the trade are **~~meant to be~~** executed only as single lot and **the trade is constituted by several non-dissociable and non-substitutable components which, when individually sent to a pre-trade transparent execution venue for execution, do not represent the initial interest in its entirety**;
3. The transaction is contingent to a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot**, and is constituted by several non-dissociable and non-substitutable components which, when or if individually sent to a pre-trade transparent execution venue for execution, do or would not represent the initial interest in its entirety**;

**Table 2**

**List of flags for the purpose of post-trade transparency**

|  |  |  |  |
| --- | --- | --- | --- |
| Flag | Name | Type of execution venue | Definition |
| ‘B’ | Benchmark trade | RM, MTF, OTC | Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time weighted-average price**, and is constituted by several non-dissociable and non-substitutable components which, when individually sent to regulated market(s), MTF(s) or systematic internaliser(s) for execution, do not represent the initial interest in its entirety**. |
| ‘X’ | Agency cross trade | RM, MTF, **~~OTC~~** | Transactions where an investment firm has brought together clients’ orders with the purchase and sale conducted as one transaction and involving the same volume and price. |
| **~~‘G’~~** | **~~Non-price forming trades~~** | **~~RM, MTF~~** | **~~All types of transactions listed under Article 2 of this Regulation and which do not contribute to the price formation.~~** |
| (…) | (…) | (…) | (…) |

<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>

Yes, we agree.

<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>

Euronext supports the fact that ESMA has taken into account the work of the Market Model Typology (MMT). However, we are concerned with the proposed “L” flag for LIS orders. LIS orders allow brokers to use lit order book liquidity for block trade execution but we consider that flagging such trades will potentially harm the price formation process by shifting LIS orders away from lit order books towards either dark pool or negotiated trade executions. Moreover, given ESMA’s decision to keep stubs hidden the ‘L’ flag would reveal the trading intentions behind these stubs to the market. We therefore recommend to remove the proposed “L” flag for trades originating from LIS orders.

In addition, we believe the post-trade transparency flags should only be used to indicate different types of transactions executed, and not different types of orders, as only one side of the trade may have been executed under the LIS waiver it may overstate the prevalence of large in scale trading and could be confusing for the market.

We therefore recommend removing the proposed “L” flag for trades originating from LIS orders. Please note that we do however support the publication of a post-trade flag for large trades which have been deferred as permitted under Article 7 of the Directive.

In addition, we believe that the RTS should be clear in respect of whom should bear the responsibility for informing venues of the respective flags. Notably, members should be responsible for informing venues that their order / trade is algorithmic and that therefore it should be flagged using flag ‘H’.

**Amendment proposal**

RTS 8

Table 2

List of flags for the purpose of post-trade transparency

|  |  |  |  |
| --- | --- | --- | --- |
| Flag | Name | Type of execution venue | Definition |
| (…) | (…) | (…) | (…) |
| ‘H’ | Algorithmic trades | RM, MTF | Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(49) of Directive (EU) 65/2014 **and as notified by the investment firms to the trading venue** |
| (…) | (…) | (…) | (…) |
| ‘L’ | Large in scale | RM, MTF | A transaction executed under a pre-trade transparency waiver in accordance with Article 4(1)(c) of Regulation (EU) 600/2014 **and which have benefited from deferred publication under Article 7 of Regulation (EU) 600/2014.** |
|  |  |  |  |

<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>

We agree with the definition of ‘normal trading hours’ for market operators as set out in the RTS (i.e. ‘those hours which the trading venue or investment firm establishes in advance and makes public as trading hours’). However, we believe that for OTC, normal trading hours should be considered as the hours applicable to the market where the concerned instrument is primarily admitted. We do not think it should be the most relevant market in terms of liquidity as the primary market is overall more consistent and causes less uncertainty while the latter one might change over time. The primary market should be defined as the venue of first listing. Where a security is admitted to more than one market at its initial listing, the country of incorporation of the issuer should be used to determine the primary market.

However, we believe that for specific transactions such as portfolio trades, no longer delays should be provided because that would be inconsistent with the goals of MiFID II. This issue has, moreover, already been appropriately addressed by the change in Article 17 of the respective RTS to as “as soon as technically possible”.

<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>

Regarding equities, whilst we understand that ESMA wishes to reduce ‘noise’, publication and reporting should be required for all transactions irrespective of their characteristics, in order to have the broadest visibility as possible over the types of transactions conducted in the EU. For shares the use of adapted flags will be sufficient to enable the market to distinguish between price-forming transactions and others. As such, these transactions should be reported under the technical trade category as per Table 2, Annex 1 of RTS 8.

<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>

We agree with the proposed classes and thresholds and welcome the decision to require the publication of transactions before the beginning of the next trading day, where appropriate.

<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>

No, we do not agree with the classes and thresholds proposed by ESMA. As we explained in our response to Question 42, we question the merit of having such a detailed table for ETFs with different ADT classes, especially because in our opinion ADT is not an appropriate proxy for measuring liquidity in ETFs. This is because liquidity in ETF markets is derived from the liquidity of the underlying market, which ADT fails to capture. We think implementing a less complex model similar to the alternative approach proposed by ESMA would be preferable.

However, although ESMA’s alternative approach offers a simple and easy-to-implement solution to achieve post-trade transparency, we are convinced that the specific characteristics of the ETF market - such as the additional layer of liquidity available to market makers through the creation/redemption process - allow for much higher thresholds than the single €5 million threshold proposed by ESMA.

We would like to propose an alternative to ESMA’s single threshold. We propose to consider a multiple threshold model based on the size of the transaction. The advantage would be that ESMA could define separate thresholds for real time, delayed and end-of-day reporting of ETF transactions and hence increase transparency over the single threshold model initially proposed.

Concretely, we suggest requiring real time publication of all transactions with a size below €10 million, permit a 60-minute publication delay for transactions with a size between €10 million and €50 million and allow for end-of-day publication of transactions with a size of €50 million and above, as in the proposed table below.

|  |  |
| --- | --- |
| **Minimum qualifying size of transaction for permitted delay in EUR** | **Timing of publication** |
| Transaction size < 10 000 000 | Immediate reporting |
| 10 000 000 ≤ Transaction Size ≤ 50 000 000 | 60 minutes |
| > 50 000 000 | End of the day |

We believe this proposal would provide for a well-balanced reporting regime that is in line with the MiFID Review’s objective to bring meaningful post-trade transparency to ETF markets. In addition, we note that this proposal is supported by a wide range of ETF market participants.

<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>

**Part (1)** No, we would not use different qualitative criteria. Euronext agrees with the classification, which is straightforward and easy to implement. We particularly welcome the use of the issuance size as a criterion to define sub-classes of liquidity in the fixed-income space, as it is currently used in the industry to gauge both current and future liquidity in an instrument.

**Part (2)** No, we would not use different parameters. The model proposed by ESMA clearly benefits from being operational and at the same time offers an adequate level of accuracy in determining the liquidity for different types of bonds. As a result, we do not support including other parameters as the ones currently used are sufficient to estimate liquidity for bonds.

However, we suggest to adjust the parameters (average number of trades per day, average nominal amount per day and number of days traded) downwards for corporate bonds in order to capture bonds with a lower issuance size in the liquid category, e.g. corporate bonds with an issuance size above €300 million would fall in the liquid category.

This change would allow the capturing of more liquid bonds which wrongly fall into the illiquid category when using the proposed methodology. We note in particular that a non-negligible part of senior non-financial corporate bonds are classified as illiquid but trade above the liquidity thresholds (approx. 8%).

In addition, current evolutions in the market structure for fixed income instruments justify lowering the thresholds. We understand that ESMA has sought to calibrate the thresholds in order to find an appropriate balance between transparency and liquidity, i.e. more liquid bonds being granted higher levels of transparency. Currently, the rise of electronic trading for bonds means that transactions will be smaller in size but also more numerous, thereby encouraging liquidity. Indeed, the market impact of a transaction in a given bond is measured against its issuance size – the smaller the transaction, the less of the available tradable quantity is exchanged, the smaller the market impact. Therefore, smaller transactions mean that bonds with lower issuance sizes can be made eligible to the transparency framework in MiFID II without any risk of harming liquidity.

**Part (3)** We are generally supportive of ESMA’s liquidity classification. We note however that a non-negligible part of senior non-financial corporate bonds are classified as illiquid but trade above the liquidity thresholds (approx. 8%). Lowering the issuance size thresholds for this class of bonds to €300 million, as we explain above, would help capturing these “false negatives”.

We note that many industry participants have chosen to focus on column 8 of table on page 104 of the consultation document to point out “false positives”, i.e. illiquid bonds within a liquid class.

In this respect, we would like to note that while the COFIA approach is not perfect, it provides for a reliable (overall accuracy of 88.54%), straightforward and easy to implement framework. We have consistently argued against the alternative IBIA model to use individual historical trade activity as a proxy for future liquidity. Under such an approach, historical information would still be a relatively inaccurate estimate of future liquidity and, especially in the case of new issued bonds, its absence would, by definition, pose a fundamental challenge in respect of determining liquidity.

Looking at the framework as a whole and in the absence of a trading mandate for fixed income instruments, we believe that the different waivers and deferrals in MiFIR’s transparency framework will provide enough flexibility to accommodate “false positives”.

<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>

Yes we agree.

<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>

**Part (1)** No, we think that ESMA’s classification is appropriate.

**Part (2)** No, we agree with ESMA’s proposal and welcome the fact that the role of liquidity providers has been taken into account.

**Part (3)** No, we consider that all securitised derivatives should be considered as liquid.

<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>

Yes, we agree.

In respect of ETCs and ETNs, Euronext would like to point out that, among the broader category of securitised derivatives, Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs) have similar characteristics to those of Exchange Traded Funds (ETFs) and are, from a business point of view, globally considered within the same product range. Therefore we suggest treating ETCs and ETNs as similar financial instruments to ETFs within this regulation and applying to them the same set of rules whenever possible.

<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>

**Euronext agrees with option 2.** We would agree that the purpose of MiFID and MiFIR is to increase overall transparency and to allow for more safeguards in trading derivatives. Although the intrinsic details of the products currently in scope are indeed that they trade the most leading up to expiration, that does not automatically mean that the product is not liquid. We believe that ESMA is taking the right approach in deciding that products that are already traded transparently, should not be treated in a less transparent way.

Regarding each of the proposed options:

**Option #1:** We consider that this option is a strongly limiting approach that is based on considerations not aligned with the intrinsic nature of equity derivatives products and how these are traded. As pointed out by ESMA, such an approach would result in less transparency than currently available rather than promoting it. Some products such as dividend futures which, due to their intrinsic nature, have yearly expirations would not have any maturity being considered liquid at the start of the year for no reason.

**Options #2:** MiFIR pre-trade and post-trade transparency obligations should be extended to all equity derivatives instruments available for trading on a trading venue irrespective of the time to maturity. Euronext currently operates markets in the majority of sub-classes listed in durations longer than 6 months, therefore to ensure liquidity is not impaired as an unintended consequence of obligations Euronext believes instruments on trading venues with duration of longer than 6 months should also be regarded as liquid classes.

With regards each sub-category, Euronext has the following comments:

1. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity;
2. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity;
3. Option 2;
4. Option 2;
5. Option 2. ESMA should be more specific about what is captured in this sub-category. Euronext believes ‘ETF’ and ‘volatility’ should be their own sub-classes along with any others deemed liquid. The term ‘other’ is too vague, any classes that then remain under ‘other’ can then be considered illiquid as per table in Annex 3
6. Option 2;
7. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity;
8. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity;
9. Option 2;
10. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity;
11. Option 2;
12. Option 2. Trading offered with pre-trade and post-trade transparency today without any impairment to liquidity.

<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>

Euronext suggests ESMA consider further granularity for both stock and index derivatives and define liquidity on sub-classes level where the criteria for defining a sub-class is the underlying of the derivative instrument. It should be mentioned that because of potential varying levels in the liquidity of the underlying, a number of tailored levels would be acknowledging the reality of the actual liquidity.

For the sub-classes ‘options on other underlying values’ and ‘futures on other underlying values’, the term ‘other’ is too broad and could lead to less transparency than today. Specifically, Euronext thinks extra sub-classes should be created for:

i. Options on ETFs;

ii. Futures on volatility indices;

iii. Futures on ETFs;

iv. Options on volatility indices.

In Europe markets in these sub-classes are available today in a transparent form including options on ETFs and futures on volatility indices on our own markets. Our proposed approach would allow consistency with the RTS, where these sub-classes can be considered liquid and the ‘other’ category can be reserved for illiquid classes.

<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>

Yes, we agree with the exception of ‘other’ which should be more specific to avoid the creation of any doubt. We refer to our answer on Q64.

<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>

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<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>

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<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>

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<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>

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<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>

**Bonds**

Euronext supports ESMA’s proposal. However, we would like to ask ESMA for more clarity on two issues:

(1) We understand that some systems are executable and others are indicative and we would like to have further clarification on what information is to be published from RFQ systems that only supply indicative quote replies.

(2) Similarly, we would ask ESMA to clarify what information is required to be made public from systems operating by displaying indicative quotes, but not using an RFQ-functionality.

**Equity Derivatives**

Euronext agrees with the definition of Voice Trading Systems. We agree that the bids and offers (including volume) from any member or participant which, if accepted, would lead to a transaction in the system being made public on an “information only” basis. This approach acknowledges the need for voice systems in the trading of particular derivatives, whilst requiring them to operate in a more transparent way than is the case today.

**Trading venue type 6 and transparency**

In principle, Euronext believes that transparency should favour price formation, protect end clients and liquidity providers in their risk taking activity. These should be general principles that apply to any trading venue and therefore the resulting level of pre-trade transparency and its calibration should not differ in any significant way between type of venues for the same type of trades (e.g. size of trade) as to avoid the risk of unlevel playing field among venues and more important non-harmonized levels of transparency for the market participants. Based on the above concerns, Euronext would like to highlight specific concerns for the Type 6 Trading Venue:

|  |  |  |
| --- | --- | --- |
| Trading system not covered by first 5 rows | A hybrid system falling into two or more of the first five rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first five rows. | Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the instrument, ***if the characteristics of the price discovery mechanism so permit*** |

We consider that there is not enough clarity in the level and nature of the information to be made public compared to what is required from the first 5 trading venue types. Specifically the wording *“if the characteristics of the price discovery mechanism so permit”* leaves too many uncertainties on the outcome. Moreover, it leaves too much flexibility for defining trading venue types that do not immediately fall in the first categories and that could benefit from a less certain and clear pre-trade transparency regime and potentially leading to less transparency and unlevelled playing field with other type of venues. In line with its suggestions in respect of equities’ markets (Q37) Euronext suggests that the text *“if the characteristics of the price discovery mechanism so permit”* is removed from the text for hybrid trading systems to ensure that a pre-trade transparency regime is not bent to the specifics of a trading system, but rather the opposite.

<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>

Euronext does not agree with the reserve orders limit. For all orders in an exchange management system, the minimum size should be established by the trading venue.

<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>

**Bonds**

Although in principle Euronext agrees with the proposed methodology, we would like to ask ESMA for more clarity with regard to the meaning of ‘close to the price of the trading interest’.

**Equity Derivatives**

Euronext believes it would not be appropriate to leave to the trading venue’s discretion the definition of the calculation methodology as it could lead to a multitude of different methodologies being implemented by various trading venues for the purpose of complying to the exact same pre-trade transparency requirements. This could result in confusion for market participants rather than providing certainty on how to interpret market data.

Instead, we suggest a general rule is defined in the RTS for request-for-quote and voice trading systems to publish, as a reference price for an instrument, the volume weighted average spread of the best bid and offer coming from actionable indications of interest above a size specific to the instrument, but below the large in scale size. We would suggest such a reference price could be calculated as follows:

When only a bid or offer is available, it is equally important an indicative price is shown and we believe a formula must be adopted for this also.

<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>

Euronext is not supportive of including “date and time of publication” as an additional mandatory data field in the Annex II, Table 1 of RTS 9 and question the rationale behind it. Time of the trade execution or time of quote is the time which is important to publish to understand how “fresh” or “old” the data is. Furthermore, we do not see the necessity to add further data fields.

<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>

As stated in our response to the previous discussion paper, we do not agree with the inclusion of “agency cross trades” in the list of identifiers as this is not as relevant information in the derivatives market as it is in cash markets.

<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>

Euronext considers the approach to have one proposal for all derivatives as very limiting one which does not take into account the large diversity of market dynamics among different asset classes.

Equity derivatives markets are highly automated in their execution with near-to real-time publication from the trading systems. The proposed delays are de-facto a step backwards and would allow trading activity to be conducted under worse conditions than is the case today in respect of post-trade publication. Such a development can only be detrimental for the price discovery process, by reducing overall transparency and thus negatively impacting end investors.

We agree with ESMA that the fundamental aim of these RTS should be to ensure the current level of (voluntary) transparency should be maintained, if not enhanced, as suggested by ESMA in Section 3.5, Para 90 on Liquid Markets (pp 132, CP). Therefore, while Euronext agrees with the 5 minutes proposal, we believe that in circumstances in which real time transparency requirements apply, trade publication should take place as close to real time as possible. MIFID II should promote greater efficiency in the trade publication process and encourage an evolution away from manual processes to automated processes. Within that context, a 5 minute standard is appropriate with the clear timetable established for reducing it in order to achieve a standard which is closer to real time.

<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>

**Derivatives**

No, we do not agree. Euronext believes that securities financing transactions should be under the scope of these requirements. This activity is currently based on bilateral relationships and is non-transparent. As such, we consider that this legislation could be an opportunity to bring transparency to this market, consistent with the overall goal of MiFID/MiFIR.

**Equities**

Whilst we understand that ESMA wishes to reduce ‘noise’, publication and reporting should be required for all transactions irrespective of their characteristics, in order to have the broadest visibility as possible over the types of transactions conducted in the EU. The use of adapted flags will be sufficient to enable the market to distinguish between price-forming transactions and others. As such, these transactions should be reported under the technical trade category as per Table 2, Annex 1 of RTS 8.

<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>

**Part (1)** We do not support a 48 hours deferral, as that would mean we would see trades delayed and published continuously during a trading day, which could disturb price formation. Delayed trades published continuously during normal trading hours could – even if these trades are flagged as delayed – potentially confuse market participants, especially in fast markets. We note that in some markets (the Euronext markets plus Denmark to our knowledge), end of day or early next morning deferrals are the standard. It would be contradictory to the intent of this regulation to introduce longer delays, thus leading to lower levels of transparency than is currently the case. In addition, the later the data is reported, the less informational value it has for investors.

As a result, we would suggest a daily fixed time for publication, i.e. end of day or T+2 at the beginning of the trading day. We do realise that some markets operate more hours than morning to afternoon; however most markets still operate inside regular trading hours. As such there would be no need for the 48-hour deferral for these markets and they could use instead a fixed time for publication of deferred information.

We note that the fixed time approach is also used for the possibility to grant further deferrals by the national competent authority, where they require the publication of aggregated data prior to 9:00 CET every day – or on a specific day every week. As an alternative, we propose that a LIS deferral shall be deferred until 9:00 CET on T+2 instead of 48 hours, or even a shorter time period.

**Part (2)** Euronext would agree to set the SSTI threshold at 50% of the LIS threshold provided that the latter is set at an appropriate level. As we point out in our response to point 5 below, we consider that the thresholds proposed for 2017 are rather low in the light of the transparency objectives embedded in the MiFID review.

Coming back to the 50%, we consider it is an appropriate percentage to operate RFQ and voice trading systems on regulated platforms. In the absence of a trading mandate for bonds, a threshold set at 50% of the LIS should allow regulated trading venues to provide a halfway house between pure OTC and fully transparent order book trading, thereby encouraging regulated electronic trading in the fixed income space.

**Part (3)** Yes, Euronext agrees. It corresponds to current market practice.

**Part (4)** Yes, Euronext agrees as it would ensure simplicity and clarity for market participants. If a transaction is pre-trade transparent, there is no reason why it should not be post-trade transparent as the corresponding trading interests have already been revealed to the market.

**Part (5)** Euronext strongly supports Option 2 as it will enable an annual recalculation of the thresholds based on accurate and comprehensive data from 2018 onwards. A dynamic system with recalculation will also make it possible to adapt the thresholds to global market conditions and the expected positive impact of MiFID II on fixed income markets.

We consider a yearly recalculation to be the most appropriate. A one-year period strikes the right balance between the need to timely adjust the thresholds and a clear and predictable framework that reacts to macroeconomic trends in the industry rather than to microeconomic events and volatility. Reviewing the thresholds every year will enable ESMA to let economic and market cycles unfold as well as take into account the broader life cycle of fixed income instruments. From an operational and technical point of view, annual recalculations are manageable for both platforms and market participants given it would allow markets to be informed of threshold changes with sufficient notice. In addition, we note that the MiFID framework foresees a specific waiver from transparency to cope with unforeseen events causing sudden drops in liquidity.

Moreover, Euronext agrees with the granularity of the classes on which the calculations will be performed. We believe the COFIA approach based on the issuance size provides sufficient granularity while maintaining simplicity. The chosen level of granularity of classes will not cause operational implementation issues and can be easily read and understood by market participants.

In addition, Euronext is fully supportive of the methodology chosen to recalculate the thresholds as it completely reflects the core objectives of MiFID, i.e. to bring more transparency to institutional fixed-income markets. Indeed, the chosen methodology will guarantee that at least 70% of volume or 90% of transactions are transparent, while keeping the 2017 figures as an absolute floor threshold.

Commenting on the thresholds proposed for 2017, Euronext considers that they are rather low. In the current environment, retail markets are already transparent. On the pre-trade side, institutional investors are currently comfortable with posting transparent orders of on average €1.5 million in the corporate liquid bond market (statistics from BondMatch, our transparent MTF). Keeping in mind MiFID’s objective to increase overall levels of transparency, setting the thresholds at €1.5 million for liquid corporate bonds would not bring about any material change to current levels of pre-trade transparency in bond markets.

<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>

**Part (1):** Euronext does not agree with a suggested deferral period of 48 hours for liquid standardised index, stock and stock dividend derivatives. A maximum deferral period longer than end-of the regular trading session is inappropriate as liquidity providers are expected to have hedged their immediate risks associated with a trade during the same day and in the regular (most liquid) trading session. Currently, most exchange trades are shown immediately. Non-publication concerns a smaller number of products non-publication, mainly owing to the very large trade size. The proposed steps here would limit the post-trade transparency dramatically in exchange traded derivatives, rather than increase it. In addition, the trades which are not directly disclosed are normally much higher than the Minimum Block trade size (i.e. Large-in-scale).

**Part (2):** Euronext does not agree. The size specific to the instrument (SSTI) threshold will be the determining factor in whether a transaction concluded via voice or RFQ waiver is eligible for deferred publication Transactions in standardised derivatives transacted under these waivers will, in general, benefit from deferred publication at a 50% lower size than the corresponding transaction in an open order book. This could actually incentivise dealers to trade sizes between the SSTI and the LIS thresholds via voice or RFQ in order to avoid publishing the transaction to the public immediately. It appears to be an undesirable inconsistency which would counteract the general objectives of increased transparency in the MiFID II/MiFIR framework. We would suggest setting the threshold for SSTI equal to the LIS or very close to the LIS.

**Part (3):** Euronext agrees. The notional amount traded (contracts x size x strike/futures price) as volume measure makes sense and reasonable when comparing volumes across different strikes, maturities and underlying.

**Part (4):** Euronext would like to make a counter-proposal. In setting the pre- and post-trade thresholds at the same size, ESMA appears to be implicitly saying that all negotiated trades on trading venues would be eligible for deferral in asset classes where the NCA has approved deferred publication. Looking at how equity derivatives exchanges in Europe currently operate, it is clear that such an approach would actually counteract the general objectives of increased transparency. In fact, currently the publication of block trades is deferred only on a small minority of volume, and for the largest transactions in size. The reason is, of course, that most block trades are already properly hedged at the time of reporting to the exchange, so that a liquidity provider does not need to worry about moving the market if it needs to continue hedging the derivatives trade. This is how the levels are currently implemented on several derivatives exchanges in Europe, i.e. the threshold for deferred publication is set higher than the minimum block size. Typically, the average daily volume in underlying is considered when concluding reasonable thresholds for deferrals. Euronext would therefore propose that:

* + LIS = SSTI, both for pre- & post-trade transparency (or very close to); but
  + LIS/SSTIPre-trade < LIS/SSTIPost-trade; which would correspond to the current practice of having minimum block trade size threshold < min size for deferrals.

Furthermore, it should be mentioned that because of the potential varying levels in liquidity of the underlying, a number of tailored levels would be acknowledging the reality of the actual liquidity. In essence, ESMA ultimately needs to analyse what the market impact would mean for the order book and define a size.

**Part (5):** Euronext agrees with annual calculations which will ensure the thresholds move with market changes. The calculation should be centralised at an ESMA level to ensure harmonisation across NCAs. With regards to the levels determined for 2017, Euronext is concerned about the approach pursued by ESMA for equity derivatives. While every step towards transparency is to be welcomed in OTC derivatives, the attempts in specifying liquidity and resulting thresholds for exchange traded derivatives (ETDs) should not lower existing standards and market practice. The methodology completely ignores how transactions are concluded in the lit order book on a regulated market, that is – transactions are concluded by matching orders in full or in part. Also the complete order to either buy or sell an instrument is not necessarily entered in full into the book at once. Instead the frequent usage of execution algorithms in futures markets naturally leads to many smaller transactions. The outcome of this is that for derivatives such as index futures, which are primarily traded in the lit order book, the methodology underestimates the size of the complete underlying orders resulting in the total volume traded given it only looks at transaction by transaction data. All things being equal, a class containing one or several derivatives where lit order book trading is widely adopted, will typically see lower LIS levels than classes where most or all volume is negotiated outside of the LIT order book.

The approach currently chosen by exchanges and exchange traded derivatives ensures the highest level of transparency. This would be severely impaired by the ESMA proposals put forward. Exchanges are currently working on finding a workable solution for regulators to consider that will not harm the already existing level of transparency for ETDs. Euronext is keen that any calculations are pan-European to ensure a level playing field for similar products.

<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>

Euronext would like to point out that, among the broader category of securitised derivatives, Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs) have similar characteristics to those of Exchange Traded Funds (ETFs) and are, from a business point of view, globally considered within the same product range. Therefore we suggest treating ETCs and ETNs as similar financial instruments to ETFs within this regulation and applying to them the same set of rules whenever possible.

**ETCs and ETNs**

**Part (1)** Therefore we do not agree with ESMA’s proposal to set the maximum deferral period to 48 hours for ETCs and ETNs. Instead we suggest applying to them the same post-trade transparency regime as for ETFs. Referring to Option 2 of the proposed ETF deferred publication regime, Euronext proposes to set the maximum deferral period to the end of the trading day.

**Part (2)** Given that there is no size specific to the instrument threshold for ETFs, Euronext proposes setting this threshold to 100% of the large in scale threshold for both ETCs and ETNs.

**Part (3)** Euronext agrees with the proposed volume measure used to set the large in scale threshold.

**Part (4)** In order to maintain a level playing field between ETFs, ETCs and ETNs, Euronext suggests applying the same pre-trade and post-trade transparency thresholds for all these instruments.

Regarding pre-trade transparency, we therefore suggest setting the LIS threshold at €1 million (please see our response to Q42 above).

Regarding post-trade transparency, Euronext suggests requiring real time publication of all transactions with a size below €10 million, permit a 60-minute publication delay for transactions with a size between €10 million and €50 million and allow for end-of-day publication of transactions with a size of €50 million and above (please see our response to Q55 above).

**Part (5)** Euronext does not agree with the proposed €100,000 threshold. We suggest adopting the same large in scale thresholds as proposed for ETFs in our responses to Q42 and Q55.

**Other Securitised Derivatives**

**Part (1)** Euronext agrees.

**Part (2)** Euronext agrees.

**Part (3)** Yes, we agree.

**Part (4)** Yes, we agree.

**Part (5)** For warrants and certificates, Euronext agrees with the proposed thresholds. The thresholds set for 2017 will ensure that current levels of transparency are perpetuated under the MiFID II framework.

In addition, Euronext strongly supports Option 2 as it will enable an annual recalculation of the thresholds based on accurate and comprehensive data from 2018 onwards.

<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>

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<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>

**Bonds**

Euronext disagrees. While we understand that the Level 1 text does allow for a supplementary deferral regime at the discretion of national regulators, we believe it will lead to regulatory arbitrage and a race to the bottom in terms of transparency requirements in order to attract flows to specific jurisdictions. We believe that this regime will provide perverse incentives for regulators to align themselves on the lowest bidding jurisdiction in order to avoid regulatory arbitrage – which would seem a rather suboptimal outcome.

On the content of the regime itself, we believe that an extended time period of deferral of 4 weeks is too long and would rather suggest setting a shorter time frame, such as 1 or 2 weeks. A four week deferral would affect the quality of the information provided: after four weeks, the price provided would have limited value to investors.

Moreover, we have concerns with the possibility to aggregate transactions. Aggregated transaction prices do not reflect real size and price, providing lower quality data to investors. This is because a given price only has an informational value in respect of a corresponding volume, especially in institutional markets where transaction sizes range from 1 million to several dozens of million euros. We would also like to ask ESMA for further clarity with regard to the aggregation of ‘at least 5 transactions executed on the same calendar day’ and what the procedure is for when there are less than 5 transactions in a day. Lastly, we would like to reiterate that we favour a fixed timing – as proposed in this case and also with regard to the transactions deferred under the ‘common baseline’ regime (please see our response to Q77).

**Equity Derivatives**

Euronext does not agree with the approach for exchange traded derivatives in relation to these proposals. Exchanges generally provide the highest possible levels of transparency. Reporting is most meaningful in risk transfer markets close to real time. In certain exceptional circumstances, where the sizes are large, exchanges currently allow for end of day reporting. There is a general concern that for highly liquid and transparent markets such as equity derivatives, different supplementary deferral regimes could be granted in different countries by the NCAs on the same product classes (e.g. French single stock options) offered for trading by different venues. In a fragmented landscape of derivative product, an NCA could allow real-time transparency (i.e. does not allow deferred publication at all) and another one could even grant an extended deferral period. Not requiring each NCA to adopt the same level of transparency for the same product could result in un-harmonized level of post-trade transparency for end investors, inefficient price discovery and potentially an unlevel playing field among trading venues. The risk is further exacerbated when combining this with the extremely low LIS thresholds and the long deferral period (i.e. 48 hours) that are being proposed.

Allowing for longer arrangements as proposed by ESMA would undermine current levels of transparency and thus contradict the Level 1 mandate and the G20 goals. Deferrals should be allowed in a meaningful way, but should not be allowed to be substantially over 48 hours as proposed by ESMA. Supplementary deferral regimes would go against any harmonisation among the current EU regimes and combined with the other proposals (LIS, time of publication and deferral periods) would allow for an even more relaxed regime. Some of the negative aspects highlighted above could actually materialize even today but Euronext believes that the intention of the transparency regime introduced with this regulation should be to improve the situation and eliminate such risks. Euronext urges ESMA to consider and address these concerns by providing guidance to the NCAs on the application of supplementary regimes.

<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>

**Bonds**

**Part (1)** Yes, Euronext agrees. It corresponds to current market practice.

**Part (2)** Regarding the methodology to assess a drop in liquidity, Euronext fully agrees with ESMA’s proposals in paragraph 7 p.315 of the consultation paper, i.e. that neither the lifecycle of fixed income instruments nor their cyclicality can be considered as a sudden drop in liquidity for the purpose of this waiver.

This fully recognises the fact that trading in bonds is cyclical in nature and subject to on-the-run and off-the-run periods irrespective of overall market conditions and liquidity.

**Part (3)** Euronext agrees, as long as the natural phases in the lifecycle of a bond are not considered as a sudden drop in liquidity, as mentioned in our response to point 2 above.

**Equity Derivatives**

**Part (1):** We agree for derivatives classes;

**Part (2):** We agree for derivatives classes. The period should be short so when liquidity returns in seasonal products the suspension can be lifted in a short timeframe;

**Part (3):** In order to account for seasonal contracts, the percentage for derivatives should drop to 25% for liquid, and 10% for illiquid instruments for derivatives classes.

<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>

We would like further clarification. While ESMA lists a number of transactions to which Article 1(6) MiFIR applies and to which it does not, for regulated markets the list could be further clarified since it does not clearly stipulate which products are (likely to be) in or out of scope. In that respect, it will be difficult for trading venues to pre adjust their systems accordingly.

<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>

ESMA should also take in to account the liquidity in the underlying instrument for the derivative (for options this can be the cash underlying or the future depending on the product). This is the natural hedge for offsetting risk: where the natural hedge is illiquid, mandating a derivative trades in a transparent fashion will create a liquidity gap. Secondly, as a qualitative criterion ESMA should consider forward looking criteria. In taking a decision on eligibility to the trading obligation, a forward looking criterion is essential to including the potential impact on liquidity of participants which do not currently trade in such markets, either via lack of opportunity or choice.

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

**General comment on Trading Obligation and lack of EMIR Clearing Obligation**

With regards to the recital RTS 11 – paragraph (5), Euronext is concerned about the ability of this regulation to fulfil the G20 2009 Pittsburgh summit mandate that all standardized OTC derivative contract should be traded on exchanges or electronic trading platforms. There is a loophole in the combined EMIR-MiFIR framework because of the MiFIR trading obligation’s (TO) dependency on the EMIR clearing obligation (CO) and the current lack of an EMIR CO for standardized OTC equity derivatives classes. Specifically, Euronext is concerned about the lack of an automatic CO for any OTC equity derivatives contract equivalent to standardized exchange traded equity derivatives. This situation effectively leaves market participants the ability to circumvent the application of a trade obligation as it would be possible to trade an ETD contract via an equivalent OTC look-like contract for the purpose of avoiding pre-trade transparency requirement, trading obligation on liquid exchange trade products and/or clearing.

**Overall approach proposed by ESMA**

Euronext supports the overall approach considered by ESMA in the application of the criteria and in addition recommends that ESMA includes also volumes from equivalent contracts traded OTC in order to assess whether a product is sufficiently liquid to trade only on venues.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_92>

* Microstructural issues

1. 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>

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<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>

As a general point, we believe it is important to clarify that trading venues only have a responsibility vis-à-vis their Members. The relationship between the Member and client is subject to national competent authority (NCA) oversight. At times, we feel this distinction is lost in the provisions.

In addition, we have concerns regarding the proportionality principle proposed in Article 3 of RTS 14 on organisational requirements for trading venues. We understand this principle to mean that, on top of the minimum resiliency, security and investor protection requirements in Article 48 of MiFID II, additional requirements could be imposed on trading venues depending on their scale by the national competent authority. We fundamentally question the rationale underpinning the proportionality principle, as well as its compatibility with the clear intention in the Level 1 text to apply an identical set of rules to all types of trading venues – thereby departing from MiFID 1 and the proportionality principle applied to MTFs. Applying more stringent requirements than is required by MiFID to some trading venues would result in asymmetrical situations and a clear distortion of the level playing field on which European trading venues should be able to compete. We therefore recommend removing the proportionality principle in order to ensure that all venues are covered by the same requirements.

* Definition of real time – Recital 11

In respect of the definition of what constitutes real-time, we consider that the notion of real-time monitoring should be clarified. This covers provisions in Recital 11 and Article 2. In respect of surveillance obligations, we suggest we are required to operate systems which trigger alerts on a real-time basis. However, the investigation and resulting assessment - by the trading venue and/or regulator – naturally takes place later.

* **Kill functionality – defining the scope (Article 2)**

In respect of defining kill functionality in Article 2(2), while we agree with the proposed list, we would suggest a third element should be added to cover the responsibility of the clearing house. This should reflect the fact that it is the responsibility of the clearing house to monitor intraday position limits and require suspension of trading activity to the trading venue in cases where the limits are breached.

* **Disorderly trading conditions – defining the concept (Article 2)**

We have significant concerns around Article 2(3b), specifically the reference to ‘*cases where orders are not resting for sufficient time to be executed*’. It is unclear exactly what is meant by ‘sufficient’ and in any case we question how it could capture a variety of order strategies. Furthermore, we question whether the principle underlying the proposal is not already dealt with as part of the order-to-trade requirements.

* **Recovery Point Objective – defining the concept (Article 2)**

We would like further clarification on what is intended by the Article 2(10) reference to ‘maximum tolerable amount of data’ in terms of ‘*the maximum tolerable amount of data that might be lost from an IT service due to a major incident and beyond which data has to be recovered*.’

* Compliance function within the governance process – Article 5

We question the potential conflicting roles between the compliance function and that of a trading venue’s legal and regulatory teams in Article 5(1). In our group, the two roles are distinct. We would suggest replacing the reference to compliance function with ‘governance structures’.

* **Due diligence for members or participants of trading venues – Article 8**

As a venue, we have concerns regarding the provisions in Article 8(1)(b) requiring us to establish standards covering the ‘*experience of staff in key positions within the members’*. We question how, as a venue, we would judge ‘experience’ across the range of Members on our market and, moreover, how we could dictate to our members the levels of experience they should have.

In addition, in respect of Article 8(1)(i) and the standards relating to a member’s outsourcing policy, we question the additional value this would bring given that the member is already subject to outsourcing provisions elsewhere in the text.

Finally, the requirements in Article 8(3) regarding annual venue compliance assessment of the members would constitute an onerous and unnecessary obligation. Venues should instead be required to employ a risk-based approach in respect of identifying any compliance issues within Member firms.

* Trading venues’ capacity - Article 12

While we generally support the provisions in Article 12 on trading venues’ capacity, we would like to clarify the exact intent behind the reference to *‘immediately’*. In our view, the requirement to inform a competent authority should be based around a reference to *‘within a reasonable time period’*. In addition, we would also welcome clarification that it is for the venue to decide on the exact timing of any increase in capacity.

* **General monitoring obligations – Article 13**

We are concerned with the obligation in Article 13(1) to ensure a maximum level of continuity and regularity in respect of the performance of the markets operated. While this is our clear intention, we believe some wiggle room has to be given. As a result, we would suggest deleting the *‘at all times’* provision and complementing ‘continuity’ with *‘reasonable’.*

In addition, we question whether the provision in Article 13(2) is driven by a belief that concentration of order flow is by definition a negative phenomenon. In our view, such activity should not be automatically deemed to be a negative phenomenon since it does happen under justified circumstances.

* On-going monitoring of performance and capacity of the trading systems - Article 14

In respect of the provisions on gateway-to-gateway latency in Article 14(1)(c) we would like clarification on the exact basis of the required measurement and whether it has to be undertaken for every matched trade. We have a similar question in respect of Article 14(1)(d) in order to understand whether the provision is intended to require us to measure the time it takes the matching engine to match the order, and again, the basis of the required measurement.

* **Periodic review of the performance and capacity of the trading systems – Article 15**

We question whether the provision in Article 15(2) is feasible, specifically *‘trading venues shall have the ability to determine the members that should participate in its stress tests and fine them in case they do not collaborate in it.’*

* Business continuity arrangements - Articles 16-18

We are generally supportive of the provisions under Articles 16-18, but would like to stress the point that these processes should focus on both people and systems, since both are a credible part of any business risk / continuity planning.

In respect of the specific provisions, we would like to clarify that Article 16(1) should introduce this requirement in respect of the exact scope of a venue’s BCM Policy (i.e. scope, objectives and approach). Turning to Article 16(2), while we support the majority of the provisions we would like further clarity on what is meant by ‘business succession planning’ in point (g) and clarification on the reference to ‘a specific security operations team’ under point (j). On our markets, this role is performed by a combination of IT and market services departments. Instead of reference to a specific team, we would suggest a simple requirement that venues can demonstrate they have procedures and personnel to react to system disruptions.

* **Prevention of disorderly trading conditions – Article 19**

In respect of Article 19(1), while we generally support the proposed set of arrangements, we question what trading venues can impose on their members in respect of the latter’s post-trade controls.

* **Mechanisms to manage volatility – Article 20**

While we support the overall thrust of the provisions in this article, we are concerned about the implications arising from one the provisions in Article 20(3). Specifically, under point c of this article, we are unsure as to how we would implement the requirement to take account of the trading profile of investors. Simply put, we do not see how a trading venue would be able to do this.

* **Pre-trade controls – Article 21**

In respect of Article 21, we would request a clarification of the intent behind paragraph 1. In our view, it is the role of the competent authority to ensure that investment firms are in compliance with the requirements in the future RTS 13.

<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>

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<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>

* **General comments**

Euronext agrees that conformance tests are part of the protections that are used upstream production environments. For that reason, conformance tests represent a major piece of the defensive line surrounding the production trading environment: before any go live of a customer application, this application needs to be certified by the Euronext as being safe for the customer, for Euronext and by extension for the whole community of customers.

Conformance tests should concern members of the trading venue but also companies that develop software interacting with the matching engine at the application level. Euronext agrees that Conformance tests have to take place in a dedicated environment. This environment has to:

* Be accessible via the same access means as the production environment;
* Mimic a full production environment;
* Be fully supported by a dedicated team.

There are mainly three events that trigger the need of a conformance test:

* A prospect currently in the process of getting his membership;
* A technical change or a new requirement initiated by an existing customer;
* A technical change at the Trading venue level, the launch of a new service or a new functionality.

In the first two cases this process is considered as a customer on-boarding, a business as usual activity whereas in the third case, the change is delivered through a project. The phase during which customers are asked to conduct conformance tests is the customer readiness period. The go live of the project is subsequent to the state of readiness of the customers’ community.

We believe that ESMA should detail the technical changes that requires a new Conformance test and would like to make the following suggestions:

* In respect of technical changes or new requirements initiated by the customer:
* Externalization of software developments to an Independent Software Vendors (ISV) or the opposite, an internalization of developments;
* A switch of Independent Software Vendors;
* An upgrade of customer’s software to a new version;
* An extension of current access to a new platform, a new product, or a new market that requires specific developments;
* A switch of protocol;
* A change of clearing house;
* A new membership status.
* In respect of technical changes at Trading Venue Level and launch of new services and functionalities:
* Upgrade of an existing piece of software interacting with customers’ software: order entry gateways, market data gateways and matching engines;
* Replacement of one of these software with a brand new one;
* Switch from a technical infrastructure to a new one;
* Launch of a new platform, a new product, a new service, a new functionality.

The type of Conformance Test the Member is required to take is determined by the scope of the change required or imposed: we suggest it could be either a full test or a partial test. In the case of customer readiness it is the responsibility of the trading venue to define and impose the tests to the customers. In the case of an on-boarding, it is the customer’s responsibility to identify, in conjunction with the Trading Venue staff, the type and depth (partial/full) of the test he needs to take. In both cases tests are mandatory before the customer’s software goes into production.

* **Testing the member’s capacity to access trading systems – Article 10**

We would suggest that the scope of Article 10 should be clarified to ensure that it refers only to an obligation to venues to require Conformance testing in respect of algos deployed on their own venue. There is a potential source of confusion in Article 10(1b). In addition, we believe that it should be clarified in Article 10(3) that the list of financial instruments available for testing is materially consistent with the ones available in the live environment.

* **Testing the members’ algorithms to avoid disorderly trading conditions – Article 11**

In respect of the general approach taken under Article 11, we would like to stress that trading venues should be under an obligation to require their members to undertake testing that is reasonable designed to avoid disorderly trading conditions. This is a more balanced approach to the currently drafted absolute requirement. In addition, the venue requirement should only pertain to new or modified algos traded on its venue

Moreover, we are very concerned with the proposal in Article 11(2) since it is very difficult to design scenarios which will reproduce live environments. This is because it is hard to replicate what participants would actually do: while we could replay a day's trading, we question the value since algos are being changed all the time. In addition, considering that most algos are deployed on multiple venues, testing scenarios on one single venue may bring little benefits in terms of improving the overall security of trading and would be redundant with the pre-trade risk management requirements imposed on participants. The pre-trade risk management requirements on participants, including in respect to the technology they use to trade, are sufficient in themselves to meet the overall objective of this provision.

<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>

* **Pre-determination of the conditions to provide direct electronic access – Article 23**

In respect of Article 23, we are unclear as to whether DEA means DMA. The definition of DEA proposed appears to be disproportionality broad, which could result in a situation where all clients of a firms could be considered as DEA users, therefore both implying disproportionate requirements both from venues (which will be responsible for monitoring DEA provision) and for DEA users (as they will have to be registered under MiFID). A tighter definition, precisely targeting Sponsored access and DMA would be more appropriate for this purpose. Furthermore, the notion of ‘permitting DEA’ is confusing, as basically all venues admitting members with an agency capacity could be deemed to permit DEA. Yet, trading venues do not necessarily have the information concerning whether their members provide DEA services or not. As such, venues should not be held liable for not having this information, as they rely on the willingness of members in this respect. The requirement as drafted seems, in this respect, disproportionate and raises important issues as to the responsibility of venues in respect to elements on which they have no controls by themselves.

Specifically in respect of point b, we question whether undertaking specific due diligence on prospective clients to which the members intend to provide DEA is really part of a venue’s role.

* **Systems and controls of DEA providers and trading venues permitting DEA through their systems – Article 24**

In respect of Article 24(1), we suggest that it be clarified that the systems referred to are indeed members’ systems.

<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>

Overall Euronext has four broad concerns with the drafting of RTS 15:

1. Definitions of competitive prices, simultaneous two-way quotes and comparable size;
2. Trading venue responsibilities;
3. Stressed market and exceptional circumstances relating to extreme volatility;
4. Misalignment of the 30% & 50% presence thresholds.

While we address points 3 and 4 in our responses to the following questions, we will cover Points 1 and 2 in this section together with some general remarks.

* General comments

Before making our detailed points we would like to make two general comments. Firstly, we would like to note our concern that the draft RTS could negatively affect the function of liquidity providers, which are essential for price guidance and liquidity, in particular in illiquid and new products, and thus for ensuring market quality and integrity. This is because the **scope has been extended to all asset classes, which all have different characteristics than equities.** As a result, we believe that the requirement should be revised and limited to liquid instruments only, as those engaged in algorithmic trading are mainly trading in these instruments. The ESMA proposals pose the risk that not only would new and illiquid products fail at market, but also that liquidity is reduced in liquid instruments, which would contradict MiFID’s goal to ensure liquid markets.

**Secondly, in respect of regulatory approach,** there are several provisions in the draft RTS which impose certain regulatory duties on trading venues which we are not entirely sure we can fulfill. As a general principle, we believe it is important to state that while venues will have a range of prescribed responsibilities, there are some areas which are the domain of the competent authorities. We identify the provisions within this RTS in the relevant sections.

1. Definitions of competitive prices, simultaneous two-way quotes and comparable size

Firstly, we question the workability of ESMA’s proposed definition for **‘competitive prices,’** meaning “*quotes posted within the average bid-ask spread*”. The concept of ‘average’ is vague and open to interpretation. Not only must it be calculated intraday, it will also move faster than market makers will be able to adjust. Secondly, we are greatly concerned that average will be interpreted as “best bid offer” (“BBO”). Market makers cannot quote continuously inside any BBO spread. The most highly paid market making agreements today require only that a market maker meet BBO for a very limited period of time (> 5% of daily trading hours). Furthermore, these are restricted to the most liquid equity instruments. Such requirements would be entirely inappropriate for the vast majority of financial instruments traded on a trading venue. Currently, market practice is to quote within a fixed range of BBO, adjusted for the liquidity of the instrument.

As an alternative, we propose to redefine RTS 15 (7) in accordance with ESMA’s Short Selling Regulation [EU No 236/2012 on Short Selling and Certain Aspects of Credit Default Swaps] (Short Selling Regulations (“SSR”)) guidelines on the market making exemption, which recognise the proportionality principle when defining the market making range. In that context, for liquid instruments ESMA provided that “*competitive prices should be within the maximum bid/offer spreads that are required from market makers/liquidity providers recognized under the rules of the trading venue where they are posted for the concerned instruments*.” This is highly practical as it recognises that trading venues can apply a range that is appropriate to the liquidity of the instrument and sufficient to attract market makers, while imposing a sufficiently ambitious requirement for liquidity provision. This would also be consistent with Article 48 of the MIFID II Level 1 text, which provides for “such a requirement [to be] appropriate to the nature and scale of the trading on that regulated market.” Therefore we propose the following alternative definition:

**Amendment Proposal:**

Article 1(7): ‘competitive prices’ means quotes posted within the **normalised ~~average~~** bid-ask spread **calculated by the trading venue and made public**.

Secondly, in terms of the proposals on **defining simultaneous two-way quotes**, we are concerned that it will be impossible for a venue to monitor whether two-way quotes were entered at the same time. Instead, we would propose defining simultaneity as meaning two-way quotes which are ***present*** on the book at the same time. In addition, two orders from one trading firm sent independently from one another (and in addition potentially by different traders) within one second cannot be considered as pursuing a market making strategy by virtue of their opposing market sides in sizes greater than the stipulated minimum quote size. The decisive factor for a market maker quote is not the time stamp at which the quote sides are sent, but more that both market sides are available **simultaneously** for matching at the same point in time. Therefore we propose the following alternative definition:

**Amendment Proposal:**

Article 1(5): ‘simultaneous two-way quote’ is a two-way quote where both sides are **~~entered~~** **present** in**~~to~~** the order book **at the same time** **~~within one second of one another~~**;

Thirdly, we disagree with ESMA’s proposal to require the **size of the** **opposite quotes** posted in the order book to not diverge more than 50% of each other. This is because we fear this will add to the risks of false measurement and misclassification of market participants’ trading activity as a market making strategy. Unbalanced quote sizes are not a valid market maker quote as they reflect a market maker’s bias for a certain market direction, in which he is willing to take on significantly more risk than in the other. Instead, we believe that the comparable size requirement should be equal to, or superior to, a minimum size set by the venue and averaged on a monthly basis. As with Point 1, this approach is consistent with the Short Selling Regulation. An alternative approach would be to align the minimum size with the minimum quoting obligation for SIs, as intrinsically market-making on a venue and as an SI are functionally the same activity, and as such should be governed by similar rules.

**Amendment Proposal:**

Article 1(6): ‘comparable size’ means that the size of the opposite **sides of the simultaneous two-way** quote~~s~~ posted in the order book **are equal to or bigger than the minimum quote size set by the trading venue and/ or at least of the corresponding Standard Market Size for the instrument ~~does not diverge more than 50% of each other~~**.

* Trading venue responsibilities;

We disagree with the proposal that trading venues must be able to detect market making strategies (be it on one – their own - or more venues). The obligation should clearly rest with the firm to notify the venue. Of course, if a venue does identify that such a strategy is in place of which it was not notified, then it should require the firm to enter into a market making agreement. We would like to highlight that the Level 1 text, specifically Article 48(3), requires the trading venue to “monitor and enforce compliance”. Therefore we do not agree with ESMA’s proposal to enforce a more onerous requirement in Level 2. However, we do support leaving trading venues with sufficient discretion and flexibility to set out the specific quoting parameters relevant to their markets (p. 387 of CP). This also applies to other aspects such as determining the specifics in commercial contracts between the trading venue and the trading participant engaged in algorithmic trading pursuing a market making strategy and in the market making scheme, respectively.

We also question the ability of trading venues to fulfil the obligations in Article 10(3)(b) requiring us to prevent firms from implementing trading strategies in cases where the firm has refused to sign a market making agreement. In our view, it should be the responsibility of the competent authority to take action in the case of any refusals.

Finally, regarding the three month advance notification to participants of changes to the market making scheme in Article 9(2), we would like ESMA to clarify that this requirement only applies to significant changes to the terms of the market making scheme. As it is currently worded, it implies that changes in parameters should also be notified at least three months in advance. However, this is not practical as trading venues need to be able to amend the parameters within a much shorter timeframe in line with changes in trading conditions for a security or the market as a whole.

**Amendment Proposal:**

**Article 2 -** **General requirements**

2. Investment firms engaged in algorithmic trading and pursuing a market making strategy shall sign a market making agreement **~~following the notification by~~** **with** the trading venue**. ~~in that respect, when the trading venue has detected the effective implementation of a market making strategy without prior notification~~.**

3. In cases where an investment firm is not willing to **~~engage~~** **sign a market making** ~~in~~ **~~such~~** agreement **~~following the notification by~~ with** the trading venue, it shall disconnect the strategy identified.

**Article 10 -** **Responsibilities of the trading venue**

**~~1. A trading venue shall have in place arrangements in accordance with the nature, scale and complexity of their business to identify market making strategies as defined by Article 17(4) of Directive 2014/65/EU pursued by its members in cases where they have not notified in advance their intention to pursue a market making strategy. Trading venues shall not be held liable for this.~~**

**~~2. Where it is not practically possible for a trading venue to identify strategies involving more than one venue or more than one financial instrument, it shall have arrangements in place to detect strategies affecting one instrument traded in its venue.~~**

3. Trading venues shall monitor and enforce compliance by investment firms of all requirements specified in this Regulation and the market making agreements. In particular, a trading venue shall:

(a) have the ability to set negative incentives to ensure that firms pursuing a market

making strategy shall:

(i) **~~Inform~~** **Notify** the trading venue **prior to implementing** **~~before the implementation of~~** the strategy;

(ii) Sign a market making agreement **~~following the notification by the trading venue where the firm has been detected as pursuing a market making strategy~~**;

**~~(b) Prevent those firms from implementing that strategy in cases where the firm rejects signing the market making agreement but shall not be held liable in cases these firms find other arrangements to access their platforms; and~~**

(c) Ensure that firms engaged in a market making agreement meet the respective requirements laid down in the agreement on a **~~systematic~~ consistent** basis. In this respect, trading venues shall ensure that non-compliant firms are not only excluded from potential benefits, but also risk a **~~significant~~** fine;

(~~b~~**d**) put in place **~~effective~~** measures to verify the effective provision of liquidity on an ongoing basis, and to detect that the obligations under the market making agreements are fulfilled; and,

(~~d~~**e**) keep a detailed record **on ~~the measures and~~** penalties adopted, as well as on the

monitoring activity carried out on members’ **~~behaviour~~** **compliance** with market making obligations.

4. Trading venues shall publicly disclose on their website:

(a) The terms of the market making scheme;

(b) The names of all members that have signed a market making agreement; and

(c) The financial instruments covered by those agreements.

<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>

Euronext does not agree. We believe the **entrance presence and ongoing presence requirement should be symmetric at 50%.** A trading strategy, or behavior, that makes up more than 50% of a firm’s time is a substantial activity rather than a 'side-line' or coincidental one. It is important to capture only investment firms which intend to act as a market maker in order to: (a) preserve commercial choice for participants and (b) minimize the chance of risk incidents of imposing obligations on firms that may not be able or willing to take them on. Otherwise, there is a risk that firms will cease liquidity providing strategies to avoid unintended consequences, which will reduce rather than increase the amount of liquidity in European markets.

Moreover, an **observation period** for market makers of one day is too onerous and will lead to systematic misclassifications and is not feasible from an operational perspective. Such a low one day qualification threshold will discourage market participants from incrementally increasing their quoting presence to evolve from a market maker ‘interested’ in market making into a fully-fledged market maker. An observation period of 1 month is suggested, during which a market maker’s quote presence must on average lie higher than the threshold defined by ESMA. Many trading venues do operate performance monitoring systems for registered market makers that can also be calibrated to allow only for a specified number of exception days within a given month. If for example the monthly average fulfillment is set with a quote coverage ratio of 50%, it can be ensured via this parameter that market makers do not merely quote the full trading day with 100% coverage for 10 days and then refrain from quoting on the remaining 10 trading days. In the following month, a market maker must enter into a binding agreement with the trading venue, effective measurement starting upon registration, and sanctions effective in the month thereafter.

**Amendment Proposal:**

**Article 3 -** **Circumstances in which an investment firm is deemed to pursue a market making** **strategy**

1. For the purposes of this Regulation, an investment firm shall be deemed to pursue a market making strategy if it is posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one financial instrument on a single trading venue for no less than **~~30~~ 50** % of the daily trading hours during **~~one trading day~~****a rolling monthly (calendar) period**.

<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>

We welcome ESMA’s approach in setting a threshold which still provides flexibility to the trading venues to set a higher threshold relevant to its market, however we have major concerns on the proposed incentives in respect of stressed market conditions.

Generally, we welcome the suggested 50% minimum presence for market makers during “normal trading conditions”. This level of quote presence will, however, not be attainable for market makers during periods of stressed market conditions as ***defined*** by the legislator.

* Defining stressed market conditions

In this context, we are concerned with ESMA’s **definitions of stressed market conditions and disorderly trading conditions and, in particular, the proposal for a trading venue to ‘declare’ when there is a stressed market condition**. While such situations can sometimes be clear, there are cases where it may not be immediately apparent depending on the security, general market conditions and the speed with which it happens. Moreover, the actual definitions of these terms differ across the RTS, even those that refer to the same Article in Level 1 e.g. RTS 13 and RTS 15. Therefore we believe it is not reasonable to expect a trading venue to declare such instances as they occur.

In addition, we disagree with the definition in Article 1(8)(a) relating to stressed market conditions. In our view, the presence of a situation *“… where a significant change in the number of messages being sent to and received from, the systems of a trading venue”* does not per se represent a stress situation for the market and its participants. Significant changes in the number of messages and transactions are natural in equity derivatives markets as a result of volatility changes, macro and corporate news, specific situations such as roll weeks, etc. All market participants and operators of trading venues should size their trading systems to cope with peak conditions. Therefore, if system load metrics reach levels of concern, providing incentives to participants to keep on quoting or even increase their quoting (e.g. to gain more benefits), might only worsen the situation (i.e. snowball effect) leading to an instable trading environment. As long as these metrics are within the system capacity of the trading venue, they should not be of a concern and if they instead reach levels that are of concern, such situation should be considered as one of the “Exceptional Circumstances”.

* Defining incentives

In addition, the ability to adapt incentives to the performance of market makers should also be set generally and not distinguished by different market. We are deeply concerned that the proposition in RTS 15 Article 8(1)(b)(iii) to require of trading venues *“****incentives offered in stressed market conditions to compensate for the additional risks taken by investment firms engaged in a market making agreement”*** implies financial incentives. We would like clarity that these incentives should not be limited to fees etc., but should also be understood as encompassing relaxed quoting requirements. Requiring via regulation compensation of market risks in stressed market conditions by means of setting incentives conflicts with the requirement on trading venues’ to ensure neutrality as well as fair and orderly price formation, since venues should not be exposed to market risks linked to trading strategies.

In addition, we also believe the provision under Article 11(1) should be amended to provide greater clarity on the nature of the identification and communication requirement on trading venues to their members.

**Amendment Proposal:**

**Article 8(1)(b)(iii):** **trading venues may establish that incentives will be based on the performance of market makers under the market making agreement**~~Incentives offered in stressed market conditions to compensate for the additional risks taken by investment firms engaged in a market making agreement.~~

**Article 11 -** **Requirement for trading venues with respect to market making agreements during stressed market conditions**

1. Trading venues shall identify and communicate to the members engaged in a market making agreement **in a timely, fair and non-discriminatory manner** the existence of stressed market conditions in **~~their~~** **such** market **~~through readily accessible channels~~.**

<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>

No, we do not agree. We do not believe that the list of exceptional circumstances set out by ESMA in Article 5 sufficiently captures all legitimate scenarios when a market maker may need to temporarily withdraw from its quoting obligations. In particular, we believe that events which are specific to one or more stocks should also be included as an event which should not have to affect all financial instruments on the market in order to be deemed exceptional circumstances. In addition we are of the view that this should be a non-exhaustive list in order to provide trading venues with some flexibility in determining when such a situation has arisen on their markets.

**Amendment Proposal:**

**Article 5 -** **Exceptional circumstances impeding providing liquidity on a regular and predictable** **basis**

2. Exceptional circumstances shall only include:

(a) Circumstances of extreme volatility, leading to an interruption of trading with respect to **~~all~~ one or more** instrument~~s~~ **~~traded on that venue~~****specific to the market making agreement**;

(b) Political and macroeconomic events**, including** **~~such as~~** acts of war, industrial actions and civil unrest or acts of cyber sabotage;

(c) System and operational matters that imply disorderly trading conditions;

(d) Circumstances which impede the investment firm’s ability to maintain prudent risk management practices which are either:

(i) Technological issues including problems with a data feed or other system that is essential in order to be able to carry out a market making strategy;

(ii) Risk management issues, **~~which would encompass problems~~** **including** in relation to capital or clearing; and,

<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>

We support ESMA’s position that trading venues should not be able to cap the number of firms qualifying for market making schemes given that ESMA also provides for venues to limit access to such schemes on the basis of non-discriminatory qualitative criteria such as ‘best performer’. In terms of the provisions, we believe that a **three month pre-announcement** is operationally inefficient and it will not be possible for trading venues to efficiently handle the high number of required market making schemes for its products. We therefore propose to replace this with one month.

Finally, we would also suggest adding volume to the dimensions of effective liquidity contribution in order to further ensure **proportionality of incentives** under Article 9(5), as liquidity contributed by market maker quotes at best leads to trade executions that is reflected in traded volume.

**Amendment Proposal:**

**Article 9 -** **Fair and non-discriminatory market making schemes**

2. Any proposed changes to the terms of the market making scheme shall be communicated to the existing participants not less than **one month** **~~three months~~** ahead of the proposed effective date.

3. Trading venues shall provide the same incentives, terms and conditions to all members engaged in a market making agreement who perform equally in terms of presence, price and size, according to published, non-discriminatory and objective criteria.

4. Trading venues shall not limit the number of participants in a market making scheme, but may limit the access to the incentives to those memberswhich have met certain parameters either providing a certain degree of quality in the liquidity provided, measured in terms of presence, size and spread, or rewarding only those which have met the requirements above a certain threshold measured in terms of presence, size and spread.

5. The incentives offered under the market making scheme have to be **~~proportionate~~** **appropriate** to the effective contribution to the liquidity in the trading venue measured in terms of **volume,** presence, size and spread. In particular, those incentives [which shall not be limited to fee incentives per se, but extended to setting up more adapted requirements] shall promote the presence of members engaged in market making agreements in case of stressed market conditions.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

In general, we agree, particularly in respect of the non-discriminatory practice in relation to third party service providers which is an essential obligation within the Regulation. A requirement that those providers offer the same non-discriminatory access can only be ensured on a contractual basis, but cannot be verified by the venues themselves. Therefore we are of the opinion that the task can only be to ensure that third party service providers get the same access and have to fulfil the same obligations as investment firms, who want to directly use the colocation services of venues. The monitoring of connectivity and latency should stay with the venue. Venues having outsourced the colocation services to a third party shall ensure on a contractual basis that the provider of those services fulfils the requirements of this Regulation.

<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>

We note that Article 4 focuses on rebates, incentives and disincentives, where the definition of ‘rebate’ given in Article 1(4) describes a rebate as a refund for market making activity. We believe this should be clarified in the Article as follows:

**Amendment Proposal:**

Article 1(4): ‘Any rebate, incentive or disincentive ***for market making activity*** provided under a fee structure shall be pre-determined by publicly available document of the trading venue and based on non-discriminatory, measurable and objective parameters including volumes effectively traded, services effectively used and the provision of specific services***~~, such as provision of liquidity provided by a market maker~~*.’**

In addition, Euronext strongly supports the ability for trading venues, under Article 6 of RTS 17, to charge for testing if the testing requirements for venues remain drafted as such, considering the significant costs incurred by the testing requirements for algorithms considered as new on the trading venue.

<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>

We do not believe that rebate-levels have impact on improper trading. We think basic principles (e.g. transparency, non-discrimination, etc.) should be sufficient to ensure proper trading. However, fee rebates, or fee rates more generally should ensure the sustainability of the trading venue, i.e. should be structurally sufficient to cover the costs of maintaining the full market integrity and surveillance that trading venues should provide. Otherwise, there is a risk the capacity of trading venues to ensure the resiliency and security of their systems will be undermined, and with it the overall resiliency and security of trading in the EU. See also our response to Q121.

**Amendment proposal**

Article 5: ‘A trading venue shall not use a fee structure where, upon reaching a certain threshold of total trading volume, the total number of trades or the cumulated trading fees generated by a trade benefit from a discount including those trades already executed. **The fee structure of trading venues shall enable each of them to comply, at all times, with the organisational requirements provided in this Regulation,** **i.e. should be structurally sufficient to cover the costs of maintaining the full market integrity and surveillance that trading venues are required to provide.’**

<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>

We are not aware of examples of such fee structures. However, fee rebates, or fee rates more generally should ensure the sustainability of the trading venue, i.e. should be structurally sufficient to cover the costs of maintaining the full market integrity and surveillance that trading venues should provide. Otherwise, there is a risk the capacity of trading venues to ensure the resiliency and security of their systems will be undermined, and with it the overall resiliency and security of trading in the EU. We refer to our amendment suggestion under Q118.

<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>

We note that the general concepts for volume discounts and cliff edge types are clearly described in Article 1 but not in Article 5 of Chapter IV (“Fee structures that may create incentives for disorderly trading”), therefore we propose to adjust Article 5 under Q118. In addition, we would suggest introducing more flexibility over the definition of the party to which the volume discount may be applied. We suggest not restricting it to members only but also including DEA users.

**Amendment proposal**

Article 1(5): ‘volume discount’ means a price differentiation scheme based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member **or client or user** whereby the marginal trade executed subsequent to reaching the thresholds is reduced;

<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>

Euronext does not agree and would like to propose a change to the way the average number of trades per day is computed.

We would strongly suggest that the methodology for the calculation of the average number of trades per day should not be limited to only the most relevant market in terms of liquidity or the primary listing market. Instead, the methodology for the calculation should take account of all price-forming transactions in the instrument concerned, across all multilateral trading venues and systematic internalisers in Europe.

The rationale for this change in methodology is that, as drafted, the application of the ESMA approach to our markets would run the risk of:

* Incentivising dark trading at midpoint under the Reference Price Waiver and also OTC (via VWAP trading which as drafted is currently allowed as an exemption to the trading mandate);
* In the absence of a tick size regime for SIs and OTC, creating price improvement opportunities on SIs and dark venues to the detriment of lit multilateral trading;
* Benefiting the lowest latency members, thereby going against MiFID 2 objectives;
* Incentivising trading on venues where the ‘waiting’ line will be lower, increasing fragmentation;
* Incentivising venues operating several order books for the same stocks.

We elaborate on these risks in our response to Q124.

While we propose taking into account all price-forming transactions in the EU in the methodology, we support maintaining the current number and bounds of liquidity bands and keeping the price ranges as proposed by ESMA. This simple change in the methodology will alleviate the issues for those venues currently using FESE Table 4, while not causing any major problems for those based on FESE Table 2.

Furthermore, in a post MiFID 1 environment, limiting the basis for the calculation of liquidity to one venue only does not reflect the current, and probable future state, of fragmentation in Europe’s equity markets. In addition, the revised methodology would add more granularity for highly liquid instruments, while not damaging liquidity in less liquid instruments whose trading is typically a lot less fragmented.

Consequently, the change to the methodology Euronext is proposing would ensure a regime that is flexible enough to be implementable across all trading venues in the EU, from the largest most liquid markets to small and regional markets, to ensure that no market or trading venue is disadvantaged by the regime. Furthermore, it would be implementable for all equities across European trading venues and accommodate both liquid and illiquid securities, with the basis for the liquidity calculation reflecting current and future levels of fragmentation in Europe’s equities markets. In particular, it should not in any way hinder the liquidity in SME securities which can be particularly sensitive to changes in market microstructure.

<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>

**Shares**

For less liquid instruments, we believe that the regime is adequate. For smaller price ranges, tick sizes will increase accordingly to what participants recommend for SMEs. We can also expect that the proposed table will incentivise trading in these stocks where the potential for spread-earning will be more aligned with the level of risks incurred. In addition, for less liquid low value stocks, the proposed level of granularity (4 decimals) is an improvement on the 3 decimals currently allowed by FESE Table 4 and will enhance price formation.

However, we have concerns that the table proposed by ESMA will cause significant issues for higher price ranges and highly liquid instruments, which constitute about 50% of the business executed on our markets. We are concerned that the proposed table will result in suboptimal, wider tick sizes that will constrain the spread of more liquid instruments. This is because volumes that are currently quoted at tight spreads will consolidate at new but wider spreads. This means that costs for end investors will go up, because liquidity takers will pay in the end more for the same liquidity they can currently get at cheaper explicit cost. Retail investors will be especially impacted by this.

While we have successfully operated under FESE Table 4 for the past 6 years, applying wider tick sizes to our markets as per the ESMA table would run the risk of:

* **Incentivising dark trading at midpoint under the Reference Price Waiver and also OTC** (via VWAP trading which as drafted is currently allowed as an exemption to the trading mandate) – when the spread is artificially constrained by an inappropriate tick size on transparent markets, execution at the midpoint and VWAP trading become very attractive options for market participants to obtain a better price;
* **Creating price improvement opportunities on SIs and dark venues to the detriment of lit multilateral trading** – the fact that the tick size regime only applies to regulated markets and MTFs means that other types of platforms will be able to offer price improvement at a very low cost. For instance, if we consider a stock with a price of 145 EUR and a corresponding tick size of 0.02 EUR, to become top of book any participant of the regulated market would have to improve the current bid or offer price by at least 0.02 EUR. On the contrary, an SI would be able to improve the price of the regulated market at a fraction of that cost, for instance by posting quotes at price increments of 0.01 EUR, 0.005 EUR or even smaller. We outline below a potential solution to that particular issue;
* **Benefiting the lowest latency members, thereby going against MiFID 2 objectives** – this is because higher absolute tick sizes mean that volume will concentrate at touch points of wider spreads. As the time between posting and execution increases, being the first in the queue becomes more important, thereby giving an advantage to those market participants that are fast enough to achieve higher queue priority. This seems contradictory with the objectives of the tick size regime, i.e. slowing down trading;
* **Incentivising trading on venues where the ‘waiting’ line will be lower, increasing fragmentation** – for the same reasons we outline above, wider tick sizes will increase the time between posting and execution. Finding a venue with a shorter waiting line at the best bid and offer will income important for market participants, also in the context of best execution requirements, thereby increasing fragmentation;
* **Incentivising venues operating several order books for the same stocks** – when the waiting line becomes too long, trading venues will be incentivised to reduce it by distributing liquidity across several split order books for the same stocks, thereby increasing fragmentation.

For equities, as outlined in our response to Q123, we believe these issues could be solved by adopting a more granular approach taking into account all price-forming transactions in the instrument concerned, across all multilateral trading venues and systematic internalisers in Europe. This would alleviate the concerns for more liquid instruments, while not damaging liquidity in less liquid instruments whose trading is typically a lot less fragmented. While we propose taking into all price-forming transactions in the EU in the counting methodology, we support maintaining the current number and bounds of liquidity bands and keeping the price ranges as proposed by ESMA.

In addition, while we recognise that the opportunity for applying a tick size regime to SIs and OTC has been missed at Level 1, we would like to make a proposal that would help mitigating the impact of this unlevelled playing field. In the absence of a tick size regime for systematic internalisers, we suggest restricting their capacity to price improve to meaningful price improvement, i.e. price improvement of at least one tick compared to the best bid and offer on the reference venue. This would ensure that SIs and multilateral trading venues are on an equal footing when it comes to providing price improvement opportunities to market participants.

**ETFs**

Regarding ETFs, we do not believe that adding liquidity bands would improve the regime. On the contrary, we welcome ESMA’s decision to assign ETFs to the most liquid category, which is a considerable improvement on the previous proposal with several liquidity bands. We do question the rationale for making the tick size a function of price only; on our markets, the correlation between the spread and the price is very small (-0.06). This also holds true for the correlation between the turnover and the price. However we acknowledge the considerable difficulties in properly assessing liquidity in ETFs and consider this table to be a step in the right direction.

Nonetheless, we still have significant concerns on the impact the proposed regime will have on our markets. We have run an impact analysis on our market and found that the proposal as drafted will result in tick size changes for more than half of our market. Perhaps more importantly, the analysis shows that the tick size will considerably increase (tick size multiplied by a factor of 2 to 30) for about 40% of the ETFs listed on our market.

Concretely, we anticipate the following impact on our markets:

* While we understand the table was designed with the view of not constraining the spread, significant increases in tick sizes will mean that the spread will be constrained for a non-negligible part of our products. Applying the table as currently drafted would mean that the spread to tick ratio is going to decrease for around 250 products. For these products, the average spread to tick ratio is currently 40, whereas with the new regime it is dangerously approaching 17. What concerns us the most is that under the proposed regime, 77 instruments will have a spread to tick ratio between 0 and 5, and 205 instruments a spread to tick ratio between 0 and 15. This accounts for almost 51% of the turnover on our markets. This means that spreads on our market will be significantly constrained with all the negative consequences that follow.
* We anticipate a concrete risk of volumes flowing away from multilateral regulated platforms due to tick size arbitrage. The fact that the tick size regime only applies to regulated markets and MTFs means that other types of platforms will be able to offer price improvement at a very low cost. For instance, if we consider an ETF with a price of 145 EUR and a corresponding tick size of 0.02 EUR, to become top of book any participant of the regulated market would have to improve the current bid or offer price by at least 0.02 EUR. On the contrary, an SI or an OTC market participant would be able to improve the price of the regulated market at a fraction of that cost, for instance by posting quotes at price increments of 0.01 EUR, 0.005 EUR or even smaller. The risk to see volumes flowing away to OTC is particularly important for ETFs as the trading mandate does not apply to them.
* ETFs which are not denominated in euros will be particularly impacted – for instance, an ETF denominated in Japanese Yen on our market will see its tick size increase from 0.01 to 2.
* Another concern we have is that, under the new regime, tick sizes will change intraday when a given instrument moves from one price range to another. This would cause distortions in trading and confusion for market participants.

We note that these concerns are not specific to our market and are shared quite broadly across the industry.

Euronext makes three proposals to improve the regime and help mitigate its potential negative impact:

1. **Adapting the table to better take ETF characteristics into account** – we suggest adapting the last liquidity band of the table in order to mitigate the negative impacts we list above. As shown in the table below, we propose to set the tick size up two levels compared to ESMA’s proposed table. With this approach, we have sought to adapt the tick size in such a way that minimises spread constraints for the products with higher turnover, thereby providing a workable solution for most of our market.

|  |  |  |  |
| --- | --- | --- | --- |
| Price Range | | Our Proposal | Current ESMA Proposal |
| >= | < |  |  |
| 0 | 0.1 | **0.0001** | 0.0001 |
| 0.1 | 0.2 | **0.0001** | 0.0001 |
| 0.2 | 0.5 | **0.0001** | 0.0001 |
| 0.5 | 1 | **0.0001** | 0.0001 |
| 1 | 2 | **0.0001** | 0.0002 |
| 2 | 5 | **0.0001** | 0.0005 |
| 5 | 10 | **0.0002** | 0.001 |
| 10 | 20 | **0.0005** | 0.002 |
| 20 | 50 | **0.001** | 0.005 |
| 50 | 100 | **0.002** | 0.01 |
| 100 | 200 | **0.005** | 0.02 |
| 200 | 500 | **0.01** | 0.05 |
| 500 | 1000 | **0.02** | 0.1 |
| 1000 | 2000 | **0.05** | 0.2 |
| 2000 | 5000 | **0.1** | 0.5 |
| 5000 | 10000 | **0.2** | 1 |
| 10000 | … | **0.5** | 2 |

However, we note that it is rather difficult to come up with a solution that works for 100% of the market. This is mainly due to the fact that, as we pointed above, price is not correlated with turnover and liquidity. This means that while the table would work for most ETFs, it still has the potential to harm liquidity in others. In addition, while a revised table would provide a more tailored framework for most of the market, it would not address situations in which a very small change in price (e.g. from 100.000 to 100.002) would result in a disruptive 150% increase in the tick size (from 0.002 to 0.005). In order to mitigate these threshold effects and to insure that the framework is appropriate for all products, we suggest to complement this revised table with an adjustment system monitored by regulators – please see point 2 and Q127 below.

1. **Allowing tailored adjustments in well-defined circumstances** – regulators should have the capacity to adjust the tick size when it is harming liquidity or constraining the spread. This would complement the changes we propose to make to the table above and ensure that the adoption of a harmonised regime does not harm liquidity in some of the most liquid ETFs. Please see our response to Q127 below.
2. **Restricting price improvement on SIs** – in the absence of a tick size regime for systematic internalisers, we suggest restricting their capacity to price improve to meaningful price improvement, i.e. price improvement of at least one tick compared to the best bid and offer on the reference venue.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We believe there are particular circumstances in which tick sizes will need to be adjusted. Examples for such circumstances include, but are not limited to, situations in which the tick size is constraining the spread and/or has a negative impact on liquidity.

These specific situations could be identified and measured based on objective criteria – e.g. the spread to tick ratio or the spread adjustment factor, which could be monitored by trading venues, market makers and issuers alike. When these indicators show that the minimum tick size according to the ESMA table is not appropriate anymore, trading venues could alert their national competent authority.

The national regulator, after consultation with its peers and with ESMA, would then be able to adjust / reduce the tick size in the instrument in question. That decision would be applicable to all trading venues on which that instrument is admitted to trading.

We note that ESMA is proposing a minimum tick size table. We understand this to mean that trading venues will retain the flexibility to adjust tick sizes upwards if and when required by market conditions.

<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>

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<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>

We think that an exception system based on objective criteria – e.g. the spread to tick ratio or the spread adjustment factor – and monitored by regulators would allow an efficient interaction with the market microstructure. Please see our response to Q127 above.

<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>

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<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>

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<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>

* Data publication and access

1. 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>

Euronext supports ESMA´s approach to the detection and correction of errors and omissions by DRSP. We also support not requiring CTPs to detect errors or omissions in the information they received from APAs and trading venues.

<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>

Setting prescribed minimum / maximum recovery times and making them a legal requirement is too prescriptive and will discourage potential participants. It is impossible to cater for every scenario and it is in the interests of the APAs, CTPs and ARMs to be providing services otherwise clients will go to competitors. We support the timescales as long as they remain guidance and are not a legal requirement.

<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>

Euronext agrees that DRSPs are able to establish their own operational hours.

<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>

Euronext disagrees with the proposed requirement for an APA or CTP to correct information on behalf of an investment firm,. In our opinion, an investment firm should make provisions to ensure it is able to correct its own information. Furthermore, we question the requirement for a stress test. It is in the interest of the provider to be able to manage this correctly: in the event they are unable to do so, clients will go to a competitor. In addition, we believe that CTPs should be able to define their own additional services and therefore we do not support any prescription in this respect.

Finally, we oppose the provisions in Article 8.2(c) regarding the determination of fees charged by the data reporting services provider and related third parties. In a competitive market the proposition that a national competent authority be involved in price regulation is questionable in our view.

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

We do not agree with the proposed timelines: in our view they look aggressive and we suggest that, as an alternative, 6 to 9 months would be more realistic. In addition, we would note that there is also a significant compliance cost to managing this data which we fear has been overlooked in the ESMA analysis.

<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>

We agree with the definition of machine-readable. However, we would like to stress the point that most Exchanges already provide such services with customers connected so changes to the definition may impact existing services. In addition, we believe that a 1 month period is too short for both provider and customer base to make changes: in our view, 3 months would be more realistic.

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

We agree.

<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>

No, we do not agree. The CTP is a data vendor and should not be assigning trade IDs since this is the role of the trading venue. Similarly, Unique Trade Identifiers (UTI) should be provided by the trading venue. Trading venues must retain the already existent identifier systems and include a MIC code to ensure the uniqueness of information for each trade.

<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>

It is important that the approach to the timestamp is standardised. ESMA has stated elsewhere that for trading venues the ‘matching’ timestamp should be used and not the publication timestamp. We ask that ESMA clarify which publication timestamp is to be used, either the output from a trading venue or from a data vendor. We also ask that ESMA clarify the definition of what is to be considered as an ‘electronic system’ as this can have a very wide interpretation.

<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>

We believe that accuracy to the second is sufficient for an APA.

<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>

The Market Model Typology (MMT) proposal has existing standards which need to be used to flag the source of a trade. The MIC code (Market Identifier Code) is the best tool for this standardisation. All trading venues must have a MIC code in place in order to make it more practical to consolidate data.

<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>

We would like to stress that any unbundling of data will increase costs for trading venues, vendors and end users. In addition, as data vendors are not covered by the legislation, there would be nothing requiring them to maintain the disaggregation – potentially, they could rebundle the data.

It should be noted that in addition to potential technical costs related to disaggregation, there are also administrative costs – i.e. the more data packages that have to be maintained by vendors, the more administration they have to do. When considering disaggregation requirements we believe ESMA should also consider the impact of implementing the changes. For example, in the case of disaggregation by index, this would require all parties to change the components of the packages, including reference data and historic data for each index re-balance. If this were to be multiplied across all European venues it would lead to a significant administration effort across the industry, with any mistakes being very costly – for very little benefit – especially if the vendors rebundled the data. Consequently, we would like to propose the following level of disaggregation:

* Pre and post trade data for:
  + Equities
  + FICC (Fixed-Income, Currency, Commodities)
  + Derivatives

Any further unbundling of derivatives products would be too granular and would face a too limited audience. Currently, Euronext disaggregates pre and post trade data. We do not support, however, the introduction of an obligation to disaggregate pre and post-trade data by asset class as this should be left to the discretion of the venue in response to consumer demand.

We also offer additional packages for delayed data versus real time, and packages tailored for retail and professional clients.

<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>

Euronext can support the ESMA approach subject to additional criteria being added to ensure the buyer is responsible for reporting an OTC trade where the seller is a non-EU entity.

<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>

Yes we agree unless the seller is a non-EU entity. Please see our response to Q146 above.

<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>

Euronext strongly considers that where an extraterritorial regime and/or when a 3rd country infrastructure does not meet European law requirements, particularly those imposed by EMIR, trading venues and CCPs should be able to deny access.

Moreover, the legal risks identified in Article 4(2) of RTS 24 are extremely narrow, and do not include the range of [legal] risks that a CCP is required to analyse pursuant to EMIR or the CPMI-IOSCO PFMIs. Examples of the types of [legal] risks which a CCP must analyse and ensure are manageable before agreeing with a trading venue to clear a financial instrument include the legal basis for contract formation, including compatible rules for account allocation, error trades, voiding contracts, trade reporting and position management, as well as compatibility of the termination dates or termination rights in relation to the contracts, and dispute resolution. A CCP would also need to ensure compatible arrangements between the CCP and trading venue relating to anti-money laundering, sanctions policies, permissible jurisdictions of participants, timing of irrevocability of transactions, governing law, licensing arrangements, required public procurement processes, etc. Of particular importance is the need for a CCP to ensure that granting access would not result in the CCP being unable to comply with existing laws. For example, if granting access would result in a CCP being unable to meet European or US laws (resulting in it no longer qualifying as a US DCO) then this should be valid grounds for denial of access. This should include, for example, US restrictions on netting for FCMs and EMIR CCP authorisation, capital or risk management requirements and differences in terms of liquidation periods or procyclicality requirements (and in fact any part of the default waterfall or provisions relating to Total Loss Absorbing Capacity).

ESMA also needs to take into consideration that a CCP could deny access in the case of existing settlement arrangements not functioning effectively for the market under consideration (where physical settlement may be a feature of the contract or its valuation). While CCPs can potentially clear any products, this should not undermine the possibility for the end client to seek the settlement and delivery of the products given that not all CCPs have access to the relevant and necessary settlement structures available in Europe to ensure an efficient fair and orderly market.

Moreover, in accordance with accepted EU law principles, non-discriminatory access means a CCP is required to treat two different trading venues in the same manner unless any different treatment is objectively justified. Certain provisions of the RTS would require changes to be made to existing business models in order to grant access requests. This goes beyond the requirement to provide non-discriminatory access as set out in the Level 1 text. As a result, Euronext considers that these provisions are ultra vires. They may also infringe on a European company’s freedom to conduct business and to property rights.

A CCP will not necessarily have the operational capacity, know-how or resources in place to clear products that do not already form part of its service offering. This is the case whether or not a CCP is authorised to clear a particular product, since such authorisation is granted according to broadly defined asset classes, rather than for particular products. Accepting such requests within the timeframes specified under Article 35(3) of MiFIR (nine months in total in the case of exchange-traded derivatives) would not necessarily permit the CCP to ensure that adequate arrangements are in place to clear such products in accordance with its regulatory obligations. We note that ESMA’s decision not to impose a clearing obligation for FX non-deliverable forwards was in part based on the fact that only one European CCP is authorised to clear these products. This implicitly recognises that making arrangements for the clearing of a new asset class is a complex process and should not be imposed upon CCPs. A CCP must be permitted to make its own business decisions in line with sound risk management practices.

<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>

Euronext strongly considers that where an extraterritorial regime and/or when a non-EU infrastructure does not meet European law requirements, particularly those imposed by EMIR, trading venues and CCPs should be able to deny access on these legal grounds. Legal risks must be included as grounds on which a trading venue could potentially refuse an open access request. Any trading venue or CCP should be able to deny access based upon legal risks. For reasons of systemic integrity and market stability, it is not appropriate for execution or clearing venues to be required to take on significant undue legal risks that cannot be managed. This has been reflected for CCPs in Article 4(1)(c) of the RTS, but also needs to be included in Article 6 of the RTS for trading venues.

ESMA also needs to take into consideration that a trading venue or a CCP could deny access in case of absence or incompatibility of appropriate settlement system(s). While CCPs can potentially clear any products, this should not undermine the possibility for the end client to seek the settlement and delivery of the products. In our view, CCPs do not all have access to the relevant settlement systems or structures available in Europe.

To complete the reasoning of ESMA as developed in paragraph 39, Euronext suggests adding the type of users to the number of users. Indeed, different user types do generate different types of risks especially the risks caused by the credit quality of the GSMs and DCMs, their systems, operating structures as well as the nature, type and number of their clients.

As per paragraph 42, Euronext would include a risk related to the overall speed of the market infrastructures. Indeed, since open access would make trading venues and CCPs absolutely intertwined (“spaghetti bowl” effect), the ultimate outcome of multiple connected trading venues and CCPs globally would make the whole system dependent on the speed of the slowest participants. Discrepancies in IT burdens would make the whole system less inefficient and we recommend ESMA take this parameter into account to allow trading venues and/or CCPs to accept or reject open access request.

<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>

No, Euronext firmly disagrees and notes that no rationale is provided for it in the consultation paper. Trading venues must manage the orderly and fair functioning of the markets. As such, trading venues would need to acquire more staff dedicated to the market control and surveillance. Compliance with these requirements would become more complex (if not impossible in view of the current drafting of the requirements on netting by CCPs) and may require additional specialist human resource. The ultimate outcome that the open access provisions could deliver means that human resources will become increasingly important to the market structure and could be a limiting factor in a decision on access.

<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>

No, Euronext disagrees. The grounds specified in the RTS are significantly narrower than the provisions of the Level 1 text. They should be broadened to ensure consistency. Indeed, MiFIR Article 35(4)(b) states that: “the competent authority of a CCP or that of the trading venue shall grant a trading venue access to a CCP only where such access…would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.”. In order to be consistent with this provision it is important to clarify that any one of the conditions set out in Article 7 would constitute sufficient grounds by itself to justify a competent authority denying access. In addition, in order to be consistent with MIFIR Article 35(4), a competent authority must be satisfied that there would not be an adverse effect on systemic risk, i.e., it needs to have a degree of certainty. A competent authority should therefore be empowered to refuse an access request where granting access would create significant undue risks for the CCP or the trading venue in a way that may have a wider negative impact on the market.

ESMA should also include in its assessment risks related to order book fragmentation and with splitting open interest or indeed where the possibility of interoperability agreed to by a specific set of infrastructures and NCAs could undermine market stability for certain products were it to be extended through such access.

Finally, Euronext strongly considers that where an extraterritorial regime and/or when a non-EU infrastructure does not meet European law requirements, particularly those imposed by EMIR, trading venues and CCPs should be able to deny access on this legal ground. Legal risks must be included as grounds on which a trading venue and a CCP could potentially refuse an open access request. Trading venues and CCPS must be subject to the same legal provisions in order to develop their capacities; any legal discrepancy within the legal regime would create a risk of regulatory arbitrage and additional risks.

<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>

Euronext strongly agrees that the terms of the access arrangements should specify which financial instruments will be subject to the access arrangement. Granting access to one sort of instrument is not grounds for an assumption that access would be granted to others without going through a full access process including all relevant parties who understand the risks and constitute the relevant market structure. Euronext also strongly believes that the applying party must cover the full cost of access unless otherwise agreed by the parties.

<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>

The costs of connectivity, ongoing operational costs and strategic development must be taken into consideration. Regarding the application of the same fee and rebate schedule as other CCPs accessing the trading venue, trading venues should be able to apply a difference of treatment so long as they could provide the rationale behind their difference in terms of treatment. In addition, a trading venue and CCPs should perhaps provide a schedule of charges for access and economic conditions as a basis for the discussions surrounding the granting or rejection of an open access request.

<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>

We do not agree with this proposals. Economically equivalent contracts should not only be identical contracts but should have the same contract terms for the set of financial instruments for which the CCP is already authorised.

Moreover, and unlike the ESMA approach, Euronext deems that economically equivalent contracts must only include contracts with identical terms belonging to a class of instruments that the CCP has been authorised to clear. Indeed, different terms mean different standards to calculate the level of margins different corporate actions, different expiries which could seriously harm the work of the CCP as clearing similar contracts with different terms would create unnecessary risks.

Euronext disagrees with ESMA’s view that it is the CCP that shall determine whether a contract traded on the trading venue to which it has granted access is economically equivalent to those contracts it clears. In our view, this decision should be the result of a joint understanding between the trading venues and the CCP as otherwise this may drastically impede the control and supervision function of the trading venues. Euronext would even recommend that trading venues should necessarily be represented within the risk committee of the CCPs which clear its products – a current market practice at most CCPs and which should be retained.

Euronext also urges ESMA to take into consideration the differences in terms of netting cycles. Indeed, certain CCPs use real time netting while others use batch netting or time based netting. Since open access would make trading venues and CCPs absolutely intertwined, having multiple connected trading venues and CCPs, potentially on a global scale, could make the potential ultimate outcome on the netting cycle dependent on the slowest participants. Discrepancies in netting cycles would make the system less efficient and we recommend ESMA take this parameter into account.

Moreover, Article 35(1)(a) explicitly specifies that “netting procedures” should not be adopted which would “endanger the smooth and orderly functioning, the validity or enforceability of such procedures”. The RTS does not provide for the possibility of a CCP not applying netting processes on this basis. The RTS should accordingly be amended to avoid inconsistency with the Level 1 requirement. In addition, it should be made clear that the netting arrangements should not endanger clearing, market surveillance or position management functions for the reasons set out above.

Article 12 refers in places to “netting processes”, in places to “netting process” and in places to “netting”. In practice, there are a range of netting processes, each with their particular considerations, all of which should be subject to non-discriminatory treatment. All references to netting in Article 12 should be made plural to encompass all these processes.

The approval process proposed in Article 12(3) is unduly onerous and disproportionate. It would lead to the highly disruptive outcome that all decisions by a CCP not to apply netting to economically equivalent contracts (of which there would potentially be a large number, given the definition of economic equivalence proposed by ESMA) would be subject to the review procedure referred to in Article 49 of EMIR. This is especially true given the numerous potential situations where there will be an obvious necessity not to net materially different contracts in the same way. Conversely, the RTS would not require any decisions to apply the same netting treatment to any two contracts, despite such decisions having the potential to involve substantially greater systemic risk and risk to the CCP than any decision not to apply the same netting treatment. If an access request would increase risks to CCPs which they are not able to mitigate, granting access may be inconsistent with EMIR’s objective to ensure the safety of CCPs. The approval requirement hinders CCPs’ ability to manage risk and could increase systemic risk. Systemic risk is an overarching factor for ESMA to consider in the furtherance of its objectives. Moreover, all CCPs are bound by Article 49 of EMIR, and as such we do not believe that the proposed Article 12(3) is necessary.

The definition of ‘basis risk’ in Article 12(4) is inadequate. It does not, for example, cover the obvious differences in value between two contracts with identical specifications except for a difference in contract size. In practice, an access request would require an analysis of the specific contract, and the implications of netting. There are many variables involved and a definition would necessarily be limiting. We believe that there is sufficient understanding of the issue among CCPs and trading venues to not necessitate a definition.

<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>

Yes, Euronext agrees.

<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>

Euronext would suggest ESMA provide clearer information about the methodology applied to the threshold relevant to the notification procedure. If all exchange traded derivatives are to be included in the calculation, we would request ESMA clarify what a trading venue being part of a group means for this purpose.

<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>

We agree that benchmark data can be required for the purpose of trading and clearing. However, as each product is different, the information requirements should be agreed upon by both parties as a commercial relationship. Outlining the specific information requirements in the RTS which can cover all potential products may cause a breach of data distribution policies and a unforeseen cost burden. As this will be a commercial relationship between the trading venue or CCP and the benchmark provider, the required data should be negotiable and tailored to the specific requirements and commercial benefits to the traded or cleared product.

Below we will provide further specific comments on elements of the draft RTS:

**Article 21.1.a**

On the basis of this provision *“a feed of the relevant benchmark’s values”* needs to be provided. While we agree that the feed (i.e. the benchmark values) should be provided, we do not see the need to provide any further market data. What is troubling with the quoted language above, is that it can be interpreted as meaning the administrator will need to provide a dedicated feed directly to the trading or clearing venue. This would generally be cost prohibitive and in opposition with normal business practice which is to supplied this through an intermediary, such as a data vendor. Any underlying or further information is regular trading information that can be obtained via the regular commercial venues (market data providers).

Additionally, the provision of a benchmark license is a commercial agreement and is tailored to suit the needs of both participants. As each trading and clearing venue is different, along with the products are traded and cleared on it, the data and requirements will change per venue and product. Stipulating all of the required data, access and usage rights for a wide variety of products may have an inverse effect on the pricing of index licenses. This is because it would not allow for a tailored approach to provide only the exact data needed to trade or clear the product as a result of being required to bundle the data, access and usage rights into a larger package.

**Article 21.1.c**

We understand the need for a clearing house to assess the historical risk of an index to set internal margin and other thresholds: however, trading venues do not impose such requirements. As this will be a commercial relationship between the parties, we do not understand why this the data should be a mandated requirement. As the access to historical data is generally available to all participants, either via a subscription directly through the Benchmark Administrator or a vendor, with clearly defined usage rights depending on the commercial relationship, we would suggest to delete this requirement from article 21.

An alternative proposal would be to have the CCP or trading venue explain why it needs the historical value and how it intends to use it. This would allow the Benchmark Administrator to retain control of its intellectual property rights and ensure fair usage and availability to all participants.

**Article 21.2**

We would suggest replacing the word “developed” by “created”. This is because “developed” does not adequately protect the intellectual property rights of the benchmark provider, while “created” ensures the ownership of IP rights are understood. We propose amending the paragraph to read:

*“In respect of composition and methodology, the information provided shall allow the trading venue or CCP to understand how each benchmark value is* ***created****,”*

**Article 21.2(b)**

Instead of requiring all criteria and procedures to be provided, we would argue that only relevant criteria and procedures should be provided. The following elements are, in our view, the most relevant:

* the components;
* when the components are derived
* the timetable
* the current composition and weighting
* the intraday and end of day levels
* the proposed changes and schedules

We would like to point out that these elements are also covered in the Commission’s Proposal to regulate Benchmarks.

**Article 21.3**

This provision seems to be superfluous as paragraph 1 already stipulates that the benchmark values need to be included. In paragraph 2 under (b) the specific elements of the benchmark values are even further defined. We question the need for the text in paragraph 3.

<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>

In principle yes, we agree with these elements. Our concerns lie with the reference to making the criteria publicly available and the retro-active requirements to change existing agreements should a new licensee in the same category negotiate new clauses to the licensing conditions. Each agreement should be made on the grounds of commercial and economic value between two parties, taking into account the cost and benefit structure of each party in association with the license. By having the same conditions apply to each licensee an unforeseen benefit may arise if retro-actively applied. Setting the minimum requirements in a package of data, usage and rights could produce an adverse effect on cost by including more commercial value than the commercial relationship requires. We believe that, in principle, the potential differences in conditions between different entities would not constitute an un-level playing field across trading venues or clearing agencies and can be objectively justified.

Below we will provide further specific comments on the draft RTS:

**Article 20.4 and 20.5**

The same basis for providing the information to different trading venues should be dependent on the product. Only if the venues references the same (element of) the benchmark, should the basis for information be the same. We would suggest the following text amendment:

*“ 20.4. A person with proprietary rights to a benchmark shall provide information to a trading venue on the same basis as it provides to other trading venues,* ***provided the request covers the same scope of product****, unless a different basis can be objectively justified.”*

*“ 20.5. A person with proprietary rights to a benchmark shall provide information to a CCP on the same basis as it provides to other CCPs,* ***provided the request covers the same scope of product****, unless a different basis can be objectively justified.”*

**Article 20.8**

We agree that it should be possible to refer to information that can be obtained via other (commercial) resources. However, we have some concerns about the condition of that information being timely and reliable. This is because it is not clear which party needs to establish whether that information is timely and reliable. Moreover, given the lack of a standard to compare the information flow to, it will be difficult to come to some sort of common understanding of what constitutes “timely” and “ reliable”.

**Article 22 – General comments**

Euronext are of the opinion that the scope of Article 22 of the draft RTS is wider than the MiFIR mandate allows for. Article 22 sets the ‘other conditions’ as stipulated in article 37(4)(b). According to the wording, ESMA is to draft regulatory technical standards to specify: *"other conditions under which access is granted, including confidentiality of information provided".* This is mirrored in the first part of Article 22(2) draft RTS: *"A person with proprietary rights to a benchmark shall set the conditions in paragraph 5 for licensing agreements pursuant to Article 37 of Regulation (EU) No 600/2014".* But the second part of Article 22(2) draft RTS introduces a new *obligation* ("and shall make freely available to a trading venue or CCP upon request the conditions for the category") which is not found at Level 1. This also applies to paragraph 3 which requires the criteria to be made publicly available.

The Level 1 text does not mandate transparency for access to benchmarks. In that respect the suggested wording of Article 22(2) and (3) should be adapted and the requirement to make the conditions or criteria available to a trading venue or CCP upon request should be deleted.

A supporting argument can be found in Article 36 MiFIR according to which a trading venue is to "provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access". This text is very clear on what is to be transparent. Article 37 MiFIR is equally clear in the sense that it does not mandate transparency on the conditions or fees and therefore it should not be in scope of the draft RTS.

Euronext suggest that Article 22 of the draft RTS is limited to the scope of Article 37(4) MiFIR and sets the conditions (to which we are commenting further below) only. Any reference to transparency of conditions or fees should be removed (paragraphs 2 and 3). In any case, in order to ensure common practice, any trading venue or CCP asking for a fee schedule applicable to its specific request will have to enter into an NDA or LOI before receiving a fee proposal. As this is common practice for any commercial business (as this shows actual intent by the person requesting the information), we expect this procedure to be in place after implementation of MiFIR.

**Article 22.4**

The conditions need to be the same, including cases where the persons with proprietary rights to a benchmark and a trading venue or CCP are connected by close links. It is not clear what is intended with the language “by close links”.

**Article 22.5**

While we understand the intent of the Commission to provide an equal starting point for terms and conditions, we believe this is best served using existing IP rights and infrastructure in place. Due to the nature of the relationship this will be commercial in character and the terms and conditions should be negotiated between the licensee and licensor. We suggest this should not be a minimum mandate but rather an example of conditions.

**Article 22.6**

Tailoring per individual licensee should remain possible as this is common practice within the benchmark licensing business and often because of specific requests by licensees. Each client will have individual needs and requests depending on the nature of their business, their commercial offering to their clients and the overall goal it wishes to achieve.

**Article 22.7**

We refer to our comments under 22.5.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_159>

* Requirements applying on and to trading venues

1. Do you agree with the attached draft technical standard on admission to trading?

<ESMA\_QUESTION\_CP\_MIFID\_160>

We would like clarification on the exact interplay between the proposed text and existing regulation. In our view, we should avoid a clash with existing regulation dealing with the admission rules with respect to the admission process and the securities considered to be admitted on a Regulated Market. Euronext is of the opinion that (1) the existing admission process, (2) existing arrangements with regard to the aforementioned securities and (3) existing regulations concerning information to be available about the securities/the underlying securities are reasonable and sufficient. Consequently, Euronext sees RTS 25 only in place to clarify existing regulations, not to change them.

<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>

In its consultation paper ESMA specifies that these obligations are covered by the Prospectus, the Transparency and the Market Abuse (in the future the Market Abuse Regulation) Directives and that it is mainly the issuers who are under the direct responsibility to comply with these obligations. Furthermore the monitoring of ongoing obligations of issuers is up to the national competent authorities and as a result of this, Regulated Markets cannot be held responsible for verifying compliance by issuers. Indeed, none of those EU texts designate the market undertakings as recipients of regulated information nor to any control procedure that have to be taken into account.

In order to manage a smooth functioning of the market, Euronext uses information on companies which are admitted to listing on its markets. For the time being this information is provided directly by the issuers on a contractual basis, according to the Euronext Rulebook. The same information could also be obtained by other means since the issuer has the regulatory obligation to make them public. In other words, Euronext uses all information available to maintain a fair and orderly market but we are not responsible for ensuring that issuers comply with their obligations.

Current practices on Regulated Markets seem to vary significantly. ESMA recognizes that there seems to be agreement that the arrangements in place are adequate and that the details should be left to the discretion of each regulated market.

As arrangements for ensuring compliance with disclosure obligations, Euronext could propose that Regulated Markets during the admission to listing process, clearly inform Issuers of their disclosure obligations towards the national competent authorities.

<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>

The monitoring of the Regulated Market’s ongoing obligations is up to the national competent authorities. As a result of this, Regulated Markets cannot be held responsible for verifying their issuers’ compliance with obligations under Union law or for facilitating access to information published under Union law for members and participants of a Regulated Market.

As ESMA does not appear to see a need for detailed, prescriptive requirements and intends only to clarify the arrangements in place should grant easy, fair and non-discriminatory access while also clarifying the scope of the information obligations, we understand that the current arrangements proposed by Regulated Markets are sufficient.

<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_167>

* Commodity derivatives

1. 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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

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<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>

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<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>

Euronext supports the use of deliverable supply to define the position limits for both physically and cash settled products for the spot month. It is very important that physically and cash settled products are treated the same way in order to ensure equal treatment and a level playing field between trading venues irrespective of the settlement procedures.

Deliverable supply need to take into account the physical capacity to deliver over a time frame identical to the remaining maturity of the instruments. For example, for our “milling wheat contract”, actual deliverable supply is a multiple (roughly annual rotation rate of 30 times) of the instantaneous capacity. It is therefore important to segregate deliverable infrastructure by applying real average rotation rate depending on silos location.

Euronext would also like to highlight the need for fair competition and coherence as per the choice of the national competent authority (NCA) assessing deliverable supply: is the NCA competent as the domiciliation of the instrument or as per the domiciliation of the physical delivery infrastructure? In any case, NCAs should adopt similar methodologies on a per commodity basis and define similar levels of deliverable supply, and hence position limits, when regulating the same physical commodities.

Euronext is also of the opinion that trading venues are the best placed to source and provide data in relation to deliverable supply to the relevant NCA. This is because trading venues are: (1) neutral and independent from the trading interests of their members, (2) have legal obligations to apply associated position management and (3) have ready access to such data. This data can then be used by them to calculate the baseline levels for determining the position limits for the commodity contracts. We suggest using an open interest approach for spot months and we stress the need for equal treatment between regulated trading venues and OTC trading.

<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>

The percentage matters less (a 25% baseline is quite low in any case and should be amended to reach a higher level) than the taking into consideration of deliverable supply over a proper time horizon (remaining life-time of an instrument). If deliverable supply is considered as an instantaneous capacity only, the baseline should be no less than 50%. Moreover, it will be necessary to consider the extent to which the seven factors enumerated in the MIFID Level 1 text should increase or decrease that level in order to establish the spot month and other months’ position limits for each commodity contract.

<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>

A 40% baseline is not enough for some small contracts that are local by nature: there is always a possibility that a major local exporter needs to benefit from the economics of a fully loaded vessel which can for instance (Panamax equals 60 KT) be of a lower but close to the capacity to the instantaneous deliverable supply capacity. For example, in our “corn contract” FOB French Bay we could be confronted with a situation where a major exporter could not use Euronext to cover fully loaded vessels. In this case, 75% would be more realistic.

<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>

Euronext agrees that NCAs should have a 15% discretion for altering baseline position limits. However, for new or relatively new contracts, this parameter should be raised to at least 25%. Some of the factors which ESMA may use to alter the baseline level should be given greater weight than others due to their paramount relevance to orderly markets and pricing considerations.

<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>

Illiquid markets or markets with a low fragmentation (i.e. limited number of participants) should benefit from higher allowances from the NCAs. When the number of actors detaining a substantial portion of the open interest is low, the allowance should be raised accordingly to at least 25%. It is understood that this implies an objective definition of what constitutes a liquid or illiquid market.

<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>

As ESMA proposed, the baseline level for both the spot month position limit and the other months’ position limits should consistently be based on deliverable supply for spot months.

However as per the issue of new contracts and illiquid markets, Euronext supports maximum flexibility in the setting of the position limit parameters. Typically, on a newly launched contract, the first trader would own 100% of the open interest. Therefore, for illiquid contracts and new contracts, there should not be any position limits until the NCA determines that the contract has become liquid.

<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>

Euronext does not think that it is possible to apply the position limits regime to new and/or illiquid contracts and to nascent markets, whereby there may be only a handful of active market participants either at the outset, or on an ongoing basis. It might be necessary to apply a threshold test – possibly expressed as a number of active market participants or an open interest ratio to deliverable supply - below which the application of position limits would be suspended until such time as participation has increased. If such a measure is not introduced, it is possible that many new markets will not be able to co-exist with the position limits regime. Euronext does not believe that ESMA’s non-equity liquidity analysis would be a suitable basis for determining the applicability of position limits to new and illiquid commodities contracts because the product classes which have been devised under ESMA’s COFIA approach are too broad for this purpose.

<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>

With regards to the “other months”, the key factor is the number of harvest or output produced periods between the time at which the position limit is set and the maturity date of the relevant contracts. In most cases, the trading venue should have considered this in calculating a deliverable supply measure for the “other months”.

As per the spot month, the key factor will vary depending on the product concerned. For commodities which are delivered on an “in store” basis, the key factor might be the amount of physical stock which has been certified as meeting the contract standard or which could readily be certified. In contrast, for commodities which are delivered on a “Free on Board” basis, the key factor might be whatever supply is potentially available at the delivery points which are potentially located both within and outside the European Union. This would be some multiple of that based on whatever delivery volume the infrastructure could ultimately support.

<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>

Seasonality in relation to the harvesting, processing and shipment of agricultural commodities will need to be taken into consideration by the trading venue and the regulator. They will also need to consider the likely impact of any exogenous events or longer-term trends, which could affect future deliverable supply positively or negatively. There should be considerations in favour of a regime of exemptions duly delivered by the CCPs in the case of goods in storage in good standing.

<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>

Euronext suggests considering the ratio between the peak of open interest of a given derivatives contract and the physical deliverable supply. When this ratio reaches a given threshold, the market would no longer be deemed “less liquid”.

<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>

Euronext broadly agrees with the features listed in the point 31. However, the case of new and illiquid markets, in which there may be only a handful of active market participants either at the outset or on an ongoing basis, needs to be taken into consideration. It might be necessary to apply a threshold test – for instance, expressed as a number of active market participants - below which the application of position limits would be suspended until such time as participation increased. If such a measure is not introduced, it is possible that many new and illiquid markets will not be able to co-exist with the position limits regime.

<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>

Euronext is of the opinion that ESMA has correctly identified the main features of the underlying commodity markets which would need to be taken into account by NCAs in establishing position limits.

<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>

Defining a meaningful time period is difficult as (1) contracts mature at different rates and (2) once they are mature, some contracts will become benchmark products whilst others will remain niche products that are characterized by limited participation.

Applying an arbitrary cut-off point beyond which a contract is no longer regarded as “new” – at which point lower position limits would automatically apply - may have the effect of stifling the development of new markets and damaging the viability of niche products. Instead of applying an arbitrary quantitative cut-off point, NCAs will need to consider qualitative factors (such as those mentioned in the previous paragraph) when determining whether a contract should continue to be regarded as “new”.

<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>

No, Euronext does not agree. This should not be based on the age/maturity but rather on the ongoing liquidity.

<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>

Euronext does not have further comments.

<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>

Yes, Euronext agrees that the factors enumerated under Article 57(3)(a)-(g) of MIFID II, and the manner in which ESMA proposes to frame the methodology, provides NCAs with sufficient scope to take into account the specificities of different markets without incorporating asset-class specific elements into the methodology.

<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>

The main factors which are taken into account in the design and application of existing limits and controls by trading venues are deliverable supply, the length of time to contract maturity, and the size of position which is capable of being delivered without causing logistical problems or delivery failure.

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

Agricultural commodities are traded and recognized as physical forwards today. As such, the threshold to be applied should not be too low. The threshold should be at least 15%.Euronext agrees with ESMA’s proposed approach of defining “risk reducing positions” in a manner which is consistent with the relevant definition under EMIR (EMIR Regulation (EU) 638/2012), Article 10(4)(a), and Commission Delegated Regulation (EU) No. 149/2013, Article 10). The purpose of EMIR Article 10(4)(a) is to identify a non-financial counterparty’s positions which are “*objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty*”. Such positions are disregarded for the purposes of calculating whether the non-financial counterparty’s overall position in OTC derivatives exceeds the EMIR clearing threshold. This is analogous to the process under MIFID II whereby position limits in respect of commodity derivatives shall be dis-applied to the positions of a non-financial entity which are “*objectively measurable as reducing risks related to that entity’s commercial activity*”. In both cases, ESMA has been requested to produce RTS which define the hedging activities of non-financial entities and it is appropriate that those RTS are consistent.

<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>

In its 2014 MIFID II Discussion Paper, ESMA noted that “non-financial entity” is not defined in MIFID II, and that it proposed to consider “non-financial entities” to be any entities which are not financial institutions under MIFID II or other relevant EU legislation. Euronext observed that such an approach may not work effectively in the context of MIFID II position limits, given that the participants in commodity markets are located across the globe. For example, a strict application of such an approach would suggest that an investment firm located in a third country would be treated as a “non-financial entity” rather than a financial entity.

In the present MIFID II Consultation Paper (page 544, paragraph 14), ESMA states that it agrees with the concern expressed by Euronext and others: *“A number of comments were received that highlighted that the definition of a financial entity, and hence its inverse of a non-financial entity should include entities that are outside the EU but would be a financial entity under the various directives if their activities were performed in the EU. ESMA agrees with this proposal on what should be considered a financial entity and non-financial entity.”* However, the draft Regulatory Technical Standards appear to be silent on this point, so it is unclear how ESMA’s conclusion will be given practical effect.

<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>

Please see our answer to Question 203.

<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>

Euronext thinks that the methodology for aggregating positions, in a situation in which one company has an ownership interest in another, should be based on a percentage threshold which is used as a proxy for “control”. The threshold should be set at 50%. Where the threshold is met, the totality of the position of the controlled entity should be added to the position of the controlling entity for the purposes of calculating the overall net position.

<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>

Yes, we agree. ESMA’s proposed approach is similar to the CFTC’s proposal in relation to economic equivalence of swaps and futures contracts, which is designed to identify an entity’s overall influence on the demand and supply conditions in a particular commodity sector, whilst recognising that the component contracts of that entity’s position are not necessarily legally identical. Given the global nature of many commodity markets, there would be clear benefits in the EU and US applying consistent definitions of “economically equivalent” for the purposes of operating their position limits regimes.

<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>

The purpose of the term “*same derivatives contract*” (as it is used in Article 57(12)(d) of MIFID II) is to manage a situation whereby a single position limit needs to be set in relation to the trading of commodity derivatives at competing trading venues. In that context, Euronext has no further comment on the proposed approach.

<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>

Yes, Euronext agrees. We would stress that these determinations need to be made dynamically.

<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>

Please see the answer to Question 204. 30 days is impossible as it is way too long. We suggest that the approval must be made ex ante, i.e. ahead of the delivery, with expected checks ex post.

<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>

Article 7 of RTS 30 states that a NCA shall have up to 30 calendar days to approve an application for an exemption. This is a significant period, during which the non-financial entity will face uncertainty about whether or not an exemption will be available to it. However, Euronext could approve or reject applications for delivery limit exemptions more quickly than the period suggested.

<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>

Please see the answer to Question 204.

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

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<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

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<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

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<ESMA\_QUESTION\_CP\_MIFID\_212>

* Market data reporting

1. 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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

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<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>

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<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>

Interbolsa, the Portuguese CSD part of Euronext Group, in its capacity as National Numbering Agency for Portugal, would like to stress that ISIN codes should be used as the sole instrument identifier for financial instruments (Fields 53 & 54 – Instrument Identification Code), and CFI code for classification (Fields 55 & 56 - Instrument classification (& Type).

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

While we agree with the three trading capacity flags, we have a major issue with the way the definition of matched principal trading is drafted under Article 1(b). Under Section 8.3 of the CP, ESMA explains that the definition of matched principal trading included in Article 1 is based on the results of the 2014 ESMA CP consultation, together with the July 24 CWG Meeting where *‘stakeholders requested for interpretative guidance from ESMA on the application of the principal and agency concepts’.*

As a result of these discussions, **Article 1(b)** states that:

‘Matched principal capacity’ means dealing on own account as defined in ***Article 4(1)(6)*** where the concerned entity enters into a transaction as defined in ***Article 4(1)(38)*** of Directive 2014/65/EU as a facilitator by interposing the firm between the buyer and the seller to the transaction in a way whereby the firm is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.

Euronext has a major problem with the cross-reference to Article 4(1)(6) in this provision. Article 4 includes both a definition of dealing on own account (point 6) and matched principal trading (point 38). For the purposes of clarifying reporting obligations under MIFIR Article 26, we believe that the reference to matched principal trading should ***only*** refer back to the definition in the Level 1 text (point 38).

This is important in the sense that it respects the definitions established in Article 4 regarding the systematic internaliser. Article 4(1)(20) defines an SI as:

‘systematic internaliser’ means an investment firm which, on an organised, frequent systematic and substantial basis, ***deals on own account*** when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system;

The critical definition of dealing on own account is outlined in Article 4(1)(6):

(6) ***‘dealing on own account’*** means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

Including the cross-reference to Article 4(1)(6) in the RTS 13 undermines the definitions in Article 4 which are clear in determining that an SI can only deal on own account. In contrast, it is the OTF which has the ability to trade on a matched principal basis under certain conditions, these being outlined in MIFIR Article 20 based on the definition of matched principal trading in Article 4(1)(38).

**Amendment proposal:**

RTS 32

Article 1 – Definitions

1. ‘Matched principal capacity’ ~~means dealing on own account as defined in Article 4(1)(6)~~ means executing orders on behalf of clients as defined in Article 4(1)(5) where the concerned entity enters into a transaction as defined in Article 4(1)(38) of Directive 2014/65/EU as a facilitator by interposing the firm between the buyer and the seller to the transaction in a way whereby the firm is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.
2. ‘Principal capacity’ means all other instances of dealing on own account as defined in Article 4(1)(6) that do not fall under the definition of matched principal according to Article 4(38) of Directive 2014/65/EU.
3. ‘Agent capacity’ means all other instances of ~~dealing~~ executing orders on behalf of clients as defined in Article 4(1)(5) that do not fall under the definitions in Article ~~4(1)(6) and~~ 4(1)(38) of Directive 2014/65/EU.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

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<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>

Euronext has major issues with **Article 3(1)** in RTS 34 which covers the designations trading venues shall maintain for each order received. We have the following issues: (i) applying disproportionate costs on trading venues to gather and store all the required information, (ii) whether the provisions are compatible with EU Data Protection rules and (iii) how we would implement them given we do not have contractual relationships with the end client and are not able to gather the requested data.

In addition, we have an issue in respect of **Article 10** covering elements relating to the functioning of the order book. We are concerned that we do not have some of the elements required and, in any case, to do so would break confidentiality agreements.

<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>

Euronext would like to request clarification on the provision included in Annex I, Table 1 and 2 requiring timestamps to be applied at “*the date and exact time of the receipt of the order or making a decision to deal*”.

Euronext believes this definition is ambiguous enough to invalidate attempts at clock accuracy. For example, is the receipt of the order when the network packet is first seen on the venues network or when it reaches the first software component or the matching engine? Similarly the ‘*decision to deal’* can be interpreted as several points along a decision path that include risk and limit checks.

Rather than mandate a specific point that could imply the prescription of specific technology that must be used for clock synchronisation, and as a consequence perhaps not be applicable to a specific firm’s architecture, we would propose that ESMA simply state that a timestamp should be applied at ‘*an internally documented, consistent point throughout an organisation*’.

<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>

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<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 are concerned by the provision in Article 3(2) by which ‘*trading venues measuring its gateway-to-gateway latency time in less than one millisecond shall synchronise its business clocks in accordance with Table 1 of Annex 1 based on the trading venue’s gateway-to-gateway latency*’. In our case, this would effectively impose a maximum divergence of 1 microsecond in terms of clock synchronisation. However, this proposal is completely impractical in the sense that no currently available technology (or technology expected to be available in the short term) is able to deliver such minimal levels of divergence.

As ESMA states in its own Cost-Benefit Analysis (page 440, Table 1), the most precise synchronisation protocol (PTP) achieves only an accuracy of 20-100 nanoseconds. Moreover, there are very few examples of achieving accuracy in the order of nanoseconds at all, let along 1 nanosecond.

The National Physical Laboratory, the UK standard for time keeping, is accurate to within 4 nanoseconds of UTC[[6]](#footnote-6)[1] whilst the OPERA experiment at CERN, which famously published results describing faster than light particles due to a time measurement anomaly, achieved an accuracy of less than 10 nanoseconds when measuring particle flight time[[7]](#footnote-7)[2]. The fact that these publicly funded, national institutes of advanced technology cannot achieve clock accuracies of 1 nanosecond highlights the impracticality of instructing financial institutions to succeed where they have not.

As a result, we would strongly recommend deleting Article 3(2). Alternatively, Euronext suggests making the following changes to the table in Annex 1 of RTS 36:

|  |  |  |
| --- | --- | --- |
|  | **Gateway-to-gateway latency time of the trading venue** | **Time divergence allowed from UTC and level of granularity required for timestamps** |
| 1 | 1 millisecond or greater  (equivalent to 1.0x10-3 seconds or higher) | 1 millisecond divergence from UTC and all timestamps for reportable events shall be to the nearest millisecond. |
| 2 | 1 microsecond to 999 microseconds  (equivalent to 1.0x10-6 second to 9.99x10-4 second) | 1**0** microsecond**s** divergence from UTC and all timestamps for reportable events shall be to the nearest microsecond. |
| 3 | 999 nanoseconds or less  (equivalent to 9.99x10-7 seconds or less) | 1 **~~nanosecond~~** **microsecond** divergence from UTC and all timestamps for reportable events shall be to the nearest nanosecond. |

<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>

Please see our response under Q233.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Interbolsa, the Portuguese CSD part of Euronext Group, in its capacity as National Numbering Agency for Portugal, strongly supports that ISIN codes should be adopted as the sole instrument identifier for all financial instruments. We consider that nothing prevents the ISIN from being extended to derivatives as the scope of ISIN already includes assignment for all derivatives. We believe its use should be encouraged by ESMA and mandated for consistent identification across all asset classes covered in MiFID II / MiFIR. <ESMA\_QUESTION\_CP\_MIFID\_238>

* Post-trading issues

1. 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>

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<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. CESR, Technical Advice to the European Commission ahead of MiFID Review – Equity Markets, Post-trade Transparency Standards, Oct 2010 [↑](#footnote-ref-2)
3. Available here: <http://www.fese.eu/en/?inc=page&id=79> [↑](#footnote-ref-3)
4. AFME, Market Analysis, The Nature and Scale of OTC Equity Trading in Europe, April 2011 [↑](#footnote-ref-4)
5. Aite, European Dark Trading: Who’s Playing in Your Pool?, December 2010 [↑](#footnote-ref-5)
6. [1] See <http://www.npl.co.uk/educate-explore/what-is-time/why-do-we-need-accurate-time> [↑](#footnote-ref-6)
7. [2] See <http://press.web.cern.ch/press-releases/2011/09/opera-experiment-reports-anomaly-flight-time-neutrinos-cern-gran-sasso> [↑](#footnote-ref-7)