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

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

# General information about respondent

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

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

< ESMA\_COMMENT\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

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<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_15>

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

<ESMA\_QUESTION\_CP\_MIFID\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_17>

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

<ESMA\_QUESTION\_CP\_MIFID\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

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<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

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<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

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<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>

NVB: We disagree with ESMA’s view Systematic Internalisers (SIs), market makers and other liquidity providers should be considered execution venues for purposes of RTS 6 for the application of disclosing data or execution of orders. In light of this, we would strongly suggest that SI’s, market makers and other liquidity providers be required to adhere to different requirements than trading venues when it comes to disclosure of information in best execution and other reporting requirements. It is not practicable for a market maker, a liquidity provider or an SI to have the same requirement as a trading venue as it is also not suitable to apply execution quality reporting to market makers as if they were trading venues. An SI operates in a different manner to trading venues like RMs, MTFs and OTFs. Where an investment firm acts as an SI, it deals on its own account in executing its clients’ orders. There are fundamental differences in structure between SIs/Market Makers and trading venues.

We believe that there should be a distinction in terms of reporting requirements for best execution from SI’s, market makers and other liquidity providers compared to trading venues. This is particularly important to avoid the adverse effects of any SI flagging. We note that the requirement of the disclosure of an SI’s identity has been removed from the ESMA transparency proposals and feel that in the case of best execution reporting the same methodology should be applied.

We strongly believe that an SI’s identity should not be disclosed on reports. An SI performs a significant and valuable function for investors by providing liquidity in a specific instrument. The SI performs this function through the advancement of its own capital. Exposing the name of the SI in reports is likely to unveil to third parties the risk that the particular SI has taken in a particular instrument and consequently adversely affect the ability of the SI to manage and unwind that risk. Such information is commercially sensitive and should not be mandated to be exposed to the public: doing so will disincentivise SIs from performing their function in the market.

We further request ESMA to clarify whether or not the execution venues reporting requirements apply to venues which are trading exclusively with ECPs while the best execution requirement does not apply (article 30 (1) MiFID II).

We agree with ESMA on having a diverse application of execution data between asset classes, as per article 1 of RTS 6. We welcome that ESMA has acknowledged the differences between instruments in article 4 of RTS 7 when defining the level of aggregation of all executions in all instruments by asset class, but we question why the same was not provided in other instances (such as in article 3(3) of RTS 6) where disclosure by asset classes would be relevant so that it is possible to differentiate divergences in execution metrics by financial instruments.

ESMA proposes under article 3(4) in RTS 6 to report average levels as well as snapshots in a specific point in time (9.00, 1.00, 13.00 and 15.00) of execution orders for each financial instrument available to trade. We consider that having a duplicative operational requirement of producing average daily metrics in addition to daily hourly snapshots is ineffective particularly for non-equity instruments, which can be highly illiquid for some time and on other occasions become very liquid very rapidly.

We wish to reiterate that members consider that the aggregation level proposed on a daily basis is overly prescriptive.

<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>

NVB: The table as set out on page 95 of Annex B to the CP is overly prescriptive. It will be difficult and costly to implement this into the IT systems. We request ESMA to consider whether all this information would be of use to ESMA.

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

NVB: The NVB supports AFME’s answer in this respect.

<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>

NVB: We believe that ESMA should consider the different trading methods for considering whether best execution is achieved, such as the auction method and the continuous trading method. In relation to the auction method, we believe these data should be exempted. During the time the primary market is in auction, best execution is not possible. This should also apply for intraday auction on the back of an exceptional market situation.

In the Netherlands the Euronext Fund Service (EFS) exists. We understand that the Luxembourg fund trading model with transfer agents is very similar, so this position would apply there as well. The EFS is a primary market activity under an auction model (rather than continuous trading), encompassing creation and redemption of fund units in transactions between the investor and the fund itself directly; these are not transactions between one investor and another investor. It would make no sense to have the EFS under the pre- and post-trade transparency obligation, because the price of a fund is the intrinsic value of all of the investments in its portfolio combined plus or minus a small amount for market impact. So both in terms of price information (pre-) and valuation (post) it is useless.

The investment firms need to use the information of trading venues to determine whether they comply with the best execution obligation. Therefore, we would expect that the trading venues have to provide the required information to investment firms for free. We would strongly recommend ESMA to make such obligation explicit to the trading venues.

<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>

NVB: With regard to paragraph 22 on page 42, we would prefer ESMA to make explicit that the trading venues have to provide the information as quickly as possible, this in order for the investment firms to comply with their obligations on publication.

<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>

NVB: We would like ESMA to consider other options than having the investment firms to pool all the information of all trading venues they operate on. To have to pool all the information to determine whether best execution has been met, requires an IT infrastructure that is very sophisticated but also with a large capacity. We would like ESMA to consider it a possibility to use a service provider for that, which will provide the aggregated information to the investment firm. We expect that certain very reputable information/data providers will offer such services.

The proposal of ESMA goes beyond what is required pursuant to article 27(6) MiFID2, and beyond its mandate pursuant to article 27(10) MiFID2. Article 27(6) merely requires firms to "the top five execution venues in terms of trading volumes where they executed client orders" and article 27(10) mandates ESMA to develop standards for the content of this information. It is therefore uncalled for that ESMA also proposes that firms publish (1) number and (2) volume of orders executed on each venue as a (3) percentage of the investment firm’s total executed orders, and (4) the inclusion of the identity of the firm submitting the OTC trade report (which is the firm executing the order OTC) in the list of top five venues. The items 1-4 are not demanded by article 27 MiFID2.

<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>

NVB: NVB requests ESMA to consider that it is very difficult to receive all information to provide information on rebates in relation to their considerations on page 44/45. The investment firms do receive information of trading venues on the fees and costs, but in reality this is only 10% of all information required. We anticipate that it will be very difficult, if at all possible, to provide the information in the detail that is required. Therefore, if this requirement will be upheld in this format, we would like ESMA to consider to oblige the trading venue to provide such information (i.e. that it is as detailed as that the investment firm needs).

With respect to paragraph 34 on page 45, how detailed should the internal monitoring policy be? Because of the level playing field, we propose to explicitly set out what needs to be in such policy.

With respect to paragraph 36 on page 45, we would like to request ESMA to consider not to have this annual requirement set at the beginning of each year. NVB foresees that this will be impractical as January is always already a very busy month and taking into account that some market makers and SIs may have to publish information both as execution venues and as investment firms. Also, the timing for providing the summary of the top 5 execution venues and the information on the quality of execution obtained by investment firms (within one month of each year end) runs parallel with the obligation of execution venues to publish data (within one month of the end of each quarter). This will cause operational impracticability for investment firms as they will also depend on the data relating to the quality of execution of transactions to be published by execution venues.

The proposal of ESMA goes beyond what is required pursuant to article 27(6) MiFID2, and beyond its mandate pursuant to article 27(10) MiFID2. Article 27(6) merely requires firms to "the top five execution venues in terms of trading volumes where they executed client orders" for each class of financial instruments and article 27(10) mandates ESMA to develop standards for the content of this information. It is therefore uncalled for that ESMA also proposes that firms publish a breakdown of orders routed to each of the top five execution venues by category of client, instead of instrument class only. This not demanded by article 27 MiFID2.

<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>

NVB: Yes, NVB agrees with the proposal to add to the current table a definition of request for quote trading systems.

<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>

NVB: Yes, NVB agrees 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. Only trades on the venue that are price forming at the point at which they are referenced should be those that form the price from which the reference price may be derived.

<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>

NVB: No, based on our review it appears that the list set out in paragraph 36 on page 58 of the CP is not replicated in article 6 of the draft RTS 8. NVB requests ESMA to clarify the differences? NVB has further established that, the lists in article 2 and article 6 are different. NVB requests ESMA to explain why there are differences? NVB proposes that ESMA applies a consistent and coherent approach with respect to transactions which are considered to not contribute to the price formation process under the trading obligation or as a negotiated transaction.

NVB proposes to include sub (f) and (g) of article 2 in the list of article 6 of draft RTS 8.

<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>

NVB: Yes, NVB agrees with ESMA’s definition of the key characteristics of orders held on order management facilities and agrees with the proposed minimum sizes.

<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>

NVB: No, NVB appreciates that ADT is not the best metric to establish large in scale thresholds in all circumstances and that approaches different from ADT are possible. NVB is of the opinion that the fact that another method is more complex, is not a good reason to choose for this method. NVB requests ESMA to reconsider to apply a different method where this would lead to a more adequate LIS threshold.

NVB emphasizes that it is important to set the LIS threshold right. Particularly given the fact that the LIS threshold is designed to protect large orders from adverse market impact and to avoid abrupt price movements that can cause market distortions. NVB points out that particularly in a pre-trade environment investment firms require adequate protection by a LIS waiver.

NVB agrees with the calculation of the LIS on an annual basis as set out in article 8 of draft RTS 8.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

NVB: Yes, we agree with the proposed approach.

<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>

NVB: Yes, we agree with the proposed conditions and standards.

<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>

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

On page 70 of the CP, ESMA refers to article 15 (2) of MiFIR. This article allows SIs in justified cases to execute orders at a better price than those quoted at the time of reception of the order, provided that this price falls within a public range close to market conditions. NVB seeks ESMA to clarify in which circumstances investment firms could rely on the “justified cases” exemption.

<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>

NVB: Yes, we agree to option 2.

<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>

NVB: No, NVB believes that back –to –back transactions between group companies are non-price forming and should not be subject to the trading obligation for shares. Therefore back –to –back transactions between group companies should be included in the list of transactions not contributing to price discovery.

NVB reiterates the concerns highlighted at question 39 in regard to the proposed exhaustive list of transactions not contributing to the price formation process. We believe that the list of exemptions ‘not contributing to the price discovery process’ should not differ from each other. These lists are used in different respect, but the end result (not contributing to price discovery) should be equal, and therefore these lists should be the same.

<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>

NVB: We kindly request ESMA to consider whether there would be a risk in double reporting. In the draft RTS, ESMA intends to remedy this by requiring the SI to inform the seller of the "action taken". Considering the short timelines and automated processing, the seller will most likely not be able to prevent disclosing the trade as well, leading to double reporting. NVB supports AFME’s proposal to overcome the risk of double reporting where an investment firm does not know it is trading with another investment firm acting as SI.

<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>

NVB: We believe that this would be unnecessary. We do not see what it would add.

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_51>

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

<ESMA\_QUESTION\_CP\_MIFID\_52>

NVB: We do not agree to the one minute delay proposal. For transactions that need to be manually booked publication within one minute is extremely difficult (and costly), if not impossible. We understand there is some added value in reducing the publication time, however the current limit of three minutes is already the maximum, not the standard; publication is required "as close to realtime as possible". Therefore, wherever technically possible, publication will under the current regime already need to take place within a minute. Hence we would propose to keep the maximum allowed publication at three minutes for those cases where publication within a minute is not possible.

<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>

NVB: Yes, NVB agrees that securities financing transactions within the meaning of the SFT Regulation 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.

<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>

NVB: Yes, we agree to the proposed classes and thresholds for LIS in shares and depositary receipts.

<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>

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<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>

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<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>

NVB: NVB appreciates that the primary objective of MiFID II is to increase transparency into 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. However, NVB notes that 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. This could also adversely impact end-investors.

NVB wants to reiterate that it has a strong preference to the IBIA method with respect to bonds. NVB appreciates that it could mean more work to operate the IBIA method, but it is more precise and adequate. IBIA can be operationally workable. NVB note that it is inherently difficult to group bonds together, based on common features while simultaneously also reflecting similar liquidity. NVB completely concurs with the response of AFME.

If ESMA insists on using the COFIA method, we urge ESMA to make this is granular as required to adequately reflect the liquidity of a bond. In conclusion, we propose that ESMA reconsiders introducing the IBIA method for e.g. bonds, while using the COFIA method for other non-equity instruments, e.g. derivatives. COFIA could be an alternative provided it is sufficiently granular.

<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>

<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>

NVB: No. NVB does not agree. NVB notes that the definition of securitised derivatives in the RTS is extremely broad and would capture a diverse range of securities. In fact, the definition overlaps with many types of derivatives since it captures both securitised and unsecuritised instruments. We ask ESMA to review and refine the definition of securitised derivatives.

With regards to the liquidity calibration, given the breadth and diversity of the universe of instruments that would be classified as securitised derivatives, NVB suggests that ESMA take a more granular approach.

<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>

NVB: No. NVB does not agree. NVB notes that the definition of securitised derivatives in the RTS is extremely broad and would capture a diverse range of securities. In fact, the definition overlaps with many types of derivatives since it captures both securitised and unsecuritised instruments. We ask ESMA to review and refine the definition of securitised derivatives.

With regards to the liquidity calibration, given the breadth and diversity of the universe of instruments that would be classified as securitised derivatives, NVB suggests that ESMA take a more granular approach. <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>

<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>

<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>

<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>

<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>

<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>

<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>

<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>

<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>

NVB: No comments

<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>

NVB: No, NVB does not agree with ESMA’s proposal. NVB believes that:

• Package transactions need to be specifically addressed in the RTS. NVB refers to ISDA’s response to the CP in which ISDA proposes that ESMA considers specific and tailored treatment for package transactions as the CP does not address how these transactions might be treated under the new framework. ISDA believes (and the NVB supports) that the Level 1 text is flexible enough to empower ESMA to specify how package transactions are treated in order to determine if such transactions are liquid or “traded on a trading venue” (both for determining whether transparency obligations apply as well as determining whether the derivatives trading obligation applies).

• The definition of a request for quote (RFQ) system requires amendment. ESMA’s proposed definition of the RFQ trading model in the CP includes the word “published” rather than “provided”. NVB proposes to replace the word “published” with “provided”. In RFQ protocols, firms only provide the quote to the requestor of the quote; the quote is not published widely. NVB supports ISDA’s and AFME’s comments regarding question 70 on the RFQ definition and the content of the pre-trade transparency.

In addition, in practice it is difficult to determine whether the ‘voice’ part is the core part of the system to negotiate and conclude transactions. Often negotiations start by using a voice system, but end via a hybrid system such as a chat system. We request ESMA to clarify or elaborate on what ESMA considers to be a ‘core’ part of the system of negotiation and the conclusion of a trade.

<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>

<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>

NVB: We understand based on paragraph 30 on page 213 that each market operator of a trading venue will determine which methodology it will use. As a consequence, there will be discrepancies between the trading venues. As long as trading venues will have to disclose explicitly which methodology it uses, we believe this will not cause too much problems for traders.

<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>

NVB: NVB agrees to the inclusion of the date and time of publication. NVB reiterates its concerns regarding double reporting as highlighted in question 49 of the CP. This also applies to RTS 9 annex 2, table 1.

We would recommend not to include additional fields.

<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>

NVB: No, NVB supports ISDA’s proposal to add a package transaction flag. NVB supports the removal of the SI identity flag. However, NVB notes that ESMA has taken an inconsistent approach under RTS 6. In RTS 6 the systematic internalisers are treated as execution venues. Article 3 of RTS 6 stipulates that the execution venues like SIs must publish trade information with their identity.

Furthermore, NVB does not agree with the inclusion of an algorithmic trading flag. Such information could be commercially sensitive and price sensitive. Although the NVB appreciates that this information might be of interest for ESMA, there is no need to include an algorithmic trading flag as it does not improve the quality of the data for users of the post trade information.

<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>

NVB:

(1) No, NVB believes that the 3-year implementation period should be subject to a feasibility study. The purpose of the study is to establish whether it is possible to shorten the post-trade transparency publication requirements to 5 minutes. The current ESMA proposal indicates that after 3-years the transitional period automatically ends and assumes that the IT systems should be amended by then. NVB highlights that this could be challenging for market participants and requests ESMA to only shorten the post-trade publication time if the study proofs that the 5 minutes is feasible.

(2) We believe that the delay of 15 minutes is really tight, particularly for manually processed trades.

(3) We don’t think 5 minutes is feasible. It takes time to manually process, so a reduction from 15 to 5 minutes is really uncalled for. Furthermore, why should the EU system differ from the US system? Because it will already be challenging to process within 15 minutes and because we do not see a justification to use a different period of time than in the US, we propose to keep this requirement at 5 minutes.

<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>

NVB: We request ESMA to clarify whether an SI would be considered OTC. The list on page 222 is not the same as page 139 of the Consultation Paper – Annex B. Therefore, we assume that reference is made to page 412 of Consultation Paper – Annex B.

<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>

NVB:

(1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision.<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>

NVB:

(1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision.

<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>

NVB:

(1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision.

<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>

NVB: (1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision.

<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>

NVB:

(1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision. <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>

NVB:

(1) NVB believes that the deferral period should be uniform and equal across all member states. The period should also be set on 48 hours and not be any period up to 48 hours. The deferral period should be fixed rather than a range. NVB believes that this harmonisation will contribute to creating a level playing field and will avoid arbitrage between jurisdictions.

NVB favours T+2 approach rather than a 48 hours deferral period.

(2) No comment.

(3) No comment.

(4) NVB believes that the pre-trade and post-trade thresholds should not be set at the same size. These thresholds have different purposes. The disclosure pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

1. other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre-trade could result in predatory pricing practices; and

2. other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker’s risk. Consequently NVB proposes that the SSTI and LIS waivers must be set at a lower level for pre-trade transparency purposes.

(5) We request ESMA to provide an explanation for the percentages in paragraph 43 on page 229. NVB would like to understand why 90% and 70% are the correct percentages for the purposes of this provision. <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>

NVB: We request ESMA to elaborate whether ESMA has considered the consequences this would have for cross border transactions. In addition, we request ESMA to elaborate what the situation would be if the NCAs of two counterparties have set different deferral periods. We believe this would mean that one part of the trade is public, but the other part not.

<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>

NVB: As included in our answer to question 57, we don’t believe that the COFIA method would be the correct method to use. A class of instruments is much too wide. We agree with the comments included in paragraph 10 on page 316. A drop in liquidity of one instrument will not affect the liquidity for an entire class.

We believe that the purpose of the waiver will not be met, liquidity of a class does not represent the liquidity of one financial instrument. If the liquidity of one financial instrument unexpectedly drops that would be exactly be the reason to use the waiver.

In relation to paragraph 11 on page 316, we request ESMA to clarify how the NCAs would get the information to calculate the thresholds.

<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>

NVB: 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>

NVB: We understand based on paragraph 9 on page 324 that there will be two sources used. We believe this will lead to mismatches. We would prefer the data of trading venues.

<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>

NVB: No comment.

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

NVB: The ‘sufficiently liquid’ test should be applied at a very granular level rather than applying broad classes of derivatives. We do not believe that ESMA should include additional criteria.

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

NVB: NVB requests ESMA to create a global level playing field. MiFID II and MiFIR should not make a cross-jurisdiction trade subject to different rules.

NVB reiterates that a tailored treatment for packaged transactions must be considered by ESMA.

<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>

NVB: We believe that in this respect the same approach should be taken as under EMIR in relation to the same criteria.

<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>

NVB: We believe that in this respect the same approach should be taken as under EMIR in relation to the same criteria.

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

NVB: NVB believes that the list of disruptive scenarios should be reduced. In relation to article 20 (2)(i) of RTS 13 ‘arrangements for the investment firm to trade all existing orders manually’ should be deleted. This is not always practicable, possible or in the best interest of the clients.

Investment firms should be allowed the flexibility to act in their clients’ best interests and as far as is possible in a disruptive scenario within the obligation of best execution. This also means that the investment firms should have the possibility to assess whether or not to finalise the trade for the client. <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>

NVB: The NVB disagrees with ESMA’s requirement to test minor non-structural changes to algorithms. Firms regularly introduce immaterial changes such as recalibration or adjustments in parameters that should not necessarily be tested for purposes of compliance with the provisions. We would like to emphasize that it will be impossible to test those minor changes. This is even more so if an investment firm uses services (systems) of third parties, if the whole cascade should be included in the testing (testing till end user) and that also in the event of minor changes, this will operationally be very costly (and time consuming). The NVB therefore proposes that testing requirements should be limited to material changes to the algorithm.

<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>

NVB: We do not express an opinion on whether the pre- and post trade controls should be implemented but if these controls will be implemented, distinction should be made between equity and non-equity instruments.

<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>

NVB: The NVB has no objections to the proposal to include a market impact assessment as a pre-trade control. However, the NVB seeks clarification from ESMA about this ‘market impact assessment’. If this pre-trade control will be implemented, we would prefer to have exact requirements, in the way that it is clear for all investment firms what should be done and what should be taken into account.

<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>

NVB: No, we do not agree. The Market Abuse Regulation (MAR) already provides for a strict regime with regards to market abuse and algorithmic trading. A specific RTS on monitoring for market abuse in this respect seems to be duplicative, especially as this is already being covered under the MAR. In any case, this requirement should not be too prescriptive and should be aligned with the requirements of MAR.

It should be noted that an investment firm does not (always) know the whole clients’ portfolio, therefor a signal for a potential sign of market abuse is not always correct to use as the investment firm might not be involved in the complete strategy of the client (e.g. an investment firm executes a transaction which is one leg of a strategy where other agents are involved in the other leg of the strategy without being aware of the first leg of the strategy).

<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>

NVB: Yes, we have a comment with respect to the requirement that DEA clients must ensure that their algorithms are tested in a non-live environment. We believe that it is not possible to test a disruptive event until the very end user. This is even more so if an investment firm uses services (systems) of third parties, if the whole cascade should be included in the testing (testing till end user) and that also in the event of minor changes, this will operationally be very costly (and time consuming). We would like to request ESMA to reconsider this requirement.

<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>

<ESMA\_QUESTION\_CP\_MIFID\_99>

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

<ESMA\_QUESTION\_CP\_MIFID\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_100>

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

<ESMA\_QUESTION\_CP\_MIFID\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_101>

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

<ESMA\_QUESTION\_CP\_MIFID\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_102>

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

<ESMA\_QUESTION\_CP\_MIFID\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_103>

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

<ESMA\_QUESTION\_CP\_MIFID\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_104>

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

<ESMA\_QUESTION\_CP\_MIFID\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_105>

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

<ESMA\_QUESTION\_CP\_MIFID\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_107>

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

<ESMA\_QUESTION\_CP\_MIFID\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_108>

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

<ESMA\_QUESTION\_CP\_MIFID\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_109>

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

<ESMA\_QUESTION\_CP\_MIFID\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_110>

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

<ESMA\_QUESTION\_CP\_MIFID\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_112>

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

<ESMA\_QUESTION\_CP\_MIFID\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_113>

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

<ESMA\_QUESTION\_CP\_MIFID\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_114>

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

<ESMA\_QUESTION\_CP\_MIFID\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_115>

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

<ESMA\_QUESTION\_CP\_MIFID\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_116>

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

<ESMA\_QUESTION\_CP\_MIFID\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_117>

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

<ESMA\_QUESTION\_CP\_MIFID\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_120>

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

<ESMA\_QUESTION\_CP\_MIFID\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_121>

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

<ESMA\_QUESTION\_CP\_MIFID\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_122>

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

<ESMA\_QUESTION\_CP\_MIFID\_123>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_123>

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

<ESMA\_QUESTION\_CP\_MIFID\_124>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_124>

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

<ESMA\_QUESTION\_CP\_MIFID\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_125>

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

<ESMA\_QUESTION\_CP\_MIFID\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_126>

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

<ESMA\_QUESTION\_CP\_MIFID\_127>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_127>

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

<ESMA\_QUESTION\_CP\_MIFID\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_128>

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

<ESMA\_QUESTION\_CP\_MIFID\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_129>

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

<ESMA\_QUESTION\_CP\_MIFID\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_130>

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

<ESMA\_QUESTION\_CP\_MIFID\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

NVB: Yes, we agree to the proposed RTS. However, we request ESMA to explain what should be done with trading in a derivate instrument when trading in the underlying financial instrument is suspended.

<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_134>

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

<ESMA\_QUESTION\_CP\_MIFID\_135>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_135>

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

<ESMA\_QUESTION\_CP\_MIFID\_136>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_136>

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

<ESMA\_QUESTION\_CP\_MIFID\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_140>

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

<ESMA\_QUESTION\_CP\_MIFID\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_141>

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

<ESMA\_QUESTION\_CP\_MIFID\_142>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_142>

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

<ESMA\_QUESTION\_CP\_MIFID\_143>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_143>

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

<ESMA\_QUESTION\_CP\_MIFID\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_144>

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

<ESMA\_QUESTION\_CP\_MIFID\_145>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_145>

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

<ESMA\_QUESTION\_CP\_MIFID\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_146>

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

<ESMA\_QUESTION\_CP\_MIFID\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_147>

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

<ESMA\_QUESTION\_CP\_MIFID\_148>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_148>

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

<ESMA\_QUESTION\_CP\_MIFID\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_150>

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

<ESMA\_QUESTION\_CP\_MIFID\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_151>

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

<ESMA\_QUESTION\_CP\_MIFID\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_152>

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

<ESMA\_QUESTION\_CP\_MIFID\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_153>

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

<ESMA\_QUESTION\_CP\_MIFID\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_154>

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

<ESMA\_QUESTION\_CP\_MIFID\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_155>

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

<ESMA\_QUESTION\_CP\_MIFID\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_156>

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

<ESMA\_QUESTION\_CP\_MIFID\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_160>

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

<ESMA\_QUESTION\_CP\_MIFID\_161>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_161>

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

<ESMA\_QUESTION\_CP\_MIFID\_162>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_182>

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

<ESMA\_QUESTION\_CP\_MIFID\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_183>

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

<ESMA\_QUESTION\_CP\_MIFID\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_184>

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

<ESMA\_QUESTION\_CP\_MIFID\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_185>

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

<ESMA\_QUESTION\_CP\_MIFID\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_186>

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

<ESMA\_QUESTION\_CP\_MIFID\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_187>

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

<ESMA\_QUESTION\_CP\_MIFID\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_191>

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

<ESMA\_QUESTION\_CP\_MIFID\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_192>

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

<ESMA\_QUESTION\_CP\_MIFID\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_193>

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

<ESMA\_QUESTION\_CP\_MIFID\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_194>

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

<ESMA\_QUESTION\_CP\_MIFID\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_195>

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

<ESMA\_QUESTION\_CP\_MIFID\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_196>

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

<ESMA\_QUESTION\_CP\_MIFID\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_197>

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

<ESMA\_QUESTION\_CP\_MIFID\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_198>

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

<ESMA\_QUESTION\_CP\_MIFID\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

NVB: The absence of a hedging exemption for financial entities may impede the ability of financial entities to enter into certain financing transactions where financial entities hold physical inventory and a derivatives position as a hedge against that inventory. There is a necessity for financial entities which are carry out inventory financing, on behalf of wholesale clients in the commodity supply chain, to be able to hedge inventory that they have title to. Whilst a bank’s commercial activity is providing finance, there is a link between the legitimate commercial activities of wholesale commodity clients and the banks financing such commercial activities. Banks, therefore, should be able to net off its physical inventory exposures provided that they can demonstrate that there is a materially recognisable correlation between their derivatives exposure and physical inventory held by banks in connection with legitimate financing of commodity trade participants.

This hedging is done in the framework of inventory financing of commodity trade participants. By having the inventory on the banks book, the commodity trade participant is relieved from its hedging tasks and receives the inventory (back) when needed and as agreed on in the finance documentation. Therefore, we assume that this risk hedging by the banks of the inventory, which will be transferred/ returned to the non-financial clients at a later stage, can be seen as done on behalf of these non-financial clients within the meaning of article 57 (1) of MIFID II.

Banks should be able to benefit from the same application of the exemption, provided that the correct arrangements are in place to be able to separately identify and segregate such activities.

<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>

NVB: We agree with the term "non-financial entity". There is a risk that the positions of non-EU non-financial entities could need to be aggregated with the positions of a parent undertaking in the EU. The non-EU entity or its EU parent on its behalf should be able to obtain the benefit of the exemption for risk reducing positions.

We agree with the comments of ISDA on this question, provided that next to parent undertaking other group entities should be included. Often we see a group structure where a specialized trading entity within the group hedges the positions of the group entities. These group entities can be established inside or outside the European Union. <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>

NVB: The absence of a hedging exemption for financial entities may impede the ability of financial entities to enter into certain financing transactions where financial entities hold physical inventory and a derivatives position as a hedge against that inventory. There is a necessity for financial entities which carry out inventory financing, on behalf of wholesale clients in the commodity supply chain, to be able to hedge inventory that they have title to. Whilst a bank’s commercial activity is providing finance, there is a link between the legitimate commercial activities of wholesale commodity clients and the banks financing such commercial activities. Banks, therefore, should be able to net off its physical inventory exposures provided that they can demonstrate that there is a materially recognisable correlation between their derivatives exposure and physical inventory held by banks in connection with legitimate financing of commodity trade participants.

This hedging is done in the framework of inventory financing of commodity trade participants. By having the inventory on the banks book, the commodity trade participant is relieved from its hedging tasks and receives the inventory (back) when needed and as agreed on in the finance documentation. Therefore, we assume that this risk hedging by the banks of the inventory, which will be transferred/ returned to the non-financial clients at a later stage, can be seen as done on behalf of these non-financial clients within the meaning of article 57 (1) of MIFID II.

Banks should be able to benefit from the same application of the exemption, provided that the correct arrangements are in place to be able to separately identify and segregate such activities.<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>

NVB: We are in favor of the pro rata based approach. Double counting would otherwise occur and also it would open possibilities for abuse / gaining net control of positions greater than the intended limit (as your real net beneficial position doesn’t correspond with the aggregated position).

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_212>

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

NVB: The following formats would pose substantial implementation challenge: FpML, TREM, IFX, FIX and XBRL. These formats are soundly developed and fit for their purpose, but they would introduce unnecessary complexities when used for reporting by intermediaries about individual transactions: current transaction processing is intensively using ISO standards and is in a process of migrating to ISO 20022. The addition of messages for MiFID II transaction reporting purposes would be much less complex within ISO 20022 than when another format would be introduced.

In our view ISO 20022 would be the most appropriate standard. Overall we believe that ISO 20022 offers the best potential for cost-effective and future-proof implementation. It has a strong methodology and model for defining and structuring financial data, and an open governance process that ensures a level playing field for standardisers and users. It also offers expert international scrutiny of submitted content. ISO 20022 is now being implemented in a growing number of markets, which results in increasing opportunities for automation and interoperability.

We believe ISO 20022 brings following benefits:

• it is the standard used for messaging by strategic initiatives such as the Single Euro Payments Area (SEPA), in the ECB’s Target 2 Securities initiative, the upcoming migrations of Target 2 and EBA EURO1/STEP1;

• it enables higher levels of automation and interoperability across payments and securities, reducing overall industry costs and lowering barriers to entry; basing MiFID II /MiFIR Transaction reporting and Reference data on ISO 20022 will enable us to reuse our investment in supporting the standard;

• it can easily cater for future additional/new regulatory reporting functionalities including changes to MiFID II /MiFIR reporting components;

• it is an open standard which can be freely implemented, with an open governance process and no single entity that controls it; it has an established process for maintenance and evolution;

• it is being adopted globally in the financial industry: Central banks and market infrastructures across the world are increasingly using the standard, with around 70 payments and securities clearing and settlement systems implementing ISO 20022;

• ISO 20022 standards have been developed across many financial business processes including retail and wholesale payments, foreign exchange, clearing, collateral management, settlement, asset reconciliation and transaction reporting.<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>

NVB: Yes, we believe that the definition of transaction is too broad. We believe that the excluded activities mentioned under paragraph 26 on page 565 should be excluded from the transaction reporting obligation altogether, not only if certain criteria are met. We do not believe that these transactions provide the information the NCAs would assist in relation to detecting market abuse or illegal practices.

However, if ESMA decides that these transactions should be reported, all these transactions should be reported without exclusion criteria. We anticipate difficulties when these transactions will only be excluded if such criteria are met. It will be very difficult and costly to have the IT systems determine whether certain transactions meet the criteria mentioned by ESMA or not. The caps and delay in time will not be workable. For instance, investment firms will have several dividend re-investment plans in place with different criteria.

In addition, we also believe that the ‘specified activities’ as referred to under paragraph 27(ii) on page 565 should be determined on EU level to prevent that these can be different in different member states. This should be applicable to branches as well as to legal entities from the same group in different member states, please see under paragraph 27(v) on page 566. Please note that groups should be able to design one reporting system for all branches and legal entities throughout the EU.

Furthermore, please note the following in relation to instructions of clients to investment firms to enter into a transaction and reporting. Based on paragraph 27 (v) on page 566 and article 3 (1) of draft RTS 32 we understand that instructions of clients to enter into transactions would be out of scope of the definitions of ‘transaction’ and ‘execution’ and would not have to be reported separately. We strongly support this, otherwise an overload and double reporting and high operational costs will be the result. An instruction is an action of the client and not of the investment firm. The instruction of the client itself is not an acquisition, disposal or modification of a reportable financial instrument. An acquisition, disposal or modification of a reportable financial instrument is a consequence of the action of the investment firm following the instruction of the client (on own account on behalf of the client). And that is a transaction within the meaning of article 26 MIFIR and will be reportable. All the relevant information, including details of the clients (buyer/ seller) which have given the instruction, will be reported. Therefore, it also is not necessary to have instructions of clients to be reported separately. However, we would like to request to include this explicitly by including that actions within the meaning of article 3 (4) which qualify as execution refer to actions *by the investment firm*.

Further, in relation to paragraph 9 on page 560 we would like to reiterate that SFTs should not be reportable under MiFID II. We believe that the reports would not contribute to the purpose of the reporting under MiFID II. Please note that if there would be a reporting obligation, this will be a huge burden, as the automated system should need to recognise which SFT should be reportable under the Regulation SFT and which SFT should be reported under MiFID II. The two systems can be different, which will mean that there will be risks of incorrect reporting. This is even more important as it is not allowed to over-report.

<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>

NVB: As set out in our answer to question 214, we believe that the definition of transaction is too broad. We believe that the excluded activities mentioned under paragraph 26 on page 565 should be excluded from the transaction reporting obligation altogether, not only if certain criteria are met. We do not believe that these transactions provide the information the NCAs would assist in relation to detecting market abuse or illegal practices. For instance, in relation to corporate events, please note that there will never be an order from clients to act in relation to the corporate event. These take place in accordance with the corporate events policies. Therefore, the purpose of reporting will not be applicable to reporting of corporate events. The receipt of rights from corporate events should not be reportable, the sale of such rights should be.

However, if ESMA decides that these transactions should be reported, all these transactions should be reported without exclusion criteria. We anticipate difficulties when these transactions will only be excluded if such criteria are met. It will be very difficult and costly to have the IT systems determine whether certain transactions meet the criteria mentioned by ESMA or not.

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

Yes, if obvious errors’ as referred to under paragraph 43 on page 569 are not being qualified we expect difficulties with the suggested approach. Automated systems will be used for reporting, if it will not be clarified what an obvious error would constitute, this will not be technical possible.

In relation to the timing issue as discussed under paragraphs 44 and 45 on page 569, we anticipate that there might be two reports, as it may not be possible to have all information before the deadline of reporting. Therefore, parties may already report, whereby there will be incomplete reports, or two reports of which one may be complete but the other one not because that has been reported earlier.

In relation to other issues under paragraph 46 on page 569, please note that the receiving entity cannot verify everything, which will be a problem in relation to the report that it needs to transmit. If the other party will not need to report, it will probably also not be inclined to provide all required information or confirm that the information is correct, which may result it the receiving entity to report incorrect information beyond its control.

<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>

We do not agree that the reporting will be simplified by the amendments. It introduces more fields to complete, which means there will be more variables, which means the possibility of mistakes increases. We would recommend to continue to use the existing report, but to include additional columns for the additional information (therefore to continue to use client and counterparty instead of buyer and seller).

<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>

NVB: We agree with the proposed fields and population of the fields.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

NVB: We agree with the proposed approach.

<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>

NVB: Yes, we foresee problems with the LEI that needs to be used for the client ID of a legal entity. There is no global system yet and therefore not all entities will have LEIs. In addition, there is always a period between an entity requesting the LEI and the moment it will receive the LEI. We request ESMA to clarify whether the legal entity is allowed to trade or not if it does not have the LEI (yet). If so, this may impact the liquidity (and volatility) in trading. Under EMIR, we have experienced already that the (high) initial and annual costs of a LEI are a material burden for the smaller clients. Therefore, it is very important that the costs of a LEI are reasonable for smaller clients and not unnecessarily restrictive to them.

We are also concerned that in relation to data privacy legislation (especially in third countries), it may constitute reporting data in breach with the applicable legislation. This is also relevant with respect to the trader ID.

In relation to paragraph 139 on page 589, we request ESMA to elaborate on what needs to be reported if there is a transaction which is composed to which multiple waivers are applicable. In addition, we request ESMA to clarify whether it would be necessary to include all waivers or only one of the applicable waivers.

In relation to paragraph 154 on page 592, we anticipate that there will be problems in using the short selling flag. We request ESMA to consider how would it work if transactions are entered into from different parts of the business to which even Chinese Walls may exist. It may not be possible to know whether a certain transaction at that moment is a short sell transaction. Also, different systems will be used: under MiFID II it will be an intra-day report (and thus use of flag) and under the SSR it is an end-of-day report. Under the SSR on an intra-day basis, it is allowed to determine the position per desk and arrange for securities lending in case of a short sale from the perspective of that desk to prevent the possibility of a naked short sale. Only at the end of the day it is required to determine the position on an aggregated basis and do the report. As a result the report can be done without breaching any Chinese Wall. In addition, we do not think this information is the information NCAs will provide the information they are looking for. We expect that NCA’s to be interested in the intention of the trader to do a short sale; even if a different part of the same investment firm coincidentally has a long position at the same time. And the SSR reporting already exists and provides the relevant information.

<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>

<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>

<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>

NVB: In relation to paragraph 171 on page 595, we foresee that it will be difficult to determine which entity will have the closest relationship with the client, without any guidance on how to assess the relationship. We request ESMA to elaborate what the exact criteria will be that entities should take into account with that determination.

In addition, the relationship with the client can change over time, by way that another entity can use a different branch or group entity more than at the beginning.

The fact that there are no criteria to consider in the determination which entity will have the closest relationship, leaves the entities with a lot of discretion, but also liability. If the CAs will determine that the entities did not take the correct criteria into consideration, it can be fined. <ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

NVB: Yes – in relation to paragraph 183 on page 597, to validate the LEI, the investment firm should have access to the global LEI system. If that is not (yet) possible, it should be possible to assume the correctness if the LEI has been provided by the counterparty.

Please also note that we believe that this obligation of verifying the LEI should only apply with the on-boarding of a client and not with every single transaction. If the client’s LEI has been verified once when the relationship started, it should be allowed to rely on that LEI for all transactions.

<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

NVB: We understand that over-reporting will not be allowed as mentioned in paragraph 186 on page 598, but we would like to emphasize that if there is room for interpretation for the investment firms, this will likely lead to discrepancies between reporting of different investment firms. Even more so, where it seems that CAs can have different interpretations for instance in 27II on page 565.

<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>

NVB: We do not understand why the client ID should be provided to the trading venue as this is already known by the CAs through the reporting obligation. Please note that this will mean that the format of the reporting needs to be amended, which will increase risks of incorrect reports..

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

NVB: in relation to paragraph 25 on page 609, We request ESMA to consider how the trading venue would know that the transaction is executed in relation to liquidity provision.

<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>

<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>

<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>

<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>

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

<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>

NVB: We request ESMA to clarify whether it would be possible for the different desks within the same legal entity that may trade on different trading venues to synchronise with the relevant trading venue, or that the desks have to coordinate and synchronise with the most strict reference time.

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_234>

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

<ESMA\_QUESTION\_CP\_MIFID\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

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<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>

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<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>

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<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>

NVB: We understand that currently there are already platforms that undertake a pre-check. However, we believe that the inclusion of a pre check as an obligation to all trading venues will introduce latency. In addition, it creates an additional step of which we do not believe is within the mandate. The obligation in article 29 (1) MiFIR should be read as an obligation to ensure that the trade feed is sent to an CCP for clearing, and that the CCP and the trading venue have both clear and public rules on when a transaction in principle will be cleared. Not that the trading venue needs to ensure that the transactions are actually cleared.

If the pre check will be included, we would recommend to adjust the title of article 3 of the draft RTS. It could be that based on the outcome of the check, there the trade will not be entered into. We propose to just use ‘pre-check’.

<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>

NVB: We agree to the categories and do not have an opinion with regard to the proposed timeframe. We do want to emphasize that the sequence should be correct. In relation to the orders, the first order should be transacted first. It should not be possible that the information on an order is sent to the CCP, and that an order that was submitted later after which that order is processed before the first order.

We refer to the response from ISDA on Q240 supporting the statement that the same rules should apply to voluntary cleared and mandatory cleared trades.

<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>

NVB: With respect to the proposed article 5 (1), the clearing member cannot ‘ensure’ that its clients send the relevant information within that timeframe. The clearing member is not aware that a bilateral transaction is entered into by its clients. Because it cannot control this process, it should not be an obligation on the clearing member to ensure that other parties have to action.

With respect to the proposed article 5 (2), at the time that the clearing member receives the back to back trade of the CCP, the clearing member currently needs to accept this trade manually. Therefore, at the moment the 60 seconds are not possible.

<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>

NVB: With regard to the proposed timeframe, we believe it would be correct to include that it should be done ‘as soon as possible’. We understand that currently it is 10 seconds. However, the 10 seconds should be set as a maximum. If it is possible - if systems are further developed - it should be done quicker.

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

NVB: At the moment the clearing member is not aware if a bilateral trade is rejected by the CCP as it is not involved in the process as set out in our answer to question 241. If the CCP rejects a bilateral trade it only informs the clients.

In the proposed article 7, only the CCP is referred to with respect to trade rejection, the clearing member should also be mentioned (if the trade is rejected by the clearing member).

In relation to the proposed article 7 (4), we request ESMA to confirm whether this means that re-submission should only be possible if there are technical problems. Currently the bilateral trades often need to be accepted by the clearing members manually. If at the end of the day the clearing member has not accepted the bilateral back-to-back trade (for whatever reason), the bilateral trade is rejected by the CCP. However, then re-submission is possible the next day.

<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>

NVB: We do not know whether the draft RTS addresses the relevant stakeholders. We believe that the proposed solution provides a clear overview in the administration of the CCP and clearing member. This will assist an insolvency administrator.

However, we do not think this will constitute legal segregation. Based on our experience with the segregation rules under EMIR, we know that not in all jurisdictions insolvency laws facilitate legal segregation as anticipated under EMIR. As ESMA is aware, in some jurisdictions there are legal discussions (pursuant to the same recital in EMIR) on whether a court/insolvency administrator would respect that (a recital) in the RTS states that this regulation prevails over conflicting national insolvency laws.

<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>

NVB: we refer to our answer to question 244.

<ESMA\_QUESTION\_CP\_MIFID\_245>

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