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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 | UBS AG |
| Confidential[[1]](#footnote-1) |[ ]
| Activity: | Banking sector |
| Are you representing an association? |[ ]
| Country/Region | Switzerland |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

UBS thanks ESMA for the opportunity to provide feedback on the Consultation Paper on MiFID II/MiFIR.

We have provided comments on a selection of specific questions. We also set out below a summary of our key comments on the ESMA proposals:

**Investor protection**

* ESMA proposes that additional information will be required when an investment firm or market operator operating an MTF or an OTF intends to provide arrangements to another Member State. Our view is that an MTF or an OTF is an investment service in the same way as other MiFID II investment services and therefore should only be subject to the same type of information or procedural requirements as cross border investment services and not to additional requirements.
* We do not support the ESMA proposal that systematic internalisers (SIs) and market makers should be defined as execution venues and subjected to the best execution reporting requirements. We propose that the definition of venue should be consistent with the rest of MiFID II/MiFIR and not include SIs or market makers as such reporting could compromise firms' ability to manage risk if their identity is made public.
* We do not support some of the best execution reporting requirements for venues that benefit from transparency waivers as such venues should be able to continue to benefit from the ability to not have to make certain information publicly available.

**Equities transparency**

* For ETFs, we do not support the ESMA proposal for post trade reporting to take place within 1 minute of execution. We also have a concern with the requirement to post-trade report unit price for ETFs. This is because at the time of an ETF transaction, the investment firm will typically not know the price. We propose some alternative approaches.

**Non-equities transparency**

* UBS does not agree with the proposed ESMA definitions of bond classes used to define bond liquidity. We are very concerned that the proposed approach fails to sufficiently account for the heterogeneity and dynamic liquidity of the bond market and will result in a high proportion of illiquid bonds being classified as liquid and consequently subjected to inappropriate levels of transparency.
* ESMA does not include any specific treatment for packaged transactions but we believe one is necessary.
* We have significant concerns with regard to how the proposed pre-trade transparency regime will apply to RFQ trading. We believe that, for RFQ systems, making the “bids and offers and attaching volumes submitted by each responding entity” pre trade transparent may have serious counter-productive effects. We propose an alternative approach.

**Microstructural**

* Regarding the testing of algorithms and systems and change management, it would be very hard to conduct the proposed non-live testing as this does not occur at the moment. Even if the trading venues do provide them as part of their own requirements for testing, it is still not clear how/if this arrangement would operate for certain algos.
* The proposed one trading day observation period to determine Market Makers is problematic, especially for non-equities. The one trading day observation period does not seem to allow for circumstances under which there is exceptional market activity. We suggest that market making obligations should be assessed on a monthly basis.

**Data publication and access**

* We support a more granular level of data disaggregation than that proposed by ESMA. We believe that disaggregation down to instrument level should be mandatory as this would help facilitate the ultimate goal of allowing customers to buy only the data they need.

**Commodity derivatives**

* UBS has concerns with a reporting regime that requires reporting of client positions until the end client is reached due to data confidentiality concerns. We propose that ESMA should adopt the CFTC approach to end client reporting where an investment firm will identify its client, and the relevant competent authority will then require that client (or its underlying client) to provide the relevant report.

**Market data reporting**

* We propose that ESMA should provide further guidance on transaction reporting requirements and responsibilities similarly to the UK Transaction Reporting User Pack (TRUP) framework.
* We are concerned with the requirement to not over-report due to the lack of any golden sources of data for financial instruments. We propose that there be some leniency in the timelines for cancelling over-reports.

**Post trading issues**

* With respect to OTC products transacted on RMs, MTFs and OTFs, we support ESMA's proposal to require clearing members to perform pre-execution limit checks on an order-by-order basis against limits established for the particular client. UBS does not support the proposed requirement for pre-trade checking for exchange traded derivatives (ETDs).
* We do not support the ESMA proposal for ETD indirect clearing. We have the following concerns with the ESMA proposals: (i) there is a lack of a consistent EU insolvency regime for return of assets to the indirect client (ii) there is a lack of a scalable legal and operational structure to enable client asset protection (iii) client access to global markets will be restricted. We propose some amendments and argue for a robust cost benefit analysis that fully considers costs and benefits for direct clients and indirect clients.

**Non-discriminatory access for market participants to trading venues**

We take the opportunity to provide comments in this section on non-discriminatory access of market participants to trading venues. This issue is not addressed in the consultation paper but we consider it to be of considerable importance and something that would benefit from additional guidance from ESMA and/or the European Commission.

In light of customers’ frequent use of indirect access models to trade on regulated venues in other asset classes, we believe it is important that customers have the same option for trading swaps on RMs, MTFs and OTFs and believe it would be beneficial for ESMA to provide additional clarification around the important principle of non-discriminatory access in order to avoid RMs, MTFs and OTFs employing discriminatory access rules or fees to exclude certain market participants from their venues.

Changes to derivatives trading requirements and market infrastructure pursuant to MiFID II and MiFIR will present unique challenges for customers seeking to efficiently locate liquidity and achieve best execution. Several factors, including the anticipated number of trading and clearing venues and the staggered phase-in of mandatory clearing under EMIR and mandatory execution under MiFID II/MiFIR, may result in significant market fragmentation, with liquidity being distributed across various trading venues and the remaining OTC market.

The implementation of the Dodd-Frank Act in the United States gave rise to similar concerns, in response to which many customers of UBS indicated a strong preference to utilize an indirect access model for trading on swap execution facilities (“SEFs”) and designated contract markets, whereby customers are able to access regulated trading venues indirectly without having to become a direct participant of each and every one and have the ability to view and transact against available liquidity across multiple sources in a single location.

There are a number of legal, financial, operational and technological reasons why many customers prefer this type of access model rather than connecting directly to every single source of liquidity and we believe this will continue to be the case as customers seek to access additional regulated venues for trading swaps pursuant to MiFID II/MiFIR. We note that the Commodity Futures Trading Commission (“CFTC”) explicitly recognized the benefits liquidity aggregation solutions can offer to market participants in the changing regulatory landscape.1

We note that, under MiFID II, MTF and OTF operators must ‘establish, publish and maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to the facility’.2 As a result, we believe that such operators are not permitted to discriminate against (a) customers wishing to access a venue indirectly through a participant or (b) participants seeking to provide customers with an aggregated view of available liquidity and the ability to route orders to various regulated markets, such as by excluding them from the venue altogether or by providing these customers and participants reduced access, functionality, trading protocols or connectivity compared to that given to other types of participants in the MTF or OTF (including direct customers). It follows that MTF/OTF operators should not be permitted to enact rules with the specific intent of discriminating against a certain category of participant (for example, participants seeking to provide customers with indirect access should not be subject to discriminatory fees).

Similar to MTFs and OTFs, we believe that this level of mandatory impartiality, as enshrined in Article 18(3) MiFID II, must also be adhered to by operators of Regulated Markets, particularly given the overall lack of discretion contemplated for these venues. We urge ESMA to consider whether additional guidance in this area could be provided and we observe that the above is consistent with the CFTC’s position in the US, which provides that “a SEF may not exclude or discriminate against a market participant providing agency services”3 and “does not allow a SEF to limit access to its trading systems or platforms to certain types of [Eligible Contract Participants] or [Independent Software Vendors] as requested by some commenters”4 in order to prevent a SEF’s owners from using discriminatory access requirements as a competitive tool.

In addition, while we acknowledge that the specific requirements for OTFs set out in Article 20 of MiFID II require that the execution of orders on an OTF be carried out on a discretionary basis, we also request ESMA to consider whether any additional clarification around this principle of discretionary execution could be provided, by way of ‘Level 3’ guidance or otherwise. For example, we believe that it would be impermissible for an investment firm or market operator operating an OTF to discriminate against a specific type of OTF participant when deciding to place or retract an order on the OTF they operate.

As the trading mandate under MiFID II/MiFIR starts to be implemented and market participants are required to trade certain products on RMs, MTFs or OTFs, it is imperative that they are able to select from among both direct and indirect access models when deciding how to interact with these venues. Otherwise, certain market participants may be prevented from accessing particular venues or trading certain products and market fragmentation across the various RMs, MTFs and OTFs becomes further accentuated. By enabling customers to access swaps liquidity as they do in other asset classes, investment firms which offer customer execution services and access to trading venues will assist customers in transitioning to trading on regulated venues while still achieving best execution and support the core MiFID II/MiFIR principles of greater transparency and liquidity and open access.

1 The Commission believes that transparency and trading efficiency would be enhanced as a result of innovations in [the field of aggregator platforms and other independent software vendors]. For instance, certain providers of market services with access to multiple trading systems or platforms could provide consolidated transaction data from such trading systems or platforms to market participants” (CFTC Final SEF Rule, 78 FR 33476, 33508 (FN 423)).

2 Article 18(3) MiFID II

3 CFTC Final SEF Rule, 78 FR 33476, 33508 (FN 421).

4 CFTC Final SEF Rule, 78 FR 33476, 33508.

< 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>

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<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

In the view of UBS, an MTF or an OTF is an investment service in the same way as other MiFID II investment services and, therefore, should only be subject to the same type of information or procedural requirements as cross border investment services and not to additional requirements. The principle of the Home State supervision applies and MTFs / OTFs will need to comply with the Home State information requirements. The Host State can obtain any information if needed from the Home State supervisor. In the view of UBS, such additional requirements are not necessary or useful.

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_14>

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

<ESMA\_QUESTION\_CP\_MIFID\_15>

UBS believes that notifications of changes in branch particulars should focus on material changes, and in this context, any further acknowledgment ESMA could provide of materiality considerations would be most helpful.

<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>

UBS believe that such a requirement can be useful, in particular if it can also help to avoid certain national competent authorities (NCAs) adding additional requirements under their own law not foreseen by MiFID II or MiFIR. To avoid duplication of information requirements, this requirement should, however, not apply to branches nor should it apply to cross-border business. We, therefore, ask ESMA to clarify the scope in the final draft RTS.

<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>

UBS supports the use of electronic transmission as the primary means of transmission. Therefore, electronic version forms / means of transmission should be available and sufficient. If there is a requirement for written documentation, it should be in addition to the electronic version and it should be the electronic version that triggers the commencement of the timetable.

<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_29>

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

<ESMA\_QUESTION\_CP\_MIFID\_30>

The proposal would result in duplication of requirements for market makers in respect of an SI or trading venue. The requirement on SIs to report could impact firms' ability to manage risk given that for post trade reporting the identity of the SI has been removed, but inappropriate levels of transparency regarding quality of execution reports is still required. UBS therefore proposes to delete the requirement in RTS 6 for market makers to report.

Otherwise we support ESMA's approach. Standardisation of the reporting from the venues is in particular of high importance for our wealth management franchise with a very large retail investor customer base and its open architecture execution services. Protocols, timeliness and quality of data needs to be enforced for the trading venues / entities involved in data publication.

We agree with the remarks in paragraph 9 and agree that whilst daily basis as a measurement would be appropriate for exchange traded/liquid products, for other negotiated OTC products alternative timing may be appropriate in order to capture all trade information as it can take over a day to respond. For the final report generation to retail investors, we would have a preference for an annual periodicity.

<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>

We would appreciate clarification of the calculation basis and whether or not the determined ranges are based on notional value. For example, we do not believe calculation on a national basis would be appropriate for exchange traded derivatives.

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

Since liquidity is a key driver within MiFID II, it would be useful to capture liquidity information per financial instrument within the data provided by venues.

We support the deletion of clearing and settlement services costs from the list of costs to be reported by execution venues as we agree it may be difficult to report these for non-vertically integrated venues.

The likelihood of execution reporting/metrics would be very hard to apply to non-liquid or OTC products. Exchange traded/liquid products would require some validation of limit orders to exclude them from the metrics.

<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>

We are of the view that the time an order is received should be the starting point for the execution service.

Extended volumes of data will have impacts to platform resilience and the price of data. Data should therefore not be required to be available real time but only as a post transaction report with storage and reporting requirements on a monthly basis.

<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>

No, we do not fully agree with the proposed approach. The requirements for venues do not take into account the differences in public disclosure between a lit venue and a dark venue. Whilst the transparency requirements make clear references to venues not being required to make disclosures where waivers are in place, the Best Execution requirements require venues to disclose information which would otherwise not be made publicly available

We propose that order information should not be required to be disclosed by venues operating under a transparency waiver. The following fields could provide information which allows participants to infer information about orders received/ executed on a venue and should not be required where a venue operates under a transparency waiver:

* Order Information required under Article 3(3)
* Information relating to orders required under Article 3(4) and Article 6:
	+ Category of Order Size
	+ Time Order Received
	+ Time elapsed between order and execution
* Information required under Article 4(1)
	+ Best Bid Price
	+ Best Offer Price
	+ Bid Size

We are concerned that the information required under Article 3(2) is largely information which will be provided as part of transaction reporting and it will be duplicative to require this as part of Best Execution reporting as well. We propose that firms should supply this data as part of transaction reporting only.

As with the transaction reporting requirements, we are concerned that we do not have enough information in the RTS to allow us to write reporting specifications. We propose that ESMA provides detailed reporting guidelines to enable us to provide data in a usable and standardised format.

In general, we believe the ESMA proposals do not distinguish sufficiently between different types of venue and products and more tailored calibration is needed. There should be a clearer distinction between fields required for SIs vs MTFs/OTFs. Regarding information on costs for example, RTS Article 3(5) is relevant for trading venues which impose costs, less so for SIs. Also, certain references are very relevant to equities (e.g. benchmark price / opening & closing time) but not so relevant to markets like FX where these concepts don't exist.

We are also concerned that the snapshot approach is not appropriate for certain products. For example, a single trade after a given point in time will be of limited relevance for high volume businesses like FX.  In order to get a view on activity and pricing during the day, the reporting of averages over a period in time (e.g.  between 9-11am, 11am-1pm etc) would be more useful.

Apart from the above, we support that the data to be provided by the venues should be precisely defined and sufficiently standardised to allow consolidation across venues and execution entities in order to demonstrate quality of execution to our wealth management retail investor base.

<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>

Since reporting is required across all financial instruments, and because data from multiple execution venues needs to be consolidated where a firm has an open architecture for its retail investors, as per our response to question 30, we would again like to highlight that firms will need a certain amount of time to establish such data in order to be meaningful to their retail customers. We would like to invite ESMA, therefore, to outline and specify in what time-frame such consolidation should occur.

Reporting should be based upon classes of instruments with a consistent classification structure and differentiation between liquid and illiquid products.

<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>

UBS does not agree with ESMA’s proposed RTS 7. Article 27(6) of MIFID II requires investment firms who execute client orders to summarise and make public on an annual basis, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained. We believe that ESMA’s draft RTS 7 Article 6 goes beyond the Level 1 text.

Our proposition is that RTS 7, Article 6 should only apply to the quality of execution obtained in relation to the five execution venues (and not the quality of execution obtained by an investment firm more broadly on all execution venues). Therefore, Article 6(1) (b) of RTS 7 should be deleted as this is only required for the top 5 execution venues and this is already covered under Article 5(5) to 5(12) of RTS 7.

As regards discounts and similar, UBS notes that certain payments are made in arrears quarterly or annually. For example discounts for longevity of ownership or performance fees for hedge funds. We would therefore suggest that the reporting should be made on an quarterly or annual rather than a monthly basis, the same as in relation to the top 5 execution venue information.

In addition, under RTS 7 Article 6(1) (a), ESMA also proposes firms to make public a ‘summary of the analysis and conclusions’ drawn by the investment firm on the quality of execution obtained on the execution venues. We believe that the word summary in the level 1 text only applies to the top 5 execution venues and not to ALL execution venues.

Finally, with regards to RTS 7, Article 6 (1) (c) to (e), we believe that ESMA has no mandate to require these further summaries to be reported. Here again, we believe these requirements go beyond the level 1 text. In addition, we do not see how these additional summaries would add any value to the information already made available.

<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>

We agree with the proposal to add a definition of request for quote (RFQ). We believe the description of request for quote in Table 3 on page 126 of Consultation Paper Annex B should be amended so that the requirement is that a quote or quotes are “made available” rather than “published”, as this is consistent with the language in respect of making data publicly available that is used elsewhere in the consultation document. The definition of RFQ system should describe the trading system and not prescribe what should be published. Because there is no requirement for a venue operating an RFQ system to publish quotes on trades in illiquid instruments or trades above SSTI, the inclusion of the word published is inaccurate and could have the consequence of requiring all quotes to be made public despite the clear provisions of the MiFIR text. Furthermore, none of the other trading systems listed in Table 1, Annex 1 of RTS 9 include the word published despite also having pre-trade transparency requirements in certain circumstances.

Please also see our response to question 58 for further comments on the proposed transparency regime for RFQ 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_38>

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

<ESMA\_QUESTION\_CP\_MIFID\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_39>

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

<ESMA\_QUESTION\_CP\_MIFID\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_41>

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

<ESMA\_QUESTION\_CP\_MIFID\_42>

We would support the alternative approach of an ETF LIS Threshold of €1 million due to it being simple and easier to apply.

<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>

Yes, UBS supports the revised approach on stubs.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_46>

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

<ESMA\_QUESTION\_CP\_MIFID\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_47>

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

<ESMA\_QUESTION\_CP\_MIFID\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_48>

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

<ESMA\_QUESTION\_CP\_MIFID\_49>

UBS has a concern with the information that trading venues and investment firms shall make public with regard to ETFs. This is because at the time of an ETF transaction, the investment firm will typically not know the price. The price will typically either be based on:

1. A NAV which is published overnight and, based on the NAV, the issuer will provide the investment firm with a price the following day in most cases, or
2. The price will be based on a contingent event, and only once that contingent event has occurred will the investment firm be able to provide the price.

Given the above, whilst we support ESMA's proposal in terms of the information to be reported, given that NAV creation/ redemption is not price forming and therefore speed of publication should not impact the market in an adverse manner, we would propose the following approach regarding the timing of post-trade transparency for ETFs:

1. When the price is contingent on overnight NAV publication, post- trade reporting for ETFs should be required as soon as possible following NAV publication and issuer publication of the price, and no later than COB the following day, or;
2. When the price is contingent on an event, post- trade reporting for ETFs should be required as soon as possible after the contingent event, and no later than COB on the event day.

<ESMA\_QUESTION\_CP\_MIFID\_49>

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

<ESMA\_QUESTION\_CP\_MIFID\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

No, we do not fully agree. We do not support the requirement for publication of a flag for "Deferred Publication" given that the purpose of a deferral is to offer a level of protection to investment firms and a deferral flag will serve to highlight the trade to the market and undermine the protection of the deferral. We propose that the "Deferred Publication" flag should be removed from the list.

<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>

UBS believes ETFs should benefit from longer delays. ETFs are not currently subject to post-trade transparency under MiFID I and as such the market does not have experience with a post-trade transparency regime. Thus the revised timescales appear particularly onerous for ETFs. In our view, from a transparency perspective, the ETF category has more in common with the Non-Equities category in that it is still highly manual in terms of booking, can be complex, and may take some time from order to booking.

Consequently, we propose that the maximum permissible delay for ETFs should be aligned with the timelines for Non-equity instruments and set at 15mins for the first 3 years and 5 minutes thereafter. This will better reflect the characteristics of the ETF market and allow the ETF market a more appropriate timeframe to adjust to the new post-trade transparency requirements.

<ESMA\_QUESTION\_CP\_MIFID\_52>

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

<ESMA\_QUESTION\_CP\_MIFID\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_53>

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

<ESMA\_QUESTION\_CP\_MIFID\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_54>

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

<ESMA\_QUESTION\_CP\_MIFID\_55>

UBS supports a single LIS threshold and deferral period applied to all ETFs, regardless of the liquidity of the financial instrument. This is consistent with the UBS proposal for pre-trade transparency and we believe it is appropriate as it will be relatively easy to calculate and apply.

<ESMA\_QUESTION\_CP\_MIFID\_55>

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

<ESMA\_QUESTION\_CP\_MIFID\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_56>

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

<ESMA\_QUESTION\_CP\_MIFID\_57>

Please note that this response covers questions 57 and 58.

No, UBS does not agree with the proposed ESMA definitions of bond classes. UBS supports the response of the Association of Financial Markets in Europe (AFME) proposal on Bond categorisation and thresholds.

UBS is very concerned that ESMA's proposed approach fails to sufficiently account for the heterogeneity and dynamic liquidity of the bond market and will result in a high proportion of illiquid bonds being classified as liquid and consequently subjected to inappropriate levels of transparency.

We highlight that whilst a majority of instruments classified as illiquid by ESMA are correctly classified, as demonstrated in column 8 of Table 5 (page 104 of the consultation paper), 42% to 74% of instruments in the liquid category are incorrectly classified based on ESMA’s own liquidity test. We consider this to be an unacceptably high level of incorrect classification.

In paragraph 35 on page 100 of the consultation paper, ESMA states that it is aware of the risks that might arise from a classes of financial instruments approach (COFIA) and it intends to remedy possible weaknesses through the waivers and deferrals for LIS or SSTI. We do not consider this to be an appropriate approach and believe ESMA should propose a more accurate classification system in the first instance that does not need to be corrected via the use of other regulatory tools.

Additionally, MiFID II sets a legal precedent for defining secondary market liquidity, which may be implemented in other legislative regimes for other purposes (such as the CSDR). Therefore, it is critical that the definition is appropriate on a standalone basis. It also appears that ESMA has not incorporated any allowance for the liquidity error margins in the SSTI/LIS thresholds. If ESMA goes ahead with a static liquidity calibration that has such significant error margins, we believe there needs to be a specific adjustment for this in the SSTI/LIS regime.

As highlighted in the UBS response to the May 2014 ESMA Discussion Paper, UBS does not support ESMA's COFIA approach for bonds and we believe the IBIA approach would be more appropriate. If ESMA does not support an IBIA approach, we consider it necessary to at least introduce additional granularity in the COFIA categories to reduce the number of false positives. Similar to the approach taken by ESMA with regards to derivatives, this could take the form of subclasses for each bond type.

MiFID II defines a liquid market as a market for financial instruments or class of instruments for which there are ready and willing buyers and sellers taking into consideration the average frequency and size of transactions, the number and type of market participants and the average spread. A COFIA approach whereby liquidity is based on the features (such as issuance size alone) of the instruments is inconsistent with this definition.

We are concerned that a COFIA approach cannot truly incorporate the dynamic nature of liquidity of bonds in which bonds may become more or less liquid throughout the term outstanding. As such, the MiFID II Level 1 text is clear that the lifecycle of bonds needs to be considered. However, a COFIA approach by its nature cannot monitor changes in liquidity over time. Further, the ESMA proposed approach in no way takes into account the lifecycle of bonds, contrary to the Level 1 mandate. Therefore, we are of the view that the ESMA proposal fails to capture this dynamic nature of liquidity which we consider to be inconsistent with the Level 1 mandate.

The COFIA approach is also likely to lead to inconsistency of application and a fragmented approach, as well as being highly inefficient given that the decentralised nature of the COFIA approach means that each and every market participant will be applying its own classifications.

We believe the flaws in the ESMA proposals will have negative consequences such as (i) adversely impacting end-investors (pension funds and insurance policy holders) due to reduced liquidity and wider spreads in the EU bond market and (ii) making it more difficult for issuers (such as corporates and governments) to raise financing through debt. We note that this is contrary to the European Commission’s growth agenda and the proposals set out the Commission's recent Green Paper on Capital Markets Union (CMU) that seeks to increase the level of capital markets funding in the EU. Therefore, we urge ESMA to reconsider its approach to bond classification.

We support AFME's proposals for bond classification as set out in its response to Q58 of the consultation paper.<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>

Please see the response to Q57 above.

<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>

**Securitised derivatives**

No, UBS disagrees with the liquidity proposal for securitised derivatives as it does not take into consideration bespoke bilaterally negotiated securitised derivatives which should not in our view be categorised as liquid. We are concerned that should liquidity bandings be applied at COFIA level, as opposed to IBIA level, then illiquid products will be incorrectly classified as liquid.

We believe it would be acceptable to retain the COFIA approach but with a specific carve out for bespoke, bilaterally negotiated products. For the purposes of determining the liquidity of the latter class of securitised derivatives, ESMA should take into account the intrinsic characteristics of such products.

We do not believe that the presence of one market maker should be sufficient for a sub-class of securitised derivatives to be deemed liquid. The definition of “liquid market” in Article 2(17)(a) of MiFIR requires there to be “willing buyers and sellers on a continuous basis” which in our view requires there to be more than one buyer or seller in a market for a particular sub-class of instruments for that sub-class to be determined liquid.

The importance of ensuring that the assessment of a liquid market for securitised derivatives is correct is exacerbated by the fact that unless the traded on venue test is sufficiently granular (as further highlighted in Q61 below), securitised derivatives which are considered to be admitted for trading solely as a result of being listed on an exchange may be construed to be 'traded on venue', notwithstanding the fact that in many instances there is no active trading on that exchange. This may therefore result in a number of securitised derivatives which are neither (i) in practice trading on a venue or (ii) liquid, being inadvertently made subject to the more stringent MiFIR transparency requirements.

<ESMA\_QUESTION\_CP\_MIFID\_59>

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

<ESMA\_QUESTION\_CP\_MIFID\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

**Interest rate derivatives**

No, UBS does not agree with ESMA's proposed definition of a liquid market for interest rate derivative classes.

UBS is concerned that ESMA has classified many illiquid instruments as liquid as a result of factors including:

* The use of thresholds for liquidity which are inappropriately low and do not accord with the MiFIR definition of a liquid market, being one with ready and willing buyers on a continuous basis. We do not consider two trades, or in some cases, one trade per day, to be consistent with this definition.
* Inconsistent use of thresholds between classes which are of equivalent granularity in order to label some sub-classes within each interest rate derivative class as liquid. Different thresholds are only appropriate where the granularity of the classes is not the same. Where classes are identified at equivalent levels of granularity, equivalent thresholds should be used. In practice, this will mean that few/no sub-classes of some derivative classes will be deemed liquid, which we consider correct because some swap classes (e.g. multi-currency swaps, inflation swaps) are simply not liquid.
* No provision for recalibration of the liquidity assessment which will result in any initial incorrect classification of liquidity being hardwired into regime on a permanent basis. The COFIA approach proposed by ESMA is based on instrument classes which are not in line with the ISDA Taxonomy which is a very widely accepted OTC industry taxonomy. This will result in firms having to amend and maintain multiple internal taxonomies.

Our proposal is that a liquidity test should be performed at IRS instrument level with liquidity determined in terms of number of trades a day and notional threshold consistent with the ISDA proposal.

**Swaptions**

We consider that ESMA’s classification of swaptions is inadequately granular and results in many illiquid swaptions being incorrectly labelled by ESMA as liquid. We disagree with ESMA's proposal to label as liquid all swaptions in 5 currencies regardless of underlier. At a minimum, given that swaptions are less liquid than their underliers, we believe ESMA must account for the fact that a swaption cannot be considered liquid if its underlier is illiquid. We support the ISDA proposals for the classification of swaptions.

**Treatment of packaged trades**

As a general consideration across MiFID II/MiFIR, we stress the need for ESMA to ensure appropriate treatment of "packaged transactions" which we would define as transactions where (1) the package has two or more components that are priced as a package with simultaneous execution of all components and (2) the execution of each component is contingent on the execution of the other components. A package is designed to provide desired risk-return characteristics effectively in the form of a single transaction with efficiencies in execution cost and reduction in risk (market and operational) achieved through concurrent execution.

Simultaneous execution of a package with a single counterparty using a single execution method alleviates the timing and mechanical risks and lowers bid/offer costs to those of the intended risk of the package. Inappropriate application of certain requirements, particularly Pre- and Post-Trade Transparency requirements, will jeopardise the ability of market participants to execute the entire package (primarily because exposure of an order in one transaction gives rise to the possibility of another party unrelated to the intended package trading that component transaction).

Inability to execute packages will result in significantly increased costs and risks to market participants. These costs and risks arise primarily from three sources: (1) separately trading the components of a packaged transaction incurs the possibility of the market moving between executions of each component because such executions cannot be precisely time-matched, (2) there are likely to be differences in contract specifications, mode of execution, clearing/settlement workflows and relative liquidity when components of a packaged transaction are executed separately and/or on different venues, and (3) accessing different sources of liquidity for the various components when traded across different venues or over-the-counter incurs additional bid/offer spreads.

We believe that 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 Level 1 text clearly sets the foundation for the pre- and post-trade transparency regimes in non-equities by defining the asset classes (“bonds, structured finance products, emission allowances and derivatives”) on which the Level 2 measures must be built. However, ESMA has flexibility to define how, within these broad asset classes, to identify whether specific financial instruments (or combinations thereof) are to be considered “liquid” or “traded on a trading venue”.

In general, we recommend that the application of the various requirements of MiFID II / MiFIR to the trading of components as a package transaction should be considered separately from the application of the requirements to those same instruments when traded on a standalone basis. This is particularly important for the application of the Pre- and Post-Trade Transparency requirements. We recommend that each transaction comprising a package must be considered liquid in order for the package to be subject to the transparency rules or the derivatives trading obligation. The presence of illiquid instruments in the package should permit the package to benefit from waivers for Pre-Trade Transparency and Deferrals for Post-Trade Transparency.

For the purposes of counting frequency and volumes of transactions within the test of liquidity, we recommend that ESMA adopt a much simpler approach. Where a trade arises as part of a package, each transaction should be considered on a standalone basis. Any other approach would like be highly operationally challenging for ESMA. For example, to assess the liquidity of a package as a whole, ESMA would have to collect data on trading in each package permutation, which would prove technically challenging if not impossible given the number of conceivable permutations.

Provided appropriate consideration is given to the application of pre-trade and post-trade transparency and the derivatives trading obligation to package transactions, counting each component of a package transaction for the purposes of assessing liquidity of the component transactions, is in our view, acceptable.

**Venue test**

The implementation of the transparency requirements relies on two criteria. First, the instrument must be traded on a venue, and second, it must be deemed liquid. For MiFID II/MiFIR implementation to be successful it is essential that financial instruments are evaluated with a sufficient level of granularity for both the venue test and the liquidity test.

The venue test is particularly important for SIs which operate outside trading venues, but are subject to MiFIR’s transparency requirements if they make firm quotes on, or conclude transactions in, derivatives that trade on a venue. It is clear that some instruments that are traded OTC by SIs will be subject to the requirements. However, it is essential that instruments that trade off-venue (i.e. OTC), are not conflated with instruments that trade on-venue where these instruments are truly distinct from each other.

We would also suggest that a clear distinction needs to be drawn between the liquidity of exchange-traded derivatives (ETDs) which generally have highly standardised terms, and are made available for trading on futures exchanges, and centrally cleared and OTC derivatives, whose terms are negotiated and non-standardised, albeit that they may also be traded on venues and sometimes available for central clearing.

<ESMA\_QUESTION\_CP\_MIFID\_61>

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

<ESMA\_QUESTION\_CP\_MIFID\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_62>

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

<ESMA\_QUESTION\_CP\_MIFID\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

In our view, it is essential to distinguish between: (i) exchange-traded equity derivatives contracts; and (ii) OTC equity derivatives contracts. We support the ISDA response to this question.

<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>

As a general principle, UBS suggest that liquidity should be considered in a wrapper agnostic way. That is, ESMA should not deem an entire universe of wrapper as liquid when there are materially different liquidity profiles of products within that universe. Important considerations would include underlying asset, expiry, strike, pay-off methodology, pricing methodology, lifecycle event scenarios and consequences, adjustment methodologies.

We believe ESMA should undertake an assessment of liquidity at a more granular sub-class level.

<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_68>

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

<ESMA\_QUESTION\_CP\_MIFID\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_69>

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

<ESMA\_QUESTION\_CP\_MIFID\_70>

No, UBS does not fully agree.

**Packaged trades**

As per our response to question 61, we believe that a specific treatment for packaged transactions is necessary.

**RFQs**

We also have significant concerns with regard to how the proposed pre-trade transparency regime will apply to RFQ trading. For example, the bond market is different to other markets which will be covered by the MiFID II pre-trade transparency regime in that the number of instruments which will fall into scope is vast (6000+) and to maintain real-time executable quotes per instrument taking into account market events could hold the firm out to arbitrage opportunities. Additionally, investment firms will have an inventory of stock which is finite and once a quote is filled they may not have additional inventory to fill other clients on the same terms.

We believe that, for RFQ systems, making the “bids and offers and attaching volumes submitted by each responding entity” pre trade transparent may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency. As at today, the answers provided to an RFQ are only known to the entity, which submitted the request. The entities answering to the RFQ do not see the prices provided by the other responding entities and, more importantly, third parties. This asymmetry of information is justified by the fact that the responding entities take on risk that would be increased, with no benefit for both parties, if the bids and offers were made publicly known. As the fixed income market is generally quite illiquid, disclosure on a price-by-price basis to the wider public pre trade disclosure could have severe consequences. It is essential that market makers on venue operating an RFQ protocol are not required to disclose pre trade prices to other market makers (i.e. other price makers).

RFQs on and off venues are privately negotiated. The responses that are returned to the client (from the dealers the client requests quotes from) are bilaterally private, in other words, the dealers that are party to the request for quote will not see each other’s quotes. This allows market makers to protect their risk by ensuring that no-one can move the market against the potentially winning quote.

If full disclosure was required to the wider public, price markers would be disincentivised to quote and there would be a race to the bottom. Specifically, the risk for the responding entity would increase as other price makers could price against them, disincentivising liquidity providers to quote in a short time frame and leading a cumulative impact of dealers pricing against each other (i.e. a race to the bottom), resulting in increased financial stability risks, market makers that are unable to hedge their risks/unwind their positions and worse prices for end-users. Further, the winner’s curse would be exacerbated, with market participants pricing against both the price maker and the investor, resulting in wider spreads and less depth of liquidity.

We understand that ESMA is constrained by the Level 1 requirements, which require venues to disclose bids, offers and depth of trading interest to the public (Article 8 MiFIR). However, we stress that MiFIR Article 8 provides that the pre trade transparency requirements should be calibrated to the trading system. We also note that Article 8 provides that “*Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices”.* We note that it does not state that every bid and offer and attaching volume should be published.

In order to address these concerns, we propose the following alternative approaches:

* For electronic RFQ, we propose that RFQ venues disclose average prices to the market following an RFQ as opposed to firms publishing actual quotes. Venues would provide the average price based on the prices provided by price-makers in response to each RFQ. Disclosure by the venue of average RFQ prices provides the market with a great deal more information than the indicative prices provided by venues and would be of a high level of value. Another significant difference between indicative prices and average prices by RFQ is that market participants will see that there is actual trading interest with the average, whereas they will not see this in the indicative prices of venues.
* For voice RFQ, current market practice is to use electronic platforms to publish indicative prices which act as a reference price for the quotes provided to clients over voice. At the point where a quote is provided, it is necessary to post trade report anyway. We consider this post trade transparency is sufficient and that the proposed pre-trade transparency seems impractical and unnecessary. We would support carving out voice traded activity from the requirement for pre-trade transparency as it is not clear to us how this works in practice.

<ESMA\_QUESTION\_CP\_MIFID\_70>

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

<ESMA\_QUESTION\_CP\_MIFID\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_71>

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

<ESMA\_QUESTION\_CP\_MIFID\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_72>

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

<ESMA\_QUESTION\_CP\_MIFID\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_73>

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

<ESMA\_QUESTION\_CP\_MIFID\_74>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_74>

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

<ESMA\_QUESTION\_CP\_MIFID\_75>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_75>

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

<ESMA\_QUESTION\_CP\_MIFID\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_76>

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

<ESMA\_QUESTION\_CP\_MIFID\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_77>

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

<ESMA\_QUESTION\_CP\_MIFID\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_78>

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

<ESMA\_QUESTION\_CP\_MIFID\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_79>

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

<ESMA\_QUESTION\_CP\_MIFID\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_80>

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

<ESMA\_QUESTION\_CP\_MIFID\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_81>

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

<ESMA\_QUESTION\_CP\_MIFID\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_82>

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

<ESMA\_QUESTION\_CP\_MIFID\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_83>

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

<ESMA\_QUESTION\_CP\_MIFID\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_84>

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

<ESMA\_QUESTION\_CP\_MIFID\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_85>

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

<ESMA\_QUESTION\_CP\_MIFID\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_86>

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

<ESMA\_QUESTION\_CP\_MIFID\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

UBS considers the requirement under RTS 13, Article 20(1)(i) (page 222), in relation to having business continuity arrangements in place to trade all existing orders manually in case of a disruptive event, to be impractical in case of large volumes and we believe it may be inconsistent with the contractual arrangements the client already has in place with venues. We believe Article 20 (1)(i) ‘arrangements for the investment firm to trade all existing orders manually’ should be amended as this is not always practicable, possible or in the best interest of the clients.

We propose that in case of a disruptive event, investment firms should be allowed to manage client orders based on their contractual agreements with their 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 would include, for example, option to cancel, re-route or process order manually.We therefore propose that the following amendment should be made to RTS 13 Article 20(1) (i):

 “Arrangements for the investment firm to manage existing orders in line with the clients’ best interests”

In addition, UBS believes that not all Algos/systems are equally critical for the normal operation of business and firms should have discretion on which Algos/systems they implement the full set of BCA requirements against. As such, we believe ESMA should consider adding wording distinguishing between critical vs. non critical Algos/systems in relation to the business continuity arrangements (BCA) requirements.

Finally, we believe ESMA should take into account its own principal of proportionality between firms when establishing BCA. The proposed arrangements are more relevant for large firms where their systemic market impact is significantly greater to that of small firms. There are instances where a firm itself creates a vast disruption due to its participation in one or several markets, where proportionality due to size or participation in a market should be deemed relevant for their application.

<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>

Yes. We would like to propose the following changes:

* + **Conformance Testing:** Is should only be necessary to perform penetration testing for public connections. As such, for private connections (e.g. in case of co-location) penetration testing does not seem to make sense. We would like to ask for a distinction to be made in this respect.
	+ We would also like to note that conformance testing should be conducted per system, not per Algo.
	+ **Non-live testing:** We believe it would be very difficult to conduct non-live testing as in many cases the environments do not exist at the moment, and even if the trading venues do provide them as part of their own requirements for testing, it is still not clear how/if this arrangement would operate for certain algos (e.g. hedging algos in FX). We believe ESMA should undertake cost benefit analysis on the proposals for non-live testing and the requirement removed if the costs exceed the benefits.
	+ **Controlled deployment**: We note that currently the wording in RTS 13 (page 217) suggests that limits on numbers of trades, price, value, position, etc. should be placed simultaneously when deploying an Algo (reads with "and"). Whilst we believe that controlled deployment of Algos makes sense in many cases, we do not think all these parameters together should be restricted.

We also believe that it should be up to investment firms to determine if an Algo update is material and thus if it is necessary to conduct initial testing as required by Article 10 in RTS13.

Regarding "Ad hoc" change management, we would like to propose adding wording in relation to "emergency releases" where an Algo can be amended without having to go through the full "ad hoc" change management sign-off process as we believe that it would be more dangerous/disruptive to wait and not make the required change.

Additionally, we would appreciate clarity on:

* How conformance testing certification will work (at what level).
* The scope of the Non-Live Testing requirement and whether all types of algo are included
* The requirement to be able to calculate outstanding exposure of clients in real time (RTS 13 - p.219). Additional clarification on the calculation of the outstanding exposure of clients in real time would be welcome.

Regarding real time monitoring, we believe that the ESMA proposed requirement for an independent internal risk control is cumbersome.

<ESMA\_QUESTION\_CP\_MIFID\_94>

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

<ESMA\_QUESTION\_CP\_MIFID\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

UBS does not agree with this as there may be risk situations where trading large volumes may be required to reduce risk and therefore we believe there should not be a requirement in the rules to prevent this.

We would like to seek clarification that this proposed requirement would only apply to shares.

<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>

We believe that there are already market abuse regimes in place to which banks are subject and which are sufficient. The Market Abuse Regulation (MAR) already submits banks to a very strict regime, which covers algorithmic trading. Therefore we do not see any need for a specific RTS on monitoring for market abuse to be included in MIFID/R as this is already covered under MAR. In any case, this requirement should not be too prescriptive in this regard and should be aligned with the Level 2 text of MAR.

<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>

As per our response to Q226 of the ESMA May 2014 Discussion Paper, in principle we agree that general clearing members should have a real time view on their clients’ positions. However, as we noted in our response to the Discussion Paper, in the majority of cases, the industry as a whole does not currently have the infrastructure/technological capability to monitor clients’ positions on a real time basis. Clearing members will typically have the capability for real time trade monitoring to monitor intraday risk but position management typically occurs on an end-of-day basis. We also highlight that clearing firms have in place other measures that enable to the monitoring of a client’s credit risk to the firm (which we understand to be ESMA's key concern as set out in paragraph 57 on page 358 of the December 2014 Consultation Paper).

These include:

* Clients are subject to ongoing credit risk monitoring on an ongoing basis and end-of-day risk monitoring via a series of reports and controls.
* On an intraday basis:
	+ Execution limits are in place to control the flow of orders pre-trade
	+ For cleared trades, near real time trade activity reports are in place, which allow the monitoring of trades intraday. This allows risk managers to monitor client activity, where particular clients are deemed higher risk. If a clearing firm was concerned about a particular client, this would be a means of monitoring whether a client was generating significant incremental risk intraday.

For the industry to be able to deliver real time client position monitoring would require significant technology and operational changes, with dependency on market infrastructure providers and third party system vendors. In our view, it will not be possible for the industry to achieve this by January 2017. We believe a 5 year implementation period would be more appropriate.

Even with an appropriate implementation period, there are scenarios where it will not be possible to achieve real time monitoring against the end client, but rather close to real time/trade date monitoring. As noted in our response to the May 2014 Discussion Paper, an example of this is where end client allocations are not immediately available such as in the case of an asset manager for whom an order is executed throughout the day and then later allocated to end client accounts at an average price.

We therefore propose that the requirement in draft RTS 13, Article 29, 2 should be amended so that the requirement is that:

"Investment firms acting as a clearing firm shall monitor their clients’ positions against these limits on real-time, or as near to real time as is practical, basis and have appropriate pre- and post- trade procedures for managing the risk of breaches".

Article 17, 6 of the MiFID II Level I text does not require general clearing members to have in place real-time monitoring of client positions so we believe ESMA should have the flexibility to make this amendment.

As a final point, we note that Chapter V of RTS 13 specifies organisational requirements for investment firms engaged in algorithmic trading. We would appreciate clarification of whether ESMA's intent is (i) to limit the RTS 13, Chapter 5 requirements to general clearing members engaged in algorithmic trading or (ii) to apply the requirements to all general clearing members, irrespective of whether they are engaged in algorithmic trading. We believe the latter scope would be more appropriate but would welcome clarification either way.

<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>

UBS would be grateful for clarity on the scope, and thus extraterritorial impact, of the MiFID II Algo/DEA provisions (both for Algos used outside the EEA but interacting with EEA clients/TVs/entities and for Algos used within the EEA that may fall under multiple local regulatory requirements).

<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>

We believe that having a fully-fledged testing environment as described in RTS 14, Article 11, 2 (page 248) would significantly increase the cost of running a trading venue and therefore this requirement could potentially violate the proportionality principle.

We support an adequate testing of systems in dedicated test environments and that a live production environment is not to be used for such a purpose, while also recognising that there are certain types of tests that really can only be performed on the production system.

We are of the view that Trading Venues should create non-live testing environments with limited/restricted scope (e.g. only for a small number of shares) and while the functionality of the platform should mirror the Production functionality, there will be instances when the two environments will slightly differ where enhancements are made available in the Test environment prior to Production implementation.

<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>

No, UBS does not agree with the proposal.

We believe the additional proposed market making requirements/ obligations will discourage market participants from pursuing market making strategies in the future, which in turn could have an adverse effect on the market.

We also believe that limiting firms in taking part in market making schemes would not be fair and non-discriminatory. Market making schemes by their nature should be open ended.

We believe the design of the structure needs to be based on a simple principle which is the deliberate intention by a firm to want to be a market maker. These requirements should encourage such activity and not try to undermine it by creating unclear open ended obligations for these firms. We do not therefore believe that it is appropriate for a firm to be deemed to be pursuing a market making strategy based on the actions of a single trading day.

<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>

No, we do not believe this is appropriate.

We do not think it is appropriate to determine whether a firm is pursuing a market making activity based on a single day trading. We believe averages for a broader period needs to be considered. It is entirely feasible that a firm holding a position they are trying to liquidate provides quotes for more than 30% of a single trading day in that instrument; this alone should not then trigger a deeper, longer commercial obligation. UBS believes that in this respect market making obligations should be assessed on a monthly basis consistent with the SI regime.

Additionally we propose that trading venues should have an obligation to notify their members in case they are coming close to exceeding the market making threshold during this four week period, so that members can make a conscious decision if they want to pursue a market making strategy and sign the relevant agreement or not (in which case they will have the opportunity to stop the Algo and not exceed the threshold).

<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>

Particularly for non-equities, UBS wish to propose that a rule of 50% of on-going quoting over a period of 4 weeks should be considered when determining the amount of quoting an investment firm is required to provide during ‘market hours’.

<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>

We believe that the text on the exceptional circumstances scenarios should mention that internal IT disruptions in an investment firm could prevent it from fulfilling its market making obligations. It would be operationally onerous to monitor the occurrence of exceptional circumstances (e.g. conditions of “extreme volatility” or a significantly stressed market conditions). There may be instances when IT disruptions may prevent an investment firm from being able to provide a quote and thus comply with the stringent quoting obligations set within the market making agreement.

We would like to propose that in order to capture such instances, ESMA refers to such exceptional circumstances (caused by internal IT disruptions) which may prevent a market maker from continuously providing liquidity under its market making agreement. In the event of an IT disruption on the side of the venue, we consider it important that any orders submitted before such a disruption will still be good following the resolve of any issues.

We strongly disagree with making public the occurrence of exceptional circumstances, as by doing so this may produce undesirable consequences in the orderly functioning of markets and performance of other market participants. We believe that the reason for the disruption should not be made public.

<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>

We believe that an investment firm should have the option to suspend its participation in the market making agreement based on its own analysis and ability to continue with the market making strategy. We suggest that a notice period (e.g. one month) should be required in order for a firm to be allowed to exit the agreement.

<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>

We would like to seek clarification on whether an OTR max ratio will be mandatory or optional for Derivatives. We consider the wording in the CP and RTS to be ambiguous as RTS 16 (page 276) states that: "*Trading venues should make an internal assessment to determine whether for derivatives it is relevant and justified to set out the maximum ratio of unexecuted orders to transactions on a per group of instruments or, when possible, on a per instrument basis*" whilst paragraph 11 on page 397 of the consultation paper it is stated that: "*In light of the revised scope of ESMA’s mandate in this regard, it is proposed not to limit the obligation to set out the OTR for any type of financial instrument and therefore, all trading venues allowing for or enabling algorithmic trading through their systems should establish an OTR for their members or participants".*

We noted that if the purpose of the OTR max ratio is to prevent HFT firms providing "phantom" liquidity, the requirement should be mandatory for derivatives.

<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>

We would like to seek clarification on whether the volume is calculated on a per instrument basis.

<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>

We believe the OTR ratios should be recalculated in the case of exceptional circumstances.

<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>

UBS seeks clarification on how the proposed calculation will work in practice. RTS 16, Recital 5 (page 279) states that: "*A trading venue shall calculate the maximum ratio of unexecuted orders to transactions in both volume and number terms at least once a year. For that purpose, trading venues shall take into account all the orders submitted by all members and participants across all phases of the trading sessions, including the auctions, during the preceding twelve months’ trading*".

We believe that monitoring should be continuous and results reported monthly. Monitoring on a monthly basis does not seem to be appropriate in the context of these rules.

<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>

In respect to co-location services, UBS is supportive of the proposed changes.

<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>

We are supportive of the proposed draft RTS. From an investment firm perspective, the proposed RTS in respect to fee structures is a positive change.

However, as per our response to the May 2014 Discussion Paper, we do not support the provision of trading venues (TVs) charging their members for testing obligations.

<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>

UBS does not support any fee structure that provides participants with information on orders before they hit the TV's matching engine. We recommend that this be prohibited. There should be a level playing field when it comes to access to information provided by TVs.

<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>

As a general comment, we fully support the general approach proposed by ESMA regarding tick sizes and we appreciate the thoroughness of the impact assessment which has been conducted and the fact that ESMA has managed to take into consideration and manage the various constraints. The fact that the current position provides both a ceiling and a floor offers a more robust approach, but at the same time, more flexibility and adjustment possibilities.

Regarding the most relevant market in terms of liquidity, we agree because the number of trades is a good proxy for liquidity. Using all possible proxies would broadly bring similar results while unduly overcomplicating the process.

<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>

No, a more granular approach would not necessarily be more suitable as the introduction of additional liquidity bands might create too much discrepancy between the top and lower bands. What is important is to ensure that the revision process is efficient and the European regulator is sufficiently empowered. Additional clarification is required regarding how the reference point for the price range categories will be calculated. For example, if the Bid price for a share is 9.98 and the Ask price 10.05, under which price range would this share fall under?

<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>

Yes, we agree with the approach. Clarification is required on how the tick size for a newly admitted share will be set for the first 6 weeks of trading (i.e. until the trading venue determines its on-going tick size band). What tick size will be used for day 1 of trading of a newly admitted share?

<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>

Yes, we agree with the approach.

<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>

No, UBS does not consider that there are any other particular or exceptional circumstances for which the tick size may have to be specifically adjusted.

<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>

We understand that Certificates are defined within MiFIR Article 2(27) as being “those financial instruments defined in point (44)(c) of Article 4(1)(45) of [MiFID II]”.

We would be grateful if ESMA could clarify if Warrants are a similar financial instrument to a certificate and are therefore intended to be considered within the scope.

<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>

We have no issue with annual revision, provided that sufficient lead time if offered to investment firms to calibrate their algorithms/systems prior to the annual liquidity band changes. It is crucial that the European regulator is enabled to conduct the revision process efficiently and this revision process should be liberated from any commercial constraints.

<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>

Yes, our algorithms/trading systems will need to be adjusted to operate accurately based on the new tick sizes proposed. Adjustments will need to be made on an annual basis when tick sizes are determined every March, and in many cases Algorithms will need to be adjusted each time a share, depositary receipts, ETF or certificate moves between different tick size categories during the year (i.e. due to a price range change). It is important to note that IT code changes will be required for these calibrations in certain cases, therefore an appropriate lead time should be provided to investment firms to deliver these adjustments.

UBS would therefore like to propose that a period of 48 hours is provided between the announcement of a tick size determination/change by a Trading Venue and the implementation/go-live day of the new tick size. This period should allow enough time for investment firms to calibrate their algorithms/systems correctly.

<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>

Yes, we have no issue with the proposed definition.

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

We do see an additional complexity for consumers of published data (e.g. in private banking where data is sourced from multiple sources of data, across different venues, execution entities, locations and asset classes) in this respect. It would be welcome if ESMA can clarify how consumers of data should be able to handle upstream data corrections, potential omissions and data quality reconciliations if they are using this data to create the periodic monitoring and review for the quality of order execution – both from a venue assessment point of view and also for the accuracy of data provided in the reports to retail investors.

<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>

Where we act as a consumer of data from multiple venues / sources, we would greatly encourage consistency in the way that data is published, especially with respect to free open source software and a monthly notice of any change in instructions.  We will be relying upon the data from upstream trading venues to support the accuracy of our retail investor reporting and therefore any delays or difficulties to access the data may have an effect on data availability and quality for trading venue monitoring (for quality of order execution) or downstream reporting on execution for retail investors.

<ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

For consumers of data, we welcome any safeguards that ensure that duplications by data publication entities are avoided. It should not be within the responsibility of the data consolidating entity to apply quality checking to strip out (un-flagged) duplicated transactions before analyzing the results for retail investors.

<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>

We would need to have greater clarity on what forms of data would be aggregated (e.g. equities into CTPs) and which would be only available individually.

<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>

Currently there are no specifications for how much time is allocated to consumers of data to prepare a consolidated view (e.g. for the retail client reporting). Any rule on publication time has to be as clear as possible for consumers of data to properly process such data.

<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>

We believe that disaggregation down to instrument level should be mandatory as this would help facilitate the ultimate goal of allowing customers to buy only the data they need. We also believe that such data should be made available on a reasonable commercial basis. By contrast, disaggregation by asset class can be on a comply or explain basis. We understand that disaggregation by asset class is already offered today by most trading venues but it should not have to be mandatory for venues to create products by certain asset classes for which there is no customer/ consumer of data demand.

Where we act as a consumer of published data from multiple sources, alignment across these multiple sources is key. We would in this respect welcome as little discretion as possible for data providers and a rather standardized approach.

<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>

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<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>

No, we do not agree. We are concerned that the ESMA proposals would result in a CCP being required to mandatorily clear a very wide range of products it may not currently clear.

UBS is of the view that the only circumstances in which a CCP should be required to offer non-discriminatory access is in respect of contracts that are identical to contracts that it already clears (i.e. in cases where the CCP already clears the contract but where it is executed on a different trading venue).

In cases where the contract specifications are different, including where there are only a couple of small differences in the contract specifications if this could result in significant work for the CCP in modifying risk / margin systems, we do not believe the CCP should be required to grant non-discriminatory access. It is important that the CCP is very transparent and precise regarding the specifications of the contracts it already clears so trading venues have a clear understanding of the CCP's product offering. Should there be a disagreement between the trading venue and CCP regarding a decision not to grant access, there should be a clear escalation process to the national competent authority of the CCP.

In cases where a trading venue wants a CCP to clear a contract that is not identical to a contract that the CCP already clears, we believe it will be necessary for the CCP and the trading venue to form a strategic partnership to facilitate the clearing of the contract on the relevant CCP based on whether the contract is commercially viable for the relevant parties. Examples of such a partnership working in practice are the arrangements between ERIS and CME and between GMEX and EUREX.

We also note that consideration needs to be given to the situation where the CCP has to invest to take on new transactions from new trading venues but where the expected volume of new transactions is low and does not justify the investment. As CCPs are commercial entities, we do not believe they should be forced to clear additional transactions from new trading venues if this is not commercially viable. But we do not believe that low predicted additional volumes should in itself be sufficient reason to deny an access request but rather that the determination should be made on the basis of a commercial analysis of the access request and the extent to which a CCP can recover costs (either through payment or expected revenues). We believe CCPs should be permitted to charge a reasonable commercial fee to trading venues to cover the costs of facilitating the access request.

<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>

UBS notes that the scope of ESMA's mandate with regard to non-discriminatory access to a trading venue only covers the production of draft RTS regarding CCPs' access to trading venues. However, we also consider it crucial that trading venues should permit access to the venue by other market participants on a transparent and non-discriminatory basis. We have included some detailed comments on this issue in the general remarks section.

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

No, we don’t agree with ESMA’s assessment. We are of the view that the following additional requirements each time a new CCP is granted access to a trading venue could have human resource implications:

* Connectivity requirements
* Limit Checking
* Trigger of the Trading Obligation
* Analysis of comparable contracts

<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>

No, we do not fully agree with the proposed draft RTS. We do not consider the determination of economic equivalence by reference to EMIR authorisation categories to be appropriate and believe the determination should be made on economic grounds, not by reference to regulatory constructs such as EMIR authorisation categories. We propose that ESMA determine economic equivalence in accordance with the approach under EMIR in Article 27(1) of Commission Delegated Regulation No. 153/2013 where economic equivalence means that the two instruments being compared are “*significantly and reliably correlated, or based on equivalent statistical parameters of dependence, with the price risk of one another*”.

Also, we do not support the proposal in the draft RTS that a CCP should apply to economically equivalent contracts the same margin and collateral methodologies regardless of where the contracts are executed. MiFIR Article 35(6) (e) states that there should “non-discriminatory” treatment between contracts traded on different venues but does not require identical treatment.

<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>

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<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>

UBS would appreciate additional clarification of the scope of "benchmarks" covered by the proposal. In particular, we believe it is important to confirm whether basket related products (e.g. Basket CDSs) are within scope of the rules. Additional granularity on scope would help investment firms understand what information (and at what level) is required to be captured.

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

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

<ESMA\_QUESTION\_CP\_MIFID\_160>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_160>

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

<ESMA\_QUESTION\_CP\_MIFID\_161>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_161>

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

<ESMA\_QUESTION\_CP\_MIFID\_162>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

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<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

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<ESMA\_QUESTION\_CP\_MIFID\_164>

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

<ESMA\_QUESTION\_CP\_MIFID\_165>

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<ESMA\_QUESTION\_CP\_MIFID\_165>

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

<ESMA\_QUESTION\_CP\_MIFID\_166>

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>

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<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>

We do not support the ESMA proposal to use average data for 2016, given that MiFID II/MiFIR becomes applicable on 3 January 2017. Average data for 2016 will only be available once 2016 has come to an end meaning market participants have just 1 day to apply the capital test and the market share test to evaluate whether they will be covered by MiFID II or are able to apply for an exemption. If an entity discovers that authorisation is required, we believe moving from non-regulated firm to regulated firm status will be a substantial and potentially costly exercise which will take a significant amount of time. In order to enable firms that become subject to MiFID II/MiFIR to continue trading, and to avoid a potentially systemic disruption to the commodities derivatives market, we believe ESMA should put in place measures to smooth the transition from non-regulated to regulated status. For example, in order to avoid a firm having to stop trading whilst waiting for its application for authorisation to be approved by the national competent authority, a firm that had submitted a valid application for authorisation could be deemed as authorised for a period of up to 12 months.

<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>

For non-spot months, UBS supports the AIMA and ISDA proposals that open interest is a more appropriate measure for setting limits. This is on the basis that for non-spot months:

* It is very unclear how to measure the deliverable supply
* It is unclear what period will be considered as relevant for the measure of deliverable supply compared to the maturity of non-spot month contracts
* It is unclear what geographic boundary should be applied to measure the deliverable supply

UBS considers open interest to be a better metric for non-spot month contracts because the open interest reflects all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants). Whilst open interest is a factor that national competent authorities can take into account when using the capacity to adjust the baseline limits by plus or minus 15%, this may not be useful if the 25% limit is materially inaccurate as it is based on deliverable supply.

<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>

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<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

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<ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

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<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>

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<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>

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<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>

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<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>

UBS would appreciate clarification that in RTS 30, Article 2, 2., the reference that positions that are held by an intermediary on behalf of a client shall not count towards that intermediary’s own position limits applies to positions held on behalf of all clients, including financial counterparties as defined under EMIR, and is not limited to non-financial counterparties.

<ESMA\_QUESTION\_CP\_MIFID\_202>

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

<ESMA\_QUESTION\_CP\_MIFID\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

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<ESMA\_QUESTION\_CP\_MIFID\_205>

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

<ESMA\_QUESTION\_CP\_MIFID\_206>

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<ESMA\_QUESTION\_CP\_MIFID\_206>

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

<ESMA\_QUESTION\_CP\_MIFID\_207>

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>

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<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

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<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

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<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

As noted in the UBS response to Q537 of the May 2014 Discussion Paper, UBS has concerns with a reporting regime that requires reporting of client positions until the end client is reached due to data confidentiality concerns.

We propose that ESMA should adopt the CFTC approach to end client reporting where an investment firm will identify its client, and the relevant competent authority will then require that client (or its underlying client) to provide the relevant report. This would allow competent authorities to receive the information they require without the intermediation of the investment firm, although there may be cases in which the client or its underlying client is unable to provide the necessary information.

In all cases, ESMA should ensure that any information published by ESMA, the competent authorities, or individual trading venues does not reveal the positions of individual market participants. This is a particular concern in physical commodity markets where contracts based on specific delivery points may be used by a small number of market participants. Even though position information for such contracts may be nominally anonymous, the identity of individual traders may still be discernible in markets with low volume or liquidity. Without adequate safeguards, reporting parties will be forced to share position information in a way that could reduce competition and frustrate beneficial risk management activities.

Finally, irrespective of the method adopted by ESMA to obtain information on clients and their underlying clients, investment firms should not be prohibited from dealing with clients who are unable to provide the required information (either in relation to themselves or in relation to their underlying clients) as a result of data protection laws in third country jurisdictions, as this is likely to result in significant barriers to market access for end clients.

<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>

As a general remark on market data reporting, UBS would be grateful if ESMA would provide further guidance on transaction reporting requirements and responsibilities similarly to the UK Transaction Reporting User Pack (TRUP) framework.

UBS would prefer to retain the flexibility of different reporting formats, due to the increased diversity of product scope and systems that will need to report. If a format is mandated then the most preferable would be FpML, due to the fact that this would leverage existing technical infrastructure that was built for EMIR and would ensure consistency. The most substantial implementation challenge would come from non-XML based formats such as FIX and to a lesser extent customized XML formats such as TREM as it is not industry standard.

<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>

UBS has no issues with the proposed definitions for transaction and execution which have been clarified as being specifically used for transaction reporting purposes.

<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>

UBS has no issues with the updated list of inclusions and exclusions. Our understanding is that further clarity will be covered in the future guidance, which will provide specific examples across the various product types and scenarios.

Our understanding is that ESMA wants to specifically exclude Securities Financing Transactions (SFTs) as they will be covered under the EU Securities Financing Transactions Regulation (SFTR) and we propose that the MiFID II/MiFIR definition of such transactions align with the proposed definition under the SFTR, to ensure there is no discrepancy as to which products are not required to be reported under MiFID II.[[2]](#footnote-2)

It is also Important that ESMA clarifies the position should the SFTR not be applicable at the time MiFID II becomes applicable. We do not consider it appropriate to have to report SFTs under MiFID II for a temporary period.

We would appreciate clarification with regards to novations & assignments of derivatives. Our current understanding is that the remaining party of a novation has no transaction reporting responsibility as it is part of a novation and there is no change in notional for them. Both Stepping-in and Stepping-out parties will have an obligation to transaction report, as a termination and as a new trade respectively, as in both cases, although they are part of a novation, there is a decrease and an increase in notional of the trade before expiry.

We would also like clarification on the specifics of reporting exercises & assignments of options that result in a deliverable underlying instrument. Our current understanding is that the exercise & assignment of the option position itself is not reportable, even though it results in a decrease in option position, although we believe this may be revisited soon by ESMA and the FCA.

We agree the underlying deliverable itself is definitely reportable as a new transaction although there is some confusion over whether this applies to early exercises only and not from expiry exercises, as there is wording in the exclusions around 'Pre-determined contractual or mandatory events where no investment decision is taken' and 'Creation, expiration and redemption of derivatives'.

For ease of implementation and the removal of complexity, we would like to propose that all reportable financial instruments that are the result of an exercise or an assignment are reportable, whether they are an early decision or an expiry event. These can be flagged as a result of an option exercise or assignment, but will not be linked back to the specific option exercise itself

If the reporting of the exercise or assignment of the option itself is brought back into scope then this would be agreeable to UBS and would remove the conflict in the consultation paper between reporting transactions and tying these back to a cumulative position. We believe the above will give ESMA and the NCA's a more comprehensive and accurate view of what is happening in the market and would be less problematic to implement.

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

UBS understands the challenges associated with the proposals for receipt and transmission of orders but realises this is a requirement under MiFIR.

<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>

UBS agrees with ESMA's proposal. However, we suggest the increase in product scope may cause issues for some products where the initiator of a trade is classed as the Buyer, for examples Basis Swaps. We understand however that this will be covered in examples in future guidance.

<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>

In general UBS is comfortable with the new fields and the reasons behind them, however we would prefer if any duplication could be cut down to further simplify the reportable fields. Our two main worries with the new proposed fields are the requirements around client identifying data and the introduction of the short selling flag which is detailed below.

We would also be grateful if ESMA could specify as part of the RTS that the validation for each field could be included, similar to the work done for EMIR Trade Reporting validation that was published on 24 of October 2014.

1). Reporting of Natural Persons – UBS proposes that, where a natural person has been identified by their passport number or national identification code, there is no requirement to fill in further details of name, surname, date of birth, country of residence and post code as this seems duplicative. Fields like postcode for example (Fields 12, 19, 27, 34) are particularly of concern due to the regularity of people changing address. The above also doesn’t seem to be included for Transaction Reports that have been the result of Receipt and Transmission where the onus is on Passport Number or National Identification code. Where possible, we would like to reduce the amount of unnecessary client identifying data, where an applicable and useful identifier has already been provided.

2). Short Selling Flag – The current requirement in the consultation paper will require firms to build systems to continually calculate a real-time position across a legal entity for all relevant products. UBS considers this to be particularly operationally challenging and resource intensive, and would not be able to take into account overarching binding or locate agreements to borrow such stock, or the rights over the stock resulting from future and option derivative transactions. We would welcome any efforts that could be made to bring this requirement into line with the current short selling regulations already enforced by ESMA, as we don't believe the current requirements will furnish ESMA with usable or correct information, and this information will come at a high price to the industry.

If the above proposal is unacceptable to ESMA, then UBS propose that rather than be covered at a legal entity level, ESMA allow the short selling requirements to apply at desk or decision making unit level. This would provide greater granularity to the regulator, whilst also being an achievable, although still challenging, build for firms to implement.

The last option would be, rather than a real-time calculation, firms were allowed to do a T+1 calculation on relevant positions, which could then take into account overarching stock borrow agreements and other instruments to see if they did end up selling short during the previous day. This could then be populated onto the appropriate trades for the regulator to see, or a single report could be sent with details of what happened.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

The definition for Matched Principal is very precisely defined and will not capture the majority of trades that it looks like ESMA is trying to capture with this rule, where an investment firm acts as a pure facilitator between a buyer and a seller and makes no change in its own position.

In line with industry recommendations, UBS proposes that rather than use the Matched Principal flag, ESMA create a new "Facilitation" flag with a looser definition to help broaden the scope of this requirement to make it more useful. This would take into account where firms work orders over time or facilitate best execution over multiple trading venues, with no intent to profit from or take position themselves.

Our definition for a Facilitation trade would be:

*F - Facilitation capacity means dealing on own account as a facilitator by interposing between the buyer and the seller to the transaction with both sides executed within a reasonable timeframe, and where the transaction is concluded where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.*

<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>

UBS has no issue with the requirement to identify specific waivers; however we would like clarity on the requirement for how and when the trading venues will supply this information as part of the trade confirmation process.

Ideally we would like this information populated on the trades themselves at point of execution, and not solely be provided on the trading venues' end-of-day reports.

We would also welcome any guidance on responsibilities if the trading venues fail to pass this information on to firms.

<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>

UBS agrees with ESMA's approach for deciding whether financial instruments based on baskets or indices are reportable, i.e. the criteria whether at least one component of the basket is a financial instrument which is admitted to trading or traded on a trading venue.

<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>

UBS proposes an amendment to the requirements for the reporting of Indices and Baskets to reduce the technical burden on firms and avoid the risk of filtering out reportable instruments.

We do agree with the ESMA proposal that only Indices and Baskets that contain underlying reportable constituents should be reported and understand the requirement not to over-report transactions. However, on the transaction itself, we ask that once an Index or Basket has been identified, we report all the constituents, regardless of whether they are a financial instrument admitted to trading or traded on a trading venue, in order to reduce the technical burden, and remove the requirement of filtering out parts of the index/basket that may not be traded on an EEA venue.

<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>

UBS does not foresee any difficulties applying the criteria for branch reporting.

We would welcome some clarity and confirmation on the responsibilities of EEA branches of Non-EEA firms and their correct flow. We believe this will be similar to the current wording from the FCA's TRUP 3.1 below:

"*Where a non-EEA firm falling within the definition of a third-country investment firm executes a transaction from its UK branch, it must report the transaction to the FCA*."

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

UBS does not anticipate any significant difficulties with regards to the implementation of LEI validation but we support the comments of FIA Europe to this question. In particular, we note that not all trading venues outside the EEA currently have an LEI.

We would welcome ESMA’s assistance in rolling out an LEI regime via the Regulatory Oversight Committee to parties with a reporting obligation outside the EEA which do not yet use a LEI.

We also agree that a firm acting on behalf of clients should be expected to validate each client’s LEI upon onboarding and to re-validate it in periodic reviews, but not on a trade-by-trade basis (either before or after execution). Firms reporting on behalf of a counterparty should not be penalised for reporting lapsed LEIs provided they have validated their clients’ LEIs as described above.

<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

UBS foresees difficulties with the requirement to not over-report due to the lack of any golden sources of data for financial instruments. We propose that there be some leniency in the timelines for cancelling over-reports. As an example, where over-reporting is identified by a firm, and strategic technical fixes are being built to combat this, the firm has flexibility in the time-frame to cancel the over-reports in one go once the fix is in place, rather than a labor-intensive daily manual cancelation.

<ESMA\_QUESTION\_CP\_MIFID\_225>

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

<ESMA\_QUESTION\_CP\_MIFID\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

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<ESMA\_QUESTION\_CP\_MIFID\_227>

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

<ESMA\_QUESTION\_CP\_MIFID\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_228>

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

<ESMA\_QUESTION\_CP\_MIFID\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_229>

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

<ESMA\_QUESTION\_CP\_MIFID\_230>

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<ESMA\_QUESTION\_CP\_MIFID\_230>

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

<ESMA\_QUESTION\_CP\_MIFID\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

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<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_234>

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

<ESMA\_QUESTION\_CP\_MIFID\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

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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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_237>

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

<ESMA\_QUESTION\_CP\_MIFID\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_238>

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

**ETDs**

UBS does not support the proposed requirement for pre-trade checking for exchange traded derivatives (ETDs). In our view the requirement is unnecessary for the following reasons:

* + ETD markets include rules to ensure that certainty of clearing is an in-built design feature.
	+ Trading Venues' rules require that for every exchange member executing on the market there is a clearing member that is contractually obliged to stand behind the trade either as buyer or as seller of the contract.
	+ Checks are already in place at execution to ensure orders with incorrect parameter are automatically rejected up front. As such, any transactions arising from the execution of such orders are in a format that will be accepted for clearing by the CCP.

Should ESMA choose to impose pre-trade checking for ETD, we are concerned that there will be a significant impact to asset manager clients, who will have to fundamentally change their allocation methodologies. We also believe that significant infrastructure changes will be needed which will result in costs for all market participants, including end clients. In this regard, should ESMA go ahead with the proposal, we consider it important that there is a thorough cost benefit analysis. Finally, we consider that a potential 60 second delay to trading for electronically executed trades which are executed in the order of milli-seconds will result in market disruption.

We therefore support the FIA Europe proposal to amend Article 3 of the draft RTS so as to exclude from the pre-trade checks orders submitted for derivative contracts by those clearing members who are members of Trading Venues and their associated CCPs where *binding contractual obligations* arise between the Trading Venue members and their clearing members, and *consequently between the clearing members and the CCP immediately upon execution of the Trading Venue transaction.*

**OTC derivatives**

With respect to OTC products transacted on RMs, MTFs and OTFs, we support ESMA's proposal to require clearing members to perform pre-execution limit checks on an order-by-order basis against limits established for the particular client.

As a point of clarification, we would suggest ESMA specify that trading venues must facilitate the performance by clearing members of their pre-trade limit check obligation, for example through building the necessary connectivity to a central limit hub.

Implementing a robust pre-trade limit checking process operates hand-in-hand with STP, as it removes the need for clearing members to engage in a post-trade affirmation process, and ensures any trade executed on the venue is submitted for clearing as quickly as technologically practicable, as required by Article 29 of MiFIR. We believe any such manual affirmation process is superfluous and should be prohibited under STP for OTC cleared products, particularly where it would operate to remove pre-trade anonymity provided to parties by the trading venue (such as in an anonymous order book).

Though we support the proposal for pre-trade checking for OTC derivatives, we consider the maximum times to be too long and could prompt delays which would impact a firms' ability to hedge. We propose the following approach for OTC derivatives:

1. UBS proposes that the pre-check related to the derivative transactions subject to the clearing obligation entered into electronically should be performed as soon a technologically practicable, but no later than 5 seconds, from the receipt of the order by the trading venue.
2. For the others [e.g. non-electronic], UBS proposes that the check should be performed within 2 minutes from the receipt of the order.
3. Because the pre-check should allow the counterparty and clearing member to take action, it is important that the information be provided in a timely fashion. UBS proposes that the trading venue should provide the information on a real time basis for orders that would be executed electronically and within 2 minutes following the pre-check for the others.
4. UBS proposes that the transaction should be submitted to the CCP within 10 seconds of execution when it is concluded on a trading venue in an electronic manner, within 5 minutes of execution when it is concluded on a trading venue in a non-electronic manner.

<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>

While we recognize the distinction between OTC products transacted on RMs, MTFs and OTFs and those transacted bilaterally, in our view the same STP rules should apply to all on-venue OTC cleared transactions, regardless of whether they are subject to the clearing mandate or voluntarily cleared.

The determination of whether a particular transaction is subject to the clearing mandate will be based on several factors, including not only the product but also the jurisdiction of the counterparties. It would be operationally challenging for different rules to apply to the same product traded on a particular venue depending on which specific counterparties were involved in any given trade. As a result, similar to the position adopted under CFTC rules, we are supportive of a single STP framework for on-venue cleared OTC products, regardless of whether of whether they are subject to the clearing mandate or voluntarily cleared.

<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>

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<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>

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<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

With respect to OTC products transacted on RMs, MTFs and OTFs, we support ESMA's proposal to maintain general consistency with the CFTC's approach and deem the trade void if it is rejected by the CCP (and cannot be resubmitted successfully).

Experience on SEFs has demonstrated that, with a robust system of pre-trade limit checks, clearing rejections are extremely rare and are typically associated with some type of operational or clerical error. In addition, ESMA's proposal serves to ensure that any such rejection will occur and be notified to the relevant parties shortly after the transaction was originally concluded.

If any such rejection were to occur, however unlikely, we are also supportive of ESMA's proposal to allow the parties to resubmit the trade for clearing during a defined period of time. However, we do believe that this period should, at least initially, be longer than 10 seconds in order to provide parties with the necessary time to resolve a purely operational or clerical error. ESMA may consider providing a longer period at the beginning, which would decrease over time as the infrastructure becomes more robust and parties are more familiar with the specific requirements.

In all, this approach provides all market participants with the necessary certainty regarding what happens in the event an OTC transaction executed on an RM, MTF or OTF is rejected from clearing, while also removing the need for bilateral documentation between each and every direct and indirect participant on the regulated venue (which may be required if compensation was required to be paid between parties to trades rejected from clearing). Bilateral documentation requirements and compensation payments between participants are not conducive to certain trading protocols, such as anonymous order book trading, and may serve to conflict with the open access principles contained in MiFID II/MiFIR as certain market participants may be hindered in transacting on specific venues due to resource constraints or other factors that impede their ability to negotiate bilateral documentation with every other participant on the venue. In conjunction with the implementation of MiFID II’s mandatory trading requirement, impediments to accessing specific trading venues may have serious consequences for market participants and as a result we believe bilateral documentation requirements are better suited for the remaining OTC activity that may occur away from a RM, MTF or OTF but nonetheless be submitted for clearing.

<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>

Please note that the following comments cover questions Q244 and Q245 jointly.

UBS does not support the proposed draft RTS. While we support the important goal of protecting client assets, there are significant legal and operational challenges in implementing the ESMA proposal in its current form. We are of the view that the resulting model is not scalable, will be costly to implement due to the materiality of the operational and implementation challenges and is likely to increase costs and complexity for end clients.

The choice of net and gross omnibus segregation will mean both direct and indirect clients, as end users, will face increased costs as a result of the significant undertaking to amend legal documentation and implement new supporting processes and account structures.

We set out below our specific concerns with the ESMA proposals and our proposed solutions. We also note our support for the responses of FIA Europe and FIA US to questions 244 and 245 of the consultation paper.

**Issue 1: Insolvency law -** Under the ESMA proposals, clients can only facilitate indirect clearing where the insolvency law applicable to the client is compatible with the RTS. But we note that clients outside of the EU will need to comply with their local laws and that those local laws will not necessarily be compliant with the RTS and it is also unclear whether ESMA's proposed recitals override national insolvency laws within the EU. Given the global nature of indirect clearing arrangements, conflicting insolvency laws may prevent firms from complying with the RTS. Some existing clearing arrangements may be prohibited, where positive legal opinions that arrangements comply cannot be achieved. End clients may need to establish new clearing relationships to access markets directly and may even be shut out of certain markets where they are unable to do so e.g. due to local licensing or regulatory requirements.

In this regard, we highlight our support for the FIA US response. This response notes that RTS 38 Articles 4(7) and 5(6) appear to be incompatible with US insolvency law applicable to US futures commission merchants (FCMs). Specifically, when an FCM is a client of a clearing member, the clearing member may not, upon the default of the client, transfer indirect client funds directly to indirect clients, as required in Article 4(7). Further, a client that is an FCM may not make arrangements with its indirect clients to facilitate the prompt return to the indirect client of the proceeds from the liquidation of the positions and assets held by the clearing member for the benefit of the indirect client, as required by Article 5(6). As a further example, we believe the same concerns arise in Switzerland. Under the Swiss Banking Act, the clearing member generally may not transfer indirect client assets directly to the indirect client. If the accounts with the clearing member are liquidated, the proceeds of such liquidation must be returned to the bankruptcy trustee for distribution to its customers according to the Swiss insolvency laws. The proceeds of the liquidation form part of the bankruptcy estate, unless the indirect client has segregation rights, e.g. pledged non-cash collateral (no title transfer). Please be aware that the above may change once FinfraG and respective amendments to the Swiss Banking Act are in force.

**Proposed solution:** We support the FIA EU and FIA US proposals that, in circumstances in which the requirements of RTS 38 are incompatible with applicable insolvency law, a clearing member and its client may continue to offer indirect clearing services, provided the indirect clients receive appropriate disclosure regarding the risks of the applicable insolvency law.

Alternatively, we ask ESMA to confirm that:

(i) a clearing member will be in compliance with RTS 38 Article 4(7), if the clearing member, upon the liquidations of indirect client assets and positions, promptly returns the proceeds of such liquidation to the bankruptcy trustee in accordance with applicable insolvency law; and,

(ii) a client will not be required to comply with the provisions of RTS 38 Article 5(6), if such contractual arrangements with its indirect clients would be incompatible with the applicable insolvency law.

**Issue 2: Extraterritorial application –** Our understanding is that the RTS apply to CCPs, clearing members, direct clients and indirect clients globally and are not limited to the EU. In our view, the purpose of the RTS is to provide protections in respect of EU indirect clients clearing through EU CCPs and the scope of the RTS should be limited accordingly.

**Proposed solution:** We believe the scope of the RTS should be limited to EU CCPs, EU direct clients and EU indirect clients.

We also highlight that on an ongoing basis, and especially in the event of client default, clients who offer indirect clearing services to their clients will be required to disclose information on these clients to the clearing member. This requirement would force information to be passed through the whole chain of intermediaries and could conflict with national privacy laws. Therefore, should ESMA be unwilling to limit the scope of the RTS to EU CCPs, EU direct clients and EU indirect clients, it would be crucial that there is an exemption from passing information to clearing members when it is contrary to local law (e.g. a direct client may not be able to provide details on the indirect client to the clearing member under Swiss Secrecy Law).

**Issue 3: Segregation and default management obligations -** The RTS represent a significant deviation from the account segregation models which have been established under EMIR and will be a significant and costly operational exercise for CCPs, clearing members and direct clients, without meaningfully changing the client asset protection. It is challenging to secure account elections under EMIR, where clients are known and fully disclosed. Securing account elections of indirect clients pose similar/greater challenges.

The RTS oblige a clearing member to manage the default of a client which effectively requires the clearing member to act as a quasi-CCP but without the insolvency protections which protect actions taken by CCPs.

We highlight that clients of wealth managers/private banks primarily use pledged portfolios in order to collateralize their exposure. These pledges usually apply to a portfolio covering cash, bonds and equities, and are used to cover exposure derived not only from OTC and ETD transactions, but also for non-derivative obligations like Lombard loans, guarantees, other covered instruments and even client's fees for bank services. The client has the liberty to trade all financial instruments so long as the value of the portfolio exceeds the calculated lending value which is necessary to cover the entire exposures.

Additionally, wealth management/private bank firms do not segregate collateral accounts with title transfers as is standard practice with IB clients. Whilst the relevant initial and variation margin requirements for each derivative trade or position is known, WM/PB firms typically do not have a segregated collateral account exclusively covering it, rather one which also serves as collateral for other outstanding liabilities.

We therefore believe any requirement to segregate client positions and collateral will require significant changes to wealth management/private bank booking models and will significantly increase the cost of indirect clearing arrangement for clients of these firms.

**Proposed solution:** We propose to default to the Net Omnibus Account structure and that clearing members revise legal documentation only where clients specifically opt for the Gross Omnibus Account structure. Where indirect clients are comfortable with their existing arrangements, we believe that they should have the choice of continuing with these arrangements. We believe the default approach of Net Omnibus Account structure should also apply to new ETD indirect client arrangements set up after the RTS are applicable, not just existing arrangements.

It is not appropriate for excess margin pass through obligations to the CCP (similar to the obligations for ISAs) to apply for gross omnibus accounts.

Clients should only be able to elect a specific account structure once they have formally confirmed they have read and understood disclosures on how their assets are protected.

**Issue 4: Liquidation Proceeds Return -** The obligation imposed by the RTS in respect of the return of liquidation proceeds direct to the indirect client is super-equivalent to the protection provided in Article 48(7) of EMIR under which a CCP is permitted to return liquidation proceeds to either the clients of the clearing member when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

**Proposed solution:** In our view, there are a variety of circumstances in which the clearing member is likely to be unable to return the proceeds directly to the indirect clients and should therefore be able to return the liquidation proceeds to the insolvency practitioner of the client on behalf of the indirect clients. The requirement to have procedures for the return of liquidation proceeds to the indirect clients should only apply when the indirect clients have selected a gross omnibus account.

**Issue 5: Number of entities in the indirect clearing chain –** Paragraph 8 on page 643 of the consultation paper states *"Therefore, a counterparty cannot comply with the clearing obligation by being a client of an indirect client or a client further down the clearing chain with additional layers of clients in between the indirect client and this counterparty*".It is not fully clear how indirect clearing arrangements with more than 4 entities (those being the CCP, clearing member, direct client and indirect client) in the chain would be treated under the proposals. Indirect clearing chains with more than 4 entities are very common and it is therefore crucial that the regulatory requirements applicable to such a chain are fully clear and workable to ensure that indirect clients are not shut off from clearing.

**Proposed solution:** We believe longer chains than four entities should be permitted, noting that the first four entities in the chain would still be subject to the RTS. It is crucial that any ETD contract involving more than 4 entities is treated as an ETD contract for the purposes of the RTS as it is executed on an exchange/regulated market and is sent for clearing. Longer chains should not be categorised as an OTC bilateral contracts as this would make them subject to the EMIR risk mitigation requirements and potentially subject to the EMIR clearing obligation which we consider inappropriate.

**Indirect clearing cost benefit analysis**

Crucially, the ESMA proposals on indirect clearing in the December 2014 consultation paper were not accompanied by a cost benefit analysis. We understand that a cost benefit analysis on indirect clearing will be published with the final draft RTS in July 2015. We fully support the need for a cost benefit analysis and believe it is crucial that a robust analysis is undertaken that fully considers all relevant costs and benefits for clearing members, direct clients and indirect clients. We strongly believe that the significant costs of the ESMA proposals are disproportionate to the benefits given the limited improvements to client asset protection that we believe will result compared to the very significant costs of the operational, legal/re-papering, business, capital and compliance requirements associated with complying with the RTS.

As an example of the potential costs of the proposal, UBS has considered the impact in respect of UBS wealth management clients. The findings from this analysis include the following:

* Of the universe of UBS wealth management clients documented to trade ETDs, over 90% trade ETDs on a very low frequency (i.e. 1 trade or less per week) and therefore would be **unable to** **justify the costs to set up and maintain a gross omnibus account solution. This would also be the case for net omnibus account structures were they to require levels of segregation beyond that currently provided for.**
* UBS wealth management clients are domiciled in over 45 different countries, meaning that under the proposed scope of the RTS, differences and conflicts in cross-jurisdictional insolvency rules would have a significant impact.
* There are **typically more than four entities in the ETD indirect clearing chain** meaning it is crucial to have an appropriate treatment for chains with more than 4 entities.
* **Swiss banking secrecy laws would severely restrict** the capacity to publish the end client information on a clearing counterparty.

<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>

Please see response to Q244 above.

<ESMA\_QUESTION\_CP\_MIFID\_245>

1. The field will used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account. [↑](#footnote-ref-1)
2. MiFID draft RTS 8; Securities financing transaction; Art 1(6) ’securities financing transactions‘ means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell or sell-buy back transaction".

SFTR definition;

"Securities financing transaction (SFT)" means:

– "repurchase transaction" as defined in point (83) of Article 4 of Regulation (EU) No 575/2013;

– "securities or commodities lending" and "securities or commodities borrowing;"

– any transaction having an equivalent economic effect and posing similar risks, in particular a buy-sell back or sell-back transaction; [↑](#footnote-ref-2)