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| 22 May 2014 |

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

Responding to this paper

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

***Instructions***

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

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

Responses are most helpful:

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

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

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

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

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

***Publication of responses***

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

***Data protection***

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

Overview

Investor protection

Authorisation of investment firms

##### Do you agree that the existing work/standards set out in points Error! Reference source not found. and Error! Reference source not found. Error! Reference source not found. provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

##### What areas of these existing standards do you consider require adjustment, and in what way should they be adjusted?

<ESMA\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_2>

##### Do you consider that the list of information set out in point Error! Reference source not found. should be provided to Home State NCAs? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_3>

##### Are there any other elements which may help to assess whether the main activities of an applicant investment firm is not in the territory where the application is made?

<ESMA\_QUESTION\_4>

Yes.

Members of BBA and AFB noted that the “elements” identified for helping assess whether the main activities of the applicant investment firm are not in the territory where the application is made are very comprehensive. Members suggested that the relevant information provided in the programme of operations (referred to in MiFID II Article 7(2)) may, at the option of the applicant investment firm, include a description of its rationale in having opted for the particular regulatory system of a member state. Members believe that this will give the firm an opportunity to explain its objectives rather than setting forth facts concerning its activities that could be misinterpreted without further explanation.

Furthermore, MiFIR Article 46.7 states “ESMA shall develop draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5”. However, neither the CP nor the DP make any reference to these draft regulatory technical standards. We would like confirmation that ESMA will be consulting on this under Article 46.7.

<ESMA\_QUESTION\_4>

##### How much would one-off costs incurred during the authorisation process increase, compared to current practices, in order to meet the requirements suggested in this section?

<ESMA\_QUESTION\_5>

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<ESMA\_QUESTION\_5>

##### Are there any particular items of information suggested above that would take significant time or cost to produce and if so, do you have alternative suggestions that would reduce the time/cost for firms yet provide the same assurance to NCAs?

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

Freedom to provide investment services and activities / Establishment of a branch

##### Do you agree that development of technical standards required under Articles 34 and 35 of MiFID II should be based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications (CESR/07-317c)? If not, what are the specific areas in the existing CESR standards requiring review and adjustment?

<ESMA\_QUESTION\_7>

Yes.

However, the CESR Standards need to be adjusted to reflect the possibility that member states will require third country firms to establish branches when providing services to retail or elective, professionals.

Whilst the BBA and AFB acknowledge that final equivalence decisions are ultimately for the Commission, EMSA's crucial role in the provision of accurate and timely technical advice cannot be understated. Given the number of provisions that will be impacted by the equivalence determination, firms will seek clarity (from ESMA/ and or the Commission) regarding the third country equivalent test and details of how that will operate. Finally, we would ask ESMA to clarify what further consultation on third country issues will be undertaken by ESMA including those under MiFIR Article 46(7), although we believe that this is likely to be in the Consultation paper due in Q4.

<ESMA\_QUESTION\_7>

Best execution - publication of data related to the quality of execution by trading venues for each financial instrument traded

##### Do you agree data should be provided by all the execution venues as set out in footnote 24? If not, please state why not.

<ESMA\_QUESTION\_8>

We have seen and agree with AFME’s response on the need for Systematic Internalisers to be treated differently from trading venues and the fact that Market Makers should not constitute an ‘execution venue’ and should therefore not be subject to the execution quality reporting obligations.

<ESMA\_QUESTION\_8>

##### If you think that the different types of venues should not publish exactly the same data, please specify how the data should be adapted in each case, and the reasons for each adjustment.

<ESMA\_QUESTION\_9>

We have seen and agree with AFME’s response, its identification of the need for different treatment of Systematic Internalisers.

<ESMA\_QUESTION\_9>

##### Should the data publication obligation apply to every financial instrument traded on the execution venue? Alternatively, should there be a minimum threshold of activity and, if so, how should it be defined (for example, frequency of trades, number of trades, turnover etc.)?

<ESMA\_QUESTION\_10>

We have seen and agree with AFME’s response, that the reporting obligation should not apply to every financial instrument and its identification of the need for appropriate treatment of illiquid instruments.

 <ESMA\_QUESTION\_10>

##### How often should all execution data be published by trading venues? Is the minimum requirement specified in MiFID II sufficient, or should this frequency be increased? Is it reasonable or beneficial to require publication on a monthly basis and is it possible to reliably estimate the marginal cost of increased frequency?

<ESMA\_QUESTION\_11>

Publication should take place annually.

<ESMA\_QUESTION\_11>

##### Please provide an estimate of the cost of the necessary IT development for the production and the publication of such reporting.

<ESMA\_QUESTION\_12>

We have seen and agree with AFME’s response. <ESMA\_QUESTION\_12>

##### Do you agree that trading venues should publish the data relating to the quality of execution with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.

<ESMA\_QUESTION\_13>

We agree with AFME’s identification of the need for differentiated treatment but a uniform period and format.<ESMA\_QUESTION\_13>

##### Is the volume of orders received and executed a good indicator for investment firms to compare execution venues? Would the VBBO in a single stock published at the same time also be a good indicator by facilitating the creation of a periodic European price benchmark? Are there other indicators to be considered?

<ESMA\_QUESTION\_14>

We have seen, and agree with, AFME’s response.

<ESMA\_QUESTION\_14>

##### The venue execution quality reporting obligation is intended to apply to all MiFID instruments. Is this feasible and what differences in approach will be required for different instrument types?

<ESMA\_QUESTION\_15>

We have seen and agree with AFME’s identification of the need to take account of liquidity of fixed income instruments.

<ESMA\_QUESTION\_15>

##### Do you consider that this requirement will generate any additional cost? If yes, could you specify in which areas and provide an estimation of these costs?

<ESMA\_QUESTION\_16>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_16>

##### If available liquidity and execution quality are a function of order size, is it appropriate to split trades into ranges so that they are comparable? How should they be defined (for example, as a percentage of the average trading size of the financial instrument on the execution venue; fixed ranges by volume or value; or in another manner)?

<ESMA\_QUESTION\_17>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_17>

##### Do you agree that a benchmark price is needed to evaluate execution quality? Would a depth-weighted benchmark that relates in size to the executed order be appropriate or, if not, could you provide alternative suggestions together with justification?

<ESMA\_QUESTION\_18>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_18>

##### What kind of cost should be reported (e.g. regulatory levies, taxes, mandatory clearing fees) and how should this data be presented to enable recipients to assess the total consideration of transactions?

<ESMA\_QUESTION\_19>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_19>

##### What would be the most appropriate way to measure the likelihood of execution in order to get useful data? Would it be a good indicator for likelihood of execution to measure the percentage of orders not executed at the end of the applicable trading period (for example the end of each trading day)? Should the modification of an order be taken into consideration?

<ESMA\_QUESTION\_20>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_20>

##### What would be the most appropriate way to measure the speed of execution in order to get useful data?

<ESMA\_QUESTION\_21>

We have seen and agree with AFME’s response, and its identification of the need for appropriate differentiation between instrument classes.

<ESMA\_QUESTION\_21>

##### Are there other criteria (qualitative or quantitative) that are particularly relevant (e.g. market structures providing for a guarantee of settlement of the trades vs OTC deals; robustness of the market infrastructure due to the existence of circuit breakers)?

<ESMA\_QUESTION\_22>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_22>

##### Is data on orders cancelled useful and if so, on what time basis should it be computed (e.g. within a single trading day)?

<ESMA\_QUESTION\_23>

We have seen and agree with AFME’s response and the caveats it identifies.

<ESMA\_QUESTION\_23>

##### Are there any adjustments that need to be made to the above execution quality metrics to accommodate different market microstructures?

<ESMA\_QUESTION\_24>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_24>

##### What additional measures are required to define or capture the above data and relevant additional information (e.g. depth weighted spreads, book depths, or others) How should the data be presented: on an average basis such as daily, weekly or monthly for each financial instrument (or on more than one basis)? Do you think that the metrics captured in the Annex to this chapter are relevant to European markets trading in the full range of MiFID instruments? What alternative could you propose?

<ESMA\_QUESTION\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_25>

##### Please provide an estimate of the costs of production and publication of all of the above data and, the IT developments required? How could these costs be minimised?

<ESMA\_QUESTION\_26>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_26>

##### Would increasing the frequency of venue execution quality data generate additional costs for you? Would these costs arise as a result of an increase of the frequency of the review, or because this review will require additional training for your staff in order to be able to analyse and take into account these data? Please provide an estimate of these costs.

<ESMA\_QUESTION\_27>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_27>

##### Do you agree that investment firms should take the publication of the data envisaged in this Discussion Paper into consideration, in order to determine whether they represent a “material change”?

<ESMA\_QUESTION\_28>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_28>

Best execution - publication of data by investment firms

##### Do you agree that in order to allow clients to evaluate the quality of a firm’s execution, any proposed standards should oblige the firm to give an appropriate picture of the venues and the different ways they execute an order?

<ESMA\_QUESTION\_29>

We have seen and agree with AFME’s response and its reservations about ESMA’s proposals.

<ESMA\_QUESTION\_29>

##### Do you agree that when systematic internalisers, market makers, OTC negotiation or dealing on own account represent one of the five most important ways for the firm to execute clients’ orders, they should be incorporated in the reporting obligations under Article 27(6) of MiFID II?

<ESMA\_QUESTION\_30>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_30>

##### Do you think that the data provided should be different in cases when the firm directly executes the orders to when the firm transmits the orders to a third-party for execution? If yes, please indicate what the differences should be, and explain why.

<ESMA\_QUESTION\_31>

We support AFME’s response that best execution data should only be transmitted to clients by entities directly executing orders not least because often in the case of transmission on the complete data is not available to the RTO entity.

<ESMA\_QUESTION\_31>

##### Do you consider that information on both directed and non-directed orders is useful? Should the data be aggregated so that both types of order are shown together or separated? Should there be a similar approach to disclosure of information on market orders versus limit orders? Do you think that another categorisation of client orders could be useful?

<ESMA\_QUESTION\_32>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_32>

##### Do you think that the reporting data should separate retail clients from other types of clients? Do you think that this data should be publicly disclosed or only provided to the NCA (e.g. when requested to assess whether there is unfair discrimination between retail clients and other categories)? Is there a more useful way to categorise clients for these purposes?

<ESMA\_QUESTION\_33>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_33>

##### Do you agree that the investment firms should publish the data relating to their execution of orders with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.

<ESMA\_QUESTION\_34>

Yes.

<ESMA\_QUESTION\_34>

##### What would be an acceptable delay for publication to provide the clients with useful data?

<ESMA\_QUESTION\_35>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_35>

##### What format should the report take? Should there be any difference depending on the nature of the execution venues (MTF, OTF, Regulated Market, systematic internalisers, own account) and, if so, could you specify the precise data required for each type?

<ESMA\_QUESTION\_36>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_36>

##### Do you agree that it is proportionate to require investment firms to publish on an annual basis a summary based on their internal execution quality monitoring of their top five execution venues in terms of trading volumes, subject to certain minimum standards?

<ESMA\_QUESTION\_37>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_37>

##### Do you have views on how ‘directed orders’ covered by client specific instructions should be captured in the information on execution quality? Is it possible to disaggregate reporting for directed orders from those for which there are no specific instructions and, if so, what the most relevant criteria would be for this exercise?

<ESMA\_QUESTION\_38>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_38>

##### Minimum standards to ensure that the summary of the firm’s internal execution quality monitoring of their top five execution venues (in terms of trading volumes) is comprehensive and contains sufficient analysis or context to allow it to be understood by market participants shall include the factors set out at paragraph 29. Do you agree with this analysis or are there any other relevant factors that should be considered as minimum standards for reporting?

<ESMA\_QUESTION\_39>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_39>

##### Can you recommend an alternative approach to the provision of information on execution quality obtained by investment firms, which is consistent with Article 27(6) of MiFID II and with ESMA’s overall objective to ensure proportionate implementation?

<ESMA\_QUESTION\_40>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_40>

##### Do you agree that ESMA should try to limit the number of definitions of classes of instruments and provide a classification that can be used for the different reports established by MiFID and MiFIR?

<ESMA\_QUESTION\_41>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_41>

##### If this approach is not viable how should these classes be defined? What elements should be taken into consideration for that classification? Please explain the rationale of your classification. Is there a need to delay the publication of the reporting for particular class of financial instruments? If the schedule has to be defined, what timeframe would be the most relevant?

<ESMA\_QUESTION\_42>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_42>

##### Is any additional data required (for instance, on number of trades or total value of orders routed)?

<ESMA\_QUESTION\_43>

No.

<ESMA\_QUESTION\_43>

##### What information on conflicts of interest would be appropriate (inducements, capital links, payment for order flow, etc.)?

<ESMA\_QUESTION\_44>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_44>

Transparency

Pre-trade transparency - Equities

##### What in your view would be the minimum content of information that would make an indication of interest actionable? Please provide arguments with your answer.

<ESMA\_QUESTION\_45>

As a basis, it would need to contain an identifier to signify that the quote provider did not need to confirm the trade before it is actioned, otherwise the quote is indicative. For further information, we have seen and agree with AFME’s answer to this question, and support AFME’s amended definition of the criteria for an IOI.

<ESMA\_QUESTION\_45>

##### Do you agree with ESMA’s opinion that Table 1 of Annex II of Regulation 1287/2006 is still valid for shares traded on regulated markets and MTFs? Please provide reasons for your answer.

<ESMA\_QUESTION\_46>

Yes.

<ESMA\_QUESTION\_46>

##### Do you agree with ESMA’s view that Table 1 of Annex II of Regulation 1287/2006 is appropriate for equity-like instruments traded on regulated markets and MTFs? Are there other trading systems ESMA should take into account for these instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_47>

Yes.

<ESMA\_QUESTION\_47>

##### Do you agree with ESMA’s view that ADT remains a valid measure for determining when an order is large in scale compared to normal market size? If not, what other measure would you suggest as a substitute or complement to the ADT? Please provide reasons for your answer.

<ESMA\_QUESTION\_48>

The BBA have seen and agree with AFME’s answer to this question.

<ESMA\_QUESTION\_48>

##### Do you agree that ADT should be used as an indicator also for the MiFIR equity-like products (depositary receipts, ETFs and certificates)? Please provide reasons for your answers.

<ESMA\_QUESTION\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_49>

##### Do you think there is merit in creating a new ADT class of 0 to €100,ooo with an adequate new large in scale threshold and a new ADT class of €100,000 to €500,000? At what level should the thresholds be set? Please provide reasons for your answer.

<ESMA\_QUESTION\_50>

Yes.

<ESMA\_QUESTION\_50>

##### Do you think there is merit in creating new ADT classes of €1 to €5m and €5 to €25m? At what level should the thresholds be set? Please provide reasons for your answer.

<ESMA\_QUESTION\_51>

Yes.

<ESMA\_QUESTION\_51>

##### Do you think there is merit in creating a new ADT class for ‘super-liquid’ shares with an ADT in excess of €100m and a new class of €50m to €100m? At what level should the thresholds be set?

<ESMA\_QUESTION\_52>

No. We support AFME’s concerns about the historic use of ADT for measuring market impact.

<ESMA\_QUESTION\_52>

##### What comments do you have in respect of the new large in scale transparency thresholds for shares proposed by ESMA?

<ESMA\_QUESTION\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_53>

##### Do you agree with the ADT ranges selected? Do you agree with the large in scale thresholds set for each ADT class? Which is your preferred option? Would you calibrate the ADT classes and related large in scale thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA\_QUESTION\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_54>

##### Which is your preferred scenario? Would you calibrate the ADT classes differently? Please provide reasons for your answers.

<ESMA\_QUESTION\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_55>

##### Do you agree that the same ADT classes should be used for both pre-trade and post-trade transparency? Please provide reasons for your answers.

<ESMA\_QUESTION\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_56>

##### How would you calibrate the large in scale thresholds for each ADT class for pre- and post-trade transparency? Please provide reasons for your answers.

<ESMA\_QUESTION\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_57>

##### Do you agree with ESMA’s view that the large in scale thresholds (i.e. the minimum size of orders qualifying as large in scale and the ADT classes) should be subject to a review no earlier than two years after MiFIR and Level 2 apply in practice?

<ESMA\_QUESTION\_58>

Yes, but flexibility should be provided for an earlier review should the effect on liquidity of the revised regime suggest that earlier revision is needed. As there is a risk of getting the LIS wrong from the beginning, flexibility during the first year is extremely important. Industry must be able to able to adjust in order not to deteriorate liquidity, particularly important for small currency areas.

<ESMA\_QUESTION\_58>

##### How frequently do you think the calculation per financial instrument should be performed to determine within which large in scale class it falls? Which combination of frequency and period would you recommend?

<ESMA\_QUESTION\_59>

Annually.

<ESMA\_QUESTION\_59>

##### Do you agree with ESMA’s opinion that stubs should become transparent once they are a certain percentage below the large in scale thresholds? If yes, at what percentage would you set the transparency threshold for large in scale stubs? Please provide reasons to support your answer.

<ESMA\_QUESTION\_60>

No.

The proposed regime for stubs would add unnecessary complexity, without adding significantly to transparency.

<ESMA\_QUESTION\_60>

##### Do you agree with ESMA’s view that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant financial instrument? Do you agree with an annual review of the most relevant market in terms of liquidity? Please give reasons for your answer.

<ESMA\_QUESTION\_61>

No, we believe the most relevant market in terms of liquidity should be the primary market, unless the price on the reference venue becomes unavailable. We agree with AFME’s position that ESMA's proposal to collect data to assess the caps from 1/1/16, before the regime is in place on 3/1/17 is flawed, given that both the numerator and denominator in the calculation will be much changed by all market structure changes to be put in place by MiFID II, and owing also to that the provision of any data into the cap mechanism in this period will be voluntary and is likely to be provided on an inconsistent, non-harmonised, and non-comparable basis. This is especially true as with the multiple changes that will likely take place including but not least the volume that is currently eligible for the Reference Price Waiver at Bid or Offer price points becoming ineligible.

<ESMA\_QUESTION\_61>

##### Do you agree with ESMA’s view on the different ways the member or participant of a trading venue can execute a negotiated trade? Please give reasons for your answer.

<ESMA\_QUESTION\_62>

Yes.

<ESMA\_QUESTION\_62>

##### Do you agree that the proposed list of transactions are subject to conditions other than the current market price and do not contribute to the price formation process? Do you think that there are other transactions which are subject to conditions other than the current market price that should be added to the list? Please provide reasons for your answer.

<ESMA\_QUESTION\_63>

We agree with the examples ESMA cites of transactions subject to conditions other than current market price.

ESMA should keep the list non-exhaustive, and allow for other types of transaction and for future developments to meet investor need.

We have seen and agree with AFME’s answer to this question.

<ESMA\_QUESTION\_63>

##### Do you agree that these are the two main groups of order management facilities ESMA should focus on or are there others?

<ESMA\_QUESTION\_64>

Yes.

<ESMA\_QUESTION\_64>

##### Do you agree with ESMA’s general assessment on how to design future implementing measures for the order management facility waiver? Please provide reasons for your answer.

<ESMA\_QUESTION\_65>

Yes.

<ESMA\_QUESTION\_65>

##### Are there other factors that need to be taken into consideration for equity-like instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_66>

##### Do you agree that the minimum size for a stop order should be set at the minimum tradable quantity of shares in the relevant trading venue? Please provide reasons for your answer.

<ESMA\_QUESTION\_67>

Yes.

<ESMA\_QUESTION\_67>

##### Are there additional factors that need to be taken into consideration for equity-like instruments?

<ESMA\_QUESTION\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_68>

##### Which minimum overall sizes for iceberg orders are currently employed in the markets you use and how are those minimum sizes determined?

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

##### Which minimum sizes and which methods for determining them should be prescribed via implementing measures? To what level of detail should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?

<ESMA\_QUESTION\_70>

The same minimum order size as prevails for the rest of the relevant venue or higher.

<ESMA\_QUESTION\_70>

##### Which methods for determining the individual peak sizes of iceberg orders are currently employed in European markets?

<ESMA\_QUESTION\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_71>

##### Which methods for determining peaks should be prescribed by implementing measures, for example, should these be purely abstract criteria or a measure expressed in percentages against the overall size of the iceberg order? To what level of details should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?

<ESMA\_QUESTION\_72>

The same minimum order size as prevails for the rest of the relevant venue or higher.

<ESMA\_QUESTION\_72>

##### Are there additional factors that need to be taken into consideration for equity-like instruments?

<ESMA\_QUESTION\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_73>

Post-trade transparency - Equities

##### Do you agree that the content of the information currently required under existing MiFID is still valid for shares and applicable to equity-like instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_74>

Yes.

<ESMA\_QUESTION\_74>

##### Do you think that any new field(s) should be considered? If yes, which other information should be disclosed?

<ESMA\_QUESTION\_75>

We have seen and agree with AFME’s response, and its identification of the need for an order management waiver identifier, and for a more adaptable process to keep the list up to date.

<ESMA\_QUESTION\_75>

##### Do you think that the current post-trade regime should be retained or that the identity of the systematic internaliser is relevant information which should be published? Please provide reasons for your response, distinguishing between liquid shares and illiquid shares.

<ESMA\_QUESTION\_76>

We do not support the requirement for the identification of the specific SI to be disclosed. Identifying one party to a trade would put the SI at material disadvantage in trying to unwind its risk and therefore reduce the incentive to commit capital, particularly in less liquid stocks.

This is inconsistent with the logic of post trade deferrals and waivers, and would translate to wider spreads and thus worse prices for the collective retail funds that wish to trade via this mechanism. If this notion was to prevail them it would be essential, for the sake of level playing field that the logically consistent approach is adopted and MTFs and RMs are also forced to include the identity of the parties to a trade in their reports.

<ESMA\_QUESTION\_76>

##### Do you agree with the proposed list of identifiers? Please provide reasons for your answer.

<ESMA\_QUESTION\_77>

We have seen and agree with AFME’s response, and its identification of the need for an order management waiver identifier, and for a more adaptable process to keep the list up to date.

<ESMA\_QUESTION\_77>

##### Do you think that specific flags for equity-like instruments should be envisaged? Please justify your answer.

<ESMA\_QUESTION\_78>

No. We have seen, and agree with AFME’s response.

<ESMA\_QUESTION\_78>

##### Do you support the proposal to introduce a flag for trades that benefit from the large in scale deferral? Please provide reasons for your response.

<ESMA\_QUESTION\_79>

No. We have seen, and agree with AFME’s response.

<ESMA\_QUESTION\_79>

##### What is your view on requiring post-trade reports to identify the market mechanism, the trading mode and the publication mode in addition to the flags for the different types of transactions proposed in the table above? Please provide reasons for your answer.

<ESMA\_QUESTION\_80>

We support this proposal.

<ESMA\_QUESTION\_80>

##### For which transactions captured by Article 20(1) would you consider specifying additional flags as foreseen by Article 20(3)(b) as useful?

<ESMA\_QUESTION\_81>

<ESMA\_QUESTION\_81>

##### Do you agree with the definition of “normal trading hours” given above?

<ESMA\_QUESTION\_82>

Yes, but ‘normal trading hours’ should be the continuous trading hours period, excluding auctions.

<ESMA\_QUESTION\_82>

##### Do you agree with the proposed shortening of the maximum permissible delay to 1 minute? Do you see any reason to have a different maximum permissible deferral of publication for any equity-like instrument? Please provide reasons for your answer

<ESMA\_QUESTION\_83>

No.

The three minutes permitted delay is justifiable and necessary in some situations – it allows for manual reporting and unusually active markets. Average reporting times should be reduced by effective enforcement of compliance with the ‘as close to real time as possible’ criterion. Additionally, it allows market participants to continue to participate in unusually active markets despite the impact that high volumes have on reporting speed.

<ESMA\_QUESTION\_83>

##### Should the deferred publication regime be subject to the condition that the transaction is between an investment firm dealing on own account and a client of the firm? Please provide reasons for your answer.

<ESMA\_QUESTION\_84>

Yes. We have seen and support the reasoning in AFME’s and IMA’s responses.

<ESMA\_QUESTION\_84>

##### Which of the two options do you prefer in relation to the deferral periods for large in scale transactions (or do you prefer another option that has not been proposed)? Please provide reasons for your answer

<ESMA\_QUESTION\_85>

We prefer either maintaining the current regime, or option B, which is more flexible for firms executing large trades late in the trading day (particular in illiquid stocks).

We have seen and support AFME’s response, and its identification of the need for a regime which is more adapted to the circumstances in which delayed publication is appropriate to allow firms to unwind risk.

<ESMA\_QUESTION\_85>

##### Do you see merit in adding more ADT classes and adjusting the large in scale thresholds as proposed? Please provide alternatives if you disagree with ESMA’s proposal

<ESMA\_QUESTION\_86>

We have seen and support AFME’s response to this question.

<ESMA\_QUESTION\_86>

##### Do you consider the thresholds proposed as appropriate for SME shares?

<ESMA\_QUESTION\_87>

We have seen and agree with AFME’s identification of the flaws in the ADT approach.

<ESMA\_QUESTION\_87>

##### How frequently should the large in scale table be reviewed? Please provide reasons for your answer

<ESMA\_QUESTION\_88>

Annually.

<ESMA\_QUESTION\_88>

##### Do you have concerns regarding deferred publication occurring at the end of the trading day, during the closing auction period?

<ESMA\_QUESTION\_89>

Yes.

We prefer Option B to avoid price distortion during the closing auction period. New information entering the market at this time would be un-necessarily disruptive and would favour those more automated trading strategies able to machine read, analyse and respond to the information over traditional wholesale trading approaches.

<ESMA\_QUESTION\_89>

##### Do you agree with ESMA’s preliminary view of applying the same ADT classes to the pre-trade and post-trade transparency regimes for ETFs? Please provide reasons for your answer.

<ESMA\_QUESTION\_90>

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<ESMA\_QUESTION\_90>

Systematic Internaliser Regime - Equities

##### Do you support maintaining the existing definition of quotes reflecting prevailing market conditions? Please provide reasons for your answer.

<ESMA\_QUESTION\_91>

Yes.

<ESMA\_QUESTION\_91>

##### Do you support maintaining the existing table for the calculation of the standard market size? If not, which of the above options do you believe provides the best trade-off between maintaining a sufficient level of transparency and ensuring that obligations for systematic internalisers remain reasonable and proportionate? Please provide reasons for your answer.

<ESMA\_QUESTION\_92>

We have seen, and agree with, AFME’s proposed adjustments to the Tables.

<ESMA\_QUESTION\_92>

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

<ESMA\_QUESTION\_93>

Yes.

<ESMA\_QUESTION\_93>

##### What are your views regarding how financial instruments should be grouped into classes and/or how the standard market size for each class should be established for certificates and exchange traded funds?

<ESMA\_QUESTION\_94>

We have reviewed and agree with AFME’s response.

<ESMA\_QUESTION\_94>

Trading obligation for shares (Article 23, MiFIR)

##### Do you consider that the determination of what is non-systematic, ad-hoc, irregular and infrequent should be defined within the same parameters applicable for the systematic internaliser definition? In the case of the exemption to the trading obligation for shares, should the frequency concept be more restrictive taking into consideration the other factors, i.e. ‘ad-hoc’ and ‘irregular’?

<ESMA\_QUESTION\_95>

We do not think that ESMA should be addressing this issue in technical standards. As ESMA acknowledges, neither the mandate nor MIFIR Article 23.3 refer to it. Whilst there is some logic to ESMA’s discussion, it is important to note that the word ‘include’ in Article 23.1 does not allow for a restrictive interpretation. It is important to follow a natural interpretation of ‘non-systematic, ad hoc, irregular, and infrequent’, and to allow, as Article 23 does, for other characteristics that make it appropriate not to pass a trade through a trading venue.

<ESMA\_QUESTION\_95>

##### Do you agree with the list of examples of trades that do not contribute to the price discovery process? In case of an exhaustive list would you add any other type of transaction? Would you exclude any of them? Please, provide reasons for your response.

<ESMA\_QUESTION\_96>

The examples ESMA lists are important instances where pricing is determined by factors other than the current valuation of a share. But there are other examples, including give-ups / give-ins; securities financing transactions; options maturity or exercise. Any list ESMA provides should be illustrative and non-exhaustive, to allow for both additional types of transaction that are not specifically referenced, and also for future developments in transaction types to meet client needs.

<ESMA\_QUESTION\_96>

##### Do you consider it appropriate to include benchmark and/or portfolio trades in the list of those transactions determined by factors other than the current valuation of the share? If not, please provide an explanation with your response.

<ESMA\_QUESTION\_97>

Yes.

<ESMA\_QUESTION\_97>

Introduction to the non-equity section and scope of non-equity financial instruments

##### Do you agree with the proposed description of structured finance products? If not, please provide arguments and suggestions for an alternative.

<ESMA\_QUESTION\_98>

We have reviewed and support AFME’s response to this question.

<ESMA\_QUESTION\_98>

##### For the purposes of transparency, should structured finance products be identified in order to distinguish them from other non-equity transferable securities? If so, how should this be done?

<ESMA\_QUESTION\_99>

No.

<ESMA\_QUESTION\_99>

##### Do you agree with the proposed explanation for the various types of transferable securities that should be treated as derivatives for pre-trade and post trade transparency? If not, please provide arguments and suggestions for an alternative.

<ESMA\_QUESTION\_100>

No. Securitised derivatives should be treated as a sub-category of bonds, for the reasons given in AFME’s and ISDA’s responses to this question.

<ESMA\_QUESTION\_100>

##### Do you agree with ESMA’s proposal that for transparency purposes market operators and investment firms operating a trading venue should assume responsibility for determining to which MiFIR category the non-equity financial instruments which they intend to introduce on their trading venue belong and for providing their competent authorities and the market with this information before trading begins?

<ESMA\_QUESTION\_101>

No. An EU authority such as ESMA should make the determination, using information provided by trading venues as explained in AFME’s response.

<ESMA\_QUESTION\_101>

##### Do you agree with the definitions listed and proposed by ESMA? If not, please provide alternatives.

<ESMA\_QUESTION\_102>

No.

ESMA should expand the definitions of soveraeign and corporate bonds as recommended in AFME’s response, and differentiate between derivative contracts and contracts for difference, as recommended by ISDA.

<ESMA\_QUESTION\_102>

Liquid market definition for non-equity financial instruments

##### Do you agree with the proposed approach? If you do not agree please provide reasons for your answers. Could you provide for an alternative approach?

<ESMA\_QUESTION\_103>

We have seen and agree with AFME’s and ICMA’s responses to this question, in particular that the technical standard on liquidity thresholds should be relevant for MIFIR transparency purposes only; and that transparency of non-equity instruments should avoid damaging liquidity, in particular of illiquid instruments.

<ESMA\_QUESTION\_103>

##### Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA\_QUESTION\_104>

We have seen and agree with AFME’s and ICMA’s preference for Option 2, for the reasons given in their responses.

<ESMA\_QUESTION\_104>

##### Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA\_QUESTION\_105>

We have seen and support the responses of AFME and ISDA to this question as regards their respective areas of expertise.

<ESMA\_QUESTION\_105>

##### Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA\_QUESTION\_106>

No. We have seen and agree with AFME’s and ISDA’s opposition to ESMA’s approach in relation to their respective areas of expertise.

<ESMA\_QUESTION\_106>

##### Should different thresholds be applied for different (classes of) financial instruments? Please provide proposals and reasons.

<ESMA\_QUESTION\_107>

We have seen and agree with AFME’s and ISDA’s responses to this question. For bonds and SFP, a class-based approach should not be applied. For Derivatives, sub-classes should be used as explained by ISDA. <ESMA\_QUESTION\_107>

##### Do you have any proposals for appropriate spread thresholds? Please provide figures and reasons.

<ESMA\_QUESTION\_108>

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<ESMA\_QUESTION\_108>

##### How could the data necessary for computing the average spreads be obtained?

<ESMA\_QUESTION\_109>

We have seen and agree with AFME’s and ISDA’s answers to this question.

<ESMA\_QUESTION\_109>

##### Do you agree with the proposed approach? If you do not agree please providereasons for your answer. Could you provide an alternative approach?

<ESMA\_QUESTION\_110>

We have seen and agree with AFME’s and ISDA’s responses to this question, and their respective identification of the need for a different approach to different asset classes.

<ESMA\_QUESTION\_110>

##### Overall, could you think of an alternative approach on how to assess whether a market is liquid bearing in mind the various elements of the liquid market definition in MiFIR?

<ESMA\_QUESTION\_111>

No.

<ESMA\_QUESTION\_111>

##### Which is your preferred scenario or which combination of thresholds would you propose for defining a liquid market for bonds or for a sub-category of bonds (sovereign, corporate, covered, convertible, etc.)? Please provide reasons for your answer.

<ESMA\_QUESTION\_112>

We have seen and agree with AFME’s response to this question.

<ESMA\_QUESTION\_112>

##### Should the concept of liquid market be applied to financial instruments (IBIA) or to classes of financial instruments (COFIA)? Would be appropriate to apply IBIA for certain asset classes and COFIA to other asset classes? Please provide reasons for your answers

<ESMA\_QUESTION\_113>

We agree with AFME’s and ICMA’s preference for the IBIA approach for fixed income instruments, and ISDA’s for COFIA for derivative contracts.

<ESMA\_QUESTION\_113>

##### Do you have any (alternative) proposals how to take the ‘range of market conditions and the life-cycle’ of (classes of) financial instruments into account - other than the periodic reviews described in the sections periodic review of the liquidity threshold and periodic assessment of the liquidity of the instrument class, above?

<ESMA\_QUESTION\_114>

We have seen ICMA’s answer, and agree with their identification of the need to take account of the risk that end of day disclosure could make firms unwilling to accept risk if not enough time is allowed to unwind positions taken on then.

We have also seen, and support, ISDA’s analysis of the dynamjcs of derivative liquidity.

<ESMA\_QUESTION\_114>

##### Do you have any proposals on how to form homogenous and relevant classes of financial instruments? Which specifics do you consider relevant for that purpose? Please distinguish between bonds, SFPs and (different types of) derivatives and across qualitative criteria (please refer to Annex 3.6.1).

<ESMA\_QUESTION\_115>

We have seen and agree with AFME’s and ISDA’s responses in their respective areas of expertise.

<ESMA\_QUESTION\_115>

##### Do you think that, in the context of the liquidity thresholds to be calculated under MiFID II, the classification in Annex 3.6.1 is relevant? Which product types or sub-product types would you be inclined to create or merge? Please provide reasons for your answers

<ESMA\_QUESTION\_116>

We have seen, and agree with, ISDA’s analysis regarding OTC derivatives.

<ESMA\_QUESTION\_116>

##### Do you agree with the proposed approach? If not, please provide rationales and alternatives.

<ESMA\_QUESTION\_117>

We have seen and agree with AFME’s and ISDA’s responses, and support their opposition to ESMA’s proposed approach, for the reasons given.

<ESMA\_QUESTION\_117>

##### Do you agree with the proposed thresholds? If not, please provide rationales and alternatives.

<ESMA\_QUESTION\_118>

We have seen and agree with both ISDA’s and AFME’s responses, and support their opposition to ESMA’s proposed approach, for the reasons given.

<ESMA\_QUESTION\_118>

Pre-trade transparency requirements for non-equity instruments

##### Do you agree with the description of request-for-quote system? If not, how would you describe a request-for-quote system? Please give reasons to support your answer.

<ESMA\_QUESTION\_119>

No.

We have seen and agree with AFME’s identification of the need to adapt the definition of RFQ system to accommodate the exclusivity feature of RFQ systems, and to distinguish between indicative and firm prices.

We support AFME’s proposed amendment to the definition.

<ESMA\_QUESTION\_119>

##### Do you agree with the inclusion of request-for-stream systems in the definition of request-for-quote system? Please give reasons to support your answer.

<ESMA\_QUESTION\_120>

We have seen and agree with AFME’s response to this question, to the effect that if the stream provided is indicative, the request for stream should not be treated as an RFQ trading system.

 <ESMA\_QUESTION\_120>

##### Do you think that – apart from request-for-stream systems – other functionalities should be included in the definition of request-for-quote system? If yes, please provide a description of this functionality and give reasons to support your answer.

<ESMA\_QUESTION\_121>

We have seen and agree with AFME’s response to this question.

<ESMA\_QUESTION\_121>

##### Do you agree with the description of voice trading system? If not, how would you describe a voice trading system?

<ESMA\_QUESTION\_122>

We have seen and agree with AFME’s and ISDA’s responses to this question. In particular, the definition of a voice trading system should involve an active role in the arrangement of a trade, and should include present and evolving hybrid mechanisms involving certain types of non-voice electronic communications. <ESMA\_QUESTION\_122>

##### Do you agree with the proposed table setting out different types of trading systems for non-equity instruments?

<ESMA\_QUESTION\_123>

We have seen and agree with the responses of AFME and ISDA to this question, and the amendments they propose to the descriptions of the types of system.

<ESMA\_QUESTION\_123>

##### Do you think that the information to be made public for each type of trading system provides adequate transparency for each trading system?

<ESMA\_QUESTION\_124>

We have seen and agree with AFME’s response to this questions, and the amendments AFME identifies as needed to the information to be made public in relation to each type of system.

We also agree with ISDA’s identification of the need in this context for proper calibration of the waiver regime.

<ESMA\_QUESTION\_124>

##### Besides the trading systems mentioned above, are there additional trading models that need to be considered for pre-trade transparency requirements in the non-equity market space?

<ESMA\_QUESTION\_125>

No.

<ESMA\_QUESTION\_125>

##### If you think that additional trading systems should be considered, what information do you think should be made public for each additional type of trading model?

<ESMA\_QUESTION\_126>

No additional trading systems should be considered.

<ESMA\_QUESTION\_126>

##### Based on your experience, what are the different types of voice trading systems in the market currently? What specific characteristics do these systems have?

<ESMA\_QUESTION\_127>

We have seen and agree with AFME’s and WMBA’s response to this question.

<ESMA\_QUESTION\_127>

##### How do these voice trading systems currently make information public or known to interested parties at the pre-trade stage?

<ESMA\_QUESTION\_128>

We have seen and agree with AFME’s and WMBA’s response to this question.

<ESMA\_QUESTION\_128>

##### Do you agree with ESMA’s approach in relation to the content, method and timing of pre-trade information being made available to the wider public?

<ESMA\_QUESTION\_129>

No.

We have seen, and agree with, AFME’s qualifications of the regime for RFQ systems.

<ESMA\_QUESTION\_129>

##### Do you agree with the above mentioned approach with regard to indicative pre-trade bid and offer prices which are close to the price of the trading interests? Please give reasons to support your answer

<ESMA\_QUESTION\_130>

We have seen and agree with AFME’s and ISDA’s reservation on ESMA’s proposed approach.

<ESMA\_QUESTION\_130>

##### If you do not agree with the approach described above please provide an alternative

<ESMA\_QUESTION\_131>

We have seen and agree with ISDA’s reservation on ESMA’s proposed approach.

<ESMA\_QUESTION\_131>

Post-trade transparency requirements for non-equity instruments

##### Do you agree with the proposed content of post-trade public information? If not, please provide arguments and suggestions for an alternative.

<ESMA\_QUESTION\_132>

We have seen AFME’s and ISDA’s response to this question. We agree with the need to harmonize information as far as possible, subject to the specific needs of users of non-equity markets as they identify. We do not support requirements of venue or SI identification, and we disagree with ESMA that the aim of the regulation should be to achieve harmonization between the transparency regime for equities and non-equities.

<ESMA\_QUESTION\_132>

##### Do you think that the current post-trade regime for shares on the systematic internaliser’s identity should be extended to non-equity instruments or that the systematic internaliser’s identity is relevant information which should be published without exception?

<ESMA\_QUESTION\_133>

No. We have seen and support the responses of the IMA, ISDA, and AFME to this question, and the analysis of the effects of the proposal. Disclosure of the identity of the SI would disadvantage SIs and their clients by revealing to the market information about the market risk taken on by the SI. The impact on non-equity markets would be particularly marked because of their relative illiquidity and dependence on firms placing their capital at risk.

<ESMA\_QUESTION\_133>

##### Is there any other information that would be relevant to the market for the above mentioned asset classes?

<ESMA\_QUESTION\_134>

We have seen and support AFME’s and ISDA’s responses.

<ESMA\_QUESTION\_134>

##### Do you agree with the proposed table of identifiers for transactions executed on non-equity instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_135>

We have seen AFME’s response in relation to fixed income markets, and ISDA’s on derivatives, and support their identification of the need for identifiers in each market to be adapted to the circumstances and needs of each.

<ESMA\_QUESTION\_135>

##### Do you support the use of flags to identify trades which have benefitted from the use of deferrals? Should separate flags be used for each type of deferral (e.g. large in scale deferral, size specific to the instrument deferral)? Please provide reasons for your answer.

<ESMA\_QUESTION\_136>

We have seen and support AFME’s and ISDA’s responses.

<ESMA\_QUESTION\_136>

##### Do you think a flag related to coupon payments (ex/cum) should be introduced? If yes, please describe the cases where such flags would be warranted and which information should be captured.

<ESMA\_QUESTION\_137>

No.

<ESMA\_QUESTION\_137>

##### Do you think that give-up/give-in trades (identified with a flag) should be included in post-trade reports or not made public? Please provide reasons for your answers.

<ESMA\_QUESTION\_138>

No. We have seen and support ISDA’s and AFME’s responses.

<ESMA\_QUESTION\_138>

##### Do you agree that securities financing transactions should be exempted from the post-trade transparency regime?

<ESMA\_QUESTION\_139>

Yes. We have seen and support the responses of the European Repo Council, ICMA, AFME, and ISDA, for the reasons they identify.

<ESMA\_QUESTION\_139>

##### Do you agree that for the initial application of the new transparency regime the information should be made public within five minutes after the relevant non-equity transaction? Please provide reasons for your answer.

<ESMA\_QUESTION\_140>

No.

We have seen and agree with the responses of ICMA, AFME, ISDA, and IMA, and the reasons they give. We stress the need for a 15 minute delay to allow for the extensively manual processes in non-equity markets.

<ESMA\_QUESTION\_140>

##### Do you agree with the proposed text or would you propose an alternative option? Please provide reasons for your answer.

<ESMA\_QUESTION\_141>

No.

We have seen and agree with AFME’s, ISDA’s, and IMA’s responses, the rationale they give, and their identification of the need for a regime which is adapted to the different specific non-equity sectors.

<ESMA\_QUESTION\_141>

##### Do you agree that the intra-day deferral periods should range between 60 minutes and 120 minutes?

<ESMA\_QUESTION\_142>

No.

We have seen and agree with AFME’s, ISDA’s, and IMA’s responses, the rationale they give, and their identification of the need for a regime which is adapted to the different specific non-equity sectors.

<ESMA\_QUESTION\_142>

##### Do you agree that the maximum deferral period, reserved for the largest transactions, should not exceed end of day or, for transactions executed after 15.00, the opening of the following trading day? If not, could you provide alternative proposals? Please provide reasons for your answer.

<ESMA\_QUESTION\_143>

No.

We have seen and agree with AFME’s, ISDA’s, and IMA’s responses, the rationale they give, and their identification of the need for longer maximum deferral periods adapted to the different specific non-equity sectors.

<ESMA\_QUESTION\_143>

##### Do you consider there are reasons for applying different deferral periods to different asset classes, e.g. fixing specific deferral periods for sovereign bonds? Please provide arguments to support your answer.

<ESMA\_QUESTION\_144>

We have seen and agree with AFME’s and ISDA’s responses. We consider there should be appropriate differentiation between broad asset classes, but no differentiation between sub-classes (e.g sovereign and corporate bonds).

<ESMA\_QUESTION\_144>

##### Do you support the proposal that the deferral for non-equity instruments which do not have a liquid market should be until the end of day + 1? Please provide reasons for your answer.

<ESMA\_QUESTION\_145>

No.

We have seen and support AFME’s, ISDA’s and IMA’s responses, and their identification of the need for longer deferral periods.

<ESMA\_QUESTION\_145>

##### Do you think that one universal deferral period is appropriate for all non-equity instruments which do not have a liquid market or that the deferrals should be set at a more granular level, depending on asset class and even sub asset class. Please provide reasons for your answer.

<ESMA\_QUESTION\_146>

No.

We do not think that one universal deferral period is appropriate for all non-equity instruments which do not have a liquid market; we think that deferral periods should be set at a more granular level depending upon asset class.

<ESMA\_QUESTION\_146>

##### Do you agree with the proposal that during the deferred period for non-equity instruments which do not have a liquid market, the volume of the transaction should be omitted but all the other details of individual transactions must be published? Please provide reasons for your answer.

<ESMA\_QUESTION\_147>

We have seen and support ISDA’s, IMA’s and AFME’s responses to this question.

<ESMA\_QUESTION\_147>

##### Do you agree that publication in an aggregated form with respect to sovereign debt should be authorised for an indefinite period only in limited circumstances? Please give reasons for your answers. If you disagree, what alternative approaches would you propose?

<ESMA\_QUESTION\_148>

We have seen and agree with AFME’s response. <ESMA\_QUESTION\_148>

##### In your view, which criteria and/or conditions would it be appropriate to specify as indicating there is a need to authorise extended/indefinite deferrals for sovereign debt??

<ESMA\_QUESTION\_149>

We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_149>

##### In your view, could those transactions determined by other factors than the valuation of the instrument be authorised for deferred publication to the end of day? Please provide reasons for your answer.

<ESMA\_QUESTION\_150>

We have seen and support AFME’s, ISDA’s and IMA’s responses to this question.

<ESMA\_QUESTION\_150>

The transparency regime of non-equity large in scale orders and transactions

##### Do you agree with the proposed option? Which option would be more suitable for the calibration of the large in scale requirements within an asset class?

<ESMA\_QUESTION\_151>

We have seen, and agree with, ISDA’s answer to this question.

<ESMA\_QUESTION\_151>

##### Do you consider there are reasons for opting for different options for different asset classes? Please provide arguments.

<ESMA\_QUESTION\_152>

Yes. We have seen, and agree with, AFME’s and ISDA’s answer to this question. <ESMA\_QUESTION\_152>

##### Do you agree that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity? If not, please provide arguments.

<ESMA\_QUESTION\_153>

Yes. We have seen, and agree with AFME’s and ISDA’s answer to this question.

<ESMA\_QUESTION\_153>

##### Do you agree with the proposed approach? If no, which indicator would you consider more appropriate for the determination of large in scale thresholds for orders and transactions?

<ESMA\_QUESTION\_154>

No. We have seen, and agree with AFME’s for fixed income and ISDA’s answer to this question.

<ESMA\_QUESTION\_154>

##### Do you agree that the proxy used for the determining the large in scale thresholds should be the same as the one used to assess the average size of transactions in the context of the definition of liquid markets? Please provide arguments.

<ESMA\_QUESTION\_155>

We have seen, and agree with, AFME’s and ISDA’s answers to this question in relation to their respective areas of expertise.

<ESMA\_QUESTION\_155>

##### In your view, which option would be more suitable for the determination of the large in scale thresholds? Please provide arguments.

<ESMA\_QUESTION\_156>

We have seen, and agree with, AFME’s and ISDA’s answers to this question in relation to their respective areas of expertise.

<ESMA\_QUESTION\_156>

##### Alternatively which method would you suggest for setting the large in scale thresholds?

<ESMA\_QUESTION\_157>

We have seen, and agree with, AFME’s and ISDA’s answers to this question in relation to their respective areas of expertise.

<ESMA\_QUESTION\_157>

##### In your view, should large in scale thresholds for orders differ from the large in scale thresholds for transactions? If yes, which thresholds should be higher: pre-trade or post-trade? Please provide reasons to support your answer.

<ESMA\_QUESTION\_158>

We have seen, and agree with, AFME’s and ISDA’s answers to this question in relation to fixed income and derivatives respectively.

<ESMA\_QUESTION\_158>

##### Do you agree that the large in scale thresholds should be computed only on the basis of transactions carried out on trading venues following the implementation of MiFID II? Please, provide reasons for the answer.

<ESMA\_QUESTION\_159>

We have seen, and agree with, AFME’s and ISDA’s answers to this question.

<ESMA\_QUESTION\_159>

##### Do you think that the condition for deferred publication of large in scale transactions currently applying to shares (transaction is between an investment firm that deals on own account and a client of the investment firm) is applicable to non-equity instruments? Please provide reasons for your answer.

<ESMA\_QUESTION\_160>

No. We have seen, and agree with, AFME’s Fixed Income and ISDA’s answer to this question.

<ESMA\_QUESTION\_160>

##### Do you agree that the large in scale regime should be reviewed no earlier than two years after application of MiFIR in practice?

<ESMA\_QUESTION\_161>

We have seen, and agree with, AFME’s and ISDA’s answer to this question in relation to fixed income and derivatives respectively.

<ESMA\_QUESTION\_161>

Size specific to the instrument

##### Do you agree with the above description of the applicability of the size specific to the instrument? If not please provide reasons for your answer.

<ESMA\_QUESTION\_162>

Yes. We have seen, and agree with, AFME’s and ISDA’s answer to this question.

<ESMA\_QUESTION\_162>

##### Do you agree with the proposal that the size specific to the instrument should be set as a percentage of the large in scale size? Please provide reasons for you answer.

<ESMA\_QUESTION\_163>

We have seen AFME’s response, and agree with its criticisms of ESMA’s approach as regards fixed income instruments.

We have seen ISDA’s answer to this question, and agree with its identification of the need for calibration of sizes between asset classes, and between pre- and post-trade transparency.

<ESMA\_QUESTION\_163>

##### In your view, what methodologies would be most appropriate for measuring the undue risk in order to set the size specific threshold?

<ESMA\_QUESTION\_164>

We have seen and agree with AFME’s and ISDA’s answers, including ISDA’s identification of the need for sizes to be set at a low level in order to avoid exposing Systematic Internalisers to undue risk.

<ESMA\_QUESTION\_164>

##### Would you suggest any other practical ways in which ESMA could take into account whether, at such sizes, liquidity providers would be able to hedge their risks?

<ESMA\_QUESTION\_165>

We have seen, and agree with, AFME’s and ISDA’s answer to this question.

<ESMA\_QUESTION\_165>

##### Do you agree with ESMA’s description of how the size specific to the instrument waiver would interact with the large in scale waiver? Please provide reasons for your answer.

<ESMA\_QUESTION\_166>

We have seen and agree with AFME’s and ISDA’s responses in relation to their respective areas of expertise.

<ESMA\_QUESTION\_166>

##### Do you agree with ESMA’s description of how the size specific to the instrument deferrals would interact with the large in scale deferrals? In particular, do you agree that the deferral periods for the size specific to the instrument and the large in scale should differ and have any specific proposals on how the deferral periods should be calibrated? Please provide reasons for your answer.

<ESMA\_QUESTION\_167>

We have seen and agree with AFME’s and ISDA’s responses in relation to their respective areas of expertise.

<ESMA\_QUESTION\_167>

The Trading Obligation for Derivatives

##### Do you agree that there should be consistent categories of derivatives contracts throughout MiFIR/EMIR?

<ESMA\_QUESTION\_168>

Yes. We have seen and agree with ISDA’s responses to this question.

<ESMA\_QUESTION\_168>

##### Do you agree with this approach to the treatment of third countries?

<ESMA\_QUESTION\_169>

We have support ISDA’s response.

We are concerned about the potential for conflicting international rules and encourage ESMA to work with its international peers to ensure a harmonized approach internationally. We agree with ESMA's general approach to third countries, subject to the following:

1. We reiterate the concerns we raised in our response to the ESMA Consultation Paper 2013/892 (i.e. in the context of EU financial counterparty guarantees, the technical standards should only refer to legal arrangements in the form of a guarantee and should not require counterparties to verify the enforceability of such guarantee).

2. We note that, in its discussion paper, ESMA still refers to its consultation paper on draft Regulatory Technical Standards on contracts having a direct, substantial and foreseeable effect within the Union and non-evasion of provisions of EMIR. We believe the discussion paper should refer to the final version of the RTS (Commission Delegated Regulation 285/2014, the "EMIR RTS").

3. We note that the scope proposed in the discussion paper differs from the scope of the EMIR RTS. The EMIR RTS only applies to EU branches of non-EU financial counterparties. By contrast, in the DP, ESMA also refers to non-financial counterparties in 9(ii). We do not believe the proposed RTS under MiFIR should apply more broadly than the EMIR RTS. Given 3.11.9 states that “…the resultant framework should be enforceable, and offer legal certainty for financial counterparties” it may be that this reference to non-financial counterparties is not intentional. However, we would appreciate clarification on this point and would reiterate that in our view the RTS issued under Article 28 of MiFIR (the "MiFIR RTS") should align with the EMIR RTS on this issue.

4. We note that pursuant to Article 13 of EMIR the Commission can declare the regimes of third countries to be equivalent and thereby exempt the relevant counterparties from the requirements imposed by EMIR (including the clearing obligation). In our view it is not necessary or appropriate for the trading obligation to apply to third country entity to third country entity trades where the clearing obligation under EMIR does not apply to the relevant transactions. Accordingly, we would urge ESMA to specify in the draft MiFIR RTS that the criteria will not have been met if the clearing obligation does not apply to the transaction as a result of the application of Article 13 of EMIR. We would note that recognising the relevant third country's trading platforms pursuant to Article 28(4) of MiFIR alone insufficiently addresses the potential for duplicative and conflicting rules as the legislation of the relevant third country may not (for legitimate reasons) impose a trading obligation on the particular transaction.

<ESMA\_QUESTION\_169>

##### Do you agree with the proposed criteria based anti-avoidance procedure?

<ESMA\_QUESTION\_170>

We note that Article 28(2) of MIFIR extends the trading obligation to transactions entered into 'with third-country financial institutions ("FIs") or other third country entities that would be subject to the clearing obligation if they were established in the Union'. Regrettably, the language used in MIFIR deviates from the language of the corresponding application provision in EMIR. Article 4(1)(a)(iv) of EMIR extends the clearing obligation to transactions:

‘*between a [FC] and a[n NFC+] and an entity established in a third country that would be subject to the clearing obligation if it was established in the Union'*.

Under EMIR it is clear that (i) transactions with third country entities (either FIs or otherwise) are only caught if the third country entity would be subject to clearing obligation if it was established in the Union and (ii) intra-group transactions are therefore exempt provided they meet the conditions specified in Article 4(2) of EMIR. By contrast it is unclear whether Article 28(2) applies to third country FIs whether or not they would be subject to the clearing obligation if they were established in the Union and therefore calls into question whether the group exemption can be relied in connection with third country FIs under Article 28(2).

In our view it would be counterintuitive and harmful to the proper functioning of the markets if the trading obligation applied in respect of transactions with third country FIs which would not be subject to the clearing obligation if it was established in the Union. Therefore, in the interests of clarity, we would be grateful if ESMA could confirm that it agrees that the underlined qualifier in Article 28(2) of MIFIR applies to both third country FIs and other third country entities and therefore aligns with Article 4(1)(a)(iv) of EMIR.

<ESMA\_QUESTION\_170>

##### Do you think it would be reasonable for ESMA to consult venues with regard to which classes of derivatives contracts are traded on venue? Do you think venues would be well placed to undertake this task?

<ESMA\_QUESTION\_171>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_171>

##### The discussion in section 3.6 on the liquid market for non-equity instruments around ‘average frequency’, ‘average size’, ‘number and type of active market participants’ and average size of spreads is also relevant to this chapter and we would welcome respondent’s views on any differences in how the trading obligation procedure should approach the following:

<ESMA\_QUESTION\_172>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_172>

##### Do you have a view on how ESMA should approach data gathering about a product’s life cycle, and how a dynamic calibration across that life cycle might work? How frequently should ESMA revisit its assumptions? What factors might lead the reduction of the liquidity of a contract currently traded on venue? Are you able to share with ESMA any analysis related to product lifecycles?

<ESMA\_QUESTION\_173>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_173>

##### Do you have any suggestions on how ESMA should consider the anticipated effects of the trading obligation on end users and on future market behaviour?

<ESMA\_QUESTION\_174>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_174>

##### Do you have any other comments on our overall approach?

<ESMA\_QUESTION\_175>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_175>

Transparency Requirements for the Members of ESCB

##### Do you agree that the above identifies the types of operations that can be undertaken by a member of the ESCB for the purpose of monetary, foreign exchange and financial stability policy and that are within the MiFID scope? Please give reasons to support your answer.

<ESMA\_QUESTION\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_176>

##### What is your view about the types of transactions for which the member of the ESCB would be able to provide prior notification that the transaction is exempt?

<ESMA\_QUESTION\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_177>

Article 22, MiFIR: Providing information for the purposes of transparency and other calculations

##### Do you have any comments on the content of requests as outlined above?

<ESMA\_QUESTION\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_178>

##### Do you have proposals on how NCAs could collect specific information on the number and type of market participants in a product?

<ESMA\_QUESTION\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_179>

##### Do you consider the frequency of data requests proposed as appropriate?

<ESMA\_QUESTION\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_180>

##### How often should data be requested in respect of newly issued instruments in order to classify them correctly based on their actual liquidity?

<ESMA\_QUESTION\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_181>

##### What is your view of ESMA’s initial assessment of the format of data requests and do you have any proposals for making requests cost-efficient and useful for all parties involved?

<ESMA\_QUESTION\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_182>

##### Do you consider a maximum period of two weeks appropriate for responding to data requests?

<ESMA\_QUESTION\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_183>

##### Do you consider a storage time for relevant data of two years appropriate?

<ESMA\_QUESTION\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_184>

Microstructural issues

Microstructural issues: common elements for Articles 17, 48 and 49 MiFID II

##### Is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be addressed in the RTS relating to Articles 17, 48 and 49 of MiFID II?

<ESMA\_QUESTION\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_185>

##### Do you agree with the definition of ‘trading systems’ for trading venues?

<ESMA\_QUESTION\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_186>

##### Do you agree that the requirements under Articles 48 and 49 of MiFID II are only relevant for continuous auction order book systems and quote-driven trading systems and not for the other systems mentioned above?

<ESMA\_QUESTION\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_187>

##### Which hybrid systems, if any, should be considered within the scope of Articles 48 and 49, and why?

<ESMA\_QUESTION\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_188>

##### Do you agree with the definition of “trading system” for investment firms?

<ESMA\_QUESTION\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_189>

##### Do you agree with the definition of ‘real time’ in relation to market monitoring of algorithmic trading activity by investment firms?

<ESMA\_QUESTION\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_190>

##### Is the requirement that real time monitoring should take place with a delay of maximum 5 seconds appropriate for the risks inherent to algorithmic trading and from an operational perspective? Should the time frame be longer or shorter? Please state your reasons.

<ESMA\_QUESTION\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_191>

##### Do you agree with the definition of ‘t+1’ in relation to market monitoring of algorithmic trading activity by investment firms?

<ESMA\_QUESTION\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_192>

##### Do you agree with the parameters to be considered to define situations of ‘severe market stress’ and ‘disorderly trading conditions’?

<ESMA\_QUESTION\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_193>

##### Do you agree with the aboveapproach?

<ESMA\_QUESTION\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_194>

##### Is there any element that should be added to/removed from the periodic self-assessment?

<ESMA\_QUESTION\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_195>

##### Would the MiFID II organisational requirements for investment firms undertaking algorithmic trading fit all the types of investment firms you are aware of? Please elaborate.

<ESMA\_QUESTION\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_196>

##### Do you agree with the approach described above regarding the application of the proportionality principle by investment firms? Please elaborate.

<ESMA\_QUESTION\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_197>

##### Are there any additional elements that for the purpose of clarity should be added to/removed from the non-exhaustive list contained in the RTS? Please elaborate.

<ESMA\_QUESTION\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_198>

Organisational requirements for investment firms (Article 17 MiFID II)

##### Do you agree with a restricted deployment of algorithms in a live environment? Please elaborate

<ESMA\_QUESTION\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_199>

##### Do you agree with the parameters outlined for initial restriction? Please elaborate.

<ESMA\_QUESTION\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_200>

##### Do you agree with the proposed testing scenarios outlined above? Would you propose any alternative or additional testing scenarios? Please elaborate.

<ESMA\_QUESTION\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_201>

##### Do you agree with ESMA’s approach regarding the conditions under which investment firms should make use of non-live trading venue testing environments? Please elaborate.

<ESMA\_QUESTION\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_202>

##### Do you consider that ESMA should specify more in detail what should be the minimum functionality or the types of testing that should be carried out in non-live trading venue testing environments, and if so, which?

<ESMA\_QUESTION\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_203>

##### Do you consider that the requirements around change management are appropriately laid down, especially with regard to testing? Please elaborate.

<ESMA\_QUESTION\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_204>

##### Do you agree with the proposed monitoring and review approach? Is a twice yearly review, as a minimum, appropriate?

<ESMA\_QUESTION\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_205>

##### To what extent do you agree with the usage of drop copies in the context of monitoring? Which sources of drop copies would be most important?

<ESMA\_QUESTION\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_206>

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

<ESMA\_QUESTION\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_207>

##### Is the proposed list of pre trade controls adequate? Are there any you would add to or remove from the list?

<ESMA\_QUESTION\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_208>

##### To what extent do you consider it appropriate to request having all the pre-trade controls in place? In which cases would it not be appropriate? Please elaborate.

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

##### Do you agree with the record keeping approach outlined above?

<ESMA\_QUESTION\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_210>

##### In particular, what are your views regarding the storage of the parameters used to calibrate the trading algorithms and the market data messages on which the algorithm’s decision is based?

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

##### Do you consider that the requirements regarding the scope, capabilities, and flexibility of the monitoring system are appropriate?

<ESMA\_QUESTION\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_212>

##### Trade reconciliation – should a more prescriptive deadline be set for reconciling trade and account information?

<ESMA\_QUESTION\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_213>

##### Periodic reviews – would a minimum requirement of undertaking reviews on a half-yearly basis seem reasonable for investment firms engaged in algorithmic trading activity, and if not, what would be an appropriate minimum interval for undertaking such reviews? Should a more prescriptive rule be set as to when more frequent reviews need be taken?

<ESMA\_QUESTION\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_214>

##### Are there any elements that have not been considered and / or need to be further clarified here?

<ESMA\_QUESTION\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_215>

##### What is your opinion of the elements that the DEA provider should take into account when performing the due diligence assessment? In your opinion, should any elements be added or removed? If so, which?

<ESMA\_QUESTION\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_216>

##### Do you agree that for assessing the adequacy of the systems and controls of a prospective DEA user, the DEA provider should use the systems and controls requirements applied by trading venues for members as a benchmark?

<ESMA\_QUESTION\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_217>

##### Do you agree that a long term prior relationship (in other areas of service than DEA) between the investment firm and a client facilitates the due diligence process for providing DEA and, thus, additional precautions and diligence are needed when allowing a new client (to whom the investment firm has never provided any other services previously) to use DEA? If yes, to what extent does a long term relationship between the investment firm and a client facilitate the due diligence process of the DEA provider? Please elaborate.

<ESMA\_QUESTION\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_218>

##### Do you agree with the above approach? Please elaborate.

<ESMA\_QUESTION\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_219>

##### Do you agree with the above approach, specifically with regard to the granular identification of DEA user order flow as separate from the firm’s other order flow? Please elaborate.

<ESMA\_QUESTION\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_220>

##### Are there any criteria other than those listed above against which clearing firms should be assessing their potential clients?

<ESMA\_QUESTION\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_221>

##### Should clearing firms disclose their criteria (some or all of them) in order to help potential clients to assess their ability to become clients of clearing firms (either publicly or on request from prospective clients)?

<ESMA\_QUESTION\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_222>

##### How often should clearing firms review their clients’ ongoing performance against these criteria?

<ESMA\_QUESTION\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_223>

##### Should clearing firms have any arrangement(s) other than position limits and margins to limit their risk exposure to clients (counterparty, liquidity, operational and any other risks)? For example, should clearing firms stress-test clients’ positions that could pose material risk to the clearing firms, test their own ability to meet initial margin and variation margin requirements, test their own ability to liquidate their clients’ positions in an orderly manner and estimate the cost of the liquidation, test their own credit lines?

<ESMA\_QUESTION\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_224>

##### How regularly should clearing firms monitor their clients’ compliance with such limits and margin requirements (e.g. intra-day, overnight) and any other tests, as applicable?

<ESMA\_QUESTION\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_225>

##### Should clearing firms have a real-time view on their clients’ positions?

<ESMA\_QUESTION\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_226>

##### How should clearing firms manage their risks in relation to orders from managers on behalf of multiple clients for execution as a block and post-trade allocation to individual accounts for clearing?

<ESMA\_QUESTION\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_227>

##### Which type(s) of automated systems would enable clearing members to monitor their risks (including clients’ compliance with limits)? Which criteria should apply to any such automated systems (e.g. should they enable clearing firms to screen clients’ orders for compliance with the relevant limits etc.)?

<ESMA\_QUESTION\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_228>

Organisational requirements for trading venues (Article 48 MiFID II)

##### Do you agree with requiring trading venues to perform due diligence on all types of entities willing to become members/participants of a trading venue which permits algorithmic trading through its systems?

<ESMA\_QUESTION\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_229>

##### Do you agree with the list of minimum requirements that in all cases trading venues should assess prior to granting and while maintaining membership? Should the requirements for entities not authorised as credit institutions or not registered as investment firms be more stringent than for those who are qualified as such?

<ESMA\_QUESTION\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_230>

##### If you agree that non-investment firms and non-credit institutions should be subject to more stringent requirements to become member or participants, which type of additional information should they provide to trading venues?

<ESMA\_QUESTION\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_231>

##### Do you agree with the list of parameters to be monitored in real time by trading venues? Would you add/delete/redefine any of them? In particular, are there any trading models permitting algorithmic trading through their systems for which that list would be inadequate? Please elaborate.

<ESMA\_QUESTION\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_232>

##### Regarding the periodic review of the systems, is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be included?

<ESMA\_QUESTION\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_233>

##### Do you agree with the above approach?

<ESMA\_QUESTION\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_234>

##### Do you think ESMA should determine minimum standards in terms of latency or is it preferable to consider as a benchmark of performance the principle “no order lost, no transaction lost”?

<ESMA\_QUESTION\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_235>

##### Do you agree with requiring trading venues to be able to accommodate at least twice the historical peak of messages?

<ESMA\_QUESTION\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_236>

##### Do you agree with the list of abilities that trading venues should have to ensure the resilience of the market?

<ESMA\_QUESTION\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_237>

##### Do you agree with the publication of the general framework by the trading venues? Where would it be necessary to have more/less granularity?

<ESMA\_QUESTION\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_238>

##### Which in your opinion is the degree of discretion that trading venues should have when deciding to cancel, vary or correct orders and transactions?

<ESMA\_QUESTION\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_239>

##### Do you agree with the above principles for halting or constraining trading?

<ESMA\_QUESTION\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_240>

##### Do you agree that trading venues should make the operating mode of their trading halts public?

<ESMA\_QUESTION\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_241>

##### Should trading venues also make the actual thresholds in place public? In your view, would this publication offer market participants the necessary predictability and certainty, or would it entail risks? Please elaborate.

<ESMA\_QUESTION\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_242>

##### Do you agree with the proposal above?

<ESMA\_QUESTION\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_243>

##### Should trading venues have the ability to impose the process, content and timing of conformance tests? If yes, should they charge for this service separately?

<ESMA\_QUESTION\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_244>

##### Should alternative means of conformance testing be permitted?

<ESMA\_QUESTION\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_245>

##### Could alternative means of testing substitute testing scenarios provided by trading venues to avoid disorderly trading conditions? Do you consider that a certificate from an external IT audit would be also sufficient for these purposes?

<ESMA\_QUESTION\_246>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_246>

##### What are the minimum capabilities that testing environments should meet to avoid disorderly trading conditions?

<ESMA\_QUESTION\_247>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_247>

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

<ESMA\_QUESTION\_248>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_248>

##### In particular, should trading venues require any other pre-trade controls?

<ESMA\_QUESTION\_249>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_249>

##### Do you agree that for the purposes of Article 48(5) the relevant market in terms of liquidity should be determined according to the approach described above? If, not, please state your reasons.

<ESMA\_QUESTION\_250>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_250>

##### Are there any other markets that should be considered material in terms of liquidity for a particular instrument? Please elaborate.

<ESMA\_QUESTION\_251>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_251>

##### Which of the above mentioned approaches is the most adequate to fulfil the goals of Article 48? Please elaborate

<ESMA\_QUESTION\_252>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_252>

##### Do you envisage any other approach to this matter?

<ESMA\_QUESTION\_253>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_253>

##### Do you agree with the list of elements that should be published by trading venues to permit the provision of DEA to its members or participants?

<ESMA\_QUESTION\_254>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_254>

##### Do you agree with the list of systems and effective controls that at least DEA providers should have in place?

<ESMA\_QUESTION\_255>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_255>

##### Do you consider it is necessary to clarify anything in relation to the description of the responsibility regime?

<ESMA\_QUESTION\_256>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_256>

##### Do you consider necessary for trading venues to have any other additional power with respect of the provision of DEA?

<ESMA\_QUESTION\_257>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_257>

Market making strategies, market making agreements and market making schemes

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

<ESMA\_QUESTION\_258>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_258>

##### Do you agree with the preliminary assessments above? What practical consequences would it have if firms would also be captured by Article 17(4) MiFID II when posting only one-way quotes, but doing so in different trading venues on different sides of the order book (i.e. posting buy quotes in venue A and sell quotes in venue B for the same instrument)?

<ESMA\_QUESTION\_259>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_259>

##### For how long should the performance of a certain strategy be monitored to determine whether it meets the requirements of Article 17(4) of MiFID II?

<ESMA\_QUESTION\_260>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_260>

##### What percentage of the observation period should a strategy meet with regard to the requirements of Article 17(4) of MiFID II so as to consider that it should be captured by the obligation to enter into a market making agreement?

<ESMA\_QUESTION\_261>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_261>

##### Do you agree with the above assessment?

<ESMA\_QUESTION\_262>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_262>

##### Do you agree with this interpretation?

<ESMA\_QUESTION\_263>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_263>

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

<ESMA\_QUESTION\_264>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_264>

##### Do you agree with the above interpretation?

<ESMA\_QUESTION\_265>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_265>

##### Do you agree with the above proposal?

<ESMA\_QUESTION\_266>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_266>

##### Do you agree with the above proposal?

<ESMA\_QUESTION\_267>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_267>

##### Do you agree with the approach described (non-exhaustive list of quoting parameters)?

<ESMA\_QUESTION\_268>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_268>

##### What should be the parameters to assess whether the market making schemes under Article 48 of MiFID II have effectively contributed to more orderly markets?

<ESMA\_QUESTION\_269>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_269>

##### Do you agree with the list of requirements set out above? Is there any requirement that should be added / removed and if so why?

<ESMA\_QUESTION\_270>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_270>

##### Please provide views, with reasons, on what would be an adequate presence of market making strategies during trading hours?

<ESMA\_QUESTION\_271>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_271>

##### Do you consider that the average presence time under a market making strategy should be the same as the presence time required under a market making agreement ?

<ESMA\_QUESTION\_272>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_272>

##### Should the presence of market making strategies during trading hours be the same across instruments and trading models? If you think it should not, please indicate how this requirement should be specified by different products or market models?

<ESMA\_QUESTION\_273>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_273>

##### Article 48(3) of MiFID II states that the market making agreement should reflect “where applicable any other obligation arising from participation in the scheme”. What in your opinion are the additional areas that that agreement should cover?

<ESMA\_QUESTION\_274>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_274>

##### Do you disagree with any of the events that would qualify as ‘exceptional circumstances’? Please elaborate.

<ESMA\_QUESTION\_275>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_275>

##### Are there any additional ‘exceptional circumstances’ (e.g. reporting events or new fundamental information becoming available) that should be considered by ESMA? Please elaborate.

<ESMA\_QUESTION\_276>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_276>

##### What type of events might be considered under the definition of political and macroeconomic issues?

<ESMA\_QUESTION\_277>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_277>

##### What is an appropriate timeframe for determining whether exceptional circumstances no longer apply?

<ESMA\_QUESTION\_278>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_278>

##### What would be an appropriate procedure to restart normal trading activities (e.g. auction periods, notifications, timeframe)?

<ESMA\_QUESTION\_279>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_279>

##### Do you agree with this approach? If not, please elaborate.

<ESMA\_QUESTION\_280>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_280>

##### Would further clarification be necessary regarding what is “fair and non-discriminatory”? In particular, are there any cases of discriminatory access that should be specifically addressed?

<ESMA\_QUESTION\_281>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_281>

##### Would it be acceptable setting out any type of technological or informational advantages for participants in market making schemes for liquid instruments? If yes, please elaborate.

<ESMA\_QUESTION\_282>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_282>

##### In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?

<ESMA\_QUESTION\_283>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_283>

##### Do you agree that the market making requirements in Articles 17 and 48 of MiFID II are mostly relevant for liquid instruments? If not, please elaborate how you would apply the requirements in Articles 17 and 48 of MiFID II on market making schemes/agreements/strategies to illiquid instruments.

<ESMA\_QUESTION\_284>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_284>

##### Would you support any other assessment of liquidity different to the one under Article 2(1)(17) of MiFIR? Please elaborate.

<ESMA\_QUESTION\_285>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_285>

##### What should be deemed as a sufficient number of investment firms participating in a market making agreement?

<ESMA\_QUESTION\_286>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_286>

##### What would be an appropriate market share for those firms participating in a market making agreement?

<ESMA\_QUESTION\_287>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_287>

##### Do you agree that market making schemes are not required when trading in the market via a market making agreement exceeds this market share?

<ESMA\_QUESTION\_288>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_288>

##### In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?

<ESMA\_QUESTION\_289>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_289>

Order-to-transaction ratio (Article 48 of MiFID II)

##### Do you agree with the types of messages to be taken into account by any OTR?

<ESMA\_QUESTION\_290>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_290>

##### What is your view in taking into account the value and/or volume of orders in the OTRs calculations? Please provide:

<ESMA\_QUESTION\_291>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_291>

##### Should any other additional elements be taken into account to calibrate OTRs? If yes, please provide an explanation of why these variables are important.

<ESMA\_QUESTION\_292>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_292>

##### Do you agree with the proposed scope of the OTR regime under MiFID II (liquid cash instruments traded on electronic trading systems)?

<ESMA\_QUESTION\_293>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_293>

##### Do you consider that financial instruments which reference a cash instrument(s) as underlying could be excluded from the scope of the OTR regime?

<ESMA\_QUESTION\_294>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_294>

##### Would you make any distinction between instruments which have a single instrument as underlying and those that have as underlying a basket of instruments? Please elaborate.

<ESMA\_QUESTION\_295>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_295>

##### Do you agree with considering within the scope of a future OTR regime only trading venues which have been operational for a sufficient period in the market?

<ESMA\_QUESTION\_296>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_296>

##### If yes, what would be the sufficient period for these purposes?

<ESMA\_QUESTION\_297>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_297>

##### What is your view regarding an activity floor under which the OTR regime would not apply and where could this floor be established?

<ESMA\_QUESTION\_298>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_298>

##### Do you agree with the proposal above as regards the method of determining the OTR threshold?

<ESMA\_QUESTION\_299>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_299>

##### In particular, do you consider the approach to base the OTR regime on the ‘average observed OTR of a venue’ appropriate in all circumstances? If not, please elaborate.

<ESMA\_QUESTION\_300>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_300>

##### Do you believe the multiplier x should be capped at the highest member’s OTR observed in the preceding period?

<ESMA\_QUESTION\_301>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_301>

##### In particular, what would be in your opinion an adequate multiplier x? Does this multiplier have to be adapted according to the (group of) instrument(s) traded? If yes, please specify in your response the financial instruments/market segments you refer to.

<ESMA\_QUESTION\_302>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_302>

##### What is your view with respect to the time intervals/frequency for the assessment and review of the OTR threshold (annually, twice a year, other)?

<ESMA\_QUESTION\_303>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_303>

##### What are your views in this regard? Please explain.

<ESMA\_QUESTION\_304>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_304>

Co-location (Article 48(8) of MiFID II)

##### What factors should ESMA be considering in ensuring that co-location services are provided in a ‘transparent’, ‘fair’ and ‘non-discriminatory’ manner?

<ESMA\_QUESTION\_305>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_305>

Fee structures (Article 48 (9) of MiFID II)

##### Do you agree with the approach described above?

<ESMA\_QUESTION\_306>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_306>

##### Can you identify any practice that would need regulatory action in terms of transparency or predictability of trading fees?

<ESMA\_QUESTION\_307>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_307>

##### Can you identify any specific difficulties in obtaining adequate information in relation to fees and rebates that would need regulatory action?

<ESMA\_QUESTION\_308>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_308>

##### Can you identify cases of discriminatory access that would need regulatory action?

<ESMA\_QUESTION\_309>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_309>

##### Are there other incentives and disincentives that should be considered?

<ESMA\_QUESTION\_310>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_310>

##### Do any of the parameters referred to above contribute to increasing the probability of trading behaviour that may lead to disorderly and unfair trading conditions?

<ESMA\_QUESTION\_311>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_311>

##### When designing a fee structure, is there any structure that would foster a trading behaviour leading to disorderly trading conditions? Please elaborate.

<ESMA\_QUESTION\_312>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_312>

##### Do you agree that any fee structure where, upon reaching a certain threshold of trading by a trader, a discount is applied on all his trades (including those already done) as opposed to just the marginal trade executed subsequent to reaching the threshold should be banned?

<ESMA\_QUESTION\_313>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_313>

##### Can you identify any potential risks from charging differently the submission of orders to the successive trading phases?

<ESMA\_QUESTION\_314>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_314>

##### Are there any other types of fee structures, including execution fees, ancillary fees and any rebates, that may distort competition by providing certain market participants with more favourable trading conditions than their competitors or pose a risk to orderly trading and that should be considered here?

<ESMA\_QUESTION\_315>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_315>

##### Are there any discount structures which might lead to a situation where the trading cost is borne disproportionately by certain trading participants?

<ESMA\_QUESTION\_316>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_316>

##### For trading venues charging different trading fees for participation in different trading phases (i.e. different fees for opening and closing auctions versus continuous trading period), might this lead to disorderly trading and if so, under which circumstances would such conditions occur?

<ESMA\_QUESTION\_317>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_317>

##### Should conformance testing be charged?

<ESMA\_QUESTION\_318>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_318>

##### Should testing of algorithms in relation to the creation or contribution of disorderly markets be charged?

<ESMA\_QUESTION\_319>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_319>

##### Do you envisage any scenario where charging for conformance testing and/or testing in relation to disorderly trading conditions might discourage firms from investing sufficiently in testing their algorithms?

<ESMA\_QUESTION\_320>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_320>

##### Do you agree with the approach described above?

<ESMA\_QUESTION\_321>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_321>

##### How could the principles described above be further clarified?

<ESMA\_QUESTION\_322>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_322>

##### Do you agree that and OTR must be complemented with a penalty fee?

<ESMA\_QUESTION\_323>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_323>

##### In terms of the approach to determine the penalty fee for breaching the OTR, which approach would you prefer? If neither of them are satisfactory for you, please elaborate what alternative you would envisage.

<ESMA\_QUESTION\_324>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_324>

##### Do you agree that the observation period should be the same as the billing period?

<ESMA\_QUESTION\_325>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_325>

##### Would you apply economic penalties only when the OTR is systematically breached? If yes, how would you define “systematic breaches of the OTR”?

<ESMA\_QUESTION\_326>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_326>

##### Do you consider that market makers should have a less stringent approach in terms of penalties for breaching the OTR?

<ESMA\_QUESTION\_327>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_327>

##### Please indicate which fee structure could incentivise abusive trading behaviour.

<ESMA\_QUESTION\_328>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_328>

##### In your opinion, are there any current fee structures providing these types of incentives? Please elaborate.

<ESMA\_QUESTION\_329>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_329>

Tick sizes (Article 48(6) and Article 49 of MiFID II)

##### Do you agree with the general approach ESMA has suggested?

<ESMA\_QUESTION\_330>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_330>

##### Do you agree with adopting the average number of daily trades as an indicator for liquidity to satisfy the liquidity requirement of Article 49 of MiFID II? Are there any other methods/liquidity proxies that allow comparable granularity and that should be considered?

<ESMA\_QUESTION\_331>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_331>

##### In your view, what granularity should be used to determine the liquidity profile of financial instruments? As a result, what would be a proper number of liquidity bands?

<ESMA\_QUESTION\_332>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_332>

##### What is your view on defining the trade-off between constraining the spread without increasing viscosity too much on the basis of a floor-ceiling mechanism?

<ESMA\_QUESTION\_333>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_333>

##### What do you think of the proposed spread to tick ratio range?

<ESMA\_QUESTION\_334>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_334>

##### In your view, for the tick size regime to be efficient and appropriate, should it rely on the spread to tick ratio range, the evolution of liquidity bands, a combination of the two or none of the above?

<ESMA\_QUESTION\_335>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_335>

##### What is your view regarding the common tick size table proposed under Option 1? Do you consider it easy to read, implement and monitor? Does the proposed two dimensional tick size table (based on both the liquidity profile and price) allow applying a tick size to a homogeneous class of stocks given its clear-cut price and liquidity classes?

<ESMA\_QUESTION\_336>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_336>

##### What is your view regarding the determination of the liquidity and price classes?

<ESMA\_QUESTION\_337>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_337>

##### Considering that market microstructure may evolve, would you favour a regime that allows further calibration of the tick size on the basis of the observed market microstructure?

<ESMA\_QUESTION\_338>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_338>

##### In your view, does the tick size regime proposed under Option 1 offer sufficient predictability and certainty to market participants in a context where markets are constantly evolving (notably given its calibration and monitoring mechanisms)?

<ESMA\_QUESTION\_339>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_339>

##### The common tick size table proposed under Option 1 provides for re-calibration while constantly maintaining a control sample. In your view, what frequency would be appropriate for the revision of the figures (e.g., yearly)?

<ESMA\_QUESTION\_340>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_340>

##### In your view, what is the impact of Option 1 on the activity of market participants, including trading venue operators? To what extent, would it require adjustments?

<ESMA\_QUESTION\_341>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_341>

##### Do you agree that some equity-like instruments require an equivalent regulation of tick sizes as equities so as to ensure the orderly functioning of markets and to avoid the migration of trading across instrument types based on tick size? If not, please outline why this would not be the case.

<ESMA\_QUESTION\_342>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_342>

##### Are there any other similar equity-like instruments that should be added / removed from the scope of tick size regulation? Please outline the reasons why such instruments should be added / removed?

<ESMA\_QUESTION\_343>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_343>

##### Do you agree that depositary receipts require the same tick size regime as equities’?

<ESMA\_QUESTION\_344>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_344>

##### If you think that for certain equity-like instruments (e.g. ETFs) the spread-based tick size regime[[1]](#footnote-2) would be more appropriate, please specify your reasons and provide a detailed description of the methodology and technical specifications of this alternative concept.

<ESMA\_QUESTION\_345>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_345>

##### If you generally (also for liquid and illiquid shares as well as other equity-like financial instruments) prefer a spread-based tick size regime[[2]](#footnote-3) vis-à-vis the regime as proposed under Option 1 and tested by ESMA, please specify the reasons and provide the following information:

<ESMA\_QUESTION\_346>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_346>

##### Given the different tick sizes currently in operation, please explain what your preferred type of tick size regulation would be, giving reasons why this is the case.

<ESMA\_QUESTION\_347>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_347>

##### Do you see a need to develop a tick size regime for any non-equity financial instrument? If yes, please elaborate, indicating in particular which approach you would follow to determine that regime.

<ESMA\_QUESTION\_348>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_348>

##### Do you agree with assessing the liquidity of a share for the purposes of the tick size regime, using the rule described above? If not, please elaborate what criteria you would apply to distinguish between liquid and illiquid instruments.

<ESMA\_QUESTION\_349>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_349>

##### Do you agree with the tick sizes proposed under Option 2? In particular, should a different tick size be used for the largest band, taking into account the size of the tick relative to the price? Please elaborate.

<ESMA\_QUESTION\_350>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_350>

##### Should the tick size be calibrated in a more granular manner to that proposed above, namely by shifting a band which results in a large step-wise change?

<ESMA\_QUESTION\_351>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_351>

##### Do you agree with the above treatment for a newly admitted instrument? Would this affect the subsequent trading in a negative way?

<ESMA\_QUESTION\_352>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_352>

##### Do you agree that a period of six weeks is appropriate for the purpose of initial calibration for all instruments admitted to the pan-European tick size regime under Option 2? If not, what would be the appropriate period for the initial calibration?

<ESMA\_QUESTION\_353>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_353>

##### Do you agree with the proposal of factoring the bid-ask spread into tick size regime through SAF? If not, what would you consider as the appropriate method?

<ESMA\_QUESTION\_354>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_354>

##### Do you agree with the proposal to take an average bid-ask spread of less than two ticks as being too narrow? If not, what level of spread to ticks would you consider to be too narrow?

<ESMA\_QUESTION\_355>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_355>

##### Under the current proposal, it is not considered necessary to set an upper ceiling to the bid-ask spread, as the preliminary view under Option 2 is that under normal conditions the risk of the spread widening indefinitely is limited (and in any event a regulator may amend SAF manually if required). Do you agree with this view? If not, how would you propose to set an upper ceiling applicable across markets in the EU?

<ESMA\_QUESTION\_356>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_356>

##### Do you have any concerns of a possible disruption which may materialise in implementing a review cycle as envisioned above?

<ESMA\_QUESTION\_357>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_357>

##### Do you agree that illiquid instruments, excluding illiquid cash equities, should be excluded from the scope of a pan-European tick size regime under Option 2 until such time that definitions for these instruments become available? If not, please explain why. If there are any equity-like instruments per Article 49(3) of MiFID II that you feel should be included in the pan-European tick size regime at the same time as for cash equities, please list these instruments together with a brief reason for doing so.

<ESMA\_QUESTION\_358>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_358>

##### Do you agree that financial instruments, other than those listed in Article 49(3) of MiFID II should be excluded from the scope of the pan-European tick size regime under Option 2 at least for the time being? If not, please explain why and which specific instruments do you consider necessary to be included in the regime.

<ESMA\_QUESTION\_359>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_359>

##### What views do you have on whether tick sizes should be revised on a dynamic or periodic basis? What role do you perceive for an automated mechanism for doing this versus review by the NCA responsible for the instrument in question? If you prefer periodic review, how frequently should reviews be undertaken (e.g. quarterly, annually)?

<ESMA\_QUESTION\_360>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_360>

Data publication and access

General authorisation and organisational requirements for data reporting services (Article 61(4), MiFID II)

##### Do you agree that the guidance produced by CESR in 2010 is broadly appropriate for all three types of DRS providers?

<ESMA\_QUESTION\_361>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_361>

##### Do you agree that there should also be a requirement for notification of significant system changes?

<ESMA\_QUESTION\_362>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_362>

##### Are there any other general elements that should be considered in the NCAs’ assessment of whether to authorise a DRS provider?

<ESMA\_QUESTION\_363>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_363>

Additional requirements for particular types of Data Reporting Services Providers

##### Do you agree with the identified differences regarding the regulatory treatment of ARMs.

<ESMA\_QUESTION\_364>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_364>

##### What other significant differences will there have to be in the standards for APAs, CTPs and ARMs?

<ESMA\_QUESTION\_365>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_365>

Technical arrangements promoting an efficient and consistent dissemination of information – Machine readability Article 64(6), MiFID II

##### Do you agree with the proposal to define machine-readability in this way? If not, what would you prefer?

<ESMA\_QUESTION\_366>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_366>

Consolidated tape providers

##### Should the tapes be offered to users on an instrument-by-instrument basis, or as a single comprehensive tape, or at some intermediate level of disaggregation? Do you think that transparency information should be available without the need for value-added products to be purchased alongside?

<ESMA\_QUESTION\_367>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_367>

##### Are there other factors or considerations regarding data publication by the CTP that are not covered in the standards for data publication by APAs and trading venues and that should be taken into account by ESMA?

<ESMA\_QUESTION\_368>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_368>

##### Do you agree that CTPs should be able to provide the services listed above? Are there any others that you think should be specified?

<ESMA\_QUESTION\_369>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_369>

Data disaggregation

##### Do you agree that venues should not be required to disaggregate by individual instrument?

<ESMA\_QUESTION\_370>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_370>

##### Do you agree that venues should be obliged to disaggregate their pre-trade and post-trade data by asset class?

<ESMA\_QUESTION\_371>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_371>

##### Do you believe the list of asset classes proposed in the previous paragraph is appropriate for this purpose? If not, what would you propose?

<ESMA\_QUESTION\_372>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_372>

##### Do you agree that venues should be under an obligation to disaggregate according to the listed criteria unless they can demonstrate that there is insufficient customer interest?

<ESMA\_QUESTION\_373>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_373>

##### Are there any other criteria according to which it would be useful for venues to disaggregate their data, and if so do you think there should be a mandatory or comply-or-explain requirement for them to do so?

<ESMA\_QUESTION\_374>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_374>

##### What impact do you think greater disaggregation will have in practice for overall costs faced by customers?

<ESMA\_QUESTION\_375>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_375>

Identification of the investment firm responsible for making public the volume and price transparency of a transaction (Articles 20(3) (c) and 21(5)(c), MiFIR)

##### Please describe your views about how to improve the current trade reporting system under Article 27(4) of MiFID Implementing Regulation.

<ESMA\_QUESTION\_376>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_376>

Access to CCPs and trading venues (Articles 35-36, MiFIR)

##### Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?

<ESMA\_QUESTION\_377>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_377>

##### How would a CCP assess that the anticipated volume of transactions would exceed its capacity planning?

<ESMA\_QUESTION\_378>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_378>

##### Are there other risks related to the anticipated volume of transactions that should be considered? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_379>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_379>

##### Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?

<ESMA\_QUESTION\_380>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_380>

##### How would a CCP assess that the number of users expected to access its systems would exceed its capacity planning?

<ESMA\_QUESTION\_381>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_381>

##### Are there other risks related to number of users that should be considered? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_382>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_382>

##### In what way could granting access to a trading venue expose a CCP to risks associated with a change in the type of users accessing the CCP? Are there any additional risks that could be relevant in this situation?

<ESMA\_QUESTION\_383>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_383>

##### How would a CCP establish that the anticipated operational risk would exceed its operational risk management design?

<ESMA\_QUESTION\_384>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_384>

##### Are there other risks related to arrangements for managing operational risk that should be considered? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_385>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_385>

##### Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?

<ESMA\_QUESTION\_386>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_386>

##### To what extent could a lack of harmonization in certain areas of law constitute a relevant risk in the context of granting or denying access?

<ESMA\_QUESTION\_387>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_387>

##### Do you agree with the risks identified above in relation to complexity and other factors creating significant undue risks?

<ESMA\_QUESTION\_388>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_388>

##### Q: Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_389>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_389>

##### Do you agree with the analysis above and the conclusion specified in the previous paragraph?

<ESMA\_QUESTION\_390>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_390>

##### To what extent would a trading venue granting access give rise to material risks because of anticipated volume of transactions and the number of users? Can you evidence that access will materially change volumes and the number of users?

<ESMA\_QUESTION\_391>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_391>

##### To what extent would a trading venue granting access give rise to material risks because of arrangements for managing operational risk?

<ESMA\_QUESTION\_392>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_392>

##### Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?

<ESMA\_QUESTION\_393>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_393>

##### Do you believe a CCP’s model regarding the acceptance of trades may create risks to a trading venue if access is provided? If so, please explain in which cases and how.

<ESMA\_QUESTION\_394>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_394>

##### Could granting access create unmanageable risks for trading venues due to conflicts of law arising from the involvement of different legal regimes?

<ESMA\_QUESTION\_395>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_395>

##### Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_396>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_396>

##### Do you agree with the conditions set out above? If you do not, please state why not.

<ESMA\_QUESTION\_397>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_397>

##### Are there any are other conditions CCPs and trading venues should include in their terms for agreeing access?

<ESMA\_QUESTION\_398>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_398>

##### Are there any other fees that are relevant in the context of Articles 35 and 36 of MiFIR that should be analysed?

<ESMA\_QUESTION\_399>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_399>

##### Are there other considerations that need to be made in respect of transparent and non-discriminatory fees?

<ESMA\_QUESTION\_400>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_400>

##### Do you consider that the proposed approach adequately reflects the need to ensure that the CCP does not apply discriminatory collateral requirements? What alternative approach would you consider?

<ESMA\_QUESTION\_401>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_401>

##### Do you see other conditions under which netting of economically equivalent contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue in line with all the conditions of Article 35(1)(a)?

<ESMA\_QUESTION\_402>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_402>

##### The approach above relies on the CCP’s model compliance with Article 27 of Regulation (EU) No 153/2013, do you see any other circumstances for a CCP to cross margin correlated contracts? Do you see other conditions under which cross margining of correlated contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue?

<ESMA\_QUESTION\_403>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_403>

##### Do you agree with ESMA that the two considerations that could justify a national competent authority in denying access are (a) knowledge it has about the trading venue or CCP being at risk of not meeting its legal obligations, and (b) liquidity fragmentation? If not, please explain why.

<ESMA\_QUESTION\_404>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_404>

##### How could the above mentioned considerations be further specified?

<ESMA\_QUESTION\_405>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_405>

##### Are there other conditions that may threaten the smooth and orderly functioning of the markets or adversely affect systemic risk? If so, how would such risks arise from the provision of access?

<ESMA\_QUESTION\_406>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_406>

##### Do you agree with ESMA’s proposed approach that where there are equally accepted alternative approaches to calculating notional amount, but there are notable differences in the value to which these calculation methods give rise, ESMA should specify the method that should be used?

<ESMA\_QUESTION\_407>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_407>

##### Do you agree that the examples provided above are appropriate for ESMA to adopt given the purpose for which the opt-out mechanism was introduced? If not, why, and what alternative(s) would you propose?

<ESMA\_QUESTION\_408>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_408>

##### For which types of exchange traded derivative instruments do you consider there to be notable differences in the way the notional amount is calculated? How should the notional amount for these particular instruments be calculated?

<ESMA\_QUESTION\_409>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_409>

##### Are there any other considerations ESMA should take into account when further specifying how notional amount should be calculated? In particular, how should technical transactions be treated for the purposes of Article 36(5), MiFIR?

<ESMA\_QUESTION\_410>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_410>

Non- discriminatory access to and obligation to license benchmarks

##### Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_411>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_411>

##### Is there any other additional information in respect of price and data feeds that a trading venue would need for the purposes of trading?

<ESMA\_QUESTION\_412>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_412>

##### Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_413>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_413>

##### Is there any other additional information in respect of price and data feeds that a CCP would need for the purposes of clearing?

<ESMA\_QUESTION\_414>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_414>

##### Do you agree that trading venues should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA\_QUESTION\_415>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_415>

##### Do you agree that CCPs should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA\_QUESTION\_416>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_416>

##### Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_417>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_417>

##### Is there any other additional information in respect of composition that a trading venue would need for the purposes of trading?

<ESMA\_QUESTION\_418>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_418>

##### Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_419>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_419>

##### Is there any other additional information in respect of composition that a CCP would need for the purposes of clearing?

<ESMA\_QUESTION\_420>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_420>

##### Do you agree that trading venues and CCPs should be notified of any planned changes to the composition of the benchmark in advance? And that where this is not possible, notification should be given as soon as the change is made? If not, why?

<ESMA\_QUESTION\_421>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_421>

##### Do you agree that trading venues need the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_422>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_422>

##### Is there any other additional information in respect of methodology that a trading venue would need for the purposes of trading?

<ESMA\_QUESTION\_423>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_423>

##### Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_424>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_424>

##### Is there any other additional information in respect of methodology that a CCP would need for the purposes of clearing?

<ESMA\_QUESTION\_425>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_425>

##### Is there any information is respect of the methodology of a benchmark that a person with proprietary rights to a benchmark should not be required to provide to a trading venue or a CCP?

<ESMA\_QUESTION\_426>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_426>

##### Do you agree that trading venues require the relevant information mentioned above (values, types and sources of inputs, used to develop benchmark values)? If not, why?

<ESMA\_QUESTION\_427>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_427>

##### Is there any other additional information in respect of pricing that a trading venue would need for the purposes of trading?

<ESMA\_QUESTION\_428>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_428>

##### In what other circumstances should a trading venue not be able to require the values of the constituents of a benchmark?

<ESMA\_QUESTION\_429>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_429>

##### Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA\_QUESTION\_430>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_430>

##### Is there any other additional information in respect of pricing that a CCP would need for the purposes of clearing?

<ESMA\_QUESTION\_431>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_431>

##### In what other circumstances should a CCP not be able to require the values of the constituents of a benchmark?

<ESMA\_QUESTION\_432>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_432>

##### Do you agree that trading venues require the additional information mentioned above? If not, why?

<ESMA\_QUESTION\_433>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_433>

##### Do you agree that CCPs require the additional information mentioned above? If not, why?

<ESMA\_QUESTION\_434>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_434>

##### Is there any other information that a trading venue would need for the purposes of trading?

<ESMA\_QUESTION\_435>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_435>

##### Is there any other information that a CCP would need for the purposes of clearing?

<ESMA\_QUESTION\_436>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_436>

##### Do you agree with the principles described above? If not, why?

<ESMA\_QUESTION\_437>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_437>

##### Do users of trading venues need non-publicly disclosed information on benchmarks?

<ESMA\_QUESTION\_438>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_438>

##### Do users of CCPs need non-publicly disclosed information on benchmarks?

<ESMA\_QUESTION\_439>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_439>

##### Where information is not available publicly should users be provided with the relevant information through agreements with the person with proprietary rights to the benchmark or with its trading venue / CCP?

<ESMA\_QUESTION\_440>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_440>

##### Do you agree with the conditions set out above? If not, please state why not.

<ESMA\_QUESTION\_441>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_441>

##### Are there any are other conditions persons with proprietary rights to a benchmark and trading venues should include in their terms for agreeing access?

<ESMA\_QUESTION\_442>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_442>

##### Are there any are other conditions persons with proprietary rights to a benchmark and CCPs should include in their terms for agreeing access?

<ESMA\_QUESTION\_443>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_443>

##### Which specific terms/conditions currently included in licensing agreements might be discriminatory/give rise to preventing access?

<ESMA\_QUESTION\_444>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_444>

##### Do you have views on how termination should be handled in relation to outstanding/significant cases of breach?

<ESMA\_QUESTION\_445>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_445>

##### Do you agree with the approach ESMA has taken regarding the assessment of a benchmark’s novelty, i.e., to balance/weight certain factors against one another? If not, how do you think the assessment should be carried out?

<ESMA\_QUESTION\_446>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_446>

##### Do you agree that each newly released series of a benchmark should not be considered a new benchmark?

<ESMA\_QUESTION\_447>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_447>

##### Do you agree that the factors mentioned above could be considered when assessing whether a benchmark is new? If not, why?

<ESMA\_QUESTION\_448>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_448>

##### Are there any factors that would determine that a benchmark is not new?

<ESMA\_QUESTION\_449>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_449>

Requirements applying on and to trading venues

Admission to Trading

##### What are your views regarding the conditions that have to be satisfied in order for a financial instrument to be admitted to trading?

<ESMA\_QUESTION\_450>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_450>

##### In your experience, do you consider that the requirements being in place since 2007 have worked satisfactorily or do they require updating? If the latter, which additional requirements should be imposed?

<ESMA\_QUESTION\_451>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_451>

##### More specifically, do you think that the requirements for transferable securities, units in collective investment undertakings and/or derivatives need to be amended or updated? What is your proposal?

<ESMA\_QUESTION\_452>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_452>

##### How do you assess the proposal in respect of requiring ETFs to offer market making arrangements and direct redemption facilities at least in cases where the regulated market value of units or shares significantly varies from the net asset value?

<ESMA\_QUESTION\_453>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_453>

##### Which arrangements are currently in place at European markets to verify compliance of issuers with initial, on-going and ad hoc disclosure obligations?

<ESMA\_QUESTION\_454>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_454>

##### What are your experiences in respect of such arrangements?

<ESMA\_QUESTION\_455>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_455>

##### What is your view on how effective these arrangements are in performing verification checks?

<ESMA\_QUESTION\_456>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_456>

##### What arrangements are currently in place on European regulated markets to facilitate access of members or participants to information being made public under Union law?

<ESMA\_QUESTION\_457>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_457>

##### What are your experiences in respect of such arrangements?

<ESMA\_QUESTION\_458>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_458>

##### How do you assess the effectiveness of these arrangements in achieving their goals?

<ESMA\_QUESTION\_459>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_459>

##### Do you agree with that, for the purpose of Article 51 (3) (2) of MiFID II, the arrangements for facilitating access to information shall encompass the Prospectus, Transparency and Market Abuse Directives (in the future the Market Abuse Regulation)?  Do you consider that this should also include MiFIR trade transparency obligations?

<ESMA\_QUESTION\_460>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_460>

Suspension and Removal of Financial Instruments from Trading -connection between a derivative and the underlying financial instrument and standards for determining formats and timings of communications and publications

##### Do you agree with the specifications outlined above for the suspension or removal from trading of derivatives which are related to financial instruments that are suspended or removed?

<ESMA\_QUESTION\_461>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_461>

##### Do you think that any derivatives with indices or a basket of financial instruments as an underlying the pricing of which depends on multiple price inputs should be suspended if one or more of the instruments composing the index or the basket are suspended on the basis that they are sufficiently related? If so, what methodology would you propose for determining whether they are “sufficiently related”? Please explain.

<ESMA\_QUESTION\_462>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_462>

##### Do you agree with the principles outlined above for the timing and format of communications and publications to be effected by trading venue operators?

<ESMA\_QUESTION\_463>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_463>

Commodity derivatives

Ancillary Activity

##### Do you see any difficulties in defining the term ‘group’ as proposed above?

<ESMA\_QUESTION\_464>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_464>

##### What are the advantages and disadvantages of the two alternative approaches mentioned above (taking into account non-EU activities versus taking into account only EU activities of a group)? Please provide reasons for your answer.

<ESMA\_QUESTION\_465>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_465>

##### What are the main challenges in relation to both approaches and how could they be addressed?

<ESMA\_QUESTION\_466>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_466>

##### Do you consider there are any difficulties concerning the suggested approach for assessing whether the ancillary activities constitute a minority of activities at group level? Do you consider that the proposed calculations appropriately factor in activity which is subject to the permitted exemptions under Article 2(4) MiFID II? If no, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_467>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_467>

##### Are there other approaches for assessing whether the ancillary activities constitute a minority of activities at group level that you would like to suggest? Please provide details and reasons.

<ESMA\_QUESTION\_468>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_468>

##### How should “minority of activities” be defined? Should minority be less than 50% or less (50 - x)%? Please provide reasons.

<ESMA\_QUESTION\_469>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_469>

##### Do you have a view on whether economic or accounting capital should be used in order to define the elements triggering the exemption from authorisation under MiFID II, available under Article 2(1)(j)? Please provide reasons.

<ESMA\_QUESTION\_470>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_470>

##### If economic capital were to be used as a measure, what do you understand to be encompassed by this term?

<ESMA\_QUESTION\_471>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_471>

##### Do you agree with the above assessment that the data available in the TRs will enable entities to perform the necessary calculations?

<ESMA\_QUESTION\_472>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_472>

##### What difficulties do you consider entities may encounter in obtaining the information that is necessary to define the size of their own trading activity and the size of the overall market trading activity from TRs? How could the identified difficulties be addressed?

<ESMA\_QUESTION\_473>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_473>

##### What do you consider to be the difficulties in defining the volume of the transactions entered into to fulfil liquidity obligations?

<ESMA\_QUESTION\_474>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_474>

##### How should the volume of the overall trading activity of the firm at group level and the volume of the transactions entered into in order to hedge physical activities be measured? (Number of contracts or nominal value? Period of time to be considered?)

<ESMA\_QUESTION\_475>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_475>

##### Do you agree with the level of granularity of asset classes suggested in order to provide for relative comparison between market participants?

<ESMA\_QUESTION\_476>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_476>

##### What difficulties could there be regarding the aggregation of TR data in order to obtain information on the size of the overall market trading activity? How could these difficulties be addressed?

<ESMA\_QUESTION\_477>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_477>

##### How should ESMA set the threshold above which persons fall within MiFID II’s scope? At what percentage should the threshold be set? Please provide reasons for your response.

<ESMA\_QUESTION\_478>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_478>

##### Are there other approaches for determining the size of the trading activity that you would like to suggest?

<ESMA\_QUESTION\_479>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_479>

##### Are there other elements apart from the need for ancillary activities to constitute a minority of activities and the comparison between the size of the trading activity and size of the overall market trading activity that ESMA should take into account when defining whether an activity is ancillary to the main business?

<ESMA\_QUESTION\_480>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_480>

##### Do you see any difficulties with the interpretation of the hedging exemptions mentioned above under Article 2(4)(a) and (c) of MiFID II? How could potential difficulties be addressed?

<ESMA\_QUESTION\_481>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_481>

##### Do you agree with ESMA’s proposal to take into account Article 10 of the Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR in specifying the application of the hedging exemption under Article 2(4)(b) of MiFID II? How could any potential difficulties be addressed?

<ESMA\_QUESTION\_482>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_482>

##### Do you agree that the obligations to provide liquidity under Article 17(3) and Article 57(8)(d) of MiFID II should not be taken into account as an obligation triggering the hedging exemption mentioned above under Article 2(4)(c)?

<ESMA\_QUESTION\_483>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_483>

##### Could you provide any other specific examples of obligations of “transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue” which ESMA should take into account?

<ESMA\_QUESTION\_484>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_484>

##### Should the (timeframe for) assessment be linked to audit processes?

<ESMA\_QUESTION\_485>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_485>

##### How should seasonal variations be taken into account (for instance, if a firm puts on a maximum position at one point in the year and sells that down through the following twelve months should the calculation be taken at the maximum point or on average)?

<ESMA\_QUESTION\_486>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_486>

##### Which approach would be practical in relation to firms that may fall within the scope of MiFID in one year but qualify for exemption in another year?

<ESMA\_QUESTION\_487>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_487>

##### Do you see difficulties with regard to the two approaches suggested above?

<ESMA\_QUESTION\_488>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_488>

##### How could a possible interim approach be defined with regard to the suggestion mentioned above (i.e. annual notification but calculation on a three years rolling basis)?

<ESMA\_QUESTION\_489>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_489>

##### Do you agree that the competent authority to which the notification has to be made should be the one of the place of incorporation?

<ESMA\_QUESTION\_490>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_490>

Position Limits

##### Do you agree with ESMA’s proposal to link the definition of a risk-reducing trade under MiFID II to the definition applicable under EMIR? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA\_QUESTION\_491>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_491>

##### Do you agree with ESMA’s proposed definition of a non-financial entity? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA\_QUESTION\_492>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_492>

##### Should the regime for subsidiaries of a person other than entities that are wholly owned look to aggregate on the basis of a discrete percentage threshold or on a more subjective basis? What are the advantages and risks of either approach? Do you agree with the proposal that where the positions of an entity that is subject to substantial control by a person are aggregated, they are included in their entirety?

<ESMA\_QUESTION\_493>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_493>

##### Should the regime apply to the positions held by unconnected persons where they are acting together with a common purpose (for example, “concert party” arrangements where different market participants collude to act for common purpose)?

<ESMA\_QUESTION\_494>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_494>

##### Do you agree with the approach to link the definition of economically equivalent OTC contract, for the purpose of position limits, with the definitions used in other parts of MiFID II? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA\_QUESTION\_495>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_495>

##### Do you agree that even where a contract is, or may be, cash-settled it is appropriate to base its equivalence on the substitutability of the underlying physical commodity that it is referenced to? If you do not agree, what alternative measures of equivalence could be used?

<ESMA\_QUESTION\_496>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_496>

##### Do you believe that the definition of “economically equivalent” that is used by the CFTC is appropriate for the purpose of defining the contracts that are not traded on a trading venue for the position limits regime of MiFID II? Give reasons to support your views as well as any suggested amendments or additions to this definition.

<ESMA\_QUESTION\_497>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_497>

##### What arrangements could be put in place to support competent authorities identifying what OTC contracts are considered to be economically equivalent to listed contracts traded on a trading venue? ?

<ESMA\_QUESTION\_498>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_498>

##### Do you agree with ESMA’s proposal that the “same” derivative contract occurs where an identical contract is listed independently on two or more different trading venues? What other alternative definitions of “same” could be applied to commodity derivatives?

<ESMA\_QUESTION\_499>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_499>

##### Do you agree with ESMA’s proposals on aggregation and netting? How should ESMA address the practical obstacles to including within the assessment positions entered into OTC or on third country venues? Should ESMA adopt a model for pooling related contracts and should this extend to closely correlated contracts? How should equivalent contracts be converted into a similar metric to the exchange traded contract they are deemed equivalent to?

<ESMA\_QUESTION\_500>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_500>

##### Do you agree with ESMA’s approach to defining market size for physically settled contracts? Is it appropriate for cash settled contracts to set position limits without taking into account the underlying physical market?

<ESMA\_QUESTION\_501>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_501>

##### Do you agree that it is preferable to set the position limit on a contract for a fixed (excluding exceptional circumstances) period rather than amending it on a real-time basis? What period do you believe is appropriate, considering in particular the factors of market evolution and operational efficiency?

<ESMA\_QUESTION\_502>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_502>

##### Once the position limits regime is implemented, what period do you feel is appropriate to give sufficient notice to persons of the subsequent adjustment of position limits?

<ESMA\_QUESTION\_503>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_503>

##### Should positions based on contracts entered into before the revision of position limits be grandfathered and if so how?

<ESMA\_QUESTION\_504>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_504>

##### Do you agree with ESMA’s proposals for the determination of a central or primary trading venue for the purpose of establishing position limits in the same derivative contracts? If you do not agree, what practical alternative method should be used?

<ESMA\_QUESTION\_505>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_505>

##### Should the level of “significant volume” be set at a different level to that proposed above? If yes, please explain what level should be applied, and how it may be determined on an ongoing basis?

<ESMA\_QUESTION\_506>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_506>

##### In using the maturity of commodity contracts as a factor, do you agree that competent authorities apply the methodology in a different way for the spot month and for the aggregate of all other months along the curve?

<ESMA\_QUESTION\_507>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_507>

##### What factors do you believe should be applied to reflect the differences in the nature of trading activity between the spot month and the forward months?

<ESMA\_QUESTION\_508>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_508>

##### Do you agree with ESMA’s proposal for trading venues to provide data on the deliverable supply underlying their contracts? If you do not agree, what considerations should be given to determining the deliverable supply for a contract?

<ESMA\_QUESTION\_509>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_509>

##### In the light of the fact that some commodity markets are truly global, do you consider that open interest in similar or identical contracts in non-EEA jurisdictions should be taken into account? If so, how do you propose doing this, given that data from some trading venues may not be available on the same basis or in the same timeframe as that from other trading venues?

<ESMA\_QUESTION\_510>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_510>

##### In the absence of published or easily obtained information on volatility in derivative and physical commodity markets, in what ways should ESMA reflect this factor in its methodology? Are there any alternative measures that may be obtained by ESMA for use in the methodology?

<ESMA\_QUESTION\_511>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_511>

##### Are there any other considerations related to the number and size of market participants that ESMA should consider in its methodology?

<ESMA\_QUESTION\_512>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_512>

##### Are there any other considerations related to the characteristics of the underlying commodity market that ESMA should consider in its methodology?

<ESMA\_QUESTION\_513>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_513>

##### For new contracts, what approach should ESMA take in establishing a regime that facilitates continued market evolution within the framework of Article 57?

<ESMA\_QUESTION\_514>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_514>

##### The interpretation of the factors in the paragraphs above will be significant in applying ESMA’s methodology; do you agree with ESMA’s interpretation? If you do not agree with ESMA’s interpretation, what aspects require amendment?

<ESMA\_QUESTION\_515>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_515>

##### Are there any other factors which should be included in the methodology for determining position limits? If so, state in which way (with reference to the proposed methodology explained below) they should be incorporated.

<ESMA\_QUESTION\_516>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_516>

##### What do you consider to be the risks and/or the advantages of applying a different methodology for determining position limits for prompt reference contracts compared to the methodology used for the position limit on forward maturities?

<ESMA\_QUESTION\_517>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_517>

##### How should the position limits regime reflect the specific risks present in the run up to contract expiry?

<ESMA\_QUESTION\_518>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_518>

##### If a different methodology is set for the prompt reference contract, would it be appropriate to make an exception where a contract other than the prompt is the key benchmark used by the market?

<ESMA\_QUESTION\_519>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_519>

##### Do you agree that the baseline for the methodology of setting a position limit should be the deliverable supply? What concrete examples of issues do you foresee in obtaining or using the measure?

<ESMA\_QUESTION\_520>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_520>

##### If you consider that a more appropriate measure exists to form the baseline of the methodology, please explain the measure and why it is more appropriate. Consideration should be given to the reliability and availability of such a measure in order to provide certainty to market participants.

<ESMA\_QUESTION\_521>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_521>

##### Do you agree with this approach for the proposed methodology? If you do not agree, what alternative methodology do you propose, considering the full scope of the requirements of Article 57 MiFID II?

<ESMA\_QUESTION\_522>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_522>

##### Do you have any views on the level at which the baseline (if relevant, for each different asset class) should be set, and the size of the adjustment numbers for each separate factor that ESMA must consider in the methodology defined by Article 57 MiFID II?

<ESMA\_QUESTION\_523>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_523>

##### Does the approach to asset classes have the right level of granularity to take into account market characteristics? Are the key characteristics the right ones to take into account? Are the conclusions by asset class appropriate?

<ESMA\_QUESTION\_524>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_524>

##### What trading venues or jurisdictions should ESMA take into consideration in defining its position limits methodology? What particular aspects of these experiences should be included within ESMA’s work?

<ESMA\_QUESTION\_525>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_525>

##### Do you agree that the RTS should accommodate the flexibility to express position limits in the units appropriate to the individual market? Are there any other alternative measures or mechanisms by which position limits could be expressed?

<ESMA\_QUESTION\_526>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_526>

##### How should the methodology for setting limits take account of a daily contract structure, where this exists?

<ESMA\_QUESTION\_527>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_527>

##### Do you agree that limits for option positions should be set on the basis of delta equivalent values? What processes should be put in place to avoid manipulation of the process?

<ESMA\_QUESTION\_528>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_528>

##### Do you agree that the preferred methodology for the calculation of delta-equivalent futures positions is the use of the delta value that is published by trading venues? If you do not, please explain what methodology you prefer, and the reasons in favour of it?

<ESMA\_QUESTION\_529>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_529>

##### Do you agree that the description of the approach outlined above, combined with the publication of limits under Article 57(9), would fulfil the requirement to be transparent and non-discriminatory?

<ESMA\_QUESTION\_530>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_530>

##### What challenges are posed by transition and what areas of guidance should be provided on implementation? What transitional arrangements would be considered to be appropriate?

<ESMA\_QUESTION\_531>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_531>

Position Reporting

##### Do you agree that, in the interest of efficient reporting, the data requirements for position reporting required by Article 58 should contain elements to enable competent authorities and ESMA to monitor effectively position limits? If you do not agree, what alternative approach do you propose for the collection of information in order to efficiently and with the minimum of duplication meet the requirements of Article 57?

<ESMA\_QUESTION\_532>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_532>

##### Do you agree with ESMA’s definition of a “position” for the purpose of Article 58? Do you agree that the same definition of position should be used for the purpose of Article 57? If you do not agree with either proposition, please provide details of a viable alternative definition.

<ESMA\_QUESTION\_533>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_533>

##### Do you agree with ESMA’s approach to the reporting of spread and other strategy trades? If you do not agree, what approach can be practically implemented for the definition and reporting of these trades?

<ESMA\_QUESTION\_534>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_534>

##### Do you agree with ESMA’s proposed approach to use reporting protocols used by other market and regulatory initiatives, in particular, those being considered for transaction reporting under MiFID II?

<ESMA\_QUESTION\_535>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_535>

##### Do you have any specific comments on the proposed identification of legal persons and/or natural persons? Do you consider there are any practical challenges to ESMA’s proposals? If yes, please explain them and propose solutions to resolve them.

<ESMA\_QUESTION\_536>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_536>

##### What are your views on these three alternative approaches for reporting the positions of an end client where there are multiple parties involved in the transaction chain? Do you have a preferred solution from the three alternatives that are described?

<ESMA\_QUESTION\_537>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_537>

##### What alternative structures or solutions are possible to meet the obligations under Article 58 to identify the positions of end clients? What are the advantages or disadvantages of these structures?

<ESMA\_QUESTION\_538>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_538>

##### Do you agree with ESMA’s proposal that only volumes traded on-exchange should be used to determine the central competent authority to which reports are made? If you do not agree, what alternative structure may be used to determine the destination of position reports?

<ESMA\_QUESTION\_539>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_539>

##### Do you agree that position reporting requirements should seek to use reporting formats from other market or regulatory initiatives? If not mentioned above, what formats and initiatives should ESMA consider?

<ESMA\_QUESTION\_540>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_540>

##### Do you agree that ESMA should require reference data from trading venues and investment firms on commodity derivatives, emission allowances, and derivatives thereof in order to increase the efficiency of trade reporting?

<ESMA\_QUESTION\_541>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_541>

##### What is your view on the use of existing elements of the market infrastructure for position reporting of both on-venue and economically equivalent OTC contracts? If you have any comments on how firms and trading venues may efficiently create a reporting infrastructure, please give details in your explanation.

<ESMA\_QUESTION\_542>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_542>

##### For what reasons may it be appropriate to require the reporting of option positions on a delta-equivalent basis? If an additional requirement to report delta-equivalent positions is established, how should the relevant delta value be determined?

<ESMA\_QUESTION\_543>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_543>

##### Does the proposed set of data fields capture all necessary information to meet the requirements of Article 58(1)(b) MiFID II? If not, do you have any proposals for amendments, deletions or additional data fields to add the list above?

<ESMA\_QUESTION\_544>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_544>

##### Are there any other fields that should be included in the Commitment of Traders Report published each week by trading venues other than those shown above?

<ESMA\_QUESTION\_545>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_545>

Market data reporting

Obligation to report transactions

##### Do you agree with ESMA’s proposal for what constitutes a ‘transaction’ and ‘execution of a transaction’ for the purposes of Article 26 of MiFIR? If not, please provide reasons.

<ESMA\_QUESTION\_546>

While the BBA broadly agree with ESMA’s proposal for what constitutes a “transaction” and “execution of a transaction for the purposes of Article 26 of MiFIR, we would like to highlight the following priciples to ESMA:

* As discussed in the Discussion Paper, the purpose of transaction reporting under Article 26 MiFIR is to detect and investigate potential instances of market abuse and to monitor the fair and orderly functioning of markets and firm activities. BBA considers that transaction reporting requirements set out under Article 26 of MiFIR, should not go beyond what is necessary to achieve these objectives, with respect to (i) the products and events that are in scope, and (ii) the information required to be included in the transaction report.
* Transaction reporting under Article 26 of MiFIR, should be harmonised where possible with other European reporting regimes (e.g. EMIR, REMIT), as this will aid the smooth expansion of transaction reporting regime to further products and avoid duplicative reporting.
* There are subsequent transactions as defined under MiFIR that would only arise between a clearing broker and its counterparty and not between the executing broker and its original counterparty that would be deemed reportable. These transactions are clearly reportable under EMIR by the clearing broker. Activity undertaken by CCPs is not intended to be in scope.
* It should not be ESMA’s intention to include other types of securities financing transactions e.g. lending or borrowing stock transactions, reverse repurchase transactions, or buy-sell back or sell-buy back transactions in the reporting obligations. Members are aware of the European Commission and Financial Stability Board’s initiatives regarding the Securities Financing Regulation (SFT) which we understand will bring further reporting obligations for these types of transactions into scope. The information provided through these reporting obligations should provide sufficient information for these types of transactions. Firms do not wish to duplicate reporting obligations unless there is a strong rationale for this, especially if the duplicated reporting were to lead to multiple system builds being required in order to meet differing data requirements.
* BBA members would like to highlight to ESMA that the clarification of this definition and the additional data requirements, mean that in many cases, firms will have to completely re-engineer their current reporting infrastructure. Whilst firms will resource this effort in order to comply with MiFIR – clarity of requirements early in the construction process will mean that firms will be able to build more robust reporting solutions. Further, there are firms who under MiFID did not have a reporting obligation who will now have to build new systems and controls in order to comply with MiFIR.
* BBA also raises concerns as to the issues that may arise if the current regime is destabilised by a ‘big bang’ approach’ to implementation. Transaction reporting enforcement cases highlight three key risks: (i) governance and management oversight; (ii) lack of regulatory knowledge; and (iii) change to people and infrastructure. Senior management will ensure key risks are addressed but these risks would be better addressed over a phased migration.

In addition, we wish to raise a number of points that should assist ESMA with the drafting of the subsequent RTS as required under Article 26(9) of MiFIR.

ESMA should also be aware that depending on the role of the party to the transaction there will be differences in the data attributes to be populated at different stages in the lifecycle of a transaction.

Whilst it is clear that partial terminations (notional decreases) are reportable, it is not clear that notional increases are reportable. It may be beneficial for ESMA to explicitly state that notional increases are reportable.

We appreciate the inclusion of the examples provided in the Discussion paper which related to transactions which are deemed reportable. However we are concerned that Para 12 (v, vii) will cause ambiguity for firms.

Firms do not believe that it is appropriate to include repo and reverse repo transactions in the reporting obligations. Repo and reverse repo transactions are typically associated with movements in collateral, which ESMA is proposing to specifically exclude from the reporting obligation under Article 26 of MiFIR, as it provides no information on the firm’s position and/or client’s position.

Footnote 182 states that OTC compressions do not lead to a change in position in the financial instrument we would suggest that that is not the case and that compression cycles are deliberately run to reduce counterparty exposure and do therefore result in significant changes to positions.

We note there is a field 86 that denotes a new transaction as being as a result of a compression. Firms suggest that ESMA specify how to identify transactions that are torn up as a result of a compression cycle.

It is also assumed that the compression of listed derivative transactions into a position at the end of day, are not reportable.

Under Paragraph 11 iii, exercises are deemed reportable – we assume that this relates to the underlying cash security transaction that occurs as a result of an exercise event occurring resulting in the delivery of securities to the option holder and not a transaction to reflect the close out of the option position itself. BBA considers that the automatic exercise of options on a pre-agreed trigger should not be within scope of transaction reporting, as the exercise would happen without any intervention from a decision maker. This is to be contrasted with manual exercise of options which would require intervention by a decision maker and therefore should be reportable under Article 26 MiFIR.

In addition some ambiguity is introduced by Paragraph 15 v, where it refers to pre-established and published transactions in convertible / exchangeable bonds that are not reportable. Further clarity would be welcome in defining transactions that arise in terms of the original contract and as to whether transactions in the financial instrument or transactions in the underlying instrument are reportable. This ambiguity does not currently exist under MiFID.

ESMA will be aware that under MiFID 2004/39/EC “Clearing Brokers/Central Counterparties were excluded from a transaction reporting obligation as they were not “executing a transaction”. Whilst we note that activities not related to settlement or clearing are excluded from the reporting obligation, this requires further clarity in the ESMA text. For example, where an executing broker executes a bilateral OTC transaction with a counterparty and that position is subsequently novated to a Clearing House, it is not clear as to whether this new trade would be reportable under MiFIR. Legally, these are two separate principal transactions, however, there is a grey area between what is considered a transaction for settlement and clearing purposes and a transaction under MiFIR. To avoid uncertainty we would encourage ESMA to make it clear in the RTSs that transactions linked to clearing do not constitute a transaction for the purpose of MiFIR Article 26.

EMIR has introduced the concept of ‘event type’ that we believe could be usefully extended to MiFIR. We would urge however, that ESMA is not too prescriptive at the level of the RTS regarding the ‘event types’ that can be reported and identified.

There is an apparent contradiction whereby ESMA clarifies that a transaction means where there is a change in position yet also extends that definition to include where a firm hits its own order on a venue. The treatment of such orders varies from venue to venue in that on some venues, the orders will be cancelled, on some venues the orders will cross yet the transactions are suppressed for the purposes of clearing and settlement whilst on others, there will be two resulting transactions. Hence in some cases there is no transaction at all to report.

Finally we ask for ESMA to provide clear guidance on appropriate timestamp for lifecycle events, as these don’t possess verifiable execution times. This is particularly relevant for clearing activity and primary issuances trades.

<ESMA\_QUESTION\_546>

##### Do you anticipate any difficulties in identifying when your investment firm has executed a transaction in accordance with the above principles?

<ESMA\_QUESTION\_547>

Under the present regime, members are in a position to currently over report where there is ambiguity. The current proposals will stop over reporting and we would highlight to ESMA that this could potentially have unintended consequences for industry.

As previously stated, repos and reverse repos should remain out of scope.

Members are concerned about the absence of a golden source for reportable products. Industry would continue to err on the side of caution and would prefer to over-report products as opposed to risk under-reporting which could lead to serious consequences such as enforcement action being taken against the firms. Firms should make best efforts not to over-report and this will be most avoided in areas where the RTSs are clear on what is in or out of scope. We do not however support the idea of having the RTS specifically precluding firms from over-reporting. We would suggest that the best way for firms to avoid over-reporting is to work closely with yourselves (ESMA) to ensure technical standards clearly outline what events are deemed in and out of scope for reporting purposes.

Where there is unambiguous guidance as outlined in our answer to Question 546 then we do not believe there will be any difficulties in identifying where an investment firm has executed a transaction. As stated, a clear understanding of the roles and responsibilities of the various parties to a transaction and the subsequent lifecycle events will make identifying and reporting transactions more straightforward and reduce the risk of redundant and duplicative reports is critical.

<ESMA\_QUESTION\_547>

##### Is there any other activity that should not be reportable under Article 26 of MiFIR?

<ESMA\_QUESTION\_548>

Firms wish to point out the imperfect overlap of reporting regimes (in particular, EMIR, REMIT, obligations under Short Selling Regulation).

Members agree that MiFIR provides an opportunity to enhance the current transaction reporting regime, harmonise data attributes shared with other reporting regimes and allow regulators to take a holistic overview of reporting requirements so as not to duplicate obligations.

In addition to the list proposed in the Discussion Paper, the following activities should not be reportable:

* Change to the composition of a basket.
* Corporate actions – any position change due to a corporate action, including assimilation, acquisition, bankruptcy, bonus rights, scrip dividends for securities, mandatory events for options such as merger or spin offs with elections and cash stock options, and voluntary events including odd lot tenders, takeovers and rights issues.
* Cash flow/ settlement related transactions.
* Expiry as a result of contractual terms.
* Derivative exercises including optional put, warrant exercises, warrant expiries & warrant issues.
* Certain OTC derivative lifecycle events, including cash flow transactions & interest rate resets.
* Repo transactions, for the reasons already highlighted in the response above.
* Activity that is the responsibility of the clearing broker, e.g. post trade client allocations, should remain out of scope. (Prime Broker intermediations are currently not in scope for MiFID/ FCA TR.).

<ESMA\_QUESTION\_548>

##### Do you foresee any difficulties with the suggested approach? Please elaborate.

<ESMA\_QUESTION\_549>

Under current reporting arrangements, investment firms already make the necessary transaction reports as described on the occasions when they transmit an order to another investment firm and don’t pass on all the necessary details for that firm to make a complete transaction report. This scenario occurs largely in the Exchange Traded Derivatives’ arena, where it is common for an executing broker to pass a client order for execution to a second executing broker. The details of the underlying client are not passed to the second broker, hence the first executing broker makes a transaction report in order to ensure that the regulators have a complete view of the parties to the transactions.

We acknowledge that ESMA has made it clear that only orders that result in transactions are reportable under MiFIR.

However, members have raised several concerns regarding the practical application of this requirement to bilaterally agree arrangements between firms to allow the firm transmitting an order to not make its own transaction report. For example:

The order received doesn’t contain all the details of the transaction with regards to the economics of the resulting transaction. E.g. the final transaction price / quantity, although it can contain details as to the order type.

A large number of bilateral agreements will have to be in place between investment firms and their clients, that are not currently in place, in order to allow both sides to be clear that a transmission of an order has taken place for the purposes of Article 26 (4).

In addition, it is clear from the obligations that data not normally present on an order would have to be provided although we would assume that the information required on the transaction report is determined as it is today from the order, the allocation and the firm’s own reference data.

The current arrangements under MiFID have worked satisfactorily for both buy and sell side firms. At present, firms currently report at the block or allocation level depending on the type of trade, however, under MiFIR, the beneficiary information will be required on the report. Firms would like to highlight to ESMA that the beneficiary information may not always be available in the required time scales of T+1, and will only be available if provided by the investment manager.

<ESMA\_QUESTION\_549>

##### 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\_550>

Due to the complexity of the reporting requirement across multiple asset classes, the BBA membership would propose that ESMA work with the industry to agree asset class scenarios, golden instrument identifiers & product taxonomy. This work could potentially be facilitated through trade associations such as the BBA.

In general terms for product classification purposes, members encourage ESMA to utilise standards agreed under EMIR, although firms are aware that standards have not yet been agreed nor endorsed by ESMA under EMIR.

Firms would be willing to participate in open dialogue with ESMA over the course of the MiFIR implementation but are concerned that the QA process and the high level requirements will be problematic for firms who will in many cases, have a reporting obligation for the first time and in many cases be re-engineering their solutions to take into account the additional reporting required.

In addition, we would like to provide the following more general comments as to the use of the fields

* Firms would encourage the development of a European-wide Transaction Reporting Guidance pack, akin to what is currently produced by several NCAs.
* With the increase in product scope and transaction type, members request that the level of detail required by the Technical standards is sufficient to allow them to accurately transaction report the necessary details of the transactions to NCAs.
* Further consideration should be made of the issues surrounding the accurate representation of new products types including Commodity / FX and Interest Rate products. Where appropriate, when standards are agreed under EMIR, firms would recommend that these should be used.
* Currency throughout a trade is not always consistent, with executed price currency and consideration currency often differing, dependent on client / counterparty preference. There are concerns that transaction reports with a uniform 'converted' currency will not correspond to what NCAs observe in market / via other reports for settlement and could lead to complexities for reporting systems to carry non-golden source static data on conversion rates.
* Consideration. Firms are concerned that settlement level adjusted attributes such as the European Financial Transaction Tax (FTT) which are typically altered at settlement level due to the day / month end calculation and payment processing and netting nature would create a complex 'crossing back' of downstream to upstream systems. Amendments to consideration due to tax / stamp changes would create an amendment requirement on firms, but would not provide more detail around investment decision making to NCAs, thus resulting in firms incurring more reporting costs for immaterial updates.
* There is no field to indicate where the transaction is not a buy or sell, i.e..a notional increase. Firms anticipate that a further field akin to that used for EMIR know as ‘Action Type’ also be required.
* Not all transactions will require all the fields to be populated hence the definitions of mandatory and optional should be considered carefully by ESMA in the RTS.
* The reporting regime today has evolved, such that many of the ambiguities have been ironed out either, as a result of guidance, or, as a result of best market practice.
* For several aspects of the reporting, a golden source of instrument reference data to identify reportable instruments would be worthwhile.
* For many derivative transactions both OTC and ETD there is no "consideration" as calculated in terms of a monetary value, i.e. the consideration is a "theoretical" value rather than an "actual" value. The values expected in this field would be further complicated in the case of complex / exotic derivatives. Firms request further guidance as to how this field should be populated. In some cases, a change in position is effected for zero consideration.
* It would be beneficial for ESMA to clarify its position on the use of Operating MICs and Segment MICs. The segment MIC is often not received on the venue’s execution file and the segment MIC cannot be determined from usual reference data channels.
* Members would seek advice from ESMA on how to transaction report primary listed products for which a request has been made of admission to trading yet the ISIN has not yet been assigned.

The Report Matching number is a new concept and requires careful consideration as to its usefulness and implementation. As ESMA clearly intends for a one-sided reporting obligation and given that it is impossible to match multiple market executions to often multiple client transactions, using a single reference number, firms suggest that it only makes practical and useful sense for this field to be populated on the market-side executions and that it can only be populated by firms where the venue makes the value available on the execution file and that the venue makes this available to both sides of the transaction. Furthermore, there may be issues with the population of this field, where a transaction is made on a reportable security, yet on a venue outside of the EEA.

<ESMA\_QUESTION\_550>

##### Do you have any comments on the designation to identify the client and the client information and details that are to be included in transaction reports?

<ESMA\_QUESTION\_551>

The BBA membership are supportive of ESMA’s proposals to the use of LEI as a client designation for legal persons. However, the BBA would be very grateful if ESMA could provide guidance in relation to the scenario where a legal person does not have an LEI but may be eligible to obtain one, or where the LEI has expired. The BBA would support industry views that there should be no requirement on investment firms to restrict trading in any way due to their client's lack of an LEI. Any requirement on investment firms to trade only with clients who have an LEI will have a major commercial impact on firms and cause considerable market fragmentation. A clear statement from ESMA that this is the case would be welcomed.

Since MiFID go-live in 2007, BBA members have improved the quality of the static data used in the reporting of transactions. For full service firms facing largely institutional “legal persons” use of the BIC code has become the de-facto standard for MiFID transaction reporting. Members wish to highlight the following:

It should not be the responsibility of members to determine whether their client is eligible for an LEI (which may also require ongoing monitoring of clients who are currently ineligible for an LEI but may become eligible in the future) this would place an additional and disproportionate burden on firms.

Rather, the Local Operating units are better placed to make these determinations. In addition the Regulation does not state that investment firms should take on the responsibility to ensure their clients apply for LEI’s, or do they have adequate means to control this.

It is not clear as to whether it is a legal obligation under MiFID / MiFIR for clients of EEA regulated firms to get an LEI where they are eligible to get one. This therefore introduces ambiguity into a process where different firms and different NCA’s could choose to interpret regulation differently in making LEI a feature of tradability determination.

For clients with neither an LEI nor a BIC code, it is suggested that firms continue to use their internal unique client identifiers, as is the case today in the UK.

Further it is not clear what is meant in Paragraph 50 for identifying non EU legal persons with neither a BIC nor LEI. We don’t believe that there are at present national codes that are sufficiently standardised to identify non EU legal persons that are maintained on a national basis.

Firms would appreciate further clarity as to the identification of the counterparty to the transaction. Under EMIR the fund, where it is eligible for an LEI should be identified, under MiFID the Investment Manager should be identified.

With the introduction of additional fields around client identification and decision makers, firms are concerned that there will be ambiguity as to what data needs to be populated in different circumstances, the quality of the data and how to source this information. Again we welcome the opportunity to work further with ESMA as to the detail that will be required.

Firms do not agree with ESMA’s proposals around the need to report additional details regarding the identity of the client such as client first name, surname, date of birth, address, postal code etc. This comment applies both to the identification of traders and clients who are natural persons. Requiring the inclusion of this information in transaction reports will inevitably lead to data protection risks which would outweigh any potential benefit of including such information in the reports. Therefore, BBA’s preference would be to identify the clients and traders with an alpha/numeric ID which can then be looked up by the regulators in case of suspicious behavior.

<ESMA\_QUESTION\_551>

##### What are your views on the general approach to determining the relevant trader to be identified?

<ESMA\_QUESTION\_552>

The BBA are supportive of the general approach for the identification of traders.

Though our membership would wish to raise to ESMA comments pertaining as to the use of Agency and Principal trading definitions. There is an overwhelming number of transaction reports submitted to regulators to reflect the contractual arrangements with their clients and members highlight that these transaction reports do not give a true reflection of the capacity in which these orders are placed on the venue.

The same objective activity is ascribed different dealing capacities across different jurisdictions within and outside of the EEA and we therefore believe that, in the absence of absolute guidance on how to define dealing capacity, firms will interpret this field differently and produce inconsistent results.  It is important to avoid confusion on this field because other essential fields (e.g. trader identification and counterparties) are conditional upon the dealing capacity and scenario chosen.

Removing the dealing capacity distinction from the field contained within point 67 would not confuse the scenarios described (e.g. execution only, discretionary mandate, etc.).  However, if these scenarios are defined by both dealing capacity and the type of scenario, it becomes more complicated to determine the correct distinction. The "riskless principal" distinction, as an example, is viewed differently across jurisdictions with regard to dealing capacity but there is no confusion regarding the scenario itself, i.e. a firm is executing on exchange to fill a known client order.

Given that dealing capacity, if viewed from as a strict legal relationship, only indicates whether the reporting firm has counterparty risk against its client and/or the exchange, we believe that further details on how this distinction is utilized in the detection of market abuse, would eliminate confusion from firms regarding ESMA's expectations.

Members have, since MiFID go live, used the capacity field to reflect the fact that although orders may be routed to venues using an indication that the firm is acting on behalf of a client (Agency), riskless principal or principal the majority of brokers have adopted the principal model of settlement irrespective of order capacity. Hence transaction reports show the capacity as being the same capacity as the trade is confirmed to the client. This reflects either the contractual arrangements between clients and firms or in some cases to describe whether an execution price has been passed directly to a client without change.

In almost all cases settlement remains on a principal to principal basis yet a firm may choose to apply the agency capacity to reflect how a price has been passed to a client rather than use the stricter legal relationship between a client and a firm.

In this context therefore depending on the definition of capacity used, firms will either populate the trader ID infrequently as they would consider this question in their order placing capacity or alternatively, they would populate this field frequently as they consider their capacity in terms of their contractual relationship with their clients. Therefore firms would appreciate a better understanding of the capacity designation and how ESMA intends firms to use it, before the use of Trader ID can be fully considered. We would welcome further discussion with ESMA on this point.

Furthermore, there are concerns with using a Traders National Identity number on transaction reports. BBA members would suggest that there are other more suitable items of identification that could be used and are already used within firms to identify individuals, for example the National Competent Authorities registration number. Firms already have in place Personal Account Dealing controls to monitor the activities of all staff where trading for their own account.

BBA Members also have concerns regarding the treatment of client and trader identification, with regards the treatment of data protection. Industry would like ESMA to address their concerns on the use of personal information.

<ESMA\_QUESTION\_552>

##### In particular, do you agree with ESMA’s proposed approach to assigning a trader ID designation for committee decisions? If not, what do you think is the best way for NCAs to obtain accurate information about committee decisions?

<ESMA\_QUESTION\_553>

This requirement will create ambiguity as to how firms interpret the role of committees who likely ratify investment decisions and make risk assessments as opposed to making the original investment decision. What is also clear is that not all investment decisions will be made by Standing Committees and that some decisions are likely made by informal groups yet all will ultimately be executed by a single trader.

It is hard to envisage how to accurately and reliably capture investment decisions made by Standing Committees/ Ad Hoc committees without such data being keyed at the time an order is placed by the trader who will ultimately manage the risk. We therefore suggest that the use of this ability to reflect investment decisions be a choice made by individual firms as appropriate to their business.

<ESMA\_QUESTION\_553>

##### Do you have any views on how to identify the relevant trader in the cases of Direct Market Access and Sponsored Access?

<ESMA\_QUESTION\_554>

The person and the “user” of a firms’ ‘Direct Market Access’ service is the person who makes the investment decision, whilst the trader is whichever algo or trader who executes the order within the firm providing the DMA.

<ESMA\_QUESTION\_554>

##### Do you believe that the approach outlined above is appropriate for identifying the ‘computer algorithm within the investment firm responsible for the investment decision and the execution of the transaction’? If not, what difficulties do you see with the approach and what do you believe should be an alternative approach?

<ESMA\_QUESTION\_555>

We are supportive of the approach, although we would suggest that the same scenarios are used to describe the use of Trader ID in our response to Q552.. We point out again that improved clarity as to the use of the capacity designation will impact the use of this field. Where a chain of Algos is involved in the execution of a transaction, the last one in the chain should be reported.

Members suggest that where appropriate ESMA’s Guidelines on ‘System and Controls in an automated trading environment for trading platforms, investment firms and competent authorities‘ be used alongside MiFIR when considering what constitutes an Algorithm for the purposes of transaction reporting.

In addition, Members would ask ESMA to clearly define what it is meant by when a new algo has been created. Members would consider this to mean when the core logic of an algo has been changed and not when an algo has passed a different input parameter.

<ESMA\_QUESTION\_555>

##### 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\_556>

It is not yet clear at industry level as to how the various waivers proposed under MiFID/MiFIR will be calculated and determined. We are therefore unable to comment as to the challenges firms may yet encounter with the population of this field.

<ESMA\_QUESTION\_556>

##### Do you agree with ESMA’s proposed approach to adopt a simple short sale flagging approach for transaction reports? If not, what other approaches do you believe ESMA should consider and why?

<ESMA\_QUESTION\_557>

No.

The short sale flag in transaction reports will be of limited use to the competent authorities as identifying short selling at a legal entity level using transaction reports is not possible.

We would like to highlight the limitations of the proposal for a short sell flag:

* Although overall positions are of course monitored for risk management and settlement purposes these monitoring systems are entirely separate from trade capture systems. Individual traders will be able to determine that they themselves are going short on their individual trading accounts, however they will not be able to determine on a transaction per transaction basis/ or flag if their transaction will cause the firm to go short. Chinese walls and data segregation means that this data is deliberately withheld from individual traders.
* Firms have implemented systems and controls in order to comply with their obligations under the existing short selling regulation which includes disclosures monitoring and checks to the firms list of securities for which they have the market making exemption.
* Firms will in addition have separate monitoring to ensure that settlement can be effected on a timely basis. Hence, we do not think transaction reports are a suitable medium for monitoring short selling activity at a legal ‘entity’ level.
* Firms suggest therefore that this field might be used to consider short positions at a firm’s trading account level but should bear in mind that many transactions flagged in this way may not ultimately at the end of day result in a short position.
* As this is a Level 1 requirement which has to be fulfilled, we support ESMA’s proposal to adopt a simple short sale flag regime for transaction reporting.

<ESMA\_QUESTION\_557>

##### Which option do you believe is most appropriate for flagging short sales? Alternatively, what other approaches do you think ESMA should consider and why?

<ESMA\_QUESTION\_558>

Firms would be supportive of Option 1, but acknowledge that the data they pass through on the transaction reports would only be as good as the information they are able to secure on a best-efforts basis from clients.

Although, there is nothing specific prohibiting firms from asking about a client’s position - clients are under no obligation to tell firms, as the information is confidential to them. Furthermore, firms in possession of that information would need to be very careful about how that information is handled to avoid any suggestion of misuse of that data. It would create a clear conflict of interest where one currently doesn’t exist.

Firms would not be supportive of Option 2 as firms may not have an accurate view of their clients overall position.

<ESMA\_QUESTION\_558>

##### What are your views regarding the two options above?

<ESMA\_QUESTION\_559>

Firms would support Option 1 in this case whilst noting the caveats already raised in Question 557 where we state that the short sale flag in transaction reports will be of limited use to the competent authorities as identifying short selling at a legal entity level using transaction reports is not possible. Below we reiterate the limitations of such a flag:

* Although overall positions are of course monitored for risk management and settlement purposes these monitoring systems are entirely separate from trade capture systems. Individual traders will be able to determine that they themselves are going short on their individual trading accounts but they will not on a transaction per transaction basis, be able to determine / nor flag if their transaction will cause the firm to go short. Chinese walls and data segregation means that this data is deliberately withheld from individual traders.
* Firms have implemented systems and controls in order to comply with their obligations under the existing short selling regulation which includes disclosures monitoring and checks to the firms list of securities for which they have the market making exemption.
* Hence we do not think transaction reports are a suitable medium for monitoring short selling activity at a legal entity level.
* Firms suggest therefore that this field might be used to consider short positions at a firm’s trading-account level, but should bear in mind that many transactions flagged in this way, may not ultimately at end of day, result in a short position.
* As this is a Level 1 requirement which has to be fulfilled, we support ESMA’s proposal to adopt a simple short sale flag regime for transaction reporting.

<ESMA\_QUESTION\_559>

##### Do you agree with ESMA’s proposed approach in relation to reporting aggregated transactions? If not, what other alternative approaches do you think ESMA should consider and why?

<ESMA\_QUESTION\_560>

We would be supportive of the option proposed under 108 ii), again caveated by the point that the information can only be gathered on a ‘best efforts’ basis to allow the investment firm to flag the client-side of the transaction as a short sale. Though the transaction report from the firms’ perspective would be a buy from the client.

<ESMA\_QUESTION\_560>

##### Are there any other particular issues or trading scenarios that ESMA should consider in light of the short selling flag?

<ESMA\_QUESTION\_561>

It is the BBA’s opinion that the flagging of short sales applies to transactions in shares and sovereign debt only.

We do not support ESMA’s proposal on the short selling flag with regards to market making activities and primary market operations. We do not think that the short selling flag should apply to these activities nor should they be required to flag whether a short sale took place under the market maker exemption or the primary market operation exemption under the SSR. We believe this information is already available to regulators and would not add any value.

Under Level 1, it is the BBA’s understanding, that those short sales which benefit from the market making exemption do not need to be flagged at all. This is because Article 17 of the SSR dissapplies Articles 12 and 13 of the SSR for transactions performed due to market making activities. Therefore, BBA does not consider it reasonable to require market makers to flag whether they are short selling and would suggest for market making activities and primary market operations to be completely exempted from the short selling flag under transaction reporting. This is also in line with the overarching ESMA’s concept of keeping the short selling flag process simple.

<ESMA\_QUESTION\_561>

##### Do you agree with ESMA’s proposed approach for reporting financial instruments over baskets? If not, what other approaches do you believe ESMA should consider and why?

<ESMA\_QUESTION\_562>

Our members have considered the problem of reporting baskets and indices many times since MiFID implementation in 2007 and dialogue has failed to produce a solution that is practical to implement and that would provide meaningful information for regulators.

We suggest therefore that firms report all baskets and indices irrespective of analysis of their composition to determine if the basket contains a reportable security or not. Where the underlying index or basket is “standardised” then firms should use an ISIN code where available to identify the underlying index or basket. An additional field on the reporting message should be made available for firms to identify the underlying as an Index or Basket. A numbering agency might be requested to create ISINs for all the standard indices across the EU and also non-EU indices issued on EU exchanges, for example KOSPI (Korean) futures issued on Eurex.

Further in order to identify the most relevant underliers to regulators EMSA might consider this approach for non standardised baskets / indices. Some regulators have taken the 20% rule – whereby if a single constituent is a financial instrument reportable under MiFIR and makes up > 20% of the basket then the reporting firm should identify it and it alone.

The product description could where feasible be used to indicate to regulators the “broad” composition of the Basket/Index.

Changes in the composition of the basket are clearly not reportable transactions.

Again firms suggest that a single source of reportable products would clarify matters here.

<ESMA\_QUESTION\_562>

##### Which option is preferable for reporting financial instruments over indices? Would you have any difficulty in applying any of the three approaches, such as determining the weighting of the index or determining whether the index is the underlying in another financial instrument? Alternatively, are there any other approaches which you believe ESMA should consider?

<ESMA\_QUESTION\_563>

Our members have considered the problem of reporting baskets and indices many times since MiFID’s implementation in 2007 and dialogue has failed to produce a solution that is practical to implement and that would provide meaningful information for regulators.

We suggest therefore that firms report all baskets and indices, irrespective of analysis of their composition to determine if the basket contains a reportable security or not. Where the underlying index or basket is “standardised” then firms should use an ISIN code where available, to identify the underlying index or basket. An additional field on the reporting message should be made available for firms to identify the underlying as an Index or Basket. A numbering agency might be requested to create ISINs for all the standard indices across the EU and also non-EU indices issued on EU exchanges, for example KOSPI (Korean) futures issued on Eurex.

Furthermore, in order to identify the most relevant underliers for regulators; ESMA might consider this approach for non-standardised baskets / indices. Some regulators have taken the 20% rule – whereby if a single constituent is a financial instrument reportable under MiFIR and makes up > 20% of the basket then the reporting firm should identify it and it alone.

The product description could where feasible be used to indicate to regulators the “broad” composition of the Basket/Index.

Changes in the composition of the basket are clearly not reportable transactions.

Again firms suggest that a single source of reportable products would clarify matters here.

<ESMA\_QUESTION\_563>

##### Do you think the current MiFID approach to branch reporting should be maintained?

<ESMA\_QUESTION\_564>

Yes. We are supportive of the current regime

<ESMA\_QUESTION\_564>

##### Do you anticipate any difficulties in implementing the branch reporting requirement proposed above?

<ESMA\_QUESTION\_565>

No.

We are supportive of ESMA’s proposals.

However, firms anticipate that ESMA will define criteria as to what activities should be flagged.

Also, this rule only works for branches of EEA firms and ESMA’s proposal is silent on the obligation of branches of non-EEA firms, where the head office of the branch is located in a non-EEA country. We would appreciate further clarity as to who these branches will be required to report to and would suggest that a primary home EEA NCA be designated based on materiality.

<ESMA\_QUESTION\_565>

##### Is the proposed list of criteria sufficient, or should ESMA consider other/extra criteria?

<ESMA\_QUESTION\_566>

Yes. The list is sufficient.

<ESMA\_QUESTION\_566>

##### Which format, not limited to the ones above, do you think is most suitable for the purposes of transaction reporting under Article 26 of MiFIR? Please provide a detailed explanation including cost-benefit considerations.

<ESMA\_QUESTION\_567>

Since the MiFID go-live in 2007, the services provided by Approved Reporting Mechanisms have altered to take into account the demands made of firms by National Competent Authorities. The market has worked well and technological advances, alongside services provided by the ARMs, has meant that firms are able to send reports, in either proprietary or non proprietary formats.

We would be supportive of non proprietary formats including XML / FpML.

<ESMA\_QUESTION\_567>

Obligation to supply financial instrument reference data

##### Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?

<ESMA\_QUESTION\_568>

We have seen and agree with AFME’s assertion that this approach will pose challenges without significant mitigation, such as the mandating of a centralized approach and the use of a central infrastructure (for further detail please refer to the AFME response, which we support). Additionally, we do not believe that the publication of daily lists should be mandated.

<ESMA\_QUESTION\_568>

##### Do you anticipate any difficulties in providing, at least daily, a full file containing all the financial instruments?

<ESMA\_QUESTION\_569>

We do not agree with a full file being provided on a daily basis. This would be an operationally unfeasible and place incredible demands process on all market participants, including regulators. An annual list would be more sensible.

<ESMA\_QUESTION\_569>

##### Do you anticipate any difficulties in providing a combination of delta files and full files?

<ESMA\_QUESTION\_570>

The BBA agrees with a combination approach but the full list should only be provided annually.

<ESMA\_QUESTION\_570>

##### Do you anticipate any difficulties in providing details of financial instruments twice per day?

<ESMA\_QUESTION\_571>

No. We do believe that venues should have the option – but not the obligation – to provide the data to their NCA’s on an ongoing basis throughout the day.

<ESMA\_QUESTION\_571>

##### What other aspects should ESMA consider when determining a suitable solution for the timeframes of the notifications? Please include in your response any foreseen technical limitations.

<ESMA\_QUESTION\_572>

We have seen and agree with ISDA’s response. <ESMA\_QUESTION\_572>

##### Do you agree with the proposed fields? Do trading venues and investment firms have access to the specified reference data elements in order to populate the proposed fields?

<ESMA\_QUESTION\_573>

We have seen and agree with AFME’s response. <ESMA\_QUESTION\_573>

##### Are you aware of any available industry classification standards you would consider appropriate?

<ESMA\_QUESTION\_574>

In regards to OTC derivatives, the BBA would support the use of existing ISDA taxonomy. This is because ISIN or aii codes are not currently used for OTC derivatives and considerable changes to procedures for creating derivative instruments might be required, should the instrument identifiers be mandated to use a narrow class of identifiers.

In regards to non-OTC derivative instruments, the BBA believes that standards should be developed in partnership with industry.

<ESMA\_QUESTION\_574>

##### For both MiFID and MAR (OTC) derivatives based on indexes are in scope. Therefore it could be helpful to publish a list of relevant indexes. Do you foresee any difficulties in providing reference data for indexes listed on your trading venue? Furthermore, what reference data could you provide on indexes?

<ESMA\_QUESTION\_575>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_575>

##### Do you agree with ESMA’s intention to maintain the current RCA determination rules?

<ESMA\_QUESTION\_576>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_576>

##### What criteria would you consider appropriate to establish the RCA for instruments that are currently not covered by the RCA rule?

<ESMA\_QUESTION\_577>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_577>

<ESMA\_QUESTION\_1>

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<ESMA\_QUESTION\_1>

Obligation to maintain records of orders

##### In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.

<ESMA\_QUESTION\_578>

Whilst option 3 would enable standardisation as well as aiding in enhancing harmonisation across the market, we support option 1, with ESMA determines the list of data elements required but not the format in which they are maintained.

<ESMA\_QUESTION\_578>

##### In your view, what are the data elements that cannot be harmonised? Please elaborate.

<ESMA\_QUESTION\_579>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_579>

##### For those elements that would have to be harmonised under Option 2 or under Option 3, do you think industry standards/protocols could be utilised? Please elaborate.

<ESMA\_QUESTION\_580>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_580>

##### Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA\_QUESTION\_581>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_581>

##### Do you foresee any difficulties maintaining records of the Client IDs related with the orders submitted by their members/participants? If so, please elaborate.

<ESMA\_QUESTION\_582>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_582>

##### Are there any other solutions you would consider as appropriate to track clients’ order flows through member firms/participants of trading venues and to link orders and transactions coming from the same member firm/participant?

<ESMA\_QUESTION\_583>

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<ESMA\_QUESTION\_583>

##### Do you believe that this approach allows the order to be uniquely identified If not, please elaborate

<ESMA\_QUESTION\_584>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_584>

##### Do you foresee any difficulties with the implementation of this approach? Please elaborate

<ESMA\_QUESTION\_585>

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<ESMA\_QUESTION\_585>

##### Do you foresee any difficulties with the proposed approach? Please elaborate

<ESMA\_QUESTION\_586>

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<ESMA\_QUESTION\_586>

##### Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA\_QUESTION\_587>

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<ESMA\_QUESTION\_587>

##### Would the breakdown in the two categories of order types create major issues in terms of mapping of the orders by the Trading Venues and IT developments? Please elaborate

<ESMA\_QUESTION\_588>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_588>

##### Do you foresee any problems with the proposed approach?

<ESMA\_QUESTION\_589>

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<ESMA\_QUESTION\_589>

##### Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.

<ESMA\_QUESTION\_590>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_590>

##### Do you agree that standardised default time stamps regarding the date and time at which the order shall automatically and ultimately be removed from the order book relevantly supplements the validity period flags?

<ESMA\_QUESTION\_591>

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<ESMA\_QUESTION\_591>

##### Do venues use a priority number to determine execution priority or a combination of priority time stamp and sequence number?

<ESMA\_QUESTION\_592>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_592>

##### Do you foresee any difficulties with the three options described above? Please elaborate.

<ESMA\_QUESTION\_593>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_593>

##### Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.

<ESMA\_QUESTION\_594>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_594>

##### Are there any other type of events that should be considered?

<ESMA\_QUESTION\_595>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_595>

##### Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA\_QUESTION\_596>

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<ESMA\_QUESTION\_596>

##### Do you foresee any problems with the proposed approach? Do you consider any other alternative in order to inform about orders placed by market makers and other liquidity providers?

<ESMA\_QUESTION\_597>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_597>

##### Do you foresee any difficulties in generating a transaction ID code that links the order with the executed transaction that stems from that order in the information that has to be kept at the disposal of the CAs? Please elaborate.

<ESMA\_QUESTION\_598>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_598>

##### Do you foresee any difficulties with maintaining this information? Please elaborate.

<ESMA\_QUESTION\_599>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_599>

Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)[[3]](#footnote-4)

##### Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.

<ESMA\_QUESTION\_600>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_600>

##### Do you foresee any difficulties in complying with the proposed timeframe?

<ESMA\_QUESTION\_601>

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<ESMA\_QUESTION\_601>

Synchronisation of business clocks

##### Would you prefer a synchronisation at a national or at a pan-European level? Please elaborate. If you would prefer synchronisation to a single source, please indicate which would be the reference clock for those purposes.

<ESMA\_QUESTION\_602>

Yes. We have seen and agree with AFME’s response.

<ESMA\_QUESTION\_602>

##### Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA\_QUESTION\_603>

No. We have seen and agree with AFME’s response to this question.

<ESMA\_QUESTION\_603>

##### Which would be the maximum divergence that should be permitted with respect to the reference clock? How often should any divergence be corrected?

<ESMA\_QUESTION\_604>

We have seen and agree with AFME’s response to this question.

<ESMA\_QUESTION\_604>

Post-trading issues

Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

##### What are your views generally on (1) the systems, procedures, arrangements supporting the flow of information to the CCP, (2) the operational process that should be in place to perform the transfer of margins, (3) the relevant parties involved these processes and the time required for each of the steps?

<ESMA\_QUESTION\_605>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_605>

##### In particular, who are currently responsible, in the ETD and OTC context, for obtaining the information required for clearing and for submitting the transaction to a CCP for clearing? Do you consider that anything should be changed in this respect? What are the current timeframes, in the ETD and OTC context, between the conclusion of the contract and the exchange of information required for clearing on one hand and on the other hand between the exchange of information and the submission of the transaction to the CPP?

<ESMA\_QUESTION\_606>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_606>

##### What are your views on the balance of these risks against the benefits of STP for the derivatives market and on the manner to mitigate such risks at the different levels of the clearing chain?

<ESMA\_QUESTION\_607>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_607>

##### When does the CM assume the responsibility of the transactions? At the time when the CCP accepts the transaction or at a different moment in time?

<ESMA\_QUESTION\_608>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_608>

##### What are your views on how practicable it would be for CM to validate the transaction before their submission to the CCP? What would the CM require for this purpose and the timeframe required? How would this validation process fit with STP?

<ESMA\_QUESTION\_609>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_609>

##### What are your views on the manner to determine the timeframe for (1) the exchange of information required for clearing, (2) the submission of a transaction to the CCP, and the constraints and requirements to consider for parties involved in both the ETD and OTC contexts?

<ESMA\_QUESTION\_610>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_610>

##### What are your views on the systems, procedures, arrangements and timeframe for (1) the submission of a transaction to the CCP and (2) the acceptance or rejection of a transaction by the CCP in view of the operational process required for a strong product validation in the context of ETD and OTC? How should it compare with the current process and timeframe? Does the current practice envisage a product validation?

<ESMA\_QUESTION\_611>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_611>

##### What should be the degree of flexibility for CM, its timeframe, and the characteristics of the systems, procedures and arrangements required to supporting that flexibility? How should it compare to the current practices and timeframe?

<ESMA\_QUESTION\_612>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_612>

##### What are your views on the treatment of rejected transactions for transactions subject to the clearing requirement and those cleared on a voluntary basis? Do you agree that the framework should be set in advance?

<ESMA\_QUESTION\_613>

We have seen and support ISDA’s response to this question.

<ESMA\_QUESTION\_613>

Indirect Clearing Arrangements

##### Is there any reason for ESMA to adopt a different approach (1) from the one under EMIR, (2) for OTC and ETD? If so, please explain your reasons.

<ESMA\_QUESTION\_614>

We have seen and agree with ISDA’s response.

<ESMA\_QUESTION\_614>

##### In your view, how should it compare with current practice?

<ESMA\_QUESTION\_615>

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<ESMA\_QUESTION\_615>

1. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-2)
2. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-3)
3. Please note that this section has to be read in conjunction with the section on the “Record keeping and co-operation with national competent authorities” in this DP. [↑](#footnote-ref-4)