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

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your in-put/Consultations’.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings ’Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Irish Stock Exchange |
| Confidential[[1]](#footnote-1) |[ ]
| Activity: | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[ ]
| Country/Region | Ireland |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

The ISE, as a market operator of a regulated market and 3 MTFs, welcomes the opportunity to comment on these proposals regarding the Regulatory Technical Standards in MiFID II/MiFIR. We appreciate the extensive work done by ESMA to date across a very broad range of topics. We understand that the data analysed by ESMA so far for the Cost-Benefit Analysis has only been taken from 12 Member States and as such still remains quite limited. Therefore, we believe when further analysis is done in the coming months it is essential to ensure the proposed provisions are still appropriate. In particular, in relation to some of the new proposals for transparency and publication of execution quality, we would suggest a more detailed impact assessment is undertaken, and perhaps a more gradual approach to implementation should be adopted.

We have set out our most important points from the consultation below:

* **Transparency - Equity**

In general we support ESMA’s approach to the equity pre-trade transparency waivers. In particular we welcome the proportionate approach taken for the large-in-scale and order management system waivers. In relation to the negotiated transaction waiver, we support the list of non-price forming transaction types and would welcome the inclusion of non-standard settlement to this list. However we still have some concerns in relation to the volume cap mechanism and in particular the use of value (quantity by price) rather than volume (quantity) as the base metric, which will increase the risk of errors and be less predictable as it will be subject to currency fluctuations. We are also very concerned with the tight timelines and with the fact that certain practical details have yet to be addressed, such as the harmonised implementation of a suspension across all EU Member States if the 8% cap is breached. Lastly, in relation to the SI regime, we remain concerned that ambiguities remain in the text pertaining to the potential use of matched or riskless principal trading by an SI. We note that ESMA has acknowledged this is an issue but that it cannot provide further clarity in the draft RTS as it has no relevant empowerment to do so. Therefore we strongly urge ESMA to raise this further with the European Commission so that it can be addressed appropriately.

* **Transparency - Non-equity**

In relation to non-equity transparency, whereas we support a regime that is not too complex, we are concerned that the proposed approach is likely to result in a significant proportion of bonds being misclassified i.e. bonds are deemed liquid when in fact they are actually illiquid, and vice versa; we suggest ESMA revisits this in order to avoid negative consequences in the bond markets.

* **Microstructural issues**

We have a number of concerns across the Microstructural Issues topics as detailed in our response. The key areas of concern are:

* The new proposed outsourcing requirements, part of the organisational requirements for trading venues. While we believe that most of the proposal is proportionate and appropriate, we strongly object to the requirement for trading venues to obtain specific prior authorisation when outsourcing critical functions as this should be part of the overall authorisation and supervision of venues by national competent authorities. Even more concerning is the proposal for the agreement between trading venues and their service providers to contain an explicit empowerment for the competent authority of the venue to access the books, records and premises of the service provider.  We believe it should be sufficient for the agreement to ensure that the service provider will comply with all requests for information from the competent authority of the venue but that such requests can be made either via the venue or via the competent authority of the provider if it is a regulated entity in another EU Member State. Otherwise we fear that the obligations on service providers will be so onerous as to dis-incentivise the provision of such services which smaller venues usually rely on to make their markets accessible and competitive.
* The draft RTS for market making contain an extremely concerning proposal for venues to offer incentives to promote the presence of members engaged in market making agreements during stressed market conditions. Such a proposal places a dangerous obligation on venues which we believe is far in excess of Level 1, placing the venue in a questionable position in relation to market integrity by potentially exposing the venue to market risk, and also places those firms engaged in a market making agreement in a position of compromise in relation to their risk management.  Therefore it is critical that the proposal for venues to offer such incentives in stressed market conditions is completely removed from the RTS.
* The tick size proposal for equities does not provide sufficient flexibility to be implementable across all markets as it does not set appropriate tick sizes for less liquid small and mid-cap shares, nor in general for shares on smaller markets which are likely to have a higher spread to tick ratio. While we note ESMA has undertaken a certain level of impact analysis, we believe that a more granular impact assessment is necessary as the actual impact on our market will be far in excess of that anticipated by ESMA i.e. a new tick size for 96.5% of our shares, with none of our MiFID liquid shares falling within the 1.5 to 3 range proposed. Furthermore the addition of more granular price ranges at the lower end (prices less than 1 euro) results in a far smaller tick for those shares in the lowest liquidity band than that indicated as in fact they will be assigned a tick almost exactly in line the FESE Table 2 rather than being three levels up as indicated on page 423 of the CP.
* **Investor Protection**

We are very concerned with the extensiveness of the proposed requirements on trading venues in relation to the execution information to be published. We believe it is far too granular to be of benefit to investors, particularly retail investors. We believe that only a subset of the proposed data fields should be included in the initial RTS until a full impact assessment of the benefits of and the demand for additional data can be undertaken. Furthermore, we believe the publication of non-comparable sample executions across venues at specific points in time will potentially be misleading as the full specific details of each order cannot be disclosed, and therefore that general trends (no more granular than on a daily basis) would be far more valuable. We also remain concerned with the inclusion of market makers and other liquidity providers in the list of execution venues and would again urge ESMA to remove these entities from the list unless in relation to when they trade away from trading venues on an OTC basis.

* **Trading Venue requirements**

We also would like to highlight our concern that throughout the consultation, some provisions appear to impose certain responsibilities on trading venues that, in our view, are the responsibility of the national competent authority. We consider amendments need to be made to the text to clarify trading venues are not responsible for enforcing any provisions of these Regulatory Technical Standards. An example of this is RTS 14 which requires trading venues to ensure investment firms comply with certain provisions in RTS 13, which we believe clearly should be the role of the competent authority. We have highlighted these points in our responses and would ask ESMA to bear this in mind when finalising these provisions.

< ESMA\_COMMENT\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_14>

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

<ESMA\_QUESTION\_CP\_MIFID\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_15>

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

<ESMA\_QUESTION\_CP\_MIFID\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_17>

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

<ESMA\_QUESTION\_CP\_MIFID\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_29>

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

<ESMA\_QUESTION\_CP\_MIFID\_30>

We have a number of concerns regarding the proposals set out by ESMA.

**Definition of Execution Venue**

We are very concerned that ESMA has not taken on-board the concerns raised by the majority of participants (ref paragraph 2, CP) in relation to the inclusion of market makers and liquidity providers in the list of execution venues. As it is proposed in the draft RTS, there is a risk of duplication when the market maker executes on a venue, and both it and the venue publish the same data for transactions and orders. We do not believe that this was the intention of the Level 1 text. Specifically 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 venues”. We do not believe that (or support) the intention to extend the obligation for financial instruments not subject to the trading obligation to market makers and other liquidity providers as separate venues. We believe the only exception could be where those firms execute on a pure OTC basis, although we note that even this approach would result in a different list of venues (trading venues and SIs only) for financial instruments subject to the trading obligation than for other financial instruments (trading venues, SIs, and market makers and other liquidity providers when executing OTC).

The proposed inclusion of “a market maker and other liquidity provider” in the definition of “execution venue” is also misleading in relation to the obligations set out in the Articles and, we believe, not in line with the Level 1 text which clearly applies the obligation to “trading venues and systematic internalisers” in relation to financial instruments subject to the trading obligation. If ESMA amends the definition of execution venue to be “a regulated market, multilateral trading facility, organised trading facility and systematic internaliser”, then we believe it is appropriate to use the term ‘execution venue’ throughout the subsequent Articles as currently proposed. However if ESMA chooses to maintain the definition of ‘execution venue’ as per the draft RTS, then each Article needs to be amended to clearly state that the requirement is on trading venues and systematic internalisers in relation to financial instruments subject to the trading obligation, and on execution venues in relation to all other financial instruments. For example Article 3(2) should state “The information to be published shall include for each financial instrument subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 by each trading venue and systematic internaliser, and for each other financial instrument by each execution venue the following……”. Otherwise it places an obligation on market makers to also publish such information for financial instruments subject to the trading obligation, which is not in line with the Level 1 text.

**Point-in-time Executions**

We are also concerned with the proposal by ESMA to include execution details at specific point-in-time levels. There are several factors (at least price, cost, speed and likelihood) to be considered when executing each order, some of which may be more relevant than others depending on the specifics of each order and each client instruction. As the specific details of how each of these factors has been applied cannot be disclosed on a case-by-case basis for each order, it is appropriate that certain metrics that capture each of these factors more generally is published by venues on a representative basis in order to provide the market with general indications of execution quality on each venue. We are concerned that providing details at specific time intervals may provide misleading information given that the full details of the relevant order (which may include client specific instructions) cannot be published. Furthermore, as the execution example relevant to each point-in-time is likely to have different execution times across the different venues, even if there are only fractions of a second between executions, it will result in information that is not directly comparable. For example, if we take the point-in-time of 11.00.00 and two regulated markets A and B with the following executions in the same share:

|  |  |
| --- | --- |
| **Regulated Market A** | **Regulated Market B** |
| **No** | **Time** | **Price** | **No** | **Time** | **Price** |
| 1 | 11.01.02 | 12.560 | 1 | 11.03.52 | 12.570 |
| 2 | 11.02.21 | 12.569 | 2 | 11.05.11 | 12.571 |
| 3 | 11.03.36 | 12.572 | 3 | 11.08.01 | 12.574 |
| 4 | 11.03.59 | 12.571 | 4 | 11.10.14 | 12.573 |

The proposed requirement would result in market A publishing the details for its execution at 11.01.02 with an execution price of 12.560 while market B would publish its execution at 11.03.52 with an execution price of 12.570. However the more meaningful comparison, from a price point of view, would be to compare executions 3 and 4 from market A with execution 1 from market B as they are closer in time. However even this would only give an indication of comparability as other factors such as volume would also then need to be considered. Furthermore, the lack of comparability would be even greater for less liquid securities as the time differences between executions will be longer. Even for liquid securities trading in fast-paced markets, small time differences are meaningful in terms of the execution results.

Therefore we believe that aggregated data showing general trends is more beneficial, and therefore urge ESMA to re-consider their proposal and restrict the publication to aggregate data no more granular than on a daily basis, although we believe that daily is too frequent and suggest that presenting data averaged over a longer period would be more appropriate for identifying general market trends.

If however ESMA does proceed with the point-in-time proposal, then we believe it needs to take the following into consideration:

* Article 4(1) states that additional information should be submitted for each executed transaction as reported in Article 3(4)(a)&(b) i.e. the first executed transaction immediately after each of 9.00.00, 11.00.00, 13.00.00 and 15.00.00. However, it is not clear if it is requiring the information at the time of execution (at which case the best bid will always be equal to the best ask), or immediately prior to or after the execution, or if it is referring to immediately after each time period (11.00.00 for example)?
* If one of the price points coincides with an auction (scheduled, such as the opening auction which may end at around 09.00.00, or unscheduled such as a volatility interruption), then it is possible that the best bid could be higher than the best ask. There is also the risk that this approach could be gamed by venues scheduling auctions just prior to these times to give the impression of larger execution sizes and/or tighter spreads.
* Article 3(4)(a): We note that the requirement is to publish the details for executions “immediately after” each specified time, however this does not take into account illiquid markets where there may be only a few transactions throughout the day and there may be no transaction “immediately after” the reference time. We therefore suggest ESMA aligns the wording in the Article with the wording in the table on page 94 i.e. “the price excluding commission and where relevant accrued interest for the **first executed** purchase after each of….” . Similarly for (b). ESMA should also clarify how data should be published where the first executed order is later in the day e.g. if the first executed order is at 14.00, should this be included only in the row with the 13.00.00 timestamp or should it be included for each timestamp up to and including 13.00.00?
* Article 3(4)(a) & (b): We note that ESMA refers to the time in UTC. However our understanding is that UTC does not take into account daylight savings time. Therefore the reference times will change for approximately half of the year resulting in non-comparable data. For example, during the winter months in a GMT timezone the reference times will be 9.00.00, 11.00.00, 13.00.00 and 15.00.00, however during the summer they will be 10.00.00, 12.00.00, 14.00.00 and 16.00.00 as BST is one hour ahead of UTC. We therefore believe that the times should be with reference to the time in the local market in order to provide a consistent approach.

**Extensiveness of Proposals**

We also have a general comment to make on the extensiveness of the proposed publication requirements which we believe are far too detailed to be beneficial 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, that the details of execution at certain time intervals could be misleading, and that some of the fields, in particular average effective spread, average realised spread and average speed of execution, will be too technical to be understood by most retail investors. 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. Therefore it is likely that the proposed published metrics will not meet all of their needs, and institutional investors will continue to obtain and analyse data from other sources, therefore making the data published under draft RTS 6 to a large extent redundant. For these reasons, we urge ESMA to take a more proportional 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 a clear need has been identified.

**Draft RTS**

We also have a number of comments on specific areas of the draft RTS as follows.

Recitals

Recital (8) includes ‘failed trades’ but without any further definition in the proposed text. We presume it is referring to cancelled orders as per Article 3(3)(c) however this is not clear and we wish to state that ‘cancelled orders’ are not the same as ‘failed trades’. Furthermore we question the inclusion of such data as orders can be cancelled for a variety of reasons and it is not necessarily an indication of poor execution quality.

Article 2

* Article 2(1): ‘settlement’ should be deleted given that it is not one of the factors included in the Level 1 text i.e. Article 27(3) of the Directive specifically lists “price, costs, speed and likelihood of execution” as the parameters to be considered.
* Article 2(4): We believe the word ‘directly’ needs to be added in i.e.”…..imposed or incurred **directly** by the….”
* Article 2(7): We note that Recital (6) provides examples of a ‘central limit order book’ and a ‘quote driven market’ but believe that an exhaustive list needs to be defined within Article 2(7). In order to provide consistency with other areas of MiFID we suggest that the market mechanism is defined under the system types defined in Table 3, Annex I of draft RTS 8.
* Article 2(9): We believe it would be better to refer to the post-trade transparency Articles in the Regulation e.g. Articles 6, 10, 20, 21. However we are also concerned that the proposal (considering the examples provided in Recital 6) will be too granular and question the need to provide the information separately for each transaction type. We are concerned that overly granular information will not be useful to investors as it will not enable them to discern general trends as each information line will be too specific. We would suggest instead that transaction types are amalgamated under broader headings e.g. executed with pre-trade transparency on a trading venue; executed without pre-trade transparency as permitted using one of the waivers; OTC. At the very least trades under the Negotiated Trade Waiver should be grouped into a single category.
* Article 2(11): We question the definition of average effective spread proposed by ESMA as we believe the accepted industry definition is 2\*ǀexecution price – mid-pointǀ. It appears that the definition proposed in the draft RTS doesn’t double the difference, although perhaps ESMA is deliberately leaving this open to industry interpretation and change over time? We also note that it refers to the time of receipt rather than the time of execution.

Article 3

* Article 3(1)(d): We believe the detail of volatility interruptions is not useful information for the purpose of best execution given that such mechanisms are in place in order to try and prevent disorderly trading and therefore should not be seen negatively or as a deterrent to using venues that may have additional volatility interruptions by virtue of having more stringent controls than other venues.
* Article 3(3)(a – d) should not read ‘number’ as the number of orders is not required, as per the table on page 93. Instead it should read, for example in (a), “the total volume and value of orders…..”.
* Art 3(4)(a) & (b) refer to “*order* sizes”, however we are unclear if the reference should be to ‘execution sizes’.
* Article 3(4)(g) refers to market orders only although (a) and (b) are not limited to market orders. We are therefore unclear if (g) should only apply in the case of market orders, and therefore if no market orders are executed no data should be provided?
* Article 3(4)(l): refers to the ‘benchmark’ price however this is not defined in Article 2 (although we note that paragraph 19 of the consultation paper provides examples as to what may be considered).

Article 4

* Article 4(1)(b): We believe it would be useful to define ‘depth weighted spread’ since other similar terms are defined.
* Article 4(2)(h) and 4(2)(i): As this requirement relates to information per day, we presume it is the **average** book depth that is required.
* Article 4(2)(j): We assume this means the ‘official closing price’ and therefore request that ESMA reflects this in the draft RTS, as markets may have an ‘official closing price’ which is not the same as the last traded price.
* Article 4(2)(n): We are unclear if the intention is to capture the last price before the official closing price (see previous comment) or the last price before the closing auction (if relevant) or the last traded price of the day and request ESMA to clarify this to ensure a consistent approach.
* Article 4(2)(o): We note that the requirement is only in relation to market orders and again request clarity if the intention is to exclude all other order types?

Annex 1

* Table page 94: Further guidance is needed on the expected content of column 2 ‘Category of order size’ as we do not see where this is defined.
* Table page 94: We believe the information is required for executed orders and therefore suggest changing the title to “First Buy/Sell Executed Order after Time T”.

<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>

While we were supportive of the proposal in the DP to categorise securities into ranges as we had expected that this would result in the data being aggregated in a meaningful way for all of the securities within each range, as we now understand that the intention is that it will provide an even more granular approach to data (for each financial instrument on a daily basis), we no longer believe that such ranges are beneficial.

However if ESMA decides to maintain the inclusion of ranges, then we believe the ranges for shares need to be set in a transparent way using established ranges, and that the same ranges are used under both draft RTS 6 and draft RTS 7 (in order to provide some level of comparability). We suggest that either the Standard Market Size table or the Large in Scale table is used i.e. 8 ranges, but not both. For example, if applying the LIS table, range 1 would be “greater than zero and less than 100000”, range 2 would be “greater than or equal to 100000 and less than 500000” etc.

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

We have not identified any additional metrics that should be considered. Furthermore we believe that ‘settlement’ should be deleted from Article 2(1) given that it is not one of the factors included in the Level 1 text i.e. Article 27(3) of the Directive specifically lists “price, costs, speed and likelihood of execution” as the parameters that should be considered.

<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>

We believe that clarity is needed when considering the speed of execution. It should explicitly exclude those trades that are executed outside of an electronic system such as manual trades.

<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>

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<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>

Our main concern is the inclusion of market makers and other liquidity providers as a type of execution venue. This should only be the case where the market maker or other liquidity provider executes the trades on an OTC basis.

We also have a number of other final comments on the proposals:

* The ISE believes that any separation of reporting by client type should only be provided to the NCA as it may be detrimental to investment firms’ business if this information was made public, and dissuade retail investors from dealing with certain firms, thereby offering them less choice.
* Article 5(3) requires information to be published as a percentage “of all client orders”, whereas Article 5(4) requires information to be published as a percentage “of total executed orders”. This suggests a varying denominator which will make it more difficult to compare data. We propose that the denominator for each calculation should be “all client orders”.
* Article 5(4) states that the total number of orders should be published however Recital 3 states that absolute numbers will not be required. This same comment also applies to the table in Annex 1.
* Article 5(9) refers to discounts or rebates however only in the general sense. We note that in paragraph 33 of the CP ESMA clarifies that this is specifically in relation to discounts and rebates that are given to the firm in return for routing a client order to that particular venue. We believe this must also be clear in the RTS as otherwise it could include general discounts that are part of volume based pricing. Therefore we propose the following wording:

“For each of the top five execution venues the existence and monthly value of any payments, discounts or rebates received from the execution venue **in return for routing client orders to that venue** together with……”

* Article 5(13): We question the benefit of requiring investment firms to include the link to the relevant section on the website of the execution venue containing the execution quality data, particularly when the proposed data is likely to be too granular and in certain cases too technical for it to be understood by retail investors.
* We note that there is no table prescribed for the information to be published under Article 6.

<ESMA\_QUESTION\_CP\_MIFID\_36>

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

<ESMA\_QUESTION\_CP\_MIFID\_37>

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<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>

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<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>

In general we support the types of transactions listed as not contributing to price formation but have a concern with the approach of defining an exhaustive list. The identification of non-standard settlement as another transaction type which could be added to the list demonstrates the inherent risks of an exhaustive list, namely that types of transactions which meet the criteria but which have yet to be identified and flagged as such by market participants will not be able to be added to this list at a later date. Therefore, the ISE believes that the transactions listed with the addition of non-standard settlement should be retained as examples in principle of transactions which do not contribute to price discovery but that the possibility of others being added should be left open, potentially requiring approval by competent authorities to ensure a consistent approach.

Non-standard settlement

We agree that non-standard or special settlement trades, due to their nature, should be included on this list of transactions subject to conditions other than the current market price in Article 6 of the draft RTS. Situations in which non-standard settlement trades are not price forming include when:

* non-standard or special settlement trades are for extended settlement periods. When these trades take place the agreed price usually includes a premium for the added risk taken on by the counterparties and, in this respect, is not reflective of the current market price.
* individual investors require immediate liquidity and thus a reduced settlement period. In these circumstances, the preference for immediate liquidity over best price may result in the transaction price deviating from the market price.
* corporate actions are due. For example, the prices of non-standard or special settlement trades may differ from the market price owing to the declaration of dividends. For example, if a share goes ex-div the market price will be adjusted downward for the dividend. Should market participants then agree on a transaction with T+0 settlement such that the buyer of the share will capture the dividend, the execution price will incorporate the dividend and therefore deviate from the existing market price. Similarly, if a trade is negotiated prior to the declaration of a dividend with a settlement date after the dividend payment date, the trade price would then have to be adjusted downward to take account of the anticipated dividend price and would also not be price forming.

We recognise ESMA’s concerns that including non-standard or special settlement may undermine the policy objectives of MiFIR of ensuring that price formation remains efficient, however we do not believe they are warranted in this circumstance. Non-standard or special settlement is only available for a limited number of specific situations as outlined above and represent a small proportion of trades. We see a decreasing trend for such types of transactions as settlement efficiencies continue to grow and therefore believe the inclusion of such transactions will not undermine the objectives of MiFIR.

<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>

The ISE agrees with ESMA’s proposals in relation to the key characteristics of orders held in order management facilities and the proposed minimum size for reserve orders, as we belive they are proportional and relevant to those orde types.

<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>

The ISE is broadly in agreement with the classes and frequency of calculation proposed by ESMA for shares and continues to support the inclusion of additional liquidity classes in order to try and achieve a more balanced approach, particularly the new class for shares with an ADT < 100000. However, we still have some reservations that the minimum sizes for orders to qualify as large in scale are potentially set too high for those shares in the lowest ADT classes as the minimum order size for them is a higher percentage of the ADT than for the more liquid shares in the upper classes. As the ADT is calculated on an aggregate basis across the Union, the minimum sizes for orders to qualify as large in scale are not being calibrated to relate to the ADT of each individual market. Therefore, calculating a size for an order to qualify as large in scale on a particular market based on the total share across the Union makes it less attainable when such shares are traded on a number of venues. Therefore we believe that it is important that the minimum sizes are not increased from the current proposal as this would favour larger markets with shares which do not trade, or trade in small amounts, on other markets.

We agree that ADT is a reliable metric to use to determine the large in scale thresholds. Additionally we appreciate and agree with ESMA’s acknowledgement that it can be collected and processed in a relatively simple way. Furthermore participants have developed appropriate systems and procedures as regards the current system and therefore we have a strong preference for maintaining the current system including the calculation methodology as it currently is. This will avoid an unnecessary operational impact on market participants and ensure a consistency and comparability in approach.

In relation to Article 8(2) in the draft RTS, we note that the proposal is to calculate the ADT excluding the non-trading days in the Member State of the relevant competent authority for that financial instrument. However given that the data will be averaged over the year we believe that a less complex approach would be for each venue to calculate the average over all days that they are open which will provide a more accurate ADT for each venue.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

Yes, the ISE welcomes ESMA’s decision to allow stubs to remain protected after a partial execution even if they fall below the relevant large in scale threshold. We believe this is important to allow large orders to be executed without revealing sensitive information.

<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>

To ensure a consistent approach and a level-playing field for trading venues and SIs we believe that SIs should have to publish with each quote the publication time it has been entered or updated. This would be similar to the obligations on trading venues to timestamp the entry, modification and deletion of all quotes entered into their systems.

<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>

Yes the ISE agrees 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. In particular, 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. This is because the introduction of a harmonized tick size regime in Europe will unfortunately not include SIs.

As a result SIs will be able to execute at any price which means that they are not 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.

<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>

In principle, we are concerned with the potentially more flexible transparency regimes for SIs than the one applicable to market makers on multilateral platforms. This is particularly worrying considering that they could become an increasingly attractive option for accommodating current BCN-type activity.

We are extremely concerned regarding the ambiguities in the text pertaining to the potential use of matched or riskless principal trading by an SI. We note that ESMA has acknowledged this is an issue but that it cannot provide further clarity in the draft RTS as it has no relevant empowerment to do so; we still strongly urge ESMA to raise this further with the European Commission so that it can be addressed appropriately.

<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>

Yes, we agree with the proposed list.

<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>

We agree with the proposed list of information that trading venues and investment firms shall make public. However we would recommend that the information is made public in local time with a reference to the UTC offset as we believe this is more beneficial to retail investors.

<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>

We believe that requiring the publication of the date and time of execution is of most benefit to market participants, but the date and time of publication can also be informative.

<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>

The ISE appreciates that the work of the industry-led Market Model Typology (MMT) has been taken into account by ESMA in formulating these flags. In general we agree with ESMA’s proposal, however with the following exception.

We do not believe that the large in scale (pre-trade) flag should be included in post-trade reports. As the stub of a partially filled LIS order can remain dark, publishing the partial fill with the ‘L’ flag will only alert the market that a (potentially significant) portion of a LIS order remains unfilled. The result would be for market participants to adjust their pricing to the disadvantage of the investor, which is in conflict of the aim of achieving best execution as outlined in paragraph 6. To avoid this, market participants would be forced to look at moving such orders away from transparent markets which is obviously not in line with the objectives of MiFID II. Moreover as only one side of the trade with such a flag may be LIS (if such an order is permitted to interact with non-LIS orders on an order book), there would be a clear risk to overstating the extent of trading under the large in scale waiver. Even avoiding this issue by requiring the side of the trade which was executed via a large in scale order to be flagged would still risk alerting the market to a partially filled large in scale order as noted above. This is contrary to what ESMA has attempted to achieve by altering its position in relation to stubs after feedback that the proposed approach would risk revealing sensitive information. We believe that the same principle applies in this situation and therefore the large in scale flag should be excluded from the table.

Please note that we do however support the publication of a post-trade flag for large trades which have been deferred for publication as permitted under Article 7 of the Directive.

We also believe that the definition of Algorithmic trades in Table 2 should refer to Article 4(1)(39) rather than Article 4(1)(49).

Finally we believe it should be made clear that the responsibility to assign the appropriate flag rests with the firm that executed the trade and that they must be responsible for providing this information to the trading venues as the venues cannot themselves determine this.

<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>

The ISE agrees with the definition of ‘normal trading hours’ as set out in the draft RTS (i.e. “those hours which the trading venue or investment firm establishes in advance and makes public as trading hours”).

<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>

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<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 for deferred publication 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>

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<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>

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<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>

Yes, in general the ISE agrees with the proposal, and supports the approach to ensure the regime is not too complex. However, we are concerned that ESMA’s analysis leads to a significant proportion of bonds being misclassified. i.e. bonds are deemed liquid when in fact they are actually illiquid, and vice versa. Therefore, we suggest that ESMA re-examines its analysis as in some cases the classification of certain types of bonds as ‘liquid’ and, in other cases, the high proportion of a class of bonds that would fall under the ‘liquid’ classification, does not appear to be correct. It will be very important that this is monitored closely by ESMA on an on-going basis to ensure there is no negative impact on certain instruments that may be deemed to be liquid given the bond class they belong to, even though they may in reality be illiquid bonds. It is important to ensure there are no negative consequences from these transparency requirements and if it is identified that liquidity in certain bonds is being harmed, this will have to be addressed immediately by ESMA.

In addition, we note from the work undertaken, ESMA concluded that issuance size was a good proxy for whether the bond was liquid or not, and that this was based on analysis of average frequency of transactions and average size of transactions etc. We believe it is important to ensure that any further work done in this regard continues to include analysis of these specific metrics and does not just focus on issuance size alone.

<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, the ISE agrees with the definitions.

However, we would like to point out that it is not clear who is responsible for determining which category a financial instrument belongs to. We would strongly argue that it should be the issuer of the security in consultation with its own advisor that determines this, and that this information should be made available in the initial prospectus or admission document, and it can then be made public to the market through the admissions notice issued once it is admitted to trading. This will result in a consistent approach across the EU.

We understood from ESMA at the Open Hearing on 19 Feb 2015, that the categorisation of bonds is addressed in section 8 of the consultation on Supplying Financial Instrument Reference Data (draft RTS 22) and that it will be the responsibility of the trading venue. However, we believe this is not the case. While trading venues and SIs will be responsible for submitting reference data to the NCA, this data is taken from the admission document/prospectus that has been submitted by the issuer. This is really an administrative data entry exercise; in our experience the trading venue is not responsible for determining or making a decision on the specific data. Therefore, we feel this provision does not clarify who is actually responsible for classifying what category each bond falls under in the COFIA approach and as mentioned above, we believe it should be stated that the issuer should set it out in its prospectus/admission document in consultation with its own advisors. If it is left to each different trading venue or SI to determine, there is likely to be a lot of inconsistent categorisations which would result in the same financial instrument being subjected to different transparency requirements because of how it is classified by each respective trading venue or SI.

<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>

ESMA states that from its sample of securitised derivatives analysed, 94% trade very little or not at all during the one year period reviewed; from this analysis, it is unclear to us how ESMA could then conclude that all securitised derivatives should be deemed 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, the ISE agrees.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

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<ESMA\_QUESTION\_CP\_MIFID\_64>

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

<ESMA\_QUESTION\_CP\_MIFID\_65>

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<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>

Yes, the ISE agrees with the content of pre-trade transparency, but we would like to ask ESMA for further clarification 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 produces indicative quote replies.

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

<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>

It seems somewhat unusual that the minimum size for reserve orders should be the same for non-equity as it is for equity. We would consider the threshold should be higher for non-equity, and should possibly differ depending on the financial instrument, as we do not believe a “one size fits all” approach makes sense in this regard.

<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>

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<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>

Yes, the ISE believes the date and time of publication should be included as it is informative for market participants and it is already accepted as the current approach in a lot of markets, but we believe the date and time of execution is the most relevant.

<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>

The ISE would suggest that ESMA liaises with the MMT Group on this issue.

<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>

Yes this seems to be a reasonable approach.

<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>

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<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>

Yes, in relation to points 1) – 3) the ISE generally agrees with the approach.

Regarding 4) this seems a reasonable approach, but we also accept that there may be a justified case for thresholds to be lower for pre-trade in order to protect liquidity providers from too much risk.

Regarding 5) we strongly support 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.

<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>

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<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>

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<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>

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<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>

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<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>

Yes, the proposals seem in line with the expected requirements.

<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>

Yes, the ISE agrees.

<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>

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<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>

The ISE welcomes the clarification of a number of areas in relation to the double volume cap mechanism but there are other matters which we believe need to be considered and addressed by ESMA:

* It is not clear how the calculation mechanism will operate after the end of a suspension. We believe that after a six-month suspension the aggregated volumes of the two waivers should be reset to zero rather than include the six months prior to the suspension in a rolling 12 month calculation. Otherwise, there is a risk that the same trades could result in 2 separate suspensions.
* We believe it would be beneficial to have information on how the suspension and resumption of these waivers will operate in practice. In particular, we are interested in how it will be achieved consistently across trading venues and jurisdictions. For example, when the 8% cap is breached competent authorities have to suspend the use of the waiver within 2 days, however it is not clear how this will be harmonised or if it is possible that the waiver will be suspended in different Member States on different days resulting in an un-level playing field.
* It is not clear to us whether suspensions can result from the mid-month data request or if it is solely from the data submitted at the start of a month.
* The CP mentions that conversions to euro should be calculated using the ECB monthly average rate. However the draft RTS state that the End of Day conversion rate should be used. If ESMA maintains its approach to use a ‘value’ threshold (i.e. volume multiplied by price) rather than a ‘volume’ (i.e. the number of shares) threshold, then we believe clarity needs to be provided on which rate should be used. However we believe the optimal approach, in order to avoid the risk of inconsistent application and to reduce the potential likelihood for errors, is to use volume as the metric for the calculations under the cap mechanism, rather than value. This would be a simpler and more straight-forward approach and would avoid the issue of price and currency fluctuations. This change could be simply incorporated by amending Article 6(4) as follows: “For the purpose of this Regulation, the volume of individual transactions shall be determined ~~by multiplying the price of the financial instrument~~ by the number of units and the total volume of trading for each financial instrument shall be obtained by collating the volume of all individual and single-counted transactions. ~~Transactions executed in a currency other than euro need to be converted prior to making the calculations in this paragraph using the End of Day conversion rate published by the European Central Bank on its website.”~~
* In general, we believe that the timelines proposed by ESMA are extremely tight and do not leave a lot of time for data to be queried or verified. However we recognise that this is required in order to meet the publication timelines imposed on ESMA in the Level 1. Therefore we do not object to the requirement for trading venues to submit data by 13.00 CET on the first and sixteenth day of each calendar month. However we do strongly object to the even tighter timeline proposed in Article 6(6) for venues to provide the data before the market opens in the event that the first or sixteenth day falls on a non-working day for that venue. We do not see any reason for imposing a shorter timeline in such circumstances particularly when under Article 7(1), the timeline imposed on the competent authority remains as 13.00 CET on the next working day following the receipt of the data. Imposing a stricter timeline in exceptional circumstances will only increase the risk of error. Therefore we urge ESMA to revise its proposal and instead propose that the timeline is 13.00 CET also on the working day following a non-working day. This will provide some additional time for venues to review the data before submitting it therefore minimising the likelihood of errors.
* We also have some concerns in relation to the tight timeline for the initial submission in January 2017. We believe that ensuring the accuracy of data should be the priority and that this may be negatively impacted by inflexible deadlines. Therefore, we would recommend that ESMA is required to publish the data within five working days ‘where possible’.
* Finally we note that the proposal is for ESMA to source data from both trading venues and CTPs. However we believe that a single source, being the trading venues, should be sufficient as trading venues are required to monitor the volumes executed under each waiver and therefore will be collecting this data in any case. We believe that always obtaining the data from two sources will result in multiple queries which will be costly for both trading venues and CTPs.

<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>

We welcome the proposal for standardised templates. These templates should be circulated to the market well in advance of the regulation being introduced. Detailed information on the required fields, preset dates and file formats should be known with enough time to build systems to automate the necessary data extraction. We would suggest at least a year.

We would also suggest csv as the format to be used.

In relation to ad-hoc queries, these should be kept as close to the standardised formats as possible. Timelines should reflect the amount of extra work that will be needed to extract data for ad-hoc requests. 4 weeks, in theory should be enough time to respond to an ad-hoc request, but without knowing the specifics of the query it is not possible to commit to a specific timeframe. However we can commit to undertaking all reasonable efforts to respond to data requests within the set timeline.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

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<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

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<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>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_93>

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

<ESMA\_QUESTION\_CP\_MIFID\_94>

We would like to strongly state our concerns regarding the applicability of the restricted deployment requirements to market makers, given the obligations of market makers to continuously quote. We believe this needs to be addressed either in Article 12 of this draft RTS, or in section 4.3 by incorporating a relaxation of the continuous quoting obligations in the market making agreements where the firm is deploying a new trading algorithm or a pre-existing algorithm that was successfully deployed on other trading venues, or material changes to previous architecture. Otherwise the relevant requirements will conflict. (Please also see our response to Q106).

<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>

We request ESMA to clarify if the requirements on pre-trade and post-trade controls for DEA providers only apply to investment firms engaged in algorithmic trading who are also a DEA provider or DEA client i.e. that they do not apply to investment firms who are a DEA provider or a DEA client but do not engage in algorithmic trading to do so. This is based on our reading of paragraphs 45 and 47 in the CP and also the definition of ‘investment firm’ in Article 1(1). Similarly we note that Articles 23 – 26 also refer to investment firms, which by virtue of the definition in Article 1(1) implies that these sections only apply to such firms if they are also engaged in algorithmic trading.

<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>

No, we do not agree. The implementation of such a market impact assessment would cause firms to intercept their orders, snap shot the order book and evaluate the impact. By the time the decision is made on whether or not to send the order, the snap shot is outdated and not of relevance anymore. Furthermore this would potentially need to be across multiple markets. This would result in inappropriate delays in the order flow and a potential risk of loss of best execution. We believe that the other pre-trade controls proposed are sufficient to prevent potential ‘fat finger’ errors, and furthermore that the impact assessment done by each venue on receipt of each order (circuit breakers) is the most appropriate, relevant and timely market impact assessment as it relates to the actual impact at the time the order would interact with the market. No such control at the investment firm level is required or appropriate.

<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>

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<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>

We are very concerned with the list of criteria set out in Article 28 which an investment firm acting as a clearing firm must consider. While we note the assessment should be done according to the nature, scale and complexity of the prospective client’s business, due to the prescriptive detail and type of criteria included (with a particular focus on systems), we believe it will in reality result in a set of requirements that will not be suitable for local brokers in smaller and regional markets. This could result in such brokers being unable to engage the services of any clearing firm and therefore being unable to trade where there is mandatory clearing. This will have a significant impact on retail investors who are the main client base of such firms. It will therefore also impact on investment in SMEs.

<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>

We have some additional comments on the draft RTS 13 as follows:

* Article 1(3)(b): We would like clarity on the expectation in relation to the ‘kill functionality’ embedded in the trading venue’s system and whether the expectation is that the trading venue provides such functionality for use by its members, or by itself, as we note the same definition has been used in both the section on organisational requirements of investment firms and the section on organisational requirements of trading venues (draft RTS 14).
* Article 1(4)(c): As ‘multiple’ generally means more than one, we believe that this needs to be re-worded to ensure it is referring to situations where there are ‘**significant**’ multiple. Furthermore it should be clarified that it is only where this occurs over a short timeframe i.e. “are experienced within a short timeframe”.
* Article 1(6)(a): We believe this should include the word significant as per draft RTS 14 Article 2(5) i.e. “a **significant** increase or decrease….”
* Article 1(6)(b) & (c): We are unclear if the intention here is for a singular “significant short-term change~~s~~” or multiple “~~a~~ significant short-term changes”.
* Article 16(4): We question the ability of a firm to be able to implement/adopt a system which will provide alerts in real-time in relation to algorithms and DEA orders triggering circuit breakers of the trading venue, and suggest that the obligation is either moved from the real-time monitoring section or is amended so that the alert identifies where the algorithm or order ***may*** have triggered a circuit breaker.
* Articles 27 to 30 refer to investment firms acting as general clearing members. However Article 1(1) defines ‘investment firm’ for the purpose of this specific Regulation as “an investment firm engaged in algorithmic trading”. This therefore implies that Articles 27 to 30 applies to investment firms acting as general clearing members only if those firms also engage in algorithmic trading.

<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>

The ISE notes that the requirements under Article 48 apply to Regulated Markets (and to other trading venues by virtue of Article 18), and we welcome ESMA’s pragmatic approach in recognising that these requirements are aimed at trading venues that provide or enable algorithmic trading. However we believe that ESMA needs to take an even more granular approach by clarifying that the obligations apply only to the venues’ specific systems or segments which enable algorithmic trading. Trading venues can have different systems and market models in place for different markets or asset classes, with only a subset of those systems enabling algorithmic trading. It would be impractical to require venues to meet these requirements for all systems and market models they operate, if not all of those systems enable algorithmic trading. We note that this is the approach that ESMA has taken in relation to market making in section 4.3, paragraph 50(iii), and also the reporting requirements on trading and execution venues in section 2.4 where the ‘market mechanism’ is one of the factors taken into account. We believe this approach can be easily accommodated by amending the text in Article 1(1) as follows: “This regulation lays down the detailed rules and requirements for trading venue**’s systems** allowing or enabling algorithmic trading ~~through its systems~~, in relation…”. Furthermore we note in paragraph 6 of the CP that ESMA states it has not amended the definition of “trading system”, however we were unable to locate this definition within the draft RTS.

We also have a number of comments on certain parts of the draft RTS 14 as follows:

Article 2(2): We are unclear if the kill functionality embedded within the trading venues’ systems should be for use by the venue or by the member or both, since it is defined similarly in both draft RTS 13 in relation to the organisational requirements of investment firms, and also draft RTS 14 in relation to the organisational requirements of trading venues, and furthermore Recital 15 states that the use of the functionality will “permit members or participants to react….”. However in clarifying this we urge ESMA to ensure that it is not overly prescriptive and in fact enables venues to have a flexible approach so that they can implement a kill functionality method that is appropriate for their market.

Article 2(3)(b): We do not believe this definition is sufficiently clear to enable a consistent and transparent approach. More specifically:

* ‘multiple’ means more than one. This implies that two erroneous orders could be defined as causing ‘disorderly trading conditions’. We do not believe this is the intention of the text and therefore recommend that it is amended to ensure it accurately captures and defines disorderly trading. We therefore suggest ‘significant multiple’. Furthermore we believe it should be clarified that it is only when this occurs over a “short timeframe”.
* ‘sufficient time’ is an arbitrary term that is open to interpretation, particularly given the number of factors that can influence the execution of an order. Furthermore we do not believe that cancelled orders should be considered to be a subset of erroneous orders. In fact there are a number of reasons why orders may be cancelled, only one of which could be that they are in fact erroneous.

Article 4(1)(b): We believe that such procedures must also take into account any outsourcing arrangement that the venue has in place in relation to its trading systems. The Irish Stock Exchange outsources the provision of its trading system to Deutsche Börse. As part of this outsourcing arrangement we have in place procedures regarding the updating of the trading system and resolution of issues, however we don’t approve the overall development of the trading system, but rather the specific functionality for the ISE’s part of that trading system. We believe this would be best dealt with by a specific Recital on outsourcing – please see our response to question 101.

Article 5(1): ‘providing’ should be deleted from the end of the first sentence. We believe that the obligation on the compliance function should be to (c) “establish, implement and maintain adequate policies and procedures” designed to detect any risk of failure to comply with the regulated entity’s obligations under the relevant legislation. As such, we do not believe that the compliance function can necessarily ensure that failure to comply with the obligations are detected, however they should be able to develop and maintain such procedures that will address this. Further, in line with the ESMA publication, “Guidelines on certain aspects of the MiFID compliance function requirements” (ESMA document/2012/388), we believe that regulated entities should ensure that the compliance function takes a risk-based approach in order to allocate the function’s resources efficiently. Drawing on this, the compliance function can adopt an appropriate risk-based approach which can form the basis for determining the appropriate tools and methodologies to be used by the compliance function to monitor on-going compliance.

Article 6(1): In order to take into account any outsourcing arrangements in place, the following wording should be added at the end of paragraph 1: “taking into account any outsourcing arrangements in accordance with Article 7”. However we believe this would be best dealt with by a specific Recital on outsourcing – please see our response to question 101.

Article 8: We welcome ESMA’s recognition that it is appropriate for trading venues to apply a risk-based approach to the annual due diligence assessment of its members, as referred to in paragraph 19(iii) of the CP and in Recital 9. However we note that this has not been brought forward into the content of Article 8(3). Without a risk based approach, the requirement for all trading venues to assess all members on an annual basis would be considerably onerous as previously highlighted. We therefore urge ESMA to (i) set out an absolute minimum standard of due diligence which must be applied to all members or participants of trading venues and to (ii) empower trading venues to apply this on a risk-weighted basis. By incorporating the risk-based approach within Article 8, this would permit trading venues to determine the level and frequency of the review of its members. Venues should be able to limit the content of the reviews based on the outcome of its risk assessment. Furthermore in relation to the technical and functional conformance testing (part (d)), we do not believe that this should be part of the annual assessment of members as there are already requirements for such testing to be carried out in specific circumstances, for changes to algorithms for example. Testing is better driven by specific changes to software, hardware, strategies etc. Furthermore, while trading venues should set out certain minimal requirements for such testing, the responsibility for ultimate compliance must remain with the investment firm as trading venues do not have sufficient information of trading strategies of firms to be able to provide the same level of assurance that the investment firm can itself. In addition, in relation to part (b), we believe there is limited ability for a trading venue to assess a member’s compliance with this requirement as it will be difficult to set a reasonable and consistent measurement to assess the experience of staff in all key positions in all members. We also question how a trading venue would assess the outsourcing policy of its members (part (i)) as we believe that this is an assessment that the regulator of the member will undertake.

Article 10: While we welcome the additional clarity provided by ESMA, we are very concerned with some of the proposed obligations on trading venues. In particular, we believe that the test environment should provide the same functionalities of the production environment in order to enable prospective or existing members to test all such functionalities that are relevant to its business on that venue, however members should not necessarily be required to test all new functionalities if it is not relevant to their business. Furthermore, a representative sample of financial instruments should be sufficient for testing purposes. The full list of instruments available in production is unlikely to be required even in smaller markets and discretion should be left to the venue to identify the representative number.

Article 11: We are concerned with the level of detail and expectation proposed by ESMA. In particular it is not possible for trading venues to provide a test environment that will enable members to ensure that their algorithms will not create or contribute to disorderly trading conditions as the test environment can never fully predict the interaction of orders in a production environment. It must be recognised that any member’s testing will interact with other members’ testing (which is in fact representative of production environments) and that this will constantly be changing. Therefore while there are of course benefits to requiring a certain level of testing to be done, it must be recognised that it cannot produce guarantees as to how orders will interact in a live environment. Therefore proportional obligations on both venues and investment firms are appropriate to ensure a sufficient level of testing and comfort is achieved.

Article 12: We believe that Article 12(4) should clarify that the requirement of the trading venue to inform its competent authority about the measures planned to expand capacity is only when it is in response to a compromise of its capacity, but that such a notification should not be required for standard system upgrades.

Article 15: While we agree that there are benefits of a periodical review, we believe the proposed requirements of such reviews are too prescriptive and will be very costly for trading venues to operate. In order to operate a reliable trading system, venues already monitor their systems, gathering particular data about key elements of their systems during live trading. This data is used by venues when evaluating the system’s performance and capacity. Therefore very prescriptive requirements do not need to be set out in the draft RTS. Moreover, stress testing without impact on members would require venues to develop and maintain another independent environment, thereby further increasing the costs without benefit to the market or members. Therefore we urge ESMA to remove the overly prescriptive and onerous requirements from the draft RTS. (We also question the repetitive requirements in 1(b) and (c) where the “unexpected behaviour of critical constituent elements” is required in both parts).

Article 16: We believe ESMA should re-consider the recovery point objective of close to zero and instead allow for different recovery point objectives to be set depending on the criticality of the underlying data.

Articles 17: We welcome the flexible approach of ESMA to allow the sign-off and oversight of the business continuity arrangements (in Art 17(4) & (5), and Art 18(1)(a)) to be undertaken either by the Board of Directors **or** by any other competent management body. It is important that this approach is maintained in the final text to ensure trading venues can implement such arrangements in the most appropriate way for their business and organisational structure. Furthermore we believe that the proposal for the Board of Directors/competent management body to approve “any amendments” is for too onerous, and instead it should specify only “significant amendments”. This will still provide the appropriate level of Board/management body oversight without creating unnecessary administrative burden due to, for example, insignificant changes within the organisation such as an immaterial change in staff within a particular department. Finally in relation to the identification of all risks (Art 17(4)), we believe it is more appropriate to require the identification of possible scenarios as it may not be possible to identify all potential risks, but identifying an exhaustive list of possible scenarios should ensure all potential threats are identified.

Article 19: We welcome the amendments made by ESMA taking into account the feedback from the DP, in particular in relation to the concerns raised with regard to the amending of orders and transactions. We believe the revised approach is more transparent and workable, however we believe it would be further improved by removing the ability for a venue to ‘correct’ transactions in 2(d). While a venue may be able to identify a clearly erroneous price or quantity of a transaction, it cannot know what the correct price or quantity is as this is determined by the members and the market. Therefore this should be removed.

We also have some further comments to make on Article 19 in the draft RTS:

* (3)(e)(iii): We are unclear if the intention of the text is to prescribe that the cancellation procedures must include all elements set out within the brackets i.e. reverse trade, transfer position, cash settlement and a price adjustment. We believe this is excessively prescriptive and that it should be left to the venue, together with their CCP if relevant, to determine the optimal process or processes for cancellation of a transaction. The list of potential procedures could be included as a suggestion but should not be prescribed as a requirement.
* (3)(e)(vi): We believe it would be more appropriate for this to be included within the general list of controls that a venue must have under (1), rather than within the cancellation procedures as the measures to minimise erroneous trades are separate to the actual policy and procedures on the cancellation of such trades when they occur.
* (3)(e)(vii – xi): We believe that these should separately be listed as (f)(i) – (iv) as they are not directly relevant to the cancellation procedures of transactions and are all elements of procedures around throttling.
* (5): The inclusion of the word ‘intends’ should be removed on the basis that it implies advance notification and potentially approval by the competent authority. Instead trading venues should only be required to provide updated policies and procedures whenever they are amended.

Article 20(2): In relation to requiring trading venues to notify their NCAs of significant price movements, we suggest that ESMA includes a recital in this draft RTS stating that trading venues and NCAs should agree on when it is expected that a TV should make such notifications (i.e. how significant would the price movement have to be to trigger the notification requirement) so as to avoid this becoming an overly onerous requirement. This follows the same approach ESMA has taken in the Technical Advice p. 385 suggesting market operators consult with their NCA regarding the NCA’s expectation of when to notify of a significant infringement of rules, disorderly trading etc.

Article 20(6): We note that ESMA proposes that “any modification” should be reported to the competent authority. However we believe this proposal goes beyond the requirements of Level 1 as Article 48(5) requires “any material changes” to be reported to the competent authority. Therefore we request that ESMA updates the draft RTS to include the word “material” to ensure it is in line with the Level 1 text.

Article 21(1)(a):We note that ESMA is proposing that the price collars of trading venues should automatically “block or cancel” orders that do not meet the relevant price criteria. While we welcome the flexible approach, we believe that blocking such orders is more relevant as cancelling them after entry on the order book may not be possible if an order is instantaneously matched resulting in an erroneous trade. However we believe the actual mechanism in place should be left to the venue to determine taking into account its trading model, the financial instruments etc.

Article 21(2)(b): We note that the draft RTS impose a different and potentially a more harmful obligation on trading venues, than is suggested in the CP. Paragraph 69 in the CP states that the controls should “enable” trading venues to stop order submission entirely once a threshold is breached, however the draft RTS places an obligation to “ensure” order submission is “entirely stopped once a limit is breached”. The proposed wording in the draft RTS would place an obligation on trading venues to completely stop order entry of a member across all financial instruments due to one breach in one financial instrument. This would therefore affect the firm’s ability to deliver best execution for its clients as all further orders would be prevented from entering the order book even in a different instrument. Furthermore we believe the proposal is not workable when the trading venue is also required to have mechanisms in place to authorise orders above pre-set limits. In practical terms, this could mean restricting order submission completely for a short period due to a breach by an order that is then subsequently permitted, with the potential compromise of best execution for legitimate (client) orders. We agree that trading venues should have the right to block order submission, but with the flexibility to impose this requirement as relevant.

Article 21: Furthermore, we note that trading venues are required to ensure their members operate the pre-trade risk limits and controls described in the Regulation on the organisational requirements for investment firms engaged in algorithmic trading. While we fully support the use of such controls and the inclusion of pre-trade control requirements in the rules of trading venues, it should be for the national competent authority to be the enforcer of the requirements on investment firms that are set out in these Regulations.

<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>

We are very concerned with two particular provisions, which we believe are not proportionate and would in fact disadvantage markets that outsource their trading system, particularly since the outsourcing of a trading system is usually a key enabler to sustaining the business of smaller and regional markets, and therefore the liquidity on those markets. We therefore believe it is critical that the below proposals are deleted from the draft RTS.

Specifically, in relation to the draft Article 7:

* (3)(i) and (4)(b)(ii) & (4)(c): We agree that the contractual agreement between the trading venue and the service provider should ensure that the service provider will co-operate with information requests from the competent authority of the trading venue, where they are necessary to enable that competent authority to supervise the trading venue. However we strongly disagree with the proposal that the competent authority of the venue should be granted unprecedented access rights to the premises of the service provider. We believe that ensuring a level of co-operation should be sufficient, and that requests for information should be processed either via the trading venue or via the competent authority of the service provider, thereby still enabling the competent authority of the trading venue to receive the information it needs. Furthermore, where both the trading venue and the service provider are authorised within the EU, we believe co-operation between the competent authorities is a more appropriate approach. We therefore urge ESMA to remove the requirement for competent authorities to have access to the premises of the service providers of the trading venues they authorise. We believe that the requirement should also be removed in relation to the auditors of the trading venue as again any information they require can be obtained from the service provider via the trading venue.
* 5(b): We object to the proposal that the competent authority of the trading venue has to give prior authorisation to the outsourcing of critical operational functions. As part of a trading venue’s original authorisation, details of any outsourcing of critical operational functions will need to be provided and therefore will be part of the overall approval by the competent authority. Thereafter we believe that the trading venue should be required to provide notification with relevant information, however explicit separate authorisation should not be required. Instead the competent authority should have the right to object to the outsourcing if has identified it is not in compliance with Article 7(1) and/or not in compliance with the terms of the initial authorisation of the regulated entity.

We are extremely concerned that these over onerous obligations (above) proposed by ESMA will also be over burdensome for service providers, resulting in them questioning the commercial viability of offering such services with the potential withdrawal of one of more such providers from the market. This would have serious implications for smaller markets which often outsource their trading system in order to increase the accessibility of their markets. Without this vital service, smaller and regional markets will be forced to develop their own trading systems at a high cost, with the loss of trading members, thereby reducing liquidity and potential growth in those markets.

On a more general note, we would like ESMA to provide further clarity on how outsourcing is dealt with outside of Article 7. We believe that this can be addressed by the addition of a general Recital which clearly states that the obligations and responsibilities ultimately rest with the trading venue, however where a trading venue outsources certain functions, in compliance with the requirements set out in Article 7, the actions to meet the requirements under the Regulations can be undertaken by the outsource provider. For example, we note that Article 4(1) recognises in the opening paragraph that the trading system of a trading venue may be through an outsourcing arrangement, however paragraph (b) requires the trading venue to have procedures to “approve the development….” of the trading system. It should be clarified that the obligation is only in relation to the services and functionality under the terms of the agreement between the trading venue and the service provider. If the service provider outsources its trading system to a number of venues, each of which has some different functionality, each venue should not be expected to provide approval for development that is outside the scope of its agreement with its provider. The ISE has an agreement in place with Deutsche Börse AG for the outsourcing of its trading system, which includes processes and procedures for system updates, development and corrective action, including approval. However this is only in so far as it relates to the ISE’s part of the overall system and does not, nor should it, require or enable the ISE to provide approval where an update may relate to functionality that it does not use, or is solely related to another trading venue client of the service provider. There are other similar examples in other Articles (please see our response to question 100), and therefore we believe that a general Recital needs to be included to clarify the approach throughout.

In relation to specific wording changes that should be made to address our concerns:

* Article 7(3)(i): the trading venue, its auditors and the relevant competent authorities must have effective access to data related to the outsourced activities, ~~as well as to the business premises of the service provider; and the competent authorities shall be able to exercise those rights of access~~”.
* Article 7(4)(b)(ii): the access of the outsourcing trading venue, ~~of its national competent authority and of its auditors~~ to the books and records of the service provider.
* Article 7(7): To be completely deleted.

Lastly, we are unclear on the rationale for notification to the competent authority (under Article 7(5)(a)) where the service provider is providing the same service to other trading venues unless all of those trading venues are located in the same Member State, thereby potentially increasing the risk within that Member State.

<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>

 We believe that the set-up of a conformance testing environment should focus on the instrument groups and functionality, and that it should be sufficient to provide representative instruments out of each instrument class. The full, identical setup of a test environment mirroring production only increases complexity and cost without the additional benefit.

In relation to the testing of algorithms, the only way to effectively test an algorithm is with the relevant member. Venues can require their members to test those algorithms in the respective instruments in the simulation environment, but as the code and parameter settings are unknown to the venue, the venue cannot provide a positive or negative certification for those tests. The full responsibility must stay with the members, with venues ensuring that they have procedures in place that they can stop individual members/traders/algorithms from affecting their markets in production.

In particular, Article 11(2) cannot be fulfilled by a venue. As the environment will be open to all members for testing (which it ought to be in order to try and replicate a live environment), the reconstruction of disorderly trading behaviours (which needs to be defined) highly depends on the activity and reaction of other members. Even with the highest effort, a venue cannot ensure that it will be able to reproduce disorderly trading circumstance. Moreover two disorderly trading conditions are never the same as each other and therefore the replication of one potential such situation in the test environment cannot provide any certainty or level of guarantee for any other such situation. Therefore even if the test environment replays live data, which may indicate possible scenarios, it still cannot guarantee how a particular algorithm will impact a different but similar situation in the future as market replay is based on historical activity. It is not possible to predict future activity or scenarios with a high level of certainty or predictability.

<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>

In general we agree with the approach and the controls on DEA access proposed by ESMA. In particular, we welcome ESMA’s clarification (in Article 23(1)(e)) that the responsibility ultimately lies with the DEA provider for all trades using its market member ID code.

Our only specific comment on the draft RTS is in relation to Article 24(1)(b) as we believe the requirement should be for the DEA provider to stop order flow by **any of** their DMA users. Currently it could be interpreted that they must stop all order flow, without the flexibility to stop it for only some members, where appropriate to do so.

<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>

**Proposal for venues to offer incentives for presence during stressed market conditions**

We fundamentally disagree with ESMA’s proposal that a trading venue must offer incentives to promote the presence of members engaged in market making agreements in case of stressed market conditions. This places an obligation on venues far in excess of what was envisaged by the Level 1, and also on investment firms to react to such incentives even though it may compromise their risk management practices. This is the antithesis of the principle in MiFID II Level 1 to try and protect markets from disorderly trading conditions. As noted by ESMA in paragraph 1 of the CP “MiFID II aims to maintain market participants’ ability to transfer risks efficiently during stressed market conditions”. In such circumstances, it is more usual for market making requirements to be relaxed or even waived to enable firms to react to the changing market conditions and amend their quotes as appropriate.

The revenue a trading venue generates is given by the fees charged per traded unit such as the notional amount (cash equities). These fees are a fraction of an instrument’s minimum price movement and therefore much lower than the profit or loss potential of the smallest market price movement in a given instrument. The trading venue’s ability to set incentives depends highly on its cost base to ensure the viability of its business model of operating markets in trading financial instruments. A trading venue’s revenues from trading in an instrument will be exhausted and exceeded by potential market making incentives to ensure quotation in stressed market conditions, as soon as one market maker is negatively affected by an unfavourable development of its distribution of trading returns.

Requiring firms to remain quoting at the same price, size and spread is adding risk to the market and potentially misleading information as the quotes will be at significant variance to other participants’ orders in the book. Moreover it is likely to exaggerate the market conditions leading to an unstable trading environment. Furthermore the suggestion of compensating market risks in stressed market conditions by means of setting incentives stands in contrast to trading venues’ required neutrality to ensure fair and orderly price formation as they should not be exposed to market risks linked to trading strategies. In order to address these concerns we urge ESMA to make the following wording changes in the draft RTS:

* Recital 5: To delete
* Recital 6: To delete

Article 4(1)(d): To delete everything after “scheme” i.e. once updated, it should read: “*The incentives provided by the trading venue for the performance of the obligations according to the market making scheme”.*

* Article 8(1)(b)(iii): To delete the first part of the first sub-bullet point and to completely delete the second sub-bullet point i.e. once updated, it should read:

“The incentives in cases where those parameters have been met. In particular, the market making scheme ~~shall~~ **may** establish:

*- Trading venues may establish that only the best performers under the market making agreement will access those incentives.”*

* Article 9(5): To delete second sentence.
* Article 11: To delete.

We also are unclear on whether the inclusion of “when trading is resumed after volatility interruptions” in Article 4(1)(d), is proposing yet another level of incentives particular to these circumstances or whether it considers such a situation to be a stressed market condition. However this wording should also be removed so that trading venues are not required to provide additional incentives to promote liquidity in the immediate period after a volatility interruption. Therefore Article 4(1)(d) should be amended as above.

**Responsibilities of Trading Venues**

We also strongly disagree with the proposal that trading venues must be able to detect market making strategies. The obligation should clearly rest with the firm to notify the venue, however 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 and urge ESMA to make the following changes to the draft RTS:

* Recital 7: Amend as follows: “As established in Article 17(3) of Directive 2014/65/EU, market making strategies may relate to one or more financial instruments and one or more trading venues. However~~, in certain cases,~~ it **is** ~~may~~ not **practical** ~~be practically possible~~ for a trading venue to **monitor** ~~identify~~ extremely sophisticated strategies. Therefore ~~trading venues should be able to detect market making strategies in accordance with the nature, scale and complexity of their business.~~ the basic strategy which trading venues should be able to **monitor** ~~detect~~ is that which affects one instrument traded on their venue.
* Recital 9: To delete the following wording at the end: ~~or the identification of market making strategies.~~
* Article 2(1): To add the following wording at the end: “….to the venue **and sign a market making agreement with that venue”.**
* Article 2(2): “Investment firms engaged in algorithmic trading **to pursue** ~~and pursuing~~ a market making strategy shall sign a market making agreement following the notification by the trading venue in that respect, **if** ~~when~~ the trading venue has detected the effective implementation of a market making strategy without prior notification. In cases where an investment firm is not willing to engage in such agreement following the notification by the trading venue, it shall disconnect the strategy identified”.
* Article 10(1), (2) and (3)(iii): To delete.
* Article 10(3)(a)(ii): “Sign a market making agreement following the notification by the trading venue **if** ~~where~~ the firm has been detected as pursuing a market making strategy”;

**Scheme of Incentives**

We are concerned with the potential requirement for venues to offer different incentives depending on the quality of liquidity provision, which could result in the market making scheme being member led rather than trading venue led, if a member expects that it can demand additional incentives for providing better prices or increased sizes than other market makers. It is critical that the venue retains the ability to determine the framework of the incentives it offers taking into account the nature, scale and size of its market, and should not be forced to increase incentives due to member demand. Furthermore, offering different levels of incentives for different levels of participation could actually have the opposite effect to that intended by discouraging some members to enter into such an agreement if they cannot attain the highest level of incentives due to the scale and nature of their business, thereby making it impossible for venues to meet the Level 1 requirement in Article 48(2)(b) to put in place a market making scheme to ensure a sufficient number of investment firms participate. We believe that this should be left as a point of discretion for trading venues in case it suits their business and trading model, but it should not be a requirement. We believe this is the intention as per Recital 11, but are concerned that some of the proposed wording in the Articles is not consistent with this principle. Therefore we request ESMA to make the following changes to the draft RTS:

* Article 8(1)(b)(iii): “The incentives in cases where those parameters have been met. In particular, the market making scheme ~~shall~~ **may** establish”:
* Article 9(5): “The incentives offered under the market making scheme **may** ~~have to~~ be proportionate to the effective contribution to the liquidity in the trading venue measured in terms of presence, size and spread”.

Furthermore, it is important to recognise that incentives can also incentives other than those related to the market making fees such as relaxed quoting requirements, and that this should be left to the discretion of the trading venue.

**Communication of exceptional circumstances**

We are concerned with the approach of ESMA in relation to the proposed obligation as to the 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. Furthermore we do not believe that such information needs to be made public as the most important communication is between the venue and its market makers. To that extent we also believe that it should not be mandated that the trading venue alone has to determine ‘exceptional circumstances’ but that it can also be the trading venue with the relevant member, particularly (but not limited to) when it is due to risk management issues within the firm. Therefore we propose the following changes to the draft RTS:

* Article 4(3): “The agreement shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading venue, if the trading venue **(either by itself or together with the investment firm)** determines the state of its market to be under exceptional circumstances as defined in this Regulation”.
* Article 5(5): “The exceptional circumstances shall be ~~made public~~ **communicated** by the trading venue **to the market makers** as soon as technically possible except in the case of circumstances that impede the investment firm’s ability to maintain prudent risk management practice as described above”.
* Article 8(2): “Market making schemes shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading venue, if the trading venue **(either by itself or together with the investment firm)** determines the state of its market to be under exceptional circumstances as defined in this Regulation”.

In relation to Article 5(7), it should only be the general procedures that need to be made public. Specific procedures on a case-by-case basis need only be communicated to the market makers.

Moreover, the actual definitions of these terms are not the exact same in the different draft RTS, even those that refer to the same Article in Level 1 e.g. draft RTS 13 and draft RTS 15. Therefore we believe it is not reasonable to expect a trading venue to declare such instances as they occur.

**Financial Instruments in Scope**

We note that ESMA has considered all of the feedback from the DP in relation to the scope of instruments that should be covered by the market making requirements, however we would urge ESMA to re-consider this and to set out that the requirements should be limited to only those equity instruments for which there is a liquid market as it is only in these instruments that algorithmic trading is concentrated. 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.

**Definitions**

We also would like to raise comments in relation to the proposed definitions of:

* Firm quote
* Simultaneous two-way quote
* Comparable size
* Competitive prices

Firm quote

It should also be clarified that only the technical order type “quote” should be considered for the assessment of MiFID II market making in order to avoid mixing quote activity with orders and therefore a misinterpretation of market activity. Therefore the following amendment should be made to the RTS:

Article 1(4): ‘firm quote’ means ~~an order or~~ a quote that is executable and can be matched against an opposite order or quote under the rules of a trading venue;

Simultaneous two-way quote

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 that both are entered at the exact same time. Therefore the following amendment should be made to the RTS:

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

Comparable size

ESMA suggests that the **size of the** **opposite quotes** posted in the order book do not diverge more than 50% of each other. However this adds to the risks of false measurement and misclassification of members’ trading activity as a market making strategy. Unbalanced quote sizes are not a valid market maker quote as it reflects a member’s bias for a certain market direction, in which he is willing to take on significantly more risk than in the other. Therefore both sides of a quote should be the same size, which should be at least equal to or greater than the minimum quote size set by the trading venue. Therefore the following amendment should be made to the RTS:

Article 1(6): ‘comparable size’ means that the size of the opposite quotes posted in the order book **are equal to each other and are at least equal to the minimum quote size determined by the trading venue**. ~~does not diverge more than 50% of each other~~.

Competitive prices

The definition of competitive prices should reflect the maximum bid-ask spreads set by a trading venue for market making in a given instrument. Therefore the following amendment should be made to the RTS:

Article 1 (7): “‘competitive prices’ means quotes posted within the ~~average~~ **maximum** bid-ask spread given by the trading venue for market making.

**Draft RTS**

We have a number of other comments on the draft RTS as follows:

* Recital 2: We believe the wording should be consistent with the Level 1 text, and specifically Article 17(3) which states “algorithmic trading **to** pursue a market making strategy”, whereas the draft RTS proposes “engaged in algorithmic trading **and** pursuing a market making strategy”, which could include firms that engage in algorithmic trading and separately engage in market making without the means of an algorithm.
* Article 1(8): We note that paragraph 35 in the CP describes exceptional circumstances as including “an interruption of trading with respect to all instruments as opposed to stressed market conditions” and therefore this implies that stressed market conditions can be in respect of just one security, but believe it is important to have absolute clarity on this to ensure a consistent application. We are also unclear as to the reason for ESMA to conclude that stressed market conditions occur frequently.
* Article 1(9):
* ‘multiple’ means more than one. This implies that two erroneous orders could be defined as causing ‘disorderly trading conditions’. We do not believe this is the intention of the text and therefore recommend that it is amended to ensure it accurately captures and defines disorderly trading. We therefore suggest ‘significant multiple’.
* ‘sufficient time’ is an arbitrary term that is open to interpretation, particularly given the number of factors that can influence the execution of an order. Furthermore we do not believe that cancelled orders should be considered to be a subset of erroneous orders. In fact there are a number of reasons why orders may be cancelled, only one of which could be that they are in fact erroneous.
* Article 7: We welcome ESMA’s clarification that the obligation only applies to the system or market segment that allows or enables algorithmic trading. We urge ESMA to apply this principle across all relevant sections of MiFID II, and in particular to section 4.2.
* Article 9(2): We would like ESMA to clarify that only significant changes to the terms of the market making scheme should be communicated. Moreover the advance notification period should be reduced to one month rather than three months. As it is currently worded, it implies that changes in parameters should also be notified at least three months in advance, but 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, for example due to a corporate action or a significant announcement from the issuer which has a material impact on the price and/or liquidity. It will also be dis-incentivising to members if they were forced to quote with parameters no longer appropriate for a security for an additional three (or even one) month period.

<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>

No. There are many reasons why a firm may meet such criteria only on one day but not in general, for example due to a particular increase in activity in a stock on one day due to an announcement. Furthermore we believe the minimum threshold of 30% is far too low.

In relation to the minimum threshold, we suggest aligning the entrance presence with the on-going presence with both at **50%.** A trading strategy or behaviour that makes up more than 50% of a firm’s time is a substantial activity rather than a 'side-line' or coincidental activity on a particular day. It is important to capture only those investment firms who intend to act as a market maker (a) to preserve commercial choice for participants and (b) to minimize the chance of imposing obligations on firms that may not be able or willing to take them on. Otherwise, the risk arises that firms will stop using liquidity providing strategies to avoid unintended consequences, which will reduce rather than increase the amount of liquidity in European markets.

Also, in relation to the proposed observation period for market making strategies, we believe one day is far too onerous, will lead to systematic misclassifications and is not feasible from an operational perspective. Such a low one day qualification threshold will discourage members 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 (which should be at least 50%).

Therefore we propose the following amendments to the draft RTS 15:

* Article 3 (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 **50%** of the daily trading hours during **a rolling monthly (calendar) period**.

Furthermore, it should be clear that the scope of the market making agreement entered into by members meeting this criteria should be limited to those instruments in which they are engaged in a market making strategy. Extending the scope of the agreement to all instruments traded on the venue would certainly result in a significant withdrawal of liquidity across the market.

We also note that the proposed RTS do not envisage any review or exit clause for such agreements. This is particularly worrying given the low entry criteria proposed (30% on one day). It is important that members are not required to enter into such onerous agreements for an indefinite period due to increased activity on a particular day due to for example a company announcement or a client order. The increase of the threshold to a more reasonable level of 50% and the change to a monthly observation period would alleviate this to a certain extent. However when a member no longer meets the criteria for a particular length of time, it should be permitted that they can then withdraw from the agreement.

<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>

In relation to equity, we believe that 50% is a reasonable minimum threshold for ESMA to impose and we welcome its approach in setting a threshold which still provides flexibility to the trading venues to set a higher threshold relevant to its market. A one-size-fits all approach with a higher minimum threshold would not be feasible.

However this level of quote presence will not be attainable for market makers during periods of stressed market conditions as defined by the legislator. Relaxed market making requirements during stressed market conditions do not insulate market makers from severe trading losses as price action unfolds. Continuing to be hit on bids in a fast falling market produces immediate losses to market makers quoting, and hence, the majority of market makers opt to further widen quotes, quote one-sided prices, or to withdraw from the market temporarily during periods of ‘stressed market conditions’. As outlined under Q104, trading venues cannot and should not compensate a market maker for trading risks in an instrument under stressed market conditions.

In addition, we believe that it is of key importance that the minimum presence requirement is permitted to be relaxed whenever a firm is deploying a new trading algorithm, or a pre-existing algorithm that was successfully deployed on other trading venues, or material changes to previous architecture when pursuing a market making strategy, in order to enable the firm and the trading venue to also comply with the restricted deployment requirements in section 4.2. Otherwise both the firm and the venue will not be able to meet both requirements simultaneously. (Please also see our response to Q94).

<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>

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, ESMA has not recognised the fact that a firm may be prohibited from dealing on its own account when connected to the offeror or offeree in relation to a merger or acquisition situation. Therefore the following should be added to Article 5(2):

* Circumstances when a firm is precluded from dealing on its own account where it is associated with either the offeror or the offeree in an acquisition or merger situation.

Furthermore, we also believe events that are specific to one or more stocks should also be included as an event should not have to affect all financial instruments on the market in order to be deemed exceptional circumstances. Therefore Article 5(2)(a) should be amended to read:

* Circumstances of extreme volatility, leading to ***but not limited to*** an interruption of trading with respect ***to ~~all~~ an instrument~~s~~*** traded on that venue;

Furthermore, we are of the view that this list 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.

<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>

In order for a market making scheme to be fair and non-discriminatory it should ensure that it is accessible to as many firms as possible, as is foreseen in Article 48(2)(b). To achieve this, incentives should be appropriate to the market, equally available to all members meeting the relevant criteria, and not lead members to compromise their risk management practices. Therefore the proposals under Article 9 to require the trading venues to set different incentives for different members, and to incentivise presence of members under stressed conditions must be removed. As different firms have different risk management processes, depending on their size, business activities etc., such an incentivisation would be unfair and discriminate against certain members.

We would also like to suggest that ‘volume’ is also added to the list of definitions and included in the criteria for assessing market making contribution. Adding volume to the dimensions of effective liquidity contribution would further ensure proportionality of incentives under Article 9(5), as liquidity contributed by market maker quotes at best lead to trade executions that are reflected in traded volume. Therefore the following amendment should be made to the RTS:

Article 9(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 shall promote the presence of members engaged in market making agreements in case of stressed market conditions.”~~ *(second sentence to be deleted as per our response to Q104)*

<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>

In general the ISE agrees with the proposed regulatory technical standards, and in particular welcome the clarity provided by ESMA. We also welcome the flexible approach which allows a trading venue to determine the ratio at a financial instrument level and enables the establishment of derogatory arrangements for firms engaged in market making agreements. In particular, for market makers in illiquid products it cannot be guaranteed that quoting activity will always lead to transactions. However the provision of liquidity in these instruments is critical for their growth.

However we disagree with a methodology dependent on the previous year’s activity, the link to the tick size regime, and the absence of a floor. More specifically:

* We believe that deriving the max ratio from the previous year’s activity could lead to a downward-spiralling effect which would occur when the max ratio would not take into account other parameters. For instance, introducing a max ratio by taking a value of the previous year “t-1” would lead to the situation that all market participants would reduce their ratios in order to obey the max ratio in a current year “t”. Hence, the ratio for the upcoming year t+1 would be calculated by those lower ratios of “t” and the new max ratio t+1 would be lower than the ratio of the current year “t”. As a result the ratios would decrease yearly which would severely and seriously affect the well-functioning of markets. However if the max ratio is calculated by taking the maximum ratio of a participant of the previous year, this limit would often be set to a value that is very high and hence considered an outlier. Hence, the determination of the max ratio would be calculated based across all members’ activity and not based on the most extreme outliers.
* We do not agree with the grouping of equities per tick size band as this would link the ratio regime with the tick size regime. The tick size parameters price and average daily trades are then the drivers for changes to the ratio regime. As the goals of the ratio regime are market integrity and system stability, the price level has no influence on the goals of the ratio regime or the parameters of it. Furthermore, the second tick size parameter is average daily trades; a link between the regimes would be redundant as the ratio regime considers trades in a volume perspective as well as in a number perspective. Those parameters, as additional influence to the parameters of the ratio regime, might lead to unnecessary noise. Furthermore, the linkage might lead to frequent and surprising changes in the max ratios as the tick size will change on a more frequent and surprising basis whenever the price of the instrument reaches another level.
* We do not agree with ESMA’s suggestion to not include a floor. We strongly recommend the introduction of a floor as it is necessary to account for illiquid instruments. We propose the floor determination shall be up to the venue and in accordance with the liquidity of the instruments traded. The ratio needs to distinguish between participant types by using different floors, e.g. market making or regular participant, where the market makers shall get a higher floor.

<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>

We believe that modifications should be counted as one (unless the firm is actually deleting the order and entering a completely new order rather than using the modification functionality provided by the system), and in fact that all order types should be counted as one.

<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>

Yes, we believe it is sufficiently precise.

<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>

No, we do not believe any further clarification is needed.

<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>

Yes, we believe that once a year should be sufficient, however the trading venue should have the ability to determine it on a more frequent basis if necessary to take into account significant changes in the trading environment.

<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>

We agree that auctions should be included, however pre- and post-trading phases should be excluded since no execution can take place during those phases.

<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>

Yes, we agree.

<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>

We support ESMA’s view (in paragraph 5 of the CP) that other types of users such as IT providers should also be able to gain equal access to co-location services. We consider this non-discriminatory practice in relation to 3rd party service providers is an essential obligation within the Regulation in order to ensure that those providers offer the same non-discriminatory access. However this can only be done on a contractual basis, and cannot be verified by the venues themselves. Therefore the responsibility on trading venues should be to ensure that 3rd party service providers get the same access and have to fulfil the same obligations as investment firms, who want to directly use co-location services of venues.

Furthermore trading venues should not be forced to an endless expansion of their capacities to cater for further co-location requests.

<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>

Yes, in general we agree.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

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<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

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<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>

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<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>

We suggest amending the definition of ‘cliff edge’ by deleting “in some cases”, as otherwise there will not be enough of a distinction between the definition of ‘cliff edge’ and ‘volume discounts’. Furthermore, we believe that the definition of ‘cliff edge’ should be explicitly included within Article 5 in order to provide complete clarity on the type of activity that is not permitted.

<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>

In relation to the most relevant market in terms of liquidity, we believe that the primary listing market would provide a more consistent approach as it would always be known in advance which securities are under the remit of each competent authority. On the other hand, using the most relevant market in terms of liquidity will result in a regime that will have periodic changes over time, potentially more so for liquid securities. We would like ESMA to address how this would work in practical terms i.e. should the calculation be first done to identify the most liquid market each year and therefore which securities each competent authority is responsible for, before then publishing the applicable tick sizes?

If ESMA ultimately decides that the primary market should be considered, then it is important to ensure that the primary market definition includes circumstances where a security may be dual primary listed. To this end we point to the work that was already done via the FESE tick size approach and the established definition there.

<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>

Please note that our comments are specifically in relation to the shares traded on the ISE and to the price bands up to and including 50 – 100euro, as we have no shares trading in excess of 100 euro.

We note the comments by ESMA that its intention is to provide an approach that will be simple to understand and implement, and that it must be accepted that the proposed table will not result in all stocks lying within the targeted spread to tick ratio. While we agree that it is not possible to design a single table that will suit all shares on all markets, and for this reason we would have preferred a more flexible approach enabling venues to choose between two alternative tables, we are concerned that the actual impact on our market will be far in excess of that anticipated by ESMA. This is based on our modelling of the proposed table on all ISE shares, the results of which highlight the following issues:

* *The table is not suitable to less liquid shares:* Of the 57 shares currently admitted to trading on the ISE, only two would remain with their existing tick size. Therefore, 96.5% of our shares would see either an increase or a decrease in tick size. Furthermore, almost 90% of those would change by more than two increments, with 9% moving four increments. While this may be partially due to the fact that we would be moving from the current FESE Table 4 to a table with a far greater number of price bands, we do not see this as being the only cause, but also the fact that the proposed table is more suited to trading venues with a higher number of liquid shares and was not designed with sufficient consideration to the impact on less liquid shares. We believe this is also evident by the impact analysis in Annex 4.6.2 which shows the greatest impact is for those shares in the lowest liquidity band.
* *The spread to tick ratio is not being met by a large number of securities:* Of the 57 shares currently admitted to trading on the ISE, we have 7 MiFID liquid shares. We note that ESMA proposes a range of 1.5 to 3 for liquid shares. However none of the ISE’s liquid shares fall into this range under the proposed table, with some having a lower ratio while the rest have a higher ratio.
* *The additional bands create overly small ticks at the lower price levels and do not accurately reflect the FESE table 2:* The table on page 423 of the CP indicates that for the lowest liquidity band, the table reflects the FESE Table 2 moved up 3 levels. However due to the addition of more granular price bands for the lowest priced stocks this is not actually the case. The lowest tick for FESE Table 2 is 0.0001 for securities with a price up to 0.4999euro. Moving this up three levels would result in the smallest tick of 0.002. However due to the more granular price ranges, the smallest tick for the least liquid shares is significantly smaller at 0.0002. We believe that ESMA’s assertions are potentially misleading as they imply that the existing table is being proportionately moved up to accommodate less liquid instruments whereas in fact they are moving down to create tick sizes too small for such illiquid securities which will result in too low viscosity for these shares. Therefore rather than creating an environment that would allow the liquidity to grow, the proposal will in fact further constrain liquidity in SME shares priced in the lower bands. As a market with a material proportion of SME shares we are extremely concerned with this approach.

We would also like to highlight that the proposed approach does not take into account that a once size fits all approach to the spread to tick ratio is not allowing for the fact that the same share can have a different trading profile on each market due to the different sizes of the markets, the extent of algorithmic trading on each market, the type of members and investors trading on each market, all of which should legitimately allow more flexibility and discretion when setting the tick size. However the proposed approach does not allow this and it seems to assume that a share will trade more or less the same on each market that it is admitted to.

Proposal

In order to address our concerns and to ensure that the final table is more accommodating of less liquid shares (although we’d like to highlight still not a perfect fit for all our shares) we propose the following changes to be made:

* In order to provide more suitable tick sizes for lower priced illiquid shares we suggest either setting a floor of 0.001 for the liquidity class of 0-100 (i.e. the price ranges 0–0.1, 0.1–0.2 and 0.2-0.5 would all have a tick of 0.001), or amalgamating the first three price levels across all liquidity classes and applying the tick size for the price range 0.2 to 0.5 to all so that the first price range would be:

|  |  |
| --- | --- |
| **Price ranges** | **Number of trades per day** |
| 0-100 | 100-500 | 500-2,000 | 2,000-15,000 | 15,000 |
| 0 | 0.5 | 0.001 | 0.0005 | 0.0002 | 0.0001 | 0.0001 |

* In order to provide a more suitable tick size for the higher priced less liquid shares:
* Changing the upper band of the second liquidity class to 250, and therefore the lower band of the third liquidity class to same.
* Amalgamating the price levels 10-20 and 20-50, and applying the tick in the 10-20 band to all shares priced in the new wider band of 10-50, i.e.

|  |  |
| --- | --- |
| **Price ranges** | **Number of trades per day** |
| 0-100 | 100-500 | 500-2,000 | 2,000-15,000 | 15,000 |
| 10 | 50 | 0.05 | 0.02 | 0.01 | 0.005 | 0.002 |

Finally given the extensive variance in shares and liquidity across all trading venues, we propose that ESMA enables venues to set a floor and a cap for the tick sizes for their market. This is based on our analysis that the most damaging tick size changes for our market will be for those shares at the lowest and highest price levels.

Draft RTS

We also have the following comments to make on the draft RTS:

* Article 2(4):We believe that trading venues should be allowed a number of days to adjust their systems to the revised liquidity band rather than setting the expectation of next day, particularly when it is unknown the time when the information will be published.
* Article 4: It is not clear which trading venue can determine this.

<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>

In relation to shares newly admitted to trading we agree with the approach outlined but would ask ESMA to also require that the publication of the new tick should be done a number of days in advance in order to ensure that all venues can adopt the same tick for the first day of trading. As it currently stands we believe that new shares are usually added to the MiFID database only on the first day of trading which will not give other venues and market participants sufficient time to set-up the relevant tick for the first day of trading.

Therefore we do not agree with the proposal in Recital 9 that trading venues should be able to apply “immediately” the tick size corresponding to the new band. Furthermore, venues should not be expected to amend limits of outstanding orders as it is not appropriate for venues to take a position on the limit of orders.

<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>

We agree with the list provided but believe that dividends should also be added to the list. Furthermore we believe that any changes due to corporate actions should also be published at least one day in advance of the effective change to ensure all trading venues can adopt it in their systems.

<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>

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<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 are unclear as to how this will be managed in practice, what data will be used for the annual revision and where it will be sourced.

<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>

As per our response to Q123, the proposed table would result in significant changes for our market with all but 2 shares moving to a new tick size, and a large number by at least two increments. In addition to changes to the proposed table as per above, we would prefer to see the table first implemented only for liquid shares with the extension to illiquid shares at least six months later after the impact on liquid shares can be evaluated.

<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>

We believe dividends should be added to the list.

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

We welcome ESMA’s recognition and inclusion in the draft RTS that a security may be admitted to more than one venue on its initial admission and that all such venues should be considered in terms of ‘material market’.

<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

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<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

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<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>

No, as depending on the disruptive incident it may not be possible to recover systems in 6 hours. DRSPs will always endeavour to get systems back on line as quickly as possible and should not be penalised for failing to do so within a 6 hour window due to exceptional circumstances that maybe beyond their control

<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>

Yes, we agree that DRSPs should be allowed establish their own opening 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>

We generally agree with the draft technical standards apart from the following issues:

* ESMA suggests that an APA and CTP should be able to delete and amend the information which it received from the entity providing it with information. This will allow an APA and CTP to deal with situations where in exceptional circumstances the entity cannot delete or amend the information itself. We consider that deleting and amending trade reports from IFs through a service provider can have legal consequences, which not every provider wants to assume. Therefore, we would strongly argue for the deletion of this requirement. This should be up to competing service providers to offer as an additional service.

Furthermore, we do not support the obligation in Art 14(4) that requires an APA to ensure it does not publish a trade report where it determines it is erroneous. While we agree APAs should ensure the trade report is complete, it cannot monitor for erroneous trades prior to publication, given trades are required to be published immediately. We therefore suggest deleting the reference to erroneous trades in this provision.

* Requirements for stress tests are not being supported at all. DSRPs have a significant interest to provide their services at all times and usually cater for such tests. Therefore, we suggest the deletion of this requirement in Recital 15. Furthermore, the last sentence of the Recital should be amended and state: *“In order to handle this, the DRSP should ensure operating at sufficient capacity including headroom capacity”*. We consider that this would be sufficient.
* We recommend deleting Recital 20. While cyber-attacks are currently being discussed by regulators, necessary measures would need to be analysed before becoming enshrined into MiFID II / MiFIR.
* We strongly recommend deleting Recital 22. While we agree with ESMA that CTPs might provide additional services, it seems overly intrusive to define which services these might be. This would be both restrictive and exclusive in terms of excluding potential service providers like exchanges seeking authorization from NCAs. We therefore strongly suggest deleting this recital as well as the corresponding paragraph as outlined below.
* Regarding Art 5(2)(a), it is unclear why ESMA requires the submission of information on the remuneration policy. This seems unjustified and disproportionate and therefore we consider that this should be deleted.
* Regarding Art 8(2)(c), the determination of fees charged by the DSRPs and related third parties should be deleted. In a competitive market it is questionable why a NCA should be involved in the determination of price setting. This is disproportionate and unjustified, and therefore should be deleted.
* We suggest the introduction of a new Art 9(5) (new) and Art 10(3) (new) which states: *“where the DSRP is already regulated as a trading venue, it shall be considered to comply with these requirements”*.Regulated Markets (RMs) are already appropriately regulated and supervised and have significant experience as regards data processing and publication. We consider that imposing additional administrative burdens would be disproportionate and not in line with the Level 1 text. Therefore, we recommend to include these new paragraphs to state that RMs comply with these requirements.
* Regarding Art 11(5)(g), we do not agree with ESMAs proposal to establish maximum recovery times for DRSPs. This will be too prescriptive for the various providers while not providing for a quicker resumption of a business. DSRPs will always aim to provide the best service under competition, however, in severe cases 6 hours might not be achievable and a legal requirement will not change the impracticalities of such recovery. Instead of imposing legal requirements in fixed terms, ESMA should require that service level descriptions shall contain information about business continuity arrangements and be transparent to the customer.
* Art 12(8)(a) requires a DRSP to have sufficient capacity to perform its functions “without failure or outages, missing or incorrect data”. While this will always be the aim of every DRSP, not just for regulatory reasons but to ensure that it can provide a commercially reliable and therefore attractive service, 100% error free service cannot be guaranteed. There the article should be amended to provide some level of flexibility i.e. “have sufficient capacity to perform its functions **with minimal** ~~without~~ failure or outages, missing or incorrect data”.
* Regarding the proposed outsourcing requirements in Art 16 which we believe are in general proportionate and appropriate, we would like to highlight one area that is of serious concern. The proposal in 5(c) to mandate that the competent authority of the DRSP must be able to obtain information directly from the service provider. While we fully agree that the relevant competent authority of the DRSP must be able to exercise their supervisory powers, we do not agree that this should place a requirement on the DRSP to include additional rights of the competent authority in the commercial agreement with its service provider. It should be sufficient for the DRSP to require that its service provider will comply with any requests for information from the competent authority and that these can be made either via the DRSP or via the competent authority of the service provider if it is in another EU Member State. We believe that anything in excess of that could be excessively onerous for the service provider and therefore reduce the appetite of such providers which could in turn reduce competition in this space.
* We propose to delete Art 18 in draft RTS 20. We question why ESMA outlined additional services which may be provided by a CTP. We deem this an unjustified restriction, especially as services offered by RMs are not explicitly included in the description, while at the same time research services are being explicitly included. While we fully agree with ESMA that CTPs should be allowed to offer additional services, we do not support to include selected services in a “positive list” within the regulation. We consider that CTPs can offer other services as long as this does not hinder the services provided as a CTP. We therefore strongly advice to delete Art 18 in draft RTS 20.

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

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<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

We appreciate ESMAs neutral approach; however, we do not agree with ESMA on using free open source software only or on a 1 month only notice period.

We do not agree with the wording provided by ESMA regarding Art 14. (iii). Currently, several exchanges provide APA like services already via the infrastructure and data feeds they operate for on-exchange trading purposes. This provides cost-effective solutions to their customers. While some exchanges apply proprietary protocols, others have applied more standard solutions. The source code is not always openly shared due to the fact that software contains certain assets as well as IP rights. Therefore, all of these protocols, regardless if they are proprietary or not, provide real-time data in push mode directly to the CTP/Consolidator, without them having to collect it. Therefore, we strongly suggest that ESMA in line with being neutral is not taking a bias position on whether a source code is open or not, but instead whether data is being delivered securely to the CTP/ Consolidator. Regardless, exchanges should not be required to apply different protocols than they currently use as they already provide reliable data to CTP/Consolidators while posing significantly less risk on them as regards the omission of data.

Furthermore, we disagree with the 1 month advance notice period suggested by ESMA and strongly suggest to increase it to a 3 month advance notice at least. This is the market standard while consolidators usually appreciate even longer advance notices where possible.

Regarding machine readability, one of the short-comings of MiFID I was the publication of OTC trade data on web-sites which resulted in non-consolidation of this data. This was due to the fact that the effort to consolidate incurs significant costs, as well as significant risks for the CTP/Consolidator. Collecting data from web-sites is extremely costly and it significantly increases the risk for any CTP for omissions or errors. The complaints about a lack of a proper tape are well known to ESMA. The introduction of APAs was targeted at improving the quality of OTC data, both for the accuracy of the data as well as the completeness. Allowing web-based publication only will be reiterating again that same mistake of MiFID I, which led to current complaints by market participants about the lack of a reliable tape. The current acceptance of web-only publication by ESMA risks both non-consolidation of this data, as well as a further discouragement for CTPs to be the providers to enter the market. An acceptance of web-publication only is neither effective nor proportionate. Therefore we strongly urge ESMA, to reconsider its approach for the sake of data consolidation. It must be clear that only real-time push data feeds applied by Trading Venues, as well as APAs, should have to be accepted by the CTP provider. There is no need to discuss microseconds or even milliseconds in cases where data would need to be consolidated from the web.

Furthermore, in its proposal referring to machine readability in 14 (2) ESMA refers to Article 12(7) of [draft RTS on the authorisation and organisational requirements for DRSPs] that enables automatic access, is robust and ensures adequate access in terms of speed. We cannot see any connection as this article refers to ARMs. We consider that there should be further clarification on this<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 with both proposals from ESMA, that said It would be preferable that IF’s report each trade to only one APA, this would reduce the risk of trades being incorrectly counted more than once. We do not think that IF’s need to have an exclusive relationship with only one APA.

<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>

We don’t agree that CTPs should assign Trade IDs. This ID should come from the source of the trade, either the TV or the APA. We agree to a composite key including both the date and the unique trade identifier.

<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>

The time the trade was executed is the field that is of most importance. We have no issue in publishing a publication time in addition to this, but the execution time is where the focus should be. Both publication and execution information should be taken from source e.g. from the trading venue or the APA. <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>

The ISE is of the view that regarding the timestamp accuracy of an APA, accuracy to the second is sufficient (regardless of the trade being executed on an electronic system or not). This is to avoid confusion to the market (some trade reports would have an accuracy to the second and others an accuracy to the millisecond) and also because an APA is only relaying the information received by other sources and, therefore, the latency introduced by sending the report from the original source to the APA and the latency the APA itself will introduce so as to comply with the requirements for the detection of errors would make the accuracy to the millisecond useless.

<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>

Yes we agree the CTP should identify the original source, the MIC code as proposed by the MMT would make the most sense to be used as an identifier of source <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 agree to Article 1, the disaggregation by asset class however we would like to see article 2 removed.

We strongly believe it will add to unmanageable complexity and potentially higher costs to the end user instead of lower cost and thus be neither proportionate nor efficient. It is also important to note that 90% of trading venue data is sent to data vendors and not directly to trading participants. (In this respect the assumption made in the Cost Benefit Analysis that Market Data Vendors will offer at least the same level of dis-aggregation is not correct and needs to be corrected).

We understand that the objective of data disaggregation is to offer the most appropriate data package to some more or less homogeneous groups of data consumers. Therefore, as stated in our response to the ESMA Discussion Paper we propose to aggregate the service around the three main groups of activities traditionally present in investment banking:

* Equities
* FICC (Fixed-Income, Currency, Commodities)
* Derivatives

Any further disaggregation especially of derivatives products is too granular and would face a too limited audience. As regards customer groups only very few retail investors would subscribe to derivatives packages. We also re-iterate our concerns that if a trading venue were forced to disaggregate by instrument but there was no requirement for a vendor to do the same, then the vendor would most likely just re-bundle the data.

We would also like to point out that, unlike as it is stated in the Cost Benefit Analysis no trading venue in the EU currently provides a full unbundling/disaggregation of pre- and post-trade data. In fact this is not the case.

Unintended consequences of increased data packages

Greater disaggregation will not only result in significantly higher costs in distributing market data, but it will also lead to confusion among investors who no longer can rely on receiving all the relevant market data. As the administration of market data already represents a burden for trading venues, vendors and end users, anything which adds to this burden is unhelpful and does not serve the purpose. In our view, market forces should decide on the level of disaggregation. Unless the regulator is in the position to control the way data vendors proceed with the data, there is no point in imposing such an obligation on trading venues which might as well then be ignored by data vendors.

In addition:

* Trading venues, data vendors and brokers would have to massively enlarge their administration operations to manage access rights. This would, as a consequence, add to the cost of market data instead of reducing it. Thus it would be both disproportionate as well as ineffective.
* Categorising in an unambiguous manner a very large universe of securities according to hard scientific criteria is a burdensome task. Specialised vendors and proprietary standard owners (ICB, GICS) charge a substantial amount of money for this type of activity.
* While the classification of securities is advanced for plain-vanilla equities, it is fragmented, incomplete and not widely accepted for other asset classes.
* Disaggregation based on multiple securities classification standard simultaneously will trigger confusion and costly bug fixing considering the large complexity of the market segmentation matrix.

All these attempts to structure market data alongside the above mentioned criteria would generate large additional costs for market participants.

Moreover, ESMA must consider that there will be additional costs that infrastructures must face when striving to provide additional data packages. Therefore, the more granular the data disaggregation that is required, the more cost will be incurred. This will not help to reduce costs for investors. Moreover, increased number of data packages could add a lot of confusion in the market, i.e. more products and more data streams for investors to consider.

Furthermore, the disaggregation by trading venues, as well as possible re-aggregation by vendors will add latency giving an edge to HFTs that take the full range of data directly from the primary sources.

<ESMA\_QUESTION\_CP\_MIFID\_145>

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

<ESMA\_QUESTION\_CP\_MIFID\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_146>

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

<ESMA\_QUESTION\_CP\_MIFID\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_147>

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

<ESMA\_QUESTION\_CP\_MIFID\_148>

We welcome the pragmatic approach by ESMA in relation to costs and that costs should be agreed between the trading venue and the CCP, and to ensure that smaller venues are not disadvantaged.

<ESMA\_QUESTION\_CP\_MIFID\_148>

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

<ESMA\_QUESTION\_CP\_MIFID\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_150>

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

<ESMA\_QUESTION\_CP\_MIFID\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_151>

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

<ESMA\_QUESTION\_CP\_MIFID\_152>

While we agree with the elements, we would like clarity on the wording in draft RTS 24, Article 8 (1) (g) which refers to ‘contracts’ whereas paragraph 56 of the CP refers to ‘instruments’.

<ESMA\_QUESTION\_CP\_MIFID\_152>

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

<ESMA\_QUESTION\_CP\_MIFID\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_153>

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

<ESMA\_QUESTION\_CP\_MIFID\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_154>

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

<ESMA\_QUESTION\_CP\_MIFID\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_155>

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

<ESMA\_QUESTION\_CP\_MIFID\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_156>

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

<ESMA\_QUESTION\_CP\_MIFID\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

Yes, overall the ISE agrees with draft RTS 25 as long as no arrangements come into effect, which might clash with existing regulation that deals with the admission rules with respect to the admission process and the securities considered to be admitted to a regulated market. As such, there are certain provisions in Art 4 Verification of Issuer Obligations that we cannot support.

We believe that the (1) 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 we view the purpose of this draft RTS is to clarify existing regulations.

Therefore, we particularly welcome that Article 1(5) carries forward the established position from MiFID I and clearly sets out that a transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

However, we have a number of concerns in relation to Art 4 as set out in Q161.

<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>

No, the ISE does not agree with these arrangements. As a regulated market, we are obliged to publish conditions for admission to trading and must ensure an issuer complies with these. However, we believe these new requirements for publishing information on how we verify compliance by issuers with obligations under Union law go too far, as it should be the competent authority (of those regulated entities) designated under the relevant EU legislation that is responsible for monitoring and enforcing this as is currently the case.

ESMA suggests that a regulated market must publish its policy on its website which should give guidance to issuers on how best to demonstrate compliance with Union law; but in our view, each issuer must determine this for itself in accordance with the relevant legislation and any guidance from relevant competent authority. It is unclear what regulatory risk or objective the proposed policy requirement is seeking to address and in our view could lead to the perverse outcome where a regulated market’s policy is determining how an issuer best complies with the requirements of certain EU directives, rather than an issuer achieving compliance in a manner that is best suited to its own business and activities.

<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 ISE believes that the proposals are adequate if the intention is that the regulated market’s obligation in facilitating access can be met if it provides a link to where the information is available i.e. to the national appointed storage mechanism (the OAM) under the Transparency Directive. As the obligation to make this information public under Union law falls on the issuers themselves, we do not think any further requirements should be applied to the trading venue, other than to direct members to where the relevant information is available.

<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>

Yes, the ISE agrees with this draft RTS.

<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

Yes, the ISE agrees that this should be an exhaustive list.

We also welcome the clarification from ESMA in Article 8(2) of the proposed ITS27 that the market operator does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of its compliance with the Directive.

<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>

Yes, the ISE believes this list is sufficient but we propose where an operator of an MTF is also an operator of a regulated market, in any areas where the requirements overlap that it only needs to provide this information once, in order to avoid duplicating the work unnecessarily.

<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>

Yes, the ISE agrees with one streamlined process. In relation to the proposed format, we would question why a column is necessary for the “relevant operator” as we would expect the entire document/application to be provided by the same operator, and therefore we suggest deleting this column.

<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>

Yes, the ISE agrees with one streamlined process, and the proposed format seems fine.

<ESMA\_QUESTION\_CP\_MIFID\_167>

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

<ESMA\_QUESTION\_CP\_MIFID\_168>

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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_169>

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

<ESMA\_QUESTION\_CP\_MIFID\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_170>

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

<ESMA\_QUESTION\_CP\_MIFID\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_171>

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

<ESMA\_QUESTION\_CP\_MIFID\_172>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_172>

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

<ESMA\_QUESTION\_CP\_MIFID\_173>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_174>

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

<ESMA\_QUESTION\_CP\_MIFID\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_175>

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

<ESMA\_QUESTION\_CP\_MIFID\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_176>

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

<ESMA\_QUESTION\_CP\_MIFID\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_177>

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

<ESMA\_QUESTION\_CP\_MIFID\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_178>

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

<ESMA\_QUESTION\_CP\_MIFID\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_179>

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

<ESMA\_QUESTION\_CP\_MIFID\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_180>

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

<ESMA\_QUESTION\_CP\_MIFID\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_181>

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

<ESMA\_QUESTION\_CP\_MIFID\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_182>

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

<ESMA\_QUESTION\_CP\_MIFID\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_183>

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

<ESMA\_QUESTION\_CP\_MIFID\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_184>

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

<ESMA\_QUESTION\_CP\_MIFID\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_185>

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

<ESMA\_QUESTION\_CP\_MIFID\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_186>

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

<ESMA\_QUESTION\_CP\_MIFID\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_187>

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

<ESMA\_QUESTION\_CP\_MIFID\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_191>

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

<ESMA\_QUESTION\_CP\_MIFID\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_192>

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

<ESMA\_QUESTION\_CP\_MIFID\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_193>

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

<ESMA\_QUESTION\_CP\_MIFID\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_194>

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

<ESMA\_QUESTION\_CP\_MIFID\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_195>

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

<ESMA\_QUESTION\_CP\_MIFID\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_196>

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

<ESMA\_QUESTION\_CP\_MIFID\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_197>

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

<ESMA\_QUESTION\_CP\_MIFID\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_198>

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

<ESMA\_QUESTION\_CP\_MIFID\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_200>

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

<ESMA\_QUESTION\_CP\_MIFID\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_201>

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

<ESMA\_QUESTION\_CP\_MIFID\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_202>

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

<ESMA\_QUESTION\_CP\_MIFID\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_205>

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

<ESMA\_QUESTION\_CP\_MIFID\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_206>

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

<ESMA\_QUESTION\_CP\_MIFID\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_207>

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

<ESMA\_QUESTION\_CP\_MIFID\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_208>

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

<ESMA\_QUESTION\_CP\_MIFID\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

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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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_212>

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

We have not been exposed in any significant way to any of the following:

FpML, ISO 2022, TREM , IFX, FIX and XBRL.

We do not currently have a preference of one format over another.

<ESMA\_QUESTION\_CP\_MIFID\_213>

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

<ESMA\_QUESTION\_CP\_MIFID\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_214>

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

<ESMA\_QUESTION\_CP\_MIFID\_215>

We believe there are typing errors in the second sentence of Recital 2 and it should read “This is to **ensure** that any report provided by the third party firm after the order is filled ~~to~~ incorporate**s**……”

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_216>

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

<ESMA\_QUESTION\_CP\_MIFID\_217>

The ISE asks ESMA for clarification on the inclusion of a ‘trading venue’ as a counter party to a trade. We consider that this is a misunderstanding of the role of a trading venue as a trading venue can never be a ‘counter party’ to a trade.

<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>

We have comments only on in relation to the following:

* Article 6(4): Please note that postcodes are not available in all countries.
* Article 15: This needs to include the situation where an instrument is first admitted to trading on two regulated markets. This is often the case for Irish companies who initially dual-list on the ISE and the LSE. We suggest that ESMA includes here the same wording that it has included in draft RTS 19, Article 1(1).
* Algo ID: We believe that ESMA should specify the format of the field (length and type of characters) as currently this varies across venues and therefore it is not possible for an investment firm to harmonise across all venues.
* Annex II Table 1 regarding national client identifiers: we note only CONCAT is suggested as the identifier in Ireland and question why a national passport number would not be included in the 1st priority column as is proposed for other jurisdictions.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_219>

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

<ESMA\_QUESTION\_CP\_MIFID\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_220>

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

<ESMA\_QUESTION\_CP\_MIFID\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_221>

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

<ESMA\_QUESTION\_CP\_MIFID\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_222>

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

<ESMA\_QUESTION\_CP\_MIFID\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

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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>

Article 26 (5) of MiFIR obliges trading venues to “report the details of transactions in financial Instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3” ( of the Article 26). In this respect the ISE would like to stress the following issues:

First, a trading venue might not obtain all the requested information from its clients, due to data protection constraints, for example a firm might not disseminate client identification data to third parties. Thus a trading venue will not be able to fulfil its reporting duties when reporting on behalf of firms that are not subject to this Regulation. It is therefore of utmost importance to have a clear definition of mandatory fields which should be reported in this case, a definition that will take data protection confidentiality into account.

Secondly, we believe clear guidance needs to be provided as to how a trading venue can identify firms that are not subject to this Regulation in order for it to report on its behalf. The lack of such provisions will ultimately result in over or under reporting.

Finally, it is crucial to point out that a trading venue is not and shall not be responsible for determining whether or not a given counterparty is subject to MiFIR or not.

<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>

The ISE has concerns with the proposal in Article 3(1)(e).

We note that ESMA believes that the provision of the client information to the venue when submitting the order is information which “will allow CAs to identify potential cases of cross-market and attempted market abuse”. However we believe that this will actually be achieved via the provision of client information in transaction reports, and do not see the added value that will be provided to the monitoring by CAs by also requiring such information to be added to orders submitted to trading venues. We further question if such data is compatible with confidentiality agreements and data protection law.

Furthermore, it has not been addressed that the client information is not always available at the time of order entry. Therefore an obligation should not be placed on a trading venue to store such information when it may not be provided to it by the investment firm. Therefore the fields in section 2 of Table 1, if maintained, should allow also for this option i.e. by including that it can be left “blank”. Furthermore, if not provided to the trading venue at the time of order entry, there should be no obligation on the venue to subsequently source this information.

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

We believe it would be beneficial for ESMA to include the definition of each capacity type within this draft RTS.

However we believe further clarity is needed on the description of ‘Liquidity provision activity’ in Table 1, Annex 1, draft RTS 34 (page 476), and propose the following amendment:

Where orders are placed in a trading venue by investment firms “**engaged in a market making agreement**”, or by………

<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>

The ISE agrees with the differentiation between electronic trading and voice trading however we believe that this needs to be done at a trading system level rather than at a venue level so that if a particular trading venue operates both an electronic trading system and a voice trading system, the requirements are set appropriately for each system. Otherwise disproportional requirements will be placed on the voice trading system. Therefore we suggest the following amendments to Article 4 of the draft RTS:

Article 4(1): ……. In the case of trading venues operating an electronic trading system, all data elements that require a time stamp shall be in a format that complies with the level of granularity required under paragraph 2(a) of this Article **for orders placed through that system**. Trading venues operating voice-trading systems ~~only~~ shall utilise a format that accommodates for data element fields to be recorded to the level of granularity required under paragraph 2(b) of this Article **for orders placed through that system**.

2. The time stamp for all order related events shall be accurate to the millisecond as a minimum. By way of derogation from this paragraph:

(a) Trading venues operating an electronic trading system where the gateway-to-gateway latency is measured in less than one millisecond shall maintain time stamps for all order related events **through that system** in accordance with Article 50 of the Directive;

(b) Trading venues that ~~only~~ operate a voice-trading system shall maintain a time stamp for all order related events **through that system** with a granularity of one second.

We would also like to highlight that we believe the local time of the market should be used to timestamp order events rather than UTC as UTC does not take into account adjustments for daylight savings and therefore will not provide a level of consistency. Instead we suggest that venues maintain the local time but will provide competent authorities with the UTC offset time for its market to enable a comparison, similar to the current approach under MiFID I.

We also note that there is an error in the definitions of “electronic system” and “voice trading system” in Article 2 where part (h) has a cross-reference to letter (b) which we believe should be to letter (g).

<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>

We welcome ESMA’s recognition that not all instruments have an ISIN code. However we would like to highlight that those instruments may not have an AII code either. While there are only a limited number of such instruments, it is important that they are captured within the Table 1 in Annex 1, and that a venue is allowed to assign another venue specific identification code to such instruments. Therefore we propose the following amendments to the table:

|  |  |  |
| --- | --- | --- |
| Financial instruments ID code | The financial instrument’s identification code i.e. the ISIN code; if there is no ISIN code, then the AII product code should be chosen. **If an instrument has neither an ISIN code nor an AII code, then an instrument ID code assigned by that venue.** | ISIN or AII product code **or venue assigned instrument ID code.** |

The same changes should also be applied to section 13 of the table:

|  |  |  |
| --- | --- | --- |
| Instrument identification code type | Code type used to identify the financial instrument. | I = ISIN, A = AII **or O = Other** |
| Identification code of the financial instrument | Code used to identify the financial instrument. | Where the instrument identification code type is I, ISO 6166 ISIN shall be usedWhere the instrument identification code type is A, the AII venue + Exchange Product Code (16 alphanumerical characters) shall be used**If an instrument has neither an ISIN code nor an AII code, then an instrument ID code assigned by that venue.** |
| Instrument classification | Taxonomy used to classify the financial instrument | ISO 10962 CFI code **or Other** |

We have comments on two of the fields in Table 1 of Annex 1 of the draft RTS:

* ‘Order modification’ – ‘Replaced by market operations’: We believe it is more appropriate for the example given i.e. where the order needs to be cancelled, to be included under the heading of ‘Order cancellation’, and that only modifications that result in the order remaining as an executable order on the system should be included in this category.
* ‘Order cancellation’ – ‘ Rejected by the counterparty’: If an order has already been executed but that execution is subsequently cancelled, then we believe that should be categorised as a trade cancellation rather than an order cancellation which is specific to each order and only represents one side of a potential trade.

<ESMA\_QUESTION\_CP\_MIFID\_229>

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

<ESMA\_QUESTION\_CP\_MIFID\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_230>

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

<ESMA\_QUESTION\_CP\_MIFID\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

Yes, the ISE agrees.

<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

We agree with ESMA’s intention to propose a calibration that takes into account different trading models, however we don’t believe that this has been fully realised within the draft RTS and are very concerned with the limited distinction between electronic systems and voice-trading at the venue level only, which will result in unworkable and unfair obligations on venues which operate both.

The ISE operates the electronic trading system, ISE Xetra, for its equity model, however for other asset classes (primarily fixed income) the ISE operates a voice trading system. In order to ensure the appropriate calibration requirements are applied to each trading model, it is critical that the draft RTS distinguish at a trading segment or market model level. This approach is already being applied by ESMA in relation to market making in section 4.3, paragraph 50 (iii) and also the reporting requirements on trading and execution venues in section 2.4 where the ‘market mechanism’ is one of the factors taken into account. Therefore a similar approach in this section would be fully in line with ESMA’s approach in other sections.

Therefore the following changes should be made to draft RTS 36:

Recital 6: ESMA is also conscious that there are trading models for which the millisecond granularity might not be relevant or feasible. Therefore trading venues that operate through voice trading ~~only~~ are required to have a maximum divergence from the reference clock of one second.

Article 3:

(1) A trading venue operating an electronic system shall ensure that its business clocks do not diverge more than one millisecond from the reference time **for that system**.

(2) By way of……

(3) A trading venue that ~~only~~ operates a voice trading system~~s~~ shall ensure that its business clocks do not diverge more than one second from the reference time **for that system**.

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

We are concerned with the proposal for all investment firms to synchronise the clocks in the systems that they use to the trading venues they connect to. This will in particular place vey onerous and costly obligations on smaller brokers connecting to electronic trading systems of larger venues that have a low latency.

Furthermore, investment firms may not be aware of such changes to the gateway latency if it is due to a system upgrade that has no member impact. The proposal therefore places new obligations on both the venues and the investment firms in this respect.

We therefore believe 1 millisecond provides sufficient synchronisation granularity.

<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>

In relation to debt products, we believe there should be sufficient flexibility in the approach so that not every field must be populated for every instrument, as we would not have information for every proposed field for all of our debt instruments. In particular, we would highlight that we would not capture “ultimate issuer identifier”, “redemption value”, “currency of the reimbursement”, “price multiplier”. Regarding the Identifier of the Ultimate Underlying and the Identifier Type, while we believe information on the underlying is essential information for investors we would not necessarily capture the specific identifier.

We agree to the publication of the following fields only

* ISIN
* Instrument status
* Instrument category
* Issue description
* Issue currency
* Maturity/expiry date
* Type of interest
* Issuer long name
* Issuer legal registration country

The ISIN field can be provided where it is available, this field should not be mandatory.

There is no obligation to issuers listing on the ISE to obtain an ISIN code, as such cannot be provided for all instruments.

 <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>

Yes we agree with this.

<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>

Yes we agree with this.

<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>

We agree to the use of ISIN code where available, however this field should not be mandatory. Instead a venue should be able to assign its own code.

<ESMA\_QUESTION\_CP\_MIFID\_238>

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_239>

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

<ESMA\_QUESTION\_CP\_MIFID\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_240>

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

<ESMA\_QUESTION\_CP\_MIFID\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_241>

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

<ESMA\_QUESTION\_CP\_MIFID\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_243>

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

<ESMA\_QUESTION\_CP\_MIFID\_244>

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<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)