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| 22 May 2014 |

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| Reply form for the ESMA MiFID II/MiFIR Consultation Paper Template for commentsfor the ESMA MiFID II/MiFIR Discussion Paper  |
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| Date: 22 May 2014 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA MiFID II/MiFIR Consultation Paper, published on the ESMA website ([here](http://www.esma.europa.eu/content/Consultation-Paper-MiFID-IIMiFIR)).

***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 properly. Therefore, please follow the instructions described below:

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

Responses are most helpful:

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

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **1 August 2014**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/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](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

Overview

Investor protection

* 1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

##### Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

* 1. Investment advice and the use of distribution channels

##### Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?

<ESMA\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_2>

* 1. Compliance function

##### Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?

<ESMA\_QUESTION\_3>

APFA is concerned that the proposed rules on compliance do not take sufficient account of the realities of a small firm where all the principal functions of a business are the responsibility of one or two individuals.

Point 2 of the draft technical advice states: “For those purposes, investment firms should take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.”

However, for example, points 5 (ii), (iv) and (v) of the draft technical advice do not appear to have been drafted with small operations in mind. Level I refers to “functions”, yet the draft advice refers to “officers”, which is not appropriate for a small firm. Furthermore the prohibition not to be involved in the performance of the services or activities they monitor may be impractical for a small firm.

Whilst at point 6 the technical advice seeks to introduce a proportionality principle for points 5 (iv) and (v), we believe it would be more appropriate for there to be an overriding principle of proportionality in the text.

<ESMA\_QUESTION\_3>

##### Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?

<ESMA\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_4>

* 1. Complaints-handling

##### Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?

<ESMA\_QUESTION\_5>

Whilst APFA can accept the principle, we are concerned that the requirement to publish the details of the process to be followed when handling a complaint “in detail” could lead to an excessive administrative burden, particularly for smaller firms, and is unnecessary information for the consumer (except when relevant for the consumer in the handling of the complaint). For example, the process might include internal steps that are not necessary for the client to know. It should therefore be sufficient to inform the client of the main steps in the process.

<ESMA\_QUESTION\_5>

* 1. Record-keeping (other than recording of telephone conversations or other electronic communications)

##### Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

##### What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.

<ESMA\_QUESTION\_7>

In respect of point 3 of the draft technical advice, in APFA’s view there should be no obligation to digitalise. For proportionality reasons we believe that physical files should be treated in the same way as digitalised information. This should be made clear in the text.

<ESMA\_QUESTION\_7>

* 1. Recording of telephone conversations and electronic communications

##### What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?

<ESMA\_QUESTION\_8>

When considering these requirements it is important to be clear on their purpose – is it to help prevent market abuse or is it intended to be a record of the advice given to a client? The policy intention is important in determining whether these requirements are appropriate and proportionate.

From our reading of paragraph 2 of section 2.6, it appears that the purpose of these requirements is primarily to help deter and detect market abuse when firms are executing client orders. It appears to be written primarily in the context of shares being traded on a stock exchange. The “client’s order” concept, where clients are actively determining what is to be traded (as is the case with stockbroking firms) is very different from the way investment advice is usually conducted. It should also be noted that in many cases, MiFID products do not have the same critical time element as would have client orders in a stockbroking environment.

The language in the rules does not sit comfortably with the way financial advice is typically conducted, where the conversation may take place over a period of time and via various mediums (e.g. an initial phone call, a follow-up email and/or meeting, with the final advice and personal recommendation being set out in a letter, at which point the client confirms whether they wish to proceed with the relevant transaction and signs any relevant paperwork.)

In APFA’s view therefore the telephone recording requirement, when advice is being given, is not proportional. In practice it would mean that all telephone conversations with a client must be recorded which would have a significant cost impact and administrative burden, particularly for smaller firms that do not have systems for recording telephone conversations or no way of easily indexing and retrieving any recordings made. In any event in the case of investment advice, written suitability reports are sent to the client that make it clear what is being recommended. This provides a full record of the advice that is being given and the client has the opportunity to accept, or not, the recommended course of action. There would therefore be no additional benefit to be gained by making it obligatory for all investment advice firms to record all their telephone conversations. There therefore needs to be clarity that the giving and acceptance of advice is not included within the concept of a “client order” and therefore does not come within the ambit of these rules.

<ESMA\_QUESTION\_8>

##### Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?

<ESMA\_QUESTION\_9>

A regulated firm will have procedures in place for monitoring the quality of advice given by staff in their organisation, and in APFA’s view it is not necessary to specify that certain types of records need to be treated in a particular way. Firms will review all records in accordance with their compliance procedures. To add specific rules for telephone recordings is unnecessarily detailed, and not proportionate.

<ESMA\_QUESTION\_9>

##### Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?

<ESMA\_QUESTION\_10>

Article 16(7) states that “… the content of relevant face-to-face conversations with a client **may** be recorded by using written minutes or notes.”(Emphasis added).

In APFA’s view the proposed requirement for certain information to always be recorded for face-to-face conversations is unnecessary and disproportionate. It is not appropriate for regulators to be specifying how firms should conduct their business at this level of detail. In any event, advisers will document their advice, and the reasons for it, in a suitability report, and there is therefore no need to specify that notes of the type suggested should also be made.

<ESMA\_QUESTION\_10>

##### Should clients be required to sign these minutes or notes?

<ESMA\_QUESTION\_11>

See our comments in respect of question 10 above. In APFA’s view it is not appropriate for regulators to be specifying how firms should conduct their business at this level of detail. For financial advice firms, the advice and the reasons for it will be documented in a suitability report which the client will need to agree before proceeding with the transaction. It is therefore not proportionate to require clients to sign meeting notes.

Consumers are already faced with excessive amounts of paperwork when conducting even the simplest investment transaction (much of which they probably do not read). Therefore from a consumer perspective it is not helpful to add more steps to the process or increase the amount of paperwork.

<ESMA\_QUESTION\_11>

##### Do you agree with the proposals for storage and retention set out in the above draft technical advice?

<ESMA\_QUESTION\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_12>

##### More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?

<ESMA\_QUESTION\_13>

On the basis of our interpretation of the Directive, firms have to comply with the telephone recording rules if their business engages in the “reception, transmission and execution of client’s orders over telephone conversations or electronic communication”. For most financial advisers, their main business is advice and they do not have an activity of “reception, transmission and execution of client’s orders over the telephone”. However for those who have an (even limited) activity of “reception, transmission and execution of client’s orders over the telephone”, the cost of implementation for small firms will be un-proportionally high. Those firms will have to decide between high entry costs or not providing that kind of service over the telephone. This is another example of the draft proposed rules not being designed for small operations. It also illustrates why MiFID II will lead to a vertical integration in the sector and a decrease of choice for (in particular smaller) investors.

Regarding the costs, this chapter in the consultation paper illustrates very well the “silo” approach in terms of cost benefit analysis. What should be considered is the overall, cumulative cost, both direct and indirect, of the proposed rules. Due to the opt-out possibility of MiFID I many market parties (who were in the opt-out of MiFID I) will now have to adapt to MiFID II (level II) in one step (without having been under MiFID I). Therefore for these firms, APFA believes a longer transition period for the implementation of these rules should be considered.

<ESMA\_QUESTION\_13>

* 1. Product governance

##### Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.

<ESMA\_QUESTION\_14>

Point 27 of the draft technical advice could be read as meaning that the final distributor in the chain has ultimate responsibility for meeting the product governance obligations:

“Where different firms work together in the distribution of a product, the final distributor in the chain (i.e. the firm with the direct client relationship) has ultimate responsibility to meet the product governance obligations…”

In APFA’s view this is not in accordance with the MiFID II text. We think the word “distributor” is missing in the sentence (i.e. “…has ultimate **distributor** responsibility…”). If not then putting such a responsibility on the distributor would not be in accordance with the original policy intentions, where the manufacturer remains responsible for the design of its products.

<ESMA\_QUESTION\_14>

##### When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?

<ESMA\_QUESTION\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_15>

##### Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?

<ESMA\_QUESTION\_16>

This should be left to contractual relations. APFA does not believe it is appropriate for regulators to be involved at this level of detail in the way firms conduct their business and we do not believe this proposal is feasible. In any event, for smaller firms in particular, a reporting requirement of this nature would be administratively burdensome, and would add to the costs of running the firm, unless the manufacturer was to pay the advisory firm’s costs in this respect.

<ESMA\_QUESTION\_16>

##### What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product’s target market)?

<ESMA\_QUESTION\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_17>

##### What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?

<ESMA\_QUESTION\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_18>

##### Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.

<ESMA\_QUESTION\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_19>

##### Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.

<ESMA\_QUESTION\_20>

APFA believes it would be helpful to clarify how the concept of a “target market” for products interacts with the suitability test, in particular in the situation where, for example, a client has a balanced portfolio containing a mix of high/medium/low risk products. In our view it should be clear that in such a situation it is possible for an adviser to advise a client, who is not necessarily in line with the “target market”, to invest in a product as long as the suitability test is done and the product is suitable in the overall context of that client’s portfolio (e.g. it only makes up a small proportion and does not affect the overall risk/suitability of the portfolio).

<ESMA\_QUESTION\_20>

##### For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?

<ESMA\_QUESTION\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_21>

* 1. Safeguarding of client assets

##### Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?

<ESMA\_QUESTION\_22>

APFA would suggest that the ESMA advice clarifies, in line with level I, that this rule is limited to investment firms holding financial instruments belonging to clients.

<ESMA\_QUESTION\_22>

##### What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm’s compliance with its obligations regarding the safeguarding of client instruments and funds?

<ESMA\_QUESTION\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_23>

##### Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?

<ESMA\_QUESTION\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_24>

##### Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?

<ESMA\_QUESTION\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_25>

##### Do you agree with the proposal to require a reasonable link between the client’s obligation and the financial instruments or funds subject to TTCA?

<ESMA\_QUESTION\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_26>

##### Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?

<ESMA\_QUESTION\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_27>

##### Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?

<ESMA\_QUESTION\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_28>

##### Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?

<ESMA\_QUESTION\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_29>

##### Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?

<ESMA\_QUESTION\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_30>

##### Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?

<ESMA\_QUESTION\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_31>

##### Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?

<ESMA\_QUESTION\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_32>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.

<ESMA\_QUESTION\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_33>

##### Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?

<ESMA\_QUESTION\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_34>

##### Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?

<ESMA\_QUESTION\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_35>

##### Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?

<ESMA\_QUESTION\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_36>

##### Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?

<ESMA\_QUESTION\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_37>

##### Do you place any client funds in a credit institution within your group? If so, what proportion of the total?

<ESMA\_QUESTION\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_38>

##### What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?

<ESMA\_QUESTION\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_39>

##### What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?

<ESMA\_QUESTION\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_40>

##### What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?

<ESMA\_QUESTION\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_41>

##### Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?

<ESMA\_QUESTION\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_42>

##### Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?

<ESMA\_QUESTION\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_43>

##### What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?

<ESMA\_QUESTION\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_44>

##### Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?

<ESMA\_QUESTION\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_45>

##### Should the option of ‘other equivalent measures’ for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?

<ESMA\_QUESTION\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_46>

##### Should firms be required to develop additional systems to mitigate the risks of ‘other equivalent measures’ and require specific risk disclosures to clients where a firm must rely on such ‘other equivalent measures’, where not already covered by the Article 32(4) of the MiFID Implementing Directive?

<ESMA\_QUESTION\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_47>

##### What would be the on-going costs of making disclosures to clients when relying on ‘other equivalent measures’?

<ESMA\_QUESTION\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_48>

##### Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client’s financial instruments to settle the transactions of another client, including:

<ESMA\_QUESTION\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_49>

##### Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?

<ESMA\_QUESTION\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_50>

##### Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?

<ESMA\_QUESTION\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_51>

##### Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?

<ESMA\_QUESTION\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_52>

##### Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?

<ESMA\_QUESTION\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_53>

* 1. Conflicts of interest

##### Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.

<ESMA\_QUESTION\_54>

The periodical review should take into account the proportionality principle and the individual situation of each firm. In APFA’s opinion there should be no fixed system for a review.

<ESMA\_QUESTION\_54>

##### Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.

<ESMA\_QUESTION\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_55>

##### Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA\_QUESTION\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_56>

##### Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA\_QUESTION\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_57>

* 1. Underwriting and placing – conflicts of interest and provision of information to clients

##### Are there additional details or requirements you believe should be included?

<ESMA\_QUESTION\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_58>

##### Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client’s interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?

<ESMA\_QUESTION\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_59>

##### Have you already put in place organisational arrangements that comply with these requirements?

<ESMA\_QUESTION\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_60>

##### How would you need to change your processes to meet the requirements?

<ESMA\_QUESTION\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_61>

##### What costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_62>

* 1. Remuneration

##### Do you agree with the definition of the scope of the requirements as proposed? If not, why not?

<ESMA\_QUESTION\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_63>

##### Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?

<ESMA\_QUESTION\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_64>

* 1. Fair, clear and not misleading information

##### Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?

<ESMA\_QUESTION\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_65>

##### Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?

<ESMA\_QUESTION\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_66>

##### Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?

<ESMA\_QUESTION\_67>

APFA does not agree that the standards for professional clients should be increased. The requirements to be considered a professional client are high. Those clients still have the right either to wish for a different categorisation or ask for detailed information.

<ESMA\_QUESTION\_67>

* 1. Information to clients about investment advice and financial instruments

##### Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?

<ESMA\_QUESTION\_68>

In APFA’s view, whether or not and at what interval there are periodic suitability assessments should be decided on a case by case basis between the client and the investment firm. It must be recognised that such a service has a price and therefore the client and investment firm should have the choice.

In the UK, following the implementation of the Retail Distribution Review, which banned commission on investment business, advisers are required to charge fees for the services they provide. Many firms offer different levels of service, which provide for different levels of review, reporting etc., and come at different costs. This gives the client a choice over the level of service they want and the fee they wish to pay.

Research conducted in November 2013 by NMG Consulting on behalf of APFA showed that 47% of financial advisers had turned away clients during 2013 following the implementation of the Retail Distribution Review, as they felt the cost of their service had become disproportionately high for some clients' needs. Of these, 40% confirmed that they had turned away five or more clients in the year. Based on this research, APFA estimated that nearly 60,000 customers had been turned away by financial advisers in the period between January and November 2013.

There should not therefore be a fixed requirement for firms to conduct reviews at certain intervals, as this all adds to the cost of advice and therefore increases the likelihood that regulated financial advice becomes unaffordable for many consumers.

<ESMA\_QUESTION\_68>

##### Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

##### Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.

<ESMA\_QUESTION\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_70>

* 1. Information to clients on costs and charges

##### Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?

<ESMA\_QUESTION\_71>

APFA does not agree that the standards for professional clients should be increased. The requirements to be considered a professional client are high. Those clients still have the right either to wish for a different categorisation or ask for detailed information.

<ESMA\_QUESTION\_71>

##### Do you agree with the scope of the point of sale information requirements?

<ESMA\_QUESTION\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_72>

##### Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?

<ESMA\_QUESTION\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_73>

##### Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.

<ESMA\_QUESTION\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_74>

##### Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.

<ESMA\_QUESTION\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_75>

##### Do you have any other comments on the methodology for calculating the point of sale figures?

<ESMA\_QUESTION\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_76>

##### Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?

<ESMA\_QUESTION\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_77>

##### What costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_78>

* 1. The legitimacy of inducements to be paid to/by a third person

##### Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.

<ESMA\_QUESTION\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_79>

##### Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?

<ESMA\_QUESTION\_80>

Paragraph 6 of the draft technical advice proposes that minor non-monetary benefits received from third parties should be disclosed to clients prior to the provision of a service.

This proposal seems to APFA to be disproportionate, particularly for smaller firms, and of little benefit to clients. We do not understand what clients are expected to do with such information. For example, one of the minor non-monetary benefits referred to is “hospitality of a reasonable *de minimis* value, this could for example include food and drink during a business meeting or a conference, seminar or other training events”. Is it envisaged that a firm will have to estimate the value of all the food and drink they have been provided with at such events throughout the year, and tell each of their clients that they have received this “benefit”? How does this information help the client, assuming the client even reads such information?

As we have commented elsewhere, there is already a problem with clients receiving too much information and not reading it. As recognised by Martin Wheatley, Chief Executive of the UK’s Financial Conduct Authority, in a recent speech (Martin Wheatley speech at Bloomberg, London, 29th May 2014 - <http://www.fca.org.uk/news/making-innovation-work>), the regulator’s previous response to a problem – more disclosure – did not actually benefit the consumer. The FCA has now recognised that the majority of people do not read these documents, and if they do, comprehension is often an issue. The FCA has therefore started reviewing guidance and rules to check they’re genuinely supporting customers to understand financial products, and will be consulting on this subject later in the year.

Therefore to add to the paperwork consumers receive with information that the average client cannot use seems us to be a costly exercise which serves no purpose. It therefore seems to us that an over-riding principle of proportionality is required, such that there is no requirement to disclose “minor” non-monetary benefits where the cost of so doing is disproportionate to the value of the benefit.

<ESMA\_QUESTION\_80>

##### Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.

<ESMA\_QUESTION\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_81>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA\_QUESTION\_82>

APFA is a member of BIPAR, the European Federation of Insurance Intermediaries. BIPAR groups 52 national associations in 32 countries and through its national associations, represents the interests of insurance agents and brokers and financial intermediaries in Europe.

In its response to this consultation BIPAR has made a number of detailed comments about this draft technical advice, and we are supportive of the concerns raised by BIPAR.

<ESMA\_QUESTION\_82>

* 1. Investment advice on independent basis

##### Do you agree with the approach proposed in the technical advice above in order to ensure investment firm’s compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.

<ESMA\_QUESTION\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_83>

##### What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?

<ESMA\_QUESTION\_84>

In APFA’s view the proposed approach at paragraph 4 (iii) of the draft technical advice, that a relevant person may not provide independent and non-independent advice, is contrary to the policy intention of the level I Directive and is not in line with the proportionality principle.

This requirement puts small investment firms in a very difficult situation and is not necessarily in the best interests of consumers. In line with the philosophy of the level I Directive, clients should have the choice, on a case by case basis, with full disclosure, to be advised on an “independent basis” or not. For example it may be that in some situations the client wants advice on a straight forward matter and would prefer a more limited, less expensive service from their adviser. At other times the same client may wish to receive full independent advice on a more complex situation. It is important that the distinction is made clear on a case by case basis, but having the choice provides a benefit for the consumer.

In the UK firms are able to provide both independent and restricted advice, provided it is made clear to clients (for example, by using different trading names to clearly separate the two business arms). This helps ensure that firms are able to provide the widest possible consumer choice and gives access to advice for consumers who might not otherwise be able to afford it.

<ESMA\_QUESTION\_84>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA\_QUESTION\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_85>

* 1. Suitability

##### Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?

<ESMA\_QUESTION\_86>

Paragraphs 1 (iii) and 1 (ix) of the draft technical advice, by specifically requiring firms to assess whether alternative financial instruments, less complex or with lower costs, could meet their client’s profile, is at risk of creating legal uncertainty. An adviser is required to ensure that the products they recommend are suitable investments that match the client’s requirements, risk profile etc.; they are not required to find the “perfect” product. There is a risk that the proposed requirement will result in complaints from a client every time an investment falls in value. APFA also believes that this creates a situation which was not the intention at level I.

For “non-independent” advisers it is unrealistic to require them to assess whether alternative financial instruments (outside the range of products they advise on and disclose to their client), which are less complex or have a lower cost, could meet their client’s profile. For independent advisers such an obligation is perhaps possible but would in practice lead to an unrealistic and unreasonable legal uncertainty.

The cumulative effect will result in a higher cost of advice because of the administrative burden and the legal uncertainty about the consequences of the advice and the availability of affordable advice will reduce substantially, particularly for smaller investors

<ESMA\_QUESTION\_86>

##### Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?

<ESMA\_QUESTION\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_87>

##### What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently ‘personalised’ to have added value for the client, drawing on any initiatives in national markets?

<ESMA\_QUESTION\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_88>

##### Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?

<ESMA\_QUESTION\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_89>

* 1. Appropriateness

##### Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?

<ESMA\_QUESTION\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_90>

##### Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?

<ESMA\_QUESTION\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_91>

* 1. Client agreement

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.

<ESMA\_QUESTION\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_92>

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?

<ESMA\_QUESTION\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_93>

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?

<ESMA\_QUESTION\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_94>

##### Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?

<ESMA\_QUESTION\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_95>

* 1. Reporting to clients

##### Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?

<ESMA\_QUESTION\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_96>

##### Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?

<ESMA\_QUESTION\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_97>

##### Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?

<ESMA\_QUESTION\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_98>

##### Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?

<ESMA\_QUESTION\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_99>

##### What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?

<ESMA\_QUESTION\_100>

The regularity of reporting should depend on what service has been agreed with the client, which in turn will depend on what the client is willing to pay. The draft technical advice should not specify this (paragraph 7). As we have said elsewhere, most consumers do not want to receive a lot of paperwork, and supplying statements should be something that the client agrees with their adviser, not something specified by rules. Furthermore, many clients can now access real-time reports on their investment holdings via online services, and therefore the production of statements every quarter is an unnecessary, costly and out-dated requirement.

In the UK, advisers are required to charge fees for the services they provide. Many firms offer different levels of service, which provide for different levels of review, reporting etc., and come at different costs. This gives the client a choice over the level of service they want and the fee they wish to pay.

As explained in our response to question 68, research conducted in November 2013 by NMG Consulting on behalf of APFA showed that 47% of financial advisers had turned away clients during 2013 following the implementation of the Retail Distribution Review, as they felt the cost of their service had become disproportionately high for some clients' needs. Of these, 40% confirmed that they had turned away five or more clients in the year. Based on this research, APFA estimated that nearly 60,000 customers had been turned away by financial advisers in the period between January and November 2013.

There should not therefore be a fixed requirement for firms to provide reports at certain intervals, as this all adds to the cost of advice and therefore increases the likelihood that regulated financial advice becomes unaffordable for many consumers.

<ESMA\_QUESTION\_100>

* 1. Best execution

##### Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA’s objective of facilitating clear disclosures to clients?

<ESMA\_QUESTION\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_101>

##### Do your policies and your review procedures already the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.

<ESMA\_QUESTION\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_102>

* 1. Client order-handling

##### Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.

<ESMA\_QUESTION\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_103>

* 1. Transactions executed with eligible counterparties

##### Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?

<ESMA\_QUESTION\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_104>

##### For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:

<ESMA\_QUESTION\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_105>

##### For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_106>

* 1. Product intervention

##### Do you agree with the criteria proposed?

<ESMA\_QUESTION\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_107>

##### Are there any additional criteria that you would suggest adding?

<ESMA\_QUESTION\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_108>

Transparency

* 1. Liquid market for equity and equity-like instruments

##### Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA\_QUESTION\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_109>

##### Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer’s home market? Please provide reasons for your answer.

<ESMA\_QUESTION\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_110>

##### Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.

<ESMA\_QUESTION\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_111>

##### Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA\_QUESTION\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_112>

##### Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest?Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA\_QUESTION\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_113>

##### Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.

<ESMA\_QUESTION\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_114>

##### Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA\_QUESTION\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_115>

##### Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?

<ESMA\_QUESTION\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_116>

##### Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.

<ESMA\_QUESTION\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_117>

##### Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.

<ESMA\_QUESTION\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_118>

##### Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest?Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA\_QUESTION\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_119>

##### Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?

<ESMA\_QUESTION\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_120>

* 1. Delineation between bonds, structured finance products and money market instruments

##### Do you agree with ESMA’s assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?

<ESMA\_QUESTION\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_121>

* 1. The definition of systematic internaliser

##### For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.

<ESMA\_QUESTION\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_122>

##### Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?

<ESMA\_QUESTION\_123>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_123>

##### For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.

<ESMA\_QUESTION\_124>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_124>

##### Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_125>

##### ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:

<ESMA\_QUESTION\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_126>

##### Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?

<ESMA\_QUESTION\_127>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_127>

##### For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.

<ESMA\_QUESTION\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_128>

##### With regard to the ‘substantial basis’ criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_129>

##### Do you agree with ESMA’s proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_130>

##### For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.

<ESMA\_QUESTION\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_131>

##### Do you agree with ESMA’s proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?

<ESMA\_QUESTION\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_132>

##### Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?

<ESMA\_QUESTION\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_133>

##### Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.

<ESMA\_QUESTION\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_134>

##### Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.

<ESMA\_QUESTION\_135>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_135>

##### What thresholds would you consider as adequate for the emission allowance market?

<ESMA\_QUESTION\_136>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_136>

* 1. Transactions in several securities and orders subject to conditions other than the current market price

##### Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?

<ESMA\_QUESTION\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_137>

* 1. Exceptional market circumstances and conditions for updating quotes

##### Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA’s view on the conditions for updating the quotes? Please give reasons for your answer.

<ESMA\_QUESTION\_138>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_138>

* 1. Orders considerably exceeding the norm

##### Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?

<ESMA\_QUESTION\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_139>

* 1. Prices falling within a public range close to market conditions

##### Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.

<ESMA\_QUESTION\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_140>

* 1. Pre-trade transparency for systematic internalisers in non-equity instruments

##### Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

<ESMA\_QUESTION\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_141>

##### Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?

<ESMA\_QUESTION\_142>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_142>

Data publication

* 1. Access to systematic internalisers’ quotes

##### Do you agree with the proposed definition of “regular and continuous” publication of quotes? If not, what would definition you suggest?

<ESMA\_QUESTION\_143>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_143>

##### Do you agree with the proposed definition of “normal trading hours”? Should the publication time be extended?

<ESMA\_QUESTION\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_144>

##### Do you agree with the proposal regarding the means of publication of quotes?

<ESMA\_QUESTION\_145>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_145>

##### Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?

<ESMA\_QUESTION\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_146>

##### Is there any other mean of communication that should be considered by ESMA?

<ESMA\_QUESTION\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_147>

##### Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?

<ESMA\_QUESTION\_148>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_148>

##### Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?

<ESMA\_QUESTION\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_149>

##### Do you agree with the imposing the publication on a ‘machine-readable’ and ‘human readable’ to investment firms publishing their quotes only through their own website?

<ESMA\_QUESTION\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_150>

##### Do you agree with the requirements to consider that the publication is ‘easily accessible’?

<ESMA\_QUESTION\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_151>

* 1. Publication of unexecuted client limit orders on shares traded on a venue

##### Do you think that publication of unexecuted orders through a data reporting service or through an investment firm’s website would effectively facilitate execution?

<ESMA\_QUESTION\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_152>

##### Do you agree with this proposal. If not, what would you suggest?

<ESMA\_QUESTION\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_153>

* 1. Reasonable commercial basis (RCB)

##### Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?

<ESMA\_QUESTION\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_154>

##### Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?

<ESMA\_QUESTION\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_155>

##### To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?

<ESMA\_QUESTION\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_156>

##### What are you views on controlling charges by fixing a limit on the share of revenue that market data services can represent?

<ESMA\_QUESTION\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_157>

##### Which percentage range for a revenue limit would you consider reasonable?

<ESMA\_QUESTION\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_158>

##### If the definition of “*reasonable commercial basis*” is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?

<ESMA\_QUESTION\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_159>

##### Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?

<ESMA\_QUESTION\_160>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_160>

##### Do you believe that if there are excessive prices in any of the other markets, the same definition of “*reasonable commercial basis*” would be appropriate, or that they should be treated differently? If the latter, what definition should be used?

<ESMA\_QUESTION\_161>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_161>

##### Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.

<ESMA\_QUESTION\_162>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_162>

##### What are your views on the costs of the different approaches?

<ESMA\_QUESTION\_163>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_163>

##### Is there some other approach you believe would be better? Why?

<ESMA\_QUESTION\_164>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_164>

##### Do you think that the offering of a ‘per-user’ pricing model designed to prevent multiple charging for the same information should be mandatory?

<ESMA\_QUESTION\_165>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_165>

##### If yes, in which circumstances?

<ESMA\_QUESTION\_166>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_166>

Micro-structural issues

* 1. Algorithmic and high frequency trading (HFT)

##### **Which would be your preferred option? Why?**

<ESMA\_QUESTION\_167>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_167>

##### **Can you identify any other advantages or disadvantages of the options put forward?**

<ESMA\_QUESTION\_168>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_168>

##### **How would you reduce the impact of the disadvantages identified in your preferred option?**

<ESMA\_QUESTION\_169>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_169>

##### **If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.**

<ESMA\_QUESTION\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_170>

##### **Do you agree with the above assessment? If not, please elaborate.**

<ESMA\_QUESTION\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_171>

* 1. Direct electronic access (DEA)

##### **Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?**

<ESMA\_QUESTION\_172>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_172>

##### **Is there any other activity that should be covered by the term “DEA”, other than DMA and SA? In particular, should AOR be considered within the DEA definition?**

<ESMA\_QUESTION\_173>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_173>

##### **Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?**

<ESMA\_QUESTION\_174>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_174>

##### **Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?**

<ESMA\_QUESTION\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_175>

Requirements applying on and to trading venues

* 1. SME Growth Markets

##### Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?

<ESMA\_QUESTION\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_176>

##### Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?

<ESMA\_QUESTION\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_177>

##### Do you agree with the approach described above (in the box above), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?

<ESMA\_QUESTION\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_178>

##### Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?

<ESMA\_QUESTION\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_179>

##### Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the “*at least 50% criterion*” do you consider the most appropriate? Please give reasons for your answer.

<ESMA\_QUESTION\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_180>

##### Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?

<ESMA\_QUESTION\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_181>

##### Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are “appropriate”?

<ESMA\_QUESTION\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_182>

##### Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM’s regulatory regime is effective?

<ESMA\_QUESTION\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_183>

##### Do you think that there should be an appropriateness test for an SME-GM issuer’s management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?

<ESMA\_QUESTION\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_184>

##### Do you think that there should be an appropriateness test for an SME-GM issuer’s systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?

<ESMA\_QUESTION\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_185>

##### Do you agree with i, ii or iii below?

<ESMA\_QUESTION\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_186>

##### Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?

<ESMA\_QUESTION\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_187>

##### Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?

<ESMA\_QUESTION\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_188>

##### Do you agree that SME-GMs should be able to take either a ‘top down’ or a ‘bottom up’ approach to their admission documents where a Prospectus is not required?

<ESMA\_QUESTION\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_189>

##### Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?

<ESMA\_QUESTION\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_190>

##### If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?

<ESMA\_QUESTION\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_191>

##### Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?

<ESMA\_QUESTION\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_192>

##### Do you agree with this initial assessment by ESMA?

<ESMA\_QUESTION\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_193>

##### In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?

<ESMA\_QUESTION\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_194>

##### How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?

<ESMA\_QUESTION\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_195>

##### Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph 23) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?

<ESMA\_QUESTION\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_196>

##### Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?

<ESMA\_QUESTION\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_197>

##### What is your view on the possible requirements for the dissemination and storage of information?

<ESMA\_QUESTION\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_198>

##### How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?

<ESMA\_QUESTION\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_199>

##### How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?

<ESMA\_QUESTION\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_200>

##### Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?

<ESMA\_QUESTION\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_201>

* 1. Suspension and removal of financial instruments from trading

##### Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?

<ESMA\_QUESTION\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_202>

##### Do you agree that NCAs would also need to consider the criteria described in paragraph 6 iii and iv, when making an assessment of relevant costs or risks?

<ESMA\_QUESTION\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_203>

##### Which specific circumstances would you include in the list? Do you agree with the proposed examples?

<ESMA\_QUESTION\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_204>

* 1. Substantial importance of a trading venue in a host Member State

##### Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?

<ESMA\_QUESTION\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_205>

##### Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?

<ESMA\_QUESTION\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_206>

* 1. Monitoring of compliance – information requirements for trading venues

##### Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?

<ESMA\_QUESTION\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_207>

* 1. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour

##### Do you support the approach suggested by ESMA?

<ESMA\_QUESTION\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_208>

##### Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

##### What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers’ dealings or major shareholders’ notifications)? Are there other public sources of information that could be useful for this purpose?

<ESMA\_QUESTION\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_210>

##### Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

##### Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?

<ESMA\_QUESTION\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_212>

Commodity derivatives

* 1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

##### Do you agree with ESMA’s approach on specifying contracts that “must” be physically settled and contracts that “can” be physically settled?

<ESMA\_QUESTION\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_213>

##### Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.

<ESMA\_QUESTION\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_214>

##### Do you agree with ESMA’s approach on specifying contracts that must be physically settled?

<ESMA\_QUESTION\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_215>

##### How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.

<ESMA\_QUESTION\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_216>

##### Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.

<ESMA\_QUESTION\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_217>

##### How do you understand and how would you describe the concepts of “force majeure” and “other bona fide inability to settle” in this context?

<ESMA\_QUESTION\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_218>

##### Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?

<ESMA\_QUESTION\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_219>

##### Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?

<ESMA\_QUESTION\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_220>

##### Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?

<ESMA\_QUESTION\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_221>

##### Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?

<ESMA\_QUESTION\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_222>

##### Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?

<ESMA\_QUESTION\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_223>

##### Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?

<ESMA\_QUESTION\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_224>

##### Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?

<ESMA\_QUESTION\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_225>

##### Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?

<ESMA\_QUESTION\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_226>

##### What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?

<ESMA\_QUESTION\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_227>

##### What do you understand by the terms “reason of default or other termination event” and how does this differ from “except in the case of force majeure, default or other bona fide inability to perform”?

<ESMA\_QUESTION\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_228>

* 1. Position reporting thresholds

##### Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.

<ESMA\_QUESTION\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_229>

##### Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.

<ESMA\_QUESTION\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_230>

##### Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?

<ESMA\_QUESTION\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_231>

* 1. Position management powers of ESMA

##### Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?

<ESMA\_QUESTION\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_232>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_233>

##### Do you agree with ESMA’s definition of a market fulfilling its economic function?

<ESMA\_QUESTION\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_234>

##### Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?

<ESMA\_QUESTION\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_235>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_236>

##### Do you consider that the above factors sufficiently take account of “the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives”? If not, what further factors would you propose?

<ESMA\_QUESTION\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_237>

##### Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?

<ESMA\_QUESTION\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_238>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_239>

##### Do you agree that some factors are more important than others in determining what an “appropriate reduction of a position” is within a given market? If yes, which are the most important factors for ESMA to consider?

<ESMA\_QUESTION\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_240>

##### Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?

<ESMA\_QUESTION\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_241>

##### What other criteria and factors should be taken into account?

<ESMA\_QUESTION\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_242>

##### If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?

<ESMA\_QUESTION\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_243>

Portfolio compression

##### What are your views on the proposed approach for legal documentation and portfolio compression criteria?

<ESMA\_QUESTION\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_244>

##### What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?

<ESMA\_QUESTION\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_245>