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

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | ICAP Plc |
| Confidential[[1]](#footnote-1) |  |
| Activity: | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

ICAP Plc (ICAP) welcomes the opportunity to submit comments to ESMA’s consultation paper on MiFID II and MiFIR. As a leading markets operator in both voice and electronic markets and provider of post trade and risk information services, ICAP’s experience gives us a perspective that may be helpful in the context of this consultation.

Our business objectives are aligned with those of MiFID II and MiFIR as we support the move of liquid instruments to electronic venues and a greater emphasis on both pre- and post-trade transparency. We have witnessed how certain markets have already started to migrate from our OTC infrastructure to our established venues where product standardisation and liquidity allow. Irrespective of the venue, a key role for ICAP continues to be fostering of transparency by continually providing pre and post-trade information to the market, whether through pre-trade price screens or order book type structures, and our full range of post-trade services.

Against this background, we have made data available to relevant competent authorities showing trading in key derivative classes to inform the calibration of waiver thresholds and the liquidity determination. In this response, we also provide information on the volume of package trades, especially in the area of interest rate derivatives trading. We hope this data gives you a better idea of tradable liquidity and average market sizes to help you adjust your methodology and data. It is crucial that the objective of enhancing market transparency is not undermined by starving the markets of liquidity and increasing risk profiles – a very real consequence if the liquidity calibrations end up driving market makers away from core market segments.

On the topic of the liquidity determination, we would also highlight that the concept of liquidity is not static. As markets evolve, innovate and react to external circumstances (including regulation), a product that is liquid today may not be liquid tomorrow, and vice versa. It is therefore of upmost importance that ESMA revisits the liquidity determination, especially once it is able to obtain better quality data through the post-trade reporting regime as implemented under MiFID II. Alternatively, a dynamic calibration approach, such as the one considered for setting large-in-scale (LiS) and size-specific-to-the-instrument (SSTI) thresholds, should be developed.

As you will see from our detailed responses, whilst we are overall positive about the standards as drafted by ESMA, we have concerns that they are too exchanges and futures centric. In the area of best execution, data reporting, and straight-through processing, we have found requirements that are not relevant, would create unmanaged data for analysis, or would require data files too large to report on if applied to (current OTC) derivatives markets. We would of course be happy to assist in developing standards that are better suited to these markets.

Lastly, we would like to suggest that, in drafting these regulatory standard, ESMA has regard not just to the objectives of the Level 1 text, but also the wider objectives of current European financial services legislation. For example, post-trade risk reduction services are encouraged in multiple guises through EMIR technical standards and received special treatment in other global legislation (e.g. CFTC no action relief). Their services are becoming increasingly relevant in reducing risks and collateral demands. However, and despite a clear recital 27 in the Level 1 text, they have not today been recognise in any associated technical standard.

Overall, we would like to commend ESMA on the important work undertaken to date.

We hope you find our responses helpful in further developing the technical standards and would be happy to discuss them further with you if that would be helpful.

< ESMA\_COMMENT\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

No comment<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

No, it is not clear how a venue operator may ‘facilitate access’ from another member state. It should be the responsibility of the participant to inform their competent authority if they decide to trade on a given venue.

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

No

<ESMA\_QUESTION\_CP\_MIFID\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_13>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_14>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_14>

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

<ESMA\_QUESTION\_CP\_MIFID\_15>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_15>

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

<ESMA\_QUESTION\_CP\_MIFID\_16>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_17>

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

<ESMA\_QUESTION\_CP\_MIFID\_18>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_19>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

Yes, but as highlighted above, it should be made clear what ESMA has in mind when it asks for notifications for facilitating access.

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_29>

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

<ESMA\_QUESTION\_CP\_MIFID\_30>

No – we have serious concerns around the best execution reporting obligations for trading venues. Whilst the consultation paper notes that different trading types and different products may require different approaches, the resulting RTS is still very equity focused and the required data is either more difficult to obtain or meaningless in a non-equities context. Further efforts need to be made to segregate execution venue reporting requirement by market mechanism as some markets are continuous (order book) but not others (voice, auction, RFQ).

As highlighted in the consultation paper, we would strongly suggest using post-trade taxonomy for best execution purposes – i.e. sticking with an overview of price per trade and volume information post-event on a quarterly basis. The current approach goes well beyond the existing post-trade taxonomy and there is a risk that market participants will not be able to make sense of the wealth of data that is being provided. In general, we feel that the amount of information requested requires analysis that many of our clients can perform (and is better performed) themselves. For example, average spreads requested in Article 4(2) RTS 6 could be calculated from pre-trade data. They are also much better placed to compare instruments across the market (such as average and snapshot bid offer spreads on a per instrument basis) whereas venues would only be able to measure the variations in types of instrument listed and so would have limited value.

We have particular concern around the frequency of updates that are proposed to be required on a rolling basis (Article 3(4) RTS 6), especially four times a day for execution details is too much. Some instruments may not have enough relevant trades to warrant this volume of updates.

Regarding publication of information, we would note that the published data should be under user license for view-only purposes, even if it is mandated to be free. Provision 12 RTS 6 refers to the information being publically available but we would request that it is still owned by the publishing venue.

Finally, we would note that in line with Recital (27), it will be necessary for ESMA to state how MIFIR provisions in relation to the trading obligation – and thereto related pre- and post-trade transparency requirements – will be applied in practice. Appropriate treatment of post-trade risk reduction activities (as set out in more detail in response to Question 89) is necessary not only in order to continue the important reduction of risk in existing derivatives portfolios, but also to maintain orderly markets and avoid misleading information in relation to price transparency and transaction reporting. In that context, it is important to clarify that best execution rules cannot apply to these services. In the absence of providing such clarification, the content of best execution reports should be specifically tailored to allow these services to continue operating.

<ESMA\_QUESTION\_CP\_MIFID\_30>

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

<ESMA\_QUESTION\_CP\_MIFID\_31>

Yes it seems sensible to split into ranges, however there is a risk of information overload. <ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

No. We would highlight that in some asset classes, it is incorrect to draw a direct correlation between received, executed, modified and cancelled orders and fill ratios to measure quality of execution on venues. In particular in the case of interest rate derivatives which are priced off underlying markets.

In interest rate swaps it is not uncommon for order book venues to have 10,000 – 100,000 orders per transaction in some outright instruments, and 100-1000 in some strategies. Order updates in interest rate swaps are driven by price movements in underlying futures and bond markets, and have nothing to do with trading frequency, or quality. All that can be measured by this metric is the number and proportion of outright to strategy instruments listed on the venue, and the volatility of the underlying futures and security markets and so the metric is meaningless in this context. The number of movements in the underling markets do not measure execution quality.

As highlighted in response to the question 31, the RTS as drafted lacks proportionality and it is not clear that it will help market participants in any way in fulfilling their best execution obligations. Indeed, as currently stated, it would confuse them as the required calibrations promote a superfluous and ultimately meaningless metric.

We would propose that the RTS should focus use the post-trade taxonomy and focus on the narrow measures to ascertain price, speed and cost:

* Cost of execution can be measured via brokerage charges, but given the nature of volume based discounts can be difficult to measure on a daily basis.
* Speed can vary enormously, however whilst important for some instruments (outrights) is less important for others (some butterfly strategies).
* The price achieved is obviously the single most important factor. However even here there is a trade-off where some participants are prepared to sacrifice price for speed and certainty of execution.

There is only one, albeit imperfect, metric that truly measures the likelihood of execution, and that is market share. In distributed markets like interest rate swaps with large variation between venues in market method and instruments listed, valid comparisons using the methods proposed can be made to some degree, however market share is the most important.

<ESMA\_QUESTION\_CP\_MIFID\_32>

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

<ESMA\_QUESTION\_CP\_MIFID\_33>

As highlighted in response to question 30, the metrics are too focused on trading models in the equities and futures space. In the diverse OTC derivative markets, it is not possible to empirically measure market cost and impact in the same way as there is no contained/controlled environment to measure. The suggested approach will therefore only work for exchanges listing securities and futures, and will only truly be effective when the exchange in question operates a market monopoly.

Take the example of an interest rate derivative product: Realised spread and open/close are meaningless when addressing quality in distributed OTC derivative markets like Interest Rate Swaps. A venue could have the best market bid for an instrument at time of trade, but the worst market spread across a range of venues five minutes later. If a venue has a bid but no offers, it does not necessarily reduce the quality of trade. If five minutes after a trade there is no bid and offer on the venue, this is unlikely to be the result of the previous trade. It’s more likely to be due to volatility in an underlying futures market, or the release of economic figures. The metric suggested are thus not meaningful in the context of (OTC) derivative markets – even if traded on an electronic venue.

<ESMA\_QUESTION\_CP\_MIFID\_33>

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

<ESMA\_QUESTION\_CP\_MIFID\_34>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_34>

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

<ESMA\_QUESTION\_CP\_MIFID\_35>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_35>

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

<ESMA\_QUESTION\_CP\_MIFID\_36>

No, due to the reasons set out above in response to question 31 and 33, we believe the proposed approach is impractical in diverse, fragmented and heterogeneous markets like OTC derivative markets – eg interest rate derivative market. The approach assumes each venue behaves like an isolated equities or futures exchange and is open to simple empirical investigation which is not the case as we have shown.

<ESMA\_QUESTION\_CP\_MIFID\_36>

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

<ESMA\_QUESTION\_CP\_MIFID\_37>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_37>

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

<ESMA\_QUESTION\_CP\_MIFID\_38>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_38>

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

<ESMA\_QUESTION\_CP\_MIFID\_39>

Yes, we agree with the list of negotiated transactions as set out.

<ESMA\_QUESTION\_CP\_MIFID\_39>

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

<ESMA\_QUESTION\_CP\_MIFID\_40>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_41>

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

<ESMA\_QUESTION\_CP\_MIFID\_42>

No. The calibration as it stands does not sufficiently address the diverse range of ETF transactions and requiring full pre-trade transparency below these thresholds risks damaging liquidity in these markets. It is difficult to comment on the methodology used by ESMA, in the absence of a more detailed description in the consultation paper. However, with respect to the different steps outlined (i.e. testing for capturing 10%/20%/30% of liquidity by turnover), we would suggest the following:

- We propose to differentiate the pre-trade transparency waivers from the post-trade transparency waiver given the greater risk to participants if they have to make their bids and offers pre-trade transparent.

- the thresholds should be set at a defined percentile based on transaction count not on the basis of overall turnover. In the latter case, few large trades can skew the calibration and capture a greater share of the market than may have been intended.

<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_44>

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

<ESMA\_QUESTION\_CP\_MIFID\_45>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_46>

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

<ESMA\_QUESTION\_CP\_MIFID\_47>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_47>

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

<ESMA\_QUESTION\_CP\_MIFID\_48>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_48>

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

<ESMA\_QUESTION\_CP\_MIFID\_49>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_49>

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

<ESMA\_QUESTION\_CP\_MIFID\_50>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_51>

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

<ESMA\_QUESTION\_CP\_MIFID\_52>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_52>

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

<ESMA\_QUESTION\_CP\_MIFID\_53>

Yes, we would note that SFTR already provides for a sufficient framework for reporting of securities financing transaction. To reduce the reporting burden, no further reporting should be required.

<ESMA\_QUESTION\_CP\_MIFID\_53>

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

<ESMA\_QUESTION\_CP\_MIFID\_54>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_54>

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

<ESMA\_QUESTION\_CP\_MIFID\_55>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_55>

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

<ESMA\_QUESTION\_CP\_MIFID\_56>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_56>

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

<ESMA\_QUESTION\_CP\_MIFID\_57>

No ICAP does not agree with the proposed definition of a liquid market.

The framework for determining a liquid market is critical and an inappropriate regime, which doesn’t account for the characteristics of the fixed income markets (e.g. dynamic liquidity and heterogeneity) and is inconsistent with Level 1 will result in significant unintended consequences.

No. ICAP would like to highlight that whilst the primary objective of MiFID II is to increase transparency in the markets, the various calibrations have been introduced into the legislation to safeguard liquidity and the functioning of the markets. The purpose of the liquidity calibration is to ensure that illiquid markets: (i) are not subject to the pre trade transparency regime and (ii) are subject to deferred post trade transparency. If illiquid markets are treated as liquid under the transparency regimes, market makers will be discouraged from committing capital to facilitate trades, impacting liquidity and spreads.

Ultimately, this would adversely impact end-investors (pension funds and insurance policy holders) and issuers: (i) it would be more difficult for investors to manage their portfolios since liquidity would decrease and spreads would widen; and (ii) it would be more difficult for issuers (such as corporates and governments) to raise financing through debt. .

With regards to the actual calibration, we are concerned that by ESMA’s own metric, whilst the overwhelming majority of instrument classified as illiquid are correctly classified, as demonstrated in column 8 of Table 5 (page 104), 42% to 74% of instruments in the liquid category are incorrectly classified based on ESMA’s own liquidity test - this means that the majority of instruments classified as liquid are in fact illiquid.

The outcome of a wrong calibration could have serious effects on the trading behaviour in fixed income markets. The corporate bond calibration is so broad and erroneous that it may lead to a complete freeze in a market that is already squeezed. This appears completely contradictory to the ambitions of the European Commission in its recent communication on capital markets union to further corporate bond issuance in the European Union.

Further, it seems arbitrary to take issuance size alone as an indicator for liquidity in European sovereigns or corporate bonds. It could drive more regular, small-size issuance which would be contradictory to the aim of policy makers seeking greater standardisation in those markets. In our view, using bid-offer spreads, rating, maturity, and trading frequency would offer a much more accurate picture of liquidity for fixed income instruments.

Lastly, we would like to refer to our introduction to this consultation paper which has highlighted the need to reflect the dynamic nature of liquidity by re-calibrating what has been determined as liquid / illiquid on a regular basis.

<ESMA\_QUESTION\_CP\_MIFID\_57>

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

<ESMA\_QUESTION\_CP\_MIFID\_58>

No, as highlighted above, ESMA’s results show that the proposed COFIA approach produces false positives of approximately 40% to 74% (i.e. illiquid instruments incorrectly classified as liquid). The fixed income markets are highly heterogeneous and there is no common thread of features that determines the liquidity of an instrument. Liquidity is driven by complex fundamental factors and not the structures of the instruments. We recommend that liquidity can only be measured by parameters that observe the behaviour of the individual instrument. <ESMA\_QUESTION\_CP\_MIFID\_58>

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

<ESMA\_QUESTION\_CP\_MIFID\_59>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_59>

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

<ESMA\_QUESTION\_CP\_MIFID\_60>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

No. ICAP would like to highlight that whilst the primary objective of MiFID II is to increase transparency in the markets, the various calibrations have been introduced into the legislation to safeguard liquidity and the functioning of the markets. The purpose of the liquidity calibration is to ensure that illiquid markets: (i) are not subject to the pre trade transparency regime and (ii) are subject to deferred post trade transparency. If illiquid markets are treated as liquid under the transparency regimes, market makers will be discouraged from committing capital to facilitate trades, impacting liquidity and spreads.

The calibrations as they stand do not appear to sufficiently distinguish between liquid and illiquid instruments, especially in the area of swaptions where no differentiation by tenor or underlying is proposed beyond currency.

Whilst we are not able to verify the underlying data that ESMA has used for its liquidity calibration exercise, we would note some peculiarities which diverge significantly from our own data. As the major OTC derivative trading venue for interest rate derivatives, these divergences are difficult to explain:

* Certain emerging market rates have been classified as liquid – particular KRW and ZAR, even though we do not observe sufficiently deep liquidity in these markets.
* Across the G4 currencies, we see large variations in liquidity based on the tenor of the swap. Looking at the calibration, ESMA suggests that all tenors from 3 months out to 30 years should be considered liquid.

One reason, we have identified that could be to cause of the large variations is the treatment of packaged transactions (such as butterflies or spreads). We believe that certain dates – especially those tenors falling outside the traded tenor of 2,3,5,10 years – would display much lower liquidity if ESMA were to only consider outright trading in those tenors. This has been recognised in the US, where it is only the benchmark tenors which have been declared subject to mandatory trading.

From our own data, we observe the following:

€ denominated swaps:

* 49.7 % of electronic trades were strategies
* At least 59.3%  of voice transacted trades were strategies. The real voice number will be higher as some trades that are booked as outrights are in fact strategies  (in reality probably over 65% for voice)

£ denominated swaps:

* 51.4 % of electronic trades were strategies
* At least 60.4% of voice transacted trades were strategies. The real voice number will be higher as some trades that are booked as outrights are in fact strategies  (in reality probably over 65% for voice)

With regards to the calibrations, package trades are often reported as a single transaction, again resulting in a skewed picture of ‘real’ market size. Looking at size thresholds proposed by ESMA, the LiS for the Euro-denominated swap market appears to be around double the size of what we are observing – a clear indication that the calibration failed to take account of package transactions. In contrast, AUD swaps that do tend to trade as outrights have been calibrated more or less accurately.

We would therefore also support a post-trade regime which identifies package transactions and enables a more accurate liquidity and threshold calibration.

Regarding the treatment of packages for the purposes of the pre-trade transparency requirements, we would support the ISDA proposal which suggest the following solution:

1. If each component of a package transaction is liquid:
   1. the package transaction should be considered liquid; and
   2. if any one component is above the relevant threshold (LIS or SSTI) then the package transaction is above the threshold.
2. If the package transaction contains liquid and illiquid components:
   1. the package transaction should be considered illiquid; and
   2. if any one component is above the relevant threshold (LIS or SSTI) then the package transaction is above the threshold.
3. For the purposes of MiFIR Articles 8.1, 10.1, 18.1 and 18.2, all components of a package have to be tradeable on a single venue in order that the package be considered "traded on a venue"

If the package transaction comprises 10 or more component legs, the package transaction should be considered illiquid.

Lastly, we would like to refer to our introduction to this consultation paper which has highlighted the need to reflect the dynamic nature of liquidity by re-calibrating what has been determined as liquid / illiquid on a regular basis.

<ESMA\_QUESTION\_CP\_MIFID\_61>

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

<ESMA\_QUESTION\_CP\_MIFID\_62>

No. The calibrations as they stand do not appear to sufficiently distinguish between liquid and illiquid instruments, especially in the area of swaptions where no differentiation by tenor or underlying is proposed beyond currency.

<ESMA\_QUESTION\_CP\_MIFID\_62>

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

<ESMA\_QUESTION\_CP\_MIFID\_63>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_64>

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

<ESMA\_QUESTION\_CP\_MIFID\_65>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_65>

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

<ESMA\_QUESTION\_CP\_MIFID\_66>

No comment<ESMA\_QUESTION\_CP\_MIFID\_66>

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

<ESMA\_QUESTION\_CP\_MIFID\_67>

No, without reviewing the data used, it is difficult to comment on the shortcomings but the classes identified as liquid do not correspond to what the market would generally consider as liquid.

The commodity calibration seems to have been based on a very narrow set of data which is not reflective of commodity markets today.

For example – only one oil derivative is listed (denominated in RON). The most liquid oil derivatives are denominated in USD but they are missing from the list. Equally, not a single coal contract is referred to in the calibration exercise.

From our perspective, the commodities calibration will have to be reviewed on the basis of a stable data set which, in all likelihood, will only be available once MiFID II has been implemented, and post-trade reports have been received.

<ESMA\_QUESTION\_CP\_MIFID\_67>

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

<ESMA\_QUESTION\_CP\_MIFID\_68>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_68>

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

<ESMA\_QUESTION\_CP\_MIFID\_69>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_69>

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

<ESMA\_QUESTION\_CP\_MIFID\_70>

Yes, we broadly agree with the definitions. We would like to clarify that the voice definition needs to be interpreted widely to encompass IM and Bloomberg chat as an accepted medium for concluding a ‘voice transaction’.

Finally, we would note that in line with Recital (27), it will be necessary for ESMA to state how MIFIR provisions in relation to the trading obligation – and thereto related pre- and post-trade transparency requirements – will be applied in practice. Appropriate treatment of post-trade risk reduction activities (as set out in more detail in response to Question 89) is necessary not only in order to continue the important reduction of risk in existing derivatives portfolios, but also to maintain orderly markets and avoid misleading information in relation to price transparency and transaction reporting. In that context, it is important to clarify that the content of pre-trade transparency rules cannot apply to these services. In the absence of providing such clarification, the content of pre-trade transparency and permitted execution models should be specifically tailored to allow these services to continue operating.

<ESMA\_QUESTION\_CP\_MIFID\_70>

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

<ESMA\_QUESTION\_CP\_MIFID\_71>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_71>

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

<ESMA\_QUESTION\_CP\_MIFID\_72>

Yes, we agree that the market operator of the trading venue shall use a clear methodology to calculate the indicative price that is close to the price of the trading interest and disclose details of the methodology used. However, the type of methodology should not be prescribed as different asset classes will require a greater or lesser degree of professional judgement in deriving the indicative price – especially for less liquid instruments where bids/offers may not reflect trading (if it occurs).<ESMA\_QUESTION\_CP\_MIFID\_72>

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

<ESMA\_QUESTION\_CP\_MIFID\_73>

No. This is not relevant and cannot be used for effective monitoring and supervision of the market. We would query what the relevance is and what ESMA/the NCA will use this data for.<ESMA\_QUESTION\_CP\_MIFID\_73>

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

<ESMA\_QUESTION\_CP\_MIFID\_74>

Yes, we broadly agree with the proposed flags – although it should be acknowledged that it will require a large IT build for both OTFs and MTFs. We also agree that the LiS flags should be applied post trade and suggest a flag to identify packaged transactions.

However, we would query ‘H’ (the Algo trade flag). With the wider definition of ‘Algos’ raised by the electronic venues, it will be difficult to identify at any given point in time who qualifies as an algo and who doesn’t. Unless we receive clarification on the definition of an algorithm, beyond the very broad definition in the Level 1 text, this will be difficult to implement. It could also lead to a misrepresentation of the amount of algorithmic trading on a venue. For example, if we are required to label anyone streaming a price with H, it would imply, rather misleadingly, that a large amount of liquidity on a certain platform is Algo trading.

We would also note that not all instruments have an ISIN or AII code. ESMA should clarify what flag should be used in the absence of such instrument identifiers. <ESMA\_QUESTION\_CP\_MIFID\_74>

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

<ESMA\_QUESTION\_CP\_MIFID\_75>

1. No, the justification for 15mins is that voice systems will not physically be able to enter these and have the trades affirmed in this time – please see the responses on clearing times that also have the same issue. This would suggest that in 3 years we expect all voice systems to have moved into electronic with no manual intervention, which is not something that can be predicted within a certain time limit and as such the justification for 15 minutes stands as strongly now as it will in 3 years.
2. No, in order to ensure the affirmation process allows a ‘last look’ to reduce the number of errors and market disruption caused by these errors, a voice system will need time to enter the trade, send the affirmation and for the trade to be affirmed by the participants. This does not seem sufficient time to ensure these steps occur and we would suggest a further widening of the time window to 30mins post-trade.
3. No, as highlighted in point (1) – given there is no suggestion that the regulation is intent on eradicating the voice trading element, the need to be physically able to enter the trade details and affirm trades within the time period will remain valid.

<ESMA\_QUESTION\_CP\_MIFID\_75>

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

<ESMA\_QUESTION\_CP\_MIFID\_76>

Yes, we agree with the exemptions from post-trade reporting requirements as these transactions are already subject to reporting under different pieces of legislation.

<ESMA\_QUESTION\_CP\_MIFID\_76>

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

<ESMA\_QUESTION\_CP\_MIFID\_77>

No, ICAP does not agree. We would query the approach taken when setting the LIS and SSTI data for calibrating when the pre-trade requirements kick in. In our view, the use of existing transaction reporting and/or trade data will provide a skewed view of the market and if we are to continue to use the COFIA approach when calibrating these levels this should be addressed.

In particular, existing trade data will include packaged transactions/strategies, whereby one leg of the package would rarely trade as a stand-alone instrument, however as part of package will frequently trade. These legs will not be identified in trade reporting data and as such will give a false view of the liquidity of that instrument.

In addition, the aim of this exercise was to ensure multi-to-multi transactions are conducted on a venue, however existing trade data will include intercompany, treasury hedging and bilateral transactions, again increasing the view of liquidity on certain instruments and skewing the average size of transactions.

With regards to the calibration as described by ESMA, we are unclear why below 100k trades have been excluded from the exercise. Their exclusion clearly results in on-average greater thresholds.

We are also concerned about the use of a 70% volume threshold. This could easily be skewed by very few, very large trades, and we would thus suggest to only use the 90th percentile of the number of transactions as a more natural reading of above normal market size.

Lastly, we would highlighted that the risk for market makers clearly differ and are of greater relevance pre-trade than post-trade. As such, there should be clear differentiation in the LiS thresholds pre- and post-trade.

We thus propose that the calibration looks at the 80th percentile for the pre-trade LiS calibration and remains at the 90th percentile for post-trade calibrations. In light of the need to take into account the use of package transactions which skew the calibration of the thresholds, we also propose to apply a haircut depending on the average use of packages in a given instrument.

On the individual thresholds, we would note that they are currently significantly divergent from current market size, especially in the area of corporate bonds. As it stands, the calibration could have a devastating effect on market liquidity unless a revised liquidity calibration is presented.

In the absence of a revised liquidity determination, we would propose AFME’s suggested approach of a sliding scale approach for the thresholds depending on the margin of error that remains such that a 40-50% error results in the use of a 70th percentile calibration of LiS, 50-60% error at 60th percentile and >=60% error at 50th percentile.

Finally, we would support a lower SSTI ratio in relation to the LiS threshold.

<ESMA\_QUESTION\_CP\_MIFID\_77>

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

<ESMA\_QUESTION\_CP\_MIFID\_78>

We would query the approach taken when setting the LIS and SSTI data for calibrating when the pre-trade requirements kick in. In our view, the use of existing transaction reporting and/or trade data will provide a skewed view of the market.

In particular, existing trade data will include packaged transactions/strategies, whereby one leg of the package would rarely trade as a stand-alone instrument, however as part of package will frequently trade. These legs will not be identified in trade reporting data and as such will give a false view of the liquidity and size of that instrument when traded outright.

In addition, the aim of this exercise was to ensure multi-to-multi transactions are conducted on a venue, however existing trade data will include intercompany, treasury hedging and bilateral transactions, again increasing the view of liquidity on certain instruments and skewing the average size of transactions.

We are also concerned about the use of a 70% volume threshold. This could easily be skewed by very few, very large trades, and we would thus suggest to only use the 90th percentile of transactions as a more natural reading of above normal market size.

Lastly, we would highlighted that the risk for market makers clearly differ and are of greater relevance pre-trade than post-trade. As such, there should be clear differentiation in the LiS thresholds pre- and post-trade.

We thus propose that the calibration looks at the 80th percentile for the pre-trade LiS calibration and remains at the 90th percentile for post-trade calibrations. In light of the need to take into account the use of package transactions which skew the calibration of the thresholds, we also propose to apply a haircut depending on the average use of packages in a given instrument.

From our own data, we observe the following:

€ denominated swaps:

* 49.7 % of electronic trades were strategies
* At least 59.3%  of voice transacted trades were strategies. The real voice number will be higher as some trades that are booked as outrights are in fact strategies  (in reality probably over 65% for voice)

£ denominated swaps:

* 51.4 % of electronic trades were strategies
* At least 60.4% of voice transacted trades were strategies. The real voice number will be higher as some trades that are booked as outrights are in fact strategies  (in reality probably over 65% for voice)

We thus believe that the calibration of ESMA is significantly higher than what we observe in the market. We thus propose an overall haircut of the LiS and the SSTI by 30%. In comparison, the AUD swaps, which trade outright, are calibrated correctly.

On the threshold for interest rate futures and options, we note that there must have been an error in the calculation as the options’ thresholds are 1000x greater than the futures thresholds. These should obviously be brought in line.

We would also like to highlight discrepancies we have observed between the standard market size in a wholesale environment (such as the one that we provide our services to) and the thresholds proposed by ESMA. Whilst the majority of the thresholds proposed are realistic, especially once discounted to take account of packaged transactions, some product thresholds appear unrealistically high. This is particularly relevant for inflation swaps, swaptions (likely due to the lack of differentiation between sub-categories), € denominated OIS, and float-to-float GBP swaps. We would be happy to discuss and provide more information if required.

Finally, we would support a lower SSTI ratio in relation to the LiS threshold.

<ESMA\_QUESTION\_CP\_MIFID\_78>

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

<ESMA\_QUESTION\_CP\_MIFID\_79>

As highlighted in response to question 67, we do not agree with the classification of commodity derivatives and are missing some crucial products. The calibration is thus too random to allow a serious evaluation of thresholds.

<ESMA\_QUESTION\_CP\_MIFID\_79>

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

<ESMA\_QUESTION\_CP\_MIFID\_80>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_80>

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

<ESMA\_QUESTION\_CP\_MIFID\_81>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_81>

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

<ESMA\_QUESTION\_CP\_MIFID\_82>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_82>

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

<ESMA\_QUESTION\_CP\_MIFID\_83>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_83>

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

<ESMA\_QUESTION\_CP\_MIFID\_84>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_84>

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

<ESMA\_QUESTION\_CP\_MIFID\_85>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_85>

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

<ESMA\_QUESTION\_CP\_MIFID\_86>

No, we do not agree that the volume cap is being calculated in Euros only. This would have as a consequence that the volume cap may be breached purely because of currency swings. The volume cap should be based on an average exchange rate so as to avoid frequent re-calibrations.

<ESMA\_QUESTION\_CP\_MIFID\_86>

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

<ESMA\_QUESTION\_CP\_MIFID\_87>

No, it is not clear to what extent this data differs from information already reported via transaction reports and/or post-trade reporting. To avoid duplication, only data that the NCAs cannot obtain from other data sources should be required.

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

We would propose that the determination should follow the liquidity determination provided for in RTS 9. Any product subject to the clearing obligation, and for which there is a liquid market according to RTS 9, should be traded on venue.

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

MIFIR explicitly recognises that: “The obligation to conclude transactions in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation on a regulated market, MTF, OTF or third country trading venue should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios including existing OTC derivatives portfolios in accordance with Regulation (EU) No 648/2012 without changing the market risk of the portfolios. In addition, while it is appropriate to make specific provision for portfolio compression, this Regulation is not intended to prevent the use of other post-trade risk reduction services.” (MIFIR, Recital 27)

In order to give effect to the intent of MIFIR in implementing the trading obligation, it will be necessary for ESMA clearly to state how this MIFIR provision will be applied in practice. Appropriate treatment of post-trade risk reduction activities is necessary not only in order to continue the important reduction of risk in existing derivatives portfolios, but also specific consideration is needed to maintain orderly markets and avoid misleading information in relation to price transparency and transaction reporting.

ESMA thus needs to ensure a horizontally consistent application to post-trade risk reduction services. Such text will need to be sufficiently tightly defined to ensure a clear differentiation of trading transactions (subject to the trading obligation) and non-trading post-trade risk reduction services. Below provides a proposed framework to inform ESMA’s approach to the trading obligation RTS:

“The trading obligation shall not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios.

Components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios shall mean only components of a compound transaction where:

• the transaction is designed to be overall market risk neutral for each participant;

• the participants of the transaction do not submit bids and offers to enter into a specific position;

• the transaction is cycle-based and multilateral (excluding the service provider), and must be accepted in full by all participants or it will not be effected;

• the transaction is designed to reduce secondary risks emerging from existing derivatives transactions, such as counterparty credit risk, operational risk and/or basis risk.

ESMA will need to include such an approach in its earliest deliberations on the implementation of the trading obligation – in order not to disrupt ongoing work to reduce post-trade risks in derivatives portfolios, and as such support the G20’s systemic risk reduction objectives.

<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_92>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_93>

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

<ESMA\_QUESTION\_CP\_MIFID\_94>

No, but we would note that the RTS needs to clarify that re-testing of algorithms should only be required where the venue has been informed of significant changes to the way the algorithm functions. A mere adjustment to allow for better pricing should not require wholesale testing of the algorithm. We would also highlight the practical challenge in implementing such testing environment in OTC derivative markets. The Level 1 definition of algorithmic trading covers all streaming swap market participants, because electronic order price levels on derivatives are updated automatically with reference to numerous underlying markets. It is therefore not clear how a venue could, in isolation, reproduce or test live environment conditions.

<ESMA\_QUESTION\_CP\_MIFID\_94>

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

<ESMA\_QUESTION\_CP\_MIFID\_95>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_96>

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

<ESMA\_QUESTION\_CP\_MIFID\_97>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_97>

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

<ESMA\_QUESTION\_CP\_MIFID\_98>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_98>

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

<ESMA\_QUESTION\_CP\_MIFID\_99>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_99>

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

<ESMA\_QUESTION\_CP\_MIFID\_100>

As it stands, the requirements for venue operators are extremely onerous, from a cost perspective alone and will be difficult/impractical to implement in practise. Whilst exchanges, often operating market monopolies, can pass these costs onto their members, this is not an option for OTC derivative markets which are not yet electronically mature, and where there is significant competition amongst multiple liquidity pools.

The proposal therefore discriminates against these kinds of markets by imposing high costs and therefore significant barriers to entry. We would propose allowing for NCA to exercise their discretion in determining how to apply these requirements on venues operating in the OTC space.<ESMA\_QUESTION\_CP\_MIFID\_100>

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

<ESMA\_QUESTION\_CP\_MIFID\_101>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_101>

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

<ESMA\_QUESTION\_CP\_MIFID\_102>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_102>

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

<ESMA\_QUESTION\_CP\_MIFID\_103>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_103>

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

<ESMA\_QUESTION\_CP\_MIFID\_104>

No. The RTS is based on the premise that there is a distinction between market making, and market making algorithmically, and that the latter requires market maker agreements. It is rarely possible to manage an electronic order on OTC derivatives such as interest rate swaps without using algorithmic techniques to update order prices automatically. This is because OTC derivatives are priced off underlying markets like futures and debt securities, they trade infrequently, and there are a large number of tradable instruments. Therefore, the act of seeking to buy or sell could easily be misconstrued as market making.

The proposal as it stand makes no attempt to discriminate between different markets. We would propose that different calibrations are used for different market segments. In the absence of taking account of market differences, this could have the perverse consequence of discouraging electronic market participation and therefore transparency.

.<ESMA\_QUESTION\_CP\_MIFID\_104>

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

<ESMA\_QUESTION\_CP\_MIFID\_105>

ICAP strongly disagrees with this requirement. We would like to illustrate the unintended consequence of the current proposal with an example of the government bond market. ICAP currently operates in a multi-platform environment for government bonds which is recognised by the Austrian, Belgium, French, Irish, Netherlands and Portuguese Treasuries. Primary dealers in Government debt are able to use our platform as an alternative to other platforms to quote two way prices in Government bonds issued by the different European Treasuries. This gives them choice and allows for much greater competition in the marketplace. Typically these banks select one primary platform to quote on and then use other platforms, such as ours to quote prices at their discretion on an ad hoc basis. To now insist on these banks to sign a market making agreement should they quote one bond for 30% of the time is anti-competitive and could well lead to them deciding to concentrate all their liquidity on the one primary platform to avoid them having to sign a second market making agreement (as they would already have one in place with the primary platform).

This would significantly impact liquidity in the market and on any of the platform providers who are not the incumbent, preferred quoting venue at the cost of competitive pricing pressure, innovation, diversity, market resilience and ultimately liquidity.

Separately, it is not appropriate to determine whether a firm is pursuing a market maker activity based only on one single day’s trading. Averages for a broader period need to be considered.  It is entirely feasible that a firm holding a position they are trying to liquidate provides quotes for more than 30% of a single trading day in at least that instrument; this alone should not then trigger a deeper, longer commercial obligation. ICAP believes that in this respect market making obligations should be assessed on a monthly basis.

As noted in response to Q105, we also firmly believe that different markets require different solutions. Taking the example of FX markets, these markets trade globally whilst volume ~~is~~ may be concentrated in a specific time zone. It is important to ensure that there is flexibility to have a market making program that applies to a specific part of the 24 hour trading day even if, in total, the 30% threshold has not been reached.

Conversely, in illiquid markets, or markets with a low trade frequency which by definition have algorithmic market makers, it is standard practice for a participant with a specific hedging interest to make a two-way quote to the market in order to avoid moving the market adversely against their hedging interest.

By definition, these markets require the posting of orders for longer periods, in order to have a reasonable chance of trading. If the market is an OTC derivative market, it is a basic requirement to automatically update the order's price in line with movements in the underlying markets during this period. Hence a participant with a basic hedging interest, showing a quote to the market for a reasonable timeframe, and updating the pricing of the interest in line with market movements would qualify as a market maker and be required to sign an agreement.

This clearly cannot have been the intention of the RTS and hopefully illustrates the equity and futures centric bias of the proposal. We would thus propose that the market making standard is adjusted to take account of different market practices and leaves discretion to the venue operator to determine when it is appropriate to enter into a market making agreement.<ESMA\_QUESTION\_CP\_MIFID\_105>

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

<ESMA\_QUESTION\_CP\_MIFID\_106>

No, please see question 105.

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_107>

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

<ESMA\_QUESTION\_CP\_MIFID\_108>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_108>

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

<ESMA\_QUESTION\_CP\_MIFID\_109>

No, the technical standard should be more specific as to the usefulness of OTR in certain markets. In interest rate swaps, for example, it is not uncommon for order book venues to have 10,000 – 100,000 orders per transaction in some outright instruments, and 100-1000 in some strategies. It is thus doubtful whether there is any value in a trading venues setting maximum limits on OTR. <ESMA\_QUESTION\_CP\_MIFID\_109>

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

<ESMA\_QUESTION\_CP\_MIFID\_110>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_110>

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

<ESMA\_QUESTION\_CP\_MIFID\_111>

No. In the context of the RTS, it is not clear whether regular re-pricing should be viewed as entering an entirely new order and thus count towards the OTR. Equally, it is not clear whether implied orders should be counted in this context.

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_112>

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

<ESMA\_QUESTION\_CP\_MIFID\_113>

No, the technical standard should be more specific as to the usefulness of the OTR in certain markets. In interest rate swaps, for example, it is not uncommon for order book venues to have 10,000 – 100,000 orders per transaction in some outright instruments, and 100-1000 in some strategies. It is thus doubtful whether there is any value in a trading venues setting arbitrary maximum limits on OTR on a regular basis.<ESMA\_QUESTION\_CP\_MIFID\_113>

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

<ESMA\_QUESTION\_CP\_MIFID\_114>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_114>

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

<ESMA\_QUESTION\_CP\_MIFID\_115>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_115>

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

<ESMA\_QUESTION\_CP\_MIFID\_116>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_116>

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

<ESMA\_QUESTION\_CP\_MIFID\_117>

ICAP agrees that a venue operator should make fee schedules available on their website. However access to these documents should be limited to participants and interested participants and a venue operator should be able to restrict access where appropriate. The information contained within these materials is commercially sensitive and therefore a degree of control is required regarding their availability.<ESMA\_QUESTION\_CP\_MIFID\_117>

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

<ESMA\_QUESTION\_CP\_MIFID\_118>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_120>

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

<ESMA\_QUESTION\_CP\_MIFID\_121>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_121>

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

<ESMA\_QUESTION\_CP\_MIFID\_122>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_122>

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

<ESMA\_QUESTION\_CP\_MIFID\_123>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_123>

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

<ESMA\_QUESTION\_CP\_MIFID\_124>

ICAP believes the tick size regime should differentiate between large orders and those of average market size. Where large block transactions in equities are concerned, a relatively small tick size could translate into large value differentials. It is therefore important to allow for a more granular approach that differentiates between wholesale and retail size orders. As an example, it is not uncommon in OTC equity markets to deal in tick sizes of 1/8 or 1/16 of a basis point.

<ESMA\_QUESTION\_CP\_MIFID\_124>

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

<ESMA\_QUESTION\_CP\_MIFID\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_125>

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

<ESMA\_QUESTION\_CP\_MIFID\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_126>

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

<ESMA\_QUESTION\_CP\_MIFID\_127>

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<ESMA\_QUESTION\_CP\_MIFID\_127>

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

<ESMA\_QUESTION\_CP\_MIFID\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_128>

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

<ESMA\_QUESTION\_CP\_MIFID\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_129>

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

<ESMA\_QUESTION\_CP\_MIFID\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_130>

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

<ESMA\_QUESTION\_CP\_MIFID\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

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<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_134>

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

<ESMA\_QUESTION\_CP\_MIFID\_135>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_135>

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

<ESMA\_QUESTION\_CP\_MIFID\_136>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_136>

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

<ESMA\_QUESTION\_CP\_MIFID\_137>

Whilst ICAP doesn’t currently operate an ARM, these rules seem extremely onerous and we fear they may prove a barrier to new entrants and active competition in these entity categories. In the RTS itself, we would like to clarify that the requirement to respond to any request for stored data should be limited to the data that the APA actually published. <ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

Whilst we agree with the concept of transparency of information and free display dissemination via APAs, as suggested in Level 1, we would highlight the need for the data originator to maintain data control and IP rights, and restrict onward usage.

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_140>

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

<ESMA\_QUESTION\_CP\_MIFID\_141>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_141>

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

<ESMA\_QUESTION\_CP\_MIFID\_142>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_142>

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

<ESMA\_QUESTION\_CP\_MIFID\_143>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_143>

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

<ESMA\_QUESTION\_CP\_MIFID\_144>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_144>

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

<ESMA\_QUESTION\_CP\_MIFID\_145>

No. We would highlight the free market operation of the market data industry. The market is driven by customer demand for high quality, verified data and there is no monopoly power to dissolve. Given the increase in technological cost to implement the proposed transparency regime and other data requirements, the potential disaggregation of data packages will only continue to add to the cost for end users.

The significant costs will be incurred by the requirements of Article 2 of the RTS, and specifically disaggregating by currency, country of issuance and auction/continuous trading. The time and resource taken to administer contracts and accounts; resource taken to disaggregate data delivery; and the responsibility to declare where there is not sufficient demand will only lead to higher costs for customers in a situation where there will be little resultant benefit.

<ESMA\_QUESTION\_CP\_MIFID\_145>

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

<ESMA\_QUESTION\_CP\_MIFID\_146>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_146>

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

<ESMA\_QUESTION\_CP\_MIFID\_147>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_147>

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

<ESMA\_QUESTION\_CP\_MIFID\_148>

No, we have some concerns around the reasons for denying access as stated in the RTS. In particular, we do not agree with ESMA that “incompatibility of IT systems such that the CCP cannot provide for connectivity” is a valid reason to deny access. IT compatibility/ connectivity issues should be rectifiable in the development phase. In addition, it seems that technical issues are already covered by the Level 1 text which explicitly states that “A CCP may require that the trading venue comply with the operational and technical requirements established by the CCP including the risk management requirements” which will include IT and rule compatibility concerns.

As alluded to above, it is also not clear what situations ESMA envisages when it refers to “incompatibility of trading venue and CCP rules that cannot be remedied”. Technical and risk issues are already covered by Level 1 (see above) whilst trade acceptance models are covered under “legal risks” (para 35 And Art 4(1)c).

We would thus propose the following revised article:

“Article 3

**Denial of access based on operational risk and complexity**

1. A CCP may deny an access request on grounds of operational risk and complexity arising from such access only when it cannot adopt arrangements to adequately manage those risks such that there would be significant undue risk remaining.

2. For the purposes of the previous paragraph, relevant types of risks are~~, among others~~:

~~(a) Incompatibility of CCP and trading venue IT systems such that the CCP cannot provide for connectivity between the systems;~~

(b) the CCP does not have, nor is it able to get in due time, the necessary human resources with the necessary knowledge, skills and experience to perform its functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already cleared by the CCP.

Article 4

**Denial of access based on other factors creating significant undue risks**

1. In addition to the circumstances identified in Articles 2 and 3 of this Regulation, a CCP may deny an access request, only when it cannot adopt arrangements to adequately manage any of the following risks arising from granting access such that there would be significant undue risk remaining:

(a) the CCP does not have, nor is it able to get in due time, the necessary authorisations consistent with meeting the relevant requirements set out in Title IV of Regulation (EU) No 648/2012 regarding the financial instruments in question;

(b) granting access would threaten the economic viability of the CCP or its ability to meet minimum capital requirements under Article 16 of Regulation (EU) No 648/2012;

(c) legal risks; ~~or~~

~~(d) there is an incompatibility of CCP and trading venue rules that the CCP cannot remedy”~~

<ESMA\_QUESTION\_CP\_MIFID\_148>

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

<ESMA\_QUESTION\_CP\_MIFID\_149>

Yes, we generally agree with the RTS.

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

No. A similar consideration is needed for venues. Trading venue would need to require adequate and appropriately skilled human resources for the provision of feeds to multiple CCPs. This is particularly relevant if the product category in the access request is new, i.e. the venue does not provide for trading in that product (but the CCP provides for clearing).<ESMA\_QUESTION\_CP\_MIFID\_150>

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

<ESMA\_QUESTION\_CP\_MIFID\_151>

Yes, we broadly agree with the RTS. However, we would like to clarify that in para 49, ESMA is referring to a trading venue/CCP's "regulatory" obligations rather than "legal" obligations which would be a very broad category that could include commercial obligations.

We thus propose the following re-draft of the Article:

Article 7

**Conditions under which access will threaten the smooth and orderly functioning of markets or adversely affect systemic risk**

Granting access will threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, apart from the situations identified in Regulation (EU) No 600/2014, where:

(a) one of the parties to the agreement is not meeting its regulatory ~~legal~~ obligations, or would be unlikely to meet its ~~legal~~ regulatory obligations as a consequence of granting access;

(b) granting access would create significant undue risks for the CCP or the trading venue in a way that would have a wider negative impact on the market; and

(c) there is no remedial action that would allow the relevant party to meet its legal obligations with reasonable effort prior to the access arrangement being put in place according to Article 35(3) and 36(3) of Regulation (EU) No 600/2014.

<ESMA\_QUESTION\_CP\_MIFID\_151>

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

<ESMA\_QUESTION\_CP\_MIFID\_152>

Yes, we agree.

<ESMA\_QUESTION\_CP\_MIFID\_152>

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

<ESMA\_QUESTION\_CP\_MIFID\_153>

Yes, we agree.

<ESMA\_QUESTION\_CP\_MIFID\_153>

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

<ESMA\_QUESTION\_CP\_MIFID\_154>

No- We understand that ESMA will require that all contracts cleared by a CCP within an EMIR categorisation for which is authorised will be deemed to be economically equivalent, and thus suitable for the same collateral requirements and netting.

But in practice, we think that CCPs will use the provisions in Art 12(2) thus enabling them to exclude such contracts from that netting process (when it considers that the legal or basis risk is not sufficiently mitigated) to narrow down the set of contracts that it nets. Risk Committees may be conflicted and the Article 49 procedure may take a while to conclude on the right approach to netting.

Our preference would be for ESMA to establish guidelines in the RTS to determine what netting processes apply for what type of economically equivalent contracts In the absence of a clear and unbiased approach, we would prefer if the RTS specifies that netting of contracts cannot be restricted until such time that there is a clear decision taken under the Article 49 procedure. .<ESMA\_QUESTION\_CP\_MIFID\_154>

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

<ESMA\_QUESTION\_CP\_MIFID\_155>

Yes we agree

<ESMA\_QUESTION\_CP\_MIFID\_155>

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

<ESMA\_QUESTION\_CP\_MIFID\_156>

Yes we agree

<ESMA\_QUESTION\_CP\_MIFID\_156>

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

<ESMA\_QUESTION\_CP\_MIFID\_157>

No, ICAP believes that the list of information that a CCP or trading venue can request should be finite to reduce the potential administration burden on the benchmark administrator.

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

Yes, ICAP agrees.

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

Whilst ICAP broadly agree, we would like to clarify that the 30 months grace period cited should be dated from when a benchmark first has a financial product based on it. <ESMA\_QUESTION\_CP\_MIFID\_159>

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_160>

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

<ESMA\_QUESTION\_CP\_MIFID\_161>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_161>

1. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA\_QUESTION\_CP\_MIFID\_162>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

No – each MTF/OTF will operate in different ways and run different markets, a very prescriptive list would result in duplication of information throughout. For example, a number of the CFTC SEF application exhibits, per the required list, are copies of other exhibits where the information is already provided making the application 1000+ pages. It should be up to the local NCA to deem what information they need/how prescriptive this list needs to be.

We would also like to highlight the following points:

* Given the commercial sensitivity of the application, it should be treated confidentially
* Under Art 2.1k, the venue shall provide a list of participants. It is not clear what ‘participants’ are being referred to here given that, at the point of application, the venue may not have any true participants.
* Art 7. 2 should specify the level of granularity for the tradable asset classes, otherwise the list could become unmanageable.

Another key point is timing of the application. We would request clarification when NCAs expect venues to apply / re-apply for authorisation – especially in light of proposed national implementation guidance in the course of 2016.

<ESMA\_QUESTION\_CP\_MIFID\_164>

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

<ESMA\_QUESTION\_CP\_MIFID\_165>

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<ESMA\_QUESTION\_CP\_MIFID\_165>

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

<ESMA\_QUESTION\_CP\_MIFID\_166>

No, please see response to Q164

<ESMA\_QUESTION\_CP\_MIFID\_166>

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

<ESMA\_QUESTION\_CP\_MIFID\_167>

<ESMA\_QUESTION\_CP\_MIFID\_167>

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

<ESMA\_QUESTION\_CP\_MIFID\_168>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_168>

1. Do you agree with ESMA’s approach to include non-EU activities with regard to the scope of the main business?

<ESMA\_QUESTION\_CP\_MIFID\_169>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_169>

1. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA\_QUESTION\_CP\_MIFID\_170>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_170>

1. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA\_QUESTION\_CP\_MIFID\_171>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_171>

1. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA\_QUESTION\_CP\_MIFID\_172>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_172>

1. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_173>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_174>

1. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA\_QUESTION\_CP\_MIFID\_175>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_175>

1. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_176>

No, ICAP does not agree with the proposal to use the gross notional of contracts. If a business has to use gross notional as the baseline indicator, as the underlying instruments’ price fluctuates the ratio will also change. We would propose to use ‘lots’ as the appropriate indicator for contracts.

<ESMA\_QUESTION\_CP\_MIFID\_176>

1. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA\_QUESTION\_CP\_MIFID\_177>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_177>

1. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA\_QUESTION\_CP\_MIFID\_178>

No, in our view it would be better if freight fell under the commodities section in C6 and C7, and possibly subcategorised further into oil.

If freight remains as an asset class of its own, as there are only around 60 players in wet freight, the market is not large enough for companies to trade without breeching the 0.5% threshold. Looking at actual trade data over the last two and a half years, we have calculated that a firm could not even trade the minimum trade size outlined by Dodd Frank (block future minimum clip size) without breaching the threshold. The approach as suggested could thus lead to the closing of the market (at least in the EU).

Our preference to ensure that the freight market can survive and continue to grow, is to reassign our classification with energy commodity products.

The Wet FFA Market is a place for owners, trading houses, majors and other financial institutions to hedge their exposure, but they cannot do that without someone taking the other side of the trade. As such people need to be able to speculate as no market is ever likely to be perfectly balanced.

<ESMA\_QUESTION\_CP\_MIFID\_178>

1. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_179>

In defining the threshold for ancillary activities, ESMA should take account of the profile of the market segment in question. In many more regional or specialised commodity products, where very few market participants exist with respect to a contract, trading volumes will naturally be limited. As an example, the relatively small size of certain contract markets (e.g. the freight derivatives market) may mean that a single position could trigger a firm to exceed their ancillary activities thresholds as outlined in response to question 178. <ESMA\_QUESTION\_CP\_MIFID\_179>

1. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA\_QUESTION\_CP\_MIFID\_180>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_180>

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

<ESMA\_QUESTION\_CP\_MIFID\_181>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_181>

1. Do you agree with ESMA’s conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_182>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_182>

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

<ESMA\_QUESTION\_CP\_MIFID\_183>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_183>

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

<ESMA\_QUESTION\_CP\_MIFID\_184>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_184>

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

<ESMA\_QUESTION\_CP\_MIFID\_185>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_185>

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

<ESMA\_QUESTION\_CP\_MIFID\_186>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_186>

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

<ESMA\_QUESTION\_CP\_MIFID\_187>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_187>

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

<ESMA\_QUESTION\_CP\_MIFID\_188>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

Position limits should take account of the liquidity profile but also the number of participants and the size of the market in question to ensure that the limits do not damage developing and existing liquidity in these contracts

In many more regional or specialised commodity products, where very few market participants exist with respect to a contract, liquidity will naturally be limited. Any consideration and/or methodology adopted for new contracts should therefore be extended to existing illiquid contracts.

As an example, the relatively small size of the freight derivatives market, may mean that a single position could trigger a firm to exceed their limits as outlined in response to question 178. <ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

The deliverable supply is better suited for calculating positions in the spot month. ICAP would propose to use open interest for longer dated contracts.

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_191>

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

<ESMA\_QUESTION\_CP\_MIFID\_192>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_192>

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

<ESMA\_QUESTION\_CP\_MIFID\_193>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_193>

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

<ESMA\_QUESTION\_CP\_MIFID\_194>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_194>

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

<ESMA\_QUESTION\_CP\_MIFID\_195>

ICAP does not agree that a specified period is a sufficient consideration in determining whether a contract is ‘new’. The liquidity of a given contract should be the determining feature when a contract starts trading. Not until a certain minimum level of liquidity is met, should a contract be treated as ‘new’.

<ESMA\_QUESTION\_CP\_MIFID\_195>

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

<ESMA\_QUESTION\_CP\_MIFID\_196>

As highlighted in response to Q195, ICAP believes that the ongoing liquidity of a contract is the appropriate measure.

<ESMA\_QUESTION\_CP\_MIFID\_196>

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

<ESMA\_QUESTION\_CP\_MIFID\_197>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_197>

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

<ESMA\_QUESTION\_CP\_MIFID\_198>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_198>

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

<ESMA\_QUESTION\_CP\_MIFID\_199>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_200>

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

<ESMA\_QUESTION\_CP\_MIFID\_201>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_201>

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

<ESMA\_QUESTION\_CP\_MIFID\_202>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_202>

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

<ESMA\_QUESTION\_CP\_MIFID\_203>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_205>

1. Do you agree with the proposed draft RTS regarding the definition of significant volume for the purpose of article 57(6)?

<ESMA\_QUESTION\_CP\_MIFID\_206>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_206>

1. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA\_QUESTION\_CP\_MIFID\_207>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_207>

1. Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?

<ESMA\_QUESTION\_CP\_MIFID\_208>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_208>

1. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA\_QUESTION\_CP\_MIFID\_209>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

We have concerns about the requirement for venues to report on positions held by market participants. In order to avoid issues of data protection and confidentiality, we would propose that participants / clients can report their positions themselves. This would also be in line with the US rules where, under form 40 of the CFTC rules, the end-client can directly send the relevant information to the CFTC without passing through the chain of intermediaries.

<ESMA\_QUESTION\_CP\_MIFID\_212>

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_213>

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

<ESMA\_QUESTION\_CP\_MIFID\_214>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_214>

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

<ESMA\_QUESTION\_CP\_MIFID\_215>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

We would expect that information pertaining to algo orders (i.e. algo id) will not be made available to us. We will only have access to the name of the executing person, not the investment decision maker if different. Similarly, as venue (reporting on behalf of non-MiFID firms) we only have access to the counterparty id, not their client’s information. Lastly, short selling is not a meaningful concept in the interest rate swap market.<ESMA\_QUESTION\_CP\_MIFID\_216>

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

<ESMA\_QUESTION\_CP\_MIFID\_217>

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<ESMA\_QUESTION\_CP\_MIFID\_217>

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

<ESMA\_QUESTION\_CP\_MIFID\_218>

The fields are too wide ranging. In the case where venues have to report for non-MiFID firms, requiring details such as date of birth, identification number, short selling information, will not be obtainable. In some cases, these will contravene local confidentiality and data protection rules, in other instances the clients will already have local reporting obligations and will thus be reluctant to agree to dual reporting to a foreign NCA.

In all likelihood, if we have to deliver reporting on such scale, it will lead for bifurcation of liquidity in those markets that are currently truly global in scope.

When proposing a similar regime in the US, it was determined that the CFTC’s reporting requirements were too burdensome and the regime was amended to include a trader ID within the firm but not an identification process for the natural person.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

No. In the scenario, where a venue has to report for third country participants, it will not be in possession of information regarding the trading capacity of the client. Whilst it can request such information, the venue is clearly not in a position to verify the information received.

<ESMA\_QUESTION\_CP\_MIFID\_219>

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

<ESMA\_QUESTION\_CP\_MIFID\_220>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_220>

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

<ESMA\_QUESTION\_CP\_MIFID\_221>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_221>

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

<ESMA\_QUESTION\_CP\_MIFID\_222>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_222>

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

<ESMA\_QUESTION\_CP\_MIFID\_223>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

We would like to highlight general concerns around the number of fields required for transaction reporting. Unless the principal to a transaction is responsible for the reporting, it will be unlikely that a third party would be able to get hold of the information on a voluntary basis. This is the key issue faced by trading venues which have to report for third country participants.

As highlighted above, especially fields in relation to the trader identification code type and the short selling indicator are unlikely to be available.

We would like to register our concerns around the identification of financial instruments. Whilst for bonds and equities, there are existing terminologies (ISINs), these are much less used in the OTC derivative markets. It is important to recognise that any transaction report can thus only make reference to internal instrument identifiers in the absence of an external reference point.

Finally, we would note that in line with Recital (27), it will be necessary for ESMA to state how MIFIR provisions in relation to the trading obligation – and thereto related pre- and post-trade transparency requirements – will be applied in practice. Appropriate treatment of post-trade risk reduction activities (as set out in more detail in response to Question 89) is necessary not only in order to continue the important reduction of risk in existing derivatives portfolios, but also to maintain orderly markets and avoid misleading information in relation to price transparency and transaction reporting. In that context, it is important to clarify that post-trade transparency and transaction reporting as envisaged by the current RTS cannot apply to these services. In the absence of providing such clarification, the content of post-trade and transaction reports should be specifically tailored to allow these services to continue operating.

<ESMA\_QUESTION\_CP\_MIFID\_225>

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

<ESMA\_QUESTION\_CP\_MIFID\_226>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

No. Due to the wide reaching definition of an Algo this will encompass those streaming prices to the screen and will show a misleading level of market making activity.

<ESMA\_QUESTION\_CP\_MIFID\_227>

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

<ESMA\_QUESTION\_CP\_MIFID\_228>

Yes, RTS 34 requires that electronic systems time stamp and put a unique ID on orders which is updated when events occur. We are not clear how this can work in a market with constant price streaming and market makers whose prices will move consistently in the order book and slightly change prices to remain in line with the market. Would every re-pricing event be classified as a new orders which will require to be time stamped and identified as such? It would be useful to clarify how this standard applies in such circumstances.

Similarly, we would like to clarify whether RTS 34 Art 5 Article d also covers OTFs. A defining feature of OTFs is the element of discretion and an OTF provider therefore won’t have a prescribed price/size protocol.

<ESMA\_QUESTION\_CP\_MIFID\_228>

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

<ESMA\_QUESTION\_CP\_MIFID\_229>

No. This requirement will increase the number of order records and ID’s by an unknown multiplier – and we would query why these would be kept when they are not orders received from participants.

<ESMA\_QUESTION\_CP\_MIFID\_229>

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

<ESMA\_QUESTION\_CP\_MIFID\_230>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_230>

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

<ESMA\_QUESTION\_CP\_MIFID\_231>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

No. We would highlight that, depending on the final outcome of what constitutes an ‘order’, the wealth of information to be collected and stored could be disproportionate and put a significant burden on venue operators. It would also create a significant barrier to entry especially in lower volume markets.

<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

No. We would like to highlight that the requirement for clock synchronisation, in addition to the time stamp requirement, is not warranted in the absence of running equity venues with HFT/Algo participation. Even where high frequency trading is occurring, on the basis of a cost/benefit assessment and the high implementation cost, the requirement should not drop below a synchronisation level of a millisecond. In this context, we would highlight the significant spend, time and resources for venues to adhere to this small margin of error; expecially in the absence of understanding the benefit for venue or participants in a non-HFT context.

The ESMA consultation clearly notes in its cost benefit analysis that the implementation of the clock synchronisation requirement “will result in a considerable cost implication for some TVs serving HFT firms, as may require an upgrade of the existing infrastructure of the live trading and position systems, potential reconfiguration of network topology, including dedicated hardware, specific enhancements and some alterations to the protocols, new routers and switches”. It thus seems that, from ESMA’s own cost benefit analysis, the concept of clock synchronisation should be limited to those venues servicing HFT firms only and not required for those that do not.

Lastly, we would note that a practical way to achieve clock synchronisation would be to restrict the requirement to venues rather than bringing participants into scope.

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

Please see above.

<ESMA\_QUESTION\_CP\_MIFID\_234>

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

<ESMA\_QUESTION\_CP\_MIFID\_235>

It is difficult to estimate the reporting burden in the absence of having a final CFI proposal or a defined list of characters that ESMA proposed for the purpose of the reference data.

The most difficult challenge is the identification of instruments and the level of detail required.

<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

Yes. We agree with a single reference file load on the premise that OTF and some MTF providers that deal in instruments without a defined list, shall only report those instrument files for which they receive orders/trades on that day. If the intention is to provide a cumulative list of instruments, the reportable reference data could soon become unmanageable.

<ESMA\_QUESTION\_CP\_MIFID\_236>

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

<ESMA\_QUESTION\_CP\_MIFID\_237>

Yes. We agree with the treatment specified for venues such as OTF and some MTF providers that deal in instruments without a defined list, and which shall only report those instrument files for which they receive orders/trades on that day. However, if the intention is to provide a cumulative list of instruments, the reportable reference data could soon become unmanageable<ESMA\_QUESTION\_CP\_MIFID\_237>

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

<ESMA\_QUESTION\_CP\_MIFID\_238>

With regards to the classification of instruments, we would like to highlight that not all instruments are currently coded and it is thus difficult (especially in OTC market) to come up with an instrument classification.

<ESMA\_QUESTION\_CP\_MIFID\_238>

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

ICAP believes it is the responsibility of the clearing members to ensure they and their clients have agreed limits at the clearing house. Any firms using a 3rd party clearer will need to have pre-defined limits set out in their agreement with the clearing member and any breach will require the member to call further margin or in rare circumstances cancel the trade. This process is already in place and works well, and it should remain the responsibility of the clearing member to support STP in this context. We would also note that in a competitive trading landscape, clearing limits must be provided centrally by each clearing member and not on a venue by venue basis.

In addition, we would like ESMA to clarify that any pre-trade credit checks performed in relation to non-mandated products (i.e. those that have not been made subject to the clearing and/or trading obligation) should be purely voluntary and not within scope of this legislation. It could harm the up-take of clearing/trading of these products if the associated cost for pre-trade credit checking would not otherwise apply to the participant.

In relation to the proposed time frame for credit checks, we would note that this can create an unfair advantage to orders provided electronically as any delay in publishing received orders will disrupt the market – especially by 60 seconds in a fast paced market.<ESMA\_QUESTION\_CP\_MIFID\_239>

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

<ESMA\_QUESTION\_CP\_MIFID\_240>

A timeframe of 10 seconds for submitting electronically executed transactions to the CCP does not take into consideration hybrid execution (where one side is transacted manually on the voice instruction of a customer). It therefore does not realistically allow for participant affirmation of hybrid executed trades.

If the 10sec rule is maintained for hybrid execution, it could lead to error trades flowing instantly to the CCP. This could have the perverse consequence of creating a higher error trade rate in these markets than voice markets where the proposed 10 minute timescale permits affirmation. <ESMA\_QUESTION\_CP\_MIFID\_240>

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

<ESMA\_QUESTION\_CP\_MIFID\_241>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_241>

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

<ESMA\_QUESTION\_CP\_MIFID\_242>

If the timeframe of 10 seconds is adopted for submitting orders to the CCP, and is combined with a 10 second timeframe for acceptance by the CCP, then potential error trades will clear within 20 seconds total from execution to clearing because there is not sufficient time for any form of trade affirmation/checking. Given the large average size of derivative transactions this may be problematic. As highlighted above, if the 10sec rule is maintained for hybrid execution, it could lead to error trades flowing instantly to the CCP. This could have the perverse consequence of creating a higher error trade rate in these markets than voice markets where the proposed 10 minute timescale permits affirmation.

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

MTF and OTFs have prescriptive rule books which currently set out procedures for failures. These requirements and rules should continue to be set by the venue. With regards to the process of rejection and information flow to the participant, we would highlight that it may not be clear if a trade is rejected by the CCP due to technical or other issues, meaning there will be uncertainty over the exact status of the trade at the trading venue. <ESMA\_QUESTION\_CP\_MIFID\_243>

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

<ESMA\_QUESTION\_CP\_MIFID\_244>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_244>

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

<ESMA\_QUESTION\_CP\_MIFID\_245>

No comment

<ESMA\_QUESTION\_CP\_MIFID\_245>

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