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| 22 May 2014 |

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

Responding to this paper

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

***Instructions***

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

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

Responses are most helpful:

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

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

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

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

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

***Publication of responses***

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

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

Overview

Investor protection

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

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

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

* 1. Investment advice and the use of distribution channels

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

<ESMA\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_2>

* 1. Compliance function

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

<ESMA\_QUESTION\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_3>

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

<ESMA\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_4>

* 1. Complaints-handling

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

<ESMA\_QUESTION\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_5>

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

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

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

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

<ESMA\_QUESTION\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_7>

* 1. Recording of telephone conversations and electronic communications

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

<ESMA\_QUESTION\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_8>

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

<ESMA\_QUESTION\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_9>

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

<ESMA\_QUESTION\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_10>

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

<ESMA\_QUESTION\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_11>

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

<ESMA\_QUESTION\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_12>

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

<ESMA\_QUESTION\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_13>

* 1. Product governance

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

<ESMA\_QUESTION\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_14>

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

<ESMA\_QUESTION\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_15>

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

<ESMA\_QUESTION\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_16>

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

<ESMA\_QUESTION\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_17>

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

<ESMA\_QUESTION\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_18>

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

<ESMA\_QUESTION\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_19>

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

<ESMA\_QUESTION\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_20>

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

<ESMA\_QUESTION\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_21>

* 1. Safeguarding of client assets

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

<ESMA\_QUESTION\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_22>

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

<ESMA\_QUESTION\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_23>

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

<ESMA\_QUESTION\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_24>

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

<ESMA\_QUESTION\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_25>

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

<ESMA\_QUESTION\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_26>

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

<ESMA\_QUESTION\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_27>

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

<ESMA\_QUESTION\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_28>

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

<ESMA\_QUESTION\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_29>

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

<ESMA\_QUESTION\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_30>

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

<ESMA\_QUESTION\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_31>

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

<ESMA\_QUESTION\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_32>

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

<ESMA\_QUESTION\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_33>

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

<ESMA\_QUESTION\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_34>

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

<ESMA\_QUESTION\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_35>

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

<ESMA\_QUESTION\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_36>

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

<ESMA\_QUESTION\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_37>

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

<ESMA\_QUESTION\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_38>

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

<ESMA\_QUESTION\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_39>

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

<ESMA\_QUESTION\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_40>

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

<ESMA\_QUESTION\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_41>

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

<ESMA\_QUESTION\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_42>

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

<ESMA\_QUESTION\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_43>

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

<ESMA\_QUESTION\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_44>

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

<ESMA\_QUESTION\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_45>

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

<ESMA\_QUESTION\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_46>

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

<ESMA\_QUESTION\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_47>

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

<ESMA\_QUESTION\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_48>

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

<ESMA\_QUESTION\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_49>

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

<ESMA\_QUESTION\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_50>

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

<ESMA\_QUESTION\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_51>

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

<ESMA\_QUESTION\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_52>

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

<ESMA\_QUESTION\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_53>

* 1. Conflicts of interest

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

<ESMA\_QUESTION\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_54>

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

<ESMA\_QUESTION\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_55>

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

<ESMA\_QUESTION\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_56>

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

<ESMA\_QUESTION\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_57>

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

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

<ESMA\_QUESTION\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_58>

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

<ESMA\_QUESTION\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_59>

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

<ESMA\_QUESTION\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_60>

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

<ESMA\_QUESTION\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_61>

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

<ESMA\_QUESTION\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_62>

* 1. Remuneration

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

<ESMA\_QUESTION\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_63>

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

<ESMA\_QUESTION\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_64>

* 1. Fair, clear and not misleading information

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

<ESMA\_QUESTION\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_65>

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

<ESMA\_QUESTION\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_66>

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

<ESMA\_QUESTION\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_67>

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

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

<ESMA\_QUESTION\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_68>

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

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

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

<ESMA\_QUESTION\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_70>

* 1. Information to clients on costs and charges

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

<ESMA\_QUESTION\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_71>

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

<ESMA\_QUESTION\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_72>

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

<ESMA\_QUESTION\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_73>

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

<ESMA\_QUESTION\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_74>

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

<ESMA\_QUESTION\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_75>

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

<ESMA\_QUESTION\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_76>

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

<ESMA\_QUESTION\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_77>

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

<ESMA\_QUESTION\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_78>

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

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

<ESMA\_QUESTION\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_79>

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

<ESMA\_QUESTION\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_80>

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

<ESMA\_QUESTION\_81>

No, Euronext does not agree with a non-exhaustive list.

Instead, we believe that the list should be more precise in order to avoid circumventions. For instance, in respect to routing of client orders, only minor third payments should be allowed as defined under the proposed paragraph 7. In addition, quality enhancement should be proven by the comparative analysis of data about the different execution choices that were available in terms of market quality (e.g. spreads, prices) and monitoring (e.g. regulatory status of the platform).

<ESMA\_QUESTION\_81>

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

<ESMA\_QUESTION\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_82>

* 1. Investment advice on independent basis

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

<ESMA\_QUESTION\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_83>

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

<ESMA\_QUESTION\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_84>

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

<ESMA\_QUESTION\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_85>

* 1. Suitability

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

<ESMA\_QUESTION\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_86>

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

<ESMA\_QUESTION\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_87>

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

<ESMA\_QUESTION\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_88>

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

<ESMA\_QUESTION\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_89>

* 1. Appropriateness

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

<ESMA\_QUESTION\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_90>

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

<ESMA\_QUESTION\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_91>

* 1. Client agreement

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

<ESMA\_QUESTION\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_92>

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

<ESMA\_QUESTION\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_93>

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

<ESMA\_QUESTION\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_94>

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

<ESMA\_QUESTION\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_95>

* 1. Reporting to clients

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

<ESMA\_QUESTION\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_96>

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

<ESMA\_QUESTION\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_97>

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

<ESMA\_QUESTION\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_98>

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

<ESMA\_QUESTION\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_99>

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

<ESMA\_QUESTION\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_100>

* 1. Best execution

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

<ESMA\_QUESTION\_101>

Yes, we do. Euronext suggests the changes below:

o Para 2 of draft technical advice on details of execution policies: it should also specify why the venue is preferred;

o Para 12 of the above: need to specify market quality comparative metrics that will be useful to give clients some understanding over the quality offered on each venue;

o Para 15: the choice of a unique OTC venue / entity should be avoided when other trading options are available.

<ESMA\_QUESTION\_101>

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

<ESMA\_QUESTION\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_102>

* 1. Client order-handling

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

<ESMA\_QUESTION\_103>

Yes. Euronext believes it central to specify that aggregation of client orders should not be used for the purpose to result in an order which size falls above the LIS and therefore can be executed in the dark.

<ESMA\_QUESTION\_103>

* 1. Transactions executed with eligible counterparties

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

<ESMA\_QUESTION\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_104>

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

<ESMA\_QUESTION\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_105>

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

<ESMA\_QUESTION\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_106>

* 1. Product intervention

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

<ESMA\_QUESTION\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_107>

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

<ESMA\_QUESTION\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_108>

Transparency

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

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

<ESMA\_QUESTION\_109>

Yes. Euronext strongly supports the new definition proposed by ESMA, which will enable to capture a more important number of shares than is the case today.

<ESMA\_QUESTION\_109>

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

<ESMA\_QUESTION\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_110>

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

<ESMA\_QUESTION\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_111>

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

<ESMA\_QUESTION\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_112>

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

<ESMA\_QUESTION\_113>

We agree with the proposal. As ESMA acknowledges it in its analysis, the free float is not a suitable criterion for ETFs as they are open-ended products characterised by a constant creation/redemption process. In addition, the free float is not a relevant factor for assessing liquidity in ETFs as the primary source of liquidity for exchange-traded funds is the liquidity of the underlying. We understand however that MiFIR requires ESMA to take the free float into account. The *de minimis* number of units and the proposed level (100 units) seem to be an acceptable proxy.

<ESMA\_QUESTION\_113>

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

<ESMA\_QUESTION\_114>

We do not agree with the preliminary results. As ESMA recognises in the Consultation Paper, a significant percentage of activity in ETFs is executed OTC – the analysis conducted on the basis of post-trade data from regulated markets only is therefore not at all representative of trading patterns in ETFs. Data from OTC activity (when it becomes available) should be taken into account when establishing the liquidity thresholds.

<ESMA\_QUESTION\_114>

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

<ESMA\_QUESTION\_115>

As a market operator providing regulated trading facilities for ETFs, we would like to stress that the criteria used to assess liquidity in ETFs do not capture all the mechanics of liquidity for exchange-traded funds. This is because ETFs are derivatively priced and their liquidity depends a lot more on the liquidity of the underlying than on the frequency and size of transactions in the fund itself. By definition, the vast majority of ETFs are liquid as issuers have a limited business case in listing illiquid products. When creating an ETF, issuers pay particular attention to the liquidity of the underlying assets selected for the fund. In addition, as ETFs are based on a basket of instruments which each have a different weighting, any drop of liquidity in one of the underlying instruments therefore only marginally affects the liquidity of the fund as a whole. In addition, ETF markets are characterised by the presence of liquidity providers. On our markets, each ETF has at least one liquidity provider. They are subject to minimum presence, spread and size requirements to guarantee liquidity on the fund and consistency with the underlying market.

However, we understand that ESMA must apply the criteria set in the Level 1 text. As the criteria present in MiFIR do not adequately describe liquidity in ETFs, we support setting the liquidity thresholds at a level which will capture the highest number of instruments. We therefore support ESMA’s calibration proposal, with the caveat that transaction data should also include OTC activity.

While we understand that OTC data is not currently available to regulators, MiFID II will require transactions in ETFs to be reported to regulators independently of how and where these transactions take place. We therefore recommend reviewing the proposed liquidity thresholds as soon as possible and no later than one year after implementation of MiFIR, in light of the newly available data for OTC activity.

<ESMA\_QUESTION\_115>

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

<ESMA\_QUESTION\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_116>

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

<ESMA\_QUESTION\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_117>

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

<ESMA\_QUESTION\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_118>

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

<ESMA\_QUESTION\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_119>

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

<ESMA\_QUESTION\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_120>

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

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

<ESMA\_QUESTION\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_121>

* 1. The definition of systematic internaliser

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

<ESMA\_QUESTION\_122>

Euronext is concerned that the use of quantitative criteria may allow a circumvention of the trading mandate for shares. This could mean that even if an activity were ‘standard’ and could therefore be executed on a bilateral or multilateral registered venues, it would be exempted from such an obligation if it fell below the quantitative thresholds provided in MiFID 2. In addition, we are concerned by the fact that the first threshold proposed, used to characterise the frequent and systematic character of the activity, is expressed in terms of number of transactions, and not in terms of turnover. This is because turnover is based on a broader set of factors.

Moreover, as we outline in our response to Q92 in the Discussion Paper, Euronext would respectfully ask that ESMA and the Commission clarify that SI activity should be limited to strictly bilateral business.

In this regard, we are extremely concerned that some recitals in MiFID/R may be used by market participants to argue that riskless counterparty trading can be undertaken by SIs, thus providing an alternative home for current OTC broker crossing business. Such a development, combined with the relatively light transparency regime applied to SIs (especially when compared to functionally equivalent market makers on multilateral trading venues) together with their new ability to provide price improvement under MIFID II, would effectively see the **introduction of an OTF-bis category within the equities space**. This is because riskless principal trading *de facto* enables the matching of two client orders by interposing the SI own account between them for a fraction of time, i.e. taking very limited market / counterparty risk. Clearly, this would go against the political, technical and legal agreement underpinning the Level 1 text.

We therefore urge ESMA and the European Commission, as a matter of urgency, to clarify the potential use of riskless principal by SIs as a result of the following inconsistencies in the Level 1 text:

* **MiFID Article 4(20)** is clear in defining systematic internalisers as bilateral activity in which an investment firm deals on own account when executing client orders outside RMs, MTFs and OTFs ‘without operating a multilateral system’.
* However, **MIFIR Recital 7**, in clarifying that the definitions of RMs and MTFs should be closely aligned, correctly excludes bilateral systems from these multilateral definitions, but extends the scope of activity of the firm from entering into every trade on its own account to include ‘*even as a riskless counterparty interposed between the buyer and seller*’;
* The question this raises is whether an SI, defined as bilateral system, would be able to act as a riskless counterparty. Further clarification appears to be given in the **MIFID Recital 17** SI definition, where client order execution is explicitly limited to dealing on own account with a prohibition that SIs should not ‘*be allowed to bring together third party buying and selling interests in functionally the same way as a trading venue*’.
* However, **MiFID Recital 24** then defines dealing on own account as ‘*executing orders from different clients by matching them on a matched principal basis (back-to-back trading), which should be regarded as acting on principal and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account*’. This appears to be different from the definition given in **MIFID Article 4(6)** which states ‘*dealing on own account means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments*’.

These recitals open the door to a fundamental blurring of the differences between bilateral and multilateral trading. While the spirit, and indeed, legal basis of the articles appears clear, a clarification of the point that investment firms acting in a bilateral capacity cannot act as riskless counterparties would be very welcome. Otherwise, there is a significant risk that SIs will be used to circumvent the clear intent of MIFID II in respect of equities broker crossing networks, that is to say accommodate the activity within the MIFID trading venues categories, respecting the fundamental distinctions between bilateral and multilateral trading.

Furthermore, we would also like to comment on the argument that is often made that **the use of matched principal trading by an SI is justified on the basis of clearing need**. We reject this argument  because: (i) there is nothing preventing SIs from setting up clearing arrangements with CCPs (but their willingness to do so may be limited considering the clearing costs this implies), and (ii) even without clearing arrangements with CCPs, riskless principal trading is not necessary to process trades on an SI. This is because in contrast to trading venues, counterparties are by definition identified on SIs , meaning that there is no need for the intervention of a ‘neutral’ party (i.e. a CCP) in the process to protect the anonymity of counterparties: indeed, in a multilateral environment where anonymity is guaranteed, the interposition of a CCP enables the trade to be processed without the need for the two counterparties to know one another. Furthermore, whilst in a multilateral and anonymous environment the interposition if a CCP is necessary to protect each counterparty against counterparty risk (since given the multilateral / anonymous character of trading, no counterparty can assess the counterparty risk it is exposed to, as the identity of the counterparty is not disclosed), on an SI limited to own account trading between the bank and its clients, all counterparties (the SI’s clients and the bank acting as an SI) know one another and therefore have the means to manage their counterparty risk  efficiently. Therefore, if SIs are to be truly bilateral, it is contradictory to allow them to perform matched principal trading (which consist in the interposition of a third party between each counterparty to a trade, similarly to the role of a CCP) for the purpose of clearing.

Therefore, we would recommend either of the two following options:

1. Revise the recitals and explicitly prohibit riskless principal trading and matched principal trading and back-to-back trading on Sis; or,
2. Keep the recitals as drafted, but explicitly prohibit matched principal trading and back-to-back trading on SIs in the SI definition. In order to strengthen the legal grounds of this prohibition it would be necessary to add a definition of riskless principal trading in MiFID II which will enable to differentiate it from matched principal trading and back-to-back trading defined in MiFID. The definition of riskless principal trading could be the following:

*‘riskless principal trading’ means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction with both sides executed non-simultaneously, and where the transaction is concluded at a price where the facilitator makes a profit or a loss, other than a previously disclosed commission, fee or charge for the transaction.*

<ESMA\_QUESTION\_122>

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

<ESMA\_QUESTION\_123>

No, Euronext does not support this proposal. We do not believe that there is a need to adapt the thresholds to the liquidity class, considering that the thresholds are not absolute values. Instead, they aim at ensuring that standard activity which escapes from the trading mandate remains limited in comparison to another benchmark (and is therefore expressed in % terms).

More generally, we consider it is of critical importance that ESMA and the European Commission clarify the provisions pertaining to matched / riskless principal trading in respect of the SI as we outline in our response to the Q92 in the Discussion Paper.

<ESMA\_QUESTION\_123>

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

<ESMA\_QUESTION\_124>

As outlined in our response to Q122, Euronext is concerned that the use of quantitative criteria may allow a circumvention of the trading mandate for shares. This could mean that even if an activity were ‘standard’ and could therefore be executed on a bilateral or multilateral registered venues, it would be exempted from such an obligation if it fell below the quantitative thresholds provided in MiFID 2.

In respect to the second threshold used for characterising the substantial basis, we would suggest a lower threshold. In our view, the starting point should be to base the calculation on current levels of SI activity. Today, SIs represent about 1.5%[[1]](#footnote-2) of the volume traded in equity products in Europe, across the 17 registered SIs. Therefore, each SI represents on average 0.07% of the volume traded in Europe in equity-like instruments. If the purpose of the regulation is to encourage an increasing share of bilateral trades executed OTC to fall under the SI regime, the threshold at which a bank should be required to register as an SI could be defined as when the OTC bilateral activity of a bank for an instrument reaches 0.07% of the total activity in that instrument in Europe (in terms of trading volumes). If the 0.25 to 0.5% threshold were to be applied, it would mean that on average, the activity that is currently conducted on SIs would no longer have to be effected on such venues.

More generally, we consider it is of critical importance that ESMA and the European Commission clarify the provisions pertaining to matched / riskless principal trading in respect of the SI as we outline in our response to the Q92 in the Discussion Paper.

<ESMA\_QUESTION\_124>

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

<ESMA\_QUESTION\_125>

Yes, Euronext agrees that thresholds expressed in turnover are more representative of the exact activity’s amount in comparison to number of trades. For example, it would be easy for a participant to execute a large number of small quantity trades on markets for the sole purpose of increasing its overall trading pool in order to have a low ratio of bilateral trading vs. overall trading, i.e. a threshold that would exempt it from the SI registration requirement.

<ESMA\_QUESTION\_125>

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

<ESMA\_QUESTION\_126>

Euronext agrees that the proposed thresholds are appropriate for ETFs.

More generally, we consider it is of critical importance that ESMA and the European Commission clarify the provisions pertaining to matched / riskless principal trading in respect of the SI as we outline in our response to the Q92 in the Discussion Paper.

<ESMA\_QUESTION\_126>

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

<ESMA\_QUESTION\_127>

Yes. Euronext considers a quarterly assessment of the systematic internaliser activity adequate.

<ESMA\_QUESTION\_127>

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

<ESMA\_QUESTION\_128>

Yes, we agree with the approach to set thresholds per asset class, for example one set of thresholds should be defined for bonds. However, the threshold proposed for illiquid bonds should be “once a month” and not “once a week” as it would apply to illiquid instruments which are not traded as frequently as more liquid instruments.

<ESMA\_QUESTION\_128>

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

<ESMA\_QUESTION\_129>

In respect of bonds, we support using the turnover as the relevant measure here as it better reflects the characteristics of bond trading (large transactions in a limited number of instruments). We also agree with the definition of total trading by the investment firm.

<ESMA\_QUESTION\_129>

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

<ESMA\_QUESTION\_130>

Yes, we agree in respect of bonds.

<ESMA\_QUESTION\_130>

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

<ESMA\_QUESTION\_131>

Yes, Euronext agrees that aggregation according to this table is appropriate.

<ESMA\_QUESTION\_131>

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

<ESMA\_QUESTION\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_132>

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

<ESMA\_QUESTION\_133>

Yes. Euronext considers a quarterly assessment of the systematic internaliser activity adequate.

<ESMA\_QUESTION\_133>

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

<ESMA\_QUESTION\_134>

In respect of **bonds and derivatives**, Euronext would support setting the threshold at the lower end of the proposed range.

<ESMA\_QUESTION\_134>

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

<ESMA\_QUESTION\_135>

In respect of **bonds and derivatives**, we have a weak preference for percentages since they are easy to implement and do not need to be updated.

<ESMA\_QUESTION\_135>

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

<ESMA\_QUESTION\_136>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_136>

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

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

<ESMA\_QUESTION\_137>

No, we do not fully agree with paragraph 1.

In order to truly define portfolio trades, it should specify that in order to be considered as part of a portfolio trade, its different elements must be non-substitutable and non-dissociable. In addition, for the purpose of applying pre-trade transparency, an investment firm should be prohibited from aggregating client orders with the result of circumventing the trading mandate or pre-trade transparency requirements.

<ESMA\_QUESTION\_137>

* 1. Exceptional market circumstances and conditions for updating quotes

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

<ESMA\_QUESTION\_138>

Euronext agrees with the draft technical advice, subject to the framework being clarified to include a specific prohibition on the use of matched / riskless counterparty trading by an SI for the reasons outlined in our response to Q92 in the Discussion Paper

In contrast, should the boundaries between bilateral and multilateral trading become blurred (i.e. through an implicit authorisation of SI matched / riskless principal trading), we would see no reason not to align these requirements with those applied to market makers on multilateral trading venues. This is because an SI and market maker are functionally similar, with the SI afforded greater flexibility in respect of transparency (low thresholds for transparency and the ability to offer price improvement) in exchange for a limitation to purely bilateral activity only.

<ESMA\_QUESTION\_138>

* 1. Orders considerably exceeding the norm

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

<ESMA\_QUESTION\_139>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_139>

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

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

<ESMA\_QUESTION\_140>

Yes, Euronext agrees with this proposal, subject to the framework being clarified to include a specific prohibition on the use of matched / riskless counterparty trading by an SI for the reasons outlined in our response to Q92 in the Discussion Paper

In contrast, should the boundaries between bilateral and multilateral trading become blurred (i.e. through an implicit authorisation of SI matched / riskless principal trading), we would see no reason not to align these requirements with those applied to market makers on multilateral trading venues. This is because an SI and market maker are functionally similar, with the SI afforded greater flexibility in respect of transparency (low thresholds for transparency and the ability to offer price improvement) in exchange for a limitation to purely bilateral activity only.

<ESMA\_QUESTION\_140>

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

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

<ESMA\_QUESTION\_141>

Yes, in respect of bonds we agree. It is however worth nothing that SIs have additional protections compared to liquidity providers on multilateral venues as there are exceptions to the general principle of making quotes available to clients requesting them and entering into transactions with other clients.

<ESMA\_QUESTION\_141>

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

<ESMA\_QUESTION\_142>

Yes, in respect of bonds and derivatives we agree. For bonds, the size specific for the instrument should be the average size of transactions in Europe for that instrument.

In theory, the risk undertaken by an SI is both greater and smaller than an LP on a multilateral trading venue. On the one hand, access to an SI is less broad, albeit of non-discriminatory nature, on the other hand the SI is systematically showing quotes on his selection of instruments, whereas on a trading venue some latitude for quoting is generally offered to the LPs.

<ESMA\_QUESTION\_142>

Data publication

* 1. Access to systematic internalisers’ quotes

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

<ESMA\_QUESTION\_143>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_143>

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

<ESMA\_QUESTION\_144>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_144>

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

<ESMA\_QUESTION\_145>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_145>

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

<ESMA\_QUESTION\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_146>

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

<ESMA\_QUESTION\_147>

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<ESMA\_QUESTION\_147>

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

<ESMA\_QUESTION\_148>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_148>

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

<ESMA\_QUESTION\_149>

Yes, Euronext agrees with this proposal.

<ESMA\_QUESTION\_149>

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

<ESMA\_QUESTION\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_150>

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

<ESMA\_QUESTION\_151>

Yes, Euronext agrees with this proposal, subject to the framework being clarified to include a specific prohibition on the use of matched / riskless counterparty trading by an SI for the reasons outlined in our response to Q92 in the Discussion Paper

In contrast, should the boundaries between bilateral and multilateral trading become blurred (i.e. through an implicit authorisation of SI matched / riskless principal trading), we would see no reason not to align these requirements with those applied to market makers on multilateral trading venues. This is because an SI and market maker are functionally similar, with the SI afforded greater flexibility in respect of transparency (low thresholds for transparency and the ability to offer price improvement) in exchange for a limitation to purely bilateral activity only.

<ESMA\_QUESTION\_151>

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

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

<ESMA\_QUESTION\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_152>

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

<ESMA\_QUESTION\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_153>

* 1. Reasonable commercial basis (RCB)

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

<ESMA\_QUESTION\_154>

Yes, we agree partially. Euronext does not believe there is any market failure to justify the imposition of a reasonable commercial basis in respect of market data. Neither the Commission nor ESMA has come up with any evidence to support the assertion made in the consultation that market data costs in Europe are too high. In addition, as we outline below and in the rest of this section, the proposed approach fails to take account of the characteristics of the market and would not, if imposed, deliver any of the supposed benefits.

Having said this, out of the three options proposed by ESMA we would have a strong preference for the transparency option. As we outline later in the response, we acknowledge that this approach could be strengthened to make it truly effective.

However, in assessing these proposals and in order to decide if these are reasonable requirements all participants must have the same understanding of what constitutes market data fees. In our view, this is not the case. The market data value chain (see below) means there are multiple participants who charge for market data at different times along the chain. Trading venue fees are the smallest part of the cost and disclosure of price lists would not enable customers to fully understand their market data expense.

**Market Data Value Chain**

The choice of provider is endogenous to the decision about the data product. In general, exchanges make their data available for licensing on a ‘wholesale’ basis to data vendors and software providers, such as Bloomberg and Thomson Reuters. These vendors normally offer a platform that combines various data subscriptions, including non-Exchange data such as news, analytics, charting and valuations data, and the users of these platforms can purchase data from multiple exchanges and other data sources in a common format. Customers accessing market data through data vendors may also choose to purchase some of the analysis packages vendors offer, such as pre-trade analysis. However, certain users, such as high-frequency traders, will often interact directly with the exchange to manage their data connection.

In the indirect model, the user pays the vendor for the access (which often includes a value-added/mark-up component), and then the vendor requests a subscription from the data provider on behalf of the user.



Source Oxera

The recent Oxera report estimated that between 8% and 15% of total market data costs are made up of Exchange fees depending on the level of data the user subscribes to with IT infrastructure estimated to account for 10% to 16% and data vendor services estimated to account for the remaining 65% to 80%.

Most European exchanges, including Euronext, and other alternative venues already allow use of data free of charge where the data is taken directly and used for trading purposes. It is difficult to justify any kind of reasonable commercial basis restrictions being imposed where data is already free. ESMA have not considered this in the consultation paper. Where data is accessed by firms indirectly e.g. via a data vendor then fees apply for all usage.

Regarding the disclosure requirements – they would allow firms to compare prices across all venues. When combined with metrics such as number of instruments covered and total turnover firms would be able to assess the value of the data. It would also enable firms to correctly manage the requirements of their data users. Most European Exchanges already offer different data packages and pricing options for users depending on their needs e.g. different prices for professional v retail users, for pre- and post-trade data, depth of order book vs. best bid offer prices etc. many banks today do not actively manage their market data users use of data.

However these requirements do not address the issue of the total cost of market data – in fact there is no connection made between the data generated by trading venues and the overall data needs of a user. So a user taking data via a data vendor will also pay for the terminal / software on which to view the data. In addition they will also be charged for any non-Exchange data services such as analytics, charting, news they subscribe to in addition to the underlying Exchange data.

Many firms pay software providers for trading and information services that may include packages of data from a number of trading venues. In such cases it is very difficult to unbundle the pricing to fully under-stand the cost of an underlying data element from a trading venue. Banks and brokers do not detail the trading v market data fees when charging commissions to clients therefore it is difficult for those users to understand the underlying cost of data from an Exchange and the transparency should be extended to all firms providing financial services where market data fees form any basis of the costs they charge clients.

Please note the price lists and announcements of changes to prices are already posted on the Euronext market data website in addition to being notified directly to end users and data vendors.

<ESMA\_QUESTION\_154>

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

<ESMA\_QUESTION\_155>

Yes. As part of a ‘Transparency +’ approach, we would recommend requiring of all parties charge for market data services in the value chain to publish their price lists and disclose price changes. This would make it easier for users to understand their market data costs. Data vendors often add a mark up to the fees charged by Exchanges to cover their costs of providing data to clients. Users need to compare the cost of data via an Exchange versus what they end up paying for it via a data vendor. The same should also apply where end users are charged fees for trading by brokers or other intermediaries that also include some element of market data cost.

<ESMA\_QUESTION\_155>

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

<ESMA\_QUESTION\_156>

Comprehensive transparency requirements, amended in line with our answer to Q155, would enable users to understand the fees charged by trading venues for market data and should lead to firms being better able to manage the provision of data to their end users ensuring the user receives the correct level and type of data relating to that user’s needs. To do this firms require at least this level of transparency.

 The table below on User Data Requirements defines users and their data needs. Most trading venues offer packages that satisfy these needs at a variety of price levels. If all trading venues published their price lists on one site it would:

a) allow users to better budget for and manage the needs of their users

b) allow other Trading Venues to develop similar models to ensure they followed existing standards and not introduce new pricing or policies required additional administration by user firms

|  |  |  |
| --- | --- | --- |
| **User** | **Purpose (use) of data** | **Type of data required** |
| Trader—broker, prop trader, HFT, etc | Front office | To execute trades | Real-time (often low-latency) level 21  |
| Middle office | Risk, credit and strategy management, including forecasts and some modelling | Generally delayed or real-time level 1, but some activities (eg, testing strategies) can require level 2 |
| Back office | To monitor and administer settlement and clearing obligations, regulatory compliance (including evaluation of best execution), and reconciliation of trades | Delayed |
| Market maker | Observing the liquidity and depth in the market to fulfil quoting obligations, generate prices and calculate risk | Real-time (often low-latency) level 21 |
| Fund manager | Research and strategy, including forecasts and modelling, assessment of brokers and other service providers | Dependent on individual manager. Often, delayed data is sufficient. Some managers may choose to receive real-time data at level 1 or 2 according to their strategy |
| Retail investor | To assess investment prospects and strategy | Dependent on individual investor.Often post-trade is sufficient |
| Issuer | To form a correct pricing and demand estimation at issuance; to assess listing venues | Delayed post-trade |
| Competitor trading venue (MTF, organised trading facility, Dark Pool, Systematic Internaliser) | To inform traders/market makers of pricing on other venuesTo provide a reference price when the venue does not have its own price discovery mechanismTo provide order pegging services—ie, where a trader enters an order that does not contain a price, but the instruction to execute only at a price better than available on other venues | Real-time level 1 or level 2 |
| Indexing (CDS, benchmarks) | To analyse and group companies’ risk profiles to form CDS indexes or to form and manage an index | Real-time level 1 or level 2 |
| Market surveillance, regulators and governments | Identify illegal behaviour of participants | Non-public, private information (including Member ID per trade). Not part of the MiFID commercial requirements |
| Other research/academic | To model markets and market mechanisms, and investigate specific relationships between economic variables | Historical data  |

Note: 1 At several European stock exchanges, registered members of the exchange are entitled to free data for trading on the exchange.

Source: Oxera analysis, based on views expressed by market participants, data vendors and data providers.

However, fundamentally ESMA and the Commission must be clear on the overall aim of the proposed measures. The fees charged by trading venues for market data are very small in comparison to overall market data costs when software, hardware and additional data requirements are considered. If the aim is to reduce the costs then cutting trading venue fees will only result in a small reduction in overall costs. In addition, it is unclear how any cost reductions would be passed down the chain to end users given the rest of the value chain would not be caught in the scope of the measures.

<ESMA\_QUESTION\_156>

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

<ESMA\_QUESTION\_157>

We oppose this option. It is an extreme measure which would only be understandable if market data fees had contributed to some kind of market failure. However no market failure has been created by market data in Europe. In addition, across Europe, there have been no cases of trading venues being accused of malpractice under existing anti-trust legislation.

Given that trading venues only contribute a small portion of the total costs of data of market data it is important to recognise that this provision would have little impact on the overall cost of market data to firms other than limiting trading venues ability to charge for data. To achieve a total cut in market data fees it would be necessary to control fees charged by all elements of the market data distribution chain.

Trading venues generate revenues from a number of business lines including, trading, market data, listing, clearing and settlement. To limit one of these business lines there would have to be a weighting factor applied to each venue relative to how much it makes from each business line. This would also have to take into account the impact competition has had on that venue e.g. if an MTF charges low fees for trading it is likely the trading venue will have already reduced trading fees – therefore information fees may seem disproportionately high but in reality they reflect the trading venues ability to charge for one of its business lines. This will be difficult to implement and police across multiple venues in different jurisdictions.

It also does not take into account the concept of trading and market data being considered joint product and therefore joint costs and joint revenues would need to be considered. This would be difficult to implement across a diverse group of trading venues with potentially different drivers. For example an Exchange provides a place for companies to list and to raise capital which supports the wider economy in terms of job creation. The drivers are not the same for all trading venues i.e. venues that only provide trading services and not listing services.

In addition, costs relating to market surveillance and monitoring and listing would also have to be considered for venues required to carry out these activities.

<ESMA\_QUESTION\_157>

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

<ESMA\_QUESTION\_158>

Given the complexity of implementation and governance required to ensure it had been adequately implemented by all Trading Venues the % would have to be significantly high enough to ensure it was only enforced where a Trading Venue caused a market failure through its market data fees.

<ESMA\_QUESTION\_158>

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

<ESMA\_QUESTION\_159>

No, it is not. We strongly oppose defining a reasonable commercial basis on the basis of costs: the LRIC+ model is an extreme measure and does not satisfy “reasonable commercial basis”. In line with our answer to Q154 re the market data value chain, we strongly question the absence of a comprehensive assessment as to which which costs are being considered and which fees are considered too high. . If the discussion relates purely to end user fees charged by Exchanges then, as previously explained, most European trading venues do not charge for market data where the user firms source data directly from the trading venues and use it for trading purposes.

The trading venues do not control how much the software providers and vendors charge for the underlying market data or for additional data services, therefore any restriction / reduction re what a trading venue can charge will have negligible effects on overall costs and any savings will not be passed on to end users.

In the market data chain Trading Venues account for a small proportion of the overall cost and are only involved in a small proportion of the overall service provided to the end user. Trading venues generate data - however for a user to make use of that data they require software to view or act on (auto trading applications) the data. In addition they will require news, analysis etc. all of these extra services are additional costs not related to the trading venue supplying the underlying data.

Therefore it is not appropriate to define “reasonable commercial basis” based on cost contributed by only one element of the value chain. In addition, to create accurate and regulated market data requires investment in systems and resources not just to deliver the market data but to monitor the market, provide timely execution services etc. The range of the costs would have to be identified and would vary from venue to venue depending on the complexity of the trading and information system as well as other systems and staff required to support the operation.

It is also extremely unclear how this would be implemented and regulated across multiple venues governed by different regulators.

<ESMA\_QUESTION\_159>

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

<ESMA\_QUESTION\_160>

We do not agree that a LRIC+ cost model is appropriate or “reasonable”. There is no evidence of market failure however the impact on a trading venue’s business model would be very significant. The cost model would be difficult to implement and regulate across multiple venues as a one size fits all approach would not be appropriate e.g. an Exchange has additional costs relating to market monitoring that an MTF may not have.

<ESMA\_QUESTION\_160>

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

<ESMA\_QUESTION\_161>

The same definition should apply. In line with our answer to Q154 re the market data value chain, we believe the model would have to apply to all elements of the chain if it were to reduce market data costs including vendor fees, broker commissions etc. The model should be the same across all participants in each market: we note there already seems to be confusion as to who is responsible for the cost of market data with the Exchanges mistakenly being considered as the only party contributing to the cost of market data.

<ESMA\_QUESTION\_161>

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

<ESMA\_QUESTION\_162>

We strongly favour Option A since it is the most reasonable and simplest to implement from a business perspective and from a regulator being able to monitor that it has been applied correctly by all participants. Option B could potentially be used as a sanction where a trading venue’s prices / policies for data had caused market failure. Both Options B & C are complex to implement fairly and reasonably across multiple venues with different cost and revenue models and to subsequently regulate to ensure compliance by all parties.

In contrast, Option A delivers transparency and information to help end users effectively manage market data costs and would lead to a reduction in the administrative costs of maintaining and complying with market data policies.

<ESMA\_QUESTION\_162>

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

<ESMA\_QUESTION\_163>

* Option A: costs are low in respect of implementation and business impact to trading venues and regulators;
* Option B: costs are low in respect of implementation, but business impact could be high depending on how a trading venue generates revenue. Cost of monitoring and enforcing from the regulatory perspective could potentially be high;
* Option C: costs are low in respect of implementation, but business impact would be very high for trading venues. Cost of monitoring and enforcing from the regulatory perspective would be very high.

ESMA should also consider the impact of the options. For trading venues, options B and C would create a significant impact to the revenues, with potentially very little downstream impact other than a reduction in costs for brokers. This could lead to trading venues not investing in technology or new services for data delivery or quality monitoring which could have detrimental impact on the market.

<ESMA\_QUESTION\_163>

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

<ESMA\_QUESTION\_164>

Yes. We would suggest as an alternative approach to:

* Apply the transparency principles in option A;
* Limit price increases in market data for retail users to a European benchmark inflation rate;
* Commit trading venues to offer per user pricing to clients who prove they have the systems and processes to qualify for it.

This would be simple to implement for trading venues and regulators to ensure compliance.

<ESMA\_QUESTION\_164>

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

<ESMA\_QUESTION\_165>

No, we do not agree. It should be an option offered by trading venues. This is because multi-vendor netting is complicated for both Firms, trading venues and vendors to implement. Only users who demonstrate they can correctly report should be admitted to a multi-vendor netting programme. Most users do not want multi-vendor netting – it only is appropriate for larger clients.

<ESMA\_QUESTION\_165>

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

<ESMA\_QUESTION\_166>

Larger clients who have passed audits or other qualifying criteria that prove they can correctly multi-vendor net.

<ESMA\_QUESTION\_166>

Micro-structural issues

* 1. Algorithmic and high frequency trading (HFT)

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

<ESMA\_QUESTION\_167>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_167>

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

<ESMA\_QUESTION\_168>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_168>

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

<ESMA\_QUESTION\_169>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_169>

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

<ESMA\_QUESTION\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_170>

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

<ESMA\_QUESTION\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_171>

* 1. Direct electronic access (DEA)

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

<ESMA\_QUESTION\_172>

**MiFID Article 4 defines DEA** is defined as 'an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue'.

The question is whether automated order routing (AOR) falls within DEA. In our view, where the service provided to a client is simply one of receipt and onward transmission of an order only using the firm’s trading ID – without any trading ***algorithm*** code applied to it - this should not be considered to fall within the scope of DEA.

Critically, the reference to trading code in the MIFID definition of DEA needs to be clarified. It should be understood to mean the use by the connecting party of the member’s algorithm trading code – thus justifying application of MIFID if trading code is understood to mean the code of the trading algorithms. In contrast, DMA and AOR orders which are simply received and retransmitted by a member firm using its trader ID should not be caught within this definition.

If this is not carved out then the scope of MiFID will be extended a whole swathe of retail clients who do use simple, electronic tools to submit orders to the market, for example web access.

<ESMA\_QUESTION\_172>

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

<ESMA\_QUESTION\_173>

For the reasons outlined above in the answer to Q172, we do not consider that AOR should be included within the scope of the DEA definition. Furthermore, we also do not believe that vanilla DMA (i.e. DMA that does not use trading algo code) should be within DEA.

<ESMA\_QUESTION\_173>

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

<ESMA\_QUESTION\_174>

We are unclear as to the difference between order transmission systems and AOR/DMA. If an order transmission system means AOR, then whether it uses shared connectivity or not it should be carved out of the scope of DEA. If however, it is using some of the trading execution codes then it could still be carved out of DEA as long as the arrangements now include shared connectivity. This is because the shared arrangements and connectivity are currently offered to many clients, both retail and professional and provide for a cost-effective, speedy and low-touch way of buying and selling securities.

<ESMA\_QUESTION\_174>

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

<ESMA\_QUESTION\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_175>

Requirements applying on and to trading venues

* 1. SME Growth Markets

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

<ESMA\_QUESTION\_176>

Yes, Euronext supports having the percentage being assessed on the basis of the number of issuers. Euronext notes that the designation “SME Growth Market” is somewhat confusing in that it may give the impression of being a market for SME growth companies rather than a market on which SMEs can raise growth capital.

<ESMA\_QUESTION\_176>

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

<ESMA\_QUESTION\_177>

Euronext has a preference for the third option (figures based on the market capitalisation at the end of each month with an average calculated on 31 December) as the most appropriate alternative for the assessment whether at least 50% of issuers on an SME-GM were SMEs.

<ESMA\_QUESTION\_177>

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

<ESMA\_QUESTION\_178>

Yes. Euronext believes that falling below the qualifying 50% threshold for a number of three consecutive years should lead to deregistration as a SME-GM. Given the time that it takes for companies to come to market and taking into accounts periods where there may be lesser listing activity this seems to strike an appropriate balance.

<ESMA\_QUESTION\_178>

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

<ESMA\_QUESTION\_179>

No. Euronext does not see the benefit of requiring SME-GMs to disclose this fact to the market. The loss or threatened loss of the deregistration is unlikely to impact the ability of individual SMEs to raise capital or have its instruments traded on such SME-GM. Also, interested parties can make their own assessment on the status of the relevant SME-GM.

<ESMA\_QUESTION\_179>

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

<ESMA\_QUESTION\_180>

Euronext considers option (c), i.e. a non-equity issuer is considered a SMEs for the purpose of determining whether an SME-GM meets the requirement of having at least 50% SME issuers if the issuer is classified as an SME pursuant to article 2(1)(f) of the Prospectus Directive, as an appropriate option. This definition of SME ensures a consistent definition across the EU regulations (MiFID II and EU Prospectus Directive).

<ESMA\_QUESTION\_180>

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

<ESMA\_QUESTION\_181>

Yes. The market operator should have the flexibility to decide the basis on which it wants to operate the market and the extent it wants to delegate certain matters to other market parties active in the capital markets ecosystem.

<ESMA\_QUESTION\_181>

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

<ESMA\_QUESTION\_182>

No. Euronext is of the opinion that the “appropriate” test should be limited to certain principal features only, i.e. free transferability and fungibility of securities and availability of clearing and settlement of transactions and believes that it is appropriate to make these principal features part of MiFID Level II requirements. Other features, such as corporate governance, financial position, should be within the remit of the market operators.

<ESMA\_QUESTION\_182>

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

<ESMA\_QUESTION\_183>

It is not clear from the text to which factors ESMA is referring to.

<ESMA\_QUESTION\_183>

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

<ESMA\_QUESTION\_184>

No. Euronext is not in favour of introducing an appropriateness test for an SME-GM issuer’s management and board at this level. In general, pursuant to applicable corporate governance rules and company law management and board members are subject to periodic evaluations and fiduciary duties. Stakeholders (including shareholders) can hold management and board members accountable in general meetings or other forums (e.g. works council meetings).

<ESMA\_QUESTION\_184>

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

<ESMA\_QUESTION\_185>

No. Euronext believes that although an appropriate test can help in assessing whether a company is able to fulfil its ongoing obligation, it is no guarantee that it will do so. Instead it believes that the SME-GM should have the power to disclose the names of non-compliant issuers to the trading members, the investment community and the public at large. See also the answer to Q195 below.

<ESMA\_QUESTION\_185>

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

<ESMA\_QUESTION\_186>

We support Option iii. Euronext believes that future Level 2 Regulation should remain silent on the adequacy of an issuer’s working capital (option iii). It should be noted in this context that in our experience audit firms do not issue an opinion on the accounts of a company that does not have sufficient working capital for the next 12 months and as such some of this is already captured.

<ESMA\_QUESTION\_186>

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

<ESMA\_QUESTION\_187>

Yes. The market operator should have the flexibility to introduce criteria in order to meet its obligations to ensure the fair and orderly working of the SME-GM.

<ESMA\_QUESTION\_187>

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

<ESMA\_QUESTION\_188>

Yes. Euronext considers it is important that investors are able to make an informed investment decision based on information consolidated in an admission document made available by the issuer. At the same time the initial disclosure requirements should allow for enough flexibility enabling issuers to make use of the (public) capital markets in a (cost) efficient way.

<ESMA\_QUESTION\_188>

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

<ESMA\_QUESTION\_189>

Yes. Both approaches should allow for sufficient information being made available to investors and at the same time providing the flexibility enabling issuers to make use of the (public) capital markets. Euronext notes however that this should not lead to a difference in perception with issuers as to whether one market has a light regime than another SME-GM, whilst this is not the case in practice.

<ESMA\_QUESTION\_189>

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

<ESMA\_QUESTION\_190>

Introducing these type of rules at the level of MiFID II would not provide the flexibility required to operate a SME-GM.

<ESMA\_QUESTION\_190>

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

<ESMA\_QUESTION\_191>

Please see response to Q190 above.

<ESMA\_QUESTION\_191>

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

<ESMA\_QUESTION\_192>

No. Euronext considers that the responsibility for ensuring that the information contained in an admission document is complete and accurate should lie unequivocally with the issuer and that financial intermediaries and other advisors engaged by the issuer are responsible for advising the issuer on what information should be part of the admission document.

An alternative way of facilitating assurance is introduction of an optional approval from the relevant NCA (i.e. applying the Prospectus Directive rules) in relation to admission documents at the request of the relevant issuer.

<ESMA\_QUESTION\_192>

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

<ESMA\_QUESTION\_193>

Euronext believes that the applicable requirements should be of such a standard to maintain high levels of investor protection to promote investor confidence in those markets.

<ESMA\_QUESTION\_193>

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

<ESMA\_QUESTION\_194>

Euronext considers that the ongoing periodic financial reporting requirements set by the Transparency Directive provide the appropriate [(minimum)] standard to maintain high levels of investor protection to promote investor confidence in SME-GMs.

<ESMA\_QUESTION\_194>

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

<ESMA\_QUESTION\_195>

Euronext believes that market operators should be in a position to apply listing measures if an issuer does not comply with the reporting obligations. Such listing measures could entail (i) publication of the non-compliance to the market, (ii) allocation of the issuer’s instrument to a special trading segment (penalty bench), (iii) trading suspension and (iv) – as ultimate remedy – a delisting.

<ESMA\_QUESTION\_195>

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

<ESMA\_QUESTION\_196>

Euronext considers the extended deadlines as being too long and not striking the right balance between on the one hand providing issuers with flexibility and on the other maintaining investor confidence.

<ESMA\_QUESTION\_196>

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

<ESMA\_QUESTION\_197>

Yes, Euronext agrees that the MiFID II framework should not impose any additional requirements or relief to those envisaged by MAR.

<ESMA\_QUESTION\_197>

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

<ESMA\_QUESTION\_198>

Euronext considers that issuers admitted on a SME-GM should make information available on both their own website and the website of the market operator. To the extent a market operator of a SME-GM would be required to make available and store information received from issuers it should also be in a position to commercially exploit such information to cover costs associated with such requirements.

<ESMA\_QUESTION\_198>

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

<ESMA\_QUESTION\_199>

Similar to the ongoing reporting obligations, Euronext believes that market operators should be in a position to apply listing measures if an issuer does not satisfy the dissemination and storage requirements comply with its the reporting obligations. Such listing measures could entail (i) publication of the non-compliance to the market, (ii) allocation of the issuer’s instrument to a special trading segment (penalty bench), (iii) trading suspension and (iv) – as ultimate remedy – a delisting.

Euronext considers that issuers admitted on a SME-GM should make information available on both their own website and the website of the market operator.

<ESMA\_QUESTION\_199>

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

<ESMA\_QUESTION\_200>

Euronext believes that the information published and disseminated should be available for a period of 5 years aligning this to the requirements under the MAD and Transparency Directive.

<ESMA\_QUESTION\_200>

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

<ESMA\_QUESTION\_201>

Yes. Euronext agrees that the MiFID II framework should not impose any additional requirements or relief to those presented in MAR.

<ESMA\_QUESTION\_201>

* 1. Suspension and removal of financial instruments from trading

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

<ESMA\_QUESTION\_202>

Yes, Euronext agrees this is an appropriate approach.

<ESMA\_QUESTION\_202>

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

<ESMA\_QUESTION\_203>

Yes, Euronext agrees.

<ESMA\_QUESTION\_203>

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

<ESMA\_QUESTION\_204>

Yes, Euronext agrees with the proposed examples.

<ESMA\_QUESTION\_204>

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

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

<ESMA\_QUESTION\_205>

Yes, Euronext agrees.

<ESMA\_QUESTION\_205>

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

<ESMA\_QUESTION\_206>

Yes, Euronext agrees.

<ESMA\_QUESTION\_206>

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

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

<ESMA\_QUESTION\_207>

Yes, Euronext agrees with the circumstances proposed and we fully support the suggestion that it should be a non-exhaustive list. We have two additional points:

1. In relation to disorderly trading, we believe there should be more focus on other market conditions that may constitute disorderly trading, and not just system issues e.g. reference needs to be made to situations where there is an inefficient market due to the lack of availability of information in the market, or where there are rumours affecting trading and information still needs to be clarified in the market. In our view, these situations also should be considered disorderly trading.
2. In relation to system disruptions, the most important trigger for notification should be when the actual trading system itself breaks down or malfunctions and we don’t feel this has been adequately captured under this section in the proposed technical advice.

<ESMA\_QUESTION\_207>

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

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

<ESMA\_QUESTION\_208>

Yes, Euronext agrees with the suggested approach, particularly that a proportionate approach with respect to the signals should be followed by market operators to take into account the conditions and characteristics of the market of a particular financial instrument. Therefore we support that fact that ESMA makes it clear that these signals may relate to activity that is conducted for legitimate reasons and do not by themselves necessarily constitute abusive conduct. It is only when an operator of a trading venue has investigated this behaviour and made a judgment that the activity is unusual and warrants further investigation that there is an onus on it to report it to the NCA. We also agree that this list is non-exhaustive as there needs to be flexibility to take into account developments and changes in trading activity.

<ESMA\_QUESTION\_208>

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

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

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

<ESMA\_QUESTION\_210>

We are of the view that it is important for trading venues to consider publicly available information when conducting market surveillance, particularly managers’ dealings, major shareholders’ notifications and any price sensitive information disclosed by issuers such as trading updates, potential acquisitions etc. Other material that is also relevant to review includes broker research and analysis, and general media reports that relate to the issuer or the markets in general.

<ESMA\_QUESTION\_210>

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

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

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

<ESMA\_QUESTION\_212>

Regarding front running, Euronext believes this is a very important issue that should be considered by an operator of a trading venue as part of its market surveillance, and if it is identified, it should be referred immediately to the NCA but it may depend on the functionality of the venue regarding how much information the operator can actually review in the first instance. In reality, as it is the NCA that receives the transaction reports for all trading activity conducted by a firm, we feel the NCA may be in a better position to identify this type of activity.

<ESMA\_QUESTION\_212>

Commodity derivatives

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

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

<ESMA\_QUESTION\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_213>

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

<ESMA\_QUESTION\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_214>

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

<ESMA\_QUESTION\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_215>

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

<ESMA\_QUESTION\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_216>

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

<ESMA\_QUESTION\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_217>

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

<ESMA\_QUESTION\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_218>

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

<ESMA\_QUESTION\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_219>

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

<ESMA\_QUESTION\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_220>

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

<ESMA\_QUESTION\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_221>

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

<ESMA\_QUESTION\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_222>

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

<ESMA\_QUESTION\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_223>

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

<ESMA\_QUESTION\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_224>

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

<ESMA\_QUESTION\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_225>

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

<ESMA\_QUESTION\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_226>

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

<ESMA\_QUESTION\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_227>

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

<ESMA\_QUESTION\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_228>

* 1. Position reporting thresholds

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

<ESMA\_QUESTION\_229>

Yes, Euronext agrees. There needs to be a minimum number of 6 participants per category of participant. If the number of participants of a particular type drops below a minimum (e.g. of 3) to publish would risk revealing the identity or at least the likely identity of the participant and their position. This is because if the positions of 28 participants spread over four categories were to be published and two were not, each of the two would know the likely position of the other.

<ESMA\_QUESTION\_229>

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

<ESMA\_QUESTION\_230>

Yes, Euronext agrees. An open interest criterion seems reasonable provided that there is an adequate definition of deliverable supply elsewhere in Level 2. However none of the thresholds take any account of average daily volume and hence of participants shifting their position. The information in these reports is only of interest to the market where it shows a change in position. There is no point in publishing reports that will be the same or similar every week.

<ESMA\_QUESTION\_230>

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

<ESMA\_QUESTION\_231>

No, Euronext disagrees: the requirement to publish for a further three months even if the threshold for publication is not attained makes no sense. Fundamentally the information is either suitable for publication or it is not. This publication would involve confidential information being revealed to the market, especially if market conditions dictated that a particular participant’s position were to vary above and below the threshold in question. If it is judged that participation is so thin and turnover is so modest that publication is not appropriate, perhaps ESMA should develop a publication delay so that participants can nevertheless see what has occurred, with a time delay sufficient for this to be historical rather than current data.

<ESMA\_QUESTION\_231>

* 1. Position management powers of ESMA

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

<ESMA\_QUESTION\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_232>

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

<ESMA\_QUESTION\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_233>

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

<ESMA\_QUESTION\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_234>

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

<ESMA\_QUESTION\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_235>

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

<ESMA\_QUESTION\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_236>

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

<ESMA\_QUESTION\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_237>

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

<ESMA\_QUESTION\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_238>

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

<ESMA\_QUESTION\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_239>

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

<ESMA\_QUESTION\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_240>

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

<ESMA\_QUESTION\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_241>

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

<ESMA\_QUESTION\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_242>

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

<ESMA\_QUESTION\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_243>

Portfolio compression

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

<ESMA\_QUESTION\_244>

Portfolio compression could potentially be used in a manner to avoid the trading obligation set out in Article 28 of MiFIR. For example, a ‘standardised’ derivative contract which would be subject to the trading obligation could potentially be created by the compression of two ‘non-standardised’ derivatives contracts. There should be an explicit statement that portfolio compression services should not be used in such a manner.

<ESMA\_QUESTION\_244>

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

<ESMA\_QUESTION\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_245>

1. Source: Thomson Reuters [↑](#footnote-ref-2)