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

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Confidential[[1]](#footnote-1) |[ ]
| Activity: | Choose an item. |
| Are you representing an association? |[ ]
| Country/Region | Choose an item. |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

< ESMA\_COMMENT\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_14>

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

<ESMA\_QUESTION\_CP\_MIFID\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_15>

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

<ESMA\_QUESTION\_CP\_MIFID\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_17>

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

<ESMA\_QUESTION\_CP\_MIFID\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_29>

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

<ESMA\_QUESTION\_CP\_MIFID\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_30>

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

<ESMA\_QUESTION\_CP\_MIFID\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_32>

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

<ESMA\_QUESTION\_CP\_MIFID\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_33>

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

<ESMA\_QUESTION\_CP\_MIFID\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_34>

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

<ESMA\_QUESTION\_CP\_MIFID\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_35>

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

<ESMA\_QUESTION\_CP\_MIFID\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_36>

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

<ESMA\_QUESTION\_CP\_MIFID\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_37>

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

<ESMA\_QUESTION\_CP\_MIFID\_38>

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<ESMA\_QUESTION\_CP\_MIFID\_38>

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

<ESMA\_QUESTION\_CP\_MIFID\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_39>

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

<ESMA\_QUESTION\_CP\_MIFID\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_41>

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

<ESMA\_QUESTION\_CP\_MIFID\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_44>

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

<ESMA\_QUESTION\_CP\_MIFID\_45>

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<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_46>

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

<ESMA\_QUESTION\_CP\_MIFID\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_47>

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

<ESMA\_QUESTION\_CP\_MIFID\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_48>

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

<ESMA\_QUESTION\_CP\_MIFID\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_49>

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

<ESMA\_QUESTION\_CP\_MIFID\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_51>

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

<ESMA\_QUESTION\_CP\_MIFID\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_52>

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

<ESMA\_QUESTION\_CP\_MIFID\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_53>

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

<ESMA\_QUESTION\_CP\_MIFID\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_54>

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

<ESMA\_QUESTION\_CP\_MIFID\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_55>

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

<ESMA\_QUESTION\_CP\_MIFID\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_56>

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

<ESMA\_QUESTION\_CP\_MIFID\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_57>

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

<ESMA\_QUESTION\_CP\_MIFID\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_58>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer per asset class identified (investment certificates, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights, structured medium-term-notes and other warrants) addressing the following points:
	1. Would you use additional qualitative criteria to define the sub-classes?
	2. Would you use different parameters or the same parameters (i.e. average daily volume and number of trades per day) but different thresholds in order to define a sub-class as liquid?
	3. Would you qualify certain sub-classes as illiquid? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_59>

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

<ESMA\_QUESTION\_CP\_MIFID\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_61>

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

<ESMA\_QUESTION\_CP\_MIFID\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_62>

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

<ESMA\_QUESTION\_CP\_MIFID\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_64>

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

<ESMA\_QUESTION\_CP\_MIFID\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_65>

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

<ESMA\_QUESTION\_CP\_MIFID\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_66>

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

<ESMA\_QUESTION\_CP\_MIFID\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_67>

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

<ESMA\_QUESTION\_CP\_MIFID\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_68>

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

<ESMA\_QUESTION\_CP\_MIFID\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_69>

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

<ESMA\_QUESTION\_CP\_MIFID\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_70>

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

<ESMA\_QUESTION\_CP\_MIFID\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_71>

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

<ESMA\_QUESTION\_CP\_MIFID\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_72>

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

<ESMA\_QUESTION\_CP\_MIFID\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_73>

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

<ESMA\_QUESTION\_CP\_MIFID\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_74>

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

<ESMA\_QUESTION\_CP\_MIFID\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_75>

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

<ESMA\_QUESTION\_CP\_MIFID\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_76>

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

<ESMA\_QUESTION\_CP\_MIFID\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_77>

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

<ESMA\_QUESTION\_CP\_MIFID\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_78>

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

<ESMA\_QUESTION\_CP\_MIFID\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_79>

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

<ESMA\_QUESTION\_CP\_MIFID\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_80>

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

<ESMA\_QUESTION\_CP\_MIFID\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_81>

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

<ESMA\_QUESTION\_CP\_MIFID\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_82>

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

<ESMA\_QUESTION\_CP\_MIFID\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_83>

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

<ESMA\_QUESTION\_CP\_MIFID\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_84>

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

<ESMA\_QUESTION\_CP\_MIFID\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_85>

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

<ESMA\_QUESTION\_CP\_MIFID\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_86>

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

<ESMA\_QUESTION\_CP\_MIFID\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_93>

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

<ESMA\_QUESTION\_CP\_MIFID\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_94>

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

<ESMA\_QUESTION\_CP\_MIFID\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_96>

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

<ESMA\_QUESTION\_CP\_MIFID\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_97>

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

<ESMA\_QUESTION\_CP\_MIFID\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_98>

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

<ESMA\_QUESTION\_CP\_MIFID\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_99>

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

<ESMA\_QUESTION\_CP\_MIFID\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_100>

1. Is there any element in particular that should be clarified with respect to the outsourcing obligations for trading venues?

<ESMA\_QUESTION\_CP\_MIFID\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_101>

1. Is there any additional element to be addressed with respect to the testing obligations?

<ESMA\_QUESTION\_CP\_MIFID\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_102>

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

<ESMA\_QUESTION\_CP\_MIFID\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_103>

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

<ESMA\_QUESTION\_CP\_MIFID\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_104>

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

<ESMA\_QUESTION\_CP\_MIFID\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_105>

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

<ESMA\_QUESTION\_CP\_MIFID\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_107>

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

<ESMA\_QUESTION\_CP\_MIFID\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_108>

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

<ESMA\_QUESTION\_CP\_MIFID\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_109>

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

<ESMA\_QUESTION\_CP\_MIFID\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_110>

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

<ESMA\_QUESTION\_CP\_MIFID\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_112>

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

<ESMA\_QUESTION\_CP\_MIFID\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_113>

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

<ESMA\_QUESTION\_CP\_MIFID\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_114>

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

<ESMA\_QUESTION\_CP\_MIFID\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_115>

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

<ESMA\_QUESTION\_CP\_MIFID\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_116>

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

<ESMA\_QUESTION\_CP\_MIFID\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_117>

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

<ESMA\_QUESTION\_CP\_MIFID\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_120>

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

<ESMA\_QUESTION\_CP\_MIFID\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_121>

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

<ESMA\_QUESTION\_CP\_MIFID\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_122>

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

<ESMA\_QUESTION\_CP\_MIFID\_123>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_123>

1. Do you believe a more granular approach (i.e. additional liquidity bands) would be more suitable for very liquid stocks and/or for poorly liquid stocks? Do you consider the proposed tick sizes adequate in particular with respect to the smaller price ranges and less liquid instruments as well as higher price ranges and highly liquid instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_124>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_124>

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

<ESMA\_QUESTION\_CP\_MIFID\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_125>

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

<ESMA\_QUESTION\_CP\_MIFID\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_126>

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

<ESMA\_QUESTION\_CP\_MIFID\_127>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_127>

1. In your view, should other equity-like financial instruments be considered for the purpose of the new tick size regime? If yes, which ones and how should their tick size regime be determined? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_128>

1. To what extent does an annual revision of the liquidity bands (number and bounds) allow interacting efficiently with the market microstructure? Can you propose other way to interact efficiently with the market microstructure? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_129>

1. Do you envisage any short-term impacts following the implementation of the new regime that might need technical adjustments? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_130>

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

<ESMA\_QUESTION\_CP\_MIFID\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_134>

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

<ESMA\_QUESTION\_CP\_MIFID\_135>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_135>

1. Do you agree with the proposal to permit DRSPs to be able to establish their own operational hours provided they pre-establish their hours and make their operational hours public? Please provide reasons. Alternatively, please suggest an alternative method for setting operating hours.

<ESMA\_QUESTION\_CP\_MIFID\_136>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_136>

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

<ESMA\_QUESTION\_CP\_MIFID\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_140>

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

<ESMA\_QUESTION\_CP\_MIFID\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_141>

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

<ESMA\_QUESTION\_CP\_MIFID\_142>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_142>

1. Do you agree with ESMA’s suggestions on timestamp accuracy required of APAs? What alternative would you recommend for the timestamp accuracy of APAs?

<ESMA\_QUESTION\_CP\_MIFID\_143>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_143>

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

<ESMA\_QUESTION\_CP\_MIFID\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_144>

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

<ESMA\_QUESTION\_CP\_MIFID\_145>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_145>

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

<ESMA\_QUESTION\_CP\_MIFID\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_146>

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

<ESMA\_QUESTION\_CP\_MIFID\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_147>

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

<ESMA\_QUESTION\_CP\_MIFID\_148>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_148>

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

<ESMA\_QUESTION\_CP\_MIFID\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_150>

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

<ESMA\_QUESTION\_CP\_MIFID\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_151>

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

<ESMA\_QUESTION\_CP\_MIFID\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_152>

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

<ESMA\_QUESTION\_CP\_MIFID\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_153>

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

<ESMA\_QUESTION\_CP\_MIFID\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_154>

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

<ESMA\_QUESTION\_CP\_MIFID\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_155>

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

<ESMA\_QUESTION\_CP\_MIFID\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_156>

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

<ESMA\_QUESTION\_CP\_MIFID\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

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<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

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<ESMA\_QUESTION\_CP\_MIFID\_164>

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

<ESMA\_QUESTION\_CP\_MIFID\_165>

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<ESMA\_QUESTION\_CP\_MIFID\_165>

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

<ESMA\_QUESTION\_CP\_MIFID\_166>

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<ESMA\_QUESTION\_CP\_MIFID\_166>

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

<ESMA\_QUESTION\_CP\_MIFID\_167>

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<ESMA\_QUESTION\_CP\_MIFID\_167>

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

<ESMA\_QUESTION\_CP\_MIFID\_168>

We do not agree. First of all in relation to the overall application of the thresholds, ESMA proposes that both tests should be met in order to remain exempted from MiFID II. Based on the Directive and level 1 text, we believe instead that the tests should be failed cumulatively in order not to rely on the ancillary activity exemption (i.e. be subject to a MiFID license).

The article 2.4 in MiFID II level 1 text stipulates: *” Those criteria shall take into account* ***at least*** *the following element****s****:”* (the term “element” being used in plural form, meaning both of the elements), however point 20.i of the CP goes far beyond stating that: *“A firm* ***will be captured*** *by the scope of MiFID II if it either exceeds the threshold set in the ancillary activity test or if it exceeds the threshold set in the trading activity test “*

Secondly, according to Directive 2014/65/EU (MiFID II) ‘*the capital employed (…) is to be considered. However, that factor* ***shall in no case be sufficient*** *to demonstrate that the activity is ancillary to the main business of the group’* (Article 2.4, 3rd paragraph when the legislator describes the minority test to be performed). In other words the level 1 text insists again that the breach of the capital employed test only will not be enough to demonstrate the “minority of activities”. This is also confirmed when reading Recital 20.

We are concerned about the macroeconomic impact that ESMA’s proposals will have, if implemented. As ESMA acknowledges in the consultation paper, there are a number of secondary effects on firms that will fall into the MiFID II scope, due to the interactions with other EU legislation such as EMIR, CRD.

Further, ESMA has not been able to quantify the effects of the proposals as “no data is available to run a simulation with different threshold levels”. It is therefore impossible to predict the post-2017 landscape of commodity markets resulting from the interplay between the proposals and firms’ strategic responses to them that will be taken in advance especially if the framework remains so uncertain.

For example the uncertainty surrounding the market size in 2016 is beginning to impact firm’s decisions to trade gas for winter 2015 (Oct 2015 – March 2016) or electricity for 2016. A reduction in market liquidity for this period would lead to firms experiencing difficulties in hedging next periods.

This uncertainty poses a degree of risk to commodity markets, the wider economy, and also to market participants, which they can really only manage away by exiting or strongly restricting their presence in EU markets.

With less intermediation in commodity derivative markets producers and consumers of commodities will encounter difficulties in hedging within EU markets and market disruption may occur. This will result in producing and manufacturing entities having to bear increased risks (price volatility, interest, currency risks and credit risks) and these elements will be factored into the prices of their products.

We urge ESMA to consider a cautious and phased approach by setting relatively high thresholds for an initial period and adjust them to proportionate levels (as required by Recital 20) on the basis of the experience, after evidence is produced and the macro-economic impact is fully taken into account. This approach has been taken by the CFTC in the U.S., where the de-minimis threshold for Swap Dealers has been set at a higher level initially, and lowered after a period of time.

Such an approach would allow markets and their participants to adapt and evolve at a more measured pace, and reduces the risk of large-scale market disruption, “liquidity flight”, and regulatory arbitrage.

<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>

Yes, we agree. This is appropriate and in line with our response to the Discussion Paper.

Nevertheless, we would like to highlight the following issue: due to the very low threshold we fear that the formula could favor global groups having assets/activities all around the world instead of pure EU-based companies with fewer assets. Such global companies would be able to include in the denominator their activities around the world. We agree it is fair that activity outside EU should be taken into account, but in theory only to the extend it is EU-related, which we, however, recognize would be very difficult to assess. Otherwise, global companies might be exempted while similar EU based companies having the similar business would not. However, in order to have a well-functioning setup, EURELECTRIC supports the proposed formula. At the same time, we shall - also for this reason - urge for a higher threshold as this will significantly reduce the problem.

<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>

Yes, we consider the revised method appropriate and relatively easier to implement. <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>

Yes, we agree. Setting up a MiFID licensed firm is one of the internal organization possibilities for those non-financial groups that do not meet the MiFID II exemption requirements under MiFID II for each of their entities and this should be allowed.

We also consider that activity undertaken by a subsidiary of the group that can invoke any other MiFID II Article 2 exemption in its own right should logically not be accounted for in the numerator. For instance this is the case for compliance-buyers of emission allowances which would be exempted as such under 2.1(e), but still would have to count emission allowances for the ancillary activity test, or for group treasury financing activities excluded under Art.2.1(b) and (d). Being assessed twice for the same activities in such a manner is disproportionate and inconsistent with the stated aims and policy reasons behind MiFID II.

<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>

We believe that the calculation in relation to the ancillary activity (numerator) should be done at *person* level as per the MiFID II mandate. We believe that the thresholds proposed are extremely low even if applied at the level of a person. Therefore it is difficult to see how the threshold proposed could be revised further in case the calculation will be done at person level rather than at group level.

A calculation ‘at group level’ is not in our view in line with the level 1 text because the licensing regime in MiFID II applies to persons and the exemption from such regime applies at person level, as clearly defined in level 1 (article 2.1).

More importantly, the calculations and the consequences of failing the tests would affect all persons within the group and not only those persons involved in investment services/activities at disproportionate levels. A full dependence between different entities within a group engaged in different activities, but still counting towards the thresholds, is not appropriate.

Additionally, it may require additional processes to be put in place at the parent company level for the calculation and accounting of the thresholds proposed for the ancillary activity test that are not always possible considering different national and international regimes applicable to group entities (e.g. accounting, classification of privileged transactions, calculation of trading activity).

Nevertheless, if ESMA maintains the proposal to consider a ‘group-level’ calculation, it is necessary that it clarifies in the RTS how the process should work in practice.

ESMA should consider that performing activities regulated by MiFID without a license may be punished with fines and as criminal offence. We read the draft RTS in a way that, following a breach of the trading activity or capital test by one entity within a group, every other unregulated entity within such group, wherever located in the EU will be required to obtain a MiFID II license because they all need to take into account the activities ‘at group level’. This will be the case until the group has been able to restructure itself in order to ring fence its MiFID activities from for example its production and maintenance activities.

Therefore it is crucial that ESMA provides a process allowing the exclusion from the assessment of the ancillary activity exemption for activities performed by entities in the process to require or obtain a MiFID license. This is necessary to ensure business continuity and avoid undue consequences.

We interpret the term ‘sum of capital employed...by the group in the European Union’ as capital employed by all the entities of the group which are incorporated or otherwise domiciled in a Member State of the European Union and it should include only activities as dealing on European regulated platforms, unless exempted, and/or with EU counterparties (see also response to Q177 on the definition of size of the trading activity).

Finally we do not understand the reference in Recital (9) of the draft RTS 28 and point 74 (p.525) of the consultation paper to third countries entities wishing to benefit from the exemption in article 2.1(j). MiFID II does not require entities wishing to benefit from the exemption to establish a branch in the European Union. Therefore we believe that those entities should be able to make a self-assessment and should be required to notify ESMA only upon request.

Any arrangement that would require third country entities to set a branch in the EU for dealing on own account in commodity derivatives increases the risk of EU and third country participants moving their commodity derivatives’ trading activity (speculative as well as hedging) outside of the EU. Reduced liquidity, competitiveness and effectiveness of EU markets would be the result and EU exchanges in particular would struggle with the decreased levels of liquidity which we believe to be contrary to EU goals to promote growth and investment.

We consider the proposed thresholds as too low, for both group and person level.

<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, we strongly disagree.

We would like to highlight that when setting the thresholds, the level 1 text stipulates that ESMA must attain to the principle of *proportionality* ((*Those criteria should ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business are covered by the scope of this Directive, Recital 20*). At first sight, the proposed 5% threshold thus seems unreasonably low compared to the proportionality principle. Furthermore, the wording made by the co-legislators stipulates a “need for ancillary activities to constitute a minority of activities at a group level.” A minority cannot linguistically or logically be interpreted as only 5%.

Having said that, we would like to stress that the main difficulty for energy companies is to assess the impact of such a low threshold given the lack of information on how on how this percentage has been set:

* the rationale behind the radical change in ESMA’s proposal (from 50% to 5%) is not explained in the consultation paper. The co-legislators intention is too narrow down the existing exemption but not to render it void, as it would be with the level of the threshold proposed;
* ESMA does not demonstrate evidence that such a low level is appropriate or legally founded with the level 1 text. The setting of the threshold seems indeed to be fully discretionary and is not backed by any impact assessment or other supporting analysis;
* ESMA is clearly highlighting in the consultation paper that they are considering the opinions of the minority of stakeholders, instead of the majority of the stakeholder’s arguments (i.e. point 37 if the Consultation Paper).

We would thus like to get more information on the rationale behind the approach taken by ESMA. It is thus crucial to receive as soon as possible reliable data, information on the foundation of those thresholds, but also on the methodology used for the calculation, to allow companies to make their own assessment. In the absence of reliable additional information, market participants are likely to cautiously retract from markets to avoid breaching the very low threshold proposed.

As already mentioned in our response to Q.168 - in the absence of a proper analysis and reliable data and given the potential severe impact on the industries in question (see more details in our response to Q179) - we thus believe that ESMA should set the threshold cautiously at a higher level for an initial period to avoid market disruption and severe consequences on the real economy. A subsequent revision should be based on the experience, after evidence is produced and the macro-economic impact is fully taken into-account.

Finally, when defining the ancillary test, ESMA may want to consider the concept of the *majority of the main business* in opposition to the *minority of the investment activities* in order to define a more appropriate level.

Based on the above mentioned, EURELECTRIC believes that a more appropriate threshold level for the “capital employed test” would be in the range of 20-25%. Such a range would be more appropriate and coherent with the principle of proportionality. In fact, where the main business covers between 75-80% of the capital employed it can be clearly identified as a majority of the business. Such a range would also better reflect the original intent of the MiFID II legislation because it would be a considerable narrowing of the existing exemptions.

Indeed, the range we propose is not based on evidence or analysis, but with the only intention to recommend a level sensibly high to avoid unintended consequences: if the thresholds will be ill-calibrated and will disproportionately bring commodity companies in scope of MiFID II this will mainly lead to additional costs to be paid by energy customers in terms of higher prices with a negative impact on the competitiveness of Europe.

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

Yes we agree.

However we believe that it may be proving difficult to extrapolate privileged transactions from the ancillary activity as they are accounted and evidenced separately in the balance sheet. Two different metrics are compared i.e. GNV for the ancillary activity at the numerator and accounting values (accrual/fair value) at the denominator.

Therefore ESMA shall recognize that different entities and groups may adopt on or more of the proxy methodologies suggested at point 41, depending on the group structure and the way in which privileged transactions are classified.

If further guidance on the technical calculation was needed at a later stage (i.e. through Q&A), it would be necessary to have an open consultation with stakeholders and a minimum time for implementation of any amended guideline in consideration of the severity of the potential consequences.

<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>

We partially agree.

On the one hand, we agree that the capital employed in the main business (the denominator) should encompass equity, current debt and non-current debt. However we believe that provisions should also be included because they are part of the main business of the group. Replacing the terms current-debt and non-current debt with *liabilities* may help clarifying this point, because in accounting terms, liabilities include also provisions whereas the term debt does not.

On the other hand, when calculating the capital employed in the ancillary activity, ESMA shall accept that different persons and groups may adopt one or more combination of the proxies suggested at point 41, because some elements may not be separately evidenced in the accounting statements or information flow due to the specific definitions applied in MiFID.

<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>

Independently on ESMA’s final decision on the level of disaggregation of the commodity asset classes for such test (i.e. either sticking to the current approach of having a very granulated methodology or going for energy (gas, power, coal and oil/oil products) as one asset class, which for many reasons, we find most sensible to have), EURELECTRIC shall propose to use *volumes* instead. Volumes are in general easier to deduct while price formulas of contracts based e.g. on future developments might sometimes involve more uncertainty in terms of GNV. Further, volumes are less volatile compared to price developments. Using GNV Companies may just because of price developments fluctuate into a higher level without any change in trading pattern.

Irrespective of whether or not GNV or volumes are used it is crucial that companies have access to information on the size of the market(s).

Accordingly, ESMA should already start publishing the market size for each commodity asset class for the year 2014 through collection of the data from Trade Repositories. Persons seeking to use the exemption should be enabled to make the required calculation through the data provided by TRs in order to foresee potential effects of MiFID II on their businesses and make according arrangements as they deem necessary from a company/group perspective. This should not exclude the possibility to use further data e.g. to identify privileged transactions.

Based on the above mentioned, EURELECTRIC shall strongly recommend that the RTS should include an obligation for ESMA to publish the market size of the commodity asset classes as a condition for the exemption process to apply. In the absence of reliable data market participants will simply not be able to calculate their positions relative to the market (because (i) TRs don’t provide such data today, (ii) such calculation would require a contact from each firm to each single TR in the EU (iii) the provision of such numbers, as part of a regulatory requirement should take place within a regulatory and non-commercial frame) and will therefore cautiously retract from markets to avoid inadvertently breaching the very low threshold proposed.

<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>

We believe that the calculation in relation to the size of the trading activity (numerator) should be done at *person* level as per the MiFID II mandate. The threshold proposed is extremely low even if applied at the level of a person. Therefore we find it difficult to see how the threshold proposed could be revised further even in case the calculation should be done at person level rather than at group level.

A calculation ‘at group level’ is not in our view in line with the level 1 text because the licensing regime in MiFID II applies to *persons* and the exemption from such regime should apply at *person* level, as clearly defined in level 1 (article 2.1).

Additionally, the calculations and the consequences of failing the tests would affect *all* persons within the group and not only those persons involved in investment services/activities. A full dependence between different entities within a group engaged in different activities, but still counting towards the thresholds, is not appropriate.

Finally it will create the need for additional processes at the parent company level that are not always possible considering different national and international regimes (e.g. accounting, classification of privileged transactions, calculation of trading activity).

Nevertheless, if ESMA maintains the proposal to consider a ‘group-level’ calculation, it is necessary that it clarifies in the RTS how the process should work in practice.

ESMA should consider that performing activities regulated by MiFID without a license may be punished with fines and as criminal offence. We read the draft RTS in a way that, following a breach of the trading activity or capital test by *one entity* within a group, *every other* *unregulated entity* within such group will be required to obtain a MiFID II license because they all need to take into account the activities ‘at group level’.

Therefore ESMA it is crucial that ESMA provide a process allowing excluding from the assessment of the ancillary activity exemption also activities of entities *in the process to require or obtain* a MiFID license. This is necessary to ensure business continuity and avoid undue consequences.

Furthermore, we read the term ‘*size of the trading activity...of the group in the European Union*’ (draft RTS 28 article 4) as the trading activities of entities in the group which are subject to the reporting obligation under Article 9 of EMIR. Indeed TRs would only contain data submitted by persons who are subject to the reporting obligation under Article 9 of EMIR. ESMA should give this clarification in the definitions (RTS 28, article 1).

Finally, we would suggest that for the calculation of the numerator, trades executed on regulated markets and centrally cleared should be counted only partially (i.e. haircuts – account only for the percentage of the IM required). This would be in line with the G20 objectives aiming at moving traded to regulated venues.

<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. We fear that a separate asset class for Freight has the risk to create a market that is too little. It is preferable to include freight into the asset classes of oil/oil products and coal, depending on how freight is used. Many energy shippers will potentially fall under MiFID II with the current thresholds and none of the shipping market participants will be able to use the hedging exemption (i.e. deduction of hedging activity from the trading thresholds) as their business is not for hedging but shipping. Freight is ancillary to other commodity business, and accordingly it would be appropriate to have freight as part of the commodity in question, i.e. gas infrastructure within the asset class on gas, electricity transmission within the asset class on electricity, etc. Alternatively, if freight has its own asset class but probably also if freight is part an ‘Other’ asset class a two digit threshold number is needed in order not to capture real economy business.

Further, regarding C10 commodities, a single asset class will result in very difficult practical considerations for the calculation of the thresholds for the ancillary activity test, due to the fact that C10 refers to any exotic derivative, from renewable certificates to transportation rights or communication bandwidths….

 We would also like to stress here that we strongly disagree with the split of energy commodities and emission allowances into five commodity asset classes rather than being grouped into one single asset class only. The split is not least strange as ESMA uses the correlation as reason for breach of one asset class should trigger a person to be subject to MiFID II for all commodity asset classes.

ESMA refers to the fact that “many” argued for wider categories “asking to merge the categories related energy into one”. Nonetheless ESMA fails to explain why this proposal, in line with the other commodities, has not been accepted for energy commodities asset classes and emission asset classes.

This would indeed ensure consistency with the approach followed for metal and agricultural commodities.

Specialized trading companies generally trade energy commodities together due to the fact that sometimes some markets are very illiquid and it is necessary to hedge the position with a high correlated product, the similar market participants and the fact that sometimes some commodities are used to produce another one. Furthermore, the existence of derivates that combine various commodities, clean spark spread and dark spark spread, depict why it is necessary to create a sole category.

We strongly disagree with the proposal that exceeding the threshold set for one commodity asset class but not another, will lead that person to be subject to MiFID II. This proposal would be reasonable only in case of a single energy commodity asset class. At a very least, believe that gas and electricity should be grouped in a single asset class considering the very similar regulation and common oversight to which they are subject in the European Union. Also in this this case volumes (i.e. energy traded) would be more appropriate than values to assess the market size.

Furthermore, the fact that emission allowances represent a separate asset class is problematic. EUAs are indeed not bought to ‘reduce commercial risks’ but to comply with the ETS scheme. If they cannot be disregarded in the ‘market size test’, companies with an important carbon footprint may end up having a large market share – thus easily breaching the 0.5% threshold - just because they have to fulfill EU obligations. By breaching the threshold in one single asset class (i.e. EUAs), such companies then become MiFID licensed. A way out of this problem could be of art. 2(1)e and art. 2(1)i could be used in conjunction and thereby extract trades made for compliance reasons from the calculation. Such recognition is better than to seek for a right (much higher) threshold as the right level to exempt compliance-buyers will give room for significant “speculative” trading for others.

As a matter of precaution, we would like to clarify what ESMA means by the following statement 7.1.9 (page505) - “However, they are not able to make use of the exemption for dealing on own account in financial instruments other than commodity derivatives, emission allowances and derivatives thereof under Article 2(1)(d) MiFID II if they are either a member or participant of a RM or MTF or if they have electronic access.” In our view such interpretation is not in line with the level 1 text or the political intentions clearly stated when the compromise was reached on this matter and reflected in recital 22.  The consequences would be very negative if  all NFCs will not be able to use the exemption in Art. 2(1)d just because  they also mitigate their treasury risk.

<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, we strongly disagree. The threshold proposed seems so low that it would render the exemption worthless. It appears that ESMA intends to capture all non-financial entities that are engaged in financial markets beyond the privileged transactions. Such an approach would transform the ancillary activity exemption into a “hedging exemption”, which is different from the content of the level 1.

As already mentioned for the capital employed test, the main difficulty for energy companies is to assess the impact of such a threshold given the lack of information available and on how this percentage has been set. ESMA indeed demonstrates no further foundation for such a low threshold (i.e. no impact assessment on threshold level as basis for this proposal) and does not provide evidence on how many persons would be captured by MiFID II as a result of its proposal. Furthermore, ESMA fails to provide evidence on the dimension (or at least an estimation) of the market size for each of the asset classes in which such a test is divided. Finally, the size of those markets can vary depending on what the rest of the market is doing. A company’s position via-a-vis the threshold is thus depending on a very relative figure.

Again, we argue that this would prevent ESMA to attain the principle of *proportionality* defined in the level 1 text (Recital 20).

We thus consider that a threshold of 0.5% is extremely and unreasonably low when compared to the proportionality principle. The co-legislators intention was to narrow down the existing exemption but not to render it void. We really believe that this threshold intends to capture almost all commodity trading entities.

We believe that the ESMA’s proposals would see the vast majority of energy trading firms being regulated as financial entities, subject to detailed oversight by financial regulators and forced to comply with onerous and costly rules on licensing requirements, clearing and margining, capital and liquidity adequacy. This is also partly due to a wider definition of financial instruments stemming from MIFID II and ESMA’s proposal RTS

These obligations trigger a cascade of material adverse and unintended impacts on energy markets, energy consumers, energy prices and thus the real economy:

* Small and medium sized energy (trading) firms will exit the market due to prohibitive compliance and prudential capital and liquidity requirements. Larger firms will curtail or close their EU trading activity in the light of increased compliance and prudential capital costs.
* Trading activity will, wherever possible, be routed via other international markets to avoid disproportionate licensing and capital costs. Trade will also migrate to purely bilateral, physical markets and products. Trading entities may seek to move outside of the European Union.
* The energy groups that will remain will have to reallocate capital within their businesses to meet the capital and liquidity ratios for their trading unit. This will “trap” liquidity in the trading unit or force consolidation of asset (generation) businesses with trading businesses in order to utilise the liquidity. Perversely, this would see financial authorities overseeing gas fields, nuclear plants, coal power plants and lignite mines etc. to oversee a minority trading business and simultaneously undermining energy regulators’ needs for effective business separation.
* Despite the need for increased liquidity in many European energy and commodity markets (e.g., as desired by Ofgem in the UK power market or as highlighted by ACER for the European gas markets in the recent Gas Target Model analysis) liquidity will dry out. The fall in liquidity will significantly increase the costs of risk management for energy companies and massively reduce opportunities for commodity risk management by industrial customers
* The damage to wholesale energy markets also directly undermines the political aims of the 3rd Energy Package and the Single European energy market. Illiquid wholesale markets reduce market competition and efficiency in the production and retail markets and energy prices for consumers and industry will increase as a result. Increased risk, constrained investment capital and poor market price signals will also undermine investment, production and consumption decisions and degrade the security of energy supplies.

These increased costs and risks come without any corresponding improvement in the risk profile or integrity of the financial markets from the perspective of energy trading firms. The energy markets are already effectively regulated, highly transparent and subject to the same high standards of conduct and integrity under REMIT. EMIR and the Market Abuse regime apply to the investment activity of energy groups.

The requirements related to MiFID will not achieve a “level playing field” between financial and non-financial counterparties as ESMA claims. Trading commodities on own account poses no threat to bank savers and no requirement to protect investors. Nor do commodity traders have access to central bank liquidity to meet liquidity requirements. Imposing the same obligations on fundamentally different businesses makes the field unplayable.

We believe that the level of the thresholds could be differentiated per commodity asset class, especially if the disaggregation of energy commodities remains as proposed in the consultation. This is even more reasoned if ESMA confirms that breaching the threshold in any asset class imposes a license requirement. Therefore the RTS should conservatively include relatively high thresholds in the beginning.

In the absence of reliable data on the size of the market at the time of drafting RTS and in consideration of the extreme consequences on energy markets, consumers and prices of applying incorrectly the MiFID II scheme to non-financial entities that are not relevant for financial markets, we believe that a more appropriate threshold level for the “market size test” around 15%.

Subsequently ESMA may revise the level of the threshold(s) on the basis of the experience, after evidence is produced and the macro-economic impact is fully taken into account.

The level we proposed is not based on evidence or analysis, but because it is a level sensibly higher to the one proposed by ESMA and with the aim to avoid unintended consequences.

<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>

Yes, we believe it is useful.

However, a threshold level of only 0.25% seems far too low compared to the (systemic) relevance of NFCs to the financial system. EURELECTRIC shall propose a substantiated impact assessment is made or - if already made by ESMA – the results should be released in order to validate the assumptions.

The level should be raised as a consequence of a different approach as suggested in response to Q179. This level should depend on the level of the threshold for the specific commodity asset class. This de minimis threshold should be set at around 4-5%.

<ESMA\_QUESTION\_CP\_MIFID\_180>

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

<ESMA\_QUESTION\_CP\_MIFID\_181>

In the draft RTS, “intragroup transactions” are defined by reference to Article 3 of EMIR.

Under this Article, in order for an EU counterparty to qualify a contract with another counterparty in the same group that is established in a third country, it is required that the Commission has adopted an implementing act to deem that third country as being equivalent under EMIR Article 13(2).

In the absence of such equivalence assessments currently and of any certainty over when such assessments might eventually be made, we would consider it more appropriate to define an “intragroup” transaction be defined as a transaction between two counterparties belonging to the same group maintaining a generic reference to the term group as this is in line with the text of Level 1 and the need to avoid extraterritorial application of MiFID II, as expressed by ESMA in the consultation paper at point 30.

Otherwise, in recognition of the possibility that such assessments may not be in place before 2017, we would urge that provisions be made in the technical standards for a transitional regime.

Finally we reiterate the need to exclude trading activity in relation to carbon EU-ETS compliance. See also our answer to Q178.

<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 we disagree.

We believe that ESMA requires a calculation that is practically impossible to make in the timeframe proposed. The intention in 2017 to use average data for 2016 is very difficult if not impossible to achieve for member firms. Average data for 2016 will only be available once 2016 has come to an end, i.e. on 2 January 2017 (since 1 January 2017 is a bank holiday in most if not all EU jurisdictions). MiFID II applies from 3 January 2017. The period of implementation of MIFID rules will be of a least one year and therefore it is unclear how a firm, can find out after 31 December 2016 that it is going to be licensed will be able to put in place all processes by 3rd January 2017 (3 days later): accounting data for firms is only audited and published within the first half of the year following the account closing date (31.12 of each calendar year usually). Even if such data was made available a 3 days implementation and compliance period can’t be deemed reasonable or fair.

We also doubt why ESMA wants to use data related to 2016 when MiFID II will not yet be in force. This is conferring MiFID II a retroactive effect, which is not the intended purpose of the directive. Deciding on retroactivity is a prerogative of the European legislator and not a power conferred to the executive authority.

It is unclear also why the interim solution covers one year only (2016), whilst ESMA it has justified the proposal of calculation over a three years period saying that ‘*the amount of capital employed and the size of the trading activity in financial instruments might fluctuate from year to year. Therefore, a firm may fall within the scope of MiFID II because it fulfils the relevant criteria one year but it may qualify for an exemption from MiFID II the following year*’ and it justifies the rejection of the proposal for ‘a second chance’ on the basis of the fact that the procedure ‘*relies on monthly inputs for 36 consecutive months seems to provide several chances to check the firm’s position against the thresholds and decide whether to reduce the trading in these instruments in order to fulfil the requirements to benefit from the exemption in the regular annual test’.*

On a practical point of view, it is impossible to acquire data of the balance sheet of the group (for the calculation of the first test) in 2 days after the end of the year. It is expected also to find some difficulty to validate the data from the TRs concerning both the market and the single person making use of the exemption.

Finally, it is unclear why ESMA proposes a more complex process by proposing a ‘simple average of monthly input’. It would be much simpler to calculate the data either on the basis of the overall year (is it the sum of daily data submitted to TRs?) or the calculation of the outstanding value on the 31/12 of the year.

Therefore, we believe that:

* The calculation should start with 2017 data i.e. notified to the NCA early in 2018. Alternatively, a ‘second chance’, at least concerning year 2016 and year 2017, should be given to avoid that fluctuations unduly penalises certain persons. The outcome of such calculation can only be a “warning” to the entity/group that it needs to take reasonable steps to either monitor its situation closely to remain exempted or to apply for license.
* More time should be allowed for the notification. This should take place at the earliest at the end of June of each year.
* Starting from 2018, once a firm realises it is captured as a MiFID firm it should notify such to its NCA and be granted a period of 12 months to implement MiFID processes and reach full compliance.

ESMA should consider that in certain countries performing activities regulated by MiFID without a license is punished as criminal offence. Therefore ESMA should set a process allowing discounting from the assessment of the ancillary activity exemption of entities within a group also activities of entities in the same group that are *in the process to require or obtain* a MiFID license. This is necessary to ensure business continuity and avoid undue consequences.

<ESMA\_QUESTION\_CP\_MIFID\_182>

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

<ESMA\_QUESTION\_CP\_MIFID\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_183>

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

<ESMA\_QUESTION\_CP\_MIFID\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_184>

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

<ESMA\_QUESTION\_CP\_MIFID\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_185>

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

<ESMA\_QUESTION\_CP\_MIFID\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_186>

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

<ESMA\_QUESTION\_CP\_MIFID\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_187>

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

<ESMA\_QUESTION\_CP\_MIFID\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

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<ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_191>

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

<ESMA\_QUESTION\_CP\_MIFID\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_192>

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

<ESMA\_QUESTION\_CP\_MIFID\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_193>

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

<ESMA\_QUESTION\_CP\_MIFID\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_194>

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

<ESMA\_QUESTION\_CP\_MIFID\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_195>

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

<ESMA\_QUESTION\_CP\_MIFID\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_196>

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

<ESMA\_QUESTION\_CP\_MIFID\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_197>

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

<ESMA\_QUESTION\_CP\_MIFID\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_198>

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

<ESMA\_QUESTION\_CP\_MIFID\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

We agree with the proposed draft RTS on risk reducing positions. However we do not fully share the view of ESMA that *each trade* can be tagged to identify whether it is a hedge or a speculative trade or position. Whilst we agree that a certain level of disaggregation is necessary, entities with a complex and large underlying commodity portfolio necessarily consider derivatives entered into for the reduction of commercial risks related to the portfolio and the distinction may not always be identifiable for each single trade.

In general we note that the draft RTS on position limits do not contain definitions that are key to evaluate the full impact of the rules proposed.

<ESMA\_QUESTION\_CP\_MIFID\_200>

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

<ESMA\_QUESTION\_CP\_MIFID\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_201>

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

<ESMA\_QUESTION\_CP\_MIFID\_202>

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<ESMA\_QUESTION\_CP\_MIFID\_202>

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

<ESMA\_QUESTION\_CP\_MIFID\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

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<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>

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<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>

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<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>

No, we disagree.  We believe that the proposed procedure is extremely impractical if it has to be applied in all cases and may definitely hinder the ability of managing risks related to the commercial activity. Thirty calendar days for a silent or explicit approval are an infinite time compared with how commodity derivative markets work.

We believe that an ‘ex-ante approval’ could be set as general rule. However it should be possible for companies to seek for an ‘ex-post approval’ in case the timing foreseen for an ex-ante approval would expose the applicant to undue risks.

For instance this can be linked that the potential change in the value of the underlying assets, services, inputs, products, commodities that the applicant or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business; or also in case of substantial risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities resulting from fluctuation of commodity prices, interest rates, inflation rates, foreign exchange rates or credit risk. Market participants shall notify the competent authority before breaching the position limit when possible; the notification should be based on a web service;

Market participants entering into positions beyond position limits, when seeking an ex-post approval, should be able to demonstrate the risks that they would have otherwise incurred by not entering into that position.

In case the competent authority does not agree with the assessment of the market participant, the market participant may be required to reduce its positions in a reasonable timeframe. This solution would allow markets to continue to work whilst allowing flexibility in the interpretation of the approval procedure.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

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<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

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<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_212>

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_213>

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

<ESMA\_QUESTION\_CP\_MIFID\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_214>

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

<ESMA\_QUESTION\_CP\_MIFID\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_216>

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

<ESMA\_QUESTION\_CP\_MIFID\_217>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_219>

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

<ESMA\_QUESTION\_CP\_MIFID\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_220>

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

<ESMA\_QUESTION\_CP\_MIFID\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_221>

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

<ESMA\_QUESTION\_CP\_MIFID\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_222>

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

<ESMA\_QUESTION\_CP\_MIFID\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

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<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

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<ESMA\_QUESTION\_CP\_MIFID\_225>

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

<ESMA\_QUESTION\_CP\_MIFID\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

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<ESMA\_QUESTION\_CP\_MIFID\_227>

1. Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

<ESMA\_QUESTION\_CP\_MIFID\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_228>

1. Is the approach taken, particularly in relation to maintaining prices of implied orders, in line with industry practice? Please describe any differences?

<ESMA\_QUESTION\_CP\_MIFID\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_229>

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

<ESMA\_QUESTION\_CP\_MIFID\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_230>

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

<ESMA\_QUESTION\_CP\_MIFID\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_234>

1. Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.

<ESMA\_QUESTION\_CP\_MIFID\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_236>

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

<ESMA\_QUESTION\_CP\_MIFID\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_237>

1. Do you agree with ESMA proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of new financial instruments.

<ESMA\_QUESTION\_CP\_MIFID\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_238>

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_239>

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

<ESMA\_QUESTION\_CP\_MIFID\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_240>

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

<ESMA\_QUESTION\_CP\_MIFID\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_241>

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

<ESMA\_QUESTION\_CP\_MIFID\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_243>

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

<ESMA\_QUESTION\_CP\_MIFID\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_244>

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

<ESMA\_QUESTION\_CP\_MIFID\_245>

TYPE YOUR TEXT HERE

<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)