|  |
| --- |
| 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:

* use this form and send your responses in Word format (do not send pdf files except for annexes);
* 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
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Société Générale |
| Confidential[[1]](#footnote-1) | No |
| Activity: | Banking sector |
| Are you representing an association? | No |
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

< ESMA\_COMMENT\_CP\_MIFID\_1>

* Investor protection

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

**General comments on the best execution regime**

SOCIETE GENERALE favours the effort to enhance the application of investor protection and welcomes the need for establishing requirements to validate and monitor the adequate implementation of best execution.

However, we consider that draft RTS 6 and RTS 7 give a very prescriptive interpretation of how investment firms should comply with establishing whether best execution was provided on their behalf. These new requirements will trigger a data tsunami and numerous observers consider these data are not useful, not relevant and not meaningful.

First, SOCIETE GENERALE wants to underline again that the inclusion under the concept of execution venues, which is not defined in the level 1 text, of market-makers and liquidity providers (which are not defined as well), is problematic. The trades of the said entities generally occur on venues and therefore the relevant information will be published by the respective venues.

Moreover, requiring systematic internalisers (Sis) to provide the same amount of information as trading venues is disproportionate, considering the very different forms of execution models, SIs dealing on own account when executing clients’ orders. We consider that the distinction between bilateral (SIs) and multilateral venues should be taken into account.

We also consider that a SI’s identity should not be disclosed on reports. Exposing the name of the SI in reports is likely to unveil to third parties the risk that the particular SI has taken in a particular instrument and consequently adversely affects the ability of the SI to manage and unwind that risk. This seems to go against ESMA’s proposal in draft RTS 8, which does not require the identity of the SI to be published as part of the post-trade regime.

Generally speaking, we fear that the far too prescriptive interpretation of how investment firms should comply can be disproportionate in many instances. As a consequence, it is important that the provisions of the draft RTS 6 and 7 are lightened, keeping in mind that key transaction-level reporting will be provided publicly via the MiFIR post-trade regime and to regulators via the MiFIR transaction reporting regime.

**On the specifics of this question**, SOCIETE GENERALE agrees with ESMA on having a diverse application of execution data between asset classes.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

No additional data should be considered. Indeed, SOCIETE GENERALE considers that the metrics required are already cumbersome, and can be very problematic to collect for some venues using an RFQ system.

<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>

SOCIETE GENERALE wonders whether some of the metrics and data required by ESMA might be duplicative of other existing and proposed information systems such as post-trade disclosure under the MiFID transparency regime and transaction reporting.

SOCIETE GENERALE considers that a consistent approach should be taken between the various reporting systems in order to ensure the orderly and effective functioning of the markets for market participants.

<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>

No. SOCIETE GENERALE considers that the aggregation level proposed on a daily basis is overly prescriptive.

<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>

SOCIETE GENERALE agrees with the proposed approach but questions some of its practical details. For instance, the taxonomy presented in draft RTS 7; Article 4, is not identical to the one used for liquidity definitions. We consider that it would facilitate the work of investment firms to use identical classifications as much as possible.

<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>

No. SOCIETE GENERALE considers that the requirements to publish details set out in paragraph 35 seem to be going much further than level 1 of MiFID.

Moreover, not all firms distinguish between different categories of clients and will therefore not make such distinction in their reporting.

<ESMA\_QUESTION\_CP\_MIFID\_36>

* Transparency

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

<ESMA\_QUESTION\_CP\_MIFID\_37>

In accordance with our answer to the Discussion Paper 2014/548, we welcome the addition to the current table for equities of a definition of request for quote systems.

Still, we have several remarks with regards the proposed table, and specifically the “summary of information to be made public”:

* for Request for quote trading systems, we would like to re-iterate our skepticism regarding the benefits that can be expected from applying public pre-trade transparency to quotes that can be executed exclusively by the requesting participant. We are of the opinion that such de-correlation between access to pre-trade transparency and access to the underlying liquidity can only have negative effects, and provides benefits only to arbitragists, not to investors,
* page 49 of the Consultation Paper, it can be read that “ESMA disagrees that all trading venues that import prices from another venue shall operate with the reference price waiver”. We believe that this ability to use imported prices – that, in our understanding, are used as an alternative to an autonomous price formation process on the considered platform –, without having to respect the conditions set under the Reference Price Waiver should be clarified, for instance through a Q&A. In the absence of such clarification, the aforementioned statement could be interpreted in a way that would impair the equal treatment of trading venues in the context of MiFID II / MiFIR,
* with regards “trading systems not covered by first 4 rows”, we note that, although other platforms are required to make public the price and volume of orders / quotes, these systems are only required to make the prices public, while it seems no obligation exists on volumes,
* finally, we believe there is a material mistake in the description of “trading systems not covered by first 4 rows”. In the draft RTS proposed in Annex B to the Consultation Paper, hybrid systems are defined as follows: “A hybrid system falling into two or more of the first four rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows”. We believe that the aim was to have the following wording: “A hybrid system falling into two or more of the first four rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first four rows”.

<ESMA\_QUESTION\_CP\_MIFID\_37>

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

<ESMA\_QUESTION\_CP\_MIFID\_38>

We would like to point out that determining “the most relevant market in terms of liquidity as the trading venue with the highest turnover in the relevant financial instrument” could in theory lead to define an RFQ platform as “the most relevant market in terms of liquidity” for some instruments.

This would have serious unintended consequences: it would mean that trading methodologies using an imported price would be required to derive the price from a platform where the price formation process is, by construction, discontinuous, while continuous prices may be available elsewhere.

We hence believe that, for any given instrument, “the most relevant market in terms of liquidity” should be chosen amongst the platforms with a continuous price formation process, other platforms being considered only if no platform with a continuous price formation process reach a minimum liquidity share (say 10%).

With this in view, we propose to change article 4.1 of RTS 8 from:

For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument is the trading venue with the highest turnover within the Union for that share, depositary receipt, ETF, certificate or other similar financial instrument.

To:

For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument is the trading venue operating a continuous price formation process with the highest turnover within the Union for that share, depositary receipt, ETF, certificate or other similar financial instrument, provided this trading venue, through that continuous price formation process, represent at least 10% of turnover within the Union for the instrument.

<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>

We have several concerns with regards the proposed list of “negotiated transactions not contributing to the price formation process”:

* we consider that the definition of “a portfolio trade” is improper. We see no reason to require that a portfolio trade “involves the execution of 10 or more financial instruments”. By definition, a portfolio trade can involve two instruments, and there an active Pair Trade market indeed exists.

We hence recommend to modify the article 6 in draft RTS 8, from

the transaction is part of a portfolio trade that involves the execution of 10 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot;

to

the transaction is part of a portfolio trade that involves the execution of 2 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot;

* the draft RTS contains at least 4 lists of transactions eligible for exemptions:
  + article 6 of draft RTS 8 provides the list of “Negotiated transactions not contributing to the price formation process”, that are not subject to pre-trade transparency rules,
  + article 2 of draft RTS 8 provides the list of “Transactions not contributing to the price discovery process”, that are not subject to the negotiation obligation set by article 23 of MiFIR,
  + article 13 of draft RTS 8 provides the list of transactions that are not subject to the “Application of OTC post-trade transparency”,
  + article 3.3 of draft RTS 32 provides a list of events that shall not be considered as ‘transactions’.

While we understand that the above lists do not serve the same purpose (and do not target the same instruments, as RTS 8 art. 2 is for shares, RTS 8 art. 6 and 13 are for equity instruments and RTS 32 art. 3 is for all financial instruments), we believe that further standardization / homogeneity across these lists would be welcome.

For instance, securities financing transactions, that are mentioned in article 2 of draft RTS 8, should be explicitly included in article 6 of draft RTS 8.

* we support the inclusion of non-standard or special settlement trades in the list,
* more globally, we believe that each of the aforementioned lists should be kept open, so as to remain flexible as the evolution of markets may result in the creation of new type of transactions that will need to be accommodated by the negotiated trade waiver.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

We consider that the classes and thresholds proposed by ESMA fail to take into account the evolution of market structure since 2006, when the first version of the table – from which the proposed table only marginally departs - was calibrated.

As already stated in our answer to the Discussion Paper issued in May, we consider that the calibration of LIS thresholds should take into account the ADT and the AVT for the instrument, so as to meet the regulatory aim of the related waiver, which is “to protect large orders from adverse market impact and to avoid abrupt price movements”.

With this in view, we strongly reiterate our proposal of the following table to determine classes and thresholds:



<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>

The approach proposed by ESMA to determine the large in scale threshold for ETF raises several serious concerns.

1/ The proposed table was calibrated on sources (data from regulated markets only) that do not represent the reality that will emerge once MiFID II / MiFIR is enforced: from the 3rd of January 2017, the ADT for ETFs will be computed taking into account all executed volumes, be it on regulated markets, on RFQ systems (that may have become MTF) and OTC.

This means that an ETF for which the calibration exercise run by ESMA has determined a rather modest ADT may well be classified as having an ADT above EUR 2m after the 3rd of Jan, 2017. This may indeed be the case of a large proportion of ETFs!

For such ETFs, the LIS threshold will hence be far higher than the one that was initially intended through the “regulated markets only” calibration.

2/ As already detailed in our answer to the Discussion Paper issued in may 2014, the ADT is not a proper proxy for the liquidity of an ETF.

Indeed, assessing the liquidity of an ETF requires taking into account (i) the volumes traded on the secondary market for that instrument (the “intrinsic” liquidity) and (ii) the ability to source primary liquidity through the “creation / redemption” process.

We understand that ESMA has tried to take this “additional” liquidity into account by setting LIS threshold as multiples of the ADT: under ESMA’s proposal, for an ETF with a “real” ADT of EUR 55k (eg the ADT determined in a MiFID II environment: RM + MTF + OTC volumes), the LIS threshold would for instance represent 10 days of ADT.

Still, this calibration is improper, as the link to the “creation / redemption” process is only indirect, and, further, it does not take into account the fact that the “creation / redemption” process is not similar for all ETFs. In particular, the proposed calibration does not take into account the fact that, when the underlying asset / basket of the ETF trades in a different time zone than the ETF (for instance, a European ETF on Malaysian stocks), the creation / redemption process does not occur just after the closing auction of the market trading the ETF, but may occur the day after. In such case, the “creation / redemption” process will not offer the same protection to risk takers as it does when it occurs after the ETF closing auction.

3/ Be it for ETFs or for any other class of instrument, calibrating the LIS threshold so as to ensure that it “leaves no more than 10% of the total turnover above the threshold” is not consistent with the legislative aim to “protect large orders from adverse market impact and to avoid abrupt price movements”.

Having in mind that:

* the ADT is not a proper proxy of liquidity for ETFs,
* the calibration of the LIS threshold for ETFs should take into account the existence of the “creation / redemption” process, and
* the “creation / redemption” process does not bring the same protection to risk takers for all ETFs, depending on the time zone under which the underlying asset / basket can be traded,

we would like to propose the following simple and effective calibration:

* a single large in scale threshold of €2 million should apply to all ETFs for which the “creation / redemption” process occurs just after the closing auction for that ETF,
* a single large in scale threshold of €0.5 million should apply to all ETFs for which the “creation / redemption” process occurs at least 3 hours after the closing auction for that ETF.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

Yes, Société Générale supports the proposed approach for stubs.

<ESMA\_QUESTION\_CP\_MIFID\_44>

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

<ESMA\_QUESTION\_CP\_MIFID\_45>

Yes, Société Générale supports the proposal to publish with each quote the time the quote has been entered or updated.

<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

Yes, Société Générale agrees that a price reflects the prevailing market conditions when it is close to comparable quotes for the same share, depositary receipt, ETF, certificates or other similar financial instrument on other trading venues.

<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>

Based on the data published on ESMA website ([http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks id=14&language=0&pageName=MiFIDLiquidSearch](http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks%20id=14&language=0&pageName=MiFIDLiquidSearch)), 96% of European shares have an AVT below EUR 20,000 (out of 5,964 shares, 754 have no daily transaction, 4,976 have an AVT below EUR 20,000 and 235 have an AVT above EUR 20,000). In other terms, the proposed classes by AVT would mean that virtually all European shares would have the same SMS set at EUR 10,000.

We hence reiterate the preference expressed in our answer to the Discussion Paper, which would consist of creating new AVT classes, so as to keep a sufficient level of differentiation across stocks. Specifically, the [ EUR 0 - EUR 10,000 ] class should be broken up in 3 new classes:

* one for the [ EUR 0 - EUR 3,000 ] AVT range, with an EUR 1,500 SMS,
* one for the [ EUR 3,000 - EUR 6,000 ] AVT range, with an EUR 4,500 SMS,
* one for the [ EUR 6,000 - EUR 10,000 ] AVT range, with an EUR 8,000 SMS.

Conversely, if the approach was confirmed to use a single [ EUR 0 - EUR 20,000 ] class, we would recommend, at least for shares, to set a unique SMS at EUR 10,000 for all instruments regardless of the AVT:

* the downside of such approach would be quite limited, as it would mean applying a “wrong” SMS to only 4% of European shares,
* the upside would be to have a set-up that would be easy to understand and to implement. It would offer significant saving of time and money for all markets participants, including ESMA and NCAs, as the follow-up of AVTs would no longer be required.

<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>

We reiterate the elements stated in our answer to Q39 with regards the need (i) to further harmonise the lists of transactions eligible for exemptions and (ii) to keep each of these lists open, so as to remain flexible as the evolution of markets may result in the creation of new type of transactions that will need to be accommodated by the relevant waivers.

We also have specific remarks regarding the proposed list of “transactions not contributing to the price discovery process”:

* we consider that the definition of “a portfolio trade” is improper, and see no reason to require that a portfolio trade “involves the execution of 10 or more financial instruments”.

We hence recommend modifying the article 2 in draft RTS 8, from

the transaction is part of a portfolio trade that involves the execution of 10 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot;

to

the transaction is part of a portfolio trade that involves the execution of 2 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot;

* we do not agree with ESMA’s proposal to limit the “collateral trade” exemption to “segregated collateral” trades.

First, “segregated” and “non-segregated” collateral trades are operationally equivalent, and neither can contribute to the price discovery process Applying ESMA’s proposal would hence result in a de facto ban of “non-segregated” collateral trades.

Second, the European Market Infrastructure Regulation authorizes “non-segregated” collateral arrangements, and it is not in ESMA’s mandate to supersede EMIR Level 1 text through a MiFID II Level 2 text.

In order to avoid this alteration of European markets, we recommend modifying the article 2 in draft RTS 8, from

the transaction is for the purpose of transferring financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;

to

the transaction is for the purpose of transferring financial instruments as collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;

<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>

Société Générale globally agrees with the proposed list of information that trading venues and investment firms shall made public.

Yet, we believe there is a possible inconsistency between the mention “Where an investment firm does not know it is trading with another investment firm acting as a SI: XOFF” (Table 1 of RTS 8) and the reporting hierarchy proposed in RTS 23.

Indeed, the draft RTS 23 states that: “Seller always reports UNLESS one firm is an SI, then it reports.”

In other terms, when a transaction involves a SI, it will always be for the SI to inform its counterpart and take the responsibility of the reporting. Hence, the situation where “an investment firm does not know it is trading with another investment firm acting as a SI” should not happen.

We recommend to clarify this point.

<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>

Given that the fact that the trades with a deferred publication will be identified through a specific flag, we do not consider it necessary to add the date and time of publication with the characteristics of the transaction, especially considering the cost that would be required to include these fields.

<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>

Yes, Société Générale agrees with the proposed list of flags that trading venues and investment firms have to make public.

<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>

As stated in our answer to the Discussion paper issued in May 2014, we believe that the calibration of the maximum permissible delay to make post-trade information available should take into account the operational constraints for some types of transactions. For instance, when a trader agrees a transaction with a client in the course of a phone conversation, he may not be in a situation to immediately input the transaction in his Order Management System, which will generate the post-trade publication. For such transaction, a 1 minute delay may be too short if the start point is considered to be the time at which the trade is verbally agreed.

Rather than shortening the existing 3-minutes allowance, we consider that the key to bring the average publication time down is to ensure that the requirement to report “as close to real time as possible” is effectively enforced and that IT systems are not designed to use the maximum permissible deferral for publication.

We also would like to underline a possible issue in the way article 15 of RTS 8 is drafted:

For transactions for which, in accordance with paragraph 1, deferred publication is permitted until the end of the trading day, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions:

(a) as close to real-time as possible after the end of the closing auction; or

(b) before the opening of the next trading day for transactions executed within 2 hours before the end of the trading day.

For an instrument like an ETF, what “closing auction” would have to be considered if the most liquid market, used as a reference, was a RFQ platform (which does not run any closing auction)?

See our answer to Q38 with regards the determination of the most liquid market.

<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>

In accordance with our answer to the Discussion paper issued in May 2014, we agree that securities financing transactions (regardless of the underlying instrument, equity or bond) should be exempt from the reporting requirement under article 20.

We reiterate the elements stated in our answers to Q39 and Q48 with regards the need (i) to further harmonise the lists of transactions eligible for exemptions and (ii) to keep each of these lists open, so as to remain flexible as the evolution of markets may result in the creation of new type of transactions that will need to be accommodated by the relevant waivers.

In consistence with our answer to Q48, we also believe there is an issue in reserving the exemption for “collateral trades” for trades related to “segregated collateral”. We hence recommend modifying the article 13 in draft RTS 8, from

transfers of financial instruments as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

to

transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

<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>

As stated in our answer to the Discussion Paper issued in may, we are strongly concerned by the fact that, by reducing the post-trade deferral periods for large in scale transactions, ESMA is taking the risk to reduce the appetite for risk of liquidity providers, and the ability of investors to find counterparties to enter into / exit from an equity strategy. In the end, this decision by ESMA will impact the ability of corporate issuers to use equity markets as a financing source.

To the contrary, given the European context, and specifically the will displayed by the European Commission to “create the right regulatory environment and promote a climate of entrepreneurship”, we believe that the permitted post-trade deferral periods should be extended, particularly for instruments with a low level of liquidity, that usually correspond to SMEs shares.

We hence support the following proposal by AFME (where ADT stands for average daily turnover and MQS for minimum qualifying size):



<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>

For ETFs, in terms of post trade transparency, we recommend (see for consistence our answer to Q42) not to base the large in scale threshold and deferral period on the ADT, but rather to take into account the timing for the “creation / redemption” process for the ETF.

Our proposal would hence be as follows:

|  |  |  |
| --- | --- | --- |
|  | Minimum qualifying size of transaction for permitted delay | Timing of publication |
| The “creation / redemption” process for the ETF occurs less than 3 hours after the closing auction for the ETF | 5 000 000 | End of the day |
| The “creation / redemption” process for the ETF occurs more than 3 hours after the closing auction for the ETF | 2 000 000 | End of the day of the “creation / redemption” process |

<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>

No comment.

<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>

* SG disagrees with the COFIA approach to classifying the liquidity of bonds. The IBIA approach is the most appropriate for bonds given the heterogeneous nature of the bond markets.
* Generally SG supports the work in relation to the definition of liquid markets in Bonds undertaken and submitted by AFME in response to this consultation.
* SG also notes the proposals included by ICMA in their response to this consultation and, while the ICMA and AFME are similar in some aspects, they do differ in others. SG believes that either the ICMA or AFME approaches represent a significant improvement on the original ESMA proposal.
* While SG does appreciate the desire for a simple, understandable and easily enforceable approach to liquidity definition, the overly simple COFIA approach based purely on issue size, as proposed by ESMA, does not accurately identify liquid bond issues.
* SG does agree that, for the most part, small issues are generally illiquid – and we agree this is supported by ESMA’s data. For all asset classes identified, only 0.31%-7.96% under ESMA’s proposed issue size thresholds met the ESMA liquidity test, itself set to a very low level.
* SG also agree that as issuance size increases, there are a greater number of liquid instruments. However it is a non-sequitur to make the link, therefore, that all large issues are liquid as there remains a significant proportion of illiquid instruments – again validated by ESMA’s own liquidity test.
* ESMA’s own liquidity test sets a very low standard for liquidity. It is far from obvious that an ISIN that trades twice a day in the whole European market to the amount of EUR100k is really liquid in the context of a multi-trillion Euro marketplace.
* Therefore, it is clear that issuance size alone is not a sufficient measure, as demonstrated by the number of false positives: 40-73.55%.
* SG does not agree that it is appropriate to mitigate the effects of incorrect liquidity classifications by adjusting other parameters within MiFID2/R (for example, LIS, SSTI), particularly where the proportion of false positives is so high.
* The table (Table 5) on page 104 (Section 3.5) of the consultation is flawed.
* It is not correct to base the appropriateness on the total number of false negatives and false positives against the entire tested universe. The universe of “illiquid” instruments (ie those under the issuance size) is significantly larger than the universe of “liquid” instruments (ie those above the issuance size). Simply summing the two creates a weighted average of the error significantly in favour of the larger universe.
* As a result the data in column (2) on Table 5 is, at best, misleading as the simple summation approach has biased the total error margin in the direction of the number of false negatives (which is very small).
* Furthermore, SG does not understand why a consistent approach has not been used for SSTI/LIS calibrations (where trades under 100k are excluded) and the Liquidity test where such trades are included.
* SG strongly supports the work of AFME and, in particular, supports the revised approach proposed by AFME for the liquidity calibration for Bonds, which is a hybrid of the IBIA/COFIA methods, namely:
* Issues sizes < EUR500mm = Illiquid
* Issue sizes >= EUR500mm = Liquid if more than 1000 trades per year on 200 separate traded days with a minimum of EUR5mm average daily volume, tested quarterly
* New issues should be treated as liquid in the first instance if the issue size is >=EUR750mm
* SG does agree with agree with the proposal for SFPs
* There are some specific technical points that SG wishes to raise:
* Exchange rates used to refer all calculations into EUR will need to be specified
* It will be necessary to develop a process for classifying bonds in to the correct category
* To avoid opportunities for gaming, the issue size used for categorization should be outstanding (except for factored/amortising bonds) and not the original issue size.
* Non price forming trades should be excluded from any liquidity test

Block trades should be used in any liquidity test as opposed to allocations. <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>

SG agrees with the definitions contained in items (1) through (13) in Annex III of RTS 9.

<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>

No. SG does not agree.

* We note that the definition of securitised derivatives in the RTS is extremely broad and would capture a diverse range of securities. In fact, the definition overlaps with many types of derivatives since it captures both securitised and unsecuritised instruments. We ask ESMA to review and refine the definition of securitised derivatives.
* With regards to the liquidity calibration, given the breadth and diversity of the universe of instruments that would be classified as securitised derivatives, we suggest that ESMA take a more granular approach. We believe that ESMA’s approach in the Consultation Paper is not appropriate.
* SG does not agree with a presumption that, prima facie, the presence of a market maker implies liquidity in all markets, and that the nature of the product as well as the number and type of market participants is highly relevant to such a determination.
* Within this large universe, there is a subset of instruments that can be categorized as liquid because are predominately retail focused and transactions are often executed in relatively small sizes. However, there are many other instruments falling within this class that are wholesale products and are illiquid.

<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>

* SG is concerned that the proposed definitions of "securitised derivatives" and "bonds" do not sufficiently identify those instruments which should be treated as securitised derivatives and those instruments that should be treated as bonds. There should be no overlap between the two definitions, otherwise there is a risk that different trading venues and investment firms will treat the same instruments in different ways for transparency purposes.

In line with ISDA, we would propose the following amendments to the definitions in Annex III of RTS 9:

A new definition of "structured debt security" should be included, as follows:

* "Structured debt security" means a transferable security falling within Article 4(1)(44)(b) of Directive 2014/65/EU with an embedded derivative which is not a convertible bond.

The definition of "convertible bond" should be amended, as follows:

* ‘Convertible bond’ means an instrument consisting of a bond or a securitised debt instrument with an embedded option to acquire shares of an issuer or a member of the issuer's group.

The definition of "bond" should be amended, as follows:

* ‘Bond’ means a transferable falling within Article 4(1)(44)(b) of Directive 2014/65/EU which is not a structured finance product or a structured debt security.

The definition of "securitised derivatives" should be amended, as follows:

* ‘Securitised derivatives’ means a structured debt security or a transferable security as defined in falling within Article 4(1)(44)(c) of Directive 2014/65/EU which is not a structured finance products.

Recital 11 should be amended, as follows:

* "For the purposes of this Regulation, plain vanilla covered warrants, leverage certificates, exotic warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights and structured medium-term-notes (and other structured debt securities) should be considered securitised derivatives. This is not meant to be an exhaustive list of securitised derivatives."

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

First of all, SG notes that no accommodation has been made for package transactions, which represent a significant proportion of market activity. Having seen the difficulties encountered by the CFTC through the implementation of the Dodd-Frank act, and noting the unavailability of “No Action Letters” within the European Regulatory regime, SG would like to propose that ESMA considers specific and tailored treatment for package

* SG notes that, in response to ESMA’s May 2014 Discussion Paper, ISDA included a number of detailed comments on the nature of package transactions to which we would like to draw ESMA’s attention. We reiterate the points made in that response and support the proposal put forward by ISDA in its response to this CP.

Secondly, SG believes that in the context of the definition of liquid markets (and therefore the transparency framework) and the trading obligation, option 2 (as set out on page 126 of ESMA’s December MiFID II/MiFIR consultation paper) is preferred however option 1, while not our preference, is acceptable.

* However, SG also wishes to distinguish between integer tenors and broken dates for the trading obligation. Adopting option 2 for the trading obligation would help to align MiFID II/MiFIR to US regulation.
* Therefore, in summary, SG believes that the inclusion of broken dates for the assessment of liquidity thresholds for the transparency regime (i.e. option 1) is acceptable, but recommends that they should be excluded from the liquid classes subject to the trading obligation. The nature of derivative markets means that execution of broken dated trades is substantially more complex than for integer tenors and other benchmark periods.

Generally SG has severe doubts about ESMA approach to assessing the liquidity thresholds (for the transparency framework) for interest rate derivatives.

* SG observes that the sub-classes have not been broken down in a consistent way. For instance, single-currency swaps are broken down by currency and tenor of the swap, whilst swaptions (which have more degrees of freedom – currency, option tenor, underlying swap tenor, strike price) are only broken down by currency.
* It seems counterintuitive that a product that is more granular in terms of its market parameters should be subject to a less granular liquidity assessment - suggesting that swaptions, as a sub-class, need to be further delineated, so that they are brought in line with the other taxonomies.
* It suggests that, at the very least, they be considered with reference to the tenor of the swap as well as the tenor of the option, otherwise it leads to the odd outcome that a Swaption on an illiquid underlying swap is itself liquid – while the data tables provided in the CP show what is already known anecdotally in the markets…. That there are far fewer Swaption transactions than there are Swap transactions.
* Similarly, the classes for inflation swaps (only split by currency) are not granular enough to reflect the diversity of trading depending on the index considered. This sub-class needs to be further broken down to reflect the index.
* Generally SG supports the work in relation to the definition of liquid markets in Derivatives undertaken and submitted by ISDA in response to this consultation.

SG also suggests that ESMA clarify the illiquid status of exotic interest rate derivatives, which do not currently appear in the interest rate derivatives taxonomy of RTS 9. Under the ISDA taxonomy generally adopted across the industry, exotics are a product distinct from options, cross-currency swaps, caps, floors, FRAs, or interest rate swaps; so creating (as ESMA has done for equity and commodity derivatives and bonds) an “all other products” category in RTS 9 will further align ESMA’s taxonomy with ISDA’s and clarify the status of these derivatives. Given the heterogeneity of derivatives in this class, we expect it to be considered illiquid.

<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>

* No, SG does not agree with the definitions of the interest rate derivatives classes as discussed in Q61 (1) and 62 (2).
* For swaps, we urge ESMA to re-run their analysis using the day count methodology suggested by ISDA in their response to Q61 (1).
* SG also urges ESMA to further break down the swaption sub-class by the tenor of the underlying swap and the tenor of the option. To do otherwise, would result in a significant number of swaptions being deemed liquid when they, are in fact, illiquid..

SG notes that any failure to readily and clearly identify the sub-classes into which particular derivatives fall will cause confusion, and make supervision of activity challenging.

SG is therefore concerned that ESMA's proposed taxonomy for interest rate derivatives does not clearly distinguish between exchange-traded interest rate derivatives (i.e. those contracts, including futures and listed options, which generally have highly standardised terms, and are made available for trading on futures exchanges, and centrally cleared) and what market convention refers to as OTC interest rate derivatives (i.e. those contracts, including swaps and swaptions, whose terms are negotiated and non-standardised, albeit also traded on venues and sometimes available for central clearing).

* For example, it is not clear from RTS 9 that the futures and option classes described in tables 5 to 12 of Section 1 of Annex III only include exchange-traded interest rate derivatives. The liquidity assessment conducted by ESMA to produce these tables was based solely on data from trading venues and therefore ESMA should clearly indicate that only exchange-traded interest rate derivatives fall within the sub-classes included within these tables.
* In particular, we would recommend the following amendments to the definitions set out in Section 3 of Annex III of RTS 9:
* The definition of “Futures” should specify that only exchange-traded derivatives are captured by this definition.
* The definition of “Option” should specify that only exchange-traded derivatives are captured by this definition.
* The definition of “Swaption” should be amended to ensure that it captures cash-settled contracts i.e. swaptions which are settled at expiry of the period of optionality based on the market value or rate of underlying swap (without resulting in the two parties to the swaption entering into a swap). The existing definition refers only to a physically-delivered swaption.
* The definition of "Swap" should be amended so that the reference to "financial instrument" is removed. It is not necessary for the exchanged cash flows to relate to a financial instrument. For example, a swap could simply involve the exchange of cash flows relating two different interest rates.
* The definition of "Forward" should be amended so that the reference to "private agreement" is removed. We would recommend that the definition refer to a bilateral contract, which is not a Futures contract (as that definition is amended in accordance with our proposal in bullet point 1 above), in which two parties agree to buy or sell a commodity or financial instrument at a designated future date at a price agreed upon at the initiation of the contract by the buyer and the seller.

SG supports the detailed proposals presented by ISDA in their response concerning the precise, clear and unambiguous specification of certain defined terms.

<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>

Generally SG is concerned that ESMA has not been clear that its proposal relates only to exchange-traded equity derivatives contracts, and does not apply to bilateral OTC equity derivatives contracts.

* OTC equity derivatives could have very different contractual and economic terms (including, amongst others underlying asset, expiry, strike, pay-off methodology, pricing methodology, lifecycle event scenarios and consequences, adjustment methodologies) to the equivalent exchange-traded equity derivatives contract and are not fungible and therefore have very different degrees of liquidity compared to exchange-traded equity derivatives contracts.
* ISDA urges ESMA to clarify that, based on its data analysis, its proposed classes of liquid equity derivatives only include exchange-traded equity derivative contracts, and not OTC equity derivative contracts.

SG believes that ESMA’s preference for Option 2 is misguided and could have extremely adverse consequences for the ability to transact in less liquid contracts. However we also believe that, although Option 1 is preferable, it is still insufficiently granular in its application of liquidity to all contracts in the listed classes with maturities less than six months.

Instead, as we propose in response to Q64, we recommend that

* ESMA categorise equity derivatives at a significantly greater level of granularity, more akin to that done for listed interest rate derivatives,
* ESMA distinguish more clearly in RTS 9 between exchange-traded equity derivatives and OTC equity derivatives, in order that there can be no confusion over which class a derivative is in.
* Whilst ESMA rightly identifies that trading venues currently offer voluntary pre- and post-trade transparency for all listed contracts, the imposition of mandatory transparency would prevent the emergence of alternative trading models which could be more successful in facilitating transactions on less-liquid contracts. ESMA should not close this possibility by mandating transparency where such a determination is not supported by current trading volumes.

SG notes that the volume data cannot justify ESMA’s proposed liquidity determinations. ESMA’s assessment correctly notes that the current level of transparency in these instruments is voluntary, however ESMA’s preference for option 2 would transform this current voluntary transparency into a mandatory transparency, and this is entirely unjustified and unsupported by the data drawn from the trading venues.

<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>

In summary in SG’s view ESMA’s determination of liquidity for exchange-traded equity derivatives does not appear justified by the trading venue data.With regard to Equity derivatives contracts traded on a trading venue:

* Futures

With regard to futures, ESMA’s own data, suggests that only futures on Stock Index (98.47% of trades, 99.69% of notional) could qualify for a “liquid” determination, however even this determination must be subject to more detailed review of individual contracts as within this category the volumes are overwhelmingly concentrated on a small number of indices.

* ESMA’s own data, as evidenced in Charts 13 to 15, shows that a finding of “liquid” cannot be supported for any contract with a time to maturity in excess of four months.
* Accordingly, the data only supports a finding of “liquid” for the on-the-run futures contract on stock indices, and given the limited number of contracts and the concentration of volumes on a subset of actively-traded indices an instrument-by-instrument (IBIA) approach would be more justified.
* Options

With regard to options, only options on individual Stock (18.89% of trades, 6.06% of notional) and Stock Index (79.29% of trades, 93.85% of notional) could qualify for a “liquid” determination, however even this determination would be subject to more detailed review of individual contracts as within this category the volumes are overwhelmingly concentrated on a small number of actively-traded stock and index contracts.

* ESMA’s own data, as evidenced in Chart 12, shows that a finding of “liquid” cannot be supported for any contract which is not the “on-the-run” first listed expiry. Accordingly, the data only supports a finding of “liquid” for the on-the-run options contract on certain stocks and stock indices, and given the limited number of contracts and the concentration of volumes on a subset of actively-traded indices an IBIA approach would be more justified.

In SG’s opinion therefore, the data, the following COFIA classes should be deemed non-liquid:

(a) Futures on Stocks.

(b) Futures on Basket/Portfolio.

(c) Futures on Dividend Index.

(d) Futures on Others.

(e) Options on Basket/Portfolio.

(f) Options on Dividend Index.

(g) Options on Others.

(h) Stock dividend options

Additionally, the following COFIA classes should be subjected to an IBIA test to inform a possible determination of liquid:

(a) Futures on Stock Index.

(b) Options on Stock.

(c) Options on Stock Index.

With regard to Equity derivatives contracts not traded on a venue:

SG is concerned that the data on which ESMA has based its proposed determination is drawn solely from trading venues and concerns only listed equity derivatives contracts subject to central clearing. Accordingly, any determination based solely on data applicable to equity derivatives listed on a trading-venue should only apply to equity derivatives listed on a trading venue.

* Listed contracts are very different in nature and scope from equity-derivatives contracts traded bilaterally which are not subject to central clearing.
* These bilateral OTC contracts are not fungible with or economically equivalent to listed and centrally-cleared contracts. Their economic and contractual terms (including, inter alia: underlying asset, expiry, strike, pay-off methodology, pricing methodology, lifecycle event scenarios and consequences, adjustment methodologies) differ widely from the standard contracts listed on trading venues.
* In the context of a broad COFIA determination, ESMA should therefore clarify that a finding of “liquid” on a listed contract class which is solely based on data derived from trading venues where such contracts are listed should not apply to non-listed equity derivatives contracts.

With regard to, equity derivatives contracts not traded on a venue SG recommends that should a liquidity determination be required at any point for equity-derivatives contracts not-listed on a trading venue, this should be subject to a separate ESMA assessment which would need to be based on data relating solely to equity-derivatives contracts not-listed on a trading venue. <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>

* SG is concerned that ESMA's proposed taxonomy for equity derivatives does not clearly distinguish between exchange-traded equity derivatives (i.e. those contracts, including futures and listed options, which generally have highly standardised terms, and are made available for trading on futures exchanges, and centrally cleared) and what market convention refers to as OTC equity derivatives (i.e. those contractswhose terms are negotiated and non-standardised, albeit also traded on venues and sometimes available for central clearing).
* For example, it is not clear from RTS 9 that the futures and option classes described in table 32 of Section 4 of Annex III only include exchange-traded derivatives. The liquidity assessment conducted by ESMA to produce these tables was based solely on data from trading venues and therefore ESMA should clearly indicate that only exchange-traded equity derivatives fall within the sub-classes indicated to be liquid within this table. Table 32 of Annex III of RTS 9 should be amended to clarify that only exchange-traded equity derivatives have been determined by ESMA to have a liquid market.
* The definitions provided in Section 3 of Annex III of RTS 9 are insufficiently clear and contribute to the confusion described above in respect of the sub-classes of equity derivatives listed in table 32 of Section 3 of Annex III of RTS 9. In particular, we would recommend the following amendments to the definitions set out in Section 3 of Annex III of RTS 9:
* The definition of “Futures” should specify that only exchange-traded derivatives are captured by this definition.
* The definition of “Option” should specify that only exchange-traded derivatives are captured by this definition.
* We do not consider that ESMA can determine that other equity derivatives (i.e. OTC contracts) are liquid without undertaking analysis at least comparable to that undertaken for interest rate derivatives on the appropriate trade repository data.

<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>

To assess the liquidity of metal commodity contracts, we understand that ESMA has analysed data collected from five trading venues. We believe that this dataset is too narrow and the analysis should also include data collected from non-EU trading venues such as International Currency Exchange (ICE) and CME Group. In addition, we believe that further granularity and transparency is needed in respect of the data collected from EU trading venues. However, we note at a high level that the data presented in the CP is minimal, that the taxonomy presented is not as detailed as for other products and as a result we have very real concerns regarding the accuracy of this data.

* We also note that neither the consultation nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time.
* Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.
* Moreover, we note the current difficulties for market participants to access to OTC data. Although this information is reported by market participants to trade repositories under the existing reporting regimes which apply to commodity derivatives (e.g., EMIR), these details are accessible only to regulators.
* SG strongly believes that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are ‘traded on a trading venue’ (e.g. excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities exchanges (including the major non-EU venues), for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that ESMA has published at the end of February an Addendum to this consultation, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal [and iron ore]) which are not addressed in either consultation.
* Therefore, we recommend ESMA conduct an in-depth analysis, similar to the one performed for other asset classes and, to further consult in an appropriate timeframe in relation to the liquidity assessments for commodity derivatives.
* We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support the current ESMA's determination of the relevant sub-classes. In our view, ESMA sub-classes should be set at a more granular.
* In particular, for metals, we believe that a distinction should be made between base metals and precious metals.
* In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of metal commodity contracts, we believe that the proposed parameters are inappropriate. In particular:
* The threshold of “one trade per day” and “€ 100.000 per day” is too low and does not give a true indication of the liquidity of a market.
* Expression of thresholds by reference to notional amount in euros is not appropriate because metal commodity contracts are traded in US dollars. Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
* Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).
* The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes it liquidity determinations on the basis on a complete set of data from trading venues and trade repositories.

* SG notes the work undertaken by ISDA in its response to this question in relation to a potential taxonomy for conducting such an assessment.

<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>

* To assess the liquidity of energy commodity derivatives, we understand that ESMA has analysed data collected from seven trading venues. We believe, this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the CP is minimal, that the taxonomy presented is not as detailed as for other products and as a result we have very real concerns regarding the accuracy of this data.
* For example, the liquidity assessment for oil related derivatives appears to imply that oil related derivatives traded in the EU are either confined to, or represented by, those traded in Romanian Leu, which is clearly not the case.
* We also note that neither the consultation nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time.
* Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.
* In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are ‘traded on a trading venue’ (e.g. excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities exchanges (including the major non-EU venues), for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC.
* We note that ESMA has published at the end of February an Addendum to this consultation, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal [and iron ore]) which are not addressed in either consultation.
* Therefore, we recommend ESMA conduct an in-depth analysis, similar to the one performed for other asset classes and, to further consult in an appropriate timeframe in relation to the liquidity assessments for commodity derivatives.
* In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of energy commodity contracts, we believe that the proposed parameters are inappropriate. In particular:
* The threshold of “one trade per day” and “€ 100.000 per day” is too low and does not give a true indication of the liquidity of a market.
* Expression of thresholds by reference to notional amount in euros is not appropriate because metal commodity contracts are traded in US dollars. Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
* Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).
* The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes it liquidity determinations on the basis on a complete set of data from trading venues and trade repositories.

* SG notes the work undertaken by ISDA in its response to this question in relation to a potential taxonomy for conducting such an assessment.

<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>

To assess the liquidity of agricultural commodity derivatives, we understand that ESMA has analysed data collected from seven trading venues. We believe, this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data.

* However, we note at a high level that the data presented in the CP is minimal, that the taxonomy presented is not as detailed as for other products and as a result we have very real concerns regarding the accuracy of this data.
* We also note that neither the consultation nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or pursuant to the scope of C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time.
* Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.
* In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are ‘traded on a trading venue’ (e.g. excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities exchanges (including the major non-EU venues), for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that ESMA has published at the end of February an Addendum to this consultation, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal [and iron ore]) which are not addressed in either consultation.
* Therefore, we recommend ESMA conduct an in-depth analysis, similar to the one performed for other asset classes and, to further consult in an appropriate timeframe in relation to the liquidity assessments for commodity derivatives.
* We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support the current ESMA's determination of the relevant sub-classes. In our view, ESMA sub-classes should be set at a more granular level and we include our initial suggestions for agricultural in the illustrative assessment below.
* In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of agricultural commodity contracts, we believe that the proposed parameters are inappropriate. In particular:
* The threshold of “ten trades per day” and “€ 500,000 per day” is too low and does not give a true indication of the liquidity of a market.
* Expression of thresholds by reference to notional amount in euros is not appropriate because agricultural commodity contracts are traded in US dollars. Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
* Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).
* The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes it liquidity determinations on the basis on a complete set of data from trading venues and trade repositories.

* SG notes the work undertaken by ISDA in its response to this question in relation to a potential taxonomy for conducting such an assessment.

<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>

* To assess the liquidity of emission allowances commodity contracts, we understand that ESMA has analysed data collected from three trading venues. We believe, this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the CP is minimal, that the taxonomy presented is not as detailed as for other products and as a result we have very real concerns regarding the accuracy of this data.

* We also note that neither the consultation nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time.
* Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.
* In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are ‘traded on a trading venue’ (e.g. excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities exchanges (including the major non-EU venues), for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC.
* We note that ESMA has published at the end of February an Addendum to this consultation, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal [and iron ore]) which are not addressed in either consultation.
* Therefore, we recommend ESMA conduct an in-depth analysis, similar to the one performed for other asset classes and, to further consult in an appropriate timeframe in relation to the liquidity assessments for commodity derivatives.
* We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support the current ESMA's determination of the relevant sub-classes. In our view, ESMA sub-classes should be set at a more granular level.

In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of emission allowances, we believe that the proposed parameters are inappropriate. In particular the threshold of “five trades per day” and “150,000 tons of carbon dioxide per day” is too low and does not give a true indication of the liquidity of a market.

* The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.
* Due to the limited due to the very limited availability of publicly available data on Emission Allowances (which are financial instruments), we understand ISDA have not been able to provide an illustrative assessment for this category. However, we understand ISDA have offered to continue the discussion on this sub-class with ESMA and we commend the involvement of ISDA to ESMA.

<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>

SG agrees with the addition of the exclusivity feature within the definition of the RFQ approach, which recognizes the fundamental nature of the relationship between the parties when executing using this market model.

SG does not, however, agree with the replacement of the word “provided” (in the may 2014 definition) with “published”. This does not reflect the nature of an RFQ trading protocol and is a material departure from market practice. SG believes this is inconsistent with the mandate provided by level 1, namely (per recital 14 of MiFIR) that ESMA should develop:

* “timely pre-trade and post-trade transparency requirements taking into account the different characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems…”

SG believes the intention of the level 1 text is clear, in that ESMA should calibrate pre- and post-trade transparency requirements suitable for the types of trading systems, not to redefine how a type of trading system operates through the application of pre- and post-trade transparency requirements.

* With regard to the pre-trade transparency requirements for RFQ systems, SG has fundamental concerns that if a workable RFQ system is not permissible under the new MiFID regime, there would be no means for trades to be executed – i.e. due to the nature of liquidity in these markets, there would be no other trading protocols that could absorb the trade flow. Therefore, it is critical to ensure well-functioning RFQ trading systems under new MiFID framework with a pre-trade regime.
* For RFQ systems, making the “bids and offers and attaching volumes submitted by each responding entity” pre trade transparent may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency.
* As at today, the answers provided to a request-for-quote are only known to the entity which submitted the request.
* The entities answering to the RFQ do not see the prices provided by the other responding entities and, more importantly, third parties.
* This asymmetry of information is justified by the fact that the responding entities take on risk that would be increased, with no benefit for both parties, if the bids and offers were made publicly known.
* Such sealed auctions take place in many business sectors and are important to ensure integrity of the systems and does not adversely impact pricing.
* It is essential that market makers on venue operating an RFQ protocol are not required to disclose pre trade prices to other market makers (i.e. other price makers)
* SG supports the recommendations of AFME in terms of a workable pre-trade transparency regime for RFQ systems that better balances ESMA’s objective to increase pre-trade transparency and the requirements of a well functioning RFQ market place.

SG agrees with the definition of voice trading systems.

* Based on the current definition in MiFID1 of “quote-driven trading system”, this not useable for fixed income because the nature of liquidity in these markets, means that quotes cannot be maintained on a continuous basis. For fixed income, a useable quote driven system would be one where market makers could provide prices on a sporadic basis rather than maintain prices.
* Therefore, SG suggest the definition of quote-driven trading system to be:

“A system where transactions are concluded on a basis of firm quotes that are made available to participants”.

SG also notes that no accommodation has been made for package transactions, which represent a significant proportion of market activity. Having seen the difficulties encountered by the CFTC through the implementation of the Dodd-Frank act, and noting the unavailability of “No Action Letters” within the European Regulatory regime, SG would like to propose that ESMA considers specific and tailored treatment for package

* SG notes that, in response to ESMA’s May 2014 Discussion Paper, ISDA included a number of detailed comments on the nature of package transactions to which we would like to draw ESMA’s attention. We reiterate the points made in that response and support the proposal put forward by ISDA in its response to this CP.

<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>

* SG is in agreement with this proposal

<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>

SG supports ESMA’s recommendation that market operators should be responsible for determining the methodology for calculating the indicative price which is close to the price of the trading interest and that a clear and comprehensive description of the methodology should be disclosed by market operators to the public beforehand. In our view, EU trading venues should be encouraged to compete in as many aspects of their business as possible and clear and comprehensive disclosure will allow market participants to compare different methodologies adopted by market operators.

Pre and post trade transparency SSTI need to be different – there are different risks

* Risks for pre trade are greater that post trade

No rationale has been provided for the numbers proposed

* SSTI is too high for pre trade given that if the SSTI is set at 50% of LIS then simply trading 2 trades at the SSTI threshold potentially leaves a dealer having to execute an LIS trade to hedge their risk. This makes is very difficult for an SI to fulfil its pretrade requirements where the SI must be prepared to execute with multiple clients.

It is clear that pre- and post- trade SSTI thresholds need not be the same as risks are greater pre-trade than post-trade.

SG believes that, based on the existing ESMA model, the SSTI for pre-trade (with trades below EUR100k) excluded should capture the 10th percentile of the transactions. This could increase to the 50th percentile should the the previously proposed IBIA approach to the liquidity definition be adopted and trades below EUR100k are included.

In terms of post trade transparency, a higher threshold can be adopted, where, for liquid instruments the SSTI for post trade transparency (with trade below EUR100k included and the IBIA approach adopted for the liquidity definition) could be set at the 80th percentile level. With a less accurate liquidity definition plus the exclusion of trades below EUR100k this should reduce to the 50th percentile.

* For illiquid instruments, the SSTI for post trade should be the same as for pre-trade.
* SG also notes that the treatment of package trades should be considered.

<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>

SG agrees with the date and time fields.

SG disagrees, however, with the necessity of including the proposed “Instrument identification code type” field. We suggest, as ESMA has also highlighted in its December 2014 consultation paper, that the operational issues arising from this proposed table field are numerous and that, for the timing being, there is no unique way to identify instruments at a sufficiently granular level across different derivative classes. We do not share ESMAs optimism that a solution to this problem can be found quickly, given our experience over many years in this area. It is SG’s contention that an inaccurate or insufficiently granular identification code will be highly confusing to the market, and we draw ESMA’s attention to the examples provided by ISDA in their response to this question.

<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>

SG supports the removal of SI identity flag –we strongly believe that there is a fundamental different between Trading Venues (which do not take principal risk) and SI’s (which do). Publication of the name of the SI will disincentivise liquidity provision.

SG also notes that ESMA has taken an inconsistent approach in RTS6 whereby all SI’s are treated as execution venues, and therefore trade information with identity will need to be made public. SG believes the treatment should be consistent.

* There are some specific technical points that SG wishes to raise:
* Block trades (not individual allocations) should be made public
* SG agrees with presence of the “currency” flag
* There should be a package trade flag
* There should be a non-standard settlement flag
* SG agrees with other flags but believes that the non-price forming trades should not be in scope of transparency
* Identifier ‘G’ is used in 2 separate instances in Table 2 of Annex 2 (for ‘non-price forming trades’ and for ‘daily aggregated trades’) (we need to note the issue with ISIN for the US)
* SG believes that inclusion of a flag for ‘Algorithmic trades’ is of little benefit to market participants and suggest that the method of execution is not relevant in the price discovery process. We do however support that such information is of value for regulatory monitoring and suggest that its inclusion in transaction reporting is more appropriate.

<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>

FOR BONDS:

SG agrees with an initial 3-year implementation period, and also that the maximum delay be 15 minutes for the first three years: (i) consistent with operational needs; and (ii) should report sooner if can. As a result we do not agree that the 15 minute period should be (as per p132 of RTS) in “exceptional cases where systems available do not allow for a publication in a shorter period of time”

* Systems currently in use in these markets the majority do not necessarily allow for shorter time periods (since most fixed income trading is OTC); therefore, to limit the extension to 15 minutes in exceptional cases only is overly restrictive – In fact, the delay should be available when systems do not allow for publication in a shorter period of time.
* It is not obvious within SG that, as systems are modified, the time delay may be shortened automatically; Systems and infrastructures are complex and interwoven. We appreciate the desire of ESMA to shorted reporting timeframes but suggest a preferable approach would be to conduct a review after 3 years rather than an automatic shortening the delay to 5 minutes irrespective of conditions at that time.

FOR DERIVATIVES:

* While SG welcomes ESMA’s proposal for a maximum permissible delay of 15 minutes for the publication of post-trade information for an initial period of 3 years, we would recommend that after this 3-year period a review is undertaken to ascertain a reasonable time frame. It is currently unclear whether a 5 minute timeframe will be achievable in 3 years’ time. Before reducing the maximum permissible delay, the feasibility of complying with a 5 minute delay should be reassessed.
* SG wishes to note that even a 15 minute time period will be challenging for many transactions. SG generally agrees with the notion that the industry needs to reduce the time it takes to publish post-trade information on complex (or new forms of) transactions, compliance with aggressive timelines may not always be achievable.
* The statistics relating to the timeliness of reporting to the DTCC under CFTC real-time reporting requirement (which came into effect at the end of 2012) indicated the extent of the challenge.
* In light of the CFTC experience, we would be supportive of ESMA monitoring firms for continuous improvement in this respect and then setting a time frame that is reasonable.

<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>

SG believes that the reporting of transactions subject to conditions other than the current market valuation can be misleading to market participants.

SFTs and other non-price forming trades should not be included in general – not just for OTC but also for SIs

As per MiFID I – SFTs are not MiFID instruments – therefore, they shouldn’t be in scope

The publication requirements are not meaningful for SFT transactions

SG believes that the forthcoming SFTR should provide the legislative framework for SFTs and that, as such, MiFID should avoid duplication and/or imposing different requirements.

While we 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, this exemption should not be limited to OTC transactions but should also be applied to venue trades.

Intra-group transactions should be non-price-forming trades

SG does not agree with ESMA’s proposal to limit the “collateral” trade exemption to “segregated collateral” trades.

First, “segregated” and “non-segregated” collateral trades are operationally equivalent, and neither can contribute to the price discovery process. Applying ESMA’s proposal would hence result in a de facto ban of “non-segregated” collateral trades.

Second, the European Market Infrastructure Regulation authorizes “non-segregated” collateral arrangements, and it is not within ESMA’s mandate to supersede EMIR Level 1 text through a MiFID II Level 2 text.

In order to avoid this alteration of European markets, we recommend modifying the article 9 in draft RTS 9, from

* transfers of financial instruments such as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements

to

* transfers of financial instruments such as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements

<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>

SG believes that a 48 hour deferral represents an improvement over immediate publication for trades that are in illiquid instruments or are large in scale, but notes that there will be a market impact in some cases (particularly where the trade is above the LIS threshold AND the instrument is illiquid) where a period of the order of 3 months would be more appropriate.

SG does not agree with the text of the RTS which refers to a “period of no longer than 48 hours” – there should only be one time (RTS 9, article 8(1) page 138) which should be clearly defined as being “48 hours”, otherwise there is a risk this will result in an inconsistent approach between member states.

It is clear that pre- and post- trade SSTI thresholds should not be the same as risks are greater pre-trade than post-trade.

SG believes that SSTI set at 50% of large in scale (LIS) is inappropriate

* There is no analysis in the Consultation to indicate that undue risk has been considered – SG believes that the level 1 text requires ESMA’s to consider undue risk to liquidity providers in the context of setting the SSTI threshold. There is no indication that such an analysis has been conducted. We urge ESMA to conduct and/or disclose this analysis.
* The proportion of trades captured by the SSTI threshold is so high that it is not consistent with the undue risk calibration – especially for pre trade transparency and illiquid post trade. SG has reviewed the analysis undertaken by AFME in its response to this consultation and SG does not accept that there is no undue risk to market makers in relation to pre trade and post trade transparency for trades sizes that relate to the these proportions of the market.
* Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements. At the levels ESMA has proposed, the pre trade regime becomes unworkable because SIs will be unable to execute with multiple clients with respect to trade sizes up to half block trades. Therefore, the proposed SSTI runs contrary to the objective of the SI pre trade transparency requirements under Level 1 which is to ensure that SIs offer the same prices to multiple clients and execute on those prices.

In paragraph 43 of Section 3 of the Consultation Paper, ESMA notes trades below EUR 100,000 were excluded from its calculations. ESMA has not provided any explanation for doing this. At the ESMA hearing on Thursday 19 February 2015, ESMA stated that these trades were excluded because, without doing so, the resulting SSTI and LIS sizes produced would be too low. We do not believe that this is a sufficient reason to exclude approximately 20% of sovereign trades, 55% of other EU public bond trades, 40% of senior financial corporate bond trades, 55% of senior non-financial corporate bond trades, 30% of subordinate financial corporate bond trades and 45% of subordinate non-financial corporate bond trades. A trade that is large in scale and undue risk cannot be determined if such large proportions of trading are excluded from the calculations.

SG believes that, based on the existing ESMA model, the SSTI for pre-trade (with trades below EUR100k excluded) should capture the 10th percentile of the transactions. This could increase to the 50th percentile should the previously proposed IBIA approach to the liquidity definition be adopted and trades below EUR100k are included.

In terms of post trade transparency, a higher threshold can be adopted, where, for liquid instruments the SSTI for post trade transparency (with trade below EUR100k included and the IBIA approach adopted for the liquidity definition) could be set at the 80th percentile level. With a less accurate liquidity definition plus the exclusion of trades below EUR100k this should reduce to the 50th percentile.

* The appeal of using the median size is that ESMA can be sure that half of transactions in any liquid security would be subject to pre-trade transparency, and would not experience deferred publication. We consider it would accord better with a normal market transaction at which liquidity providers could be reasonably expected to hedge their risks (as per MiFIR Article 9(5)(d). Furthermore, breaking the link to LIS would prevent the SSTI being skewed by individual, large transactions (which could result under ESMA’s current proposal for LIS calibration).

For illiquid instruments, the SSTI for post trade should be the same as for pre-trade.

SG supports the work of AFME in their detailed answer to this question.

SG believes matched principle trades should not be excluded from the SSTI waiver

* In paragraph 37 Section 3 of the Consultation Paper, ESMA states that it believes that the applicability of the SSTI should be restricted to market participants trading on own account other than matched principal. SG does not agree with the exclusion of matched principal trading from the SSTI. The Level 1 MiFIR text is clear that the SSTI waiver can be applied to all trading venues (RMs, MTFs and OTFs) and does not provide any such restriction. It is also clear that except for OTFs with respect to illiquid sovereigns, no venue can act on a principal basis (i.e. on own account). Therefore, it is highly inconsistent for Level 1 and ESMA to permit venues acting on a pure agency basis to apply the SSTI but for ESMA to then exclude venues utilising matched principal-based trading from applying the SSTI waiver.
* Whilst we agree with ESMA that the SSTI relates to undue risk to liquidity providers, we highlight that it is not the venue that is exposed to undue risk but those participating on the venues. Market makers use venues as a medium to trade on own account for the purposes of facilitating client trades. Therefore, the disclosure of pre trade quotes or post trade prices could expose the participants on the venue to risks such as the winner’s curse but never the venue itself.

SG does not agree that the RTS should include LIS floors. We believe that the concept of a floor runs contrary to the objective purpose of the LIS, which is intended to be the threshold at which trades are large in scale compared with normal market size. For example, if a floor is introduced, the LIS values can only ever be greater than the floors even if the normal market size decreases over time. Further, we believe that by setting the floor, ESMA is exceeding its mandate since there is no such concept in Level 1.

Based on the Level 1 text, SG understands that LIS is intended to set the threshold at which the trade size is large in scale compared with normal market size such that a deferral would be needed for post trade transparency. We agree with ESMA that analysing the universe of trade sizes is a useful and meaningful methodology for identifying LIS. Further, we agree that for liquid instruments, the 90th percentile is an appropriate threshold, as long as the liquidity definition has minimal error margins. SG does not believe that a threshold of 70% of trade volumes is in any way relevant to the LIS threshold.

<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>

First of all, SG notes that no accommodation has been made for package transactions, which represent a significant proportion of market activity. Having seen the difficulties encountered by the CFTC through the implementation of the Dodd-Frank act, and noting the unavailability of “No Action Letters” within the European Regulatory regime, SG would like to propose that ESMA considers specific and tailored treatment for package

* SG notes that, in response to ESMA’s May 2014 Discussion Paper, ISDA included a number of detailed comments on the nature of package transactions to which we would like to draw ESMA’s attention. We reiterate the points made in that response and support the proposal put forward by ISDA in its response to this CP.

Secondly, SG believes that in the context of the definition of liquid markets (and therefore the transparency framework) and the trading obligation, option 2 (as set out on page 126 of ESMA’s December MiFID II/MiFIR consultation paper) is preferred however option 1, while not our preference, is acceptable.

* However, SG also wishes to distinguish between integer tenors and broken dates for the trading obligation. Adopting option 2 for the trading obligation would help to align MiFID II/MiFIR to US regulation.
* Therefore, in summary, SG believes that the inclusion of broken dates for the assessment of liquidity thresholds for the transparency regime (i.e. option 1) is acceptable, but recommends that they should be excluded from the liquid classes subject to the trading obligation. The nature of derivative markets means that execution of broken dated trades is substantially more complex than for integer tenors and other benchmark periods.
* SG welcomes ESMA’s proposal to extend the length of the deferral period for transactions that are: large in scale, above SSTI (if carried out on own account other than matched principal) and in illiquid instruments.
* Nevertheless two business days is a challenging timetable for certain types of transactions and severity of the challenge will increase if NCAs do not choose to implement the supplemental volume omission regime.
* SG has significant concerns that the necessary balance between liquidity and transparency will not be achieved if the SSTI threshold is set at 50% of the LIS threshold, particularly for pre-trade transparency purposes. In our view, the SSTI for pre-trade transparency should be set at 10% of the LIS.
* In the pre-trade context, a firm is putting its capital at risk and pre-trade disclosure of its quoted prices increases the possibility that the market will move against the firm before it is able to execute those transactions. The risk is of a different nature in the post-trade context. At this stage, the firm has already committed its capital. The risk it faces at this stage is related to the management of its exposure (i.e. its ability to conduct a successful hedging strategy).
* A 50% SSTI rate would only allow a systematic internaliser to undertake two trades before it hits LIS levels (and prices). Whilst we recognise that a systematic internaliser may not always have similar trades lined up with multiple clients, it is certainly possible that it may have more than two clients willing to execute the same transaction. It is, therefore, essential that the SSTI/LIS ratio take into account possible follow-up transactions for firms. A pre-trade transparency SSTI threshold of 10% of LIS would allow a systematic internaliser scope to make ten similar trades before hitting the LIS threshold and maintain some price neutrality.

We propose instead that the SSTI threshold should either be set at either :

* The median trade size (50th percentile of transaction sizes) for transactions in the relevant sub-class; or
* 10% of the LIS threshold for the relevant sub-class (if ESMA prefers to retain a method based on the percentage of LIS)

The appeal of using the median size is that ESMA can be sure that half of transactions in any liquid sub-class would be subject to pre-trade transparency, and would not experience deferred publication. We consider it would accord better with a normal market transaction at which liquidity providers could be reasonably expected to hedge their risks (as per MiFIR Article 9(5)(d). Furthermore, breaking the link to LIS would prevent the SSTI being skewed by individual, large transactions (which could result under ESMA’s current proposal for LIS calibration).

* Whilst SG can support a SSTI/LIS threshold of 50% for post-trade purposes, this level is not without its challenges. Moreover, if the ratio is set too high for post-trade purposes, the risks the systematic internaliser faces in managing its hedging strategy in relation to certain products will be reflected in the prices quoted to clients.

We do not support the use of the volume measure set out in option 2. The determination of whether a transaction is large relative to the market should not be confused with the volume of trading in that market

* As indicated above, we believe that the pre-trade and post-trade SSTI thresholds should be set at different sizes

<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>

* As noted in our responses to Q66-69, we are strongly concerned that the current proposals for commodity derivatives are based on a dataset which is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. Therefore, we are extremely concerned that these proposals are not be workable and could have significant adverse consequences if implemented.
* In order to establish appropriate thresholds for the SSTI and LIS, we strongly believe that it is necessary for ESMA to conduct an appropriate market assessment of the liquidity of the contracts that will subject to the MiFID2 transparency regime based on complete data available from the major commodities trading venues (including the major non-EU venues), for on venue contracts, and the data from trade repositories for the contracts which are currently traded OTC.

In terms of our preference for the system to set the thresholds, we strongly believe that an annual recalculation of the thresholds would be more appropriate.

<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>

No.

While we welcome ESMA’s proposal to extend the length of the deferral period for transactions that are large in scale, above SSTI (if carried out on own account other than matched principal) and in illiquid instruments, we strongly recommend that the deferral period be set at two business days. This is to ensure that transactions that occur close to the end of trading before a weekend/bank holiday get the full benefit of the deferral period (which they may otherwise not if the 48 hour period runs over the weekend).

Whilst information about exchange-traded equity derivatives is typically published today on a voluntary basis at the end of the day, this is not currently the case for OTC equity derivatives. SG believes that even two business days may be challenging for certain types and sizes of transactions and especially so if the LIS and SSTI thresholds are not appropriately calibrated in the final rules.

This challenge will be significantly worsened if NCAs do not implement the supplemental volume omission regime. Whilst we appreciate that it is within the discretion of individual NCAs to determine whether to implement a supplemental volume omission deferral regime, SG urges ESMA to try and encourage as many NCAs as possible to adopt this regime.

SG also notes that no accommodation has been made for package transactions, which represent a significant proportion of market activity. Having seen the difficulties encountered by the CFTC through the implementation of the Dodd-Frank act, and noting the unavailability of “No Action Letters” within the European Regulatory regime, SG would like to propose that ESMA considers specific and tailored treatment for package

* SG notes that, in response to ESMA’s May 2014 Discussion Paper, ISDA included a number of detailed comments on the nature of package transactions to which we would like to draw ESMA’s attention. We reiterate the points made in that response and support the proposal put forward by ISDA in its response to this CP.

SG believes that the proposal to set the SSTI threshold at 50% of the LIS threshold is too arbitrary –there is no rationale for choosing 50% (as opposed to another percentage) and its link to the LIS threshold means that the SSTI threshold will not necessarily ensure that 50% of trades in a sub-class will actually fall below the SSTI threshold.

* We propose instead that the SSTI threshold should either be set at 10% of LIS or at the median trade size for the relevant sub-class. While we believe this should apply for both pre and post trade thresholds, we strongly believe that this should be the case at least for the pre-trade SSTI threshold. This is for the following reasons:
* The risks to firms are more significant in the pre-trade context; a firm is putting its capital at risk and pre-trade disclosure of its quoted prices increases the possibility that the market will move against the firm before it is able to execute those transactions. This would lead firms to price in these risks which would result in worse pricing for end investors.
* A 50% SSTI rate would only allow an SI to undertake two trades before it hits LIS levels (and prices). If the policy objective is to encourage SIs to make their quotes available and executable by a number of their clients then setting the SSTI threshold at a level which takes into account multiple transactions and still being able to maintain price neutrality would enable ESMA to achieve such an objective.

The risk is of a different nature in the post-trade context. At this stage, the firm has already committed its capital. The risk it faces at this stage is related to the management of its exposure (i.e. its ability to conduct a successful hedging strategy).

The SSTI thresholds (and LIS thresholds) in all of the tables in section 4 (equity derivatives) of Annex III should be defined in local currency terms rather than Euro (since the need to apply a currency conversion results in an additional layer of complexity, and results in inflexibility as exchange rates move).

<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>

As indicated in our response to question 59, we disagree with the liquidity parameters proposed by ESMA for securitised derivatives.

We do not believe that the presence of one market maker should be sufficient for a sub-class of securitised derivatives to be deemed liquid:

* As ESMA itself has noted in paragraph 62 of page 112 of the Consultation paper, whilst 98% of securitised derivatives analysed by ESMA had a dedicated market maker, these instruments only make up 29% of total trades and 39% of total volume traded. It is clear therefore that the presence of a market maker does not equate to liquidity. Therefore, additional factors must be taken into account to determine which sub-classes of securitised derivatives are liquid.
* The definition of “liquid market” in Article 2(17)(a) of MiFIR requires there to be “willing buyers and sellers on a continuous basis”. This requires there to be more than one buyer or seller in a market for a particular sub-class of instruments for that sub-class to be determined liquid.

In our view, additional liquidity parameters must be used by ESMA to conduct a more thorough liquidity analysis of each of the sub-classes identified by ESMA in paragraph 60 on page 112 of the Consultation Paper (i.e. 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). Once ESMA has reclassified securitised derivatives, we recommend recalibrating LIS and SSTI thresholds at a more granular level.

<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>

No comment.

<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>

SG agrees that the framework of the supplementary deferral regime is consistent with level 1 – however, we are concerned about inconsistent application, which could lead to:

* problems with cross- border transactions
* an unlevel playing field across Europe at a time where CMU proposal are seeking to create greater levels of harmonization.

As such therefore, SG urges ESMA to actively coordinate the national implementation of the supplementary deferral regime to ensure that there is a harmonised deferral regime across Europe, to the greatest extent possible

* The extension of the maximum post trade deferral to 4 weeks represents an improvement but, in line with our comments on the previous DP, remains insufficient for all trades, most notably trades above LIS in Illiquid products where a deferral period of 3 months would be more appropriate. SG reiterates that, in many illiquid market,s it can take several months for liquidity providers to hedge/unwind their exposures,. It can take weeks or months to fully exit such positions. The inability to de-risk before the size of a LIS or illiquid trade is made public will act as a significant deterrent to the provision of liquidity.

<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>

We completely disagree with the proposal

* The proposal makes the level 1 redundant and unusable and as such is not fit for purpose
* The COFIA approach does not work for temporary suspension – such an approach would need whole market to collapse for a temporary suspension to apply.
* The approach of using a 30 day look back plus opinion will take too long and be too late to be useful. SG believes that there needs to be an immediate measure and an immediate application as proposed in our response to the previous discussion paper.
* An approach based on looking at 30 days based on the previous 12 months does not give a reliable indication since markets may move significantly over 12 months but not as the result of a market event.

<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>

Yes, it is consistent with level 1

<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>

No comment.

<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>

No comment.

<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>

It is imperative that the assessment of whether there is "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", takes into account all variables which may impact the liquidity and tradability of an instrument and the must therefore be conducted at a suitably granular level. If this approach is not followed then there is a risk that a derivative product which is insufficiently standardised and which cannot be traded on venue or in which there insufficient third-party buying and selling interest will be declared subject to the trading obligation.

The “sufficiently liquid” test concerns the following several criteria, which are:

* Average frequency of transactions – set thresholds for the minimum number of trades per day and a minimum number of days on which trading took place. Technical trades are to be removed from the calculation.
* Average size of transactions – notional by trading days.
* Assessment reference period – to vary by class of derivatives.
* Number and type of active market participants – with reference to one transaction or where there is a contractual arrangement to provide liquidity.
* Average size of spreads – to be an average weighted measure.
* Anticipated impact of the trading obligation on liquidity and commercial activities of end-users that are not financial entities.
* Transactions where trading obligation is below a certain size – see following draft response.
* ESMA intends to apply the “sufficiently liquid test” only for transactions below a certain size and to discount trades that are clearly identified as “non-price forming post-trade risk reduction trades with reduced non-market risk in derivatives.

Interest Rate Derivatives

We support ESMA's view that option 2 (as set out on page 126 of the Consultation Paper) is preferred and that ESMA should distinguish between benchmark or integer tenors and broken dates.

* Adopting option 2 for the trading obligation would help to align MiFID II/MiFIR to US regulation (since the CFTC MAT product set only contains integer tenors and a limited number of forward-starting USD swaps).
* However, whether a derivative can be traded on a trading venue and the liquidity of the relevant derivative will be impacted by the inclusion of a number of other bespoke terms; for example, but not limited to, the relevant day count fractions, whether the coupons are on-market or off-market with a fee, the payment conventions, the compounding basis, and whether it includes variable notionals. As indicated in response to question 61 above, there will be an even greater number of variables for swaptions (including currency, underlying index (LIBOR, EURIBOR, OIS, Inflation, etc), tenor of underlier (including accounting for broken-dated or whole year tenors), tenor of option (including accounting for broken-dated or whole year tenors), style of option exercise (e.g. American, European, cash settled, physically settled, binary, etc) and stake price).
* In our view the assessment whether there is ' 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', must take into account such variables and be conducted at a suitably granular level. If this approach is not followed then there is a risk that a derivative product which is insufficiently standardised and which cannot be traded on venue or in which there insufficient third-party buying and selling interest will be declared subject to the trading
* SG wishes to clarify that the Trading Obligation should only apply to trades subject to an EMIR Clearing Obligation. A Trading Obligation on a non cleared trade would be a nonsense.

Equity Derivatives

As we propose in response to question 64, we recommend that

* ESMA categorise equity derivatives at a significantly greater level of granularity, more akin to that done for listed interest rate derivatives,
* ESMA distinguish between exchange-traded equity derivatives and OTC equity derivatives, in order that there can be no confusion over which class a derivative is in.
* We would reiterate that the assessment of whether there is ' 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', must take into account such variables and be conducted at a suitably granular level to avoid incorrectly subjecting a derivative product to the trading obligation.

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

Application of the “sufficiently liquid” test: The “sufficiently liquidity” test should be applied at a very granular level (sub-asset classes rather than broad classes of products) and with a view to a global harmonization of trading obligations, particularly with regard to the US in a first step.

- (ii) Broken dates

With regard to the treatment of broken dates, ISDA agrees with ESMA's proposal to include broken dates in the classes of financial instruments listed in Annex III of RTS 9 (i.e. option 1). However, they should be excluded from the liquid classes subject to the trading obligation. As indicated by ESMA in paragraph 83 of the December 2014 Consultation Paper, differentiating contracts on the basis of broken date maturity vs. benchmark maturity is important for the definition of the liquid classes subject to the trading obligation.

A definition of the "related maturity date" should be introduced. For example, in the case of a forward date swap, is the tenor of the contract: (i) the difference between the date the swap is executed and the swap maturity date; or (ii) the difference between the date the swap is agreed and the swap maturity date?

We agree with ISDA position that a trading obligation for a class of derivatives can only be imposed if there is a clearing obligation for these trades. Mandatory clearing must be a pre-condition for mandatory trading. For non centrally cleared transactions, the identity of the counterparty is a material pricing term, and trades with apparently similar terms can have different prices depending on the counterparty ID.

(iii) Package transactions

SG notes that no accommodation has been made for package transactions, which represent a significant proportion of market activity. Having seen the difficulties encountered by the CFTC through the implementation of the Dodd-Frank act, and noting the unavailability of “No Action Letters” within the European Regulatory regime, SG would like to propose that ESMA considers specific and tailored treatment for package transactions

o SG notes that, in response to ESMA’s May 2014 Discussion Paper, ISDA included a number of detailed comments on the nature of package transactions to which we would like to draw ESMA’s attention. We reiterate the points made in that response and support the proposal put forward by ISDA in its response to this CP.

<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>

No.

We agree with ISDA position that a trading obligation for a class of derivatives can only be imposed if there is a clearing obligation for these trades. Mandatory clearing must be a pre-condition for mandatory trading. Hence we do not agree with the proposed RTS in relation to the criteria determining whether derivatives have a direct, substantial and foreseeable effect within the EU.

In our view it is not necessary or appropriate for the trading obligation to apply to third country entity trades where the clearing obligation under EMIR does not apply to the relevant transactions by virtue of an equivalence assessment under Article 13 of EMIR.

ESMA's current proposal could lead to a situation in which the EU imposes an obligation on two counterparties to trade an instrument on an EU trading venue despite the fact that neither counterparty is based in the EU and the relevant transaction is exempted from the EU clearing obligation by virtue of Article 13 of EMIR. In our view such transactions cannot be properly interpreted as having a direct, substantial and foreseeable effect within the EU and nor is the application of the trading obligation to such transactions necessary to prevent the evasion of the MiFIR as those trades do not impose additional risks in the EU. Furthermore, such counterparties may be subject to conflicting local law trading requirements and are unlikely to have access to EU trading venues which will make it difficult for such entities to comply with the EU trading obligation

<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>

Yes, in order to align with the EMIR rule on clearing

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_92>

* Microstructural issues

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

Regarding to the point 2(i) of article 20 (RTS 13) drafted as follows « arrangements for the investment firm to trade all existing orders manually. » We are of the opinion that a more flexible wording could be used.

We hence believe that point 2(i) of article 20 (RTS 13) should be modified as follows:

« Arrangements for the investment firm to manage all existing orders manually. »

<ESMA\_QUESTION\_CP\_MIFID\_93>

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

<ESMA\_QUESTION\_CP\_MIFID\_94>

We would like to insist that the testing requirements should be based on the proportionality principle. Specially, testing requirements should be limited to instances where the firm has introduced functioning, substantial or structural changes to the algorithm or strategy and not to minor changes such as recalibration or adjustments in parameters.

We hence believe that article 10 in RTS 13 should be modified as follows:

“An investment firm shall, prior to the initial deployment or update involving functioning, substantial or structural changes of a trading system, algorithm or strategy, make use of clearly delineated development and testing methodologies. These methodologies should address process design and execution, division of responsibilities, allocation of sufficient resources, escalation procedures, and sign-off by a responsible party within the investment firm.”

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

No comment.

<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>

We support ESMA’s intent to apply market abuse monitoring to the specific case of algorithmic trading.

Still, we consider that Market Abuse Regulation (MAR) already submits our members to a very strict regime, which already accounts for algorithmic trading.

Hence, we see no value in introducing a specific article related to market abuse monitoring in MiFID II / MiFIR Level 2. Overlaps between MiFID II / MiFIR and MAD / MAR can only have unintended effects.

As a conclusion, we believe that the references to market abuse monitoring (in article 6 and 18) should be retrieved from draft RTS 13, and, if need be, introduced to complete MAD / MAR Level 2 texts.

<ESMA\_QUESTION\_CP\_MIFID\_97>

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

<ESMA\_QUESTION\_CP\_MIFID\_98>

We would like to emphasize that SG understand that the definition of algorithmic trading, as defined by ESMA, is applicable to orders as well as quotes, which are initiated and have limited or no human interaction.

SG therefore understands that requests for quote/ voice trading are out of scope, as they are a response to a request, rather than initiating a request itself.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

We do not agree with the proposed RTS.

First, we consider that market making strategies should be exempted from be qualified as High Frequency Trading (HFT).

Indeed, even though market makers have certain technical characteristics in common with HFTs (they make use of high speed infrastructures and also place large volume of orders part of which are subsequently cancelled):

* they already operate under strong organizational and operational standards, that will be reinforced by MiFID II outside of the HFT provisions, so the HFT qualification will not bring anything
* there is a risk that a HFT qualification have negative consequences on the public image of market makers, that would consequently reconsider their role as liquidity providers and cease performing it to avoid facing sensitive political and reputational issues.

Second, we believe clarification / amendments would be required on several aspects of the RTS:

* we consider that it is not appropriate to define the nature of a market participant on the sole ground that its presence during one trading day exceeds a given threshold. Such approach does not take into account the life-cycle (variation of liquidity) of certain instruments,
* the timeframe for eligible entities to sign a market making agreement must be clarified. We consider that a delay of one month after the conditions are met, as the one for SI, would be acceptable.
* The situation of venues working with a RFQ systems must be clarified. Our understanding is that the market making regime is not designed to apply to such platforms. Furthermore, we believe that liquidity providers answering to requests on such platforms cannot be considered to use algorithmic trading strategies (see our answer to Q98). Yet, a clarification by ESMA would be useful.

We also question the notion of “competitive prices”, which are defined as “*quotes posted within the average bid-ask spread*”. This does not seem consistent with Article 3(2) of draft RTS 15, or at least deserves clarification. If “average bid-ask spread” is to be understood as the Best Bid Offer (i.e. best limits independent from the size), then there is a strong risk of manipulation to the detriment of market makers, and ultimately to the detriment of all market participants. Instead, “average bid-ask spread” should be established as meaning the spread weighed on the size. Apart from that, it should be specified which prices are taken into account in case an instrument is traded on several venues (prices accumulated or those of the most liquid platform?).

<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>

As explained in our answer to Q104, we are very skeptical about the consideration that one day is sufficient to give the status of market marker, which is designed to be a lasting and constraining status. In particular, this rule does not seem appropriate for some non-equity instruments which can have peaks of liquidity followed by long periods of low liquidity in a short timeframe.

We also consider that the situation of venues working with a RFQ systems must be clarified. Indeed, current RTS drafting does not clarify how the 30% minimum presence on the trading venues would apply to request for quotation type of markets such as bonds market:

“*The minimum parameters to be met in terms of presence, size and spread that shall imply at least posting firm, simultaneous two way quotes of comparable size and competitive prices in no less than one financial instrument on the trading venue for no less than 50 % of the daily trading hours.*”

It should be clarified that this requirement applies only to market where there is an central limit order book.

<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>

Current RTS drafting does not clarify how the 50% minimum presence on the trading venues would apply to request for quotation type of markets such as bonds market:

“*The minimum parameters to be met in terms of presence, size and spread that shall imply at least posting firm, simultaneous two way quotes of comparable size and competitive prices in no less than one financial instrument on the trading venue for no less than 50 % of the daily trading hours.*”

It should be clarified that this requirement applies only to market where there is an order book.

We also would like to get precisions on what consequences the breach of this obligation to quote would entail.

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

We do not agree with making public the occurrence of exceptional circumstances as this could have impact on the functioning of trading venue and on other market participants.

Furthermore, we note that the draft RTS 15 (Art 5.5) is not clear on the possibility for an investment firm to stop the performance of its market making agreement in circumstances that impede the investment firm’s ability to maintain prudent risk management practice:

“*The exceptional circumstances shall be made public by the trading venue as soon as technically possible except in the case of circumstances that impede the investment firm’s ability to maintain prudent risk management practice as described above.*”

It could be understood that trading venue does not have to make publicity when exceptional circumstances impede the investment firm’s ability to maintain prudent risk management practice.

“*The exceptional market circumstances shall be made public by the trading venue as soon as technically possible. Failing such publication, investment firms engaged in a market making agreement may however consider that exceptional market circumstances occur if market circumstances impede the investment firm’s ability to maintain prudent risk management practice.*”

Additionally, RTS 15 (Art 4 - 3) appears to contradict the above provision RTS 15 (Art 5 - 5) by stating that an investment firm may suspend its market making activity “*if the trading venue determines the state of its market to be under exceptional circumstances*”. CP and Art 5- 5 provide the possibility for a market maker to consider that exceptional conditions are met if there is no statement from the trading venue and if the continuation of market making would impede the investment firm’s ability to maintain prudent risk management practices.

It should also be clarified that in Market makers can suspend their participation within such an agreement outside of any exceptional conditions based on its own business policy and ability to continue with its market making strategy.

Finally, we believe that further clarification is needed from ESMA in relation to the “negative incentives” system mentioned in RTS 15 (Art 10). In particular it should be clear that this may not allow venue to impose undue punitive indemnity that go beyond contractual will of the parties.

<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>

As already explained in Q107, we would like to note that the RTS should include the possibility for a market maker to suspend its participation within such a market making agreement based on its own analysis, business policy and ability to continue with its market making strategy.

<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>

Regarding to the *Order to Trade Ratio,* the Recital 7 of the RTS 16 provides for the possibility for platforms to exclude the *market making* activity: “trading venues may establish derogatory arrangements for firms engaged in market making agreements” but this possibility isn’t explicit in the RTS itself. Article 1 RTS should be modified, in this respect, by adding a point 3. :

“(3) Trading venues may establish derogatory arrangements for investment firms engaged in market making agreements and fulfilling the obligations set under article XXX (refer to current article 4 of draft RTS 15).”

We are of the opinion that the Orders to Transactions regime should be extended to derivatives as derivative and cash trading patterns are not necessarily linked for a given investment firm.

We have reasons to believe that certain high frequency strategies can use derivative products only, with no intervention on the underlying cash instruments, and hence the ESMA proposal would not be captures by an Orders to Transactions regime limited to cash instruments.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No we do not believe that more liquidity bands or generally a more granular approach is necessary for very liquid stocks or non liquid stocks. We consider that the proposed tick sizes are adequate for the following reasons:

- The proposed tick-size regime remains simple and manageable by all market players and each liquidity range captures enough instruments to make statistical analysis relevant (specifically for the sake of impact analysis);

- The proposed tick-size regime includes enough liquidity bands so that, when an instrument moves from one band to the next, the impact on tick size is not so large that it could create disruptions to the trading activity.

Oversall, we consider that the proposed tick-size regime will participate in ending the decrease in tick sizes due to competition between venues, and the involved moderate increase of tick sizes could be beneficial for the equity markets.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_130>

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

<ESMA\_QUESTION\_CP\_MIFID\_131>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

No comment.

<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>

No comment.

<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>

SG agrees with this proposal

<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>

SG agrees with the recovery provisions; however, there needs to be consistency between the DRSP continuity provisions and the obligations on firms to report/publish such that the obligations cannot permit on one side DRSPs to not function for a certain period of time but for firms to remain liable.

<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>

As per Q135, it is important that the obligations on DRSPs are aligned with the obligations on firms.

<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>

SG would like to observe that the definition of “Client” throughout the RTS 20 should clearly exclude the general public. If there is any need to have any obligations to the entire public, such needs should be stated expressly and clearly.

With regard to specific articles

* The text of Article 11 is acceptable, except for recovery provisions issues raised in our answers to Q135 and Q136 above
* Article 13 would benefit from some minor modifications:
* Para 3(c) – The word “modifies” should be added to the list of actions.
* Para 5 and 6 should specify clearly that a copy of any incident report provided to the competent authority should also be provided to the relevant client(s) We believe Article 16 intends that the provisions of the RTS should continue to apply where activites are outsourced, however the wording of this article would benefit from being more explicity in this regard.
* Article 17 should apply to APAs and CTPs as well as ARMs

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

SG agrees with this proposal

<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>

SG agrees with this proposal

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

SG agrees with this proposal

<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>

SG agrees that the ability to provide a trade ID is an important feature of a CTP. However, SG does not believe that the approach should be as prescriptive as that proposed. It should be sufficient for a CTP to rely on a trade ID assigned by other parties (provided its uniqueness can be assured) or for the CTP to add its own trade ID as and if necessary.

<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>

SG believes the venue timestamp is the most appropriate

<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>

SG agrees with the proposal.

<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>

SG believes that such identification is unnecessary and could in fact be confusing and lead to undesirable competitive behavior between APAs. In addition, where an APA is known to report for a small number of market participants, publication of the APA source could provide knowledgeable market participants with inappropriate levels of transparency.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

SG generally agrees with ESMA’s proposal.

SG is fully supportive of ESMA’s concerns that to deny access CCPs will need to demonstrate that the capacity they have installed, (in use and idle) as well as their ability to increase capacity, the foreseeable increase in flow and how the concrete increase in flow could not be manageable in a given timeframe, i.e., why and how the CCP would not be able to acquire the needed capacity, so that granting access would, therefore, leave a significant undue risk.

SG also concurs that CCPs should be protected from having to incur significant costs of connection to venues that subsequently provide little to no volume. As such, SG believes that CCPs should be able to charge reasonable costs of connection to venues, such costs approved by the Competent Authority of the CCP in question.

SG believes that CCPs should not be required to enter into interoperability agreements to support the request for access from a venue. Interoperability is not the only model by which a venue could access a CCP.

<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>

SG is fully supportive of ESMA whereby conditions based on the anticipated volume of transactions and the number of users does not impact a trading venue on reasonable risk grounds. SG is aware of Trading Venues and CCPs that have worked together in an interoperable environment - where access has been granted by venues - and the platforms have not been adversely affected by either of the above conditions.

SG believes that a venue should be able to identify why it is able to provide one CCP with a trade feed but not another. A comparison should be provided to the NCAs of both the CCP and the venue.

While Article 6 states that denial of access may be appropriate where a trading venue incurs costs when providing access that threaten the viability of the venue or its ability to meet minimum capital requirements, SG believes that ESMA should require that clear and transparent details of the costs should be discussed between the CCP and venue to try to reduce the expense. If this cannot be resolved, the NCAs of both parties must be provided with the reasons and costs

SG is also of the view that the incompatibility of infrastructure rules such that these cannot be remedied is unlikely and not in the spirit of the Regulation and we would ask that ESMA fundamentally review, or delete, this element.

<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>

SG agrees with ESMA’s approach.

<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>

SG broadly agrees with the three elements of:

* not meeting legal obligations,
* undue risk and
* a lack of remedial action to satisfy its legal obligations.

We would urge ESMA to ask the CAs to inform the trading venue, CCP and other NCA where applicable so that the process is as transparent as possible.

Also, it is not clear how the phrase “have a wider negative impact on the market” in Article 7(b) can be quantified and therefore implemented fairly.

<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>

SG generally agrees with the proposals, however question 8.1.f (iv) would be better addressed by requiring the infrastructure to be proactive and require it to determine the risks at the outset and include them in the agreement with the other party. <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>

SG believes the fees charged by a CCP to its clearing members should generally not to be different per venue unless such a difference is objectively justifiable. The level 1 text, Article 35(6)(b) of MiFIR which states that “ESMA shall develop draft regulatory technical standards to specify…the non-discriminatory and transparent basis as regards fees related to access”.

Thus we believe the working of RTS24 Art 9 should be tightened to ensure that a CCP shall only charge fees for clearing transactions executed on a trading venue to which it has granted access on the basis of objective criteria, applicable to all clearing members and, where relevant, clients. Fees shall not depend on the trading venue where the transaction takes place.<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>

SG agrees with the proposal

<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>

SG agrees with the proposal, and notes that notifications pursuant to Articles 14,15,16 and 17 of RTS 24 should be made public.

<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>

SG agrees with the proposal, and notes that notifications pursuant to Articles 14,15,16 and 17 of RTS 24 should be made public.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_159>

* Requirements applying on and to trading venues

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_160>

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

<ESMA\_QUESTION\_CP\_MIFID\_161>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_167>

* Commodity derivatives

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

<ESMA\_QUESTION\_CP\_MIFID\_168>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

The proposed framework appears on the one hand not sufficiently flexible and on the other hand unclear.

On the one hand, we do think that the proposed methodology should be more flexible by the introduction of the open interest baseline for non-spot month limits. A methodology based exclusively on the deliverable supply is not only inconsistent with some non-EU regimes but also seems unable to create a workable position limits regime for all non-spot month contracts. Even if each national competent authority (NCA) will be able to introduce at its national level some adjustments that may include the open interest baseline for non-spot month limits, we do think that for consistency purposes the level 2 technical standards should expressly accept this flexibility.

Moreover, we are of the opinion that contracts entered into between banks and non-financial counterparties (NFCs) to hedge the positions of these NFCs should be eligible for netting against related commodity futures positions. We think that such a possibility would not be inconsistent with the level 1 which states that “*Position limits shall not apply to positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity*”.

On the other hand, clarity is needed to ensure that the proposed framework of the methodology for calculating position limits remains at each moment consistent with any new characteristic of the relevant commodity markets. In that matter we would advise that each NCAs by required to review the methodology as soon as practicable. Therefore, we think that the drafting of Recital (15) should be modified so that the word “*periodically*” be replaced by “*as soon as needed*”.

<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 welcome the ESMA’s proposed 25% of deliverable supply baseline as well as the fact that NCAs have the ability to vary it by +/- 15%. However, we would like to make the two following comments.

Firstly, given the lack of accurate data we are wondering how NCAs will be able to calculate such a deliverable supply for all asset classes of commodity contracts. We would advise that all NCAs use (1) the same methodology to calculate such a deliverable supply to ensure consistency across the Union and (2) a methodology which as simple as possible. In that context, NCAs could hopefully rely on figures provided by:

- all relevant warehouses for metals,

- all relevant public silos as well as the significant private points for agricultural products,

- the hub operator(s) for energy products.

Moreover, once the criteria of the methodology will be determined it would be necessary to indicate in the level 2 technical standards what will be the frequency according to which the above-mentioned figures will have to be transmitted by these warehouses, silos and hub operators. Therefore, we would recommend that this frequency should be “*as soon as practicable*”.

Secondly, we do think that the proposed methodology based on the deliverable supply is only relevant for physically settled spot-month contracts. For non-spot month limits, we recommend using the open interest baseline.

<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>

Given the lack of details we have been provided so far in the context of this Consultation Paper, we are not able to answer this question. Such answer directly depends on the methodology which will be used (deliverable supply versus spot month), its criteria and the frequency of its possible modifications. Above all, we do not benefit from the appropriate statistics and data allowing us to determine whether such a 40% position limit is suitable for all commodity derivatives.

<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>

Same response as under 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>

Even if we are not able to assess their concrete impacts on the market given the lack of details we have been provided, we agree in principle with the fact that the +/- 15% perimeters appear suitable for all the factors. However, we think that some factors like volatility should be understated (although not avoided as this factor is used at level 1) because they appear irrelevant to determine the size of position limits.

<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>

Same response as under question 184.

Once again, our opinion is that for physically settled spot-month contracts the methodology should be based on the deliverable supply whereas for non-spot month limits the open interest metric is more appropriate.

<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>

In our view, ESMA should pay attention to the fact that the commodity markets are characterised by a number of contracts which are illiquid, especially (but not limited to) new contracts. For these contracts, it is a common situation that a limited number of market participants represent the vast majority of volumes, at least as long as these contracts remain immature. If positions limits were to be imposed according to the same methodology and criteria as the ones for the other contracts it could hurt the liquidity and create barriers to the development of new commodity derivatives.

For this reason, we would be favorable to the use of a transitional period during which position limits would not be applicable. For example, it could be considered that during the first 6 months after the creation of a new commodity contracts positions limits would not apply or, if ESMA considers that it would not be compliant with the level 1, the quantitative thresholds (25%, 40%, +/- 15%) should be adapted accordingly.

<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 believe that some factors directly related to the physical market such as the capacity constraints could be taken into account.

But once again given the current lack of exhaustive data we are wondering how NCAs will be able to calculate and adjust the level of deliverable supply.

<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>

Same response as under question 190.

<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>

Same response as under questions 184 and 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>

Same response as under question 189 (illiquid and new contracts).

In addition, competent authorities should take into account the number and composition of market participants in a specific commodity market or even better for each contract. If it appears that the number of participants is too low or that market participants are essentially composed of buyers, positions limits should be calibrated to avoid hurting both the market and its participants.

<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>

Competent authorities could enter into formal agreements with warehouses, public silos, private storage points and hub operators to be provided with data on the storage capacities.

<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>

The NCAs should have discretion on a case-by-case basis.

<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 do not think that the “age” of the commodity derivative is a relevant indicator that should be taken into account.

But we think that the ongoing liquidity of a contract could be relevant to qualify contracts as illiquid and therefore to allow NCAs to impose a more flexible position limits regime applying to these contracts.

<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>

No comment.

<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 ESMA’s proposal and we fully agree with the need for NCAs to have sufficient flexibility to be able to take into account the specificities of the different markets.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

Once again, we are of the opinion that contracts entered into between banks and NFCs to hedge the positions of these NFCs should be eligible for netting against related commodity futures positions.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

Despite the fact that we globally agree with the proposed draft RTS (except the point that financial hedging contracts provided by banks to NFCs should be eligible for netting against related commodity futures positions), we cannot agree with the procedure that market participants should follow for their derivatives to be recognised as economically equivalent OTC contracts (EEOTC).

Recital (10) states that where a person considers an OTC commodity derivative as EEOTC it should “*notify the relevant competent authority for the trading venue on which the commodity derivative trades*”. After this notification, this competent authority will determine whether OTC commodity derivative is EEOTC and both this authority and ESMA will publish the relevant list.

This procedure appears too much formal but also not suitable with the clients’ needs. Indeed, this *ex ante* requirement does not allow market participants to know at the moment they enter into a transaction with a client whether their trade is recognised as EEOTC and therefore whether they will comply with the position limits. Moreover, we note that surprisingly this requirement of mere importance is only contained in a Recital.

For these reasons, we would recommend to delete Recital (10) and to replace it by the following procedure:

- market participants would have to comply with their own internal process setting the characteristics under which on OTC contract could be recognised as EEOTC,

- this internal process would be validated by the relevant NCA ex ante (prior to any recognition of a contract as EEOTC pursuant to this process),

According to its powers, the relevant NCA will have the ability to check - on an ex post basis – whether the market participant has comply with the internal process that the NCA has validated.

<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.

<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 agree with the proposed draft RTS.

<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 agree with the proposed draft RTS.

<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>

Same response as under question 204.

To avoid disturbing the whole market and to create situations where clients are unable to find easily some counterparties, we strongly recommend replacing the proposed *ex ante* procedure by an *ex post* approval under which market participants notify the competent authority after the trades have been entered into. Furthermore, we believe that it would be more appropriate even for competent authorities.

<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 agree with the proposed draft RTS.

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

We agree.

<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

We agree.

<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

Article 2 of the proposed ITS 31 states that “*investments firms shall produce and send a daily position report on their positions* […] *as well as of those of their clients and the clients of those clients until the end client is reached* […]”.

We understand that this requirement is consistent with Article 58.2 of MiFID II (level 1) which expressly refers to the fact that this reporting should be performed in accordance with Article 26 of MiFIR.

First of all, we underline that Article 26.3 of MiFIR does not require such a reporting “for the clients of clients until the end client is reached”. Indeed, Article 26.3 only refers to “*a designation to identify the clients on whose behalf the investment firm has executed that transaction*”.

Secondly, we stress the fact that investment firms will be practically and legally unable to provide the reporting until the end client is reached. From a practical viewpoint, investment firms will absolutely have no guarantee given from their clients that the reporting such investment firms have requested will be provided until the end client is reached. In other words, investment firms will not be able to make the appropriate due diligence to determine whether they have complied with the reporting obligation. From a legal point of view, for confidentiality and banking secrecy reasons it is not obvious that the clients of the investment firms would legally be allowed to provide any detail on their clients.

Thirdly, such a mandatory reporting would lead to a high number of situations where commercially and legally sensitive information are transferred to undue persons which obviously may impair the integrity and safety of the whole commodity market.

Fourthly, we are wondering if such a reporting obligation will not encourage some clients to use the services provided by intermediaries which are located outside of the EU and therefore not submitted to the MiFID position reporting requirements.

In this specific context, and taking into account the level 1 we urge ESMA to modify the drafting of Article 2 of the proposed ITS 31 as such:

“*1. Investment Firms shall produce and send a daily position report on their positions taken in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue and in economically equivalent OTC contracts, as well as, when available, of those of their clients and the clients of those clients until the end client is reached to the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded or the central competent authority where the commodity derivatives or emission allowances or derivatives thereof are traded in significant volumes on trading venues in more than one jurisdiction, in the format specified in Table 2 of the Annex*.”

<ESMA\_QUESTION\_CP\_MIFID\_212>

* Market data reporting

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

TREM is the format which would pose the most substantial implementation challenge since it is a custom XML format defined by ESMA.

Indeed, it can be much more complicated for firms to implement customized XML formats, instead of standardized formats widely used by the industry like FpML.

That being said, all formats specified in paragraph 2 would pose substantial implementation challenges. Indeed, the less cumbersome format is flat files.

<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>

Yes, we anticipate the following difficulties:

* Issuance, allotment or subscription, placements: Reportable static data such as ISIN, AII, … may be missing at the time the transaction has to be reported. Thus reporting firms would have to flag the reported transactions with missing static data and then re-submit them when that data is available.

To avoid reporting firms having to re-submit a large number of transactions executed on the primary or on the grey markets, ESMA should consider (i) enabling firms to replace the missing static data with their internal data, (ii) accepting these reports and letting NCAs liaise directly with firms should they have questions on specific transactions or (iii) allowing firms to report late in these circumstances.

* Exclusion of Security Financing Transactions: We welcome this clarification but want to make sure that all securities financing transactions (SFTs) reporting requirements will arise solely from the SFT Regulation and that investment firms will not be requested to report any SFT even in an interim period. Indeed:
  + One of the main objectives of the SFTR is to extend reporting requirements on all forms of SFTs. Furthermore, the regulation should enable to integrate in its scope any future form of SFT;
  + It would thus be hard to understand that, should the SFTR not enter into force before MiFIR, investment firms are requested to report SFTs under MiFIR. This would lead to inconsistencies between MiFIR and SFTR reportings and would incur unnecessary additional costs and burdens to investment firms and NCAs alike, with no proven added value. One would thus strongly question the cost/benefit of a temporary MiFIR reporting of SFTs.
* Reporting of transactions between a firm acting as Systematic Internaliser (SI) and the same firm acting on a riskless principal basis: Whilst there is no ambiguity on the necessity to report transactions between a SI and the same firm acting on an agency basis, we would like clarity on whether transactions between a SI and the same firm acting on a riskless principal basis are required to be reported.
* Reporting of options exercise: We would like to stress that the reporting of exercises of OTC options and more precisely of EMSA’s request to flag exercises may prove very complex to implement. We thus suggest that firms should have the ability to report options exercises independently from the options they relate to.

In addition, we would like to stress the necessity for reporting formats across regulations to be consistent in order to be able to report the same data (the same field) in the same way.

<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>

Yes, we think that the definition of financial instruments eligible for Transaction Reporting should be restricted to those whose principal listing is on an EEA Trading Venue.

Indeed, following the proposed definition, a transaction is reportable as long as it is executed on or has an underlying being a financial instrument tradable on an EEA Trading Venue.

Thus all transactions on non-EEA financial instruments (US or Asian stocks, etc.) which have a dual listing on an EEA Trading Venue must be reported, even if those transactions have no EEA nexus (e.g. transactions on US stocks executed on a US Exchange by the US Branch of an EEA investment firm using its membership). Such transactions are already reportable under MiFID, yielding to large numbers of reported transactions with no European nexus. We would question what interest NCAs have in receiving these reports.

With the extension of the perimeter of eligible financial instruments to all EEA Trading Venues (and in particular to MTFs and OTFs), this unintended consequence of the definition of eligible transactions is likely to result in very large numbers of reported transactions of little use for NCAs.

We thus strongly recommend that ESMA restricts the definition of eligible financial instruments to those whose principal listing is on an EEA Trading Venue. If the purpose of transaction reporting is to enable NCAs to investigate market abuses, one can argue that NCAs should be primarily concerned in those securities where the primary listing is within their jurisdiction<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

No, nevertheless for the detection of obvious errors when receiving information from the transmitting firm, receiving firms should be left with a margin of interpretation on what constitutes an obvious error and which controls should be implemented.

<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>

Yes but it incurs additional costs for investment firms as this is a change in fields that firms should report i.e. not a change of the logic of buying and selling. However, it should not have a significant impact.

<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>

Fields 5, 6, 13, 14, 20, 21, 28, 29, 36 to 39, 68, 69, 71 and 72: Natural Persons Identification:

We would like to stress the following points:

1. For countries choosing to identify natural persons in priority via National Passport Number or the National Identity Card, this will incur a lot of complexity for investment firms having retail banking activities in those countries as typically such ID numbers are kept manually in clients’ files and not stored in banks IT systems. The obligation to convey these client IDs in orders will incur sizeable and complex IT and organizational investments, as many systems will have to be amended to accommodate this data and convey it across the whole order transmittal and execution chain. This will be further compounded by the fact that these ID numbers change over time.

For these reasons, we propose that the implementation of this requirement should be phased in over time: at inception (in January 2017), client identification would be requested for all new clients being nationals/residents of the country of incorporation of the investment firm; one year later this obligation would be extended to all existing nationals/residents of that country; in January 2019, it would be extended to all nationals/residents of EEA countries.

1. The problem of banking secrecy pertaining to trades executed for the account of non-EEA clients, with non-EEA counterparties or outside of the EU remains unresolved i.e. we generally need to get client’s or counterparty’s prior approval for reporting their id on such transactions.

Field 77: Short Selling Indicator:

We strongly challenge the reference made to Regulation (EU) 236/2012 as the purpose of the Short Selling Indicator in relation to Transaction Reporting is totally different. Indeed, Regulation (EU) 236/2012 requires the reporting of short selling positions, as well as aiming to prevent short selling under certain circumstances, at investment firm level, while MiFIR Short Selling Indicator aims at reporting short sell orders at client level. We are fully aware that this consideration pertains to the level 1 but we strongly believe that ESMA should challenge this point with the European bodies and advocate a removal of any reference to Regulation (EU) 236/2012.

Focusing on the Transaction Reporting, while we agree with the principles put forward by ESMA for the population of the Short Selling Indicator for clients’ orders, we firmly believe that for investment firms’ orders, in order for NCAs to get meaningful information, the assessment of the short selling should be made at trader’s level, not at legal entity level. Indeed, as the Transaction Reporting is viewed by regulators as a privileged tool to enable them to detect possible market abuse, short sell information relating to the trader’s book seems much more relevant for that purpose than information relating to the whole firm position. Conversely, demanding firms to compute the Short Selling Indicator at legal entity level is likely to increase dramatically development costs for firms with no guarantee over results accuracy.

Field 80: Transaction Reference Number:

We respectfully ask ESMA to reconsider the introduction of a Report Matching Number, which would be completed only for transactions executed on a trading venue (i.e. market facing transactions).

This would enable firms to systematically populate the Transaction Reference Number with their own reference, and in turn facilitate the communication between NCAs and the investment firms they supervise in case of enquiries by NCAs on specific transactions.

Otherwise, it will be much more difficult than today for investment firms and NCAs alike to correctly identify market transactions subject to NCAs’ enquiries.

General Comment:

We are unconvinced that the number of fields provided to report complex derivatives is sufficient. As this is a complex issue, ESMA should provide very precise guidelines on how the many kinds of complex derivatives should be reported, bearing in mind that in view of the variety, the complexity of those derivatives and the fact that the reporting will probably never entail the necessary level of details to exhaustively report the characteristics of any kind of complex derivative, ESMA will have to opt for sometimes imperfect reporting of at least transactions main characteristics. The industry would welcome a close dialogue with ESMA when elaborating on those detailed standards, so that those transactions are reported consistently to all involved NCAs, even if in some instances imperfectly. This is all the more necessary as it is likely to entail significant development costs at investment firm level.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

No. ESMA proposes to introduce the “M – Matched principal” trading capacity, which will incur a significant complexity for firms.

Under the existing set-up, investment firms have the ability to report riskless principal trading as two separate principal transactions, a “market leg” and an OTC “client leg” without linking them. The Matched principal trading capacity will oblige them to link the 2 “legs”, which will be complex and costly.

Clarification is required on the “maintenance by trading venues” of the trading capacity flags. Does it mean that trading venues will have to convey the trading capacity flag to be input by investment firms on orders they send to the market down to the execution feedback?

<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>

No, as long as trading venues convey them. The pre-trade transparency waivers being defined by MiFIR, we understand that the eventual waiver applicable to a given transaction must be reported solely for transactions executed on EEA trading venues. Indeed:

* There is no evidence that trading venues outside the EEA propose the same pre-trade transparency waivers. It would thus not make sense for a non-EEA trading venue to convey a waiver either not defined by MiFIR or not applicable on that venue;
* Furthermore, European Authorities cannot impose trading venues outside their remit to convey the eventual applicable waiver.

<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>

Yes

<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>

Yes but for indices for which no ISIN is available, as the official name of an index may not be a normalized information, discrepancies will inevitably arise between investment firms’ source systems feeding their transaction reports and other available referentials.

<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>

No, we don’t expect significant issues. We do however question the pertinence of selecting the branch that has the closest relationship to the client rather than the branch where the salesperson is located, as the latter information may appear more relevant for NCAs.

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

Yes. European regulators should restrict the LEI obligation to legal persons domiciled in countries where the LEIs are compulsory.

Indeed, European Authorities should avert creating uneven competition situations detrimental to EEA firms like the following: a branch of an EEA investment firm that is located in a non-EEA country could not accept a client’s order because the client does not have an LEI - LEIs not being compulsory in that country -, while a local investment firm can accept and execute that order.

<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

Yes. Not having a reference data base of financial instruments admitted to trading on an EEA trading venue maintained by ESMA would result in further increasing the existing uncertainty regarding whether an instrument is reportable or not. Indeed, there currently does not exist any sufficiently reliable “golden source” of reportable instruments maintained by a third party and this problem is likely to worsen with the significant enlargement of eligible financial instruments, in particular with the creation of OTFs. Furthermore, the benefit incurred by the absence of a golden source maintained by ESMA weighs little in view of the incurred instability of the Transaction Reporting and difficulties for NCAs to exploit its results and the related costs for the industry.

In that context, ESMA’s request to prevent over-reporting seems contradictory with the above. Indeed, it appears that major NCAs do not have an issue with over-reporting (whether today or in the future).

In view of all the trading venues being supervised by ESMA, we propose that, in addition to ESMA’s maintenance of a golden source, that were investment firms to detect omissions in the golden source, they would report their transactions on the missing instruments, or where the missing instruments were the underlying, and they would concurrently report the discrepancy to ESMA.

Indeed, ESMA appear best placed to demand diligent and continual reports from the trading venues on all new financial instruments in order to maintain an accurate golden source. This in turn seems to be the most reliable and most cost-efficient way to ensure an efficient and consistent Transaction Reporting regime in line with regulatory expectations.

<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>

Yes, in some European countries asset managers routinely allocate the execution of their orders among the funds under their management after execution has taken place. Thus, in all these instances the client IDs are not transferred to the trading venues.

Furthermore, the inclusion of client IDs in all remaining orders is likely to be an extremely sensitive process as investment firms will have to modify upstream all their market connectors to include these data at the formats specified by ESMA. Indeed, to minimize the risk of failure, investment firms typically schedule the evolution of their connectors with the technical releases of the various concerned EEA trading venues. Thus the incurred complexity and costs for the corresponding IT projects for investment firms are very significant.

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

Yes

<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>

No comment.

<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>

No comment.

<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>

Yes but one should keep in mind the following elements:

* On some servers, achieving a time stamping more accurate than a microsecond is technically possible but the relevance of last digits is difficult to guarantee. However this problematic is system-dependant and some operating systems do not allow such precision. Basically on third party vendor gateways, investment firms would be dependent on their implementation and technology.
* The need to have such precision in the timestamp is highly reduced by the time synchronization constraint:
* A precision beyond a microsecond would only be useful for orders that are going through the same server, and usually due to the internal mechanics of the server one does not need to go below a few microsecond precision to distinguish orders;
* To compare timestamps between servers and deduct a chronological order among them, the synchronization error prevents us to use a better precision than the error itself (please refer to answer to Q233).

<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>

No

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

Yes

<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>

No for the following reason:

* Investment firms typically synchronise their gateways with each corresponding trading venue i.e. ensure that the time difference with each venue does not exceed the accuracy of that venue.
* But the difficulty stems from the fact that all markets are not synchronised. Thus, for the time being, as investment firms have to synchronise their gateways with each venue, they cannot synchronise their clock with UTC with a better accuracy than a few milliseconds.

To enable investment firms to eventually synchronise their clock with UTC with an accuracy of one millisecond, all trading venues should first synchronise their clocks with an accuracy beyond one millisecond. This would probably incur very significant investments.

* On another hand, one has to keep in mind that the global standard for time synchronisation between servers, Network Time Protocol (NTP), only guarantees a millisecond synchronisation.

<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>

Yes because as recalled above, NTP only guarantees a millisecond synchronisation. Thus, if trading venues achieve accuracies below one millisecond, all investment firms would have to implement more precise time protocols, which would incur huge investments.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<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>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_238>

* Post-trading issues

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

We believe that it is of paramount importance that clearing certainty (i.e. certainty that a trade intended to be cleared will be cleared) is achieved at an early stage. Therefore, we fully support ESMA proposal to make pre-trade credit checks mandatory for on-venue transactions. However, we believe that flexibility should be allowed as far as the means for these pre-trade credit checks are concerned. Market operators have for instance already developed various mechanisms under the CFTC pre-trade credit checks requirements and should be able to build on those and other solutions.

We therefore support ISDA proposal to amend Art. 3.1. as follows:

*“A trading venue shall request clearing members to either provide or arrange for such trading venue to access, directly or indirectly, the limits applicable to its clients that are entering into transactions referred to in Article 2 on that trading venue and require the clearing member to update them on a real-time basis”.*

<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>

The same rules should apply to voluntarily and mandatory cleared trades. Straight Trough Processing should apply as broadly as possible in order to reduce the risks involved in clearing. The only relevant distinction justifying different timeframes should be between transactions executed on venues and transactions executed off venues.

Hence, we support ISDA proposal to amend the title and text of Article 2 as follows:

*“Cleared transactions*

*Chapter II of these RTS should be applied to a transaction which is either i) cleared in accordance with Article 29 (1) of Regulation (EU) N° 600/2014, ii) subject to the clearing obligation in accordance with Article ‘ of Regulation (EU) N° 648/2012 or iii) voluntarily cleared. Section 1 shall apply only to trades that are executed on a trading venue”.*

The title of Chapter II, Section 1 should be amended to read “Cleared transactions executed on a trading venue”.

The references to “referred to in Article 2” in Articles 3.1, 4.1 and 4.2 should be deleted.

The title of Chapter II, Section 2 should be amended to read “Cleared transactions executed on a bilateral basis”.

Sections 3 and Article 6 should be deleted.

**Timeframes for transactions executed on venues**

We support a shorter timeframe for electronic trades than for non-electronic trades. Whilst in electronic trading, there is no opportunity for manual error and the process is sufficiently automated, clearing should be a matter of seconds, by contrast, in non-electronic trading, additional steps need to be performed in order to check the accuracy of the trade.

We agree that for trades executed electronically the timing of 10 seconds for the transfer of information from the trading venue to the CCP as set out in the draft RTS is appropriate and the trade should be void if it fails to clear, like in the US.

For trades executed non-electronically, the trades should be processed as quickly as possible but at a pace allowing market operators to check the accuracy of the trades.

We suggest a three step approach: - a first timeframe from the submission by a trading venue to a post trade affirmation process within 10 seconds from execution, and – a second timeframe during which the parties would have 10 minutes to complete the affirmation process, and –a third timeframe from the completion of the affirmation process to the submission to the CCP within 10 seconds. Hence, a total of 10 minutes 20 seconds if all works well.

**Timeframes for transactions executed bilaterally**

We do not agree with ESMA proposal to impose a timeframe of 30 minutes from execution to clearing for trades executed bilaterally.

The US and EU versions of the ISDA/FIA cleared derivatives execution agreement (CDEA) which is in the process of being widely adopted by market participants stipulate a timeframe of 150 minutes. Should this timeframe be reduced, it would force the industry to revisit this market standard, which is never an easy task. In addition, US regulators do not impose any timeframe on transactions executed bilaterally.

We fully support At. 7.3, which makes clear that the treatment of a bilaterally agreed trade which is subsequently rejected by a CCP must be determined by contract between the parties. We think that the CDEA, which stipulates solutions to breakage risks between the counterparties, provides such appropriate contractual framework.

<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>

We agree that the clearing member should receive the information on the bilateral trades as soon as possible and hence we believe that the proposed 60 sec. for the information to be provided by the CCP to the clearing member is appropriate and that the timeframe for the clearing member to accept or reject the trade should be set at a level which allows clearing members to perform proper credit risk check*.* <ESMA\_QUESTION\_CP\_MIFID\_241>

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

<ESMA\_QUESTION\_CP\_MIFID\_242>

We support the objective of having a common timeframe for CCP acceptance /rejection for all categories of transactions and believe that 10 sec. is the appropriate timeframe.

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

We believe that only electronic trades should be subject to the voidance ab initio rule. For non electronic trades there should be no legal requirement; it should be left to trading venue and contract rules as for these trades some steps must be accomplished in a non-fully automated way to check the details of the transaction.

We are of the opinion that there should always be an opportunity for the counterparties to re-submit a trade to clearing (even the electronic trades subject to the voidance rule) and that this re-submission should occur within 10 sec. as proposed in the RTS.

Finally, it is essential that original counterparties to a trade be informed on a real time basis whether a trade is accepted or rejected by the CCP. The RTS mention the term “clearing member” generally, whilst a clearing member may be acting as an executing broker or clearing broker rule. We therefore support the following ISDA’s proposals for amendments:

*“The trading venue should develop, and be required, to use, appropriate communication tools to inform the counterparties of the acceptance/rejection of the trade on a real time basis.*

Article 6.2- Insert “, as the case may be,” after the word “counterparties” and further add the sentence *“Trading venues should develop, and be required to use, appropriate communication tools to inform the counterparties of the acceptance/rejection of the trade on a real time basis”* at the end of the paragraph.

Article 7.4 should be amended by replacing 10 seconds with 30 minutes and deleting “to 3”.

<ESMA\_QUESTION\_CP\_MIFID\_243>

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

<ESMA\_QUESTION\_CP\_MIFID\_244>

We support AFTI response and find that the proposed criteria for indirect clearing structures generally make sense. However, we would like to remind the differences in functioning of the exchange-traded derivatives (ETD) structures and the related structures for the clearing of OTC derivatives.

Whilst indirect clearing is an established practice in the ETD world, it is not in the OTC one. Therefore, different solutions may apply to ETD and OTC and one should be careful not to apply solutions that would render the functioning ETD indirect clearing structures inadequate or would eliminate the incentives to provide indirect clearing.

<ESMA\_QUESTION\_CP\_MIFID\_244>

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

<ESMA\_QUESTION\_CP\_MIFID\_245>

No comment.

<ESMA\_QUESTION\_CP\_MIFID\_245>

1. The field will used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account. [↑](#footnote-ref-1)