|  |
| --- |
| 22 May 2014 |

|  |
| --- |
| Reply form for the  ESMA MiFID II/MiFIR Discussion Paper    Template for comments  for the ESMA MiFID II/MiFIR Discussion Paper |
|  |

|  |
| --- |
| 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 2 and 3 above 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 6 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree. Euronext strongly supports the proposal that all venues as specified under Footnote 24 (Regulated Markets, MTFs, OTFs & SIs) should fall under the requirement to publish exactly the same data.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree. Euronext believes that data publication obligations should apply to all instruments traded on the execution venue. In addition, Euronext believes that publication should be effected on an instrument by instrument basis.

<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>

Euronext believes that this data should be reported at the very least annually, but would support a more frequent basis, for instance quarterly, in order to enable investors and intermediaries to receive information in due time. In addition, Euronext believes that on top of defining the appropriate frequency, ESMA should also define the exact period during which reports will have to be published, in order to ensure that all platforms publish their reports approximately at the same time (in terms of day), which will be central to the comparability of their performance data.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree with the proposal, subject to the additional comments below. Euronext supports the harmonisation of reference period, minimum reporting details and the application of compatible format.

In addition, Euronext believes that on top of defining the appropriate frequency, ESMA should also define the exact period during which reports will have to be published, in order to ensure that all platforms publish their reports approximately at the same time (in terms of day), which will be central to the comparability of their performance data.

<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>

Yes, Euronext agrees that the volume of orders received and executed is a good indicator.

However, we do not believe that the VBBO would be a good indicator or that it would facilitate the creation of a periodic European price benchmark. This is because VBBO is only one amongst multiple indicators that may be used to iterate the best price available (EBBO for instance), each of which have their benefits and drawbacks depending on the trading strategy at play. In addition, the publication of a periodic VBBO would only provide an indication at a point in time, which may not be reflective of the VBBO on a continuous basis. Therefore, ESMA needs to ensure that other criteria are equally captured and displayed so that all can be compared together and investors are not misled.

Euronext would also recommend adding the market share in the financial instrument for the individual venue in comparison to the whole EU market as a key indicator, as it is a proxy for the liquidity available on each venue. This indicator should always be taken into account by investment firms defining or revising their best execution policies. When the venue with the highest liquidity remains out of the scope of the venues selected by the intermediary, the intermediary should be required to justify this absence.

<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>

Yes, Euronext believes that this approach is feasible. However, we consider that the indicators may need to differ in order to be adapted to each instrument class.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, Euronext believes that in order to enhance the information of different types of investors, and to enable investment firms to populate their best execution policies with venue’s performance per type of investors, it is appropriate to split trades into ranges so that they are comparable. To this end, we recommend creating 3 categories of trades: one up to the retail size (€7500), another one for trades between this retail size and the LIS, and a third one for those trades above the LIS.

<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>

No, Euronext does not believe that a benchmark price is needed to evaluate execution quality. This is because execution quality must be assessed along multiple criteria, with best price being only one of them.

<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>

Euronext does not believe that any costs should be reported considering that venues costs are already public. In addition, because the publication obligations referred to in this part of the Discussion Paper aim at ensuring application of best execution obligations, Euronext does not believe that venue’s costs are relevant indicator in this respect, considering their very low weight in comparison to other transaction costs (either implicit or explicit, such as commissions, etc.).

<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>

Yes, Euronext agrees that the percentage of orders not executed at the end of the applicable trading period would be a good criteria in order to measure the likelihood of execution. However, in order to truly inform investors, this indicator should only cover aggressive orders for which the likelihood of execution is a relevant goal, and distinguish between market and limit orders in order to offer the needed level of granularity.

<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>

Euronext believes that speed of execution should be measured by calculating the time period between the moment an order enters in the trading system and the moment it is executed. This indicator should only be calculated for aggressive orders for which speed of execution is obviously a key goal, whilst passive orders respond to very different trading strategies and needs.

<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>

Yes, Euronext agrees that qualitative criteria should be disclosed in respect to the existence of central clearing, circuit breakers and surveillance mechanisms.

<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>

No, Euronext does not agree that data on cancelled orders is useful for investors.

<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>

No. Euronext believes that besides a potential adaptation to the different types of instruments traded, these indicators should apply equally to all market microstructures, in order to ensure the comparability of their respective performance for the same instruments.

<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>

Euronext does not believe that additional measures should be required for the purpose of this Article. This is because in order to ensure investor information and the right level of supporting evidence for the definition or revision of investment firms’ best execution policies, it is crucial for regulation to ensure the usability and readability of those performance reports. However, whilst some key indicators are needed, adding some less useful indicators will render the use and readability of the reports less efficient, considering the amount of data that investors or participants will have to process, especially if these reports are effected on an instrument by instrument basis. In addition, this data will be of little use in respect of enabling clients to carry out transaction costs analysis (TCA). This is because TCA already uses highly sophisticated trading tools. Moreover, TCA analysis and the publication of performance data by venues are two intrinsically different activities, which do not serve exactly the same purpose.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Yes, Euronext agrees that the investment firms should take the publication of the data envisaged in the Discussion paper into consideration when defining and revising their best execution policies subject to one additional comment.

Specifically, Euronext would also recommend adding the market share in the financial instrument of the individual venue in comparison to whole EU market as a key indicator, as it is a proxy for the liquidity available on each venue. This indicator should always be taken into account by investment firms defining or revising their best execution policies. When the venue with the highest liquidity remains out of the scope of the venues selected for this purpose by the intermediary, the intermediary should be required to justify this absence.

<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>

Yes. Euronext agrees that an appropriate picture of the venues and of the different ways they execute client orders is information that should be transmitted to clients. In addition, we recommend the inclusion of information on the existence and on the amount of inducements received, capital links and payment for order flow as necessary elements to inform clients about the existence of potential risks of conflicts of interests.

<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>

Yes. Euronext agrees that when execution on SIs and OTC represents one of the five most important ways for the firm to execute client orders, this should be incorporated in the reporting obligations under article 27(6) of MiFID. However, we believe that market-makers and dealing on own account should not be considered separately from SIs and OTC, as these activities, at least for cash equities, should take place on SIs, unless they do not meet the SI thresholds in which case they could remain OTC, or are effected on multilateral venues if the firm, whilst displaying an activity above the SI threshold, does not wish to set up an SI.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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. Euronext agrees that investment firms should publish 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 homogeneous calculation method.

<ESMA\_QUESTION\_34>

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

<ESMA\_QUESTION\_35>

TYPE YOUR TEXT HERE

<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>

Euronext supports the application of a common format, similar to the one that will apply to the mirroring obligations borne by trading venues and to require investment firms to disclose the same type of information on market quality as that will be required from trading venues. In addition, we would support the inclusion of information on the existence and on the amount of inducements received, capital links and payment for order flow that is necessary to inform clients about the existence of potential risks of conflicts of interests.

<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>

Yes, subject to the comment below, Euronext agrees 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 minimum standards.

However, in order to reinforce the informational potential of these public reports, we would suggest requiring quarterly publication.

<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>

TYPE YOUR TEXT HERE

<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>

Euronext agrees with the principles listed in paragraph 29. However, we suggest adding the shareholding and governance of the top five venues towards which client orders were routed to this information, in particular mentioning any stakes – together with their size - a firm owns in any of them.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_42>

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

<ESMA\_QUESTION\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_43>

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

<ESMA\_QUESTION\_44>

Euronext believes that information on the existence and on the amount of inducements received, capital links and payment for order flow is necessary to inform clients about the existence of potential risks of conflicts of interests.

<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>

Euronext believes that all indications of interest (IOI) should be considered as actionable, meaning that they should be displayed to the market with the information they contain (over the requested price, and/ or quantity, and/or over whether the intention is to buy and or sell). Only in the instance where those actionable indication of interests would fall under one of the waivers defined for equity and equity-like instruments should they remain in the dark, i.e. not displayed to the whole market.

We suggest this approach in order to avoid any circumvention of pre-trade transparency rules, given their scope applying to orders and actionable indications of interest. This is particularly relevant in any trading where the use of RFQ systems is widespread.

While some participants may argue that IOIs should not be made transparent because they are executable only by one counterparty (and are not meant to be executable against other counterparties), there is a parallel between IOIs and SI quotes: SI quotes, although executable only against the SI clients, are subject to pre-trade transparency requirements. There is therefore no reason to exempt IOIs from pre-trade transparency.

<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>

No, Euronext does not agree that the Table 1 of Annex II of Regulation 1287/2006 is still valid for shares traded on Regulated Markets (RMs) and MTFs.

We outline below a proposed modification based on current experience with the MiFID I framework which would ensure that, under the revised legislation, it would be clear that in cases where prices are simply imported from lit venues, the activity must fall under the Reference Price Waiver and be subject to the double volume cap mechanism.

The flexible definition of pre-trade transparency obligations for "hybrid" systems in the abovementioned regulation has enabled some platforms to operate trading models that are functionally comparable to dark platforms operating under the reference price exemption ("Reference Price Waiver"). However, these platforms are still being recognized from a regulatory perspective as pre-trade transparent platforms, despite their lack of participation in the price formation process.

Specifically, some platforms currently considered to be pre-trade transparent import prices formed on competing lit platforms and display these prices as actionable even though those prices (i) do not correspond, strictly speaking, to the interests present on the platform (they are calculated by the platform itself from prices other than those actually sent to the platform) and (ii) can be made only if market makers operating on the platform are present and agree to trade at the price displayed.

These practices, which go against the spirit of MiFID, are problematic insofar as (i) they do not allow clients directing their orders to these platforms to know whether the displayed prices are truly actionable, and (ii) they impair the price formation process in an identical manner to dark platforms operating under the reference price exemption. In fact, by leaving the opportunity for some market participants to benefit from the prices formed by others on transparent platforms, they encourage a growing number of participants to veer towards what is perceived as a more convenient way to receive best execution. Thus, the share of volumes directed towards truly transparent pre-trade platforms decreases proportionally, resulting in a less efficient price formation process that is detrimental to all stakeholders, including those active on these deceptively transparent platforms importing prices that are less reflective of the real interests present in the market.

MiFID II / MiFIR aims to better control the volumes executed under the reference price exemption using a quantitative limit ("volume cap"). However, in the absence of a change in the rules concerning the so-called hybrid platforms defined under Annex II of Regulation EC No. 1284/2006, there is a risk that volumes executed today under the Reference Price Waiver will shift to platforms considered to be pre-trade transparent but which actually operate under a model identical to the one used by dark platforms, thereby reinforcing the status quo. We strongly urge regulators to ensure that the rationale underpinning trading on hybrid platforms ensures that the transactions are executed on the basis of pricing intentions generated by the interaction of buying and selling interests on the venue concerned. It should be made clear that in cases where prices are simply imported from lit venues the activity must fall under the Reference Price Waiver and be subject to the double volume cap mechanism.

As a result, Euronext recommends revising, under the definition of the pre-trade transparency obligations, the current Annex II to Regulation EC No. 1284/2006 implementing the MiFID Directive 1. The proposed additions to the current text are shown in bold and the proposed deletions are struck through.

|  |  |
| --- | --- |
| **System type** | **Information to publish** |
| Continuous auction  order book trading  system | The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels **sent to the venue’s order book and present on its order book.** |
| Quote-driven trading  System | The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices **sent to the venue’s order book and present on its order book.** |
| Periodic auction trading system | The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price, **calculated from the prices and sizes of orders sent to the venue’s order book and present on its order book.** |
| Trading system not  covered by first three  rows | **~~Adequate information as to the level of orders or quotes and of trading interest; in particular,~~** The five best bid and offer price levels and/or two-way quotes of each market maker in the share **sent to the venue’s order book and present on its order book**, if the characteristics of the price discovery mechanism so permit. |

<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, we agree. In our view, information published for ETFs for the purpose of pre-trade transparency requirements should be identical to the requirements applicable to shares, subject to the comments we make in Q46 on modifying the current requirements in respect of shares.

In addition, the **indicative net asset value, or iNAV,** should also be subject to a publication requirement. This is because the iNAV represents fundamental information for investors: it allows them to know the theoretical value of the ETF, notably in cases where the market makers usually active on this type of instruments withdraw from the market or publish quotes with a wide bid-ask spread.

<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>

Yes, Euronext agrees that ADT remains a valid measure for determining when an order is large-in-scale compared to normal market size. This is because this measure is harmonized across all markets and enables the aggregation of volumes executed on the same instruments on different venues for the purpose of calculating liquidity.

<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>

No, we do not fully agree.

**The method used to set the LIS threshold for shares is not directly applicable to ETFs.** As the rationale for the LIS waiver is to avoid market impact, it is necessary to differentiate between instruments whose price depends on the interaction of orders (e.g. shares) and other instruments which are derivatively priced (e.g. ETFs). While we agree with the division of instruments into liquidity bands or ADT classes, **these classes should be based on the ADT** (average daily turnover, i.e. yearly turnover divided by the number of trading days) **of the underlying**, not on the ADT of the ETF itself. This is because the most relevant factor of liquidity for an ETF is the liquidity of the basket of assets the fund is based upon. For instance, an ETF tracking a very liquid underlying should have a higher LIS threshold than an ETF based on a less liquid basket of instruments, even though the ADT of the respective funds may not differ much. Conversely, ETFs based on the same underlying can have very different average daily turnovers.

Please see our response to Q54 for concrete proposals in respect of ETFs.

<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, Euronext supports the creation of a new ADT class of 0 to €100,000 with an adequate new large in scale threshold and a new ADT class of €100,000 to €500,000. This should assist in supporting liquidity and transparency for SMEs.

<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, Euronext supports the creation of new ADT classes of €1 to €5m and €5 to €25m, which would introduce grater granularity, and therefore better meet market needs.

<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>

Yes, Euronext supports the creation of a new ADT class for ‘super-liquid’ shares with an ADT in excess of €100m and a new class of €50m to €100m.

<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>

Euronext strongly supports ESMA’s approach.

The rationale for the LIS waiver is to allow large-size orders to be executed without pre-trade transparency in order to avoid market impact, which is detrimental both to the investor logging the order and the market as a whole because of increased volatility. Therefore, the level of the threshold should depend on the absorption capacity of the market.

Analysis of the relevant factors indicates that the absorption capacity of the market for liquid shares has not decreased since the implementation of the MiFID I LIS thresholds. Consequently, there is scope to increase the LIS thresholds for liquid shares where the market has evolved in the direction of a greater ability to absorb large size orders. On our markets, for the CAC40, market impact for a €500,000 order decreased from 15.3 basis points to 13.9 basis points (9% decrease) between January 2006 and January 2014 in spite of the fact that execution had to be done on the first two limits (i.e. the first two best bids or offers) in 2006 and the first six in 2014. In other words, the absorption capacity of the market improved since the implementation of the MiFID I LIS thresholds, even if in order to execute a large order the participant has to go further down the depth of the order book.

In addition, average market depth in 2013 (above €50,000 on CAC40 securities at the best limit) remains well above average transaction size, even if compared with average transaction size in 2006 (above €30,000 for the most liquid CESR securities). This demonstrates that, in spite of the decrease in average transaction size, the capacity of the market to absorb larger order remains significant. This is all the more true given that the market depth mentioned above only covers Euronext markets and not competing platforms and, therefore, only gives a partial view of the total market depth available for a given instrument listed on our markets.

Moreover, the average size of transactions executed on our block trade facility remained relatively high following the implementation of MiFID I and is well above the minimum size thresholds established by MiFID I. In 2013, the average size of transactions executed on our block trade facility was €1,250,000, i.e. 2.5 times the LIS threshold for the most liquid shares. Similarly, the average size of transactions executed at the VWAP on our dedicated “Negotiated Deal Waiver” facility has increased substantially since the implementation of MiFID I. In 2013, the average transaction size was €3,750,000, i.e. 7.5 times the LIS threshold for the most liquid shares. This data demonstrates that market participants currently do not experience any difficulty in executing large-in-scale orders, be it on the central order book or via dedicated facilities, and thus supports the proposed approach by ESMA.

<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>

No, we do not agree the ADT ranges selected or the LIS thresholds set for each ADT class.

As we highlight in our response to Q49, the ADT classes should be based on the ADT of the underlying, not on the ADT of the ETF itself. We do, however, agree with ESMA that the LIS thresholds should be set according to a target percentage of turnover above the threshold (i.e. 10% of turnover could be executed under the LIS waiver or benefit from deferred publication).

While we make a proposal for four ETF underlying ADT classes below, we are not in a position to propose corresponding LIS thresholds as we lack the consolidated data to run an EU-wide analysis. In that respect, we note that ESMA’s dataset is extremely limited as it only takes into account regulated markets in 11 EU Member States, thereby ignoring MTF and OTC activity, which is a serious flaw considering that a significant percentage of activity in ETFs is executed OTC. As regards the methodology to establish the ADT of a basket of assets underlying an ETF, we suggest using the weighted average of the average daily turnover of each asset in the basket, using the index weighting provided by the issuer of the fund. ETFs are most commonly based on equity, commodity and fixed income underlying. These asset classes are all subject to post-trade reporting requirements, transaction data is therefore already readily available to regulators – albeit not to market participants for fixed income in particular. ESMA could then calculate the ETF underlying ADT using the index weightings provided by the issuer of the ETF.

To limit the regulatory burden on issuers, weightings would only have to be provided to ESMA when the ADT classes are reviewed. While index weightings change every day according to market conditions, the overall liquidity of the basket as a whole only changes marginally on a daily basis, therefore making the ETF underlying ADT an accurate measure of liquidity over time. It would therefore not be necessary to update the weightings more often than the repartition of ETFs in the 4 ADT classes is updated. We would recommend updating the repartition on a quarterly basis, which is consistent with the periodic reviews of most indices on which ETFs are based.

In order to offer all participants in ETF markets a simple way to know in which underlying ADT class a particular ETF falls, we propose that ESMA makes public on its website a list of ETFs in each of the four underlying ADT classes.

**Proposed table:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ETF Underlying ADT Classes – 10% of turnover above threshold** | | | | |
| **Class in terms of ETF underlying ADT *(in euros/day or other currency equivalent)*** | ADT < 200 million | 200 million ≤ ADT < 500 million | 500 million ≤ ADT < 1 billion | ADT ≥ 1 billion |
| **LIS threshold *(in euros)*** | TBD | TBD | TBD | TBD |

While the approach described above would in our opinion be the most comprehensive way of determining the different ADT classes, we understand that it may seem complex and that it requires ESMA to do a number of calculations in regular intervals.

We therefore could support an alternative option which is to keep the methodology proposed by ESMA, based on the average daily turnover of the fund, whilst applying a calibration resulting in higher thresholds. This approach, though less comprehensive, would reflect the fact that ETFs are derivatively priced and that any market impact or hedging opportunities need to be assessed against the liquidity of the underlying assets.

<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, Euronext agrees with ESMA’s view.

<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>

Euronext supports the ESMA approach that an annual calculation remains the most appropriate. We would not support a quarterly frequency for the calculation given the burden it would impose on market participants. The length of the calculation period should be equal to the interval between two subsequent calculations.

<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, we do not agree with the ESMA approach. We believe that stubs should remain dark.

However, we consider it essential to specify in the level 2 texts that the LIS threshold is applied to “child” orders and not to “parent” orders. This is because, in contrast to parent orders, child orders are actually sent to the market and can, depending on their size, have an impact on market prices. Parent orders, which are either sliced or modified, do not directly interact with the market. Therefore, thresholds should not be calculated on the basis of parent orders: even though the size of the parent order may be superior to the LIS threshold, this order is not communicated to the market and can be sliced into smaller child orders which will not face market impact. Applying the LIS threshold to parent orders would amount to exempting from pre-trade transparency child orders which could have, without any risk of market impact, contributed to the price formation process.

Similarly, the threshold should apply to child orders stemming from a single parent order from one counterparty. This would ensure that orders from several counterparties are not aggregated in the view of attaining a size above the LIS threshold and, therefore, escape pre-trade transparency rules.

<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>

Yes, Euronext supports ESMA’s proposal that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant financial instrument, which is a key proxy for liquidity. An alternative may be to define the most relevant market in terms of liquidity as the primary market since the primary market is the market which maintains the closer links with issuers. We also support an annual review.

<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>

No, Euronext does not fully agree with ESMA’s views.

We believe it is necessary to complement these principles in order to limit the use of the NDW to its original purpose. To achieve this, we suggest defining further in Level 2 texts the potential use of the NDW, along the lines of the definition adopted in MiFID I. Article 19 of the implementing Regulation for MIFID I is clear in defining negotiated transactions as a transaction involving a venue’s members, negotiated privately, but executed within the venue. This principle should be maintained and enhanced in the revised MiFID II Level 2 framework (e.g. by adding a requirement that the deals are subject to the full rules of that venue).

In particular, it should be made explicitly clear that the meeting of the two trading interests has to be facilitated by the broker or the bank operating completely outside the systems of the venue in question.This willensure that a venue cannot use the NDW on a systematic and generalized basis to replicate what is happening today under the RPW. For instance, as currently drafted a venue could use the NDW to facilitate the meeting of interests directly on its system through a dark matching algorithm.

In addition, and in respect to the use of the NDW for transactions executed at VWAS, it will be crucial to ensure that these transactions are conducted at a price which can be monitored and validated by the trading operator. To this end, the VWAS price should correspond to the prices formed on the operator’s lit central order book, and should not be imported from other trading venues, in contrast to venues operating under the RPW. In other words, the operator operating the NDW facility and the operator operating the lit central order book from which VWAS prices are calculated should be the same.

<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>

Yes, Euronext agrees with the proposed list of transactions which should in principle mirror that adopted for the purpose of defining the exemptions to the share trading mandate. However, we do think there are other transactions which should be added and therefore suggest adopting the following exhaustive list, which is by definition more comprehensive in terms of scope. This is needed in order to limit the scope for circumventing pre-trade transparency requirements. However, in order to adapt the list to evolving market practices and needs, an efficient review mechanism should be built into the process:

|  |  |
| --- | --- |
| **Transactions considered as non-addressable for the purpose of the equities trading mandate** | |
| **“Trades which do not constitute a transaction”** | Trades which do not correspond to a transfer of property. This category includes the following two types of transactions:   1. Transfer of a transaction from a broker A to a broker B for which A has executed the transaction, without changing its characteristics (notably in terms of price and size), commonly called “give-up / give-in”; 2. Creation and redemption of exchange-traded funds (ETFs). |
|
|
|
|
| **“Transactions constituted of inseparable components”** | Transactions reflecting a unique and indivisible economic interest and constituted of several inseparable and non-substitutable components which, if they were directed to the market, would not represent the initial economic interest in its entirety and, therefore, could not participate as such in the price formation process of the instruments constituting the initial economic interest. In addition, these transactions are characterised by the fact that the commitment to trade is made simultaneously on all the components. The risk of this definition being circumvented is relatively high since it is frequent for a client to give an order on several instruments which are not necessarily inseparable. Therefore, regulators will have to make sure that the several components of a transaction are effectively inseparable before labelling a transaction as non-addressable.  This type of transactions notably includes “**exchange for physical**” transactions. |
| **“Administrative transactions”** | Transactions executed for purely administrative purposes. This category of transactions includes the four following types:   1. Inter-fund transfers; 2. Exercise of stock options; 3. Exercise of stock buybacks; 4. Transfer of client securities accounts or portfolios between banks. |
| **Non-current market value transactions based on post-trade prices** | |
| **VWAP** |  |
| **TWAP** |  |
| **CVWAP** |  |
| **Ex / cum dividend** |  |
| **Non-current market value transactions based on pre-trade prices** | |
| **VWAS** |  |

<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, Euronext agrees that these are the two main groups of OMF that ESMA should not only focus on, but limit the use of the OMF to.

<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>

No, Euronext does not fully agree with ESMA’s general assessment.

We strongly encourage ESMA to introduce a prohibition for venues to build market models around this waiver, i.e. to use sophisticated technology for its implementation in order to avoid the OMF being used as a tool to circumvent the volume caps. In addition, we would encourage ESMA to promote a harmonisation of practices in this respect, by directly overseeing national implementations of the waiver.

<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>

No. The described framework also works for ETFs.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_67>

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

<ESMA\_QUESTION\_68>

No. We agree that the minimum size for stop orders should be set at a level not higher than the minimum tradable quantity.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No, we do not agree.

Euronext believes that the content of the information currently required should be complemented by additional flags, as defined under the Market Model Typology initiative administered by FIX. This would afford market participants and regulators alike more visibility on the way transactions are carried out. In addition, information published according to post-trade transparency requirements by investment firms trading on an OTC or Systematic Internaliser basis should be identical to the information required of trading venues. Moreover, we recommend the addition of trade flags indicating that a transaction was carried out on an SI or OTC. When a transaction is flagged as OTC, we also recommend indicating the category of transactions to which it belongs. Furthermore, we also consider that information published for ETFs for the purpose of post-trade transparency requirements should be identical to the requirements applicable to shares.

<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>

Euronext strongly recommends:

1. publishing information to identify the type of market models on which the transactions will be executed (e.g. lit or dark trading), with, where applicable the identification of the waiver used and of the particular conditions justifying the use of the waiver (for instance, for OMF, an iceberg flag should be added to the information disclosed if the order was an iceberg order);
2. for OTC trades, publication should include information on the type of transactions, based on the list of exemptions to the trading mandate defined in the level 2 texts, or a ‘standard’ flag for those bilateral trades that were executed outside SIs because they did not fall under the SI definitional thresholds.

This level of granularity is necessary for participants and investors to have the ability to have an accurate and comprehensive view of trading.

<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>

Euronext agrees that the SI identity should not be disclosed for the purposes of real-time publication if SIs are truly bilateral - i.e. are prevented from performing riskless principal trading, matched principal trading or back-to-back trading, please see our detailed points under Q92 in the Discussion Paper). This is important in order to protect the identity of the SI, which will be trading on own account and therefore taking on important market risk. However, SIs identity should be disclosed through periodical identity reports as is current practice under MiFID 1.

Nonetheless, if SIs were to be allowed to perform principal trading, matched principal trading or back-to-back trading (see in particular our response to Q92 for more details), then there would be no reason to subject SIs to a different regime than that applicable to trading venues. This is because they would be functionally identical to trading venues matching third-party trades on a multilateral basis. As such, they should then be required to disclose their identity in post-trade publications and reports in real-time. In any case, Euronext believes that the post-trade regime for SIs should be improved by including flags specifying whether the order was executed in the dark (i.e. matched against non-pre-trade published quotes of the SIs) and if the order received price improvement.

<ESMA\_QUESTION\_76>

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

<ESMA\_QUESTION\_77>

No, Euronext does not fully agree with the proposed list.

We recommend complementing the proposed list with additional flags covering the following types of transactions that should be authorised in the OTC space:

|  |  |
| --- | --- |
| **Transactions considered as non-addressable for the purpose of the equities trading mandate** | |
| **“Trades which do not constitute a transaction”** | Trades which do not correspond to a transfer of property. This category includes the following two types of transactions:   1. Transfer of a transaction from a broker A to a broker B for which A has executed the transaction, without changing its characteristics (notably in terms of price and size), commonly called “give-up / give-in”; 2. Creation and redemption of exchange-traded funds (ETFs). |
|
|
|
|
| **“Transactions constituted of inseparable components”** | Transactions reflecting a unique and indivisible economic interest and constituted of several inseparable and non-substitutable components which, if they were directed to the market, would not represent the initial economic interest in its entirety and, therefore, could not participate as such in the price formation process of the instruments constituting the initial economic interest. In addition, these transactions are characterised by the fact that the commitment to trade is made simultaneously on all the components. The risk of this definition being circumvented is relatively high since it is frequent for a client to give an order on several instruments which are not necessarily inseparable. Therefore, regulators will have to make sure that the several components of a transaction are effectively inseparable before labelling a transaction as non-addressable.  This type of transactions notably includes “**exchange for physical**” transactions. |
| **“Administrative transactions”** | Transactions executed for purely administrative purposes. This category of transactions includes the four following types:   1. Inter-fund transfers; 2. Exercise of stock options; 3. Exercise of stock buybacks; 4. Transfer of client securities accounts or portfolios between banks. |
| **Non-current market value transactions** | |
| **VWAP** |  |
| **TWAP** |  |
| **CVWAP** |  |
| **Ex / cum dividend** |  |

In addition, Euronext suggests adding an OTC ‘standard’ flags for those bilateral trades that were executed outside of SIs because they did not fall under the SI definitional thresholds. Moreover, as outlined in our response to Q76, Euronext believes that the post-trade regime for SIs should be improved by including flags specifying whether the order was executed in the dark (i.e. matched against non-pre-trade published quotes of the SIs) and if it received price improvement. In addition, Euronext would have the following recommendations in order to bring the regime in line with the current MMT initiative that is currently being implemented by the industry[[1]](#footnote-2):

* Addition of a flag ‘P’ Plain Vanilla Trade: an ordinary/standard trade for the specified trading Market Mechanism or Trading Mode;
* Addition of a flag ‘F’ Trade with conditions: trades where the trade price and/or trading process does not reference or correlate with the current market price. Note that this trade type is provided so as to ensure that MMT is compatible with existing systems, but the trade type need not be used if the “Negotiated Trade” or “Benchmark Trade” trade types have been used.
* Potential issues on market microstructure/price formation mechanism on lit books [“L” flag]: a large in scale order (LIS) above the LIS threshold might be posted fully hidden into a lit order book (depending on whether the market operator allows it or not).  Tagging the execution of a LIS order with a “L” flag on the public trade message triggers the following issues:
  + As soon as the first portion of the LIS hidden order gets executed against a smaller conventional lit order, the trade message will go out tagged with “L”. This will immediately signal to other participants that there is some hidden portion of a larger order still lying in the book. This consequently massively weakens the rationale of trying to post hidden liquidity above LIS threshold in the lit book. This will on the contrary incentivize brokers to divert larger hidden block orders away from lit books to either dark pools or to off book bilateral execution.
  + Tagging trades originating from LIS orders with “L” might induce a misconception of the portion of lit trading derived from the execution of hidden orders. Keep in mind that in case of execution there will be in most cases one conventional lit book order with full pre-trade transparency getting executed against one LIS order (hidden). The consecutive trade message will be anyway tagged as “L” although only one side of the trade was a non- transparent order. Order book statistics will nevertheless consider the entire trade as being not/less transparent. Potentially there will be some voices asking to disregard such trades for index computation purposes or asking regulators to cap the amount of such trades in order book trading, claiming that this distorts price formation. Market operators displaying a large slice of order book trades flagged with “L” will presumably get more regulatory scrutiny. More “L” trades means, however, that brokers rely on lit order book liquidity for block trade execution and make large orders addressable liquidity. This is by essence not a negative signal for the price formation efficiency.
  + For those reasons we believe that “L” tag can potentially harm the price formation process by shifting LIS orders away from lit order books towards either dark pool or negotiated trade executions. We therefore recommend removing the proposed “L” flag for trades originating from LIS orders.
  + By analogy we would not recommend to flag trades originating from orders under the Order Management Facility waiver regime, typically iceberg orders for the same reasons.
* Potential issues with data hierarchy and duplicative nature of certain flags [‘R’, ‘NTV, ‘NTI’, ‘NTC’ flags]: The scope of other new flags suggested by ESMA lies outside lit book operations. There are potential issues rather of operational nature than of market microstructure nature:
  + We understand that the reference price waiver applies mainly to dark trading venues. ESMA suggests a new tag “R”, while CESR recommended a tag “D” in CESR/10-882. There is a duplication and potentially some confusion. “D” flag is already available in  MMT v2.0 Transaction Category field (see MMT data hierarchy level 3/ Transaction Type).
  + “NTV”, “NTC” and “NTI” are designed to make off book trade reporting more transparent. There is an operational issue with these 3 codes as CESR/10-882 always applied 1 digit code values. MMT data model currently relies accordingly on 1 digit code values for each MMT field. Enlarging the existing MMT “Negotiated Transaction Indicator” field (see MMT data hierarchy level 3/transaction Type) to new values is not an issue as long as code values remain 1 digit long.  Enlarging MMT field to 3 positions means all industry players having already implemented MMT logic should modify the structure of their feeds/display products. This cost/benefits ratio looks bad.
  + “NTI” flag looks of duplicative nature considering the “T” flag for technical trades recommended in CESR/10-882 and in the same table of the ESMA paper as well. “T” flag is already available in MMT v2.0 Transaction Category field (see MMT data hierarchy level 3/ Transaction Type).
  + For those reasons we recommend to drop the flags “R” and “NTC” because of their duplicative nature with existing flags, unless ESMA can elaborate on the distinctive value-added of those two new flags (not obvious for the moment). In addition and in subsidiarity 3 digits code values should be turned into 1 digit values in order to minimize costs of implementation in the industry.

<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 do not think there is a need. In respect of ETFs, the framework is applicable - no further specific flags are needed.

<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>

Yes, Euronext agrees with the introduction of a flag for deferred LIS. It makes sense to flag trades that are subject to deferred publication. This indicates that the time lag between execution and publication explains the gap versus the current lit book price of the reference market. Trade flags must in particular deliver unambiguous information.

Data management best practices suggest, however, applying the appropriate attribute for the proper purpose it has been specified for.  The “L” flag has clearly not been specified for transporting the information regarding publication deferral. Executed LIS orders might be subject to deferred publication, but not necessarily. This is an optional feature under current MiFID rules.

Using the “L” flag in a derived usage for indicating the deferred publication would trigger confusion as deferred publication is not systematic but optional. Therefore, we recommend not applying “L” in a derived usage. We recommend instead applying the MMT solution “Publication Mode” (see MMT data hierarchy Level 4/Publication Mode). This would be line with data management best practice and be an unambiguous approach.

<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>

Yes, Euronext agrees with the introduction of additional flags for these purposes and suggests the Market Model Typology (MMT) initiative as the best source. This would not increase cost for the industry and would be harmonised across all markets.

<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>

Euronext would suggest specifying detailed flags covering each of the following transactions:

|  |  |
| --- | --- |
| **Transactions considered as non-addressable for the purpose of the equities trading mandate** | |
| **“Trades which do not constitute a transaction”** | Trades which do not correspond to a transfer of property. This category includes the following two types of transactions:   1. Transfer of a transaction from a broker A to a broker B for which A has executed the transaction, without changing its characteristics (notably in terms of price and size), commonly called “give-up / give-in”; 2. Creation and redemption of exchange-traded funds (ETFs). |
|
|
|
|
| **“Transactions constituted of inseparable components”** | Transactions reflecting a unique and indivisible economic interest and constituted of several inseparable and non-substitutable components which, if they were directed to the market, would not represent the initial economic interest in its entirety and, therefore, could not participate as such in the price formation process of the instruments constituting the initial economic interest. In addition, these transactions are characterised by the fact that the commitment to trade is made simultaneously on all the components. The risk of this definition being circumvented is relatively high since it is frequent for a client to give an order on several instruments which are not necessarily inseparable. Therefore, regulators will have to make sure that the several components of a transaction are effectively inseparable before labelling a transaction as non-addressable.  This type of transactions notably includes “**exchange for physical**” transactions. |
| **“Administrative transactions”** | Transactions executed for purely administrative purposes. This category of transactions includes the four following types:   1. Inter-fund transfers; 2. Exercise of stock options; 3. Exercise of stock buybacks; 4. Transfer of client securities accounts or portfolios between banks. |
| **Non-current market value transactions** | |
| **VWAP** |  |
| **TWAP** |  |
| **CVWAP** |  |
| **Ex / cum dividend** |  |

<ESMA\_QUESTION\_81>

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

<ESMA\_QUESTION\_82>

Yes. Euronext agrees with the definition of ‘normal trading hours’. In case of Art 3.3, 6.2, 8.3, 10.2 MiFIR, the normal trading hours should be the same as those of the trading venue itself. Otherwise publication through an APA should be considered.

<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, Euronext does not fully agree.

While the shortening of the period for equities post-trade publication raises very little market impact risks, since prices are formed mostly out of pre-trade information, this 1 minute delay should be limited only to those cases where real-time publication is not possible as the trade has not been executed electronically. Otherwise, only actual real-time-time publication should be authorised.

In addition, Euronext believes it necessary to specify from which moment the delay starts to be computed in order to avoid any type of circumvention and to promote a more harmonised application across platforms and participants. This moment could be defined as corresponding to the time the order was executed.

<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>

TYPE YOUR TEXT HERE

<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>

Euronext supports option A. The highest delay should be reduced to end of day considering that for equities post-trade publication raises very little market impact risks, since prices are formed mostly out of pre-trade information. Extending the delay would deprive investors of useful information and would go against transparency principles.

Euronext recommends a simplification of the current deferred publication regime for shares defined in the annex to MiFID Implementing Regulation EC 1287/2006.We think that the size threshold above which deferred publication is allowed should be aligned on the pre-trade LIS threshold. This is because deferred publication and the LIS waiver from pre-trade transparency are based on the same rationale, i.e. avoiding market impact.

<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>

No, we do not agree. Euronext believes that the LIS deferral regime should be simplified and follow the same model as for the LIS pre-trade transparency threshold.

<ESMA\_QUESTION\_86>

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

<ESMA\_QUESTION\_87>

Yes. Euronext agrees with the thresholds proposed.

<ESMA\_QUESTION\_87>

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

<ESMA\_QUESTION\_88>

Euronext believes that an annual review, aligned with the revision frequency for the LIS pre-trade transparency threshold, should be privileged as it will be sufficiently regular to adapt the LIS to potentially evolving market dynamics.

<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>

No. Euronext has no concerns regarding the deferred publication occurring at the end of trading day, during the closing auction period.

<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>

No, we do not fully agree.

The same liquidity bands and LIS thresholds for pre-trade and post-trade transparency should be used for ETFs, **but only if** they are based on the ADT of the underlying (please see our response to Q54 above). Subject to this condition, applying the same pre- and post-trade ADT classes will ensure the framework is easy to understand and to implement.

In addition, we recommend that there should be only two deferral periods for ETFs:

* End of day for large in scale transactions in order to allow market participants to hedge their trades;
* T+1 for transactions executed at the net asset value (NAV) under the negotiated trade waiver as, for transactions executed at the NAV, the price of the transaction is generally not available before then.

<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, Euronext agrees with the proposal. However, we urge ESMA and the Commission to resolve the ambiguities in the text pertaining to the potential use of matched or riskless principal trading by an SI as we outline in Q92. Without clarification, this point risks fundamentally undermining one of the core principles of the Level 1 framework, that is to say a strict separation of bilateral and multilateral trading functionality.

<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>

No, Euronext does not support the current SMS table. In the absence of any viable alternatives and subject to our broader comments below on ensuring the bilateral nature of SIs, Euronext supports Option B, that is to say grouping the two smallest classes into a single class for shares with an AVT between zero and 20000 Euros and set a standard market size of 10000 Euros.

In principle, we see no reason why the transparency obligations on the SI should not be totally aligned with the LIS table applicable to trading on multilateral platforms. This is because there is no reason to apply a more flexible transparency regimes to SIs than the one applicable to which market-makers active on multilateral platforms. This is especially the case given that, in contrast to market-makers on multilateral platforms, SIs can choose to whom they will provide quotes. None of the options proposed by ESMA would enable SIs to truly contribute to price formation. This is truly problematic considering that as they stand, and considering the volume caps that will apply to dark trading on multilateral platforms and to the trading mandate, SIs will become an increasingly attractive option for accommodating current BCN-type activity.

However, in practice, Euronext can accept the differentiated requirements applied to SIs, as compared to multilateral venues, so long as the **strict bilateral nature of SI activity is clarified by the Commission and ESMA.**

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

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

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

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

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

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

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

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

<ESMA\_QUESTION\_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>

TYPE YOUR TEXT HERE

<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>

For ETFs, we suggest using the same approach as the one we have proposed for LIS thresholds, i.e. classes based on the ADT of the underlying of the fund. Please see our response to Q54 above.

<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>

Yes. Euronext agrees that the determination of what is non-systematic, ad-hoc, irregular and infrequent should be defined as mirroring the parameters applicable to the SI definition, in order to promote the consistency of the regulatory framework in this respect.

In addition and to the same end, Euronext recommends adding that only bilateral trading should be considered as eligible to these criteria. In other words, multilateral trading, including via riskless principal trading, back-to-back trading or matched principal trading, should always be conducted on a multilateral trading platform where non-discretionary and non-discriminatory execution and access rules apply.

<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>

Yes, Euronext agrees with the proposed list.

In addition, Euronext strongly supports the adoption of an exhaustive list, in order to limit the scope for circumvention of pre-trade transparency requirements. This should be complemented with an efficient review mechanism, which would enable, when needed, to adapt to the list to evolving market practices and needs. We suggest incorporating the following transactions into an exhaustive list:

|  |  |
| --- | --- |
| **Transactions considered as non-addressable for the purpose of the equities trading mandate** | |
| **“Trades which do not constitute a transaction”** | Trades which do not correspond to a transfer of property. This category includes the following two types of transactions:   * Transfer of a transaction from a broker A to a broker B for which A has executed the transaction, without changing its characteristics (notably in terms of price and size), commonly called “give-up / give-in”; * Creation and redemption of exchange-traded funds (ETFs). |
|
|
|
|
| **“Transactions constituted of inseparable components”** | Transactions reflecting a unique and indivisible economic interest and constituted of several inseparable and non-substitutable components which, if they were directed to the market, would not represent the initial economic interest in its entirety and, therefore, could not participate as such in the price formation process of the instruments constituting the initial economic interest. In addition, these transactions are characterised by the fact that the commitment to trade is made simultaneously on all the components. The risk of this definition being circumvented is relatively high since it is frequent for a client to give an order on several instruments which are not necessarily inseparable. Therefore, regulators will have to make sure that the several components of a transaction are effectively inseparable before labelling a transaction as non-addressable.  This type of transactions notably includes “**exchange for physical**” transactions. |
| **“Administrative transactions”** | Transactions executed for purely administrative purposes. This category of transactions includes the four following types:   * Inter-fund transfers; * Exercise of stock options; * Exercise of stock buybacks; * Transfer of client securities accounts or portfolios between banks. |

<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. Euronext agrees with this proposal.

We suggest that portfolio trades should be included under the “Transactions constituted of inseparable components” category of the list of non-addressable transactions. We would therefore suggest that the following transactions should be considered as “non-current market value” ones for the purpose of Article 20:

|  |  |
| --- | --- |
| **Non-current market value transactions** | |
| **VWAP** |  |
| **TWAP** |  |
| **CVWAP** |  |
| **Ex / cum dividend** |  |

<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>

Yes, we agree.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, we agree.

As a general point, we would like to clarify our understanding that the derivatives trading obligation and extension of transparency requirements apply both to OTC derivatives meeting the clearing and trading tests in EMIR & MiFIR respectively, as well as to all exchange traded derivatives (ETDs), since both will be, by definition, standardised and should therefore fall under the requirements. However, MiFIR Article 9(1c) allows competent authorities to waive pre-trade transparency obligations for “derivatives which are not subject to the trading obligation and other financial instruments for which there is not a liquid market’. As a consequence, the trading obligation needs to apply both to OTC derivatives and ETDs to avoid transparency waivers being sought for ETD contracts simply on a misguided and strict misinterpretation that they have not fulfilled a trading obligation test. Such a scenario would be a perverse outcome and completely at odds with the political ambitions of the G20 and the MIFID Review in respect of OTC derivatives.

<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>

***We do not fully agree with ESMA’s proposal for a number of reasons. First of all, the different market characteristics (type of issuer and type of product) call for a tailored approach and for that reason we would suggest an alternative approach for derivatives and bonds and securitized derivatives.***

***For derivatives:***

No, we do not fully agree with ESMA’s approach. While we agree that market operators of trading venues should assume that responsibility we believe that there should be an escalation procedure to the national competent authority, or ultimately ESMA in case of a blatant mismarking of the product in relation to its structure or construct by the trading venue. This will address possible issues that would negatively affect a level playing field going forward. There should be a consistent applicability of the categories and arbitrage should be avoided. For those purposes, regulators should be involved.

***For Bonds & Securitised Derivatives:***

No, we do not agree. Giving that responsibility to market operators and investment firm operating a trading venue seems to be inefficient as different trading venues may define the category differently which would lead to different transparency regimes. We recommend that the issuer of a bond or a securitised derivative should assume responsibility for determining the MiFIR category. This approach guarantees that trading venues and investment firms apply the same transparency regime to the same instrument. This approach could however raise conflicts of interest issues for certain securitised instruments (e.g. asset-backed securities), with the potential for the issuer to choose a category associated with lower levels of transparency. We therefore recommend that regulators exercise oversight over categorisation in order to ensure that newly introduced instruments are placed in the right category.

<ESMA\_QUESTION\_101>

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

<ESMA\_QUESTION\_102>

***Derivatives & Bonds***

We do not fully agree with the proposal. While we agree with the approach, we think it is incomplete. Regarding the derivatives segmentation, we question the missing fixed income derivatives section (paragraph 35, page 111 of Discussion Paper). Fixed income derivatives should be explicitly mentioned either under their own category or under the interest rate category.

<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>

***General Comment***

The Level 1 criteria outlined in MiFIR Article 2(1)(17) represent a blunt and inadequate approach to the challenge of defining a liquid market, especially if to be deemed liquid a market has to meet all four criteria. For this reason we propose an alternative solution consisting of a cascade approach, outlined in our response to Q110/Q111, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach. This approach frames our responses to the individual questions on each liquidity criterion.

***Derivatives***

No, we do not fully agree. We would like to suggest an alternative approach. While we understand the objective of the proposed approach to mix Options 1 and 2, we feel that other dimensions should be introduced. Therefore we would support Option 3, provided that the following elements are taken into account:

* The existence of a Liquidity Provider;
* The timeframe for the determination of the liquidity. This needs to be set according to the product type as different products have different lifecycles of trading activity. For example, a single stock future will tend to be most active during the dividend season, a yearly observation would therefore be recommended for this type of product. This can be done by interpretation of the “nature and life cycle” and “type of market participant”;
* The importance of OTC transactions. Focusing on the frequency of trading neglects the fact that volumes could be traded OTC on the basis of the market prices available on the trading venues. That is, the frequency of trading measured on a trading venue is not a good indicator of what actually trades. This aspect could be very important in some equity derivatives products heavily traded OTC where the introduction of a trading obligation could significantly improve market transparency and thus liquidity on trading venues.

An overall rule, applicable to all products will not work, it will need to be tailored to specific classes of instruments.

***Securitised Derivatives***

No, we do not agree. The approach for securitised derivatives should be the same as the alternative approach we propose above for derivatives.

We note that frequency measurements for securitised derivatives are only possible at the level of classes of financial instruments (COFIA approach), and not at the level of individual financial instruments. This is because some products only have a lifespan of a few hours or a few weeks.

***Bonds***

In respect of bonds, we do not fully agree with Option 3. We would like to suggest an alternative approach. While we understand the objective of the approach proposed by ESMA to mix Options 1 and 2, we feel it needs to be complemented by the following elements (points 1-3 below) and considered alongside other measures of liquidity (please see our response to Q110-111 below). Therefore we would support Option 3 provided that the following elements are taken into account.

1. **Set a low threshold** – Bond markets are characterised by a very low number of trading days and large transaction sizes, therefore requiring both a minimum number of transactions and a minimum number of active trading days to be met (i.e. Option 3) would be extremely restrictive. Many instruments will only trade once a day, or at lower frequencies, however the absence of transactions does not mean that it is not possible to trade. The presence of a liquidity provider, for instance, would guarantee liquidity in an instrument independently of the frequency of transactions taking place. As ESMA itself recognises on p.118 of the Discussion Paper, the chosen thresholds in the event of Option 3 being adopted would have to be set at a level that is considerably lower than would be the case if only one of Option 1 or 2 were adopted. This would also reflect the fact that the frequency of transactions is not an accurate proxy to measure liquidity in bonds.
2. **Seasonality** - In addition, the frequency of transactions in fixed income instruments follows a specific rhythm, both due to the nature of market participants, which have a buy and hold profile, and the life cycle of a bond, characterised by a high activity period in the weeks after the offering, followed by a lower activity period until maturity, during which transactions occur sporadically irrespective of the level of transparency applied. In order to capture this seasonality of trading in fixed income instruments, we agree with ESMA that a “residual maturity” sub-liquidity category should be included in the COFIA approach (i.e. covering the period up to expiry, please see our response to Q115 below).
3. **Time period for measuring the frequency of transactions** - We are not in favour of longer time periods for measuring the frequency and size of transactions. This is because the uneven distribution of trading in bonds throughout the life cycle of the instrument means that longer periods would distort results, especially if an average were to be used. We would rather support the use of a median for the purpose of these calculations.

<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>

***General Comment***

The Level 1 criteria outlined in MiFIR Article 2(1)(17) represent a blunt and inadequate approach to the challenge of defining a liquid market, especially if to be deemed liquid a market has to meet all four criteria. For this reason we propose an alternative solution consisting of a cascade approach, outlined in our response to Q110/Q111, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach. This approach frames our responses to the individual questions on each liquidity criterion.

In respect of the average size criterion, in contrast to ESMA we suggest the approach to be taken should be dependent on the nature of the product concerned. Across our products, we favour several of the options proposed in the discussion paper as a result of the characteristics of the products concerned. We therefore strongly urge ESMA to adopt a framework that allows for both flexibility and comprehensiveness .

***Derivatives***

No, we do not fully agree with Option 2 as this does not accurately reflect the average trade size, but rather the average daily value. We could support Option 1 as long as the following additional elements are taken into account:

* The minimum threshold for the average daily turnover in the underlying stock or basket of stocks constituting an index over a period of one year;
* The calibration is such that the seasonality of the product and the role of liquidity providers and/or market makers is not ignored. For seasonal products, longer observation periods would be called for in order to properly reflect the true average.

***Securitised Derivatives***

In respect of securitised derivatives, we do not agree with Option 2 and instead support Option 1. Option 2 is not appropriate because some products have a very short lifespan (a few hours or a few weeks), therefore measuring the average size of transactions against the total number of trading days in a given period would not adequately capture liquidity in these products. In addition, Option 2 would not take into account the fact that investors are more active on some products rather than others depending on the strike and maturity of the instruments and global market conditions.

We therefore consider Option 1 as more appropriate, even though focusing on the average value of trades is not a relevant measure of liquidity in a market characterised by the presence of liquidity providers. When it comes to the size of transactions in securitised derivatives, what matters is the size the liquidity provider is willing to quote and trade.

***Bonds***

In respect of bonds, we do not fully agree with Option 2. We would like to suggest an alternative approach as we feel Option 2 needs to be complemented by the following elements (points 1-3 below) and considered alongside other measures of liquidity (please our response to Q110-111 below).Therefore we would support Option 2 provided that the following elements are taken into account.

1. **Active trading days** – Bond markets are characterised by a very low number of trading days and large transaction sizes. Therefore, to estimate the average size of transactions more accurately, the turnover should be divided by the number of “active” trading days (i.e. the number of trading days where the instrument has been traded) as opposed to the total number of trading days. This way, the average size of transactions will truly reflect the average volume per trading day the instrument has been traded, thereby taking away “silent” periods. Silent periods would however be included in the measurement of the average frequency of transactions.
2. **Size at issuance** – The size at issuance of the instrument needs to be taken into account for the purpose of these calculations. This is because, at equal levels of liquidity, bonds with larger outstanding (i.e. large issue size) are likely to generate larger trades than bonds with smaller outstanding. Conversely, bonds with a smaller nominal value generate more trades, and of a smaller size, than large nominal bonds because a broader range of investors can access them. We agree with ESMA to take this characteristic into account via the inclusion of a “size at issuance” sub-liquidity category in the COFIA approach (please see our response to Q115).
3. **Time period for measuring the size of transactions** - We are not in favour of longer time periods for measuring the frequency and size of transactions. This is because the uneven distribution of trading in bonds throughout the life cycle of the instrument means that longer periods would distort results, especially if an average were to be used. We would rather support the use of a median for the purpose of these calculations.

<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>

***General Comment***

The Level 1 criteria outlined in MiFIR Article 2(1)(17) represent a blunt and inadequate approach to the challenge of defining a liquid market, especially if to be deemed liquid a market has to meet all four criteria. For this reason we propose an alternative solution consisting of a cascade approach, outlined in our response to Q110/Q111, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach. This approach frames our responses to the individual questions on each liquidity criterion.

In respect of the number and nature of participants criterion, we do not agree with the proposals ESMA is making in the sense that we do not feel a single option adequately caters for the specific elements of each market. However, we do recognise ESMA’s reasons for not ***solely*** relying on Option 2 as, following this option, the absence of a liquidity provider would automatically qualify the market as illiquid. At the same time, on our markets the presence of liquidity providers is central to the operation of the market and therefore needs to be taken into account. In order to square this circle, we propose an approach in which ***either*** Option 1 or 2 could be relied upon as an indicator of liquidity. Such an approach provides the necessary flexibility to be adapted to a range of markets, as we outline in our response below.

***Derivatives***

We suggest an approach in which either Option 1 or 2 could be relied upon as an indicator to fulfil the “market participants” liquidity criterion. As such, an instrument or class of instruments would have to meet either Option 1 or Option 2 in line with the cascade approach we outline in question 110. Additionally - referring to the ii paragraph in Article 2 (1) (17) - it is important to note that the type of participant should include Liquidity Providers.

***Bonds***

In respect of bonds, we suggest an approach in which either Option 1 or 2 could be relied upon as an indicator of liquidity. The approach proposed by ESMA would further entrench the status quo, i.e. opaque trading, whereas the objective of the MiFID review is to improve transparency. The approach proposed by ESMA has three main shortcomings:

* Only transactions are taken into account, whereas the presence of orders and quotes for a given instrument indicates that there are disclosed buying and selling interests in the market and that it is possible to trade. We consider that market participants which have posted firm orders in a central order book or disclosed price availabilities on request for quotes platforms such as Bloomberg, Tradeweb, Bondvision, etc. should be taken into account.
* The fact that a transaction needs to have taken place on a trading venue is extremely limiting, especially in a market in which participants overwhelmingly trade on a bilateral, private basis. While we understand the data collection issues associated with OTC trading, we consider that SI data, at the very least, should be included.
* It ignores the fundamental role played by liquidity providers in fixed income markets. Liquidity providers, bound by contractual obligations with minimum spread, presence and size requirements, ensure investors can get in and out of positions at virtually any time and without incurring excessive cost.

As an alternative, an approach in which either Option 1 or 2 could be relied upon as an indicator of liquidity would mean an instrument or class of instruments would have to pass one of the following tests:

* Presence of 1 liquidity provider, OR
* 4 active market participants, defined as having participated in at least one transaction or having posted a quote during the retained measurement period

Due to their contractual obligations, the presence of one liquidity provider is enough to attest of liquidity. For the second test, we suggest requiring a minimum of 4 active market participants because current RFQ systems such as Bloomberg enable investors to request quotes from 4 counterparties.

***Securitised Derivatives***

In respect of securitised derivatives, we suggest an approach in which either Option 1 or 2 could be relied upon as an indicator of liquidity. Here too, the fundamental role played by liquidity providers in securitised derivatives markets should be recognized. Liquidity providers, bound by contractual obligations with minimum spread, presence and size requirements, ensure investors can get in and out of positions at virtually any time and without incurring excessive cost.

Therefore, we think that as long as there is one liquidity provider with contractual requirements, the instrument should be considered as liquid. As the following statistics from our markets show, the presence of liquidity providers guarantees tight spreads and high available sizes at virtually any time in the order book, independently of whether there are transactions in the instrument.

The following table is based on the EUSIPA classification, which we suggest should be retained for the COFIA classification of securitised derivatives products. The order sizes available for each product are high considering that the instruments we offer for trading are targeted at retail market participants. The last three columns on the right show that liquidity providers meet their minimum order book presence, minimum size and maximum spread requirements on average 98% of the time for investment products and 95% of the time for leverage products.



Source: Euronext markets, June 2014. All liquidity statistics for all the instruments we offer for trading are publicly available on our website: <https://etp.nyx.com/etps/warrants-certificates/structured-products-directory>

<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>

***General Comment***

The Level 1 criteria outlined in MiFIR Article 2(1)(17) represent a blunt and inadequate approach to the challenge of defining a liquid market, especially if to be deemed liquid a market has to meet all four criteria. For this reason we propose an alternative solution consisting of a cascade approach, outlined in our response to Q110/Q111, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach. This approach frames our responses to the individual questions on each liquidity criterion.

In respect of our products, we do not agree with ESMA’s approach. Using only end of day spreads would not be representative of the rest of the trading day in so far as pricing often differs due to volatility of the underlying as it heads into the end of day auction. This is why, for instance, the cost of the end of day hedge tends to be higher due to a lack of time to execute the hedge on the underlying. A broader outlook would therefore be necessary for all derivatives, securitised derivatives and bonds with some suggestions in terms of the specific elements of these markets below.

Generally, there are two types of price formation mechanism:

* Order driven: where the average spread serves as an interesting measure since these are naturally liquid market;
* Quote driven: for example for an options market where the intervention of a market maker is key, the market maker obligations will be an essential element of the functioning of the market.

Spreads should include quotes, orders and indications of interest. We believe certain markets need a more tailored approach considering their specific trading structure.

***Options***

* Concerning options, only the spread on the front month and near the money options need to be considered, extrapolations can be made for the other series. For markets that are not organised around a central order book, the mere existence of one or more market makers/dealers willing to answer to Requests For Quotes could serve as proxy even without a measurable trace of what those prices are.
* As a general addition, there is also a need to look at spreads on the front month rather than the back month. For example on the CAC40, the front month has an average spread of 1.5 ticks, whereas on the second/third/fourth month the spread ranges between 2 to 4 ticks.

***Bonds***

* In respect of **bonds**, the width of bid-ask spreads is a good measure of liquidity in bond markets, contrary to the frequency and size of transactions. However, spread assessments will be majorly biased by the fact that only trades taking place on the order book of a trading venue will be taken into account.
* That being said, we understand that obtaining pre-trade and spread data for OTC activity is a major challenge. One alternative could be to use the size at issuance as a proxy to measure, as there is a strong correlation between the two measures: the larger the issue size, the tighter the average bid-ask spread, regardless of the rating of the instrument, as shown in the data set below. This could be taken into account via a “size at issuance” sub-liquidity category in the COFIA approach (please see our response to Q115 below).

Source: Bloomberg

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Issue Size** | **Credit Investment Grade** | | | **Credit High Yield** | | | **Government bonds** | | |
| **# of priced bonds** | **% of priced bonds** | **Average Bid-Ask spreads** | **# of priced bonds** | **% of priced bonds** | **Average Bid-Ask spreads** | **# of priced bonds** | **% of priced bonds** | **Average Bid-Ask spreads** |
| **€250m - €500m** | 219 | 5% | 1,583 | 482 | 40% | 1,668 | 136 | 6% | 1,977 |
| **€500m - €750m** | 856 | 19% | 0,963 | 228 | 19% | 1,281 | 229 | 11% | 1,256 |
| **€750m - €1 Bn** | 785 | 18% | 0,969 | 134 | 11% | 1,256 | 115 | 5% | 1,140 |
| **€1 Bn - €2,5 Bn** | 2 212 | 50% | 0,701 | 338 | 28% | 1,491 | 757 | 36% | 0,737 |
| **€2,5Bn - €5Bn** | 233 | 5% | 0,611 | 9 | 1% | 1,145 | 260 | 12% | 0,375 |
| **> €5Bn** | 76 | 2% | 0,536 | 3 | 0% | 0,961 | 630 | 30% | 0,153 |
| **Total** | **4 397** |  | **0,841** | **1 219** |  | **1,509** | **2 129** |  | **0,678** |

<ESMA\_QUESTION\_106>

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

<ESMA\_QUESTION\_107>

Yes, we agree with ESMA on the principle that for all non-equity classes, different thresholds should be used for different classes and suggest that this is applied in line with the granular COFIA we have suggested under Question 113.

***Derivatives***

We propose for derivatives that different thresholds should be applied for different (classes of) financial instruments, specifically depending on the type of liquidity and the price formation mechanism.

***Bonds***

As shown in the data set above (please see our response to Q106), different categories of bonds are characterised by different levels of average bid-ask spreads thus justifying different thresholds.

<ESMA\_QUESTION\_107>

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

<ESMA\_QUESTION\_108>

Yes we do, in respect of derivatives, bonds and securitised derivatives.

***Derivatives***

We believe that the average spread would need to be calculated relative to the tick size, as there is a tight correlation between the average spread and the tick size. This will need to be looked at relative to the price of the underlying. Spread obligations for market makers could also be used as proxy when looking at the spread, however we are of the opinion that if a derivative meets either of the three “liquidity” criteria of the cascade approach in a specific sequential manner (please refer to question 110) then this is sufficient to assess the liquidity of the product. The spread would only be looked at in a situation in which there were no transactions and no market makers. This is really only the case for bonds.

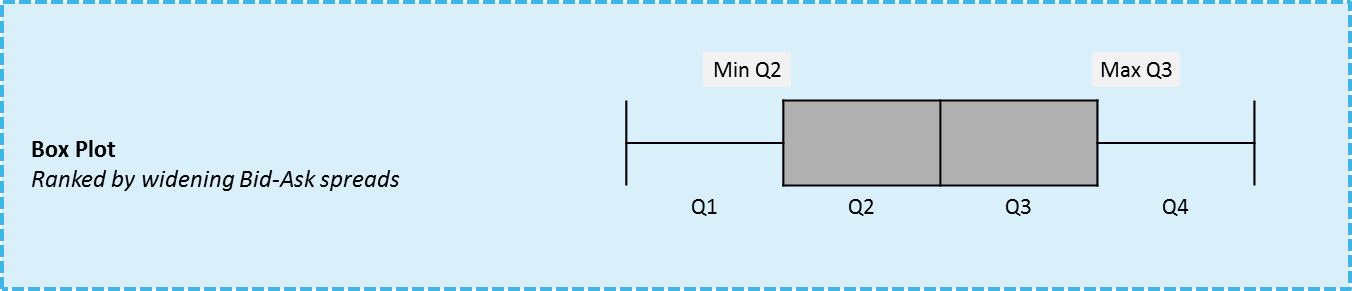
***Bonds***

Please see data below. In February 2014, Euronext carried out an assessment of liquidity in European institutional bond markets based on the following characteristics: (i) the proportion of bonds exhibiting quoted prices, (ii) the width of bid-ask spreads, and (iii) volumes tradable at the best limit. We ranked bid-ask spreads per quartile. The tighter bid-ask spreads are in the first quartile (Q1), the largest in the fourth quartile (Q4). The conclusions of this assessment show that the bonds under study exhibit tight bid-ask spreads and large volumes available at the best limit in the first three quartiles, attesting liquidity. We therefore recommend setting the spread thresholds at the maximum spread in the third quartile.

Universe studied: Bonds traded by institutional investors on Bloomberg, regardless of their listing venue.

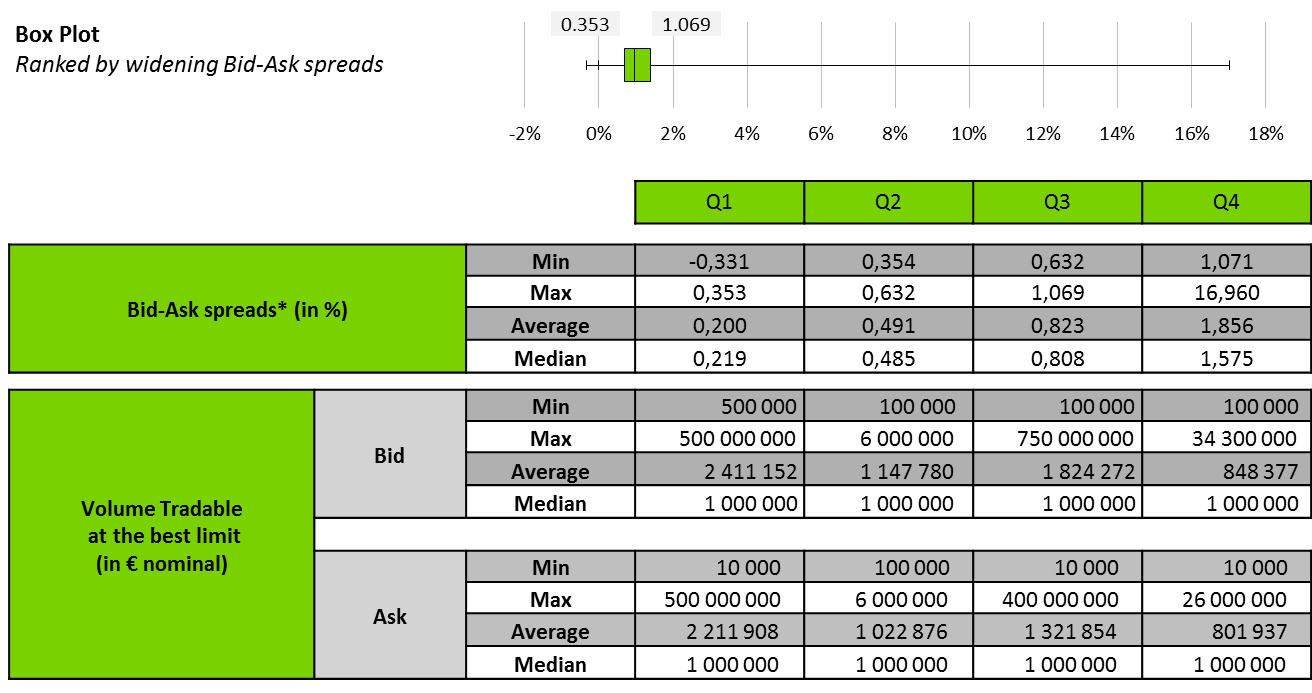
|  |  |  |
| --- | --- | --- |
| **Credit Investment Grade (IG) market** | **Credit High Yield  (HY) market** | **Government bonds market** |
| * 4 532 bonds * Corporate & FIG * EU Listed * Multicurrency * Minimum outstanding amount of €500m * BBB- S&P rating minimum * Min maturity of 1 year | * 1 889 bonds * Corporate & FIG * EU Listed * Multicurrency * Minimum outstanding amount of €250m * Between BB+ and D * Min maturity of 1 year | * 2 696 bonds * Government bonds * EU Listed * Multicurrency * Minimum outstanding amount of €250m |

Methodology: Bid-Ask spreads are ranked per quartile. The tighter bid-ask spreads are in the first quartile (Q1), the largest in the fourth quartile (Q4).



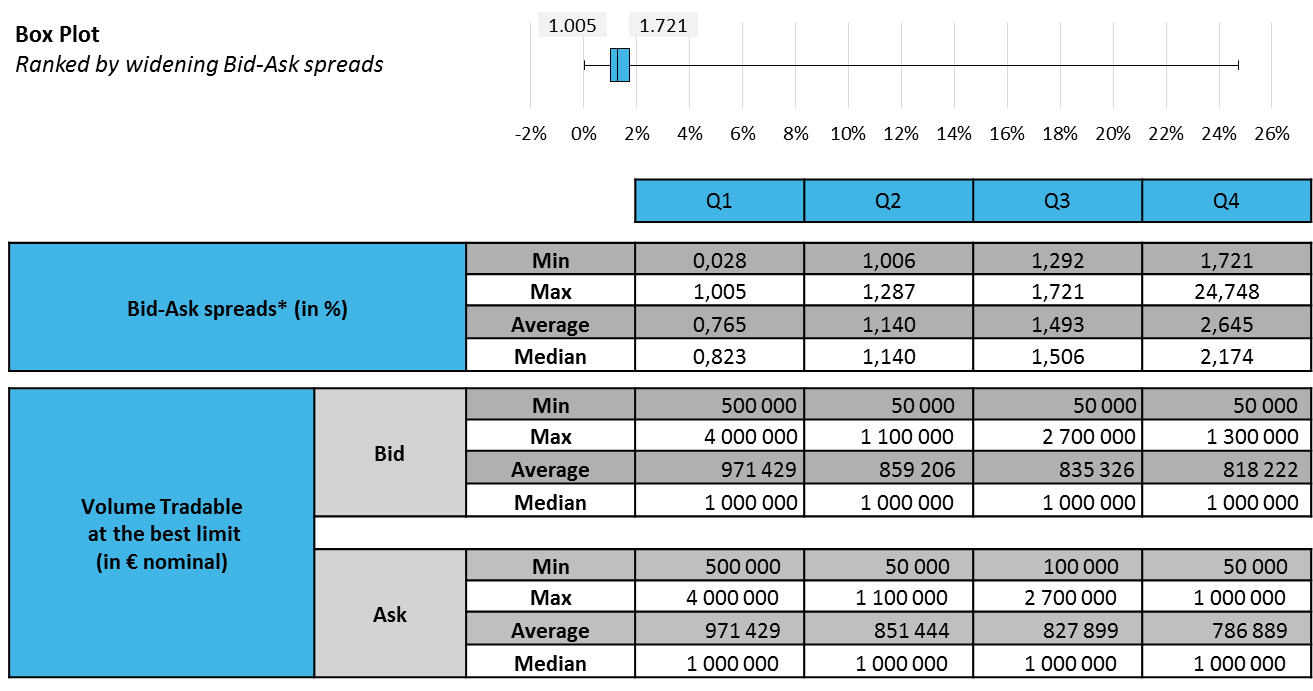
Our analysis shows that the tighter the bid-ask spread is, the greater the volume quoted. By removing the 25% worst bid-ask spreads (Q4), the assessment shows that the bonds under study exhibit tight bid-ask spreads and large volumes available at the best limit, attesting liquidity. We therefore recommend to set the spread thresholds by classes of bonds at the bid-ask spread corresponding to Max Q3 for each class. The data set below gives examples of what these thresholds should be for credit investment grade, credit high yield, and government bonds markets.

Credit Investment Grade



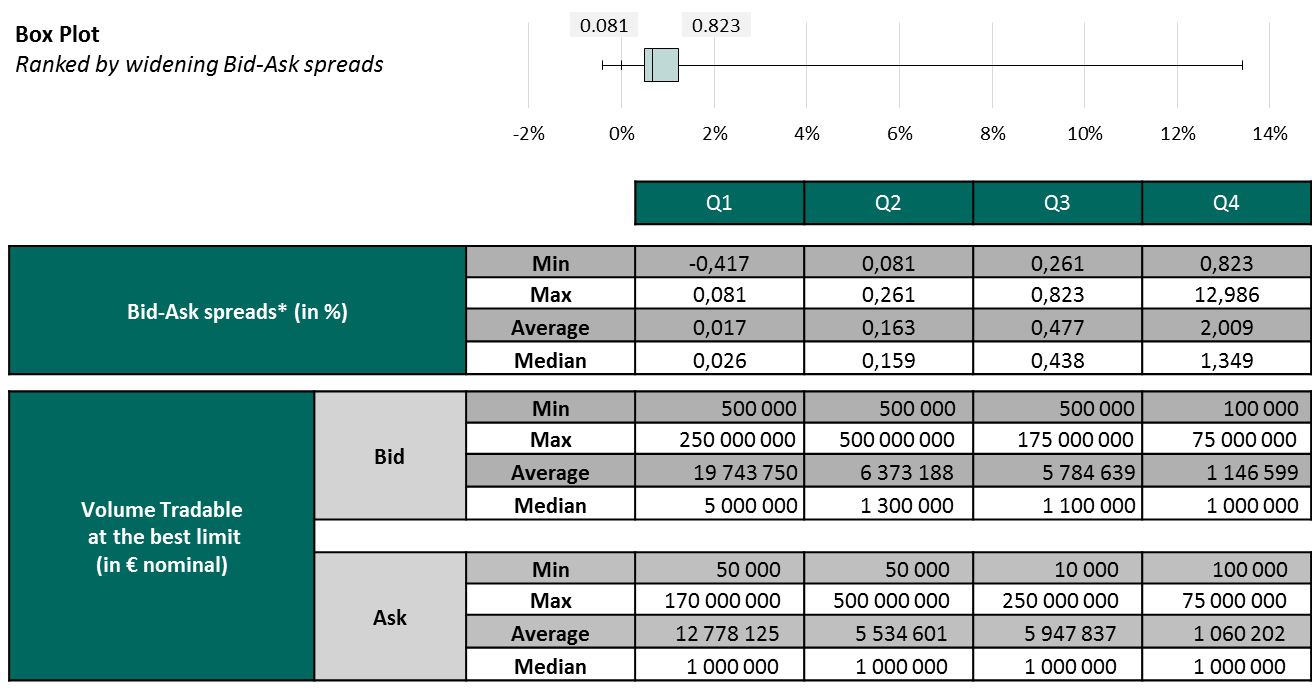
Source: Bloomberg. Average bid-ask spreads since 01/01/2013.

Credit High Yield



Source: Bloomberg. Average bid-ask spreads since 01/01/2013.

Government Bonds



Source: Bloomberg. Average bid-ask spreads since 01/01/2013.

***Securitised Derivatives***

We think spread thresholds in respect of securitised derivatives should be aligned with the requirements applying to liquidity providers for each product types. For instance, for covered warrants:

|  |  |
| --- | --- |
| **Underlying** | **Maximum Spread** |
| CAC 40®, BEL 20®, AEX25®,  PSI 20®, DJ EURO STOXX 50SM,  Dow Jones Industrial AverageSM Nikkei 225, Nasdaq 100®, FTSEurofirst 80®, S&P 500, DAX® index | Max (€0.03, 3%) |
| Other indices | Max (€0.05, 5%) |
| Basket of equities | Max (€0.05, 5%) |
| Equities | Max (€0.05, 5%) |
| Rates | Max (€0.10, 5%) |
| Currencies | Max (€0.15, 5%) |
| Commodities | Max (€0.15, 5%) |
| All Other | Max (€0.15, 5%) |

Source: Euronext Trading Manual

We recommend that the maximum spread allowed for the liquidity provider should be the spread threshold retained. Under the threshold, the instrument or class of instruments would be considered as liquid; above the threshold it would be considered as illiquid.

<ESMA\_QUESTION\_108>

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

<ESMA\_QUESTION\_109>

***Bonds***

We urge ESMA to take into account spread data from OTC venues in addition to data from transparent venues. Transparent trading venues pre-trade information is published by several data vendors like Bloomberg or Reuters. However, not only the pre-trade information of trading venues is published via Bloomberg. Also quotes/IOIs of liquidity providers like banks are published. Bloomberg continuously aggregates the quotes of the trading venues and the liquidity providers to a Bloomberg best bid / best ask. This information is available also historically in Bloomberg data bases and can be used to obtain the necessary data to calculate the average spread. In addition, Bloomberg already publishes consolidated spread data for fixed income instruments: the Bloomberg CBBT quotes are a composite developed by Bloomberg based on the average of at least three dealer quotes for a particular credit instrument, where available.

***Securitised Derivatives***

In respect of securitised derivatives, liquidity provider contracts including the maximum spread requirements by product type are detailed in the Euronext Trading Manual, publicly available on our website: <https://europeanequities.nyx.com/sites/europeanequities.nyx.com/files/PAR_20140415_02807_EUR.pdf>

<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>

***Derivatives, Securitized Derivatives, and Bonds***

No, we do not agree. We do not think it is necessary that all criteria are met for an instrument to be declared liquid.

The Level 1 criteria outlined in MiFIR Article 2(1)(17) represent a blunt and inadequate approach to the challenge of defining a liquid market, especially if to be deemed liquid a market has to meet all four criteria. In addition, we note that ESMA only expresses a ‘weak preference’ for Option 1. As a result, we strongly urge ESMA to consider alternatives. For this reason we propose an alternative solution consisting of a ***cascade approach***, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach.

Euronext considers that all four of the criteria represent a blunt and inadequate approach to the challenge of defining a liquid market. In assessing the two options presented in the paper for the decision mechanism, we would like to propose a third approach that would combine both flexibility and comprehensiveness. Specifically, we propose an alternative solution consisting of a cascade approach, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach, but with a prioritisation according to the criteria and the ease with which they can be tested.

Please see our response to Q111.

<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>

***Derivatives, Securitized Derivatives, and Bonds***

Euronext considers that all four of the criteria represent a blunt and inadequate approach to the challenge of defining a liquid market. In assessing the two options presented in the paper for the decision mechanism, we would like to propose a third approach that would combine both flexibility and comprehensiveness. Specifically, we propose an alternative solution consisting of a cascade approach, that would allow the application of all the criteria on a flexible yet comprehensive basis within a sequential approach, but with a prioritisation according to the criteria and the ease with which they can be tested.

* Step 1: assess whether there is trading activity by applying, sequentially, the frequency test followed by the size test
  + If the class of instruments fits either criteria then it is deemed liquid, if not;
* Step 2: assess whether there is a liquidity provider or enough market participants
  + If the class of instruments fits either criteria then it is deemed liquid, if not:
* Step 3: assess whether there is a tight spread, even in the absence of liquidity providers
  + If yes, the class of instruments is liquid
  + If not, the class of instruments is illiquid.

The purpose of the liquidity test is to bring transparency to derivatives and fixed income instruments. From the moment two counterparties agree on a price, then the existence of a potential trade is the key element to decide whether or not the rest of the market should see its price and be able to participate in the trade and see the transaction itself once executed even if it did not participate in the trade. Therefore of all the criteria, the existence of transactions is one of the easiest way to assess liquidity. Where there is a traded price, the product should be deemed liquid, and interest on it should be shared with the broader market – this is reflected in Step 1 of the above cascade approach.

In certain cases there may not be traded prices, however this does not necessarily mean that the product is not liquid. Bond markets for instance are structurally characterized by less frequent and less numerous transactions, which does not mean that there is no trading interest in a product, or that it could not be traded easily if the investor wanted to. On derivatives markets, there could be a product that would be tradable but however there is no demand for it and therefore no proof of its liquidity through the existence of transactions. In such a case, the lack of transactions is a result of lack of demand rather than lack of liquidity, and therefore a product would be deemed liquid because a sudden interest would be met by a two way executable price. For example there could be either an active Liquidity Provider (“LP”) with spread, presence, and size obligations enforced by the trading venue, or a reasonable spread even in the absence of an LP – this is reflected in Step 2 and 3 of the above cascade approach.

<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>

***Bonds***

None of the scenarios are satisfactory, as the analysis focuses on transaction data and ignores the other criteria required by MiFIR to assess liquidity. The intrinsic liquidity characteristics of fixed income instruments, as explained above, have not been taken into account. This is reflected in the results of ESMA’s analysis: even when applying Scenario 1, which is the least restrictive, no more than 5% of bonds are considered liquid.

<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>

***General comment***

We believe that an alternative should be applied since the COFIA approach is too broad and the IBIA approach could be too detailed. Our alternative suggestion would be to apply a more **granular COFIA** approach where we could group products within the instrument classes according to certain narrower criteria.

***Derivatives***

In respect of derivatives we believe that it is important to ensure that individual series and maturities are not be considered as individual instruments regardless of what approach is retained.

***Bonds***

In respect of bonds we believe applying IBIA would be too cumbersome, given the number of fixed income instruments in Europe (between 7,000 and 10,000 instruments). A granular COFIA approach would enable ESMA to take into account some key liquidity factors for fixed income instruments which are not mentioned in the definition of liquidity present in MiFIR. Among these key liquidity factors, we recommend including the rating, size at issuance and residual maturity of fixed income instruments. Please see our proposal for a COFIA table in our response to Q115 below.

***Securitised Derivatives***

Similarly in the case of securitized derivatives, we consider that applying an IBIA approach would be too cumbersome for the following reasons:

* Some securitised derivative instruments have a very short lifespan (a few hours or a few weeks);
* The stock of securitised derivative instruments include over 1.2 million products in Europe at all times;
* This stock is subject to high turnover and is constantly being renewed.

We would again suggest a granular COFIA approach.

<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>

***Derivatives***

While we have no specific proposals, we do feel it is important to note that the timeframe for the determination of the liquidity needs to be set according to the product type as different products have different lifecycles of trading activity.

<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>

***Derivatives***

Yes we do. We propose to look at the structure of the product on the one hand (e.g. American vs European options, maturity cycle, plain vanilla vs barrier options) and the underlying asset on the other (e.g. equity index, currency, grouping of equities e.g. SMEs, etc….) since the underlying is the defining element of the derivative and therefore both elements need to be taken into account.

***Bonds***

Yes, we do. We recommend including the rating, size at issuance and residual maturity of fixed income instruments, as shown in the table below. We have ranked the specific criteria according to how important they are to market participants in order to assess the liquidity of an instrument.

We consider it very important to include the rating for corporate bonds because there is a strong correlation between the rating and liquidity. On top of being a reliable and stable criterion over time, it is also one of the first factor investors are interested in while assessing the liquidity of a bond.

In addition, in our opinion the differentiation proposed by ESMA between listed and non-listed issuers is not relevant. Whether a company has made the choice of going public or not does not give any type of information on the liquidity of their bonds. Some large unlisted companies issue very liquid bonds whereas the debt instruments issued by small and mid-cap listed companies are a lot less liquid.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Financial Instrument** | **Product Types** | **Sub-Product Types** | **Liquidity Subcategories** | | | |
| Bonds | Sovereign Bonds | EU sovereign debt | Size at issuance | | Residual maturity | Structure (straight bonds, zeros, discounted papers, floating rate notes, structured interest linked notes) |
| Non-EU sovereign debt |
| Corporate Bonds | High Yield | Seniority (senior / subordinated debt) | Size at issuance | Residual maturity | Structure (straight bonds, zeros, discounted papers, floating rate notes, structured interest linked notes) |
| Investment Grade |
| Municipal Bonds |  |  | |  | |
| Covered Bonds |  |  | |  | |
| Convertible Bonds |  |  | |  | |

We make the following suggestions to break down the “size at issuance” and “residual maturity” criteria into homogeneous liquidity classes:

|  |
| --- |
| Size at issuance  > €5bn  €1.5bn to €5bn  €500m to €1.5bn  €100m to €500m  < €100m |

|  |
| --- |
| Maturity (in years)  Less than 1  1-3  3-5  5-7  7-10  10+ |

We would also suggest to include a review clause in order to assess the system after its implementation.

***Securitised Derivatives***

Yes, we do. We suggest the EUSIPA classification (European Structured Investment Products Association) which is publicly available on the association’s website: <http://www.eusipa.org/categorisation>

This classification has the advantage of being both granular enough to form homogeneous classes of liquidity and recognised by the industry.

<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>

***Derivatives***

In relation to the segmentation of products into liquidity sub-categories (where we would suggest to apply a granular COFIA as discussed under Question 113), Annex 3.6.1 (page 132) indicates the level of granularity of sub-categorisation that ESMA has in mind, although it does not specify whether ESMA would apply the COFIA approach at the level of the “Product type”, “Sub-product type” or “Other potential liquidity sub-category”. Moreover, we note that the Discussion Paper (page 132) states that “the segmentation proposal below should not be interpreted as final and does not preclude from having a different (and potentially simpler) level of granularity”.

We believe that if the level of granularity were to be insufficient it could result in products being regarded as “homogenous” and thus being placed in the same category, regardless of the fact that the liquidity of those products differs significantly. Those differences will be masked by the application of an averaging process in the calibration of the transparency requirements. To the extent that the transparency requirements for a category as a whole will be set by reference to the nominal “average” product within the category, products which are significantly higher or lower than the nominal average will be subject to inappropriate transparency requirements. In many cases, this will lead to a reduction in existing levels of transparency. As a result, the COFIA approach will only be effective if it is operated at a more granular level.

If a granular COFIA approach were to be retained, then the Equity derivatives class should also be split along the same lines as Interest Rate derivatives:

* Physical vs cash
* Standard vs flexible
* American vs European (for options)
* Underlying type (index, individual stock, volatility, dividend)

***Bonds***

Please see our response to Q115 above.

***Securitised Derivatives***

Please see our response to Q115 above.

<ESMA\_QUESTION\_116>

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

<ESMA\_QUESTION\_117>

***Derivatives***

We can partially agree, because we do feel there is a need for certain caveats to be taken into account. However, in respect of equity derivatives, we note that ESMA suggests that a decline in liquidity could be expressed as a percentage. The ‘specified threshold’ would be met if the current ADT (measured over the last 20 trading days) falls below a certain percentage of the ADT as calculated at the latest official liquidity assessment. This is a very limiting approach as it is in the nature of, for instance, single stock and also index options traded volumes to fluctuate significantly depending on the volatility and the specific news/events affecting a given underlying stock or more generally macro-economic news. They trade when they are needed (although a two way market could be available at all times based on the Market Maker/Liquidity Provider`s activity to support a transparent price formation).

It would be inappropriate to focus on the ADT as some single stock derivative names might be considered as trading too little (i.e. with transparency waived or classified as not liquid) even though an established market is available. When corporate events result in strong interest on such derivatives, the overall market would be negatively altered by the waiving of pre-transparency.

Instead the lack of a formal presence of a Market Maker and/or the non-fulfilment of the obligations by the appointed Market Makers over a prolonged period of time should be a much more relevant criteria for the suspension of the transparency regime as it is a more direct indication of the inability to establish and maintain liquidity in the market. Furthermore, an ADT criteria could also be considered for the underlying instrument of the derivative product class.

***Bonds***

No, we do not agree. The ADT of bonds will necessarily fall after issuance because of the life cycle of the instrument. Liquidity in bond markets follows a specific rhythm both due to the nature of market participants, which have a buy and hold profile, and the life cycle of a bond, characterised by a high liquidity period in the weeks after the offering (on-the-run period), followed by a low liquidity period until maturity during which transactions occur sporadically irrespective of the level of transparency applied (off-the-run period).

If the proposed ADT approach is retained, all bonds - no matter their liquidity levels - will fall under the scope of this waiver from transparency. In addition, it is very unlikely that once a bond is off-the-run and falls below the ADT threshold it will ever go back to liquidity levels above the threshold. The suspension of transparency requirements would then no longer be temporary and become permanent.

As an alternative, we suggest comparing the ADT of an instrument all along its life cycle to a “benchmark” ADT computed in the month immediately following issuance. In other words, we suggest computing the ADT of the instrument in the first month after issuance to provide a calibration basis for the rest of the life cycle. The ADT of the instrument would then be compared every six month to this benchmark ADT figure. If the ADT represents less than a certain percentage of the initial turnover (e.g. 10%), liquidity could then be considered to have dropped below the threshold.

***Securitised Derivatives***

No, we do not agree. The average daily turnover (ADT) is not an accurate measure of liquidity in markets characterised by the presence of liquidity providers. As long as the liquidity provider is present in the market, there can be no material drop in liquidity (please the data set provided in response to Q105 above).

An alternative approach to detect material drops in liquidity could be to monitor the ADT of the underlying, which greatly impacts the liquidity of securitised derivative instruments. However, the drop in liquidity would need to be significant to impact warrants and certificates markets. Alternatively, this waiver could be used when trading in the underlying is suspended.

<ESMA\_QUESTION\_117>

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

<ESMA\_QUESTION\_118>

***Derivatives***

Yes, we agree.

***Bonds***

No, we do not agree with the thresholds. This is because the proposed thresholds can be very inconsistent for each class of fixed income instruments. In order to avoid false positives not representing a real drop in liquidity, we suggest comparing the ADT of the instrument all along its life cycle to a “benchmark” ADT computed in the month immediately following issuance. Please see our alternative approach in Q117 above.

***Securitised Derivatives***

No, we do not agree. The proposed thresholds do not represent a significant drop in liquidity.

<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>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not agree with this description of request-for-quote (RFQ) system.

An RFQ type platform is typical of a market that is price rather than order driven. This is to say that it is because of the nature of the instrument itself (derivatively priced) that it can be necessary to organise the price formation mechanism around that of an RFQ model. An open order book for derivatives products may therefore be complemented by an RFQ system in order to obtain prices that can be traded against. In such cases those RFQ results are open to be traded by all. It is therefore our view that while an RFQ system may indeed cater for bilateral negotiations or negotiations around a chosen few, they may also support price discovery mechanisms within multilateral trading platforms, justifying the need to broaden the RFQ trading system definition.

Therefore, we believe that ESMA’s description does not take into account the multilateral element of trading venues that use these systems. The ESMA proposal suggests that these set ups are only ever bilateral trading platforms: this is too narrow a definition. A ‘system’ should be regarded in line with MiFIR recital 7 which states that a system could be composed of a set of rules only. Therefore, we propose  the following RFQ definition: “A trading system where transactions between members are arranged through requests for quotes amongst participants of that system”.

This system (in the sense of MiFIR recital 7: a technical system and a set of rules or just a set of rules) works in the sense that a quote or several quotes are provided to a member or several members in response to a request submitted by one or more other members. The requesting member may conclude a transaction by accepting the quote or quotes provided to it, where shown to non-requesting members, these quotes may also be accepted by the broader set of members/participants.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes, we agree.

<ESMA\_QUESTION\_122>

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

<ESMA\_QUESTION\_123>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not fully agree with ESMA’s proposal to use the table in Annex II of Regulation EC No. 1287/2006 implementing MiFID I Directive to establish the different types of trading systems for non-equity instruments.

We could only support this approach if certain amendments were made to this table in order to correct the deficiencies that have been observed across some trading platforms in the course of its implementation in respect of equities during MiFID I. These amendments are proposed in order to follow the G20 commitments and to ensure increased multilateral trading of derivatives. Therefore, these definitions should not be overly prescriptive but reflect the flexible mechanisms that trading venues have in place to fulfil the G20 trading obligation. Moreover, there should be a further differentiation made between bonds and derivatives on these trading systems.

The flexible definition of pre-trade transparency obligations for "hybrid" trading systems under MiFID I in respect of equities has enabled some platforms to operate trading models that are functionally comparable to dark platforms. However, these platforms are still being recognized from a regulatory perspective as pre-trade transparent platforms, despite their lack of participation in the price formation process.

These practices go against the spirit of MiFID and are problematic because: (i) they do not allow clients directing their orders to these platforms to know whether the displayed prices are truly actionable; and, (ii) they impair the price formation process in an identical manner to dark platforms operating under the reference price exemption. In fact, by leaving the opportunity for some market participants to benefit from the prices formed by others on transparent platforms, they encourage a growing number of participants to veer towards what is perceived as a more convenient way to receive best execution. Thus, the share of volumes directed towards truly transparent pre-trade platforms decreases proportionally, resulting in a less efficient price formation process that is detrimental to all stakeholders, including those active on these deceptively transparent platforms importing prices that are less reflective of the real interests present in the market.

In order to avoid the same experience in respect of non-equities, we recommend revising, under the definition of the pre-trade transparency obligations, the current Annex II to Regulation EC No. 1284/2006 implementing the MiFID I Directive as follows. This would replicate the proposal we make in respect of equities in Q46.

|  |  |
| --- | --- |
| ***System Type*** | ***Information to publish*** |
| *Continuous auction*  *order book trading*  *system* | The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels ***sent to the venue’s order book and present on its order book.*** |
| *Quote-driven trading*  *System* | The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices ***sent to the venue’s order book and present on its order book*.** |
| *Periodic auction trading system* | The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price, ***calculated from the prices and sizes of orders sent to the venue’s order book and present on its order book.*** |
| *Request-for-quote system* | The bids and offers and attaching volumes submitted by each responding entity. |
| Voice trading systems | The bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. |
| *Trading system not covered by first five rows* | ~~Adequate information as to the level of orders or quotes and of trading interest; in particular~~, the five best bid and offer price levels and/or two-way quotes of each market maker in the instrument ***sent to the venue’s order book and present on its order book~~,~~*** ~~if the characteristics of the [rice discovery mechanism so permit.~~ |

<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>

Please see our response to question 123

<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>

***Derivatives, Securitised Derivatives & Bonds***

In some markets a large number of mid-size transactions in listed index & equity options are negotiated outside of the continuous auction order book trading system of the relevant multilateral trading venue. Such transactions are nonetheless covered by a set of rules of the trading venue, including validation of a fair price compared to the price formation in the lit order book. Since the posting of buy and sell interests is not taking place within the infrastructure of the trading venue, such venues cannot administer the pre-trade transparency for such orders and it would be important for the markets concerned that an additional type of trading system for reported transactions is defined by ESMA to correspond to this trading model.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Please refer to question 125.

<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>

***Derivatives, Securitised Derivatives & Bonds***

We accept pre-negotiated trades that have been executed by voice onto our system through the rules of our exchange, which meet the future conditions of MIFIR Article 8.4.

In respect of the different types of voice trading systems in the market, we note that [Tabb Group](http://www.tabbgroup.com) issued a report segregating the different types of voice platforms into five categories:

* Voice based IDB (BGC, Tradition)
* Hybrid (voice/screen) : ICAP
* Data aggregator (Cscreen, Vectalis)
* Execution management systems (Autobahn)
* Request for quote (RFQ Hub, Tradeweb)

<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>

***Derivatives, Securitised Derivatives & Bonds***

It is done by phone or chat/message as well as through hybrid voice/electronic systems.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes we agree.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes, we agree. We suggest, moreover, that it needs to be made clear that a trading venue could choose to only propose a ‘system’ (in the sense of rules) for the registration of such business that is above the specific size (use of the waiver only). We agree that it does resemble the SI regime on equities.

<ESMA\_QUESTION\_130>

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

<ESMA\_QUESTION\_131>

***Derivatives, Securitised Derivatives & Bonds***

We believe indications of interest with a specific flag should be published, could be through a different channel but are useful to the market as a whole.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes we agree, subject to the concerns we are raising with respect to the transaction identifiers under Q135.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Concerning derivatives, the SI identity should be published without exception. The objective of transparency is indeed to enable the wide market to see what the prices are available and when in private pools, the only way to get to them is to know who they are run by in order to become a client of that SI, the non-discriminatory nature of SI membership making it possible for those market participants interested in SI prices to join the venue, reinforcing the need for SI identity to be published. Quarterly reporting in aggregate form would not allow for market participants to benefit from the transparency that will be imposed by MiFID/MiFIR.

<ESMA\_QUESTION\_133>

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

<ESMA\_QUESTION\_134>

***Derivatives, Securitised Derivatives & Bonds***

No other information is needed.

<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>

For Fixed Income

Yes, we do. We believe that, as the ‘normal market conditions’ flag is not included, the standard trade will be un-flagged.

For Derivatives

No, we do not agree with the proposed table of identifiers for transactions executed on non-equity instruments. There are a number of proposed flags, such as ‘give-up/give-in’ and ‘agency cross trades’ that are not relevant to non-equity markets. We understands that there has been significant progress on this approach for shares; however, any such work for non-equities needs further consideration of the types of trades that can take place, as well as taking into account work that has been carried out in EMIR and the Short Selling Regulation.

The only flag types which meet ESMA’s stated aim of identifying the transactions which have been executed pursuant to a transparency waiver are the following:

* Large in scale flag;
* Illiquid instrument flag;
* Size specific to the instrument flag.

The others have not been justified and should be deleted unless they are justified. Many of them relate to market structures in the cash equities market (e.g. “agency” cross trades) which do not have a precise analogue in the derivatives markets. If ESMA determines that such flags must be implemented, a more appropriate approach would be to replace them with flags which are relevant to derivatives markets (e.g. flags for Exchange For Physicals and other types of composite transaction, as well as a flag for “cross transactions” (which are typically undertaken on a principal-to-principal basis even where one of the parties is a customer of the other).

The Discussion Paper notes that ESMA is considering whether the publication of “give-up/give-in trades” would provide the market with additional and necessary information or whether it would risk giving an inflated view of the true trading activity (page 160, paragraph 25). ICE believes it would give an inflated view of the true trading activity (in many voice trading systems the level of duplication could give the impression that trading activity was almost double its true size). “Give-ups” occur during post-trade processing and are part of the clearing and risk management process. This is distinct – and should not be conflated with – the process for post-trade transparency of trading activity.

<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>

***Derivatives***

No, we do not agree. As the deferral rules will depend on the product (liquidity criteria) and the waiver anyway, we do not believe the addition of another marker would add any benefit. Considering part of the trade will be published anyway, one can deduct what the deferral is.

***Securitised Derivatives & Bonds***

Yes, we agree. We think that different flags for specific deferral reason may be of use, specifically to allow regulators to measure the use of deferrals and identify the share of deferred publication. The deferred trades should contain information which kind of deferral is used. This would help in analysing which type of deferral is used and how often it is used.

<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>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not agree. Corporate actions are managed and reflected in the product structure itself according to the contract specifications. Therefore there is no need for a separate flag.

<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>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not agree. These should not be made public, they are not transactions per se and their inclusion would only create confusion.

<ESMA\_QUESTION\_138>

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

<ESMA\_QUESTION\_139>

***Derivatives & Securitised Derivatives***

We are of the view that it depends on the asset class.

In respect of bonds, we would agree. However, in respect of equity derivatives, we would not agree. Securities financing transactions for equity derivatives should not be exempt from the transparency regime. The securities lending activity is organized as a competitive market, i.e. different prices can be offered by different market participants. Therefore in order for the market to be efficient pre and post trade prices need to be made public. Currently the market is based on bilateral relationships and therefore is totally opaque, this legislation is an opportunity to bring transparency to this market.

<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>

***Derivatives & Securitised Derivatives***

Yes, we agree. We think that the new transparency regime needs to be the same across all trading systems to avoid arbitrage. For trading systems organised around a central order book, publication should be immediate. We understand that for trading systems that are organised around a more manual process this may take more time and agree with ESMA’s analysis that these venues will have to invest in systems in order to meet the publication requirements. However providing 5 minutes does seem a long timeframe.

***Bonds***

We believe that the timing should be the same as for the equity regime. In addition, electronically executed transactions can technically be published in real time. Moreover, in respect of “telephone-trading” or other types of trades that require manual interaction, there is no difference between the time required for equity trades and non-equity trades. Hence, if the deadline is shortened to 1 minute for equities, it should be the same for non-equities.

<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>

***Derivatives & Securitised Derivatives***

No, we do not fully agree. It should be noted that in the case of transactions which benefit from a pre-trade transparency waiver, in certain circumstances the counterparties to the transaction will require more time to first register the transaction with the Exchange, following which the Exchange will also require more time to check that the transactions have been effected under the rules of the Exchange. Currently our Trading Procedures state that once a Large-in-scale/technical transaction has been organised, the trading member must submit its details to the Exchange as soon as practicable and in any case within five minutes in the case of a transaction that is not dependent on the execution of a transaction in another instrument. Submission will be made within 15 minutes in the event of exceptional market conditions or a Large-in-scale/technical transaction which was dependent on the execution of a transaction in another instrument. In the case of a transaction involving several counterparties/legs, this is extended out to one hour.

Concerning the information to be hidden from the market for liquid products we are in favour of hiding the size.

<ESMA\_QUESTION\_141>

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

<ESMA\_QUESTION\_142>

***Derivatives***

Please refer to our response to Q141.

<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>

***Derivatives***

Please refer to our response to Q141.

<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>

TYPE YOUR TEXT HERE

<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>

***Derivatives& Securitised Derivatives***

No, we do not agree. We do not understand why this deferral should be longer than that afforded to LIS trades. This proposal would result in a small trade in an illiquid market being published after a much larger trade that has far greater market impact. This would give illiquid markets an advantage.

**Bonds**

No, we do not support delaying further than end of day. In addition, we believe post-trade information including volumes is needed by market participants to perform portfolio valuations and to assess the quality of their execution – post-trade information without volumes would be worthless to them. This is especially important considering that, according to the preliminary results of ESMA’s liquidity study, about 95% of bonds would be considered as illiquid.

<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>

***Derivatives***

No, we do not agree. We would prefer that different deferral periods apply to different asset classes/sub asset classes.

<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>

***Derivatives***

No we do not agree. For illiquid instruments, hiding the price is more important as the price will give an indication to the market as to what side of the trade the market maker was, as the broad market would assume that the end client would be crossing the spread.

***Bonds***

No, we do not agree. Post-trade information including volumes is needed by market participants to perform portfolio valuations and to assess the quality of their execution – post-trade information without volumes would be worthless to them. This is especially important considering that, according to the preliminary results of ESMA’s liquidity study, about 95% of bonds would be considered as illiquid.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

***Derivatives***

Anything that does not contribute to the price formation process because it is “subject to conditions other than the current market price” (page 69, paragraph 75) should continue to benefit from a full waiver from post-trade transparency requirements.

<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>

***Derivatives***

We understand both Options 1 and 2 overall to be sub-optimal. However, Option 2 could be used as long as it was implemented within a suitably granular COFIA.

We believe that LIS regime must take into account the liquidity of the instrument and that the interplay of the regimes in place for pre-trade transparency and post-trade publication must be taken into account.

We believe that the proposed threshold for these regime should be significantly high enough to allow for a harmonisation between both. Doing so ensures that the LIS threshold is not set below that level (in which case Block Trades could cannibalise business within the central order book and thereby reduce transparency) or significantly above that level (in which case a liquidity gap would develop, whereby orders below LIS but above the volume available at the best on-screen price would face execution delay and/or price slippage).

Instead, ESMA’s proposed approach is to set LIS thresholds with reference to all liquidity, rather than liquidity at the best price level. All other things being equal, this is likely to lead to an increase in current LIS thresholds and to customers potentially experiencing price slippage in the execution of large transactions which are below the new LIS thresholds.

***Bonds & Securitised Derivatives***

If COFIA liquidity classes were to be homogeneous, we would not support including additional liquidity bands. This is because calibration of the large in scale threshold would then be done at the level of each liquidity class. However, if COFIA were not successful in achieving homogeneous liquidity classes, liquidity bands could be a useful addition in order to fine-tune the thresholds.

<ESMA\_QUESTION\_151>

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

<ESMA\_QUESTION\_152>

***Derivatives***

No, we do not. If, as ESMA suggests on page 175 paragraph 14.ii, the classification has been done with a sufficient level of granularity, then Option 2 should work and as a result there would be no need to have different options according to the asset class.

<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>

***Derivatives , Securitised Derivatives & Bonds***

Yes, we agree. The choice between the two options should be consistent with the approach adopted for the assessment of liquidity, with the right level of granularity.

<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>

***Derivatives***

No, we do not agree. We think a blend of Options 1 and 2 should be used because some derivatives can have a very high daily turnover but be difficult to trade in large clips because the nature of a derivative product is indeed that its price is derived from another. There may be some difficulty in getting large size done on a central order book as there may not be a lot of size displayed. Average trade size can also be used to measure the ease with which one can get a large clip executed (market absorption). It should also be borne in mind that seasonality needs to be taken into account when calculating the average turnover.

***Bonds***

No, we do not agree. We consider that a percentage based on the issue size is more appropriate. This is because it is representative of the market impact to be expected on fixed income instruments. In fixed income markets, the definition of what a “large” trade is depends on the size of issuance of the instruments, i.e. the overall tradable quantity available in the market. Bonds with large issue sizes will therefore require higher LIS thresholds than bonds with smaller outstanding.

In addition, the size at issuance has the advantage of being easily applicable to all instruments and would be easier to measure than dynamic criteria.

***Securitised Derivatives***

No, we do not agree. Option 1 is not appropriate for securitised derivatives because of irregular trading. Therefore the ADT is not a good proxy for establishing the LIS threshold.

We support Option 2 instead.

<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>

***Derivatives***

Yes, we agree. The proxy used should be the same as the Large-in-scale setting should be a direct function of the product’s liquidity.

***Bonds***

No, we disagree. A mentioned in Q154, we consider the issue size to be a more accurate measure of potential market impact.

<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>

***Derivatives & Securitised Derivatives***

We do not support either Option 1 or Option 2 as currently drafted. We would like clarification as to whether Option 1 proposes a multiple of the mean approach. If this were the case, we could support Option 1.

***Bonds***

Option 2 is more suitable, as it is consistent with the policy objective of achieving more transparency on fixed income markets.

<ESMA\_QUESTION\_156>

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

<ESMA\_QUESTION\_157>

***Derivatives & Securitised Derivatives***

The large in scale thresholds could be derived from the mean (please refer to question 156) and should be a certain percentage higher than the mean, considering statistical information with regards to the percentage of trades that trade beyond a certain level. For example for derivatives, if 5% of transactions occur 40% above the mean then that level could be chosen as the LIS threshold (5th percentile).

<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>

***Derivatives & Securitised Derivatives***

No, they should not.

We do not understand why an order would need more/less transparency than a transaction. The threshold should be set at the order level only as it represents the trading intention of the market participant. Both should be at the same level which is simplistic solution to preserve transparency.

<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>

***Derivatives***

No, we do not agree. All transactions need to be taken into account, even post MiFID implementation. The key point here is that all business carried out on derivatives is taken into consideration. This means that for products that are not under the trading mandate, trading can occur in the OTC space and needs to be taken into account in order to get a clear picture of what business is in fact transacted on that product.

***Bonds & Securitised Derivatives***

No, we disagree. In the absence of any trading mandate for fixed income and securitised derivative instruments, it is extremely likely that most of these instruments will keep on being traded predominantly on an OTC basis. OTC transactions and SI volumes will therefore have to be taken into account to establish the thresholds.

In addition, as the LIS threshold also applies to SI transactions and OTC transactions regarding post-trade transparency, transactions of SIs and OTC transactions should also be considered when calculating the large in scale thresholds.

<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>

***Derivatives***

No we do not. This looks like a riskless principal concept and we do not believe these arrangements exist in respect of derivatives.

***Bonds***

We agree to the approach by ESMA, as there is no reason for a deferred publication of a trade when no participant is exposed to risk or needs to hedge the transactions when providing liquidity (e.g. when two buy-side participants trade a bond).

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes, we agree. However, this should not preclude the possibility of an earlier review in the event of any serious issues arising in the marketplace.

<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>

***Derivatives & Securitised Derivatives***

No, we do not agree. We believe that the applicability of the size specific to the instrument should not depend on the type of trading system within which the transaction was executed. It is important to keep a level playing field amongst all types of trading systems.

***Bonds***

Yes, we agree. We think that the threshold should be below large in scale but not too far away from it (e.g. 80% of LIS).

<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>

***Derivatives & Securitised Derivatives***

No, we do not agree. The RFQ/voice and Large In Scale waivers serve very different purposes. The Large In Scale waiver serves the purpose of protecting the market as a whole from adverse intraday volatility peaks that would result from market participants attempting to execute large clips in transparent order books when it is possible for them to find a counterparty in the dark. The level chosen for the Large In Scale waiver needs to be directly related to the calculated market impact on lit books. Because derivatives are by nature derivatively priced, interests may not be visible in the depth of the order book when in fact if the market would struggle to absorb a large incoming order, new interests would appear in the order book as a result of the natural arbitrage that occurs between derivatives and their underlying assets. The level must be determined based on what is visible in the order book in terms of market depth and what average transaction size sits above a certain percentile, therefore using a market impact calculation (what amount can be traded within x ticks of the best bid and offer) averaged against the average trade size. It is also to be noted that even though a Large-in-scale transaction can be effected outside the current bid-ask spread there should still be some price check to ensure that the price is within a certain range of what has been traded throughout the day, in line with MiFIR Article 8.4.

The RFQ/voice waiver serves the purpose of enabling intermediaries and market participants directly to seek out interests that are not present in the order book. This can be either because the transaction is a strategy involving several legs in which case a relatively low level unrelated to the Large In Scale waiver level can be set; or because there may be an opportunity for price improvement. In this particular case, the level must be determined based on the average transaction size at the top of the book and should be accompanied with trade-at type rules to protect the lit order books. In other words the price of the transaction effected using this waiver, outside of technical transactions, must be within the current best bid-offer spread. If the transaction price goes beyond this spread, the counterparty to the trade crossing the spread must first take out the interests present in the lit order book(s). This way market participants will not be dis-incentivised from showing their interests in lit order books. It is to be noted however that because of the non-fungibility of derivatives, this trade-at rule will not be as strong as in a fungible environment, for example on the equity market where such a rule can be enforced across trading venues. For technical trades, the threshold can be set low but then the rules must be strict and systematically enforced.

***Bonds***

Yes, we agree. We think that the threshold should be below large in scale but not too far away from it (e.g. 80% of LIS).

<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>

***Derivatives & Securitised Derivatives***

The hedge will be a factor of the size of the transaction in lots multiplied by the contract size and the delta (100% for futures). It should therefore in theory be calculated by taking into account the liquidity of the underlying asset. For futures this would be pretty straightforward. For options this is more complex, however all liquidity providers will build into their price the cost of the hedge, this will be calculated, amongst other elements, by observing the liquidity conditions of the underlying asset. Therefore it is arguable whether it is required to make this measurement overly complex and the suggestions made in the answer to question 163 should sufficiently cover this Liquidity Provider risk element.

<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>

***Derivatives & Securitised Derivatives***

Please refer to our answer to question 164.

***Bonds***

In fixed income markets, there is a variety of instruments that could be used for hedging of different bonds. The interest rate risk for a risk position is often offset by trading fixed income derivatives which are very liquid instruments. In other cases, the risk position created by trading one bond can be offset by trading another, more liquid, bond or financial instruments (could also be futures) simultaneously.

<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>

***Derivatives & Securitised Derivatives***

No, we do not agree. We disagree that a trading venue that benefits from the RFQ/voice waiver will no longer require the LIS waiver for the reasons stated in question 163. Indeed we would want to see price conditions applied uniformly to all types of trading venues. In other words an RFQ/voice trading system might apply for an RFQ/voice waiver for its business conducted within the best bid and offer spread and for its technical trades, and apply for a LIS waiver for its larger sized business that could be traded outside the best bid-offer spread.

***Bonds***

Yes, we agree. We think that the threshold should be below large in scale but not too far away from it (e.g. 80% of LIS).

<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>

***Derivatives & Securitised Derivatives***

Yes, we agree. We agree that the deferral time should differ between both waivers. It should be a lot shorter for the RFQ/voice, which by its very nature will be for transactions that create less market impact and/or require a hedge, which will be more opaque.

***Bonds***

Yes, we agree.

<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>

***Derivatives***

Yes, we agree.

<ESMA\_QUESTION\_168>

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

<ESMA\_QUESTION\_169>

***Derivatives***

Yes, we agree.

<ESMA\_QUESTION\_169>

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

<ESMA\_QUESTION\_170>

TYPE YOUR TEXT HERE

<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>

***Derivatives***

Yes, we do. It would be reasonable for ESMA to consult venues. They are the ones best able to judge whether a product is suited to the trading mandate, it has the most broad range of market participants. They will also be in position to determine the best price discovery mechanism for each new contract receiving the trading mandate.

<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>

***Derivatives***

The trading obligation procedure should follow a similar approach to that used for the determination of a liquid market (article 2(1)(17) - questions 103-110).

<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>

***Derivatives***

Yes, we do.

This can depend on whether the product is seasonal  or not. We believe the trading venue is best placed to analyse the liquidity cycle. Each product however may require different types of analysis, it might be possible to analyse their future liquidity against existing substitutable products. In other cases, the product might be completely new and evaluation of the underlying asset’s liquidity could act as a proxy to that products’ liquidity. Guidance could be provided by ESMA regarding the thresholds mentioned in question 172, bearing in mind that for truly innovative products, comparisons to different but adjacent product lines could be used.

<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>

***Derivatives***

Empirical observations of the effects of the trading mandate on derivatives, once the law is implemented, could create a basis for the liquidity tests to be performed on contracts in the future on which the trading mandate might ultimately apply.

We strongly urge ESMA to create a systematic review of the effects on transparency, liquidity and volatility of a contract to which the trading mandate has recently been applied in order to refine their guidance for future requests.

<ESMA\_QUESTION\_174>

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

<ESMA\_QUESTION\_175>

***Derivatives***

No, we do not.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes, we do. The content of data requests should be a standard format in order to be able to interface automatically.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Yes, we do. In order to collect specific information on the number and type of market participants in a product, NCAs should use the Legal Entity Identifier (“LEI”). Market participants should be responsible for providing their respective LEIs.

<ESMA\_QUESTION\_179>

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

<ESMA\_QUESTION\_180>

***Derivatives, Securitised Derivatives & Bonds***

Yes we do.

<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>

***Derivatives, Securitised Derivatives & Bonds***

Every quarter following a new product listing provided that the granular COFIA approach is adopted.

<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>

***Derivatives, Securitised Derivatives & Bonds***

This should be a collaborative approach with the trading venues to ensure that i) the data is even retrievable, ii) it serves a purpose (i.e. that it is exploitable and that the result is meaningful), and iii) it does not negatively impact the business as usual activities of those trading venues. Another possible approach would be that the local authorities simply retrieve the order per order data from the trading venues and industrialise the process at their end.  This could work on the assumption that the criteria that will be created by ESMA are appropriate for the instruments and/or classes of instruments.

<ESMA\_QUESTION\_182>

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

<ESMA\_QUESTION\_183>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not. Until we know exactly the frequency and data detail that would be requested, it is not possible to commit to a two week turnaround.

<ESMA\_QUESTION\_183>

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

<ESMA\_QUESTION\_184>

***Derivatives, Securitised Derivatives & Bonds***

No, we do not. Until we know exactly the data detail that would be requested, it is not possible to commit to a two year timeframe even though two years seems reasonable.

<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>

No, we do not agree.

Euronext believes that trading systems should be defined as broadly as possible in order to render the second paragraph of MiFIR Article 23 on the share trading mandate applicable. Specifically, this paragraph introduces a requirement for any ‘internal matching system’ executing orders in equity and equity like instruments to be registered as an MTF. While there is no definition of internal matching systems in the Level 1 text, we strongly recommend that the proposed definition of trading systems should be defined as “any facility or arrangement enabling the execution of a transaction” in order to encompass as many systems as possible and ensure there is no circumvention of the political agreement in the Level 1 text.

<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>

No, we do not agree.

Euronext believes that all trading systems should be covered by those articles. For the reasons outlined in our response to Q186, we believe that in the absence of a comprehensive approach there is a risk that trading systems will be designed precisely to circumvent those obligations by claiming that they do not fall under the continuous auction order book category.

<ESMA\_QUESTION\_187>

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

<ESMA\_QUESTION\_188>

Please refer to our answer to question 187.

<ESMA\_QUESTION\_188>

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

<ESMA\_QUESTION\_189>

No, we do not agree.

Euronext believes that the definition of a trading system should be the same for venues and investment firms, as otherwise different definitions may favour one category over another.

In addition, and along the lines of our answer to question 186, we believe that trading systems should be defined as broadly as possible in order to render the second paragraph of MIFIR Article 23 on the trading mandate applicable in respect of ‘internal matching systems’. To this end, trading systems should be defined as “any facility or arrangement enabling the execution of a transaction”.

<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>

Real time monitoring is at the heart of what a surveillance function does so in principle a strict rule is relevant. However, a 5 second limit seems quite random. It seems irrelevant for the supervisory authority to assess whether an entity would be able to meet a 5 second limit specifically. A less prescriptive rule would be more beneficial and practical but would still provide a basis for the supervisor to control that real time monitoring is done as strictly as necessary.

<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>

Euronext agrees with the parameters proposed. It is important to stress that the situations set out in paragraph 28 of the Discussion Paper are those which could be possible indications of disorderly trading conditions, i.e. the existence of a market where maintenance of fair, orderly and transparent execution of trades is compromised. They do not however form either a necessary nor sufficient set criteria for disorderly market conditions; i.e. such situations would not necessarily form conclusive evidence of disorderly trading conditions, nor would they necessarily be evident from disorderly market conditions. Trading venues should continually monitor the market for disorderly market situations, whether or not such situations are evident.

The definition of disorderly trading conditions makes perfect sense but the one on severe market stress is much less intuitive. Use of the term “market” would suggest a business related or at least operational stress of some sort, but the definition suggested only refers to situations where the technical performance of a trading system may be jeopardized. It seems more like a definition of the term “Severe system stress”.

An alternate approach could be to argue that a market is stressed when price formation is particularly vulnerable and that disorderly trading conditions prevail when such vulnerability has materialized into failure. Signs of vulnerability could be wider than normal spreads and higher than normal volatility in combination with high message rates.

A definition that would encompass message rates only is also problematic because it would not necessarily be picked up by market participants.

<ESMA\_QUESTION\_193>

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

<ESMA\_QUESTION\_194>

Euronext agrees with this approach.

<ESMA\_QUESTION\_194>

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

<ESMA\_QUESTION\_195>

Euronext believes that a number of the elements should be clarified to ensure a consistent application across EU trading venues. In particular, it is important to clarify what is captured under the term of ‘strategies’, i.e. does it solely refer to algorithmic strategies or to other strategies such as market making strategies. Euronext is of the view that the intention of Article 48 is to primarily protect against the potential risks of algorithmic strategies. In addition, the % of members that are remote as well as the number is important from the perspective of ensuring a proportional approach.

<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>

The problem with the draft approach is that it only covers firms that are members/participants or markets/platforms. A very active firm that would engage in significant trading activities but that would connect to the market place as a DEA client would fall outside of the scope.

<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>

Yes, Euronext agrees with this approach.

<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>

As a general principle, all entities seeking to become Members of trading venues should be subject to adequate due diligence, regardless of the type of activity in which the Member is involved. However, this due diligence general principle should be calibrated depending on the nature of the entity concerned, in order to avoid any duplication of work already carried out by regulators: where entities are already regulated, the due diligence obligation should be appropriately calibrated. For example, Euronext performs less due diligence on authorised firms because there is no point in repeating a fit and proper test for authorised firms. It should also be understood that venues can only be reasonably expected to undertake due diligence in respect of prospective and existing members, not clients. Due diligence of members’ clients should be undertaken by the member and/or competent authority.

In addition, we question the need to require trading venues to carry out reviews for all their members on at least an annual basis since this would be a resource intensive requirement for both venues and their members. Instead, the reviews should be risk based. In addition, we assume the regulators themselves will be carrying out annual checks on authorized firms and varying the degree of frequency of such checks depending on the risk profile of the firm concerned.

<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>

As outlined in our response to Q229, we consider that venues should perform adequate due diligence on all entities applying to become Members. Where the applying entity is already a **regulated firm** we would urge ESMA to allow venues to calibrate the use of the criteria given that some of the elements will have already been addressed through initial authorisation and continuing supervision of the regulated entity by its NCA. Specifically, in respect of regulated firms the criteria on staff selection policy & training practice (Para 5(ii)), disaster recovery procedures (Para 5(vii)) and a firm's outsourcing policy (Para 5(viii)) should not be included. These elements are best overseen by competent authorities as they fall more into conduct of business / firm supervision than that undertaken by trading venues. In addition, we question the proposal in Para 7(i) for trading venues to maintain an up-to-date list of trader IDs within members and users of trading systems since, to our understanding, such an explicit requirement is not provided for in the Level 1 text. In addition, given that competent authorities are responsible for the authorisation of traders, we question whether it makes sense for trader IDs to be held at the venue level. This would simply duplicate requirements between competent authorities and trading venues. An alternative would consist in reviewing the approach taken to trader authorisation and how a database of trader IDs could be maintained, for example either by individual competent authorities or coordinated across them. Trading venues should simply be required to maintain a list of those who are able to authorise trade cancellations within firms and who can account for activity on the venue if questioned.

Regarding the second question, given the objectives of ensuring the resilience of trading venues, and ensuring fair and orderly trading through their systems, we believe that all member firms should be subject to the same requirements, irrespective of the whether the entity is a credit institution, investment firm or other category of institution.

<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>

We refer to our response to Q230.

<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>

As a general comment, Euronext considers it is important to continue current good practices and ensure they are applied consistently across markets. In respect of the requirements on venues in paragraph 11 to undertake continuous real-time monitoring of the performance and degree of usage of the trading systems, we generally agree with the proposed parameters, but with the following remarks:

* The general approach needs to take account of market data and, specifically, the risks of manipulation based on market data;
* We question the proposed requirement on trading venues to monitor in real time the number of trades executed per second to detect decreases in performance. The number of trades executed per second is not a good measure of performance, as it is affected by a number of extraneous factors. Changes in performance can better be measured by the latency measurements suggested in sections (v) and (vi) on p243 of the Discussion Paper.
* On gateway-to-gateway latency outlined in paragraph 11(v), it is important regulators take account of two factors. Firstly, this is not an issue of equal importance for all financial instruments, since it depends on characteristics such as liquidity and the nature of participant. Secondly, it is also important to note that changes in latency potentially impact the way clients are used to trading and can therefore impact the way algorithms interact.

<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>

In respect of the proposed periodic systems review in paragraph 13, we would make the following remarks:

* It is not clear how the requirement in paragraph 13(i) to assess the lifetime of orders would help venues to monitor system performance and capacity. In addition, multiple strategies and algorithms would make it very hard to determine what is a ‘normal’ lifetime;
* The requirement on venues to run stress tests in paragraph 13(ii) should take account of the fact that it is incredibly difficult to recreate in a test environment all real-life conditions. These include the full range of potential macro-economic factors, as well as the simple fact that algorithms are continually being developed and modified; hence it is a dynamic rather than static environment. Trading venues should be required, above all, to focus on the areas within their control.

<ESMA\_QUESTION\_233>

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

<ESMA\_QUESTION\_234>

Yes, we agree with the approach.

<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>

Euronext does not see the need to determine minimum standards in terms of latency. Instead of basing minimum standards on latency, we would support an approach that would prioritise the ability of trading venues to gracefully degrade the response time as the overall load on the system increases, without the loss of transaction integrity. In addition, there should be further work on the synchronisation of business clocks, within and between trading venues.

<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>

Yes we agree, with the understanding that messages and orders are treated as being the same.

<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>

Yes, we agree with the proposed except for the requirement in paragraph 31(viii). While use of mulitpe gateways is one technique for mitigating the impact on order entry of collapses in software / hardware, other system structures make use of different techniques. As a result, we urge ESMA to ensure appropriate resilience for receipt of messages, rather than to mandate the use of a particular technique. From a technical perspective, operating such a system in real-time would not be possible on our markets.

<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>

Yes, we agree with this proposal. The general framework should be published in a manner which avoids disclosure of any market or commercially sensitive information, which either participants or competitors could use to the disadvantage of the trading venue or any of its participants.

<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>

As a general rule, we never modify nor amend orders. However, as part of our responsibility to ensure fair and orderly markets, we need to be allowed some flexibility to take discretionary decisions should circumstances require us to do so. As a result, we believe that exchanges should be able to exercise discretion so that they have the ability to cancel, vary or correct an order or transaction for the purpose of maintaining fair and orderly trading. While it is beneficial to set out a number of examples of such circumstances as we do already within our Rulebook, it is difficult to prescribe an exhaustive list.

<ESMA\_QUESTION\_239>

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

<ESMA\_QUESTION\_240>

Yes, Euronext agrees with the principles.

<ESMA\_QUESTION\_240>

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

<ESMA\_QUESTION\_241>

Trading venues should be required to make public the broad parameters around the operating mode of their trading halts in order to ensure that the market has a clear overview. However, venues should not be obliged to provide any detailed information or sensitive parameters (such as details on the hard limits, for example) that could be used to manipulate the trading halts and thereby the market.

<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>

Please see our response to Q241.

<ESMA\_QUESTION\_242>

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

<ESMA\_QUESTION\_243>

Overall, we agree that trading venues should establish standardised conformance testing for all trading systems accessing the venue and agree with ESMA’s proposal.

<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>

Yes, Euronext agrees that trading venues should impose a process and manage the content and timing of conformance tests. However, we do not believe that trading venues should charge for such facilities, but in any case that should be a decision for the venue to take. Trading venues are only realistically able to provide a basic level of testing of the member or participants’ systems and to require the member to conduct rigorous testing.

<ESMA\_QUESTION\_244>

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

<ESMA\_QUESTION\_245>

No, Euronext considers that only trading venue approved conformance should be permitted.

<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>

We believe it is appropriate to require testing of members’ and participants’ algorithms to avoid disorderly trading conditions. The trading venue should also test its controls rigorously to ensure they provide adequate protection against such disorderly trading conditions. Trading venues are only realistically able to provide the facilities to allow for testing of the member or participants’ systems and to require the member to conduct rigorous testing. Given the trading venue’s lack of detailed knowledge of the member’s systems and its lack of control of members’ test environments, it is impractical for the trading venue to conduct the testing on behalf of the member, to impose rigorous testing on the member or to verify that the system has been tested rigorously.

Furthermore, whilst testing should be designed and conducted in a comprehensive and rigorous manner, it is difficult to test unforeseeable circumstances. In this respect, a certificate from an external IT audit would be of limited value, and certainly not sufficient to ensure full protection from such circumstances.

<ESMA\_QUESTION\_246>

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

<ESMA\_QUESTION\_247>

Please see our response to Q246.

<ESMA\_QUESTION\_247>

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

<ESMA\_QUESTION\_248>

Generally – with one exception - we agree with the list of requirements for pre-trade risk limits and controls, with it understood that these requirements can only be implemented by trading venues for their markets. It is appropriate for a trading venue to have in place controls at the market level, to provide a framework to allow members to put in place controls to limit their own business and that of their clients’ business, and to require in its rules members to ensure proper controls are exercised over their own business and that of their clients. It is not possible under existing structures for trading venues to establish individual limits over their members or non-member organisations. The individual proposed limits and controls proposed in paragraph 48 comprise partly controls which should be exercised by the exchange at the member level and partly controls which should be exercised by members at the level of their clients.

The particular measure with which we have concerns is the market impact assessment in paragraph 48(viii). This provision would appear to require trading venues to anticipate the market impact before the trade happens which would be incredibly difficult to achieve. An alternative might be to use the notion of a dynamic collar as a proxy.

<ESMA\_QUESTION\_248>

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

<ESMA\_QUESTION\_249>

We do not believe there is a need to require any other pre-trade controls.

<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>

We agree with the proposed approach.

<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>

Euronext strongly supports option A.

A trading venue should set out a general framework for its members, that should be met by members offering DEA. Such a framework should be part of the trading venue’s rules. A trading venue’s rules have direct impact only on members – not on non-member participants. This approach is the only practical option as trading venues’ rules are not binding on non-member participants. Members are better placed to control their clients’ activities - contractually, legally and logistically - than the trading venue. It is also in the first instance the member which is required to remedy the consequences of any failings in the controls relating to its clients’ use of DEA. A trading venue should make use of a range of escalating sanctions for members not adhering to its rules instead of applying a draconian ban on the provision of DEA in the event of non-compliance with the general framework.

<ESMA\_QUESTION\_252>

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

<ESMA\_QUESTION\_253>

Please see our comments in response to Q252.

<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>

We urge ESMA to consider that any limitation of providers of DEA to European investment firms would be extremely problematic for European trading venues, and would effectively prevent them from operating on a global basis. We would propose that a trading venue, in conjunction with its competent authority, should require that the framework in which third-country providers of DEA operate is equivalent to that in Europe.

<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>

Please see our response to Q254.

<ESMA\_QUESTION\_255>

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

<ESMA\_QUESTION\_256>

Euronext welcomes the clarification already set-out by ESMA that the responsibility for the trades under their participant ID is with the DEA provider.

<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>

In considering or reviewing the provision and / or usage of DEA, a trading venue is realistically able to demand the review of the risk control framework, procedures, controls and systems relating to its provision and use of DEA. It is unrealistic for the trading venue to demand the review of risk controls in unrelated functions. It is also unrealistic for the trading venue to review risk control systems of non-members. In addition, we believe it should be clarified that the DEA provider is responsible for ensuring that the trading venue can identify each individual user as trading venues do not necessarily have direct access to this information, and as ESMA has already outlined, it is important not to blur the line of responsibility between trading venues and DEA providers.

<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>

Yes, Euronext agrees with the assessment.

<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>

No, we do not agree with the preliminary assessment.

Specifically, posting quotes on different platforms should not be considered as market-making for the purpose of Article 17. This is because such activity is very difficult to monitor for an external observer, be it a regulator or trading venue. In addition, it could prove to be highly problematic, since it could lead market makers defined as such when posting quotes on different venues that could have negative spreads.

<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>

Euronext recommends the observation and qualification periods to be equal to one year

<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>

Yes, Euronext agrees with this assessment.

We support an approach that would not subject clients of investment firms, accessing the market indirectly (i.e. through DEA arrangements), to the obligation to have a direct contractual relationship with the trading venue.

<ESMA\_QUESTION\_262>

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

<ESMA\_QUESTION\_263>

No, we do not fully agree with this interpretation.

We suggest specifying that quotes, to be considered as firm, should be available and present in the system and not simply be mirroring the prices observed on other venues. This would put an end to the distortions observed today whereby some participants claim to be market-makers when they display quotes, which in reality are only prices based on interests present on a benchmark platform.

<ESMA\_QUESTION\_263>

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

<ESMA\_QUESTION\_264>

No, Euronext does not agree fully with the assessment.

Posting quotes on different platforms should not be considered as market-making for the purpose of Article 17. This is because such activity is very difficult to monitor for an external observer, be it a regulator or trading venue. In addition, it could prove to be highly problematic, since it could lead market makers defined as such when posting quotes on different venues that could have negative spreads. In addition, two way quotes are not possible for bonds at the middle of their trading cycle.

<ESMA\_QUESTION\_264>

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

<ESMA\_QUESTION\_265>

Yes, Euronext agrees with this interpretation.

<ESMA\_QUESTION\_265>

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

<ESMA\_QUESTION\_266>

No, we do not fully agree with the proposal.

As a complement to the proposal, we suggest introducing a minimum size on both sides to ensure that the activity remains equivalent to market-making, i.e. it provides liquidity to the market.

<ESMA\_QUESTION\_266>

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

<ESMA\_QUESTION\_267>

No, we do not fully agree with the proposal.

While we support ESMA’s approach, we would recommend aligning it with the Short Selling Regulation’s provisions in this respect.

<ESMA\_QUESTION\_267>

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

<ESMA\_QUESTION\_268>

Yes, Euronext agrees with the approach.

<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>

Euronext believes that the passive turnover executed by the member and its performance in terms of presence time at the best limits could be useful metrics to determine the added value of its activity.

<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>

Euronext believes that the indicator defined in the French Financial Transaction Tax Law could be used as a relevant benchmark for defining an adequate presence time for equity instruments, with a minimum performance of 95%.

<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>

Yes. Euronext believes that the two requirements should be aligned.

<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>

No, Euronext does not agree with this proposal.

This is because it is not possible to apply the same approach to all instruments and trading models. We were consulted on this issue as part of an ESMA consultation in XXXX and would suggest that the results of this exercise are used as the basis for work on specifying tailored requirements by different products and market models.

Euronext recommends applying different requirements for different instrument types as the liquidity profile and market structure may change greatly depending on the class of instruments.

<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>

Yes, Euronext agrees with the proposal.

<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>

Euronext recommends mirroring the circumstances under which the Short-Selling regulation provisions can be waived for the purpose of qualifying exceptional circumstances.

<ESMA\_QUESTION\_276>

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

<ESMA\_QUESTION\_277>

Please see our response to question 276

<ESMA\_QUESTION\_277>

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

<ESMA\_QUESTION\_278>

Euronext believes that platforms should have the flexibility to assess what is the appropriate timeframe for determining whether exceptional circumstances no longer apply and choose the most appropriate mechanism depending on the nature of the event and of market conditions

<ESMA\_QUESTION\_278>

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

<ESMA\_QUESTION\_279>

Please see our response to question 278

<ESMA\_QUESTION\_279>

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

<ESMA\_QUESTION\_280>

No, we do not fully agree with some of the elements in the proposed approach.

Specifically,Euronext believes that the proposal made under (iv) should be deleted: there is no value in disclosing to the market who is market maker. However, because market making minimum obligations are public, market makers whose name would be disclosed would bear important risks.

<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>

Yes, we believe that further clarification is needed.

Euronext believes that transparency over the selection criteria is key, but that platforms should have the ability to also choose market-makers on the basis of the assessed added value of particular market-making strategies, as long as these criteria are public.

<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>

No, we do not agree.

Euronext believes that no particular technological or informational advantage should be granted to market-makers since this could create an un-level playing field amongst participants, resulting in lower overall levels of trust in markets.

<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>

Given that minimum obligations for market making will be defined and mandatory in MiFID 2, we believe that the resulting application of these obligations will be sufficient to ensure orderly trading, even in cases where only one market maker is active on any given market. Consequently, a market should be able to refuse entry to additional market-makers if it were so to choose, with, however, the understanding that schemes should be reopen to new entrants on a frequent basis (for example every year).

<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>

No, we do not agree.

Euronext believes that the same principles should apply to illiquid instruments falling into the same instrument class.

<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>

No, Euronext agrees with the proposed methodology for liquidity assessment.

<ESMA\_QUESTION\_285>

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

<ESMA\_QUESTION\_286>

Given that minimum obligations for market making will be defined and mandatory in MiFID 2, we believe that the resulting application of these obligations will be sufficient to ensure orderly trading, even in cases where only one market maker is active on any given market. Consequently, a market should be able to refuse entry to additional market-makers if it were so to choose, with, however, the understanding that schemes should be reopen to new entrants on a frequent basis (for example every year).

<ESMA\_QUESTION\_286>

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

<ESMA\_QUESTION\_287>

Euronext does not believe that there is an absolute market-share figure that would be optimal as this varies greatly depending on market conditions and the type of instruments.

<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>

Please refer to our answer to question 287.

<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>

Given that minimum obligations for market making will be defined and mandatory in MiFID 2, we believe that the resulting application of these obligations will be sufficient to ensure orderly trading, even in cases where only one market maker is active on any given market. Consequently, a market should be able to refuse entry to additional market-makers if it were so to choose, with, however, the understanding that schemes should be reopen to new entrants on a frequent basis (for example every year).

<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>

No, Euronext does not fully agree with the proposal.

We suggest clarifying the treatment of ‘immediate or cancel’ (IOCs) and peg orders, which contain cancellation / amendment parameters in the very initial order. In addition, Euronext would recommend clarifying the calculation and monitoring frequency, with a preference for a daily or weekly basis in order to allow participants’ the scope to vary to meet market conditions.

<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>

Euronext strongly supports taking into account the value and /or volume of orders rather than just their number for the purpose of calculating the OTRs. Similarly, we would support taking into account the value and /or volume of transactions for the purpose of the calculation:

* In fact, the value and/ or volume of orders and transactions would enable OTRs to be effectively implemented, in contrast to measures based on the sole number of orders and of transactions. This is because if the measure is based on the number of orders and transactions, it would be easy for participants willing to avoid breaching the OTRs to send executable orders at the lowest possible quantity, resulting in effective transactions yet at the lowest size as possible, which would automatically result in a low order to trade ratio. We have no particular preference between taking into considering volumes or value of orders and transactions as the two would be effective measures for the purpose of the OTRs. However, usually venues calculate order and transaction size in terms of value, so it may be easier for them to consider value for the purpose of OTRs.
* Using the value and/ or volume of orders and of transactions in the OTRs would be the most optimal approach considering the above. We do not perceive any significant cons associated to it.
* There is no particular issue in respect to the determination of the methodology to be used for computing value and/ or volumes of orders and transactions considering that these measures are part of the usual measures computed and/ or computable by trading venues. Therefore, there does not seem to be a need for regulation to provide for the specific methodology to be used in this respect, besides specifying whether the value or volumes should be taken into account. As mentioned under point (i), although we have no particular preference between value and or volume measures in terms of their expected effectiveness, as most venues calculated order and or transaction size by using a value measure, it may be easier for them to calculate OTRs based on order and transaction value.

<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>

Yes. Euronext agrees with this scope.

However, Euronext recommends specifying in the Level 2 texts that OTRs should be set per group of ‘homogeneous’ instruments.

<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>

Euronext believes that derivatives should be excluded from the scope since they are derivatively priced and therefore require permanent price updates based on the evolution, amongst other things, of the underlying asset value. In contrast, we believe that ETFs should be included.

<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>

No, we would not make any distinction given ETFs trade similarly to shares.

<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>

No, we do not agree.

Euronext believes that it would be more appropriate, for new venues, to apply a multiple of the OTR in force on the reference market. This would apply a proportionate approach, while avoiding a completely un-level playing field.

<ESMA\_QUESTION\_296>

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

<ESMA\_QUESTION\_297>

Euronext believes that a period of 6 months would be enough to allow new entrants to build sufficient liquidity to be subject to the ‘standard’ OTR regime.

<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>

Yes, Euronext would support the application of an activity floor.

<ESMA\_QUESTION\_298>

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

<ESMA\_QUESTION\_299>

Yes, Euronext agrees with the proposed approach and suggests applying a multiplier at least equal to 5.

<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>

Yes, Euronext believes this is appropriate as long as the chosen multiplier is set appropriately.

<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>

Euronext believe that the multiplier should not be lower than 5.

<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>

Please our response to question 301

<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>

Euronext believes that the assessment and frequency of the review should be every six months.

<ESMA\_QUESTION\_303>

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

<ESMA\_QUESTION\_304>

Euronext believes that market makers and liquidity providers should be exempted from the OTR.

Their role in the markets – bringing additional liquidity to lit order books – and their contractual obligations towards trading venues presuppose regular and timely updates of prices in the order book. The vast majority of exchanges, including Euronext, already have in place systems to incentivise/penalise market makers and enhance market quality. We think the addition of an OTR restraint for market makers and liquidity providers would not be beneficial to the market and could have a negative impact on their ability to provide liquidity to transparent markets.

In addition, applying an OTR to market makers and liquidity providers would result in an un-level playing field amongst them. This is because liquidity providers with a high market share (higher number of trades) would have a lower OTR than liquidity providers with a lower market share (lower number of trades), even though all liquidity providers need to update their prices at about the same frequency (a similar number of price updates).

An OTR applied to liquidity providers would also have the unintended consequence of putting RFQ platforms at an advantage compared to central order book systems. This is because on venues operating open order books, liquidity providers must refresh their prices whenever required by market moves and, hence, send more orders. On venues operating with an RFQ model, liquidity providers only send a price in response to a request for quote, which generally turns into a trade. Observed order to trade ratios on RFQ platforms are therefore significantly lower (close to 1) than on order book markets. Consequently, RFQ platforms will be considerably more appealing than open order book markets to liquidity providers should the OTR regime apply to them.

<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>

Yes. Euronext supports the principle based approach pursued by ESMA.

<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>

Yes. Euronext believes that payment for order flow need regulatory action in order to be prohibited or, at the very least, totally transparent to the market in terms of their existence together with the amounts paid or received.

<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>

Please our response to question 307

<ESMA\_QUESTION\_308>

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

<ESMA\_QUESTION\_309>

Please our response to question 307

<ESMA\_QUESTION\_309>

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

<ESMA\_QUESTION\_310>

Euronext does not believe that volume incentives should be considered as potentially leading to disorderly trading conditions. They simply reflect the fact that trading venues operate in a fixed cost industry, therefore where marginal costs decrease with volumes, thereby legitimating the application of lower fees for higher volumes.

<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>

Euronext believes that rebates are highly problematic as they create important distorsions by incentivising flow to be routed to venues providing the highest rebates. This situation is particularly questionable in respect to the routing and execution of client flow, considering that rebates may lead brokers to preference venues offering them payment over those displaying the highest market quality, thereby creating important conflicts of interests in respect to their best execution obligations. This is even more problematic given that those payments are not passed on to clients and are not even disclosed to them. However, we agree that rebates may be legitimate when limited to market-making activity, as provided in the level 1 text, considering that they remunerate an activity that involves high market risks for market-makers but that is useful and valuable for the whole market.

<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>

Yes. Euronext agrees.

<ESMA\_QUESTION\_313>

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

<ESMA\_QUESTION\_314>

No. Euronext cannot identify any potential risks considering that each trading phases respond to different trading needs and are therefore non-substitutable. Trading may be charged differently depending on the trading phases without resulting in distortions risk.

<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>

Rebates should be prohibited as they distort market dynamics and make certain participants subsidise the trading of others. However, we agree that rebates may be legitimate when limited to market-making activity, as provided in the level 1 text, considering that they remunerate an activity that involves high market risks for market-makers but that is useful and valuable for the whole market.

<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>

Please see our response to question 315

<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>

No. Euronext cannot identify any potential risks considering that each trading phases respond to different trading needs and are therefore non-substitutable. Trading may be charged differently depending on the trading phases without resulting in distortions risk.

<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>

Yes, Euronext agrees overall with this approach.

However, we would recommend being more flexible in respect to point (iii) considering that if a firm does not perform correctly, the venue should be required to stop continuing providing the firm with incentives, which will be a sufficient sanction in this respect. Penalties may be disproportionate and could actually dis-incentivise firms from becoming market makers.

<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>

Yes. Euronext agrees that OTRs may be complemented with a penalty fee.

<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>

Euronext supports Option A.

This would give venues the flexibility they require, as (i) fees are a matter of their commercial policy and (ii) OTRs are explicitly presented in MiFID 2 as a way for venues to control the amount of messages in order for them to fit the venue’s capacity, meaning that each venue will be the best placed to determine the disincentive that should apply to OTR breach.

<ESMA\_QUESTION\_324>

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

<ESMA\_QUESTION\_325>

Yes. Euronext agrees that the observation period should be the same as the billing period.

<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>

No, we do not agree.

Euronext believes that the breach of the OTR should be calculated over a sufficiently long time-period (1 day, 1 week) in order to allow the necessary adaptations to market conditions of counterparties activity within this period, and that following this approach there is no need to limit ‘sanctions’ to systematic breaches, which will be in any event, difficult to define.

<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>

Yes, we agree.

Euronext believes that if market-makers fall under the OTR, it may be appropriate to subject them to a more flexible regime.

<ESMA\_QUESTION\_327>

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

<ESMA\_QUESTION\_328>

Euronext does not believe that fee structures themselves incentivise market abuse. However, some practices (such as payment for order flow) may result in distortions and should therefore be banned.

<ESMA\_QUESTION\_328>

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

<ESMA\_QUESTION\_329>

No. Euronext does not believe that there are fee structures providing these types of incentives currently.

<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>

Yes, Euronext supports the general approach suggested by ESMA.

In particular, Euronext agrees with the need to ensure that tick sizes are harmonised across all platforms in the EU. We suggest extending the application of scope to systematic internalisers, in order to avoid the creation of distortions. In addition, Euronext strongly supports the adoption of a regime that will limit disruptions to the market, both through the ‘content’ of the new regime in itself or through a phased-in implementation approach.

However, Euronext questions the need to amend the current harmonised tick size regime based on FESE’s initiative. This is because the current regime has proven to work efficiently, responding well to market needs with a demonstrated ability to be implemented across diverse venues.

<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>

No, Euronext does not agree with adopting the average number of daily trades as an indicator for liquidity.

We recommend using more representative metrics such as either: (i) the average daily turnover or (ii) the criteria retained for the definition of liquidity under Article 2 of MiFIR, which takes into account the free float, turnover and number of transactions.

<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>

Based on the options presented in the Discussion Paper, Euronext recommends the following alternatives:

* The adoption of 2 liquidity bands based on the definition of liquidity retained under Article 2 of MiFIR;
* The adoption of 4 liquidity bands offering a greater level of granularity, similarly to the Option 1 presented, with however the replacement of the number of trades by the turnover.

<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>

Euronext agrees with the approach taken to define the trade-off between constraining the spread without increasing viscosity too much.

<ESMA\_QUESTION\_333>

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

<ESMA\_QUESTION\_334>

Euronext believes it crucial to take into account that the appropriate spread to tick ratio depends intrinsically on the dynamics of each market. Therefore, setting a uniform optimal spread to tick ratio may not only prove difficult, but also risks harming market dynamics, in particular price discovery. We believe that spread to tick ratios should be defined by the reference market, on a principles based approach.

<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>

Euronext believes that for the tick size regime to be efficient and appropriate, it should rely both on the spread to tick ratio and the evolution of liquidity bands.

<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>

The application of Option 1 as it is defined in the Discussion Paper will lead to important distortions resulting in high implementation problems. The dimensions chosen will not enable the application of the table to homogeneous classes of stocks, in particular due to the existence of a single category for stocks with a price range between 20 to 50. In order to limit disruptions, this category would have to be split in two bands. If implemented as drafted, this table would result in - on Euronext markets - changes to the tick sizes of 83% of the listed stocks.

<ESMA\_QUESTION\_336>

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

<ESMA\_QUESTION\_337>

Euronext believes that liquidity should be defined along the lines of the two following alternatives:

* The adoption of 2 liquidity bands based on the definition of liquidity retained under Article 2 of MiFID;
* The adoption of 4 liquidity bands offering a greater level of granularity, similarly to the Option 1 presented, with however the replacement of the number of trades by the turnover.

Euronext believes that there should be an additional price class by splitting the price band 20 to 50 in two bands.

<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>

Euronext is in favour of a regime that has a sufficient level of flexibility to be adapted to evolving market structures and dynamics. As such, Euronext believes that tick sizes should be reviewed as frequently as necessary at the initiative of the reference market and under the supervision of its regulators.

<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>

No, we consider that it does not.

Euronext believes that in order to offer sufficient predictability and certainty in this respect, the regime proposed under Option 1 should be amended to specify that a review should be undertaken as frequently as necessary at the initiative of the reference market and through the supervision of its regulators.

<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>

Euronext believes that the frequency of revision should not be pre-set, but should occur as and when necessary.

<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>

If implemented as drafted, this table would result in - on Euronext markets - changes to the tick sizes of 83% of the listed stocks.

<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>

Yes, we agree.

<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[[2]](#footnote-3) 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>

We believe a spread-based regime is more appropriate for all types of equity and equity-like instruments. Please see our answers to questions 330-360 for detailed comments on the methodology, which should be common to shares and ETFs.

<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[[3]](#footnote-4) 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>

In respect of ETFs, we believe a spread-based tick sick regime to be more appropriate. This is because the greatest and most reliable indication of liquidity for ETFs is the liquidity of the underlying, not the turnover of the fund itself – Option 1 would therefore not capture the liquidity mechanics of ETF markets. The liquidity of the underlying is reflected in the spread available for the ETF, a spread-based tick size regime is therefore more appropriate for ETFs.

We recommend using the same tick size table for all ETF instruments – i.e. no differentiation between liquid and illiquid ETFs. This is because, in our opinion, the depiction of liquidity for ETFs proposed by ESMA in the Consultation Paper based on the criteria present in MiFIR is not accurate. We believe liquidity measurements should be based on the liquidity of the underlying.

We believe tick sizes for ETFs should generally be small to encourage liquidity. The level of granularity and number of liquidity bands proposed by ESMA for equities are not applicable to ETFs. Experience from our markets has shown that no more than 3 different tick sizes for ETFs are needed. Adding additional levels will likely complicate matters and, in a worst case scenario, have a negative impact on liquidity. Please see our answers to questions 330-360 for detailed comments on the methodology, which should be common to shares and ETFs.

<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>

No, we do not see a need to develop a tick size regime for securitised derivatives and bonds, for the following reasons:

Bonds

For bonds, a tick size regime would be both of little interest and very hard to define. This is because fixed income instruments have very heterogeneous liquidity patterns depending on their characteristics and the moment of their life cycle (on-the-run vs. off-the-run periods). Also, without more widely available price data for OTC transactions, it would be extremely difficult to build an accurate tick size table.

In addition, since the vast majority of trading in fixed income instruments occurs in an OTC environment, establishing a tick size regime limited to regulated trading venues would not only be of little interest, but would also introduce a competitive disadvantage for platforms operating in a regulated and transparent environment.

Securitised Derivatives (warrants and certificates)

Liquidity providers on warrant and certificate markets link the tick size of the instrument to the tick size of the underlying. For products where the spread on the underlying is very tight (or the tick size is very small), liquidity providers will be able to offer a much tighter spread, and vice versa. Therefore, any regime based on the price of the instrument only would not be appropriate.

In addition, a tick size table will not prove efficient at controlling tick sizes and spreads as issuers of warrants and certificates have the possibility to adjust the product ratio/parity in order to fall into one price band or another, and therefore choose the corresponding tick size.

Lastly, there are certain trading periods during which a tick size regime could not be applied. For example, during a PAKO phase (Payment After Knock-Out), the liquidity provider must be able to bid at the residual value (with 4 digits) no matter what the tick size is.

<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>

Yes, Euronext agrees with the assessment of liquidity proposed under Option 2 as it is based on common definitional standards. It is therefore very pragmatic and would work efficiently on Euronext markets. In addition, providing for only two groups of shares would limit the operational concerns over implementation.

<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>

No, Euronext does not agree with the ticks proposed under Option 2.

Implementing the table as it stands today would result in an increase of the tick size on 96.8% of the trading volumes done in June 2014 on our markets. This significant change could have several side effects on dark trading (incentivising a shift of volumes toward dark pools or systematic internalisers or OTC which will not be covered by the tick size regime or which will have the ability to circumvent it by executing at midpoint). It would also result in greater HFT activity in comparison with other flow: the larger the tick size, the more prices remain stable and then the more value is associated with being the first to arrive with the new price, meaning an increase in the speed race forcing the slowest participants to shift to venues where the tick sizes will not apply to increase their likelihood of execution. In contrast to what is often thought, there is no study proving that increasing tick sizes would lead to an increase the order size and trade size.

<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>

Euronext would suggest the following calibration:

* Correcting the illogical step at the start of the table where the aim is to have 1-2-5 series whilst there is an initial jump from 0.0001 to 0.0005.
* Pushing all the ticks by one bracket up in order to limit disruptions: if this is done, the implementation of the table will result in a stable tick regime for 70.3% of our stocks, and our smallest stocks, such as the Portuguese one will benefit from smaller tick sizes.

|  |  |  |
| --- | --- | --- |
| from | to | Liquid – tick size |
| 0 | 0.5 | 0.0001 |
| 0.5 | 1 | 0.0001 |
| 1 | 2 | 0.0002 |
| 2 | 5 | 0.0005 |
| 5 | 10 | 0.001 |
| 10 | 20 | 0.002 |
| 20 | 50 | 0.005 |
| 50 | 100 | 0.01 |
| 100 | 200 | 0.02 |
| 200 | 500 | 0.05 |
| 500 | + | 0.1 |

<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>

No. Euronext does not agree with this treatment. We believe that trading in new listings should be simulated through accurate tick sizes, being assigned to the equivalent table of its peers. This should be accompanied by the possibility for ticks to be revised frequently during the first 6 months after the listing of the instrument.

<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>

Euronext believes that the period should not be constrained, and encourage the introduction of a pilot phase in order to assess all the potential side effects of this measure.

<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>

No. Euronext does not agree with this approach and recommends ensuring that tick sizes can be reviewed frequently, upward or downward, as frequently as necessary by the reference market under the supervision of its regulators.

<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>

No. Euronext does not consider that this spread is too narrow. However, Euronext believes it crucial to take into account that the appropriate spread depends intrinsically on the dynamics of each market. Therefore, setting a uniform optimal spread may not only prove difficult but also risks harming market dynamics, in particular price discovery. We believe that spread should be defined by the reference market, on the basis of principles guidelines.

<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>

No, we do not agree.

Euronext believes that the revision mechanism should not only based on one direction as market structures and dynamics may evolve in unpredictable ways, meaning that the mechanism retained should not only result in the possibility to decrease ticks, but also to increase them if needed, in contrast to what is proposed under Option 2. In addition, we believe that spread should be defined by the reference market, on the basis of principles guidelines.

<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>

Yes. Euronext is concerned that the proposed review cycle will be too restrictive to give the ability for ticks to be revised where needed. Tick sizes should be reviewed frequently, upward or downward, as frequently as necessary by the reference market under the supervision of its regulators.

<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>

Euronext agrees with ESMA’s suggestion, but believes that ticks should be revised as frequently as necessary by the reference market.

<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>

Yes, at a high level we agree. Data should be available in a standard machine readable format and sent to APAs / CTPs rather than the requirement being to collect the data. ARMs data should remain private. The responsibility for the accuracy and completeness of the data has to fall on the submitter of the data and not the DRS.

<ESMA\_QUESTION\_361>

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

<ESMA\_QUESTION\_362>

Yes, we agree. There should be standard notice periods and methods of informing of changes e.g. it is not enough to publish changes on your own website – changes should be notified in writing to all relevant parties.

<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>

No

<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>

We suggest that disaggregation by asset class is the lowest level that could be implemented without significant cost or risk. For example, if the tape were to be offered on an index level, it is unclear how CTPs, vendors, and end users would manage the reference data for stocks coming in and out of an index across multiple markets. A too granular disaggregation would lead to greater complexity and risk as well as increase costs for all users. Any increase in costs to the CTP or market data vendor will ultimately be passed on to the end user.

In addition, there are different forms of value-added e.g. derived data such as VWAPs, mid-price, hi, lo, open, close and aggregation of the order book to the top 5 or top 10 levels based on price etc. Providing this information would establish a standard for the calculation, however the data is already calculated and distributed by the data vendors so this may require them to change current processing and would be seen as competition for their services. Comprehensive customer consultation across all user groups is required to establish the need and level of disaggregation.

<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>

We strongly question whether the tape actually needs to carry all data. This is potentially a huge amount of data, which could be reduced by only including trades from venues with a minimum % of trading or only trades of a certain size. OTC trade reporting and validation standards must be standardised and implemented by all parties to ensure completeness, accuracy and market fairness. In addition, transaction data must not be confused with trade data – only public market data should be included, not transaction data.

<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>

We agree to the proposed list of services, though noting the differences with the US model. There are no other services provided to be specified.

<ESMA\_QUESTION\_369>

Data disaggregation

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

<ESMA\_QUESTION\_370>

Yes, we strongly agree. Such a move would imply huge costs to all, as well as being complex to manage and of little benefit to customers other than potentially a small set of high frequency traders. It should also be noted that even if a venue were to disaggregate by instrument, unless there is a similar requirement on the data vendors, then the latter would re-aggregate the data as instrument level. Disaggregation would be hugely expensive for them to implement and maintain considering they would have to do this for all trading venues across Europe. In addition it would potentially reduce the exposure to the markets that currently smaller stocks get from being included in a wider package which could ultimately make it less attractive to raise capital by listing on an Exchange.

<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>

Yes, we agree. Euronext already offers this level of disaggregation.

<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>

No, we do not agree. In our view, data should be disaggregated by:

* Equities – including individual equities, ETFs, certificates and warrants
* Fixed income
* Commodities
* Derivatives e.g. Equity and Index futures and options
* Indices

<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>

No, we do not agree. There is no value without the same requirement being placed on data vendors who ultimately deliver the data to end users. The level of disaggregation should be established by each venue after customer consultation and not a one size fits all approach imposed by regulators.

<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>

Please see our answer to Q368. All options need to be subject to a ‘comply or explain’ approach.

<ESMA\_QUESTION\_374>

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

<ESMA\_QUESTION\_375>

We believe that data maintenance costs and associated risks would increase significantly for all parties the more granular the level of disaggregation.

<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>

Euronext agrees and believes that it should not possible for a CCP to take on these volumes on the basis of its available resources, operations and risk procedures when anticipated volume of transactions do exceed the planned capacity. When prejudicial to its regulatory obligations under EMIR, a CCP should not accept to clear more volumes. Systemic risk would otherwise be increased and the clearing members and customers would be the first victims in case a problem would arise.

<ESMA\_QUESTION\_377>

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

<ESMA\_QUESTION\_378>

As a matter of safety, a CCP should not accept access requests when it is incapable of predicting the number and size of the transactions. A CCP plans its operational capacity and risk mitigation procedures on the basis of observed volumes. Likely variations in volumes, and redundancies are also taken into consideration. If the business presented to a CCP was to increase, then planned capacities must be raised accordingly. Planned redundancies are not a relevant criteria.

The intervention of an objective and unbiased third party should help meeting the best choice possible. The independent third party would have the mission to assess whether the anticipated volume of transactions are high enough so that the CCP would unable to clear a trading venue while complying with EMIR. This independent third party should be appointed jointly by the CCP and the applicant trading venue.

<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>

Clearing members or CCPs are not incentivised to accept business from a trading venue below a certain volume. It is indeed only after a certain threshold, which varies depending on the type of financial instruments, that clearing new volumes become commercially viable. If too low, anticipated volumes of transactions are likely to lead to more fragmentation and lead to decreased transparency.

A CCP should always be able to deny access if the anticipated volume of transactions to be cleared by the CCP from the applicant trading venue based on current and historical trading volumes in the past three months, is below either:

* a percentage of the volumes of similar transactions cleared by the CCP which the CCP reasonably considers to be likely to result in liquidity fragmentation or disproportionate to the resources and operational capacity it would be required to use to clear these volumes; or
* a percentage of the aggregate of volumes of the relevant transactions executed on the applicant trading venue.

The intervention of an independent third party would be decisive to make the assessment described above.

<ESMA\_QUESTION\_379>

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

<ESMA\_QUESTION\_380>

Euronext agrees. The number of users of the applicant trading venue would certainly have a consequential impact on the anticipated volume of transactions. As such, a CCP will need to factor this element when assessing whether its resources and operational capacities are sufficient to allow the CCP to respect its regulatory obligations under EMIR.

<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>

When the anticipated number of users, as estimated by an independent third party -to be selected by both the CCP and the applicant trading venue- is deemed too high for the CCP to be able to clear such trading venue in a manner consistent with its obligations as a CCP authorised under Article 14 of EMIR, then access must be denied.

<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>

Yes, Euronext agrees there are other risks that should be considered. When the number of users for an applicant trading venue is too low, this would produce the same effect as low volumes of transactions (as described in Q379). It is thus logical for a CCP to deny access when the anticipated number of users is below a certain level.

<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>

The eligibility criteria of the applicant trading venue are not equivalent to the eligibility criteria of any trading venue or OTC platform to which a CCP is connected. Thus the CCP would have an indirect exposure to the applicant trading venue’s users through its clearing members. Granting the request where the eligibility criteria are less stringent than those applied by incumbent trading venue could therefore increase the risk being taken on by the CCP and, as a consequence by market participants generally. A CCP should thus be allowed to deny access.

<ESMA\_QUESTION\_383>

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

<ESMA\_QUESTION\_384>

Due to their systemic importance, CCPs should not bear increased that they can’t cope with. A CCP should never grant access in circumstances which may generate increased exposure to risk. An applicant trading venue’s risk monitoring systems and controls or disciplinary, investigatory and enforcement procedures may not be equivalent to those of existing venues, a situation which could create conflicts. The following elements are relevant when CCPs are being asked to accommodate an access request within their operational risk management design:

1. **Significant alteration to current business models:** access requests from trading venues should not impose material alteration to its business model, which will have been approved by the competent authority for the purposes of its authorisation under EMIR. Indeed, a CCP may not have mechanisms in place to monitor and adapt its systems to such changes and should not be required to put such additional measures in place. If such a request is accepted, the CCP should be able to recover the costs of this on a reasonable commercial basis.
2. **Operational capacity, know-how, resources and regulations:** A CCP may not have the operational capacity, know-how, resources or regulatory permissions to clear products that are not already part of its service offering. This is the case whether or not a CCP is authorised to clear a particular product, since such authorisation is granted according to broadly a defined asset class, rather than particular product. Granting access requests within the timeframes definedd under Article 35(3) of MiFIR would not allow the CCP to ensure that adequate arrangements are in place to clear new products and to ensure that the CCP meets its regulatory obligations.
3. **Settlement arrangements:** Under Article 47 of MiFID II, trading venues are required to have effective arrangements in place to facilitate the efficient and timely finalisation of transactions executed under their systems. This includes certain aspects of the settlement process for commodity derivatives, such as:
4. delivery arrangements for physically settled derivative contracts, including warehousing, quality control, valuation;
5. position management arrangements approaching settlement, to ensure orderly settlement without price distortion. Such arrangements may be conducted in accordance with Article 57 of MiFID II or otherwise in order to ensure fair and orderly trading in accordance with Article 47 of MiFID II. Activities involve monitoring of positions approaching settlement (either through cash settlement or delivery) and impact on underlying prices and benchmarks;

These activities are typically overseen by exchanges in accordance with their regulatory obligations. The applicant trading venue should ensure that effective arrangements are put in place for these activities to enable fair and orderly markets to be maintained in relation both to derivative contracts traded by the trading venue and on existing venues. Both the CCP and existing venues will be exposed to risk in the event that such arrangements are not fully effective. The CCP should therefore be required to ensure that such systems and procedures are effective, including any outsourcing arrangements.

Trading venues are also subject to **position reporting** obligations under Article 58 of MiFID II in respect of commodity derivatives. Where netting or cross-margining is performed by a CCP across multiple trading venues, the trading venues may not have access to the data at an individual customer level and so would not be able to provide their competent authorities with a complete breakdown of positions held on a daily basis, as required under Article 58(1)(b) of MiFID II.

<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>

Risk management is the core of a CCP’s business. Access arrangement should not jeoparise it.

Following Article 35(1) of MiFIR, the necessary compliance by an applicant trading venue with key operational and technical requirements is deemed an important safeguard for CCPs in managing the operational risk linked to access arrangements.

However, access arrangements could give risk to additional operational risk for the CCP across the entire scope of its activities:

* **Standards and compatibility of applicant trading venue’s** market supervision arrangements and pre-trade and post-trade checks; and disciplinary, investigatory and enforcement powers and practices. CCPs should not accept an increased exposure to risks which they are not in a position to mitigate. This could arise if an applicant trading venue’s risk monitoring systems and controls or disciplinary, investigatory and enforcement procedures are not equivalent to those of Existing Venues.
* Whether the applicant trading venue 1) has any physical presence or grants access to users in any jurisdiction which is not within the current scope of the CCP’s geographical coverage and/or 2) is subject or is likely to be subject to third country law or regulation with a potential for extra-territorial application adversely affecting the CCP as a result of granting access or which would threaten the smooth and orderly functioning of the CCP. Becoming subject or potentially **subject to obligations pursuant to another legal regime would increase a CCP’s legal risk and add to administrative complexity**. Unless these risks can be adequately mitigated, granting access in these circumstances would not be in the interests of efficiently functioning and transparent EU markets. It could also create an uneven playing field as EU CCPs could become subject to varying and potentially conflicting legal requirements.
* Applicant trading venue’s (and its group’s) **financial robustness** and ability to meet its regulatory capital / financial resources requirements and financial covenants. The CCP will need to ensure that the applicant trading venue and its parent undertakings are sufficiently financially robust both in order to honour its obligations to the CCP (including any indemnities) and to enable the orderly wind down of the exchange in case of default, allowing the CCP to close out open positions. In case of stressed market conditions it is essential that a CCP is able to provide order and stability by exercising its default procedures effectively.
* **Legal basis for contract formation**, including compatible rules for account allocation, error trades, voiding contracts, trade reporting and position management, as well as compatibility of the termination dates or termination rights in relation to the contracts. The contracts formed pursuant to the rules of the applicant trading venue must be legally enforceable and contain terms allowing them to be accepted by the CCP’s clearing mechanism.
* **Standards and compatibility of position management systems and controls.** In providing clearing services to a third party venue, many of the control mechanisms that a CCP may have under its arrangements with Existing Venues will not be available. For example, a CCP should not agree to clear contracts where the potential exists for disputes to arise over the legitimacy of a trade. Risk mitigation mechanisms such as invoicing back - which require the CCP to consult with the relevant trading venue - will be more cumbersome and potentially less effective where the interests of the CCP and the trading venue are not wholly aligned. Adequate supervision and controls at the trading level are crucial for the management of such risks in the interests of market stability.
* **Standards of and compatibility of IT and business continuity systems, and the related security standards**.The applicant trading venue will need to provide matched trade data to the CCP for clearing. If the IT system it uses is not compatible with the CCP’s systems, clearing will not be possible operationally. Adapting the systems may not be possible without disrupting the CCP's business and standards of service, which would be unacceptable. Furthermore, if the CCP considers on reasonable grounds that the applicant trading venue’s IT security arrangements do not meet the same standards as it applies to its own network, this could introduce unacceptable additional risk for the CCP. Under Article 26(6) of EMIR, a CCP is required to ensure high standards of security and integrity and confidentiality of information in its IT systems.
* **Anti-money laundering,** counter-terrorist financing and sanctions policies and procedures of the applicant trading venue. It would not be in the interests of clearing members, customers, users of Existing Venues and the EU financial system as a whole for a CCP to grant access in circumstances which create increased exposure to risk, including of financial crime.
* **Compatibility of the dispute resolution** or jurisdiction provisions in the contracts or rules of the trading venue. CCPS must have clear procedures founded on a valid legal basis for resolving any disputes that may arise in relation to the transactions it clears. Dispute resolution procedures therefore need to be made consistent.
* **The disclosures the CCP or any clearing members of the CCP are required to make under Article 39(7) of EMIR**. Granting access to a trading venue should not require the CCP to make changes to its existing arrangements for segregation of clearing member and client assets, which are a key element of a CCP’s default protection measures.
* **Impact that an access request would have on the risks an Existing Venue is required to mitigate through its market supervision function**. Market supervision is carried out at the trading level, as required under MiFID II (Article 31 and 56). Supervision obligations apply not just at the point of entry into the transaction but for the entire life cycle of the contract. In particular, for certain classes of derivative contracts (e.g. physically delivered derivative contracts) a high level of supervision and surveillance – and potentially enforcement – is required until delivery occurs. In addition, Existing Venues should not be put in a position where they are forced to take on additional risks that may undermine the safety and efficiency of their markets or increase the risk of financial crime.
* **Appropriate licensing arrangements with respect to the relevant contract or underlying deliverable**. A CCP will need to obtain all relevant IP rights and licences in order to perform clearing services for the applicant trading venue in accordance with its legal obligations towards third parties.
* When the applicant trading venue 1) has any physical presence or grants access to users in any jurisdiction designated by the United Nations, European Union or any Member State, under legislation relating to financial sanctions regimes or in any jurisdiction where in the CCP’s reasonable opinion there is an increased risk of the relevant financial instruments being subject to fraudulent or corrupt practice; and 2) is required to operate to the same supervisory standards as Existing Venues, then the CCP should not take on business which it considers likely to affect either its own compliance with relevant financial sanctions regimes or anti-money laundering or anti-corruption requirements, or which may expose the CCP to increased reputational risk. This would be contrary to the objectives of EMIR to ensure that “*CCPs are safe and sound, and comply at all times with the stringent organisational, business conduct and prudential requirements established by (Recital 49) [EMIR]*.”
* When 1) the moment of finality or irrevocability of the transaction is inconsistent with the rules of the trading venue; or 2) derivative contracts are governed by a different governing law than the governing law governing law applicable to the trading venue under its rules. These conditions will ensure that a CCP is able to mitigate the risks of becoming involved in contractual disputes with the applicant trading venue and its users, and any increased risks arising from potential conflicts of laws. Differences in choice of law for derivative contracts could jeopardise a CCP’s “designated system” status.
* Whether the product is offered by the trading venue pursuant to a public procurement process. Regulation (EU) 1031/2010 establishes the regime for the auctioning of carbon emission allowances. Such auctions can only be held by auction platforms pursuant to public procurement processes which include, inter alia, establishing satisfactory clearing and settlement services, in many cases requiring procurement contracts between CCPs and governmental authorities. A CCP will need to ensure it does not infringe the terms of such public procurement processes were it to clear such products.
* Whether adequate arrangements are in place for the termination of access arrangements including the wind-down and transfer of outstanding positions at the CCP as required.The CCP must ensure that it has the right to terminate the access arrangement if necessary and, in such circumstances, that adequate procedures are in place to provide for close-out or transfer of the relevant open derivative contract positions in an orderly fashion.
* Whether the applicant trading venue’s model enables the CCP to obtain accurate information on the prices of the relevant financial instruments. The CCP must ensure that it is able to obtain accurate pricing information. This may be an issue where trading venues are not subject to pre-trade transparency requirements.

<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>

ESMA seems to acknowledge that significant costs are likely to arise as a result of an access request as well as the risk that an access request could threaten CCPs’ resilience. However, in addition to this relatively extreme scenario, there are a range of factors which need to be taken into account in relation to costs:

1. **Financial impact of changes:** Any changes to the business model created by an access request that the CCP agrees to make in order to accept the access request should be chargeable.
2. **Viability:** It may not be commercially viable for a CCP or clearing members to accept business from a trading venue below certain volumes, in terms of transactions or users (please refer to questions 379 and 382).
3. **Fees:** a condition of any access request should be that adequate arrangements are set out to collect and distribute fees from users in accordance with agreed terms.
4. **Capital requirements:** assuming the burden of additional capital or other resource requirements as a result of granting access to a trading venue could have a serious impact on the CCP’s economic viability, with ensuing systemic risk consequences. A CCP will need to evaluate such risks in connection with the access request, and in particular to assess whether granting access to the applicant trading venue would require the CCP to hold additional capital pursuant to Article 16 of EMIR and Regulation 152/2013 or cause an increase in the amount of own resources that a CCP is required to hold pursuant to Article 45 of EMIR and Article 35 of Regulation 153/2013.

<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>

Clearing is increasingly a cross-border business which would require a minimum of legal convergence. The main risks for the CCP arising from a lack of harmonization are the following:

1. **Lack of harmonisation:** insolvency law is not harmonised throughout the EEA. Insolvency laws’ implementation varies between member states. A CCP must therefore assess the enforceability of its rules and in particular its default rules in each relevant jurisdiction.
2. **Conflicts of laws:** Differences in choice of law for contracts could jeopardise a CCP’s “designated system” status. Therefore a CCP’s requirements as specified in MiFIR Article 35(1) should address consistency relating to the moment of finality or irrevocability of transactions, and compatibility of governing law relative to the governing law applicable to the CCP in its capacity as a “system” designated pursuant to Directive 98/26/EC. A CCP needs to be able to mitigate the risks of becoming involved in contractual disputes with the applicant trading venue and its users.
3. **Overseas regulatory status**: the nature of the financial instruments to which the access request relates may also mean that the trading venue or CCP requires a particular regulatory status in a third country jurisdiction. For example, in order to provide a trading facility for futures and options to US participants, a trading venue may need to be recognised in the US as a DCM. An access request should be rejected if the applicant trading venue or CCP does not have the regulatory status required by any jurisdiction which is relevant to the instruments to which the access request relates.
4. **Third country regulatory requirements:** a CCP or an associated trading venue may have some form of regulatory status in third country jurisdictions. In order not to restrict cross-border activity it will be important that the CCP/trading venue remains in compliance with the terms of any such licence or permissions. Importantly,an access request should be rejected if granting the request would prejudice any regulatory status held by the CCP in any jurisdiction.

<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>

Euronext agrees with ESMA’s analysis of complexity and factors creating significant undue risks. The matters identified in our responses to Questions 384 to 387 are also substantial risks which must be assessed in relation to access requests.

Euronext has some comments in relation to paragraphs 24 to 28 of the Discussion Paper:

1. **Compliance with regulatory requirements:** there is a suggestion in paragraph 24 that a CCP would be justified in refusing an access request only where the CCP would be prevented from complying with the regulatory requirements to which it is subject. It is important to point out that this goes beyond the requirement to offer access on a non-discriminatory basis. Many CCPs comply, and require members and trading venues or OTC platforms to which a CCP is connected by close links or to which a CCP provides clearing services on the date of the access request by the applicant trading venue (“**Existing Venues**”) to comply, with standards and procedures that exceed the minimum requirements prescribed by law and regulation. They are entitled to apply these to any trading venue requesting access, providing that this is done on a non-discriminatory basis.
2. **Costs:** further to paragraph 25 (and as set out in our responses to Questions 384, 386, 398 and 399), there are a range of factors which need to be taken into account in relation to the costs of an access arrangement other than the relatively extreme question of whether an access request would threaten the viability of a CCP.
3. **Distinction between scope of authorisation and service offering:** further to paragraph 24, we note that (as set out in our response to Question 384) a CCP will not necessarily have the operational capacity, know-how, resources or regulatory or other permissions in place to clear products that do not already form part of its service offering. This is the case whether or not a CCP is authorised to clear a particular product, since such authorisation is granted according to broadly defined asset class, rather than a particular product.
4. **EEA conflicts of laws:** we question on what basis, and with what legal evidence, the statement is made in paragraph 28 that “*the legal risk stemming from choice of law and conflicts of laws within the EEA will rarely justify a decision to refuse access*”. Whilst we are not yet aware of the nature of access requests which will be forthcoming, there are a number of situations in which choice of law and conflicts of law within the EEA could potentially cause serious difficulties for a CCP, including the following:
5. insolvency law is not harmonised across the EEA except to a very limited extent (for example, the Winding Up of Credit Institutions Directive applies to banks but no equivalent legislation applies to trading venues or CCPs). Conflicts of laws and jurisdictional issues are therefore highly complex in cross-border situations, and the CCP would need to assess the insolvency risk both in relation to the applicant trading venue and its users; and
6. even where laws are harmonised across the EEA, differences in implementation or failures to implement provisions on time or correctly can give rise to significant problems. For example, a number of member states have failed to amend their insolvency laws to implement certain EMIR requirements, such as enabling porting of customer positions. One UK CCP has published a list of such jurisdictions on its website. As a result there is significant uncertainty as to the operation of these arrangements on a cross-border basis, particularly where the clearing member and customer are located in different jurisdictions. Uncertainty also arises from differing national interpretations of the Financial Collateral Directive.

All access requests should therefore be scrutinised to identify potential conflicts of law issues, as set out in our response to Question 387.

<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>

Yes, liquidity fragmentation is an additional risk which could arise from the provision of access arrangements. Regulated markets typically provide a deeper pool of liquidity for exchange traded derivatives and as such they provide stability in times of stressed markets – this should not be put at risk. Fragmentation will also restrict the ability of trading venues and competent authorities to perform their market monitoring obligations by reducing the overall transparency of the affected markets. Liquidity fragmentation may arise from access arrangements in certain circumstances, for example where the volumes of contracts subject to the arrangement is low. This is clearly a factor creating a “significant undue risk” and one of the specific criteria that a competent authority is required to consider under Article 35 of MiFIR. CCPs should also be expressly enabled to take this factor into account in their consideration of access requests.

<ESMA\_QUESTION\_389>

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

<ESMA\_QUESTION\_390>

Euronext is of the opinion that the conditions which are mentioned are generally less relevant for trading venues than CCPs. As previously stated, in terms of the anticipated volume of transactions and number of users, the risks for a trading venue are that low volumes are likely to result in fragmentation and decreased transparency. Given the market monitoring and surveillance obligations of trading venues this could present a significant risk. High numbers of users of the applicant CCP could lead to a disproportionate increase in membership requests for the trading venue which may present an operational risk issue. Trading venues are also required under MiFID II to adequately manage their operational risk. Where they are providing trade feeds to an additional venue various additional risks could potentially arise which need to be managed by the trading venue (see for example, Article 47(1)(b) of MiFID II) MTFs and OTFs (for example, Article 18(1) of MiFID II). Accordingly, we believe the appropriate conditions under which an access request may be denied by a trading venue under Article 36 are, in the majority of cases, broadly equivalent to those applicable to CCPs.

<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>

If too low, the anticipated volume of transactions to be submitted by the trading venue to the applicant CCP, this situation may lead to fragmented liquity, less efficient markets and decreased transparency. This would have a consequential impact. Systemic risk will therefore increase due to the impact on market data collection, market surveillance practices and may hinder the detection of abusive behaviours. Moreover, it may not be commercially viable for a trading venue to submit transactions to a CCP for clearing below a certain volume. Therefore, it is appropriate for access to be denied by a trading venue if the anticipated volume of transactions to be cleared by the applicant CCP from the trading venue (as estimated by an independent third party appointed jointly by the applicant CCP and the trading venue) based on the current or proposed scope of the applicant CCP's authorisation under EMIR and product offering is below either: (i) a percentage of the aggregate of volumes of the relevant transactions executed on the trading venue; or (ii) a percentage of the volumes of similar transactions executed on the trading venue which the trading venue reasonably considers to be likely to result in liquidity fragmentation or disproportionate to the resources and operational capacity it would be required to establish in order to allow the applicant CCP to clear such transactions.

Regarding the number of users of the applicant CCP, it is likely to have a consequential impact on the anticipated volume of transactions, and a trading venue will need to take this factor into account in assessing its ability to carry out effective market monitoring and oversight. Therefore it is appropriate for the trading venue to deny access to a CCP if either the applicant CCP has less than a specified number of users that will clear transactions executed on the trading venue or such users will clear transactions below a specified percentage of similar transactions executed on the trading venue. At the opposite, where the number of users of the applicant CCP exceeds a certain threshold this could lead to a disproportionate increase in membership requests for the trading venue. This may also present an operational risk to the trading venue if its membership department were unable to deal with the volume of requests including all the necessary due diligence. Therefore it is appropriate for the trading venue to deny access to a CCP if either the applicant CCP has more than a specified number of users that will clear transactions executed on the trading venue or such users will clear transactions above a specified percentage of similar transactions executed on the trading venue.

Through its members a trading venue would have an indirect exposure to the applicant CCP's users. Granting the request where the eligibility criteria are less stringent than those applied by CCPs to which a trading venue is connected by close links or from which a trading venue receives clearing services on the date of the access request by the applicant CCP could therefore increase the risk being taken on by the trading venue and, as a result, Existing CCPs and market participants generally. Therefore it is appropriate for the CCP to deny access to a trading venue if the eligibility criteria of the CCP are not equivalent to the eligibility criteria of Existing CCPs.

<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>

Access arrangements could give rise to additional operational risk for the trading venue across the entire scope of its activities. These risks will also potentially impact on CCPs to which a trading venue is connected by close links or from which a trading venue receives clearing services on the date of the access request by the applicant CCP. The issues that should be addressed by a trading venue in any access arrangement in order to mitigate operational risk are as follows:

|  |  |  |
| --- | --- | --- |
|  | **Operational risk issue** | **Overview** |
|  | Anti-money laundering, counter-terrorist financing and sanctions policies and procedures of the applicant CCP. | It would not be in the interests of members, customers, users of Existing CCPs and the EU financial system as a whole for a trading venue to grant access in circumstances which create increased exposure to risk, including of financial crime. |
|  | The applicant CCP’s disciplinary, investigatory and enforcement powers and practices. | Given the regulatory obligations of regulated markets, (for example, Article 47(1)(b) of MiFID II) MTFs and OTFs (for example, Article 18(1) of MiFID II) they should not take on an increased exposure to risks which they are not in a position to mitigate. This could arise if the disciplinary, investigatory and enforcement powers and practices of the applicant CCP are not at least equally stringent as those of Existing CCPs. |
|  | Whether the applicant CCP:   * has any physical presence or grants access to users in any jurisdiction designated by the United Nations, European Union or any Member State, under legislation relating to financial sanctions regimes or in any jurisdiction where in the trading venue’s reasonable opinion there is an increased risk of the relevant financial instruments being subject to fraudulent or corrupt practice; and * is required to operate to the same supervisory standards as Existing CCPs. | The trading venue should not take on business which it considers likely to affect either its own compliance with relevant financial sanctions regimes or anti-money laundering or anti-corruption requirements, or which may expose the trading venue to increased reputational risk. This would be contrary to Article 47(1)(b) (for regulated markets) and Article 18(1) of MiFID II (for MTFs and OTFs). Granting access to a CCP in these circumstances could present a threat to the integrity and security of EU financial markets. |
|  | Whether the applicant CCP is subject or is likely to be subject to third country law or regulation with a potential for extra-territorial application adversely affecting the trading venue as a result of granting access or which would threaten the smooth and orderly functioning of the trading venue. | Becoming subject or potentially subject to obligations pursuant to another legal regime would increase a trading venue’s legal risk and add to administrative complexity. Unless these risks can be adequately mitigated, granting access in these circumstances would not be in the interests of efficiently functioning and transparent EU markets. It could also create an uneven playing field as EU trading venue could become subject to varying and potentially conflicting legal requirements. |
|  | Systems and controls of the applicant CCP. | In granting access to a third party CCP, many of the control mechanisms that a trading venue may have under its arrangements with Existing CCPs will not be available. For example, a trading venue should not agree to grant access where the potential exists for disputes to arise over the legitimacy of a transaction. This could be the case, for example if the applicant CCP’s systems and controls are not at least equally stringent as those of Existing CCPs.  Any access arrangement with a CCP must enable the trading venue to continue to meet all regulatory requirements, including its position management functions in accordance with MiFID II Articles 57 and 58. |
|  | Applicant CCP’s (and its group’s) financial robustness and ability to meet its regulatory capital / financial resources requirements and financial covenants. | The trading venue will need to ensure that the applicant CCP is sufficiently financially robust both in order to honour its obligations to the trading venue (including any indemnities). |
|  | Standards of and compatibility of IT and business continuity systems, and the related security standards. | The applicant CCP will need to receive matched trade data from the trading venue for clearing. If the IT system it uses is not compatible with the trading venue’s systems, clearing will not be possible operationally. Adapting the systems may not be possible without disrupting the trading venue's business and standards of service, which would be unacceptable. Furthermore, if the trading venue considers on reasonable grounds that the applicant CCP’s IT security arrangements do not meet the same standards as it applies to its own network, this could introduce unacceptable additional risk for the trading venue. Under Article 47(1)(c) of MiFID II a regulated market is required to have in place arrangements for the sound management of the technical operations of its system. |
|  | Legal basis for contract formation, including compatible rules for account allocation, error trades, voiding contracts, trade reporting and position management, as well as compatibility of the termination dates or termination rights in relation to the contracts. | The contracts formed pursuant to the rules of the applicant CCP's clearing mechanism must be legally enforceable and contain terms allowing them to accept contracts formed by the trading venue. |
|  | Compatibility of the dispute resolution or jurisdiction provisions in the contracts or rules of the trading venue. | In the interests of efficient market functioning, the trading venue must have a clear procedure founded on a valid legal basis for resolving any disputes that may arise in relation to transactions submitted for clearing. Dispute resolution procedures therefore need to be made consistent. |
|  | Impact that an access request would have on the risks an Existing CCP is required to mitigate through the provision of market supervision function by the trading venue. | Existing CCPs should not be put in a position where they are forced to take on additional risks that may undermine the safety and efficiency of their clearing services or increase the risk of financial crime. |
|  | The disclosures any Existing CCP or any clearing members of an Existing CCP are required to make under Article 39(7) of EMIR. | The granting of access by a trading venue to a CCP should not require an Existing CCP to make changes to its arrangements for segregation of clearing member and client assets, which are a key element of a CCP’s default protection measures. |
|  | Whether:   * the moment of finality or irrevocability of the transaction is inconsistent with the rules of the trading venue; * derivative contracts are governed by a different governing law than the governing law governing law applicable to the trading venue under its rules. | These conditions will ensure that a trading venue is able to mitigate the risks of becoming involved in contractual disputes with the applicant trading venue and its users, and any increased risks arising from potential conflicts of laws. |
|  | Appropriate licensing arrangements with respect to the relevant product or underlying deliverable. | A trading venue will need to obtain all relevant IP rights and licences in order to permit the applicant CCP to perform clearing services for the trading venue in accordance with its legal obligations towards third parties. Therefore it is appropriate for the trading venue to deny access to a CCP |
|  | Whether the contract is offered by the trading venue pursuant to a public procurement process. | Regulation (EU) 1031/2010 establishes the regime for the auctioning of carbon emission allowances. Such auctions can only be held by auction platforms pursuant to public procurement processes which include, inter alia, establishing satisfactory clearing and settlement services, in many cases requiring procurement contracts between CCPs and governmental authorities. A CCP to which a trading venue grants access will need to ensure it does not infringe the terms of such public procurement processes were it to clear such products. |
|  | Whether adequate arrangements are in place for the termination of access arrangements including the wind-down and transfer of outstanding positions at the CCP as required | The trading venue must ensure it has the right to terminate the access arrangement if necessary and, in such circumstances, that adequate procedures are in place to provide for close-out or transfer of the relevant derivative positions in an orderly fashion by the CCP. |
|  | Arrangements to collect and distribute fees from users in accordance with agreed terms. | The trading venue must also be satisfied that clear, robust and satisfactory arrangements are in place for the collection and distribution of the fees which it is owed from users under the access arrangement. |
|  | The applicant CCP's clearing methodology and systems for reporting to the trading venue. | Trading venues need to be able to ensure that they will continue to meet all applicable regulatory obligations if an access request is granted, in accordance with MiFID II Articles 47, 57 and 58. (see further our response to Question 396).  Market supervision is carried out at the trading level, as required under MiFID II (Article 31 and 54). For derivative transactions, supervision obligations apply not just at the point of entry into the transaction but for the entire life cycle of the transaction. In particular, for certain classes of derivative contracts (*e.g.* physically delivered derivative contracts) a high level of supervision and surveillance – and potentially enforcement – is required until delivery occurs. |
|  | Whether a sufficiently clear and transparent process with suitable record-keeping function is in place to identify the trades designated by users to be cleared by the applicant CCP. | The trading venue must be able to ensure that it continues to operate in an orderly manner including in relation to arrangements for clearing and settlement. Where transactions may be cleared by more than one CCP a process for clear designation of users’ choice of CCP together with records of such designation will be required. |

<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>

The issue of the financial impact of any access request is very important. ESMA recognises that significant costs are likely to arise as a result of an access request and therefore could threaten the viability of a trading venue. Fundamentally, providing access on a non-discriminatory basis should not require a trading venue to materially alter its existing business model or incur an increased financial burden. However, in addition to this relatively extreme scenario, some factors need to be taken into account in relation to costs.

First, the financial impact of changes needs to be taken into account. A trading venue should not be required to grant access to a CCP if granting access to the applicant CCP would require the trading venue to make changes to its business model or service offering, including material changes to its trading venue systems or other operational mechanisms, or to its contractual arrangements. The trading venue’s current business model will have been approved by the competent authority for the purposes of its authorisation under MiFID/MiFID II. Any such changes that the trading venue agrees to make in order to accept the access request should be charged for on a cost-plus basis.

Secondly,assuming the burden of additional capital or other resource requirements as a result of granting access to a trading venue could have a serious impact on the trading venue’s economic viability, with ensuing systemic risk consequences. A trading venue will need to evaluate such risks in connection with the access request. Therefore it is appropriate for the trading venue to deny access to a CCP if granting access to the applicant CCP would require the trading venue to hold additional financial resources pursuant to Article 47(1)(f) of MiFID II.

Viability is a third factor:as it may not be commercially viable for a trading venue to submit transactions to a CCP for clearing below a certain volume, in terms of transactions or users, this could threaten the viability of a CCP.

<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>

The applicant CCP must have rules in place and strong legal basis for contract formation, account allocation, error trades, voiding contracts, trade reporting or position management that are compatible with the rules of the trading venue. The contracts formed pursuant to the rules of the applicant CCP’s clearing mechanism must be legally enforceable and contain terms allowing them to accept contracts formed by the trading venue.

<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>

Euronext believes that granting access could create unmanageable risks linked to the conflicts of law in a world where trading venues frequently conduct business on a cross-border basis. Ensuring enforceability of rules and contractual arrangements, analysing questions of jurisdiction, conflicts of laws and overseeing compliance with requirements of all relevant jurisdictions is highly complex and subject to a high degree of uncertainty, as detailed further below. An access arrangement could also give rise to the need for regulatory authorisation for one or both of the parties in another jurisdiction. Lack of harmonisation across relevant jurisdictions is therefore a potentially significant source of risk in the context of granting or denying access to a CCP.

The relevant risks for the CCP arising from a lack of legal harmonisation are:

* **Conflict of laws:** a trading venue must be able to mitigate the risks of becoming involved in enforceability and contractual disputes with the applicant CCP and its users, and any increased risks arising from potential conflicts of laws;
* **Compliance and reputational risk:** the trading venue should not take on business which it considers likely to affect either its own compliance with relevant financial sanctions regimes or anti-money laundering or anti-corruption requirements, or which may expose the trading venue to increased reputational risk. This would be contrary to Article 47(1)(b) (for regulated markets) and Article 18(1) of MiFID II (for MTFs and OTFs). Granting access to a CCP in these circumstances could present a threat to the integrity and security of EU financial markets. This could be a particular concern where the applicant CCP has any physical presence or grants access to users in any jurisdiction designated by the United Nations, European Union or any Member State, under legislation relating to financial sanctions regimes or in any jurisdiction where in the trading venue's reasonable opinion there is an increased risk of relevant financial instruments being subject to fraudulent or corrupt practices;
* **Third country regulatory requirements**: unmanageable risks are likely to arise where the CCP is subject or is likely to be subject to third country law or regulation with a potential for extra-territorial application adversely affecting the trading venue as a result of granting access or which would threaten the smooth and orderly functioning of the trading venue. Becoming subject or potentially subject to obligations pursuant to another legal regime would increase a trading venue’s legal risk and add to administrative complexity. Unless these risks can be adequately mitigated, granting access in these circumstances would not be in the interests of efficiently functioning and transparent EU markets. It could also create an uneven playing field as EU trading venue could become subject to varying and potentially conflicting legal requirements;
* **Overseas regulatory status**: it is possible that a trading venue will have some form of regulatory status in third country jurisdictions. In order not to restrict cross-border activity it will be important that the trading venue remains in compliance with the terms of any such licence or permissions.

<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>

As far as derivative trading is concerned risks relating to a trading venue’s continued compliance with its obligations as to efficient and timely settlement, position management, position reporting and delivery arrangements are significant. There are also risks associated with possible liquidity fragmentation.

Please see below how such risks may arise from granting access:

* **Liquidity fragmentation**: this may arise from access arrangements in certain circumstances, for example where the volumes of transactions subject to the arrangement is low. This is clearly a factor creating a “significant undue risk” and one of the specific criteria that a competent authority is required to consider under Article 36 of MiFIR. Trading venues should also be expressly enabled to take this factor into account in their consideration of access requests. Regulated markets typically provide a deeper pool of liquidity for exchange traded derivatives and as such they provide stability in times of stressed markets – this should not be put at risk. Fragmentation will also restrict the ability of trading venues and competent authorities to perform their market monitoring obligations by reducing the overall transparency of the affected markets.
* **Settlement arrangements:** under Article 47 of MiFID II, regulated markets are required to have effective arrangements in place to facilitate the efficient and timely finalisation of transactions executed under their systems. This includes certain aspects of the settlement process, such as:

1. delivery arrangements for physically settled derivative contracts, including warehousing, quality control, valuation.
2. position management arrangements approaching settlement, to ensure orderly settlement without price distortion.

These activities are typically overseen by exchanges in accordance with their regulatory obligations. The trading venue must ensure that effective arrangements are put in place for these activities in respect of the products that will be cleared by the applicant CCP if the access request is granted. A CCP will not necessarily have the operational capacity, know-how, resources or regulatory or other permissions in place to clear products that do not already form part of its service offering. Granting access to the CCP in such circumstances within the timeframes specified under Article 36(3) of MiFIR (nine months in total in the case of exchange traded derivatives) would not necessarily permit the CCP to ensure that adequate arrangements are in place to clear such products in accordance with its regulatory obligations and the trading venue, the applicant CCP and CCPs to which a trading venue is connected by close links or from which a trading venue receives clearing services on the date of the access request by the applicant CCP will be exposed to risk in the event that such arrangements are not fully effective.

* **Position reporting**: regulated markets are also subject to position reporting obligations under Article 58 of MiFID II in respect of commodity derivatives. Where netting or cross-margining is performed by a CCP across multiple trading venues as it may seek to do in accordance with Article 35 of MiFIR, the trading venues may not have access to the data at an individual customer level and so would not be able to provide their competent authorities with a complete breakdown of positions held on a daily basis, as required under Article 58(1)(b) of MiFID II. The risks would become unmanageable for the trading venue if the applicant CCP has requested to clear commodity derivative contracts that are subject to position limits or position management controls under Article 57 or 58 of MiFID II without arrangements and procedures in place to ensure that the trading venue is able to monitor and manage such limits and controls to the satisfaction of the trading venue and Existing CCPs.
* **Competition law issues**: given the potential for collusion and/or abuse of a collectively dominant position between market participants in financial markets in breach of Article 101 and/or 102 of the Treaty of the Functioning of the European Union, it is important that ESMA and relevant competent authorities take all available measures within their power to ensure that Article 36 of MiFIR is used appropriately by market participants, having regard to applicable competition law constraints. In particular, where an access request has been instigated by market participants who are colluding in order to manipulate pricing or other trading elements to their advantage (e.g. via a collective boycott of the incumbent CCP), this is a relevant factor in the trading venue’s decision as to how to treat the access request – not least as the trading venue could itself conceivably be implicated in a potential competition law infringement. Therefore, when a trading venue has received an access request, the trading venue should request one or more of (i) ESMA, (ii) the trading venue’s relevant competent authority and (iii) the competent authority of the applicant CCP to seek clarification from the applicant CCP and (as necessary) other relevant market participants as to the reason for the request, and communicate the results of that enquiry (subject to applicable confidentiality constraints) to the trading venue. The trading venue should be able to request one or more of (i) ESMA, (ii) the trading venue’s relevant competent authority and (iii) the competent authority of the applicant CCP to seek clarification from the applicant CCP and (as necessary) other relevant market participants as to the reason for the request, and communicate the results of that enquiry (subject to applicable confidentiality constraints) to the trading venue. Where such enquiry is ongoing, the trading venue should be entitled to delay its decision pending the outcome of such enquiry;

<ESMA\_QUESTION\_396>

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

<ESMA\_QUESTION\_397>

Euronext agree with the conditions set out, although in relation to certain of the conditions identified it is important to ensure that the conditions take account of a number of additional factors:

* **Termination rights**: as set out in paragraph 35 iii e, there should be agreed procedures for termination of the access arrangement. In particular, provision should be made for the following:

1. in the interests of market integrity, a trading venue or CCP must have the right to suspend or terminate access arrangements where the other party has materially breached the terms of the arrangement or where the arrangement has resulted in liability for the trading venue or CCP;
2. in addition, providing access will require a CCP / trading venue to provide proprietary information to the other party some of which will belong to the CCP / trading venue and some of which may be licensed to it by third parties. The CCP / trading venue should have the right to suspend or terminate the access arrangement at its discretion for material breaches by the other party of the contractual arrangements that are in place between the two parties or for any event giving rise to an indemnity claim by the CCP / trading venue under such arrangements.

* **Confidentiality**: As set out in paragraph 35 ii of the Discussion Paper, there should be appropriate confidentiality arrangements in place. Any decision to extend clearing services to third party trading venues should not compromise a trading venue or CCP’s ability to maintain confidentiality as to commercially sensitive information. In particular a trading venue or CCP may require the other party to enter into appropriate confidentiality arrangements with respect to the development of new products in a class which are not currently offered for clearing by the trading venue or CCP.
* **Risk management standards**: Paragraph 35 iii g states that there should be agreed procedures for “ensuring that the access arrangement does not cause the CCP to reduce its risk management standards, especially when there are two or more CCP’s involved in the access arrangement”. We believe that agreed procedures should be in place to ensure that the access arrangement does not cause any reduction of risk management standards relating to the CCP, the trading venue or Existing Venues, irrespective of the number of CCPs involved in the access arrangement.
* **Additional conditions:** We believe there are also additional conditions which should apply, as set out in our response to Question 398.

<ESMA\_QUESTION\_397>

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

<ESMA\_QUESTION\_398>

**The following additional conditions are applicable for CCPs and trading venues requesting access under Articles 35 and 36:**

1. A CCP or trading venue will incur additional one-off and ongoing costs in connection with the access request, including administration costs, infrastructure arrangements, resource requirements, IT and connectivity arrangements, legal fees and capital charges. CCPs and trading venues requesting access should pay for the costs of such access. A CCP or trading venue should be entitled to recover these costs through admission and clearing fees on a reasonable commercial basis, whether as a one-off charge or ongoing fee arrangement. This is important to protect the economic viability of the CCP or trading venue, which has a consequential impact on systemic risk. Therefore, it may be appropriate and necessary for a CCP or trading venue to charge connection and admission fees or require a contribution to its regulatory capital on either a one-off or ongoing basis on a reasonable commercial basis;
2. For reasons of market transparency, it is important that access requests are made public. A CCP or trading venue should therefore notify the market in the case of any access request.
3. In order for the CCP or trading venue to mitigate the risks to which it is exposed, the applicant CCP or trading venue should provide an indemnity to the CCP or trading venue to which the request is made to cover litigation, tax, employment and IP infringement risk which the trading venue may incur as a result of entering into the arrangement. The applicant CCP or trading venue should therefore indemnify to the CCP or trading venue to which the request is made against any:
4. claims by third parties;
5. tax liabilities;
6. liabilities arising from the application of Council Directive 2001/23/EC; and
7. any alleged or actual infringement of intellectual property rights, arising, in each case, from acts or omissions of the applicant CCP or trading venue or as a direct consequence of the provision, by the CCP, of clearing services to the trading venue or by the trading venue, of access to its transaction feeds to the CCP.
8. An applicant CCP or trading venue may not necessarily have available all of the financial resources to adequately cover its liabilities to a trading venue in the event an indemnity is enforced, especially considering it may be exposed to multiple trading venues under the open access provisions. In such circumstances it is appropriate for a trading venue to rely on a guarantee from affiliates in the applicant’s group. The applicant should procure any third party guarantee of its obligations to the trading venue reasonably requested by the trading venue.
9. The CCP or trading venue’s decision to grant access will be based on its assessment of the risks of such access at the time the application is made. If there is a significant time lapse between the date of the decision and the confirmation and implementation of the arrangements this may alter the outcome of the analysis. If access is still required by the applicant after this time, a new application should be submitted. Where a CCP or trading venue provides a positive response to an access request, the applicant should be required to formally accept the terms within 3 months or the right of access will expire. The applicant should be required to implement such access arrangements as agreed with the trading venue within three months of the trading venue making access available or the right of access will expire.
10. In order for CCPs and trading venues to comply with their obligations under applicable anti-money laundering regimes, applicant CCPs and trading venues will need to provide information on various matters for the purposes of customer due diligence and other checks. The applicant CCP or trading venue must fully comply with the other party’s anti-money laundering procedures and policies from time to time and provide all information reasonably required in connection with these policies and procedures.
11. Information on the applicant CCP or trading venue’s ownership structure, management, financial resilience and any pending or threatened claims or disciplinary action will be required in order for the receiving party to carry out an adequate risk assessment as part of its due diligence process in relation to the access request. For listed entities, these documents will normally be publicly available. Therefore, to the extent not publicly available, an applicant CCP or trading venue must provide on request:
12. full information on its ownership structure including complete list of owners and percentages of ownership;
13. details of ownership interests held by the applicant in other CCPs and trading venues;
14. list of directors, officers and executive directors;
15. details of any pending or threatened litigation or disciplinary action involving the applicant or its beneficial owners.

**The following additional conditions are applicable for CCPs requesting access from trading venues under Article 35:**

1. In the interests of efficiently functioning and liquid markets, a CCP should be permitted to implement measures which incentivise liquidity provided that these are made public, notified to its competent authority and are made available on a non-discriminatory basis. Therefore, it may be appropriate for a CCP to operate an incentive program to encourage efficiently functioning and liquid markets, subject to:
2. the publication of the principal terms of such program;
3. the availability of participation in such programs to other trading venues on similar terms; and
4. the notification of such terms to the competent authority of the CCP.
5. In the interests of maintaining a level playing field, a CCP may differentiate in its margin standards between users of different trading venues only on objective, non-discriminatory grounds. A CCP should:
6. publish its operational requirements regarding margining as applicable from time to time;
7. differentiate between users of different trading venues in its operational requirements regarding margining where this is objectively justified on the grounds of risk.
8. In order to avoid market distortions and the development of a false impression of liquidity, a CCP must have the ability to restrict any cash, equity or other incentives that would result in a net payment to users of a trading venue. A CCP may, therefore, on a non-discriminatory and transparent basis, prohibit an applicant trading venue from providing a financial incentive for the execution of transactions on its platform where on a net basis in respect of any user’s transactions on the trading venue this results in a payment from the trading venue to the user for the relevant period.
9. Information on the ultimate beneficiary of orders submitted to the trading venue may be required by a CCP in connection with its default management procedures, including porting of contracts as required under Article 48(4) of EMIR. The trading venue must therefore fully comply with a CCP’s requirements for identification of the ultimate beneficiary of each order submitted to it and of any intermediary involved.
10. In order for a CCP to have the ability to liquidate a position into the market, clearing members must have full membership of the trading venue. Any clearing member of the CCP wishing to enter into transactions to be submitted for clearing to the CCP via the applicant trading venue must have full membership of the applicant trading venue.

<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>

Fees charged by a CCP to a trading venue are relevant “other fee” in the context of Articles 35 and 36. Indeed, a CCP will incur additional costs in connection with the access request, such as administration costs, infrastructure arrangements, resource requirements, IT and connectivity arrangements, legal fees and capital charges. Trading venues requesting access should pay for the costs of such access. A CCP should be entitled to recover these costs through admission and clearing fees on a reasonable commercial basis, whether as a one-off charge or ongoing fee arrangement. Recognition of the need for such fees is important to protect the economic viability of the CCP, which has a consequential impact on systemic risk. Whilst in certain circumstances such costs may be recoverable from clearing members, in other circumstances it may be more appropriate for them to be met by the trading venue. Therefore, in relation to access arrangements under Article 35, it may be appropriate and necessary for a CCP to charge connection and admission fees or require a contribution to its regulatory capital on either a one-off or ongoing basis for trading venues which wish to connect to the CCP on a reasonable commercial basis.

<ESMA\_QUESTION\_399>

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

<ESMA\_QUESTION\_400>

If it is considered for a particular access arrangement that development or operational costs applicable to a product should be recovered from clearing members rather than directly from the trading venue, then the charges to clearing members may differ from charges for similar products at other trading venues. Whilst charges by a CCP to clearing members should be non-discriminatory, they may in certain circumstances not be the same for similar products traded by different trading venues.

<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>

A CCP’s collateral requirements should be based on the risk profile of the relevant asset class. Within a clear non-discriminatory framework, a CCP needs full discretion to amend its collateral requirements on a risk sensitive basis. The principles for non-discriminatory treatment should be set out clearly.

Euronext therefore believe that a CCP should:

* apply the same collateral reinvestment policy across all instruments of the same risk-based asset class; and
* accept the same kinds of securities and financial instruments as collateral and ensure that these are provided to it under the same terms for all instruments of the same risk based asset class.

<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>

What needs to be taken into consideration in establishing whether a particular financial instrument may be “netted” against another, and the appropriate netting treatment, will depend on the nature of that financial instrument and are not simply based on economic value. Differing treatments will apply to exchange traded derivatives, OTC derivatives and cash equity instruments based on both the distinct nature of the instruments themselves and the varying regulatory requirements applicable to each type of instrument.

These considerations, together with the applicable regulatory regime for regulated markets, raise issues for the netting of exchange-traded derivatives contracts traded on one venue against similar contracts traded on a different venue. This is explained in further detail below:

***Obligations of regulated markets***

*Market oversight*

In light of their regulatory obligations under MiFID II and national law, regulated markets need to have oversight of the contracts which they trade, including but not limited to:

1. rules on trading transparency and block trading;
2. error trade policies;
3. prohibitions on disorderly trading practices (eg, ‘spoofing’);
4. prohibitions on trading practices designed to give a false and misleading impression of liquidity;
5. position management policies;
6. monitoring of compliance with limits on positions in exchange-traded derivative contracts;
7. monitoring of positions in the run-up to derivative contract expiry (eg, the inadvertent opening of a position in a physically-delivered commodity derivative contract by an electronic trading firm);
8. compliance with rules imposed by oversees regulators, eg, with respect to Linked Contracts (contracts which settle against settlement prices published by a US Designated Contract Market).

Market monitoring and price formation are critical functions of a regulated market. Positions under derivative contracts must be supervised for the lifetime of the contract. The CCP needs to ensure that such supervision is carried out in accordance with appropriate standards in the interests of safe and efficient markets and to ensure to the extent possible that it and trading venues or OTC platforms to which a CCP is connected by close links or to which a CCP provides clearing services on the date of the access request by the applicant trading venue are not exposed to any additional risk. Particularly in the light of fraudulent practices that took place in relation to EUAs, a CCP should be entitled to protect itself and its participants against the possibility of becoming involved in contractual disputes with the applicant trading venue and its users or any attempted criminal activity.

*Position limits*

Netting derivative contracts executed on one trading venue against derivative contracts executed on other trading venues may prevent the relevant trading venues from being able to properly carry out their position limit monitoring function under MiFID II. The contracts would be commingled and the data would not be readily accessible on an individual basis. In this circumstance competent authorities may need to rely on the information received in transaction reports under Article 26 of MiFIR in order to have an accurate understanding of positions held across the market. Various trading practices, such as block trade size limits, would also need to be harmonised in order for such netting arrangements to function.

***Overseas regulatory status***

In addition, the CCP, the applicant trading venue and Existing Trading Venues may have a regulatory status in a third country jurisdiction which imposes requirements limiting the extent to which derivative contracts executed on different trading venues can be netted against each other. For example, if any of the relevant trading venues provides direct access to US market participants and is required to be registered with the CFTC as a foreign board of trade, it would need to ensure that it can continue to comply with all applicable requirements, including publication of daily trading information and position limits in relation to “linked contracts”.

**Approach to netting and economic equivalence**

For the reasons set out above, we consider that the term “economically equivalent” should be defined as follows:

“**Economically Equivalent**”, for the purpose of Article 35 and in relation to derivatives, means all derivative contracts with the same terms and conditions, including size, value date, reference or underlying and expiry or exercise date, deliverable instrument (if any) or basis for cash settlement and any other terms as set out in sections 2(f) to 2(h) of Table 2 of the Annex to Regulation 148/2013, as defined by product specifications established (in the case of exchange-traded derivatives) under the rules of a regulated market or (in the case of OTC derivatives) bilaterally between the parties. For the avoidance of doubt, exchange-traded derivative contracts and OTC derivative contracts are not Economically Equivalent to one another for the purposes of article 35 of MiFIR.

In order to ensure netting procedures are enforceable and ensure non-discriminatory treatment, the below principles should be followed in relation to netting by CCPs:

1. With respect to transferable securities that are economically capable of mutual substitution and legally identical ("**Equivalent Listed Securities**") a CCP may facilitate the netting of positions in all such Equivalent Listed Securities cleared by the CCP.
2. With respect to OTC derivative contracts cleared by a CCP that are economically and legally capable of mutual substitution ("**Equivalent OTC Derivatives**"), a CCP may facilitate the netting of positions in all such instruments cleared by the CCP provided that:
3. this does not impair the market monitoring, position management, or position reporting functions (as set out in MiFID II) of the applicant trading venue or Existing Venues cleared by the CCP; and
4. such netting would not prejudice any regulatory status in any jurisdiction that is held by the CCP, the applicant trading venue or any Existing Venue;
5. A CCP may facilitate the netting of positions in exchange-traded derivative contracts traded on regulated markets that are economically capable of mutual substitution and legally identical ("**Equivalent Exchange-Traded Derivatives**") subject to the agreement of each regulated market concerned, provided that:
6. this does not impair the market monitoring, position management, or position reporting functions (as set out in MiFID II) of any of the regulated markets cleared by the CCP; and
7. such netting would not prejudice any regulatory status in any jurisdiction that is held by the CCP or any Existing Trading Venue.

**Competition considerations**

It is vital that Article 35 is implemented so that it is conducive to fair competition, innovation and product development in the relevant markets. This is reflected in Recital 40 of MiFIR which provides that “*[t]he removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and* ***foster innovation*** *in Union market*” (emphasis added) .

Specifically, the RTS implementing Article 35 should recognise that what is required in order for a CCP to comply with “non-discriminatory treatment” must be tailored and will vary according to the relevant activity. For netting, the appropriate treatment will depend on the type of financial instrument to which the access request relates.

In the case of exchange traded derivatives, it essential that the RTS takes into account the innovation and investment by exchanges which warrant protection from ‘free-riding’ by competitors, i.e. unfair competition. For this reason, the RTS should expressly confirm that, for exchange traded derivatives, it is objectively justified for a CCP to protect an exchange from ‘free-riding’ by a competitor when determining the netting treatment it applies to contracts traded on applicant trading venues.

***Accordingly, the RTS should state that a CCP may refuse to provide netting for economically equivalent contracts traded on two or more trading venues [and instead provide appropriate cross margining], in order to protect exchange investment and innovation incentives without this being regarded as discriminatory in breach of Article 35 of MiFIR.***

The rationale for this statement is set out in further detail below:

As set out in the response to this question under the heading of *‘Type of financial instrument’*, exchange traded derivatives differ from other instruments in that the instrument themselves and the rules under which they trade are designed and overseen by exchanges. Derivative contracts have various key terms including expiry date, size and product quality. Exchanges spend significant sums designing, implementing and evolving contract specifications that meet customer requirements and that can be effectively risk managed by the CCP(s) which clear them (the business of such CCPs is often also the result of investment by the same group). Once created, the contracts can be replicated because the contract specifications are publicly available. Intellectual property rights (“IP rights”) arise in respect of aspects of the contract terms, reflecting the innovation and investment by the exchange. Nonetheless, in practice, IP rights are not a barrier to competitors creating ‘look-alike’ contracts which are economically equivalent.

Accordingly, a rival trading venue could in theory use Article 35 of MiFIR to request access to a CCP and request netting of a look-alike contract on equivalent terms to a contract developed by another trading venue, without having had to invest in developing the contract specification.

This could have serious adverse consequences for product innovation and the availability of derivatives products needed by businesses. Exchanges will self-evidently be less likely to invest in developing new products if a competitor could benefit from the exchange’s investment by launching a look-alike contract and simply relying on netting to engineer a liquidity shift to its own platform. This would not be competition on the merits, i.e. a competitor attracting liquidity for its contract by offering different (improved) contract terms in response to the demand of customers. Rather it would be unfair competition based on free-riding facilitated by the availability of netting which would undermine the incentives of exchanges to innovate with respect to new/improved product development.

Such unintended consequences would ultimately be to the detriment of users of exchange traded derivatives who need to trade such instruments in order to manage price risk in connection with their business operations.

It is well established in EU competition law that promoting effective competition requires companies to be able to prevent free-riding on their investments and the need to preserve incentives to innovate.

For example, EU competition law permits the appointment of exclusive distributors (subject to conditions) because the intrinsic restriction of competition is necessary to achieve efficiencies which benefit consumers in the form of reduced prices, improved product offers, etc.  (See for example the European Commission’s Guidance on Vertical Restraints, paragraph 107(a): “*One distributor may free-ride on the promotion efforts of another distributor. [...] Exclusive distribution or similar restrictions may be helpful in avoiding such free-riding.*”)

For similar reasons, EU competition law confirms that the owner of an essential facility /IP rights should only be obliged to grant access to the facility/IP rights in “exceptional circumstances”, a pre-condition for which is that the access will be used to provide a new product and not simply to duplicate an existing product.

It is vital that the RTS take the above into account. Producers and consumers in the real economy could be disadvantaged if the creation of products which help them mitigate their risk is inhibited.

In our view, there are objective grounds for a CCP to take these issues into account in the netting treatment it applies to contracts traded on applicant trading venues. The RTS should take account of such factors and expressly state that in such circumstances, a CCP should be entitled to refuse to provide netting of contracts to two trading venues on equivalent terms without this being regarded as discriminatory and instead to provide appropriate cross margining consistent with protecting its investment and innovation incentives.

**Appendix to Q402**

***Situations in which netting under Article 35 MiFIR is not feasible for derivatives from more than one regulated market***

***Background***

1. *A regulated market on which derivatives are traded (“****derivatives exchange****”) is responsible for the design of the derivatives products which it offers. This includes admission to trading of a specific product, and the rules applying to its trading over the entire duration of that product until expiry. In this regard, the exchange-traded derivatives market structure differs fundamentally from that of the OTC derivatives market (where contracts are generally designed by ISDA) and the securities market (where the products are designed and maintained by a third party (subject to corporate and securities laws and listing rules). Thus, one aspect of the role of a derivatives exchange is analogous to the ‘listing’ function for securities (although because of the fixed term nature of the product, the exchange rules govern the entire behaviour and performance of the contract throughout its life rather than being solely an initial listing function).*
2. *The exposures accumulated through the combination of several exchange-traded derivatives are known as ‘open interest’ in that particular product. This open interest will be renewed through the creation of fresh contracts, or wound down as the existing contracts expire, as the user chooses.*
3. *At the CCP which provides clearing for the derivatives exchange where the open interest accumulates, the open interest can be terminated through buying or selling the products exactly mirroring the profile of the open position. In order for the position to be truly terminated (in other words, for there to be no residual exposure) the corresponding derivative contract must be capable of full economic substitution and be on identical terms, so that the CCP may ‘net’ one against the other with complete overlap and zero exposure remaining.*
4. *It follows that, for exchange-traded derivatives it is not possible for the CCP to net any derivatives other than those that exist under the same rules for the life of that derivative. A CCP cannot agree to net derivatives which are anything less than 100% identical or it would assume the exposure arising from the difference between the contracts.*

***Diverging values of exchange-traded derivatives***

1. *A number of routine situations can occur that cause the value of apparently identical exchange-traded derivatives to diverge, as set out below:*
2. *the most obvious case is an event affecting the underlying index, asset or reference, which forces the regulated market trading the derivative to clarify for its own market how that event will affect the derivative linked to that underlying index, asset or reference. For example, when there were thefts of emissions permits from registries in early 2011, some derivatives exchanges and trading venues allowed previously ‘stolen’ permits still circulating in the emissions markets to be delivered legitimately at expiry of a derivatives position consistent with EU policies at the time. Other derivatives exchanges published lists of permits which they deemed unacceptable for delivery. Netting exchange-traded derivatives which are traded on different derivatives exchanges is incompatible with this scenario, as the open interest in the CCP from one derivatives exchange would be indistinguishable from that of another, yet different treatment of the derivative by the regulated market of origin might give rise to pricing anomalies which would cause the CCP to bear that risk;*
3. *like other derivatives exchanges, Euronext regularly updates the specification of its contracts to keep pace with market developments. A counterparty’s open interest in a CCP derives from a mixture of exposures over a variety of time horizons, with a constant or gradually shifting profile depending on trading activity and the remaining time to expiry of positions. It is critical that this open interest be truly consistent over the whole of its life. Any event affecting the underlying interest which could open up a variation in value between the derivatives being netted at the CCP would expose the CCP to that residual risk.*

***The obligation of regulated markets to continually fulfil their regulatory obligations under MiFID cannot be jeopardised***

1. *Article 47(1)(d) of MiFID II requires regulated markets to have transparent and non-discretionary rules and procedures that provide for fair and orderly trading. Article 47(1)(e) of MiFID requires regulated markets to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under their systems. Among other tools, regulated markets may make use of delivery procedures under exchange rules to this end. These procedures are distinguished from position limits and position management pursuant to Article 57 of MiFID II, which apply only to commodity derivatives. Delivery procedures may be used by regulated markets to ensure an orderly relationship between the derivative contract and the underlying market especially regarding the settlement conditions at the time of expiry of the derivative.*
2. *In order to ensure the ongoing integrity of markets provided by market operators, MiFID rules applying to regulated markets must be observed at all times. Non-discriminatory access provisions in MiFIR must be implemented by derivatives exchanges in a manner consistent with the legal and regulatory obligations of regulated markets. Cross-market netting of exchange-traded derivatives would threaten the ability of both the incoming derivatives exchange and the existing derivatives exchange connected to the CCP to ensure fair and orderly trading over the full life of the contract until expiry. Neither exchange would know what open interest was derived from the trading originating on its platform – and as a result would not be able to comply with Articles 47(1)(d) and (e) of MiFID II.*

***Other routine situations in which cross-exchange netting is not feasible***

1. *It is also possible that changes may occur to an equity which is the underlying of a derivative, especially a single stock option or future. For example, on the insolvency of Northern Rock, organisations which had admitted to trading or otherwise created derivatives on that equity were forced to decide how the derivative would be treated. In such situations, different organisations may take different views, as was the case for the emissions permits. Some settled the contract upon the insolvency of Northern Rock. In contrast, LIFFE suspended settlement until the end of the recent litigation on valuation. This has an impact on the pricing of the derivative. Netting in that environment would have given rise to unquantifiable risk to the CCP.*

<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>

A CCP may only offer portfolio margining where there is a significant and reliable correlation or equivalent statistical parameter of dependence with the price risk of other instruments according to Article 27 of Commission Delegated Regulation 153/2013,

Portfolio margining should only be offered by a CCP when not detrimental to its obligations under EMIR and its portfolio margining model.

When a CCP offers cross-margining services within a portfolio of contracts offered by a trading venue, the CCP should provide equivalent cross-margining across similar portfolios of contracts offered on other trading venues provided that:

1. cross-margining of such contracts would be consistent with the CCP’s obligations under Article 41 of EMIR and Chapter VI of Commission Delegated Regulation 153/2013;
2. collateral in respect of such contracts is not:
3. put in separate collateral pools; or
4. covered by separate default funds pursuant to Article 41(4) of EMIR.
5. in the case of exchange traded derivative contracts, it must have obtained the consent of each relevant Existing Venue;

<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>

Euronext agrees with these considerations, and would add an additional one. As outlined in our responses to other questions (questions 383-5, 392, 397, 402 and 404-405), we believe that in certain circumstances non-discriminatory access could result in increased risks to trading venues or OTC platforms to which a CCP is connected by close links or to which a CCP provides clearing services on the date of the access request by the applicant trading venue and CCPs to which a trading venue is connected by close links or from which a trading venue receives clearing services on the date of the access request by the applicant CCP (“Existing CCPs”) (together “Existing Providers”), and the inability of Existing Providers to meet their regulatory requirements under MiFID II. For these reasons, Existing Providers should very much be included within the scope of organisations which national competent authorities should consider in determining whether access should be denied.

<ESMA\_QUESTION\_404>

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

<ESMA\_QUESTION\_405>

Where national competent authorities are believes or are aware that a trading venue (including trading venues or OTC platforms to which a CCP is connected by close links or to which a CCP provides clearing services on the date of the access request by the applicant trading venue or CCPs to which a trading venue is connected by close links or from which a trading venue receives clearing services on the date of the access request by the applicant CCP) is unlikely to meet its legal or regulatory requirements as a consequence of granting access, then the access request should be denied by the national competent authorities.

<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>

Euronext is of the opinion that there are a number of ways in which non-discriminatory access may very well threaten the smooth and orderly functioning of the markets and adversely affect systemic risk. It is not possible to specify in a comprehensive manner the full range of such circumstances and conditions in advance. As such, we do not consider that these conditions should be specified in further detail at this stage, as it is important that national competent authorities have the discretion to determine when granting access would threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, taking into account the particular circumstances.

<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>

No, we do not agree. The current framing of what information is to be disseminated is too broadly formulated. As a principle, it should be recognised that the usage of data should be proportionate to the product traded or cleared. Referencing ‘a feed of the benchmark values’ is too broad. It should be clearly defined for which products the Trading Venue requires relevant information and which tailored information can be disseminated by the Benchmark Administrator.

Additionally, as is current practice, users of the Trading Venue derive a financial benefit from the data and therefore should be required to acquire a usage license from the Benchmark Administrator. Distribution to users of the Trading Venue would require a redistribution license and fees accordingly. Access to such feeds should paid by the Trading Venue.

<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>

No there is not. We do have some remarks regarding the combination of both feeds. In order to clearly separate between price and data feeds, it is important to understand that access to price and data feeds are determined on separate license and usage contracts.

In this section we are discussing access to benchmark pricing only. The general market data feeds are separate from both the specific benchmark data feeds and trademark contract (benchmark license) and are provided by market data providers, not necessarily the same as the benchmark administrator. This general market data feed should therefore be out of scope of this section.

<ESMA\_QUESTION\_412>

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

<ESMA\_QUESTION\_413>

No, we do not agree. The current framing of what information is to be disseminated is too broadly formulated. As a principle, it should be recognised that the usage of data should be proportionate to the product traded or cleared. Referencing ‘a feed of the benchmark values’ is too broad. It should be clearly defined for which products the CCP requires relevant information and which tailored information can be disseminated.

Additionally, users of the CCP and potentially the CCP itself derive a financial benefit from the data and therefore should be required to acquire a usage license from the Benchmark Administrator. Distribution to users of the CCP would require a redistribution license and fees accordingly. Access to such feeds should be paid by the CCP.

<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>

No there is not. We do have some remarks regarding the combination of both feeds. In order to clearly separate between price and data feeds, access to price and data feeds are determined on separate license and usage contracts.

In this section we are discussing access to pricing. The data feeds are separate from the trademark contract and are provided by market data providers, not necessarily the same as the benchmark administrator. This market data feed should therefore be out of scope of this section.

<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>

No, we do not agree. There is no necessity for a real time feed at all times or for all products. It will depend on the commercial offering of the client as well as the elements of the products which are offered. For many purposes delayed data is sufficient. In general a 15 minute delay is acceptable.

<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>

No, we do not agree. There is no necessity for a real time feed at all times or for all products. It will depend on the commercial offering of the client as well as the elements of the products which are offered. For many purposes delayed data is sufficient. In general a 15 minute delay is acceptable.

As determining risk and other CCP activities are not processed on a real-time basis delayed data is generally suitable. If a CCP wants to create additional commercial opportunities by providing risk management services, the commercial benefit should be shared between the CCP and the Benchmark Administrator

<ESMA\_QUESTION\_416>

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

<ESMA\_QUESTION\_417>

We do no fully agree as this needs to be done on a proportionate basis depending on the product traded. Also, where it is suggested that information gets distributed ‘in advance’ we feel it is important to note that the trading venue should not receive any information prior to the general public.

<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>

No

<ESMA\_QUESTION\_418>

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

<ESMA\_QUESTION\_419>

We do no fully agree as this needs to be done on a proportionate basis depending on the product traded. Also, where it is suggested that information gets distributed ‘in advance’ we feel it is important to note that the CCP should not receive any information prior to the general public.

<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>

No

<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>

No we do not agree. To ensure fairness in the marketplace trading venue and CCPs - where required to have component information - should receive the information at the same time as the public .

<ESMA\_QUESTION\_421>

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

<ESMA\_QUESTION\_422>

No we do not fully agree: in principle, where appropriate and following the IOSCO and ESMA guidelines for specific products, the relevant data is already made available publically. There needs to be a proportionate approach to the information required for trading venues and CCPs depending on the products traded or cleared.

<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>

No.

<ESMA\_QUESTION\_423>

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

<ESMA\_QUESTION\_424>

No we do not fully agree: in principle, where appropriate and following the IOSCO and ESMA guidelines for specific products, the relevant data is already made available publically. There needs to be a proportionate approach to the information required for trading venues and CCPs depending on the products traded or cleared.

<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>

No

<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>

Yes. In our view, Confidential and/or proprietary business information in relation to the creation of the benchmark should not be required to be provided to a trading venue or CCP.

<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>

No, we do not agree. None of the relevant information mentioned is actually required to process the trades or run an orderly market. All a trading venue requires is the benchmark level data. All other information would only be necessary for further commercial developments which are not in scope of article 37 of the Regulation.

<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>

No

<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>

In circumstances where the underlying data is property of another party than the benchmark administrator. Also, where underlying data is from regulated data or available from regulated sources in which case the data can be obtained via market data providers.

<ESMA\_QUESTION\_429>

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

<ESMA\_QUESTION\_430>

No, we do not agree. None of the relevant information mentioned is actually required to clear the trades or manage the risk process. All a CCP needs is the benchmark level data. All other information would only be necessary for further commercial developments which are not in scope of article 37 of the Regulation.

<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>

No

<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>

In circumstances where the underlying data is property of another party than the benchmark administrator. Also, where underlying data is from regulated data or available from regulated sources in which case the data can be obtained via market data providers.

<ESMA\_QUESTION\_432>

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

<ESMA\_QUESTION\_433>

No, we do not fully agree.

We have a mixed response. We do not agree that the information referenced under paragraph 33 is required. The CCP or TV have a direct relationship with the feed provider and will receive that information via those channels and should not get it via the benchmark administrator as well unless it is directly subscribed to the benchmark providers’ proprietary feed.

For paragraph 35 it is framed to broadly as “any relevant” information can mean a range of things. In that respect we propose a proportionate approach to the product. It should also be detailed in the contract since the benchmark administrator is not able to assess the information need of each CCP or TV user.

On paragraph 32 and 34 we agree.

<ESMA\_QUESTION\_433>

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

<ESMA\_QUESTION\_434>

No, we do not fully agree.

We have a mixed response. We do not agree that the information referenced under paragraph 33 is required. The CCP or TV have a direct relationship with the feed provider and will receive that information via those channels and should not get it via the benchmark administrator as well unless it is directly subscribed to the benchmark provider’s proprietary feed.

For paragraph 35 it is framed to broadly as “any relevant” information can mean a range of things. In that respect we propose a proportionate approach to the product. It should also be detailed in the contract since the benchmark administrator is not able to assess the information need of each CCP or TV user.

On paragraph 32 and 34 we agree.

<ESMA\_QUESTION\_434>

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

<ESMA\_QUESTION\_435>

No.

<ESMA\_QUESTION\_435>

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

<ESMA\_QUESTION\_436>

No.

<ESMA\_QUESTION\_436>

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

<ESMA\_QUESTION\_437>

No, we do not agree. Based on the Regulation, data is solely provided for the purposes of trading by the Trading Venue or clearing by the CCP. This cannot lead to redistribution to other market users/parties/agencies unless written permission is granted from licensor and relevant license fees are paid.

To do otherwise, would either result in a discrimination of the users of the provider of the data, who have to pay for data, while users of third party system do not have to pay, or information as a general rule would need to be free of charge. In the latter case there would be no incentive for the originator to maintain any costly market data distribution infrastructure.

<ESMA\_QUESTION\_437>

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

<ESMA\_QUESTION\_438>

No, they should receive the same information as the rest of the market at the same time in order to safeguard market integrity.

<ESMA\_QUESTION\_438>

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

<ESMA\_QUESTION\_439>

No, they should receive the same information as the rest of the market at the same time in order to safeguard market integrity.

<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>

No, they should receive the same information as the rest of the market at the same time in order to safeguard market integrity.

<ESMA\_QUESTION\_440>

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

<ESMA\_QUESTION\_441>

No, we do not fully agree. These recommendations should be tailored to the proportionate needs of the licensee and the possibilities of the licensor. Requiring to have all procedure incorporated in the agreements, could prove too burdensome. We would argue that flexibility and proportionality needs to be maintained.

We urge ESMA to allow for deviation and a tailored approach where appropriate.

<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>

Yes. IP rights and ownership should be recognized by the users of the data and by the licensees.

<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>

We do not feel any other conditions are needed but instead we feel that the recommendations made should be tailored to the proportionate needs of the licensee and the possibilities of the licensor. Requiring to have all procedure incorporated in the agreements, could prove too burdensome. We would argue that flexibility and proportionality needs to be maintained.

We urge ESMA to allow for deviation and a tailored approach where appropriate.

<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>

This should be tailored in the agreements as is current practice and should be proportionate to the specific use.

<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>

Yes, we agree.

<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>

Yes, we agree.

<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>

Euronext believes that these conditions are reasonable and appropriate. Euronext considers that the implementing provisions adopted in the MiFID I Level 2 Regulation work in a satisfactory manner. There is no necessity to amend or update.

<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>

Euronext believes that these requirements have worked satisfactorily and we are not aware of any regulatory failures or issues that need to be addressed. In particular, we believe it is very important to retain the reference in Art 35(5) of MiFID I that states a transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

<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>

Euronext does not see a need to amend these requirements set out in the existing regime.

<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>

Euronext is of the view that these conditions are reasonable and appropriate. We believe these requirements have worked satisfactorily and we are not aware of any regulatory failures or issues within the existing regime that need to be addressed. In particular, we believe it is very important to retain the reference in Art 35(5) of MiFID I that states a transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

<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>

Euronext agrees it should encompass information relating to the PD, TD and MAD as the relevant provisions are issuer-focused. However, we do not think it is appropriate to include the MiFIR trade transparency obligations in this section as these are separate requirements and are not obligations relevant to the issuer so it would not make sense to include in this section.

<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>

Yes, Euronext agrees with the proposal set out in the Discussion Paper.

<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>

No, Euronext does not agree with the proposal set out in the Discussion Paper.

<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>

Yes, Euronext agrees with this proposal and fully support s ESMA’s project to develop a centralised multilateral functionality – SARIS as this should provide a very efficient centralised data system which will benefit the European market as a whole.

<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>

Yes, Euronext agrees with ESMA’s proposal. The purpose of Article 10(4)(a) of EMIR is to identify a non-financial counterparty’s positions which are “*objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty*”. Such positions are disregarded for the purposes of calculating whether the non-financial counterparty’s overall position in OTC derivatives exceeds the EMIR clearing threshold. This is analogous to the process under MIFID II whereby position limits in respect of commodity derivatives shall be dis-applied to the positions of a non-financial entity which are “objectively measurable as reducing risks related to that entity’s commercial activity”.

<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>

No. Since the concept of “*non-financial entity*” is not defined in MIFID II, it seems that ESMA is considering using the definition of “*non-financial counterparty*” which is set out in Article 2(9) of EMIR. That definition states that a non-financial counterparty is any “*undertaking established in the Union other than [a CCP or an entity which is authorised under EU law]*”. However, that definition may be useless with commodity markets, many of which have active participants which are located across the globe. For example, a strict application of the definition would suggest that an investment firm or bank located in a third country would be treated as a “*non-financial entity*” rather than a financial entity.

<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>

The position limits regime should be as objective and consistent as possible. Euronext thus believes that the methodology for aggregating positions , when one company has an ownership interest in another, should be based on a discrete percentage threshold which is used as a proxy for “control”. The threshold could be set at 50%. Where the threshold is met, the totality of the position of the controlled entity should be added to the position of the controlling entity for the purposes of calculating the overall net position.

<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>

Euronext agrees. If the position limits regime did not apply to unconnected persons acting in concert, this would constitute a real loophole.

<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>

Euronext does not deem feasible to have a common approach to “*economic equivalence*” throughout MIFID II and MIFIR. The concept of “*economic equivalence*” for the purposes of operating a position limit regime is indeed quite different from “*economic equivalence*” for other MIFID II/MIFIR purposes (non-discriminatory access to CCPs and trading venues).

E*conomic equivalence*” in this context seeks to identify an entity’s overall influence on the demand and supply conditions in a particular commodity sector by calculating its net position, whilst recognising that the component contracts of that entity’s position are not necessarily legally identical. Such contracts would remain open and would not extinguish one another, notwithstanding the fact that they may offset one another in economic terms. However, in the second context – where the objective is for “*economically equivalent*” contracts to be legally netted (i.e. when opening a new position in one contract would extinguish an equal and opposite position in another contract) - such contracts must be legally identical, otherwise, an existing financial exposure could be extinguished (not merely offset) by a contract which was similar to it but not the same. As a consequence, the concept of “*economic equivalence*” is necessarily broader in the context of position limits than it is in relation to non-discriminatory access. Therefore, instead of using the First Approach cited in the Discussion Paper (paragraph 29, page 411), we recommend ESMA to apply the Second Approach (paragraph 31, page 411).

<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>

No. Euronext disagrees with the First Approach for the reasons stated in the answer to Question 495.

<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>

Euronext is of opinion that it is appropriate. The CFTC’s definition of contracts which are economically equivalent to a “*Core Referenced Futures Contract*” is designed to identify an entity’s overall influence on the demand and supply conditions in a particular commodity sector, whilst recognising that the component contracts of that entity’s position are not necessarily legally identical. Clear benefits could emerge in the EU and US in the case of the application of a consistent definition of “*economically equivalent*” for the purposes of operating their position limits regimes.

<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>

The proposed CFTC regime is designed to target those futures contracts and their “*economic equivalents*” whose values are used extensively in the broader economy in order to establish prices paid by retail and wholesale consumers, producers and processors of the commodities in question. In contrast, the EU regime seeks to be comprehensive, i.e. it covers core and non-core contracts alike. Euronext believes that ESMA should carefully consider how the regime can be implemented in practice. For instance, it would be preferable to adopt a phased implementation approach, whereby the position limit regime is applied initially to a set of core contracts only. This would make the task facing the NCAs more manageable, including as it relates to identifying which OTC contracts are considered to be economically equivalent to contracts which are admitted to trading on a trading venue.

<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>

As explained in the answer to Question 495, derivatives contracts traded on different trading venues may contain similar economic terms, but those contracts are not legally identical. As such, a certain prudence is required when using the term “*same derivatives contract*”. The purpose of the is to manage a situation whereby a single position limit needs to be set in relation to the trading of commodity derivatives at competing trading venues. Where trading venues have admitted competing commodity derivatives to trading, a single position limit should be set provided the competing exchange-traded derivatives meet the tests contained in the “Second Approach”, which are set out in paragraph 31, pages 411-412 of the Discussion Paper).

<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>

The framework established by ESMA should be designed in order to identify an entity’s overall influence on the demand and supply conditions in a particular commodity. The idea is indeed to prevent such influence reaching a level at which it causes either pricing distortions or frustration of the settlement process. This would suggest that NCAs should take into account all related positions, whether they are held in the form of exchange-traded futures or options contracts, similar OTC contracts or in the physical commodity underlying such contracts. For the purposes of calculating an aggregate or net position, the positions should be converted on a delta-adjusted futures basis. As the Discussion Paper acknowledges there are some practical constraints to achieving the most efficacious outcome. However, at the very least the position limit regime should capture physical inventory where it is held as certified stock within a warehouse or storage facility which is subject to the rules of an EU trading venue. This is because, for instance, any entity holding a large long position in a maturing physical-delivery futures contract whilst simultaneously owning the majority of the certified stock would cause serious orderly market concerns which the position limit regime should address.

<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>

As per physically settled contracts, Euronext believes that it is more appropriate to base position limits on deliverable supply than on open interest because it is undue influence and control over deliverable supply, coupled with holding a significant futures position, which can give rise to a disorderly market. In contrast, holding a significant proportion of open interest in the futures contract in isolation does not raise these issues, unless the position is significant compared with the deliverable supply of the underlying commodity. As delivery obligations crystallise, “*deliverable supply*” should be construed as the amount of stock which is available to satisfy delivery obligations in the maturing contract month.

Euronext proposes that “deliverable supply” in relation to a contract which has a year until maturity should be construed as the annual production or consumption of that commodity (based on statistics for the most recent year’s production/consumption). This is because such a figure would measure the amount of the physical commodity which would be produced prior to maturity of the derivatives contract concerned (and therefore which would potentially be available to satisfy future delivery needs). Similarly, “deliverable supply” in relation to a contract which had three years until maturity should be construed as three times the latest annual production/consumption statistics.

<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>

The periodicity of the publication of deliverable supply statistics is the key element when considering the re-calculation of position limits. In practice, statistics in relation to deliverable supply are likely to be produced on a quarterly, annual or seasonal basis, depending on the commodity concerned. As per the spot month, as it approaches maturity, the trading venue should calculate the position limits applicable to that delivery phase by reference to a narrower metric. For months other than the spot delivery month as it approaches maturity, the relevant trading venue should use the most relevant authoritative statistical source available as the basis for the re-calculation of position limits and it should do so when new data are published (quarterly, seasonal or yearly basis).

<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>

In the event that the re-calculation process led to position limits being reduced, the trading venue should be responsible for actively managing the reduction of positions over an appropriate period of time, in order to avoid the process causing disorderly trading conditions. The length of the period required will depend on the extent to which significant reductions in existing positions have to be made.

<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>

Existing positions will need to be brought into line with the re-calculated position limit, albeit the trading venue should be responsible for actively managing any reduction of positions over an appropriate period of time, in order to avoid the process causing disorderly trading conditions.

<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>

Euronext agrees.

<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>

No.

<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>

Euronext agrees. As delivery obligations crystallise, “deliverable supply” should be construed as the amount of stock which is available to satisfy delivery obligations in the maturing contract month. Having determined deliverable supply for the spot month, it would then be necessary to determine how it should be determined for other contract months. Euronext suggests that “*deliverable supply*” in relation to a contract which has a year until maturity should be construed as the annual production or consumption of that commodity (based on statistics for the most recent year’s production/consumption). This is because such a figure would measure the amount of the physical commodity which would be produced prior to maturity of the derivatives contract concerned (and therefore which would potentially be available to satisfy future delivery needs). Similarly, “deliverable supply” in relation to a contract which had three years until maturity should be construed as three times the latest annual production/consumption statistics. Position limits may be broad in relation to contract months which were far from maturity and would become narrower and more restrictive as maturity approached. As such, the level of position limits at different points in the life cycle of a contract month would reflect the extent to which its price was susceptible to manipulation.

<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>

Position limits need to be carefully calibrated as they may well distort demand and supply conditions in the market in question. As such, they should be applied in a manner which ensures that the benefits of their application - i.e. limitations on the scope for deliberate or unintentional market squeezes - outweighs the costs of distortions to supply and demand conditions and the potential resultant damage to the ability of market users to manage price risk in an effective manner. As the pressures which can cause technical or abusive market squeezes typically manifest themselves in the period immediately prior to the maturity of the relevant commodity futures contract, Euronext believes that delivery limits in the spot month as it approaches maturity should be tighter than those in other months. A tight limit on the size of open positions should be imposed during the period when it is most needed, thus during the weeks prior to the maturity of the relevant futures contract and during the delivery process itself.

<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>

Euronext agrees. Trading venues should provide data on the deliverable supply underlying their contracts and should calculate proposed position limits on the basis of such data.

<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>

The framework established by ESMA should be designed in order to identify an entity’s overall influence on the demand and supply conditions in a particular commodity and to prevent such influence reaching a level at which it causes either pricing distortions or frustration of the settlement process. This would suggest that national competent authorities should take into account all related positions, whether they are held in the form of exchange-traded futures or options contracts, similar OTC contracts or in the physical commodity underlying such contracts.

There are some practical constraints to achieving the most efficacious outcome (for example obtaining information concerning positions opened on non-EEA trading venues). Whilst it may prove impractical for the EU regime to take account of such positions, at the very least it should capture physical inventory (either as a component of the position limit or otherwise) where it is held as certified stock within a warehouse or storage facility which is subject to the rules of an EU trading venue. This is because any entity holding a large long position in a maturing physical-delivery futures contract whilst simultaneously owning the majority of the certified stock would cause serious orderly market concerns which the position limit regime should address.

<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>

Care needs to be taken in implementing the position limit regime because if position limits are set at an inappropriate level, they may cause volatility rather than prevent it. Any artificial constraints which are placed upon the normal interaction of supply and demand (such as position limits) may serve to act as a “liquidity rationing” device, which could have the effect of increasing volatility. This has the potential to destabilize the market as regards the equilibrium between various types of participant and should be borne in mind when considering position limits. A balance will therefore need to be struck between the costs and benefits, in public policy terms, of imposing tight or less tight position limits, so as to avoid such negative consequences.

<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>

Information about the number and size of market participants is important in calibrating position limits. Trading venues and NCAs should examine this factor together with the deliverable supply in the underlying commodity and the amount of open interest in the relevant products to determine the anatomy of the market.

<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>

ESMA has identified the key considerations related to the characteristics of the underlying commodity market, i.e. seasonality (some physical commodities such as agricultural produce, and oil in the summer maintenance period, experience seasonal variation in both production and consumption which has an effect on the associated derivative markets), perishability, and transportation considerations between the point of production and point of delivery (e.g. timeframe).

<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>

There should be a difference between mature and immature contracts. The position limit calibrated for a mature contract would need to be relaxed for an immature contract. The relevant factors needed to calibrate position limits would not have become clear. NCAs should be able to allow new contracts a period of establishment during which no position limits would apply. Where existing contract specifications are changed fundamentally, the same should be able to apply during the period of adjustment.

<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>

The key factors are deliverable supply and the length of time to contract maturity. The other factors are ancillary to those factors, as explained in the answers to Questions 507-514.

<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>

No.

<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>

Position limits need to be carefully calibrated because, by their very nature, they may distort demand and supply conditions in the market in question. Their application should happen in a manner which ensures that the benefits of their application (limitations for deliberate or unintentional market squeezes) outweighs the costs of distortions to supply and demand conditions and the potential resultant damage to the ability of market users to manage price risk in an effective manner.

As the pressures which can cause technical or abusive market squeezes typically manifest themselves in the period immediately prior to the maturity of the relevant commodity futures contract, Euronext believes that delivery limits in the spot month as it approaches maturity should be tighter than those in other months. This would have the advantage of avoiding some of the distortion effects which could be caused by the imposition of a tight “all month” position limit regime. In other words, a tight limit on the size of open positions should be imposed during the period when it is most needed, *i.e.* during the weeks prior to the maturity of the relevant futures contract and during the delivery process itself.

<ESMA\_QUESTION\_517>

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

<ESMA\_QUESTION\_518>

As delivery obligations crystallise as the spot month approaches maturity, “deliverable supply” should be construed as the amount of stock which is available to satisfy delivery obligations in the maturing contract month. The manner in which this will need to be gauged will depend upon the nature of the commodity market concerned. Having determined deliverable supply for the spot month, it would then be necessary to determine how it should be determined for other contract months. Euronext suggests that “deliverable supply” in relation to a contract which has a year until maturity should be construed as the annual production or consumption of that commodity (based on statistics for the most recent year’s production/consumption). This is because such a figure would measure the amount of the physical commodity which would be produced prior to maturity of the derivatives contract concerned (and therefore which would potentially be available to satisfy future delivery needs). Similarly, “deliverable supply” in relation to a contract which had three years until maturity should be construed as three times the latest annual production/consumption statistics. Through application of the approach described above, position limits would exhibit a “funnelling” effect, *i.e*. they would be broad in relation to contract months which were far from maturity and would become narrower and more restrictive as maturity approached. As such, the level of position limits at different points in the life cycle of a contract month would reflect the extent to which its price was susceptible to manipulation.

<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>

An exception should only be made if such a benchmark were: (a) subject to significant risk of pricing distortion; and (b) if price limits were the most appropriate tool for addressing such risk.

<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>

Yes, Euronext believes that deliverable supply would be the most appropriate measure on which to base the position limit regime. Trading venues will need to utilise the most relevant authoritative source of data in respect of deliverable supply. The availability and quality of these sources will vary from commodity to commodity. Sometimes authoritative a public statistics or provided by public body would be available, whilst in others it would be a market association or other private sector body. Judgement will also need to be applied by the trading venue in determining whether production, consumption or some other measure is the best proxy for deliverable supply. In addition, the trading venue should be able to judge whether it is more appropriate to base position limits on regional deliverable supply or global deliverable supply for each commodity concerned.

<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>

Euronext does not consider that a more appropriate measure exists.

<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>

Euronext agrees with the proposed methodology, but notes that the factors listed in paragraph 96 of the Discussion Paper should not carry equal weight. Instead, most weight should be ascribed to deliverable supply and maturity as these are the key factors which are relevant to the design of position limits which support orderly pricing and settlement conditions and prevent market abuse. A second category of factors should be given a medium weighting (i.e. number and size of participants, characteristics of the underlying market and new contracts), as they are also relevant to calibrating the application of position limits to the market in question. A third category should be given a low weighting (i.e. open interest and volatility) for the reasons explained below.

Open interest should not be assessed *per se*. Instead, the open interest in a contract should be compared with the deliverable supply of the physical commodity in order to ascertain whether it would be feasible, from a practical perspective, for a market participant to hold a significant proportion of each. Where this is the case, position limits should apply on the basis of deliverable supply. Where it is not the case (e.g. where the open interest in a contract is small relative to deliverable supply and where the ownership of the deliverable supply is diverse), there is no case to apply position limits. Alternatively, position limits for such contracts should be multiplied by a factor which reflects their lack of susceptibility to manipulation.

Volatility is often confused with the pricing distortions which can occur (in commodity markets as a contract approaches maturity). Rather than volatility per se, as it implies that the price of the prompt month is rising and falling sharply during a short space of time, it is more likely that any pricing distortions would be characterised by increases or decreases in price in a clear direction and/or a change in the pricing relationship between the prompt month and the next delivery month. Such distortions may occur as a contract approaches maturity and they would be mitigated by the maturity factor which ESMA describes in paragraph 96(i) of the Discussion Paper, i.e. “the longer the maturity, the higher the limit may be as this gives market participants time to adjust to ensure an orderly meeting of their settlement obligations”. The corollary of that statement is that the position limit should become tighter as a contract approaches maturity in order to mitigate the risk of pricing distortions as delivery obligations begin to crystallise.

<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>

The level of the baseline and the size of the adjustment factors will need to be established on a sector by sector basis. The starting point should be the experience of trading venues in managing the markets in question and the size of position which, historically, have and have not caused orderly markets concerns. This is likely to vary from sector to sector.

<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>

In relation to agricultural products, Euronext does not understand why ESMA states that “*position limits in other months will tend to be lower than or near the limit for the prompt reference contract*” (paragraph 107, page 424 of the Discussion Paper). In fact, the reverse is true, as is recognised in ESMA’s maturity factor (paragraph 96(i) of the Discussion Paper) which provides that “*the longer the maturity, the higher the limit may be as this gives market participants time to adjust to ensure an orderly meeting of their settlement obligations*”.

<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>

The experience of EEA trading venues in managing commodity derivatives markets should be taken into consideration. Also, the size of positions which, historically, have and have not caused orderly markets concerns is also very relevant. This is likely to vary from sector to sector. The only other jurisdiction in which position limits are being developed is the United States. ESMA should take into account the development of the U.S. position limits regime while noting that the differences in its policy objectives, legal and supervisory structures and anatomy of the markets mean that the legal framework should aim to be equivalent on an outcomes-based approach, rather than attempting to replicate the detailed arrangements within the U.S. regime.

<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>

Yes. Position limits should be expressed in a manner which is compatible with market conventions. These may vary from commodity to commodity.

<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>

Yes. This would assume an equal likelihood of the option being exercised or not exercised, irrespective of whether exercising the option would make any sense in view of the prevailing price. The solution is to require exchanges to publish their options deltas.

<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>

Euronext agrees that trading venues should publish their options deltas.

<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>

Yes, the proposed approach is transparent and non-discriminatory. ESMA should ensure publication of the position limits for each commodity by including links on its website to the websites of the relevant NCAs on which the definitive information governing position limits would be displayed. This would ensure that the information displayed by ESMA and the NCAs remained consistent.

<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>

ESMA and NCAs should ensure that there are appropriate lead times and information in respect of the application of new position limits in order to mitigate the risk of a disorderly market being created by the transition to the new regime.

<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>

Euronext agrees. Position limits may potentially be applied in fragmented markets where no single trading venue or exchange has overall visibility of the entire market. Therefore it seems clear that if there is a NCA limit on “*economically equivalent”* contracts, that position reporting should be designed to enable the NCA to monitor activity in order to administer the position limits effectively.

<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>

The definition of a position should be the same for the purposes of position limits as for position reporting, albeit options positions must be treated separately.

<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>

Positions should be netted within months but not across months (a long and a short within the same month should be consolidated to determine an overall position in that month), but this should not be aggregated with positions in other months. If aggregation across months were permitted, this would allow positions with different characters to appear the same for the purposes of position limits. The template for the Commitment of Traders (COT) report in paragraph 49 does not appear to acknowledge the need to report a spread separately, as the CFTC COT reports do.

<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>

Identification of companies should not present any particular difficulties and we would not anticipate that the identification of individuals would prove significantly more difficult.

<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>

The first approach will be extremely unpopular because it will enable everyone in the transaction chain to know who each other’s’ clients are with obvious commercial consequences. This would be a time-consuming option and it would be laborious to decipher a complex client chain. This would exacerbate the possibility of error or delay. Furthermore these approaches ignore the fact that significant business is structured as US business through a US clearing firm connected to an EU entity, which would not be captured fully. The most appropriate model would be where entities report under a code which is decoded by the NCA, analogous to the model operated by the CFTC. This would be a variant of option 2.

It is worth noting that the NCA only needs to be concerned about large positions that might be in danger of breaching position limits and not about every single position. Instead, an NCA merely needs to satisfy itself that it would be able to find out the origin of a position if necessary, since the owner of it is logged and identifiable under a specific code. It does not follow that position reporting always requires instantaneous identification of the position holder. In the case of minor positions, this can happen after the fact without undue impact on the effectiveness of scrutiny.

<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>

Euronext suggests that entities should be allowed to report their positions directly to the NCA, and that they submit via a web portal. This would allow exchanges to ensure that their position management controls are fully in line with the broader position limits administered by NCAs. It would also provide a degree of verification of the reports since it would be harder for an entity to report one position to the venue and a different one to the regulator.

<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>

Common sense suggests that the NCA of the on-exchange market in question should receive the reports, otherwise reporting would be fragmented according to the origin of the participants which, for commodity markets, can present a wide geographical spread. It would also tend to disperse rather than concentrate the position information for analysis purposes, which cannot be a goal of the legislation.

<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>

Euronext agrees as we would like the reporting requirements to become unnecessarily burdensome.

<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>

Exchanges would be prepared to provide reference data relating to the size, value, and other contract features of their own products. They would not be in a position to do so in a useful way for OTC “versions” of their products because of the wide range of variations possible even within the same type of product (eg oil swaps can be based on calendar weeks, half-months, and may have various bespoke features, etc., whereas exchange traded versions are uniform, less varied, and may be difficult to match exactly against an underlying instrument. This type of data may be best obtained from participants.

<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>

For the sake of economy and efficiency, it is worth trying to use existing market infrastructure.

<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>

It may be necessary to require the reporting of options on a delta-equivalent basis for a variety of reasons: as it is how the market has always valued them and because an out of the money option is unlikely to be converted to a position on maturity. An option position expressed on a delta-equivalent basis best expresses the likelihood of the option becoming a position and therefore having an impact. Also, options viewed on a delta-equivalent basis drive hedging strategies and market practice today.

<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>

The draft commitments of traders report template makes no mention of contract maturity or of positions held as spreads. This is relevant because a position concentrated in one month is of a different order to one spread over a whole year. An idea of contract maturity would also provide quite a good indicator of the nature of the business. Furthermore, the NCA might want to look at the absolute position rather than the consolidated net position. For example a person who is long 10 000 lots and short 9 999 lots would be long one lot, and would otherwise be viewed as the same as another person who is long one lot. The first person is of considerably more interest from the point of view of market integrity.

<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>

Please see our answer to questions 544 and 534. Euronext deems that the COT report should include dimensions of spreading and concentration i.e. the percentage of open interest accounted for by the largest positions.

<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>

No, Euronext does not fully agree with ESMA’s proposal for what constitutes a ‘transaction’ and ‘execution of a transaction’ for the purpose of Article 26 of MiFIR. The proposal made by ESMA should be complemented as follows in order to ensure that it truly covers all types of transactions:

* Paragraph 11 (vii) should explicitly include each leg of a riskless principal trade (client-bank and bank-client). Each of these legs should be considered as transactions.

In addition, Euronext believes it central to ensure that this definition of what constitutes a transaction not only applies for the purpose of Article 26 of MiFIR but also for the purpose of MiFIR Article 23.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_547>

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

<ESMA\_QUESTION\_548>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_548>

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

<ESMA\_QUESTION\_549>

TYPE YOUR TEXT HERE

<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>

Euronext welcomes the full harmonisation of reports proposed by ESMA across all EU member states.

<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>

Euronext is concerned that, as they stand, the proposals made in respect to the designation to identify the client and client information and details to be included in transaction reports risk creating an unnecessary and detrimental burden on market participants, including regulators. In particular, French personal data protection law could raise significant issues in respect of all the information prescribed in ESMA’s proposal to be transmitted to and/ or by different parties. Euronext recommends that this information should not be communicated and stored in each transaction report, as it would imply a significant increase in the size of the messages transmitted for this purpose, but rather be stored by investment firms in a durable and readable means in order to ensure that regulators have access to this information when needed.

<ESMA\_QUESTION\_551>

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

<ESMA\_QUESTION\_552>

Euronext is concerned that, as they stand, the proposals made in respect to the determination of the relevant trader risk creating unnecessary and detrimental burden on market participants. Therefore, Euronext recommends that trading firms should be required to maintain records of authorised traders with the necessary identification details. However, these details should not be mentioned in each transaction report.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Euronext does not believe that the proposed approach is appropriate.

Euronext believes that the approach should include further details specifying the exact format to be used for the identification of the algo (number of characters) and defining the maximal size of this ID. Otherwise, there is a risk that market participants will develop different format, preventing reporting actors (for instance venues) from transmitting harmonised data for the purpose of reporting requirements, which will also be detrimental to the usability of these reports by regulators.

<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>

No, Euronext does not foresee any problem with identifying the specific waiver under which the trade took place in transaction reports. On the contrary, this information should automatically be included in transaction reports. In addition, Euronext recommends including a similar level of details for trades carried out in the OTC space for which transaction reports should include flags indicating the type of transactions (for each of the transactions defined under MIFIR Article 23 for the purpose of setting exemptions to the trading mandate).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_558>

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

<ESMA\_QUESTION\_559>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_563>

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

<ESMA\_QUESTION\_564>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_564>

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

<ESMA\_QUESTION\_565>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_565>

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

<ESMA\_QUESTION\_566>

TYPE YOUR TEXT HERE

<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>

Euronext believes that format harmonisation is key, and that ESMA should not only prescribe the electronic format, but also details about the fields to be reported and the maximum length of each of the fields, as well as the standards if any (such as ISO). In addition, Euronext believes it crucial for ESMA to focus on timestamps definition, in order to ensure that the granularity of those is the same for all reporting agents.

<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>

No, we do not see foresee any issues. Data can be provided on reasonable commercial basis.

<ESMA\_QUESTION\_568>

##### Do you anticipate any difficulties in providing, at least daily, a full file containing all the financial instruments?

<ESMA\_QUESTION\_569>

No, we do not see foresee any issues. Data can be provided on reasonable commercial basis.

<ESMA\_QUESTION\_569>

##### Do you anticipate any difficulties in providing a combination of delta files and full files?

<ESMA\_QUESTION\_570>

No, we do not see foresee any issues. Data can be provided on reasonable commercial basis.

<ESMA\_QUESTION\_570>

##### Do you anticipate any difficulties in providing details of financial instruments twice per day?

<ESMA\_QUESTION\_571>

Data can be provided on reasonable commercial basis. Euronext already does this at a start of day via datafeeds and then an end of day e mail / FTP service for the cash markets and start of day as well as intra-day for derivatives to reflect immediately any addition of strikes on a real time basis. Specific market notices are also disseminated throughout the day to notify external parties on an upcoming admission to listing / trading or a Corporate Action with an effective date for at minimum the next business day. Going beyond this would have a non-marginal impact on the way Operations and Referential applications are currently structured. We also think that this would create complexity for brokers, custodians and other ISP in terms of how they would need to integrate additional batch of static information / data.

<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>

In terms of new instruments admitted to listing / trading or for events affecting a given existing instrument, the main constraint to be considered for the timing of inclusion in the static data is the dependency on a possible regulatory stamp / non objection (visa on the prospectus, final terms of an issuance, right issue etc).

<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>

In general yes, however we have the following specific comments. In respect of equities & bonds, the inclusion of the LEI would require some coordination with the parties involved in the transaction / issuance process to make sure they can provide the LEI of the relevant parties. For futures & options, as the issuer is the stock exchange, we question the added value of having the LEI included. Some of the contract specifications might also be useful, for example exercise type (European versus American), settlement method (physical versus cash). Euronext currently disseminate much more detailed information : strikes for all call / put, various expiries, types of orders / strategies available etc.

<ESMA\_QUESTION\_573>

##### Are you aware of any available industry classification standards you would consider appropriate?

<ESMA\_QUESTION\_574>

No. Euronext currently uses the CFI. It might be better to refine the current CFI classification to make to better reflect the variety of instrument types.

<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>

Euronext currently provides some reference data related to indices which covers the following information:

* Name
* ISIN code
* Location
* Index type (blue chip, Size, dividend, strategy, sector, theme)
* Number of components
* Constituents
* Number of shares
* Weight of every constituent
* Level
* Corporate Actions affecting the index

<ESMA\_QUESTION\_575>

##### Do you agree with ESMA’s intention to maintain the current RCA determination rules?

<ESMA\_QUESTION\_576>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_577>

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_578>

##### In your view, what are the data elements that cannot be harmonised? Please elaborate.

<ESMA\_QUESTION\_579>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_580>

##### Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA\_QUESTION\_581>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_585>

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

<ESMA\_QUESTION\_586>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_586>

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

<ESMA\_QUESTION\_587>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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)[[4]](#footnote-5)

##### 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_602>

##### Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA\_QUESTION\_603>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_614>

##### In your view, how should it compare with current practice?

<ESMA\_QUESTION\_615>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_615>

1. Link: http://fese.eu/en/?inc=page&id=79 [↑](#footnote-ref-2)
2. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-3)
3. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-4)
4. 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-5)