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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 | Shell Trading and Supply |
| Confidential[[1]](#footnote-1) |  |
| Activity: | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

Shell Trading & Supply welcomes the opportunity to comment on ESMA’s proposed draft implementing measures in respect of MiFID II.

Shell Trading & Supply consists of a number of distinct legal entities across multiple jurisdictions within the Royal Dutch Shell group whose primary role is to act as the sole conduit to the global traded commodity markets for Shell’s Upstream and Downstream businesses in order to manage the group’s supply/demand balances and commodity price risk in hydrocarbons (crude oil, refined oil products, natural gas, LNG), power, freight and emissions. To achieve this, Shell Trading and Supply trades in excess of 13 million barrels of physical oil equivalents per day.

In addition, Shell Trading & Supply must also access commodity derivatives markets in order to manage the risks associated with its underlying physical activities. Such activity typically reflects and responds to the natural supply/demand dynamics that are found across commodity markets (whereby producers will be long the underlying physical commodity, short the corresponding commodity derivative and consumers vice-versa).

The portfolio of activities described above also enables Shell Trading and Supply to selectively engage in discretionary trading activities in order to maximise value for the group. Such activities are fundamentally ancillary to the underlying purpose of Shell Trading and Supply and of the Royal Dutch Shell group.

Our responses are limited to those likely to be most impactful for Shell Trading & Supply. In this regard, our response focuses on the questions set out in Chapter 7 of the Consultation Paper. In particular, we express our significant concern regarding ESMA’s proposals in relation to the ancillary activity exemption.

As noted by ESMA itself in the Consultation Paper, the potential impacts on commodity firms being brought within the scope of MIFID II for the first time are unlikely to be inconsequential. Far from strengthening financial markets in the EU, ESMA’s proposals will ultimately result in less liquid, less competitive and more volatile commodity markets that undermine the competitiveness of the EU.

Of critical importance for commodity market participants such as Shell Trading & Supply is the potential application of regulatory capital requirements that would result from being considered an investment firm under MiFID II. Until the European Commission has produced the report required under Article 498(2) CRR, commodity market participants are unable to properly assess the potential impacts that result from not being to avail themselves of the ancillary activity exemption. Faced with the prospect of becoming subject to the full application of CRR/CRD IV from 1 January 2018, many commodity market participants will be forced to consider whether their activities remain commercially viable.

Shell Trading & Supply urges ESMA to conduct a comprehensive cost-benefit analysis of its proposals and the potential direct and indirect impacts they may have on commodity market participants. In particular, ESMA should consider the potential impact the possible application of CRR/CRD IV will have on commodity firms if applied un-amended from 1 January 2018. In light of such analysis, we would encourage ESMA to re-consider its current proposals.

Shell Trading & Supply acknowledges the compressed timeframe in which ESMA is required to provide its Technical Advice to the European Commission. However, we believe any delay that could result from undertaking a full cost-benefit analysis far outweighs the potential consequences that are likely to result from ESMA’s current proposals.

Above all else, market participants require a sufficient degree of certainty and predictability so that they can develop and implement the requisite organisational and operational changes needed to enable them to either demonstrate they satisfy the requirements of the ancillary activity exemption or comply with the requirements of MiFID II as an investment firm. In this regard, we call on ESMA to provide market participants, as a matter of urgency, with a clear definition of what it considers to be the size of trading activity in the EU in respect of each relevant asset class. In the absence of such information, we are unable to evaluate, with any degree of accuracy, the impact of ESMA’s proposals on Shell Trading & Supply’s activities.

Such uncertainty is compounded further by ESMA’s amended proposals in respect of the ESMA Technical Advice on specifying the derivative contracts referred to in Sections C6 and C7 of Annex I of MiFID II that were published alongside the Consultation Paper. ESMA has introduced additional uncertainty through the addition of the ‘proportionate arrangements’ test in relation to C6 energy derivative contracts and wholesale energy products. The definition of such derivatives is critical in determining the potential impact on Shell Trading & Supply’s activities and the extent it will be subject to MiFID II. We will be writing to ESMA on this and other matters concerning the Technical Advice under separate cover.

Unlike many other areas of MIFID II where ESMA is providing Technical Advice to the European Commission, the matters concerning commodities markets are not simply a matter of refining or enhancing the existing regulatory framework but are of such fundamental importance that the efficient functioning and competitiveness of EU commodity markets are at stake. There is a significant risk that liquidity will migrate to both established and emerging hubs outside the EU, with consequential impacts on growth, investment and jobs in the Union. It is therefore critical that ESMA continues to engage with market participants beyond this consultation and works closely with them and the European Commission to find workable solutions that support the underlying intentions of MiFID II without damaging liquidity and competitiveness in Europe.

< 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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_30>

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

<ESMA\_QUESTION\_CP\_MIFID\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_32>

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

<ESMA\_QUESTION\_CP\_MIFID\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_33>

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

<ESMA\_QUESTION\_CP\_MIFID\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_34>

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

<ESMA\_QUESTION\_CP\_MIFID\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_35>

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

<ESMA\_QUESTION\_CP\_MIFID\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_36>

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

<ESMA\_QUESTION\_CP\_MIFID\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_37>

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

<ESMA\_QUESTION\_CP\_MIFID\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_38>

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

<ESMA\_QUESTION\_CP\_MIFID\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_39>

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

<ESMA\_QUESTION\_CP\_MIFID\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_41>

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

<ESMA\_QUESTION\_CP\_MIFID\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_44>

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

<ESMA\_QUESTION\_CP\_MIFID\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_46>

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

<ESMA\_QUESTION\_CP\_MIFID\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_47>

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

<ESMA\_QUESTION\_CP\_MIFID\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_48>

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

<ESMA\_QUESTION\_CP\_MIFID\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_49>

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

<ESMA\_QUESTION\_CP\_MIFID\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_51>

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

<ESMA\_QUESTION\_CP\_MIFID\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_52>

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

<ESMA\_QUESTION\_CP\_MIFID\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_53>

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

<ESMA\_QUESTION\_CP\_MIFID\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_54>

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

<ESMA\_QUESTION\_CP\_MIFID\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_55>

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

<ESMA\_QUESTION\_CP\_MIFID\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_56>

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

<ESMA\_QUESTION\_CP\_MIFID\_57>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_61>

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

<ESMA\_QUESTION\_CP\_MIFID\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_62>

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

<ESMA\_QUESTION\_CP\_MIFID\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

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<ESMA\_QUESTION\_CP\_MIFID\_64>

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

<ESMA\_QUESTION\_CP\_MIFID\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_65>

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

<ESMA\_QUESTION\_CP\_MIFID\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_66>

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

<ESMA\_QUESTION\_CP\_MIFID\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_67>

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

<ESMA\_QUESTION\_CP\_MIFID\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_68>

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

<ESMA\_QUESTION\_CP\_MIFID\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_69>

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

<ESMA\_QUESTION\_CP\_MIFID\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_70>

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

<ESMA\_QUESTION\_CP\_MIFID\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_71>

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

<ESMA\_QUESTION\_CP\_MIFID\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_72>

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

<ESMA\_QUESTION\_CP\_MIFID\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_73>

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

<ESMA\_QUESTION\_CP\_MIFID\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_74>

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

<ESMA\_QUESTION\_CP\_MIFID\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_75>

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

<ESMA\_QUESTION\_CP\_MIFID\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_76>

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

<ESMA\_QUESTION\_CP\_MIFID\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_77>

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

<ESMA\_QUESTION\_CP\_MIFID\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_78>

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

<ESMA\_QUESTION\_CP\_MIFID\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_79>

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

<ESMA\_QUESTION\_CP\_MIFID\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_80>

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

<ESMA\_QUESTION\_CP\_MIFID\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_81>

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

<ESMA\_QUESTION\_CP\_MIFID\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_82>

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

<ESMA\_QUESTION\_CP\_MIFID\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_83>

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

<ESMA\_QUESTION\_CP\_MIFID\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_84>

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

<ESMA\_QUESTION\_CP\_MIFID\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_85>

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

<ESMA\_QUESTION\_CP\_MIFID\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_86>

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

<ESMA\_QUESTION\_CP\_MIFID\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_93>

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

<ESMA\_QUESTION\_CP\_MIFID\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_94>

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

<ESMA\_QUESTION\_CP\_MIFID\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_96>

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

<ESMA\_QUESTION\_CP\_MIFID\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_97>

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

<ESMA\_QUESTION\_CP\_MIFID\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_98>

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

<ESMA\_QUESTION\_CP\_MIFID\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_99>

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

<ESMA\_QUESTION\_CP\_MIFID\_100>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_102>

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

<ESMA\_QUESTION\_CP\_MIFID\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_103>

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

<ESMA\_QUESTION\_CP\_MIFID\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_104>

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

<ESMA\_QUESTION\_CP\_MIFID\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_105>

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

<ESMA\_QUESTION\_CP\_MIFID\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_107>

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

<ESMA\_QUESTION\_CP\_MIFID\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_108>

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

<ESMA\_QUESTION\_CP\_MIFID\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_109>

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

<ESMA\_QUESTION\_CP\_MIFID\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_110>

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

<ESMA\_QUESTION\_CP\_MIFID\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_112>

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

<ESMA\_QUESTION\_CP\_MIFID\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_113>

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

<ESMA\_QUESTION\_CP\_MIFID\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_114>

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

<ESMA\_QUESTION\_CP\_MIFID\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_115>

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

<ESMA\_QUESTION\_CP\_MIFID\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_116>

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

<ESMA\_QUESTION\_CP\_MIFID\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_117>

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

<ESMA\_QUESTION\_CP\_MIFID\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_120>

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

<ESMA\_QUESTION\_CP\_MIFID\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_121>

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

<ESMA\_QUESTION\_CP\_MIFID\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_122>

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

<ESMA\_QUESTION\_CP\_MIFID\_123>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_124>

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

<ESMA\_QUESTION\_CP\_MIFID\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_125>

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

<ESMA\_QUESTION\_CP\_MIFID\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_126>

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

<ESMA\_QUESTION\_CP\_MIFID\_127>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_134>

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

<ESMA\_QUESTION\_CP\_MIFID\_135>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_136>

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

<ESMA\_QUESTION\_CP\_MIFID\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_140>

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

<ESMA\_QUESTION\_CP\_MIFID\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_141>

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

<ESMA\_QUESTION\_CP\_MIFID\_142>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_143>

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

<ESMA\_QUESTION\_CP\_MIFID\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_144>

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

<ESMA\_QUESTION\_CP\_MIFID\_145>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

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<ESMA\_QUESTION\_CP\_MIFID\_159>

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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

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<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

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<ESMA\_QUESTION\_CP\_MIFID\_164>

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

<ESMA\_QUESTION\_CP\_MIFID\_165>

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<ESMA\_QUESTION\_CP\_MIFID\_165>

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

<ESMA\_QUESTION\_CP\_MIFID\_166>

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<ESMA\_QUESTION\_CP\_MIFID\_166>

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

<ESMA\_QUESTION\_CP\_MIFID\_167>

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<ESMA\_QUESTION\_CP\_MIFID\_167>

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>

Shell Trading & Supply has significant reservations and concerns regarding ESMA’s proposed approach in relation to the calculation of the thresholds to determine whether a person is undertaking investment services or activities on an ancillary basis within the meaning of Article 2(1)(j) of Directive 2014/65 on markets in financial instruments [MiFID II]. ESMA’s revised approach represents a significant departure from that which was set out in its earlier Discussion Paper and appears to go beyond what the co-legislators intended at Level 1.

It is important to recall the purpose of the exemption contained in Article 2(1)(j) - to ensure that a non-financial firm providing investment services or undertaking investment activities on an ancillary basis to the main activity of their group is able to do so in a way that does not result in the disproportionate application of MiFID II and associated requirements under EMIR and CRR.

Whilst not explicitly stated in the Consultation Paper, by revising the methodology and setting the thresholds at such an unrealistic and unjustified level, whether intentional or not, ESMA’s proposals have the effect of narrowing the scope of Article 2(1)(j) beyond what was envisaged by the co-legislators.

Article 2(1)(j) does not limit or otherwise prescribe that the investment services or activities performed or undertaken by the non-financial firm must be for the exclusive purpose of risk management or hedging. However, the proposed methodology will have precisely that effect.

With such low thresholds, very few market participants will be able to safely rely upon the exemption. The consequences of not being able to rely upon Article 2(1)(b) should not be underestimated. As noted by ESMA on page 507 of the Consultation Paper, these include the potential application of the CRR/CRD IV upon expiration of the exemption in Article 498(1) CRR on 31 December 2017, the limited scope for financial firms to rely on the hedging exemption in the context of the position limits regime and the application of pre-trade transparency requirements.

For some market participants, the cumulative effect of those elements will be catastrophic and prompt them to exit the market completely. For others, it may mean that the regulatory costs are so punitive, that their European operations are no longer viable and liquidity will migrate to other global centres such as Chicago, Singapore, Hong Kong and Shanghai. Whilst this may not be the desired outcome of ESMA’s chosen approach, it is an increasingly plausible one.

The above concerns are amplified by the lack of empirical evidence or credible cost benefit analysis advanced by ESMA to justify such a radical departure from its initial policy thinking contained in the Discussion Paper. Similarly, it is difficult to reconcile ESMA’s revised proposals with the views expressed by the majority of respondents to the Discussion Paper supporting thresholds significantly above those now being proposed.

In summary, Shell Trading & Supply considers ESMA’s revised proposals to be a significant retrograde step that risk altering the complexion of European and international commodity markets and will prompt liquidity in those markets to migrate to other jurisdictions outside the EU. This in turn will have a negative impact on the ability of producers, processors and end-users of commodities to manage commodity price risks arising from their underlying activities effectively and will impose significant additional costs on market participants that may ultimately be borne by end consumers.

<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>

We agree that the denominator should encapsulate both EU and non-EU activities of the group.

<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>

At a general level, Shell Trading & Supply agrees that capital employed for ancillary activity relative to the capital employed for the main business is an appropriate test. However, Shell Trading & Supply has serious reservations regarding the revised methodology to determine the numerator.

We further elaborate on this in our response to Question 172

<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>

As noted in our response to Questions 170 and 172, Shell Trading & Supply has significant reservations concerning ESMA’s revised methodology to calculate the numerator. Were the revised methodology to remain unchanged, then it is essential that any activity undertaken by a MiFID II licensed subsidiary is deducted from the numerator.

In addition to ensuring MiFID II activity undertaken by a licensed affiliate is deducted from the numerator, it is equally critical that activity exempted by virtue of one or more of the other exemptions in Article 2 MiFID II is also deducted. This is consistent with ESMA’s view that it is possible for market participants to combine the exemptions in Article 2.

Specifically, we would urge ESMA to amend the draft RTS so that activity undertaken by an entity or affiliate that is otherwise exempt by the exemption in Article 2(1)(e) in relation to dealing in emission allowances for compliance purposes is excluded from the numerator.

<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>

Shell Trading & Supply has significant reservations and concerns regarding ESMA’s proposed revised methodology to determine ancillary activity (the numerator) on the basis of capital employed for MiFID II activity at group level in the EU.

Shell Trading & Supply considers that ancillary activities (the numerator) should be calculated on the basis of the capital employed for eligible activities by the person seeking to rely on the exemption rather than the capital employed by the group for such activities.

We understand it is ESMA’s belief that Article 2(4) requires ESMA to apply the capital employed test on a group basis. However, this appears to be inconsistent with ESMA’s own thinking expressed in paragraph 38 of the Consultation Paper, which states:

“The test will include a comparison of the capital employed by the person seeking the exemption for trading activities undertaken in the EU for non-hedging purposes on the one hand and the capital employed for the overall activity undertaken by the whole group globally on the other hand” [emphasis added]

ESMA’s proposal to calculate the numerator at a group level raises a number of substantive practical difficulties that will introduce unnecessary complexity and uncertainty for commodity firms and undermine its value as a reliable measure of ancillary activity.

We do not see how, using the proposed definition of capital employed, it will be possible to identify/calculate the capital employed by the entity seeking to rely on the exemption for eligible activities undertaken by another member of its group.

The draft RTS also appears have the unintended consequence of requiring each and every entity within a group conducting MiFID II activity to be subject to MiFID II solely on the basis of one entity exceeding one or both of the thresholds.

We have difficulty reconciling this with the underlying intention and objective of Article 2(1)(j) – namely to exempt persons undertaking investment services or activities in relation to commodity derivatives that are ancillary to the main business of the group to which the person belongs. Recital 20 clearly refers to ‘persons’ and ‘non-financial’ firms undertaking the ancillary activities rather than the group to which it belongs.

A further concern relates to the territorial scope of the calculation. Article 2(a) and Article 3(1) of the draft RTS states that reference should be made to the capital employed by the group for carrying out eligible activity in the European Union [emphasis added]. It is not clear how this to be interpreted and applied in practice.

A group may have multiple subsidiaries engaged in activities in multiple jurisdictions outside the EU that could be interpreted as constituting eligible activity. For example, it is not clear whether the activity of a non-EU affiliate trading commodity derivatives on an EU exchange would be considered to be ‘eligible activity in the European Union’ or not. Similarly, it is possible that commodity derivatives traded on a third country venue could fall within the expanded definition of Annex 1 C7. It may therefore be possible that dealing on own account by a non-EU affiliate in such instruments would also constitute ‘eligible activity in the European Union’.

Recommendation

Shell Trading & Supply respectfully suggests ESMA consider a methodology based on the ancillary activity of the person seeking exemption. This could be expressed as:

Capital employed by the person for eligible activity in the EU – capital employed for privileged transactions

Capital employed for the main business of the group on a global basis

Such an approach would be relatively simple for market participants to calculate; would more closely align the methodology with the purpose and subject of the exemption; and removes the uncertainty whether the breach of the threshold by one entity within a group triggers a licensing obligation for all entities undertaking eligible activity.

Shell Trading & Supply notes ESMA’s comment that changes to the methodology may impact the level at which the threshold is set. However, Shell Trading & Supply does not believe the alternative approach it suggests would materially alter the regulatory outcome that ESMA and the Level 1 text is seeking to achieve. We comment more fully on the appropriateness of the threshold level in our response to Question 173.

Irrespective of whether ESMA chooses to apply the minority of activities test at a person or group level, it is critical that it further elaborates on what it considers to be ‘eligible activity in the European Union’.

In this regard, ESMA ought to consider a definition that is limited to eligible activity undertaken:

i) By counterparties located within the EU (either established or a branch); or

ii) On a regulated market, MTF or OTF authorised and located within the EU.

Such a definition would provide greater legal certainty and minimise the risk of divergent approaches being taken by market participants and national competent authorities.

<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>

Shell Trading & Supply has significant reservations concerning the level at which ESMA has chosen to set the threshold. In our view, ESMA has failed to make the case to justify the imposition of such a low threshold and urge ESMA to reconsider both the methodology used to calculate ancillary activity and the level of the threshold.

The threshold proposed by ESMA fails to reflect the proportionality principle embodied in the Level 1 text. According to Recital 20 MiFID II, the stated purpose of Article 2(1)(j) is to “ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business” are subject to MiFID II.

The Consultation Paper notes that “most respondents support setting the threshold close to 50%”. Notwithstanding ESMA’s proposed revisions to the methodology, ESMA fails to advance any credible evidence or cost-benefit analysis to justify such a disproportionately low threshold.

In light of the uncertainties identified in our response to Questions 170-172 and the absence of compelling evidence or data to support a threshold of 5%, Shell Trading & Supply considers a more appropriate and proportionate threshold to be between 15-20% of capital employed. Such an approach would also give the European Commission, ESMA and national competent authorities the opportunity to further calibrate and refine the thresholds in light of further data and experience gained. A lower threshold prevents any such flexibility.

As suggested in our response to Question 172, a more proportionate and pragmatic approach would be to apply the capital employed test at the level of the person/entity seeking exemption. Shell Trading & Supply acknowledges that by doing so, the applicable threshold may need to be lower than if it were calculated on a group basis. We also acknowledge that ESMA may have concerns that market participants might seek to ‘subsidiarise’ eligible activity into multiple entities in order to remain below such a threshold

.<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

In general terms, Shell Trading & Supply supports the use of an accounting measure for capital employed. However, as noted in our response to Question 175, there are considerable practical challenges as to how such a measure can be used to calculate capital employed for privileged transactions.<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>

As noted in our response to Question 174, Shell Trading & Supply broadly supports the use of equity, current debt and non-current debt as the principal measure for determining what constitutes capital employed. However, it is not possible to use such a measure to determine the capital employed for privileged transactions nor when seeking to calculate capital employed by one entity in respect of eligible activities undertaken by an affiliate within the same group.

Recommendation

Shell Trading & Supply considers a more appropriate measure to determine capital employed for privileged transactions would be a working capital measure based upon the sum of the following elements:

i) mark-to-market exposures of uncollateralised OTC derivatives;

ii) accounts payables/receivables; and

iii) margin held against relevant exchange-traded and OTC derivatives.

Such an approach may require firms to amend their internal processes to derive such information. However, we believe such impacts are likely to be relatively minimal

.<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>

ESMA’s proposal to use gross notional value to measure size of trading activity presents a number of practical difficulties that will impose unnecessary burden and costs on market participants with no additional regulatory benefit or value.

Shell Trading & Supply considers a simple volumetric test to be a more appropriate test to determine market size/size of trading activity.

Shell Trading & Supply understands why an approach based on gross notional value might appear attractive. Most market participants will already have systems to calculate gross notional value for EMIR compliance purposes. However, the basis for the calculation is fundamentally different. Such data is compiled on an aggregate basis across different commodity asset classes and only captures OTC derivatives.

We note ESMA’s desire to use TR data as the basis for the calculation. Such an approach is unlikely to deliver the outcome sought by ESMA. Given the expanded definition of financial instruments, transactions between two non-EU counterparties (one of which being an affiliate of an EU entity seeking exemption) in certain instruments would count towards the size of trading activity but would not be subject to the reporting obligation under EMIR. Further, the TRs have not thus far been able/willing to provide market participants with their own data.

A simple, volume-based test will be simpler for firms to calculate as they will not have to extrapolate price series data for each and every contract. Further, a volumetric test removes any risk of price volatility or foreign exchange risk impacting either the denominator or numerator. For certain asset classes, notably in respect of crude oil and refined oil products, it will be necessary for market participants to apply an appropriate conversion factor in order to derive a common volumetric measure (e.g. 1 lot (1000 bbls) of crude oil futures = 133.642565 metric tonnes). Such conversion factors are standardised and widely available. We do not believe this would impose any undue burden on market participants.

Recommendation

ESMA should adopt a volumetric based test based on the standard unit of measurement commonly used in the relevant asset class. <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>

Shell Trading & Supply has significant concerns regarding ESMA’s proposals to apply the numerator on the basis of the group rather than the person.

Many of the concerns expressed in our response to Question 172 are broadly applicable in respect of the size of trading activity. In particular, we would draw ESMA’s attention to paragraph 47 on page 518 of the Consultation Paper that clearly states that:

“The size of trading activity should be defined by deducting the sum of the volume of privileged transactions from the volume of the trading activity of the person undertaken in the EU at group level. The size of trading activity of the person must then be compared with the size of the overall market trading activity in the relevant asset class in the EU.”

Notwithstanding the apparent inconsistencies between the above language and that used in the draft RTS, the additional burdens that will be placed on firms/groups to aggregate the relevant data should not be underestimated.

Recommendation

Shell Trading & Supply respectfully suggests that ESMA revert to a methodology that measures the relevant trading activity of the person seeking to rely on the exemption. In this regard, we suggest ESMA consider the following methodology:

Size of trading activity of the person in the relevant commodity asset class in the EU

Size of the overall market trading activity in the relevant commodity asset class in the EU

Such an approach is, in our view, consistent with the underlying policy intent of the co-legislators; will minimise the administrative burden and compliance costs on market participants; and is unlikely to prejudice the regulatory outcomes sought by ESMA.

We note ESMA’s comment that adjustments to the methodology may impact the level of the threshold to be applied. We comment more fully on the level of the threshold as regards the size of trading activity in our response to Question 179.

<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>

Shell Trading & Supply has significant reservations regarding ESMA’s proposals to introduce a separate asset class for commodities referred to in Section C10 Annex I. In particular, Shell Trading & Supply does not support the proposal to subsume freight within that new asset class

As noted by ESMA in paragraph 52 on page 520 of the Consultation paper that freight to be a commodity which is ancillary to the trading of other commodities. ESMA’s proposal to include freight with C10 instruments appears to contradict ESMA’s apparent policy intent. A more appropriate and more logical approach would be to include freight activity within the ancillary activity of the related commodity (e.g. oil and oil products, gas etc). [Such an approach may present some practical implementation challenges if a volume-based approach is used to calculate size of trading activity. However, we do not think such issues would impose an unnecessary burden on firms in comparison to the complexity and consequences of subsuming freight with the C10 asset class.]

Recommendation

The respective asset classes enumerated in Article 2(b)(i) should be expanded to include freight related to that specific asset class.<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>

Shell Trading & Supply is unable to support ESMA’s proposals regarding the threshold for size of trading activity. ESMA has failed to provide any credible justification or empirical evidence to support such a low threshold. More importantly, ESMA has not provided any indication of the data it proposes to use to derive the denominator for the calculation.

It is imperative that ESMA provide market participants with the denominator for each asset class so that they are able to provide informed comments on the appropriateness of the threshold. In the absence of such fundamental information, we are unable to undertake a considered appraisal of whether or not the proposed threshold is appropriate.

Notwithstanding the absence of specific data against which the threshold can be compared, the 0.5% threshold appears intuitively low, particularly when applied on a group basis. As noted in our response to Question 172, the intent of the exemption is to ensure that commodity firms who undertake MIFID II activities in a disproportionate manner compared to the main activities of their group. A threshold of 0.5% lacks any such proportionality and renders the exemption unavailable to all but the very smallest market participants.

As noted in our response to Question 176, it is questionable the extent to the data held in TRs is sufficiently robust and complete in order to calculate the overall size of trading activity in the EU (for example, non-EU market participants may not have reporting obligations under EMIR).

In the absence of a reliable and robust methodology for calculating the denominator, it is neither possible nor appropriate for Shell Trading & Supply to suggest at this point in time an alternative threshold for the size of trading activity.

Recommendation

As a matter of urgency, we call upon ESMA to develop and publish a robust methodology for calculating the denominator for each asset class. This should be done on the basis of further consultation and input from market participants. On the basis of that methodology, ESMA should then seek further input from market participants as to the level at which the threshold should be set. To the extent that it is able, Shell Trading & Supply remains at ESMA’s disposal to assist further in this regard.

We note such a process may have an adverse effect on the already compressed timeframes in which ESMA must submit its technical advice to the European Commission. However, we firmly believe that this matter is of such fundamental importance to commodity market participants and commodity markets in general that the additional certainty this will bring to market participants far outweighs any possible delay that might be incurred

.<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>

In principle, Shell Trading & Supply is supportive of a de minimis threshold. However, in light of our response to Question 179, Shell Trading & Supply is unable to express a view on whether the proposed 0.25% is set at the appropriate level.

<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>

In principle, Shell Trading & Supply supports ESMA’s proposed approach.

In respect on intra-group transactions, Shell Trading & Supply acknowledges the desirability of aligning the definition of intra-group transactions with the definition contained in Article 3 EMIR. However, the absence of equivalence decisions regarding third countries places severe limits on the scope of intra-group transactions that can be excluded as privileged transactions. Such an outcome would appear to run contrary to ESMA’s policy intent as expressed at paragraph 38 on page 515 of the Consultation Paper.

In relation to risk-reducing transactions, we welcome the recognition by ESMA that the definition contained in EMIR ought to be expanded to include exchange-traded derivatives.

Recommendation

In defining intra-group transactions, ESMA should amend the draft RTS to ensure that transactions undertaken with a non-EU affiliate should be considered a privileged transaction, irrespective of whether or not an equivalence decision has been made under EMIR

<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>

Shell Trading & Supply has significant concerns regarding the implications resulting from ESMA’s proposal to base the initial calculation period on 2016 data.

ESMA’s approach risks creating conditions that could lead to disorderly trading conditions within certain markets and in some circumstances may expose market participants and individuals to criminal liability in certain jurisdictions, most notably the UK.

On the 3 January 2017, commodity market participants will either have to be exempt under Article 2 MiFID II or authorised under Article 5 MiFID II by their national competent authority.

Faced with such a prospect, commodity market participants will need to:

i) Put in place the necessary organisational systems and controls to comply with MiFID II (and related requirements under EMIR and national regulatory regimes) and submit a defensive application for authorisation by 3 July 2016 (as national competent authorities have six months within which to grant an application for authorisation);

ii) Cease all relevant eligible activity and novate all open positions to an duly authorised MiFID II entity from 3 January 2017 (thereby resulting in possible market disruption)

A third scenario is that the market participant takes no action. In such circumstances, if established in the UK, from the 3 January 2017 the market participant could face criminal prosecution and existing contracts could be voidable (which could create disorderly markets).

Shell Trading & Supply recognises that ESMA is constrained by the Level 1 text as to what it is able to propose to overcome this critical issue. Shell Trading & Supply urges ESMA to work closely with market participants, national competent authorities and the European Commission to develop a workable solution to this issue.

<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>

In its present form, we consider that the proposed framework of the methodology for calculating position limits poses a number of issues which we have elaborated on in further detail in our responses below. We believe that the cumulative effect of all these different issues will prove to be extremely onerous on market participants and has a high probability factor for many of these to significantly reduce their trading activity on these markets (and thus reducing liquidity overall) or migrate their trading activity to a non-EU venue with less stringent measures being imposed in such a sweeping, broad-brush basis.

For ease of reference, we have provided an overview of our concerns surrounding issues that are of most salient to us:

• The proposal that deliverable supply should be used as the baseline metric for physically delivered contracts beyond spot month and also for cash-settled contracts, where it is not immediately clear what the deliverable supply actually is. We raise and suggest a number of revisions that can be made to ensure that a more effective implementation of a position limits regime can take place.

* An overly narrow definition of what constitutes an economically equivalent OTC contract will prove to be restrictive for market participants who will be left particularly exposed as they will be unable to effectively execute effective risk management strategies.
* The inability to net non-MiFID instruments with MiFID instruments will serve as an artificial constraint on the actual risk exposure that is being created as it does not reflect the overall trading position. ESMA cannot ignore the global nature of the commodities markets and that it is common trading practice to mitigate EU risks arising from MiFID instruments by hedging with non-MiFID instruments traded on a third country venue.

Whilst it appears that the exact methodology has yet to be further defined by the NCA around the setting of the position limits for individual contracts in a particular asset class and that the baseline figure of 25% of deliverable supply with the +/-15% parameters is the only factor has been explored in further detail, it is difficult to provide detailed comment without knowing the exact weight that other factors (i.e. contract maturity, characteristics of the underlying commodity markets etc.) will play.

It is essential that ESMA to provide market participants with data concerning deliverable supply for key commodity asset classes so that market participants are able to evaluate whether or not the 25% figure and the +/- 15% parameters proposed are appropriate.

We call on ESMA to work with market operators to develop an outline of methodologies currently in place for establishing position limits for different commodities and types and contract so that ESMA can take into consideration the complexities behind each market and that the final methodology needs to be more flexible to account for this. We also note that given the concurrency of developments introducing changes to the position limits regime in the U.S., ESMA should seek to achieve a degree of consistency and alignment with the approach taken by the CFTC as far as is practicable, noting that the overwhelming majority of market participants will have to adhere to these two regimes.

<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>

We consider that the proposal for using a baseline of 25% of deliverable supply is not a suitable metric for the position limit for each commodity derivative for both the spot month limit and the limit for other months further down the curve. We do however agree with the use of deliverable supply as the metric for physically-settled spot month contracts only.

We believe that it is necessary to make a distinction between physically-settled and cash-settled contracts. The “futurization of swaps” which took place in October 2012 in response to the implementation of the Dodd-Frank Act in the U.S., resulted in a proliferation of these previous swap contracts being listed on European trading venues (e.g. ICE Futures Europe) as cash-settled futures contracts. As the majority of these cash-settled contracts are differentials and spreads, we have a number of concerns as to how ESMA’s proposals in relation to deliverable supply will apply to such contracts, as there is nothing actually being physically delivered upon expiry. Furthermore, regarding the application of position limits to spreads, it is unclear how this will apply to these types of contracts – will separate position limits for different asset classes be applied to each leg of the spread?

In order for deliverable supply to be workable in practice, ESMA should take into consideration and further elaborate on the following:

• How will deliverable supply for physically settled contracts be calculated for the spot month, noting that there will be specific factors that will have to be taken into consideration for different asset classes. For example, we anticipate that for the natural gas market, it will be necessary to look at the level of gas production; how much is available for delivery; the delivery capacity of the delivery facility; and information around the storage facilities.

* It is also unclear whether or not the issue of deliverable supply will be looked at on an exchange-by-exchange basis. For instance, for ICE Gasoil Futures, upon reaching expiry, alternative delivery mechanisms can be invoked which would then have an effect on the deliverable supply available.
* Another point we would like to bring to ESMA’s attention is how the concept of deliverable supply will be applied to markets, such as BFOE which is a very dynamic market with a heavy focus on fungibility at play. This is particularly relevant for non-spot months and should also be subject to variation depending on whether there is an element of seasonality to the commodity and also whether storage is a factor.
* Furthermore, if deliverable supply is to be used for the spot month, what length of time will this encompass? Would it constitute the entire duration of the spot month or would it only cover the days in the run up to expiry? This makes a significant difference as to the overall size of the position figure that is calculated and set.
* It is unclear what geographical scope is to be considered when looking at the measure of deliverable supply. For some markets, such as natural gas and power, this should be considered on a national or regional basis. However, for the crude oil and refined products markets, these are truly global markets.
* We also believe that ESMA should set out how they anticipate NCAs will be able to obtain reliable data from physical facilities that are not within the scope of financial supervision, such as oil refineries for example.

The proposal as it currently stands, is suggesting that the same baseline figure of 25% of deliverable supply is to be applicable to both the spot month and forward months further down the curve. We do not think that it is appropriate to use deliverable supply as the metric for determining the position limit for the months further down the curve as this raises issues around lower liquidity.

As is the case for the majority of contracts, the further down along the curve you go from expiry, the depth of liquidity will tend to fall, which if we were to have the same position limit applied, would be particularly onerous to the limited number of market participants active in these contract months. By implementing a higher position limit for non-spot months, there runs the risk that existing liquidity could be affected, running the risk of a disorderly market. This will also artificially constrain any potential growth in liquidity for what will already be a small number of contracts being traded. We would also highlight the fact that the estimation of deliverable supply further down the curve, e.g. 4-5 years ahead, is likely to be very difficult to conduct and risks associated with a margin of error are more likely to occur.

As such, we would advocate for either of the following solutions to be adopted as an alternative to the use of deliverable supply for months other than the spot month:

• Using open interest as the baseline metric for the forward months further down the curve; or

* Having two different measures of deliverable supply – a slightly lower figure for the spot month and a higher one for months thereafter; or
* Having position accountability levels instead of hard position limit for non-spot months to only target excessive speculative activity.

Whilst we do recognise the fact that there is a degree of flexibility afforded with the ability for NCAs to adjust the baseline percentage by +/-15% and are supportive of this measure, we are not in a position to be able to comment on whether the baseline 25% is an appropriate figure, until we have had sight of some estimates as to what deliverable supply values are likely to be, as we have mentioned in our response to Question 183 above.

<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>

Please refer above to our response to Question 184<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>

Please refer above to our response to Question 184<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>

Please refer above to our response to Question 184<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>

Yes – we believe that there should be different methodologies for setting the spot month position limit and for setting non-spot month limits. As mentioned in our above response to Question 184, we would consider deliverable supply to be a suitable metric for the spot month, but not for the months further down the curve. Instead, we believe the following are more appropriate metrics to use for these less liquid contract months:

• Using open interest as the baseline metric for the forward months further down the curve; or

• Having two different measures of deliverable supply – a slightly lower figure for the spot month and a higher one for months thereafter; or

• Having position accountability levels instead of hard position limit for non-spot months to only target excessive speculative activity.

There should also be a de minimis threshold as to the amount of trading activity actually taking place before a position limit is imposed on a contract.

<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>

We strongly believe that ESMA should ensure that a methodology is established whereby there is a degree of flexibility that accounts for the fact that new contracts are likely to be relatively illiquid when they first begin to be traded, and thus the very few participants at that point will represent the majority of the number of contracts. If the position limit has been set too low, it is likely that this will constrain liquidity growth from the outset and hinder any increase of participation. A way to address this would be to introduce a de minimis threshold for the amount of trading activity that would have to be present before a position limit should be introduced. This could be done by way of applying a reasonable multiple to the number of contracts traded after a defined period of trading for each individual new contract

However, we would like to highlight that whilst illiquidity is often associated with new contracts, it is also a common feature of many longstanding existing contracts that are perhaps more niche and specialist in nature. As such, we call on ESMA to shed some light on what the intention is for existing illiquid contracts that will be subject to a new position limits regime.

As to whether the ESMA-proposed technical standard for non-equity transparency could serve as a basis for determining whether a contract is liquid, we would consider that for the sake of consistency that this should be used as a foundation on which to determine the liquidity of a contract. However, we believe that further refinements should be made to improve on the existing proposed RTS covering energy commodity derivatives. In particular, we note that for the oil markets, the data used as the basis for the liquidity test has been based on transactions pertaining to a limited number of instruments and are denominated in the Romanian Leu.

We would consider that a more appropriate measure, given the relative size of the market, not just within the EU but in a global context, would be to look at instruments relating crude oil and refined products that are traded on the most liquid regulated markets such as ICE Futures Europe. On a more general basis, we would note that a test for liquidity should ultimately consist of a higher threshold – as is currently stated in this Consultation Paper, for energy commodity derivatives, “an average of 1 trade per day or more and; an average notional amount per day of €100,000 or more” will amount to a sub-class as being liquid. We believe that this should be revised to increase the amount of trading activity that should be accounted for in the liquidity test.<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>

We would like to bring to ESMA’s attention the fact that there are a number of factors specific to the different asset class markets that need to be taken into consideration by NCAs when adjusting the level of deliverable supply calculated by trading venues. In our opinion, we believe that contract specifications play a critical role as to how some sizes of market positions are built. We also consider logistical capacity constraints around both physical delivery and storage/warehousing capacity to be equally important elements that need to be factored into the methodology. <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>

We have noted that there are some specific features of the underlying commodities that are highly likely to have an impact on deliverable supply. We believe that seasonal supply shortages/outages are a critical factor on deliverable supply, for example, for the Brent oil market, there is a scheduled summer maintenance period whereby oil companies undertake annual infrastructure work on their platforms and pipelines, and BFOE output tends to fall as a result of this activity. This is an event which the market expects each year and is generally considered as a seasonal supply factor. We also believe that the perishability of certain commodities is also a factor that may have an impact on deliverable supply, for example, the calorific value of coal starts to deteriorate after a period of three months

<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>

Please refer above to our answer to Question 189.<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>

We believe that NCAs should take into account the fact that there are already in place, position management powers that can be exercised by trading venues, particularly surrounding the size of positions that can be held by market participants in the run up towards expiry. For example, on the ICE Brent Futures market, where participants are nearing the limit in the run up to expiry, there will be interference from the exchange to enquire as to the physical positions that are also being held by the market participant, so as to prevent any potential abusive squeezes taking place. We also feel that the NCAs should consider looking at both the distribution and composition of the participants so as to gain a better understanding of the context in which the position limit will be applied to a particular market, in a similar approach to that of the CFTC<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>

Please refer above to our response to Question 193. We would also like to highlight that if open interest were to be used instead of deliverable supply for non-spot months and cash-settled contracts then it would also take into consideration the specific factors relating to a particular commodity market.<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>

Please refer below to our response to Question 196. We believe that it would be beneficial if NCAs had a discretionary power to determine on an individual case basis, what the maturity status of a new contract is after its commencement. It is essential that any limits imposed, do not run the risk of damaging the developing liquidity in these new markets

.<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>

We believe that the ongoing liquidity should apply, as opposed to the age of the commodity derivative. In our opinion, the age of the contract is merely an arbitrary factor. There are currently plenty of existing contracts whose underlying markets are relatively illiquid and are unlikely to even require a position limit to be put in place. If ongoing liquidity was used instead, it would at least allow for a justifiably suitable threshold to be in place

.<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>

We do not have any further comments to add to our responses on the position limit calculation methodology which we have not already brought to ESMA’s attention <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>

We agree with the proposal from ESMA to not include asset-class specific elements in the methodology and that the methodology should provide the NCAs with sufficient scope to take into consideration the specific elements relating to the different markets without incorporating asset-class specific elements in it.<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>

These factors are already taken into account within the open interest metric

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

Regarding the proposed draft RTS regarding risk reducing positions, we do not agree that these are formulated in the best way that will promote stability and robustness in these markets. We believe that if the hedging exemption will only be applicable to non-financial entities, this may result in increased market volatility as financial entities who are no longer able to avail of the hedging exemption, will have to close out a vast number of positions so as not to trigger a breach of a position limit. If financial entities are subject to what may be a particularly stringent position limits regime, with an inability to offset any risks that may be related to any positions being held, then a highly probable outcome will be for such participants to consider moving their trading activity to a non-EU market instead. ESMA should also consider exempting arbitrage positions (simultaneous purchase and sale of identical or equivalent commodity futures contracts or other instruments across two or more regulated markets) from the position limits regime as well.

<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>

The availability of an effective exemption from position limits for hedging activities is critical for commodity market participants.

We agree that the term "non-financial entity" should be understood to cover persons that are not either:

• persons who are regulated under the various EU directives or regulations regulating financial entities; or

• persons who would be regulated under those directives or regulations if they were established in the EU.

We consider that the definition should be read in this way even if the territorial and personal scope of Article 57 is limited to EU persons. Even if this is the case, there is a risk that the positions of non-EU non-financial entities could need to be aggregated with the positions of a parent undertaking in the EU. The non-EU entity or its EU parent on its behalf should be able to obtain the benefit of the exemption for risk reducing positions.

<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>

We believe the effect of ESMA's proposals is that where a parent or ultimate holding company itself holds no positions in commodity derivatives traded on a trading venue or economically equivalent OTC contracts, that entity will not be subject to aggregation rules notwithstanding positions may be held by one or more subsidiary undertakings of that entity.

At paragraph 19 of Section 7.3 of the Consultation Paper ESMA states that the aggregation will comprise of the positions of a person together with those of any wholly or partly owned subsidiaries of that entity but 'aggregation with the positions of fellow subsidiaries of a mutual parent or ultimate holding company' is not required. It follows therefore that the parent or ultimate holding company should not have to aggregate its positions with those of its subsidiaries where it holds no positions in commodity derivatives traded on a trading venue or economically equivalent OTC contracts itself as otherwise this could result in the position limits applying on an aggregated basis between the positions of fellow subsidiaries of that mutual parent or ultimate holding company which would be inconsistent with the position as set out in Section 7.3, paragraph 19.

Accordingly, we would welcome further clarification in the RTS that the position limit regime is only applicable where the relevant person holds positions in commodity derivatives and accordingly a parent or ultimate holding company that holds no positions in commodity derivatives is not required to aggregate the positions of its subsidiaries.

<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>

We understand this Question to be of more relevance to the asset management community.

.<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>

We do not agree with the proposed draft RTS regarding the criteria for determining whether a contract is an economically equivalent OTC contract (“EEOTC”). We believe that the criteria in its current form, poses a number of questions and issues that need to be addressed by ESMA and does not factor into consideration the global nature of commodities markets.

If the EEOTC definition is to be framed narrowly in accordance with ESMA’s statements that “a wider scope would risk diluting the integrity of position limits for commodity derivatives by allowing inappropriate netting of positions” and that “a wide approach would also create additional complexity and uncertainty for position holders as regards the same commodity derivatives potentially being simultaneously subject to several position limits”, this subsequent result of narrow-netting would have a profound negative effect on the provision of liquidity and the ability for market participants to effectively conduct price risk-management strategies. We consider that the direction which the RTS is taking imposes an artificial restriction on the scope of netting that can be undertaken and this will run the risk of trading activity shifting to non-EU markets.

In the RTS, ESMA has stated that a contract will be deemed to be an EEOTC, if it is at least economically equivalent; is traded under or with reference to the same set of trading venue rules and creates a single fungible pool of open interest; and has “other equivalent properties, such as requiring the same underlying commodity for settlement.” It is this latter limb of the criteria which we believe requires further clarification. ESMA should be alert to a possibility that contracts could be altered/drafted in such a way that they are no longer deemed to be economically equivalent or have the same equivalence in other contractual properties. There is also a lack of clarity about how, or if, this criteria should be applied to contracts traded on a third country trading venue. To illustrate this point, under the criteria currently stipulated in the RTS, would a NYMEX Brent Futures contract be considered economically equivalent to an ICE Brent Futures contract?

We would also like to note that Recital 10 of the draft RTS 30 states that ESMA and the relevant NCA will publish a list of commodity derivative contracts with the OTC commodity contracts that are economically equivalent to them for the purposes of position limits – how often will this list be updated and which entity will have the responsibility of oversight for this?<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>

We agree with the proposed draft RTS regarding the definition of same derivative contract on the basis that “same” is a subset of economically equivalent and that a contract is to be regarded as “the same” if it is at least economically equivalent and has other equivalent properties<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>

We believe that the draft RTS definition in its current form, proposing that more than three lots of open interest in the same commodity will constitute significant volume, is set far too low, particularly if it is to be applied across all commodity classes of contracts. We believe the figure should be set at a higher value so as to pick up a greater degree of market movement – it is unlikely that a market with just three lots of open interest will be an efficient market.

<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>

We do not support ESMA’s proposals aggregation and netting of OTC and on-venue commodity derivatives. A narrow interpretation of what instruments can be netted risks creating a position limits regime that is ineffective and may frustrate effective risk management by both non-financial and financial institutions.

In particular, we do not share ESMA’s view that Article 57 is confined to the EU. The fact that Level 1 text is silent on the matter should not preclude the possibility of a wider interpretation. Indeed, it is possible that derivatives traded on a third country venue are considered financial instruments under C7 Annex I.

.<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>

We are in support of having a procedure set in place for applications for exemptions to the position limits regime. However, we question whether the 30 calendar day period of approval is the most appropriate timescale in asking for a position limit exemption. Given the immediacy that is often associated with having to take hedging and risk-reducing positions, we believe that it would be better suited to have an ex post approval procedure that would allow for the firm to notify the NCA that they wish to execute a trade and carry it out with immediate effect.<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>

We do not have any concerns with the proposed draft RTS in relation to the aggregation and netting of OTC and on-venue commodity derivatives for the purposes of establishing the trading venue with the largest volume of trading and to determine significant volumes.<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

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<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

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<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

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<ESMA\_QUESTION\_CP\_MIFID\_212>

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>

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<ESMA\_QUESTION\_CP\_MIFID\_213>

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

<ESMA\_QUESTION\_CP\_MIFID\_214>

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<ESMA\_QUESTION\_CP\_MIFID\_214>

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

<ESMA\_QUESTION\_CP\_MIFID\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

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<ESMA\_QUESTION\_CP\_MIFID\_216>

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

<ESMA\_QUESTION\_CP\_MIFID\_217>

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<ESMA\_QUESTION\_CP\_MIFID\_217>

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

<ESMA\_QUESTION\_CP\_MIFID\_218>

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<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

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<ESMA\_QUESTION\_CP\_MIFID\_219>

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

<ESMA\_QUESTION\_CP\_MIFID\_220>

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<ESMA\_QUESTION\_CP\_MIFID\_220>

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

<ESMA\_QUESTION\_CP\_MIFID\_221>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

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<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

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<ESMA\_QUESTION\_CP\_MIFID\_225>

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

<ESMA\_QUESTION\_CP\_MIFID\_226>

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<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

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<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

TYPE YOUR TEXT HERE

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_236>

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

<ESMA\_QUESTION\_CP\_MIFID\_237>

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<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>

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<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>

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<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>

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<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>

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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>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

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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.

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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?

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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)