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| 22 May 2014 |

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

Responding to this paper

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

***Instructions***

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

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

Responses are most helpful:

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

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

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

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

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

***Publication of responses***

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

***Data protection***

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

Overview

Investor protection

Authorisation of investment firms

##### Do you agree that the existing work/standards set out in points 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>

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<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>

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<ESMA\_QUESTION\_4>

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

<ESMA\_QUESTION\_5>

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<ESMA\_QUESTION\_5>

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

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

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

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

<ESMA\_QUESTION\_7>

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<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>

No, WMBA does not agree. The requirement to publish the data should not apply to either OTFs nor to ‘hybrid MTFs’.

'Best Execution' needs to be assessed in the context of the trading venue in question, and 'Best Execution' obligations need to be contingent upon sufficient addressable liquidity.

It is difficult for WMBA to envisage how any retail derived 'Best Execution' requirement could meaningfully apply in discretionary trading environments, such as OTFs. As MiFID Level 1 expressly allows voice and RFQ systems to operate under an OTF authorisation, any execution policy requirement needs to be proportionately applied to avoid making these venues unable to operate under the technical standards.

Rather, we would prescribe a proportional approach for venues without retail participation where participants classified as 'Professional Clients' are able to positively waive their ‘Best Execution' obligations as is currently the market practice due to the notion of multiple venues acting in an open access and competitive environment. Clients need to be encouraged and offered to "shop around" [note the reference below and reference MiFID 1 clause].

We would also emphasise the non-retail participation on OTFs (Level 1 Art 27) which disburses the conduct of business requirements to elevate an execution policy to an evidencing of “Best Execution" which would otherwise ensure retail clients who are unable or ill prepared to "shop around" receive adequate investor protections.

Further, since OTFs are unable to link into other OTFs to compare liquidity and/or order stacks, than a real time fungible order stack is not possible, rather we note the provisions in the opinions of the Commission and of CESR in respect of MiFID1 in 2007.

["Best Execution under MiFID Questions and Answers: page 22; ‘Commission answers to CESR scope issues under MiFID and the implementing directive’. (Working Document ESC-07-2007)] http://www.esma.europa.eu/system/files/07\_320.pdf]:

"*Questions of market practice will help to determine whether it is legitimate for clients to rely on the firm. For example, in the Wholesale OTC derivatives and bond markets buyers conventionally 'shop around' by approaching several dealers for a quote, and in these circumstances there is no expectation between the parties that the dealer chosen by the client will owe best execution*."

***In regards of Post trade Risk-Reduction and Compression Services***

According to Article 31 of MiFIR, an investment firm, when providing portfolio compression, is not classified as a trading venue and is also not subject to any best execution requirements.

Post trade risk reduction services, which reduce non-market risks in derivatives portfolios including existing OTC derivatives portfolios in accordance with Regulation (EU) No 648/2012, without changing the market risk of the portfolios (see recital 27 of MiFIR), of which portfolio compression is one kind, are characterised by:

1. being designed to be overall market risk neutral for each participant;
2. the participants not submitting bids and offers to enter into a specific position – instead the post trade risk reduction service provider will have applied an optimisation algorithm to two or more existing transaction portfolios (or subsets of portfolios) as submitted by the participants, and come up with an optimised solution to reduce post trade risk by injection of risk-reducing offsetting component transactions in the portfolios;
3. consisting of more than a few component transactions (typically thousands component transactions);
4. being cycle-based and must be accepted in full by all participants or it will not be executed (i.e. it will lapse and be rendered null and void); and
5. being designed to reduce secondary risks emerging from existing derivatives transactions, such as counterparty credit risk, operational risk, basis risk and/or systemic risk.

The fact that a post trade risk reduction service, which meets the above criteria:

1. is designed to be overall market risk neutral for each participant;
2. can never include bids or offers to enter into a specific position;
3. is based on the post trade risk reduction service provider applying an optimisation algorithm to participants’ existing transaction portfolios, resulting in an optimised solution to reduce post trade risk in the portfolios; and
4. means that post trade risk reduction services, like portfolio compression, do not constitute trading in any ordinary sense, nor can any best execution requirements be applied to them.

Post trade risk reduction services asks that ESMA clarifies, with reference to Article 31 of MiFIR, that no requirements of publication of data related to the quality of execution by trading venues shall be applicable for investment firms when providing portfolio compression.

Post trade risk reduction services further asks that ESMA clarifies that no requirements of publication of data related to the quality of execution by trading venues shall be applicable for investment firms when providing other post trade risk reduction services.

<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>

WMBA agrees with ESMA and believes that the different types of venues should not publish exactly the same data. However, venues offering the same and competitive services need to be equivalent and supervised on the same basis. See question 8. Note non-retail (Level 1 Art 27).

<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>

As noted in our response to Q8, WMBA does not believe that publication should be required by either OTFs nor to ‘hybrid MTFs’. In addition, where there is a publication requirement this obligation should be limited to liquid instruments.

Best execution needs to be assessed in the context of the trading venue in question. It is difficult to envisage how any best execution requirement could meaningfully apply in discretionary trading environments, such as OTFs. As Level 1 expressly allows voice and RFQ systems to operate under an OTF licence, any best execution requirement need to be proportionately applied to avoid making these venues unable to operate under the technical standards. Liquidity is also dependent upon the presence of market maker schemes.

Best execution needs to be read in conjunction with other technical standards. To the extent that illiquid instruments have no pre-trade transparency obligations, it is difficult to envisage how meaningful best execution could take place in those circumstances. Equally, any instruments where a certain percentage of trades within a venue are subject to pre-trade transparency waivers should be relieved from best execution requirements.

In relation to other venues, WMBA does not believe that data publication should apply to every financial instrument traded on an execution venue. An element of proportionality needs to be applied based upon the liquidity of the instrument. WMBA believes that any liquidity threshold ought to be an absolute number calculated in accordance with the principles determined in Section 3.6 below. To use a percentage method could lead to the exclusion of liquid instruments from the report.

<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>

WMBA affirms that annual publication where required is sufficient. This should only be relevant to venues where it applies from our answer to Question 8 above. Note that monthly costs would be an order of magnitude greater (and indeed we understand that validation and review processes could multiply this). <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>

WMBA notes that until more detail is provided as to how operators should comply with the requirements, we cannot provide a cost figure for the required build. For the avoidance of doubt, for the operation of ‘hybrid’ markets and in non-equities, we do not think these terms will be applicable nor transferable to non-equities.

WMBA does however caveat that the methodologies recommended will not produce the designated outcomes in a multiple venue and competitive marketplace; therefore, these costs are unable to be assessed and factored into commissions charged.

(*We note that a 'multiple venue and competitive marketplace' here is one with open access, non-large incumbent liquidity pool and an absence of intellectual property rights on the underlying product*).

<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>

No, WMBA does not agree. As set out in the answer to question 8, this recommendation likely derives from a cash equity template and is not applicable to ‘hybrid’, non-retail and non-equity markets.

<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>

No, WMBA disagrees with the ESMA proposal.

As set out in the answer to question 8, this is not remotely applicable to ‘hybrid’, non-retail and non-equity markets.

This can only apply to a single CLOB market place where 'shopping around' is not available to non-retail counterparties. Even in this situation, the provision of orders to a venue may be algorithmic or HFT and have little underlying relevance to liquidity, the discovery of price or the discovery of volumes.

Rather, wholesale venues compete on a wide ranging customer service package centred on the search for liquidity and of suitable counterparty volumes. Therefore, volumes transacted on those venues by non-retail clients is the better indicator of execution quality as opposed to that of orders received, or reflect the use of discretion.

WMBA further notes that the entire level two [2] process lacks an operational definition of 'an order to trade' which we understand to be close to, "addressable electronic liquidity offered in standard products on an electronic CLOB". OTF and MTFs tend to operate in different ways including randomising the order stack and acting as a search tool for liquidity which may be either contingent or contained within balance sheets.

Further work needs to be carried out in defining what is meant by an “order”. OTFs will typically receive orders to trade which are never made visible to the market as they may be submitted by telephone or electronic messenger or as hidden volume. From a practical and operational perspective, it would be disproportionately difficult to try to collate this type of information as it cannot be done so automatically and may be amended throughout the trading day.

Further guidance is also required in relation to the calculation of executed trades which needs to be applied consistently. For example, should sleeved trades count as one or two trades? Likewise with spread trades. Depending upon the methodology used, a simple spread could comprise up to three separate trades (i.e. the original headline spread and the two subsequent legs). Clarity is also required on cleared OTC trades (Exchange for Related Positions “EFRPs”) and whether these constitute two underlying and offsetting OTC trades and a futures position. There is currently not a consistent approach applied by different exchanges and this issue needs to be resolved for all transaction reporting requirements.

<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>

No, WMBA does not agree that this is a feasible approach. Nor is it particularly desirable since it would produce a further set of meaningless data at significant cost.

Best execution needs to be read in conjunction with other technical standards. To the extent that illiquid instruments have no pre-trade transparency obligations, it is difficult to envisage how meaningful best execution could take place in those circumstances.

Equally, any instruments where a certain percentage of trades within a venue are subject to pre-trade transparency waivers should be relieved from best execution requirements.

<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>

Where this may apply to non-CLOB multiple venue markets, then WMBA would concur that the answer is yes.

Estimation of costs of production and publication is highly dependent on the data requirements, formats, details and availability.

Useful data sets would need to take into account how the data is to be defined, what format data will have to take, the more granular the data, the greater the technology build, and implementation will have to allow necessary and robust testing of the technology and the data itself. Costs are also likely to be front end loaded, with the consequence of reducing choice and competition in venues.

<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>

As per answers 8-16, WMBA do not agree that this is appropriate to non-retail, ‘hybrid’ and multiple competing venue markets.

<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>

WMBA would disagree. Not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 – 16.

<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>

WMBA would disagree. Not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16

<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>

WMBA would disagree. Not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

In any event, there may be any number of reasons why an order does not trade which have no reflection on the quality of the execution venue. It may instead be a reflection of the market on any particular day which can be driven by numerous variables outside the control of the trading venue. Metrics such as likelihood or speed of execution, are therefore not likely to be reflective of the quality of an execution venue but more the state of the market at any particular time.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

Any reporting obligation would lead to additional costs and a requirement for additional resources. The extent of such additional requirements would depend upon the complexity and format of the data required and the extent to which it is possible to automate the process of data collection. WMBA is acutely aware of the overriding desire to reduce trading costs yet it appears that an initiative such as this will only serve to increase costs with no guarantee of providing meaningful information at the end of the process. Trading venues will need to absorb all the additional costs imposed upon them by MiFID and MiFIR and it is likely that at least an element of these costs will have to be passed onto market participants.

<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>

WMBA reminds that this is not applicable to non-retail, ‘hybrid’ and multiple competing venue markets. See answers in question 8 - 16. We note that most orders are contingent IOIs in voice-hybrid markets.

<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>

WMBA would disagree. As venue operators, particularly given the non-retail participation, these questions are not relevant to wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity market venues as multilateral MTFs and OTFs.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets. Further, in this section ESMA talks about "*Market Orders*," but this seems inconsistent with then saying in section 8.3 that Market Orders are a form of limit order (Q 588).

WMBA also considers that the idea that 'market orders' are a form of *'limit orders'* is nonsensical - for buy orders the limit could be zero but for selling orders it would have to be infinity and for spreads, packaged-trades and basis-trades then it could be positive or negative!

Therefore, WMBA underlines that it would simply be better to have market order as a separate type.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<ESMA\_QUESTION\_34>

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

<ESMA\_QUESTION\_35>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not applicable for wholesale non-equity markets.

<ESMA\_QUESTION\_42>

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

<ESMA\_QUESTION\_43>

WMBA considers this is not applicable for wholesale non-equity markets.

<ESMA\_QUESTION\_43>

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

<ESMA\_QUESTION\_44>

WMBA considers this is not applicable for wholesale non-equity markets.

<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>

WMBA considers this is not relevant for members operating venues in wholesale non-equity markets.

<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>

WMBA considers this is not relevant for members operating venues in wholesale non-equity markets. <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>

WMBA considers this is not relevant for members operating venues in wholesale non-equity markets. <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>

As venue operators, particularly given the non-retail participation, these questions are not relevant to WMBA members.

<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>

As venue operators, particularly given the non-retail participation, these questions are not relevant to WMBA members.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_52>

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

<ESMA\_QUESTION\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_53>

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

<ESMA\_QUESTION\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_54>

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

<ESMA\_QUESTION\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_55>

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

<ESMA\_QUESTION\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_56>

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

<ESMA\_QUESTION\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_57>

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

<ESMA\_QUESTION\_58>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_65>

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

<ESMA\_QUESTION\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_66>

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

<ESMA\_QUESTION\_67>

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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_68>

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

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

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

<ESMA\_QUESTION\_70>

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_76>

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

<ESMA\_QUESTION\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_77>

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

<ESMA\_QUESTION\_78>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_81>

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

<ESMA\_QUESTION\_82>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_86>

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

<ESMA\_QUESTION\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_87>

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

<ESMA\_QUESTION\_88>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

No, WMBA understands that a more useful definition of derivatives needs to be developed and adopted beyond the dependency upon venue where it is transacted.

<ESMA\_QUESTION\_100>

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

<ESMA\_QUESTION\_101>

No, WMBA would recommend that ESMA consider the cost-benefit of requiring investment firms which operate a trading venue for assuming such responsibility. In particular, we would draw ESMA's attention to the following important considerations:

1. Requiring investment firms’ operating trading venues to assume such responsibility carries the risk of creating inconsistencies in categorisation in the market across trading venues. We recommend the implementation of a feedback mechanism whereby national competent authorities can alert investment firms of inconsistencies that arise in categorisation with a view to their resolution.

2. There are several instances in which a financial instrument could be deemed eligible for categorisation and reporting, as follows:

1. where a new financial instrument is created;
2. where there is a new issue of an existing instrument;
3. a financial instrument contract which roles on to a new term where, for example, the underlying indices under the new term have changed; and
4. spread combinations consisting of the spread between two financial instruments where the spread combination between the two instruments would constitute a new financial instrument requiring categorisation and reporting.

Where an RM lists and categorises the derivatives and an OTF also trades those derivatives away from the RM, does this mean that the RM will be responsible for determining type of instrument for submission to the NCA?

We believe that categorisation of instruments, as with reference data, should be centralised and should not be undertaken at investment firm level. We do not believe it is appropriate for operators of venues or investment firms operating venues to be responsible for categorising instruments. The same instrument can trade on multiple venues.

If venues were responsible for categorising the instrument, the exercise would be duplicative, which would create slow processing when the information is centralised and would also lead to many inconsistencies. This would be the case, even if there was a specific methodology that would need to be applied.

<ESMA\_QUESTION\_101>

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

<ESMA\_QUESTION\_102>

Yes. WMBA does agree.

WMBA endorse ESMA’s assessment that the most important assessment to be undertaken at Level 2 is the determination of whether an instrument has a liquid market. For these purposes, it is important not to ‘mirror the equity regime’ exactly, since even within ESMA’s proposed broad class of bonds for instance, there are orders of magnitude more heterogeneity than among equities.

In terms of cash fixed income, WMBA consider it important not to group all bonds into a single undifferentiated ‘bond’ class. Government bonds, investment grade corporate bonds, high yield bonds, and other categories have different liquidity characteristics, so it will be important to ensure that the transparency regime differentiates appropriately between them, so that in any particular case the transparency obligations are applied in a liquidity-sensitive way to a homogeneous group of instruments. A simple distinction between the proposed limited definition of sovereign debt and corporate bonds would not suffice.

We agree that depository receipts for bonds should be treated as non-equities and convertible bonds should be treated as bonds.

There a number of issues which fall outside the definition in the First company Law Directive which the market regards as corporate bonds, including non-EU companies, bodies corporate such as universities, limited liability partnerships (LLPs) and charities.

<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>

No, WMBA disagrees. WMBA understands that unless an instrument trades multiple times per day, then it does not accord with the continuity of buying and selling interests as set out in the definition of a liquid market in Article 2(1)(17) of MiFIR.

Whilst WMBA does indeed support the adoption of Option 3, there are further considerations that remain important.

A class of OTC derivatives should only be considered liquid if it:

1. trades multiple times per trading day; and
2. trades on at least every trading day during the specified period.

For all the liquidity criteria, we recommend that an assessment is undertaken on:

1. a half-yearly basis for OTC derivatives classes. (A class of OTC derivatives should, therefore, trade multiple times on every trading day during a half-yearly period for it to be considered liquid);
2. a monthly basis for cash fixed income instruments;
3. all instruments should have a specific treatment and segregated calibration when newly issued and/on 'on the run';
4. For the calibration, we believe that new instruments should be treated as illiquid until they are first calibrated in the standard calibration schedule. Therefore, we endorse only holding once per month calibrations which would then pick up any new issues in the most recent month.

**Package transactions**

Throughout its drafting of regulatory technical standards ("RTS"), ESMA should give due consideration to the application of the various requirements to instruments traded as part of a package. By package transactions, we also include Matched Principal arranging as facilitated by interdealer brokers.

In these cases:

1. two or more components that are priced as a package with simultaneous execution of all components; and
2. the execution of each component is contingent on the execution of the other components (a "Package Transaction").

A Package Transaction is designed to provide desired risk-return characteristics effectively in the form of a single transaction with efficiencies in execution cost and reduction in risk (market and operational) achieved through concurrent execution.

Although there is no comprehensive publically available data on the significance of trading in Package Transactions we estimate that in the interest rate derivatives asset class, Package Transactions account for approximately 15-25% of transactions, and in the credit derivatives asset class they account for 5-10% of transactions, increasingly significantly around roll dates when there is substantial trading activity rolling between the series.

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

Particular consideration should be given by ESMA to whether a sufficiently broad range of venues can adequately process Package Transactions, both in terms of the execution of such transactions and the post trade processing, even where such venues offer trading in the component instruments on a standalone basis. To date, it has proven more complex for venues and central counterparties to implement processing of Package Transactions compared to the processing of standalone transactions. The technical build required to support electronic execution beyond a limited range of Package Transactions, given the number of conceivable permutations of packages, will be very challenging to market participants and venues alike, and could prove impossible for certain permutations.

Inability to execute Package Transactions will result in significantly increased costs and risks to market participants. These costs and risks arise primarily from three sources:

1. separately trading the components of a Package Transaction increases the possibility of the market moving between execution of each component (because execution of each component cannot be precisely time-matched);
2. there are likely to be differences in contract specifications, mode of execution, clearing/settlement workflows and relative liquidity when components of a Packaged Transaction are executed separately and/or on different venues; and
3. accessing different sources of liquidity for the various components when traded across different venues or over-the-counter incurs additional bid/offer spreads.

The processing of Package Transactions into central clearing can, with insufficient flexibility of processing, be a source of heightened risk. For example, where scenarios such as the acceptance of one or more components of the package combined with the rejection from clearing of other components can expose the parties to those transactions to significantly increased market risk.

In general, we recommend that the application of the various requirements of MiFID2/MiFIR to the trading of components as a Package Transaction should be considered separately from the application of the requirements to those same instruments when traded on a standalone basis. This is particularly important for the application of the pre-trade and post trade transparency requirements and the derivatives trading obligation.

Generally, we recommend that each transaction comprising a package must be considered liquid in order for the package to be subject to the transparency rules or the derivatives trading obligation. The presence of illiquid instruments in the package should permit the package to benefit from waivers for pre-trade transparency, deferrals for post trade transparency, and not be subject to the derivatives trading obligation. This is relevant also for the arrangements of sets of trades into a Matched Principal transaction.

For the purposes of counting frequency and volume of transactions within the test of liquidity, we recommend that each transaction which constitutes a Package Transaction be considered on a standalone basis. As a practical example, where a 5 year interest rate swap ("IRS") and a 10 year IRS are traded within the same Package Transaction, these should be considered as two distinct trades, alongside other 5 year and 10 year IRS, for the purposes of assessing liquidity. In our view, other approaches would be unfeasible for ESMA. For example, in order to consider the liquidity of Package Transactions, ESMA would have to collect data on trading in each package permutation, which would prove technically challenging if not impossible given the number of conceivable permutations.

Provided appropriate consideration is given to the application of pre-trade and post trade transparency and the derivatives trading obligation to Package Transactions, counting each component of a Package Transaction for the purposes of assessing transaction frequency for the liquid market definition is, in our view, acceptable.

**‘Technical trades’**

We recommend that ESMA specify the types of transaction that should not be counted towards the determination of liquidity. There are a number of transactions, such as new trades resulting from compressions and give-ups and intra-affiliate trades purely for risk management purposes, which should not be taken into account for liquidity purposes as they do not represent a true picture of the buying and selling interests in a market. The inclusion of such transactions would give a distorted view of liquidity.

WMBA therefore understands that these transactions can be excluded from the liquidity assessment by excluding them, or appropriately identifying them, in transaction reports and using the data from transaction reporting as the basis for the liquidity assessment.

**Consideration of the specific market structures of OTC derivatives**

As a general comment regarding the liquid market definition and its application to OTC derivatives, we note that in assessing liquidity for the purposes of Article 9 and 18 of MiFIR (i.e. pre-trade transparency for trading venues and systematic internalisers trading respectively) Art 2(1)(17) of MiFIR requires EMSA to take "into consideration the specific market structures of the particular financial instrument." We recommend that ESMA take into consideration the following aspects of the OTC derivatives market:

1. whether or not a particular class of derivatives is centrally cleared. Central clearing is increasingly becoming a key part of the OTC derivatives market structure. As CCPs have to go through their own regulatory approval and prove that a particular contract is liquid before it is clearable, we believe that this should be taken into account as part of the liquidity assessment. This is particularly true of OTC derivative contracts which have been declared subject to the mandatory clearing obligation in EMIR; and
2. whether the collateral terms of an OTC derivatives contract form part of its liquidity assessment. Non-standard collateral terms for OTC derivatives, in particular where derivatives are uncollateralised, can be a determinant of liquidity.

**Time period for calculation**

With regards to the time period for non-derivative fixed income trades, we propose a monthly calibration. WMBA therefore recommend that a monthly retrospective calibration will be sufficiently dynamic to detect changes in liquidity but will ensure a model that is not too volatile. We agree with ESMA that defining the time period is critical and that the longer the time period, the higher the risk of skewed distribution.

Further, we acknowledge that a shorter time period may introduce more operational complexity; however, this is mitigated if a simple operational structure is introduced, that is optimally automated – WMBA would cross refer to the evidential work presented by which AFME explains how a monthly period can work in an operationally simple manner below. [AFME has undertaken testing on trade data provided by TRAX. 10,091 fixed income bonds were randomly chosen from six asset classes (government bonds, supranational, corporate bonds, high yield, covered bonds and securitisation). Trade data for these securities was tested over the period 1 October 2011 to 30 September 2013 (see Annex 1 page 1). Given that these securities were chosen at random, we can assume that this universe is proportionally representative.]

We would strongly endorse that a yearly period for the calculation and calibration of average frequency of trade (i.e. number of trades in a year) is not appropriate for fixed income.

If a yearly calibration is considered suitable for equities which are perpetual, then it is clear that the frequency of calibration for fixed income needs to be shorter.

**Fixed income securities mature meaning that liquidity is more dynamic -** One of the reasons that a yearly calibration for fixed income instruments does not work is that they mature. Given that fixed income instruments have maturity dates, the liquidity of these instruments changes more dynamically over time. For example, one of the most notable features of bonds is that trading activity tends to be much greater within the first few months.

**An annual calibration would be meaningless for shorter term instruments** - Often, the term of bonds is relatively very short, which means that they have an even shorter liquidity life cycle. For these shorter term instruments, an annual calibration is even less meaningful. For example, for a three-year bond a whole year of time would need to pass before the liquidity of the instrument is assessed and then the second year of the bond (one year before maturity) would be based on the fixed year. As discussed above, the secondary market activity of an instrument within the first few months issuance is very different from the activity of an instrument the following year.

Even though matching is a very important process, it is essential that the allocations are not included in the trade frequency count. Rather, it should be the block level trades that are counted. For example, if a bank undertakes a trade of EUR 50mm notional with a client and that client allocates the EUR 50mm to 100 different funds, the trade count should be one (one trade of EUR 50mm and not 100 trades of EUR 500,000). Counting the allocation level would be misleading and would incorrectly inflate the number of trades. It is essential that this is clarified by ESMA.

Currently, under transaction reporting, there is a mixture of block-level and allocation level reporting, which produces a distorted and inconsistent picture of trading in the fixed income market. We strongly recommend that this is corrected under MiFID2 because of the wider implications of the reporting/publication for calibration purposes.

Although a shorter the time period may introduce more operational complexity, we believe this can be mitigated by the use of appropriate market automation. But for automation to work efficiently, the industry will need to change its practices, particularly in relation to trade matching and allocation; this process is already affected by other reforms such as the move to T+2 settlement (international bonds settle on T+3 today).

Considerable further detailed work will be needed to establish, on the basis of evidence, how best to balance the conflicting demands of liquidity and transparency at reasonable cost. WMBA members would welcome the opportunity to work with ESMA on this.

<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>

Yes, WMBA does agree the number of transactions over a fixed period (1 year) and on notional value.

We would confirm with ESMA that Option 2 is more appropriate for the fixed income market: for the average size to be calculated based on the total turnover over a period divided by the number of trading days in that time period (ADT). WMBA strongly recommend that the ADT should be calculated by dividing the notional volume turnover (rather than market value) by the number of days in the period. In considering the frequency of trades, we recommend that the time period should be monthly rather than yearly. This is consistent with the approach taken in our response to Question 103

Para 22 (2). Option 2: The term market participant should be understood as any member or participant of a trading venue with a contractual arrangement to provide liquidity in a financial instrument traded at least on one trading venue (e.g. as members of a regulated market). This kind of information could be obtained directly from the trading venues at a certain point in time (e.g. year-end). However, if there were markets without such contractual arrangements it would be impossible to meet this criterion. As a consequence, all related financial instruments would be considered as illiquid.

[The proposed approach is very vague and we assume will fall within NCA discretion]

<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>

Yes, WMBA does agree whilst further acknowledging that ESMA's valid point in paragraph 20 that the definition of market participant is critical with as much granularity and specificity as the LEI structure affords.

There is a preference for Option 2. Most of the OTC derivative products traded (except for the most liquid 'benchmark' products such as 2,5,10 year $, £, Euro IRS) are not given liquidity by any participant on a trading venue because they are by nature illiquid and it would not be in the member's interest to provide liquidity for market risk reasons and capital reserves requirements.

Therefore, a venue such as an RM, MTF or OTF whose class of instruments does not have a member providing liquidity should have those instruments deemed illiquid. Average size of spreads - para 27(I) - trading takes place on the 'lit' order book of the venue. Again, ICE Swap Futures contracts mainly take place away from the order book and are therefore not liquid under this definition.

However, we note that this parameter is not as critical a measure of liquidity as frequency and ADT.

<ESMA\_QUESTION\_105>

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

<ESMA\_QUESTION\_106>

No, the approach should be wider to incorporate all venues rather than only those "lit order books". WMBA stresses that ESMA needs to consider where a significant proportion of the market trades away from the CLOB via other mechanisms (Voice systems, RFQ, Auctions).

It should further be emphasised that RM instruments that are mainly traded off exchange and not via the "lit" order book should therefore be deemed as illiquid.

With regards to bid-ask spreads used as measures of liquidity for instruments traded on order book, we agree with AFME who would not recommend the use of average bid-ask spread calculated over a certain period that are based on end-of-day spreads because:

1. end-of-day spreads may not be representative of the spread incurred by market members during the course of the trading session;
2. end-of-day spreads may not be reliable as they could be fed by participants that have no intentions to trade; and
3. measuring a spread irrespective of the type, and even more importantly, of the size of the quotes can be misleading, as a narrow spread on a very limited size should in no instance be considered as evidence of liquidity for institutional market participants.

We consider that the following alternatives could be considered:

1. venues could be asked to publish average spreads over each trading session (based on randomly determined snapshots or polled at certain intervals (e.g. hourly));
2. to be meaningful, spreads need to be related to available sizes; and
3. relative sizes could be measured for (i) the average value trade and (ii) the SSI for the given instrument.

<ESMA\_QUESTION\_106>

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

<ESMA\_QUESTION\_107>

Yes, WMBA agrees and notes that whilst the width of bid/offer has little information on market size and depth and therefore is only one indication of liquidity, an alternative metric could be the value of the spread relative to the average trade size, i.e. the cost to trade relative to the value of the underlying.

ESMA should be conscious that each instrument class has its own specific characteristics, largely driven by the requirements of the market participants, and that the size of spread is different per product, per instrument class.

<ESMA\_QUESTION\_107>

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

<ESMA\_QUESTION\_108>

Without a complete and sufficient data set, which is the subject of ongoing work with ESMA, it is hard for WMBA to currently suggest quantitative metrics.

<ESMA\_QUESTION\_108>

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

<ESMA\_QUESTION\_109>

WMBA understands that sufficient data frameworks are likely only available subsequent to the venue transparency and reporting requirements. Therefore, this information will not be available to ESMA for initial calibration exercises. Correct data sets will only be available to ESMA in subsequent iterations and using liquid information which will be biased in favour of those instruments always being classed as liquid promoting artificial cyclicity in the classifications of certain products over others.

<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>

Yes, WMBA strongly agrees with Option 1.

All 4 characteristics make up the definition of a liquid product. Failure to meet one of more of those definitions by default classes the instrument as illiquid. Should insufficient data be available from the market place to ESMA, a liquid classification should not be considered.

We would also ask ESMA to compare the methodology to the CFTC's criteria for liquid markets in relation to Made Available to Trade (MAT) determinations.

<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>

There does not appear to WMBA to be an alternative approach given the 4 characteristics listed in the Discussion Paper.

Essentially it should be remembered that investments outside of equities and benchmark derivative products are illiquid by nature, hence they have never been transferred onto a RM. Para 39 - A mixture of both options would have to thought about carefully as forced transparency under Option 2 may cause participants to refrain from trading that product therefore making it more illiquid.

WMBA do not agree with the CFTC methodology and approach because the US block threshold rule has not been established long enough to conclude it is successful or that it balances the need for transparency alongside liquidity. Therefore, the adoption of this would in effect be to take up an entirely arbitrary scalar.

<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>

WMBA does not agree with any of the scenarios as the exercise would appear very limited and specific.

<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>

WBMA would support IBIA for the optimal methodology guarantying a more accurate outcome. Other approaches would create a greater number of incorrect classifications.

<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>

WMBA reminds that it is very common for OTC liquidity to be biased into a few 'on-the-run' or 'benchmark' contracts. Therefore, to be highly transient between outgoing benchmarks and incoming benchmarks, which are often termed ‘front-month’ contracts or ‘on-the-run’ contracts, it is our view that, for certain categories of instruments, ESMA should base its assessment of liquidity parameters on a benchmark basis rather than on a specific instrument basis.

This could be termed as an "IBIA+" method.

Please refer to the ISDA table contained herein which clearly highlights what we have described above.

WMBA underlines the episodic and ephemeral nature of liquidity in the derivatives market. Closely related is the effect on liquidity of the natural maturing of a derivative.

We therefore support and emphasises the results of the ISDA survey on Credit Derivatives which is outlined below.

**Analysis of Credit Derivatives**

With regard to the six most liquid CDS indices, the table below shows the dramatic fall in liquidity when an on-the-run series becomes an off-the-run series. As soon as an index becomes “off-the-run” it turns illiquid almost immediately. This dynamic should be strongly considered for both the trading obligation and the transparency requirements.

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Index** | **Roll date** | **Pre-roll 5-day average trade count (old series)** | **Post-roll 1-5 day average trade count (old series)** | **Change** | **Post-roll 6-10 day average trade count (old series)** | **Change** | **Post-roll 11-15 day average trade count (old series)** | **Change** | **Post – roll 16-20 day average trade count (old series)** | **Change** |
| **Itraxx Europe 5Y** | **20/03/2014** | **171.8** | **28.6** | **-83%** | **16.6** | **-90.3%** | **6.4** | **-96.3%** | **7** | **-95.9%** |
| **Itraxx Crossover 5Y** | **20/03/2014** | **143.4** | **41.4** | **-71.1%** | **16.4** | **-88.6%** | **10** | **-93.0%** | **13.2** | **-90.8%** |
| **Itraxx Sr Fincl 5Y** | **20/03/2014** | **37.6** | **9.6** | **-74.5%** | **5.4** | **-85.6%** | **2.4** | **-93.6%** | **1.6** | **-95.7%** |
| **NA.HY 5Y** | **27/03/2014** | **160.8** | **62.8** | **-60.9%** | **39** | **-75.7%** | **30** | **-81.3%** | **12.6** | **-92.2%** |
| **NA. IG 5Y** | **20/03/2014** | **192.8** | **64** | **-66.8%** | **27.8** | **-85.6%** | **16.4** | **-91.5%** | **18** | **-90.7%** |
| **CDX. EM 5Y** | **20/03/2014** | **29** | **16.8** | **-42.1%** | **5.2** | **-82.1%** | **4.6** | **-84.1%** | **1** | **-96.6%** |

In this analysis, we have used the daily trade count from the publicly available DTCC SDR and Bloomberg BSDR data. The table shows that liquidity in existing credit derivative index swaps immediately declines following the date the new series begins to trade. This is evident by comparing the 5 day trading volume average before the roll date with the 5 day trading volume average after the roll date (we exclude the roll date itself since this is the event we wish to analyse).

To complete the analysis, the table also shows the additional 5-day increments of average trading volume post the roll date: days 6-10, days 11-15 and days 16-20. It appears that 75% or more of this average liquidity has drained across the entire sample as early as day 10 and by the end of the third trading week after the roll, liquidity has collapsed by over 90%. As stated above, ISDA believes that a cash or derivative instrument that does trade at least daily should be considered *ipso facto* illiquid.

The above analysis also demonstrates the degree to which an instrument that is considered to be ‘on-the-run’ influences the market’s propensity to trade it. Patterns that are similar to the above can be observed in the Single name CDS market as well (the ‘on the run’ SN CDS contract for a given Reference Entity is typically considered to be the one that matures at the first IMM date after 5 years have passed from trade inception). ISDA believes separating ‘on-the-run’ instruments from those that are ‘off-the-run’, in addition to separating instrument by underlying Reference Entity, is the minimum that would be required for a reliable study of liquidity patterns.

In the United States, the ‘On-the-run/Off-the-run’ concept has been embedded in all Made Available to Trade determinations submitted by SEFs thus far. The result of applying the trading mandate only to instruments that are truly liquid in their own right (rather that instruments that are liquid only with reference to other similar swaps) has been a relatively smooth transition to SEF trading for those products. When less liquid products are forced onto electronic platforms, the risks of diminished liquidity and significantly higher transactions costs rise.

<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>

This is less relevant for an IBIA approach. However, we would refer to our answer to Q. 114 suggesting an 'IBIA+’ approach.

<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>

WMBA refers to our answer to question 114.

<ESMA\_QUESTION\_116>

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

<ESMA\_QUESTION\_117>

Yes, WMBA concurs that ESMA’s approach acknowledges the episodic nature of non-equity markets. WMBA further agrees with the main points of the AFME response, set out for ease of reference below.

**Calculation of sudden drops in liquidity for the purposes of temporary suspension**

We agree with ESMA that the purpose of temporary suspension is to deal with more structural aspects of liquidity and the latter is meant to address unexpected and sudden drops in liquidity. For the temporary suspension provisions to be fit for purpose, the measures need detect sudden drops in liquidity in real time (or thereabouts) and apply immediately. As such, the periodic liquidity assessment approach proposed for the assessment of a liquid market is not appropriate for the temporary suspension. If the calculation requires a period of data collection, it will not be able to detect sudden drops of liquidity in a timeliness needed to protect the markets and mitigate financial stability risks.

We do not agree with using ADT to measure sudden drops in liquidity. This measure would not be sufficiently timely – it would require a period of testing and as ESMA observes, in extremely uneven distributions, it might not correctly capture the decline.

We agree with ESMA that a combination of qualitative criteria in combination with quantitative criteria.

**Operational structure for temporary suspension**

As ESMA recognises, a quick and straightforward assessment of liquidity for the purposes of temporary suspension is of upmost importance. We recommend that it is also critical that the application of the thresholds can be undertaken in a quick and straightforward manner, i.e. if the threshold can be applied immediately but the approval process for applying the threshold takes days or weeks, temporary suspension will not be fit for purpose.

**Expiration or renewal of temporary suspension**

Following the three-month period of a temporary suspension, the determination as to whether the suspension is renewed or lifted cannot be based on price. A market event may cause the price of an instrument to drop but after three months, the liquidity of the instrument may return but the price may not resume to pre-event levels (it may adjust to a new level).

Therefore, we suggest that ESMA need to determine whether the suspension for an instrument is renewed or lifted based on whether liquidity has returned to the same level prior to the initial application for temporary suspension. This can be done by comparing the frequency and ADT of the instrument in the third month of suspension to the frequency and ADT of the instrument in the month prior to suspension.

<ESMA\_QUESTION\_117>

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

<ESMA\_QUESTION\_118>

Yes WMBA does agree with the rationale.

<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>

Yes, WMBA does agree on the definition of a 'request for quote' given. Further, WMBA note that generally in an RFQ system, a client typically requests a quote following the provision of an indicative price or indicative prices. These indicative prices are not firm and are an essential part of trading.

A quote no longer becomes indicative when the price becomes firm. ESMA states that an actionable indication of interest contains all necessary information to agree a trade. The distinguishing feature between an actionable indication of interest (AIOI) and an indicative price is that the AIOI is firm.

<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>

Yes, WMBA confirm that it is common practice in the market for RFQ and RFS to be used interchangeably, depending on the technical sophistication of the market maker offering the quotes and streams.

Trading protocols should not be exclusively grouped into an ESMA trading system. The ESMA trading system notations should be determined for trading protocols on a case- by-case basis based on the core characteristics. The trading venue or investment firm should declare the type of ESMA trading system notation the protocol falls under. Fixed income has a broad array of trading protocols that are appropriate for the highly heterogeneous fixed income market and, as such, it is inappropriate to attempt to categorise specific trading protocols.

With regards to request-for-stream systems, if the stream provided is indicative, the request-for-stream should not fall under the RFQ trading system notation. This is because, the firm is not responding to the client with quotes but indicative prices. If the firm responds to the client with quotes, which are indicated as such (for a predefined period of time), the system would fall under the request for quote system notation.

<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>

No, WMBA note that the determination as to whether a trading protocol is request for quote should be based on core principles rather than categorisation of types of protocols.

<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>

WMBA does not agree with this overly narrow definition of the term ‘*voice trading system’*. We do not concur that the discussion paper accurately captures the current universally accepted market model which if not corrected presents meaningful negative implications for market participants.

Millions of OTC transactions occur annually where the execution has a voice component but may not be exclusively voice only on both sides of that trade. Therefore, the critically undefined term '*voice negotiation'* lacks vital clarity and, most urgently, in limiting the definition only to ‘*negotiation’* may exclude the completion of transactions.

Indeed, ‘*voice trading system’* as prescribed in 3.7.14 does include the full scope of one to one or many to many negotiation that may be carried out by other means such as screen based voice assisted execution, hybrid execution (where only one side of the trade is voice based), single price and weighted price auction execution (where the pre-trade price discovery process is conducted by voice), voice work up (which may stem from a fully electronic transaction), instant messaging system based execution or email based executions (which may then be stored in a 'durable medium' as defined under MiFID record keeping requirements). All of these methods receive similar audit trail, post trade processing and trade reporting treatment.

Therefore, the specific inclusion of this wider, integrated and more comprehensive scope is necessary to describe the current voice based arrangement, negotiation and execution operations of the wholesale multilateral market in which technologies that replicate and enhance voice execution, and which are able to store details on a durable medium, are widely employed on a global basis.

Accordingly, in the view of WMBA, a ‘*voice trading system’* definition should include a significantly more complete summary of hybrid execution methodologies for which there are multiple means of communications.

Further we would note that in the US under Dodd-Frank, the notion of *'voice'* is specifically and purposefully incorporated into the Act under the broad term *'by any means of interstate commerce'*.

As a result, WMBA would specifically request that the broad definition be expanded to “***Any trading system where transactions between members are either arranged, negotiated or executed partially or completely by voice to include any medium that replicates voice procedures***".

<ESMA\_QUESTION\_122>

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

<ESMA\_QUESTION\_123>

WMBA does not agree with the table, most especially with the context and content of the column prescribing which information should be made publicly available. These mandates would not only appear to go far in excess of those definitions in level 1 and in some cases actually reverse the intent of level 1. It is essential that that the trading system protocols are workable for fixed income and are not solely based on the equities systems. In particular, provision must be made for indicative prices to be disseminated as well as firm price.

WMBA understands that the publicly available transparencies of a trading system should be the same or equivalent across their different natures and the methodologies adopted. Different methods of arranging a trading system are built to cater for the different requirements pertaining to those products rather than segregating any part of the system or subset of participants. WMBA would request ESMA to, at a minimum, disassociate the application and function of the ‘*Large in Scale’* [LiS] waivers available from those available under the ‘*Instrument Specific’* [SSI] waivers such that this latter set are more closely tied to the nature of the platform and its participants.

Please see our answer to Q.163 which emphasises that the SSI waiver needs to be applied on an instrument-by-instrument basis even when the LiS waiver may also be applicable. In setting the thresholds ESMA should take account of the type of participants, nature of the risk transfer, and methods adopted by the relevant OTF venue. We would refer here ESMA's notes [on page 164 point 45] that in these models the provision of liquidity by participant firms involves taking on significant risk onto the trading book.

Therefore, WMBA does not concur that volume alone is a sufficient scalar. Further items such as frequency of trades and the number of participants needs to be taken into account. We would request that a sufficient list be developed by ESMA for NCAs to take into account when authorising the SSI waivers.

As observed in the table, the normal operation of an RFQ, RFS and hybrid and voice-traded systems, in the absence of any of the waivers, would be infeasible. In order for platforms to make public all requests and their responses via real time publication, this would not only be technologically impossible but also injure the business model beyond the point of offering any utility whatsoever. It is further operationally uneconomic for all these prescriptive publications to be repeatedly issued and updated for each and every enquiry received or anything "that may lead to an execution”. The outcome of this would be a totally disproportionate publication for any trades that are not subsequently eligible to qualify for one of the available waivers.

Moreover, in a market place where participation is limited to a small set of wholesale participants transacting periodically in large size trades inappropriate to a continuous order book market, the waiver regime immediately becomes critical. However, these regimes are neither complete nor assured. In the first instance therefore, WMBA notes that during the pre-trade workup of liquidity [that period where the wholesale market broker is actively attempting to discover and build liquidity] the volume of any one party to a trade is often transient and these trades tend to link into one transaction. Therefore, thresholds around volume would need to be subject to the grouping or linking of related trades and only applied once the transaction is completed and executed. We do not believe it was the intention of the level one text to make common parts of the traded market either impracticable or offshore.

WMBA would also note as mentioned in the answer to question 122 above, the definition of a voice trading system for multilateral wholesale markets needs to embrace the entire functional set as one that includes communication via compliant and recorded instant messaging systems or email at a minimum. We again underline that in application to voice trading systems, a wholesale market broker acting as arranger in receipt of indications of interest can disseminate trade information simultaneously to all participants or members of the system in a multiple-to-multiple manner.

Evidently SSI waivers when granted to a venue need to be granted to all equivalent venues.

WMBA notes that member firms have provided data sets to ESMA for all wholesale transactions in derivatives in the EU across five classes of financial instruments underlying.

<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>

No, WMBA does not agree with the pre-trade information which is required to be provided. The requirements are disproportionately onerous and yet do not provide relevant transparency. This risks injuring a competitive market and further unintended consequences of disabling participation on multilateral venues.

For voice trading systems you would have to question whether volume is necessary for pre-trade transparency for the public. For members of the venue it is important; however, for members of the public, the instrument and bid/offer should be sufficient. It is worth noting that for the majority of these markets, those outside a professional capacity such as an investment firm or physical user, the information would be rarely absorbed by a 'retail client':

1. Bid and offer prices and pre-trade indicative bid and offer prices which are close to the price of the trading interest does not allow investors to accurately identify liquidity pools;
2. The requirement for pre-trade transparency is unsuitable for voice trading systems. The information required to be made public for voice trading systems is impracticable to collect. It would require the broker to input voice bids and offers electronically whenever they are received by the broker;
3. Making such pre-trade information available to the public will stifle competition by permitting competitors to view and replicate bids and offers; and
4. RFQ systems, making the “bids and offers and attaching volumes submitted by each responding entity” pre-trade transparent may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency. As at today, the answers provided to a request-for-quote are only known to the entity which submitted the request. The entities answering to the RFQ do not see the prices provided by the other responding entities and, more importantly, third parties. This asymmetry of information is justified by the fact that the responding entities take on risk that would be increased, with no benefit for both parties if the bids and offers were made publicly known. Instead, the risk for the responding entity would increase as other price makers could price against them.

WMBA notes that member firms have provided data sets to ESMA for all wholesale transactions in derivatives in the EU across five classes of financial instruments underlying.

<ESMA\_QUESTION\_124>

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

<ESMA\_QUESTION\_125>

No, WMBA does not consider that there are further models.

Please see response to Q123 in respect of volume matching which could fall within '*Continuous auction order book trading system'* or *'Periodic auction trading system'*.

<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>

WMBA does not think that additional trading systems should be considered.

Please see our response to Q123 in respect of volume matching which could fall within *'Continuous auction order book trading system*' or *'Periodic auction trading system'*.

<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>

WMBA would note the following systems may be broadly categorised as:

1. **‘Voice on voice’ trading**– whereby one or more brokers speak to one or more clients or counterparties either through spoken or through email or instant messaging;
2. ‘**Voice on electronic’ trading**– whereby the trader asks the broker to act on his/her behalf through voice means, following which the broker acts on his/her behalf via non- voice electronic means;
3. WMBA member systems are multilateral "all-to-all" systems ["B2B"] as defined away from dealer to client ["B2C"] bilateral negotiations which are now more likely captured under the Systematic Internaliser regime; and
4. **RFQ & RFS**: as Order book/liquidity search.

Please see answers to Q123 & Q126.

In addition, ESMA should also note that technology does allow a voice system to carry out one to many as well as one to one and this alone gives participants better transparency whilst not addressing the public issue.

<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>

**WMBA emphasises that wholesale market brokers widely advertise pre-trade information to all interested parties in the trading system.**

Dissemination is done including:

i. Indicative screen prices or other price related factors (such as yields, rates, volatilities or correllations);

ii. Announcements via telephone or voice box or through electronic messaging and/or email; and

1. Reports of RFQ / RFS requests

As previously mentioned, most voice trading systems are in products with a strict professional and eligible participants market only ("wholesale") and have no participation by 'retail clients'. On this basis, there is very little pre-trade information currently given to the public due to the absence of demand.

For participants, it is in the arranger's best interest to disseminate and advertise order information to all participants as soon as possible in order to increase the chances of a concluding trade. Therefore, by default, members get the necessary pre-trade information.

<ESMA\_QUESTION\_128>

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

<ESMA\_QUESTION\_129>

No, WMBA does not agree. In particular in relation to voice trading systems, and for the reasons mentioned in response to question 124, the proposed pre-trade transparency regime is unsuitable and unworkable.

We do not agree with the ESMA proposals on making pre-trade information available to the wider public (The public in our eyes being retail clients as defined under MiFID 1).

It would place a great burden on firms and venue operators to comply with this requirement and for no discernible benefit given the wider public would not have an active interest in these specialised professional dominated markets.

<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>

**WMBA broadly agrees and this conforms to current market practice where venues publicise their prices and give indications on 'market runs'.**

These are described by the websites of WMBA member firms and at a high level cover real time indications across all liquid derivatives in all six broad categories of financial instruments. Because of the infinite possible number of derivative contracts, WMBA emphasises that the possible universe in scope needs to be limited to 'liquid products'.

However, WMBA notes that any methodology to arrive at indicative bid/offer prices shall be sufficiently flexible to allow for the trading via different modalities and conventions across different financial instruments and does not mandate the venue to broadcast derived and indicative prices where it is unable to reliably make such an indication.

We note that in describing how indications are currently made, methodologies are both quantitative and qualitative and have been developed and refined by member firms to serve the needs across the client base.

<ESMA\_QUESTION\_130>

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

<ESMA\_QUESTION\_131>

WMBA does agree with the approach.

<ESMA\_QUESTION\_131>

Post-trade transparency requirements for non-equity instruments

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

<ESMA\_QUESTION\_132>

Yes, WMBA does agree with the content proposed for publication post trade.

In regards of Post trade Risk-Reduction and Compression Services, WMBA requests that ESMA clarifies that post trade risk reduction services should not be made subject to any post trade transparency requirements.

<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>

Yes, WMBA would agree.

<ESMA\_QUESTION\_133>

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

<ESMA\_QUESTION\_134>

WMBA does not believe there is other information that would be relevant.

<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>

No, WMBA broadly disagrees. Whilst WMBA does agree with a majority of the identifiers for trades in non-equity instruments, we would take exception for both the flags 'X' and 'G' for agency and give-up trades.

Firstly, these may denote a non-real transaction as an accounting entry which would serve to artificially increase the reported volumes in any one market.

These two flags also delineate to the public a sponsored access trade away from a direct or an inter-dealer wholesale trade which may be injurious to direct client participation in wholesale markets, most especially in any ‘hybrid’ market. The market place would simply be alerted as to which dealer was winning a client mandate when it sees the precise terms of a trade that had been shopped around being publicly printed. The 'G' and 'X' flags should only be available for regulatory reporting and not openly to the competitive peer groups.

WMBA therefore believe that it would make better sense to suggest simplicity of flags for trades which would not have been available to other counterparties "non-available liquidity" trades, subject to publication deferral.

The wholesale market would much prefer to have a solid and comprehensive range of identifiers for post trade transparency. A simple and uniform set of flags would achieve this.

**In regard to Post trade Risk-Reduction and Compression Services.** In the context of compound transactions in post trade risk reduction services, a specific compound transaction class of derivatives could be formed where the service is characterised by:

1. being designed to be overall market risk neutral for each participant;
2. the participants not submitting bids and offers to enter into a specific position; instead the post trade risk reduction service provider will have applied an optimisation algorithm to two or more existing transaction portfolios (or subsets of portfolios), as submitted by the participants, and come up with an optimised solution to reduce post trade risk by injection of risk-reducing offsetting component transactions in the portfolios;
3. consisting of more than a few component transactions (typically thousands of component transactions);
4. being cycle-based and must be accepted in full by all participants or it will not be executed (i.e. it will lapse and be rendered null and void); and
5. being designed to reduce secondary risks emerging from existing derivatives transactions, such as counterparty credit risk, operational risk, basis risk and/or systemic risk.

<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>

Yes, WMBA broadly agrees. It is necessary to inform the market that the reported trade is a non-current trade.

We are, however, not sure what benefit an 'investor' would gain from being able to identify different types of deferred publication trades once the deferral is published. One flag showing the trade was deferred will normally mean only one reason, it was not in the interest of the counterparties or the market for that trade to be published immediately after execution. This should be sufficient for the investor and have no effect on his investment decisions.

WMBA does endorse a broad series of flags for regulatory transaction reporting as these will simply annotate the reasons for the timings of the reports.

**In regard to Post trade Risk-Reduction and Compression Services.** As explained in the response to Q135, if component transactions resulting from post trade risk reduction service exercises are made subject to post trade transparency requirements, such component transactions need to be clearly identified as a separate category of transaction information.

As explained in the response to Q141, if component transactions resulting from post trade risk reduction service exercises are made subject to post trade transparency requirements, such component transactions need to be made subject to deferred publication.

Indeed, should compression services component transactions become subject to post trade transparency requirements, and subject to deferred publication, a specific post trade risk reduction service flag should be introduced to indicate (i) that a transaction originates from a post trade risk reduction service and (ii) that its publication was deferred for that same reason.

<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>

This question is not relevant to WMBA members.

<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>

WMBA recommends that ‘Give Up’ & ‘Give In’ trades should not be made public.

It is our view that whilst this information should be included in post trade regulatory reporting, it should not be made public as it would demonstrably injure the process of shopping around by a client. This acts against the clients' best interests because a counterparty’s ability to trade will be negatively affected by the market's knowledge that they are active in the market in a particular direction.

‘Give Up’ & ‘Give In’ trades are primarily a facilitation for the eventual counterparties to the deal and are never beneficial owners thereby this will give an inflated view of trading activity. We note that because the end users of the trade will report to their NCA, the intermediary carrying out the ‘Give up’ or ‘Give in’ should not also have to report such trades since this could result in double-counting and confusion for regulators.

Please see our answer to Q. 136. WMBA add that this is an inappropriate conferral of equity market protocols into the non-equity space.

<ESMA\_QUESTION\_138>

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

<ESMA\_QUESTION\_139>

Yes, WMBA does agree that securities financing transactions should be exempted from the post trade transparency regime. Such transactions should be exempted as their reporting could negatively impact the setting and management of position limits.

SFTs do not result in an outright exposure to the security in question and thus are very different in nature to outright trades. In many cases the securities involved are posted as effective collateral. Such trades are often not extremely sensitive to market price (so may be misleading) and also can be subject to features (haircuts or other specific bilateral agreements between counterparties) that are relevant from an SFT point of view, but could hardly be reflected under MiFID2 post trade transparency regime.

With regards to the need for consistency for SFTs on shares and SFTs on bonds, it has to be noted that MiFIR level 1 text does not make any difference in the treatment of SFTs based on the type of underlying security.

With regards to the need for a sufficient level of subsidiarity between MiFID2 and the future SFT regulation, we believe that Securities Financing Transactions cannot be submitted to two different post trade transparency regimes. In other terms, either SFTs are submitted to MiFID2 post trade transparency regime in which case the future SFT regulation should rely on MiF2 for post trade transparency purposes, or SFTs are exempted from MiFID2 post trade transparency regime, to let the future SFT regulation develop a regime specifically designed for SFTs.

Therefore, based on the above, we believe that both equities and bonds Securities Financing Transactions should be not be covered by MiFID2 post trade transparency regime, and that the future SFT regulation should develop a specific regime that will better fit the specific features of SFTs.

<ESMA\_QUESTION\_139>

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

<ESMA\_QUESTION\_140>

No, WMBA does not agree that there should be a 5 minute maximum time to make public post trade information.

Proportionality and flexibility provisions are again paramount. Given that non-equity markets are not as liquid or latent as any equity market then it should be left to the, 'as near real time as possible' definition since whilst liquid products traded on SEFs are able and subject to far quicker publication (on the scale of minutes), many fixed income and commodity trades would be far slower (over several hours). On balance, WMBA would support a 15 minute maximum.

Regardless of automation that a firm may employ after a trade is concluded (either as voice trading systems or otherwise), the information included within a report is often far more complex than that of a cash equity. We note the 91 reporting fields being developed by ESMA, so derivatives will naturally have more information fields to complete given its characteristics. Therefore, WMBA would suggest reporting only very few key parts of the information in under five fields, and subsequently reporting the rest of the information when it becomes available in an appropriate timeframe. This would replicate the approach under SEFs.

For OTFs and voice trading systems therefore, WMBA would propose a transition period to develop which subset of eligible reporting parameters for multi-to-multi venues which are materially different to those purely bilateral and OTC markets for which a more prescriptive waterfall of information will need to be sent to the APA and calibrated appropriately.

We do not agree with ESMA that the SSI threshold and LiS threshold should only apply to liquid instruments. The conditions under MiFIR Article 11 are not stated to be mutually exclusive. As discussed in our response to section x, we propose for there to be real-time reporting for below a SSI threshold for illiquid instruments to ensure optimum transparency that mitigates risks.

MiFIR Articles 11 and 21 provides that all the details of the trade may be deferred in circumstances where there is a LiS, a trade in an illiquid instrument or a trade above a SSI to the instrument.

Publication of volume information may be allowed for an extended time period of deferral based on a system of threshold conditions. We note that ESMA has not proposed a regime that adopts these principles set out under MiFIR, so WMBA does request ESMA to reconsider these principles and adopt a regime that incorporates this framework set out under MiFIR.

We also do not agree that the SSI threshold for liquid instruments could be similar to the time period of deferral proposed under the LiS regime for equities (as suggested under paragraph 53). Unlike the equities market model adopted by ESMA, even liquid instruments for fixed income are not sufficiently liquid for most client transactions to execute on order books (CLOB).

Fixed income requires market makers to take on risk to facilitate client trades. As such, in fixed income, if a market maker does not have sufficient time to hedge or unwind its position, then it will be exposed to undue risk. Therefore, WMBA strongly recommend that the delay for the SSI to the instrument, whereby it would cause undue risk to the liquidity provider and the LiS threshold, is sufficiently long to prevent the undue risk materialising. The undue risk in fixed income is sometimes described as ‘the winner’s curse’.

To be clear, WMBA therefore endorses but requires operational independence for the rules that the deferral of publication may be authorised for:

1. LiS transactions compared with the normal market size for the financial instrument or for the asset class;
2. transactions that are related to financial instruments or to the related asset class for which there is not a liquid market; and
3. transactions that are above a SSI to that financial instrument or that class of financial instruments traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

<ESMA\_QUESTION\_140>

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

<ESMA\_QUESTION\_141>

No, WMBA broadly disagrees with the calibration used for deferrals for publication in the proposed text.

Rather, we would prefer a method with greater clarity and simplicity to be developed by ESMA for both venues to quickly establish requisite transparency as to how any deferrals should be calibrated against the sizes and types of transactions.

WMBA thinks that the calibration framework should be embedded into the publication frameworks (APA or RRM or Trade Repository) such that the venues are able to send the trades, appropriately flagged for any deferrals, in comprehensive batches as soon as technically possible after trade affirmation.

As ESMA correctly notes, in paragraph 45, an appropriate regime for deferred publication is important in these markets as many instruments are relatively illiquid in nature and, in some cases, rely on firms adopting risk to providing liquidity.

**In regard to Post trade Risk-Reduction and Compression Services**

1. The fact that a post trade risk reduction service run, which meets the above criteria, is executed in an all-or-nothing fashion means that the component transactions are executed in bulk and all have the same execution time. A compound transaction resulting from a post trade risk reduction service exercise can consist of multiple thousands of component transactions, and as the component transactions are executed in bulk it is also appropriate that they are published in bulk;
2. As mentioned in the response to Q136, the component transactions resulting from post trade risk reduction services need to be clearly identified as a separate category of transaction information as part of any post trade price reporting and transaction reporting. Otherwise market participants could be misled by signals of spurious trading activities; and
3. Against the above background, post trade risk reduction services asks that should post trade risk reduction services compound transactions become subject to post trade transparency requirements, (i) such compound transactions (and the component transactions which make them up) are authorised for deferred publication to the end of day, and (ii) unless such compound transactions are deemed “LiS” for the purpose of deferral until end of day, an alternative deferral option for such compound transactions (and its component transactions) is introduced.

<ESMA\_QUESTION\_141>

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

<ESMA\_QUESTION\_142>

No, WMBA does not agree since most trades in the wholesale markets could not be unwound within the day. We note, however, that it is difficult to comment on this question until the threshold calibrations for deferral have been determined.

WMBA propose that discretion be given to the NCA to extend out beyond 60 or 120 minute deferrals if deemed that this would benefit the marketplace liquidity, especially where or when a market is episodic in nature and may require a counterparty longer time to lay off risk. MiFIR Articles 11 and 21 provides that all the details of the trade may be deferred in circumstances where there is a LiS, a trade in an illiquid instrument or a trade above a SSI to the instrument.

We stress that MiFIR Article 21(4) provides that volume omission for an extended period applies based on the conditions in Article 11. Therefore, volume omission for an extended time delay should not only apply to illiquid instruments but should also apply to liquid instruments.

Also, we highlight that under the TRACE regime, even though prices are published in real-time for trades above USD 5mm for corporate bonds, the volume is omitted. Even though such a principle of indefinite volume omission does not exist under MiFID2, we urge ESMA to consider the reasons behind the volume omission under TRACE, which is to ensure that the bond markets are not adversely affected, and to utilise the extended volume deferral in a globally consistent similar manner that provides sufficient protections.

We also note here that even RMs do currently have their own rules delaying publication beyond the proposed timeframe and therefore MTFs and OTFs should have proportionate provisions from the same or greater scales given that they will often not be operating CLOB functionality.

WMBA notes that its members have provided ESMA with details of all wholesale market brokered transactions for 5 classes of derivatives over the calendar year to 01 June 2014 in order to provide quantitative evidence for calibrations. We do not present these here.

In respect of cash fixed income, the WMBA proposal for deferrals would therefore match the scale of those of AFME and ISDA and are in the tables below.

**For instruments with an issue size >5bn**

**Super-liquid & liquid**

|  |  |  |
| --- | --- | --- |
| **Size of transaction** | **Deferral period** | **Details to be published after the deferral period** |
| Size is below the threshold for SSI to the instrument and LiS | N/A | Publication of all details as close to real time as is technically possible and no later than **15 minutes** |
| Size is equal or above SSI to the instrument but below LiS threshold | N/A | All details to be published after the deferral period is over |
| Size is equal or above LiS threshold | Price: End of Day  Volume extended delay: 18 months | Price to be published after the delay with an indication that the size is above LIS  Volume to be published after the extended delay |

**For instruments with an issue size 500mm-5bn**

**Liquid**

|  |  |  |
| --- | --- | --- |
| **Size of transaction** | **Deferral period** | **Details to be published after the deferral period** |
| Size is below the threshold for SSI to the instrument and LiS | N/A | Publication of all details as close to real time as is technically possible and no later than **15 minutes** |
| Size is equal or above SSI to the instrument but below LiS threshold | End of day | All details to be published after the deferral period is over |
| Size is equal or above LiS threshold | Price: T+3  Volume extended delay: 18 months | Price to be published after the delay with an indication that the volume is LIS  Volume to be published after the extended delay |

<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>

WMBA is supportive of the maximum deferral period but would encourage simplicity rather than an overly complex series of scalars.

We note, however, that it is difficult to comment on this question until the thresholds for deferral have been determined.

As stated above, there should be proportionate waiver exemptions for transactions based upon size or complexity such as basis trades where the counterparties may need to complete a leg of the trade connected with the OTC derivative, i.e. buy the underlying cash.

In respect of the timing mechanisms proposed, WMBA strongly disagrees with ESMA since the members of the association operate markets which are open 24 hours per day and are active around the globe. Therefore, the reference to 1500 hours is illogical and impracticable (CET, UTC or local time?).

Rather the deferral needs to be either referenced to real time elapsed from the execution (which becomes complex) or deferred until the end of the following business day (therefore much preferred). This would additionally have the advantage of coordination with the provisions within EMIR.

<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>

WMBA disagrees because we consider this far too complex. There should be a different regime for equities, fixed income and derivatives. However, there should not be different periods across the different asset classes for bonds.

We do, however, agree with the broad proposition that there should be fixed deferral periods for different asset classes. This accords with the tables proposed above under Q142. As per our answers to Q142, Q143 above, this depends on the thresholds set for the 'LiS' and 'SSI' deferral periods.

We would welcome further clarification of the approach to be adopted which will determine the different deferral periods and whether an IBIA or a COFIA approach will be applied. Given the wholesale nature of the OTC markets, there can be a varying range in liquidity per instrument. Sovereign Bond markets are dominated by many wholesale players where as more specific commodity derivatives may have fewer participants and as such be less liquid and need longer deferrals.

<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>

WMBA disagrees because we consider that there will often be times when longer deferrals are required by market participants and we consider that the ESMA proposals are too complex. For the reasons set out above in answer to Question 141, a T+1 delay for illiquid instruments is not appropriate to ensure that market makers will have sufficient time to hedge their risks and unwind their positions. The delay of the price needs to be longer depending on the issue size. As stated above, except for sizes below SSI to the instrument, we recommend that an extended time delay for volume publication also needs to be in place.

We do, however, agree with the broad proposition that there should be fixed deferral periods for different asset classes and would refer to and support the AFME calibration regime. We agree that for defined illiquid instruments there should be a minimum deferral period of end of day +1 and that the length of time required may need to be longer in particular markets.

WMBA notes that its members have provided ESMA with details of all wholesale market brokered transactions for five classes of derivatives over the calendar year to 01 June 2014 in order to provide quantitative evidence for calibrations. We do not present these here.

In respect of cash fixed income, WMBA proposal for deferrals would therefore match the scale of those of AFME and ISDA and are in the tables below.

**For cash instruments with an issue size >5bn**

|  |  |  |
| --- | --- | --- |
| **Size of transaction** | **Deferral period** | **Details to be published after the deferral period** |
| Size is below the threshold for SSI to the instrument and LiS | N/A | Publication of all details as close to real time as is technically possible and no later than **15 minutes** |
| Size is equal or above SSI to the instrument | Price: T+3  Volume extended delay: 18 months | Price to be published after the delay with an indication that the volume is LIS  Volume to be published after the extended delay |

**For cash instruments with an issue size 500mm-5bn**

|  |  |  |
| --- | --- | --- |
| **Size of transaction** | **Deferral period** | **Details to be published after the deferral period** |
| Size is below the threshold for SSI to the instrument and LiS | N/A | Publication of all details as close to real time as is technically possible and no later than **15 minutes** |
| Size is equal or above SSI to the instrument | Price: T+7  Volume extended delay: 18 months | Price to be published after the delay with an indication that the volume is LIS  Volume to be published after the extended delay |

**For instruments <500mm**

|  |  |  |
| --- | --- | --- |
| **Size of transaction** | **Deferral period** | **Details to be published after the deferral period** |
| Illiquid instruments | Price: T+7  Volume extended delay: 18 months | Price to be published after the delay with an indication that the volume is LIS  Volume to be published after the extended delay |

<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>

WMBA does agree with ESMA because we would argue for universal deferrals.

We do indeed agree with the broad proposition that there should be fixed deferral periods for different asset classes. As per our answer to Q. 143 above, this depends on the thresholds set for the 'LiS' and 'Size Specific' deferral periods.

There is need for clarification of the approach which will be adopted to determine the different deferral periods and whether an IBIA or a COFIA approach will be applied.

We agree that for defined illiquid instruments there should be a minimum deferral period of end of day +1.

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, WMBA would like to clarify that the inclusion of ‘Cash Settled Forwards’ is understood to mean physically settling FX forward transactions, rather than non-deliverable forward transactions. A non-deliverable forward being a FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e., cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency.

We would also like to clarify, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments.

<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>

WMBA does not agree with this proposal.

Across most non-equity markets, and most especially in those qualifying as ‘*illiquid markets’*, orders can be identified by many metrics including price and by volume. On this basis, we recommend that the deferral should apply to all identifying details.

We do not agree that there is a market or public need for all other details of an illiquid extended deferral trade to be published. If it is deemed an ‘*illiquid market’* then even the smallest of trade details published before trade +1 may compromise the risk and hedging strategy of the counterparty.

The overall aim of transparency is to shed as much light on non-equity transactions as possible and this method of publication does not, in our opinion, serve that purpose.

<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>

No, WMBA does not agree that publication of sovereign debt in aggregated form for an indefinite period of time should be permitted, this is due to the lack of any definition of 'Limited Circumstances'. Rather WMBA believes that the deferral should be available under all circumstances.

As mentioned in the answers Q. 141-147, the market is strictly wholesale in its nature and with limited counterparties this publication of only aggregated data would ensure participants can lay off their risk without the market moving against them due to publication. This aggregated form of publication should only be used in limited circumstances.

<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>

WMBA only notes from our answer to Q. 148 above that the criteria should be expanded to 'everything'.

<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>

WMBA does agree that there are other types of transactions that could be authorised for deferred publication other than just those of valuation factors on the basis that publication serves no purpose to the wider public such as 'Give Up' and ‘Give In’ trades.

Determining trades by factors other than the valuation of the instrument, and making them eligible for deferred publication, will still unfairly expose the clients' activities to the market by allowing for their identification in the market. This also lessens the burden on the venues that have to publish this information.

<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>

No, WMBA does not agree with the ESMA proposals. WMBA has a firm preference for Option 1 (one) because the underlying data set is remarkably heterogeneous and needs to be treated at a granular level. Given therefore our preference for an IBIA approach across all asset classes, we consider that option 1 (one) is more suitable to cater for that approach.

Evidently the risks here are self-evident that smaller and less liquid products and issues are squeezed or crowded out of their appropriate market place by dint of being classified together with other more widely traded instruments.

<ESMA\_QUESTION\_151>

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

<ESMA\_QUESTION\_152>

No, WMBA does not agree with any combinations of Options 1 (one) and 2 (two). WMBA would therefore endorse any further option that is consistent with an IBIA approach. This is entirely dependent upon the availability and consistency of the requisite data.

<ESMA\_QUESTION\_152>

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

<ESMA\_QUESTION\_153>

Yes, WMBA does agree.

<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>

Yes, WMBA does agree with Option 1 on the basis that it is a more realistic approach and simpler to adhere and validate; whilst it is not possible to evaluate Option 2 without a method for calculating the average value of transactions (AVT).

In the calculation of ADT, WMBA would underline the requirement for a sufficient set of data taken from across the market rather than only sampling data from large and standard platforms.

We agree that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity. Therefore, Option 2 will sit alongside the COFIA assessment of liquidity for asset classes; and WMBA reminds of its strong preference for IBIA.

<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>

Yes, WMBA does concur. We agree that the proxy used in the determination of ‘*liquid markets’* could also be applied to LiS thresholds.

Notwithstanding the above, venue operators should still be able to negotiate these with their NCA at any given time if the market it operates becomes fragmented due to LiS threshold sizes being set inappropriately.

<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>

WMBA supports Option 1 (one). We believe that Option 1 (one) is more likely to produce more stable and consistent results which will in turn be easier to implement and that the LiS threshold sizes should be computed on the basis of a statistical measure of the central tendency.

This would provide a more statistical based approach which in turn should ensure that those trades that are LiS receive the protection appropriate to ensure an orderly but functional market. We would, however, recommend that Option 1 is measured by the use of quartiles or the median, rather than the mean which can be skewed by outlier transactions.

<ESMA\_QUESTION\_156>

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

<ESMA\_QUESTION\_157>

As mentioned in Q156, WMBA supports the computation of the average size of the overall trading size for each class as the most efficient and effective method. Following the CFTC approach in ensure that a pre-determined percentage of all trades should be published is a political method rather than one that ensures orderly transparent markets and gives the participants in that market the protections it requires.

<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>

WMBA supports equal thresholds and stresses the requirement for ease of application and simplicity.

There should only be a single threshold for each application of the criteria. Ensuring pre-trade transparency for orders would risk participants withdrawing from that market if the thresholds are too low. As per ESMA's comments in the DP, a common threshold would simplify the transparency regime for trading venues and investment firms, thus making compliance with these regimes more likely in practice, and it would align this aspect of the EU transparency regime with the US CFTC regime. Additionally, a common LiS threshold would assist the industry's implementation of the non-equities transparency regime.

<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>

Yes, WMBA does agree. We agree that data for the setting of LiS thresholds should only be collected from the venues post-MiFID2 as the RM, MTF and OTF categories should cover the entire market for the current OTC trades carried out now.

Prior to the introduction of the OTF, we understand that ESMA proposes to use OTC data to calculate the LIS threshold. In this regard, we would like to highlight the data submissions made by WMBA member firms to ESMA as described above. We do, therefore, highlight the risk that the inclusion of OTC data pre-MiFID2 could skew the dataset towards wholesale market trade sizes, as such trades will not necessarily be representative of "liquid" or "traded on a venue". Additionally, we query how practicable the collection of this data will be beyond WMBA members given that there is no uniform mechanism to collect such data under the existing MiFID 1 rules.

<ESMA\_QUESTION\_159>

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

<ESMA\_QUESTION\_160>

No, WMBA does not agree. Non-equity markets function very differently to equities markets and, as such, elements from the equity transparency regime should not be introduced into the transparency regime for non-equities simply because such element is present in the equities regime. There needs to be strong justification, based on the characteristics of the non-equity markets, to limit the applicability of the LiS waiver.

In particular, we would note that the argument traditionally put forward to support this condition in the equity context (and put forward by ESMA in the DP) is not reflective of certain non-equity products. For example, parties to a derivative contract are not usually regarded as clients of each other. However, the liquidity concerns which the deferral regime is intended to address are nevertheless present in the derivative market and warrant the availability of the LiS regime regardless of who the parties to the transaction are. Given the risk to the investment firm's capital and that some non-equity derivatives have a higher volatility and gearing than an equity, it is imperative that the investment firm be given the appropriate amount of time to minimalise the risk to capital for the investment firm.

We would recommend permitting deferred publication of LiS transactions without imposing the condition that the transaction is between an investment firm that deals on own account and a client of the investment firm. We would recommend that this aspect of the transparency regime be subject to an automatic review two years after the implementation of MiFID2 through which ESMA can evaluate two years’ worth of post trade data to see whether the absence of this condition has led to any detrimental effects on transparency in the non-equities markets.

<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>

Yes, WMBA would agree that the LiS regime should not be reviewed not less than 2 years after implementation.

Evidently this answer is caveated by the extent of the granularity of the assessment, but it is more likely that the granularity would need to be revised and adjusted rather than the setting of the threshold. Therefore, we would recommend the inclusion of a mechanism to ensure that a review can be conducted earlier if it is clear that the transparency regime, or certain parts of it, is not working as envisaged.

For example, wording could be added along the lines of the following: "unless there is widespread and systematic use of the temporary suspensions mechanism suggesting that the thresholds should be reviewed" or "ESMA can instigate a review at any time should market conditions dictate, in the interests of supporting the liquidity and workability of European markets’.

In support of this proposal, we would highlight recent problems experienced in the US markets. The US transparency rules have been perceived as too strict by market participants and, as a result, liquidity pools are being fragmented. We would urge ESMA to take stock of the US example and ensure that there is a mechanism in the EU for thresholds, or any other aspect of the transparency framework, to be reviewed if it is clear that the calibration of the regime is having a detrimental impact on liquidity in EU markets.

<ESMA\_QUESTION\_161>

Size specific to the instrument

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

<ESMA\_QUESTION\_162>

Yes, WMBA would agree with the description given to the applicability of the SSI to the instrument [SSI].

We note that *request for quote* and *voice trading systems* should have a suitable and proportionate requirement for pre-trade transparency as these types of interests and liquidity searches are not normally placed on a central order book and also require discretion in some cases of how the order is shown in order to protect a liquidity provider. Again, we remind that these routes to market nearly always only apply to wholesale markets and not those with retail participation.

<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>

WMBA does not remotely agree that the SSI should be set with reference to the LiS.

The SSI waiver needs to be instrument specific in its very nature and therefore set dependent upon the requirements of that market place and its participants rather than with reference to more generic factors specifically including LiS.

WMBA would request ESMA to at a minimum disassociate the application and function of the ‘LiS’ waivers from those available under the ‘Instrument Specific’ waivers such that this latter set are more closely tied to the nature of the platform and its participants. WMBA understands that the public transparencies of a trading system should be the same or equivalent across their different natures and the methodologies adopted. Different modalities of operating a trading system are built to cater for the different requirements pertaining to those products rather than segregating any part of the system or subset of participants.

Please see our answer to Q.31 which emphasises that the SSI waiver needs to be applied on an instrument by instrument basis even when the LiS waiver may also be applicable. In setting the thresholds, ESMA should take account of the type of participants, nature of the risk transfer, and methods adopted by the relevant OTF venue. We would refer here to ESMA's notes [on page 164 point 45] that in these models the provision of liquidity by participant firms involves taking on significant risk onto the trading book.

Therefore, WMBA does not concur that volume alone is a sufficient scalar. Further items such as frequency of trades and the number of participants needs to be taken into account. We would request that a sufficient list be developed by ESMA for NCAs to take into account when authorising the SSI waivers.

As observed in the table, without first applying one of the applicable waivers, neither RFQ, RFS, hybrid or voice would be feasible. For platforms to make public all requests and their responses via real time publication would not only be technologically impossible, but also injure the business model beyond the point of offering any utility whatsoever. It is further operationally uneconomic for all these prescriptive publications to be repeatedly issued and updated for each and every enquiry received or anything "that may lead to an execution”. The outcome of this would be totally disproportionate publication for any trades that are not subsequently eligible to qualify for one of the available waivers.

Moreover, in a market place where participation is limited to a small set of wholesale participants transacting periodically in large size trades inappropriate to a continuous order book market, the waiver regime immediately becomes critical. However, these regimes are neither complete nor assured. In the first instance, WMBA notes that even during the deferral periods, all enquiry details towards a possible transaction other than volume would need to be published. This would injure both parties. We do not believe it was the intention of the level one text to make common parts of the traded market either impracticable or offshore.

WMBA would also note as mentioned in the answer to question 122 above, the definition of voice trading system for multilateral wholesale markets needs to embrace the entire functional set as one that includes communication via compliant and recorded instant messaging systems or email at a minimum. We again underline that in application to voice trading systems, a wholesale market broker acting as arranger in receipt of indications of interest can disseminate trade information simultaneously to all participants or members of the system in a multiple-to-multiple manner.

Evidently SSI waivers, when granted to a venue, need to be granted to all equivalent venues.

<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>

WMBA is not sure how any measure of 'undue risk' could be created or subsequently understood. This would seem to be entirely subjective and therefore not the material for a technical consultation.

We would still suggest however, that the most appropriate methodology for calculating SSI thresholds is to extract data from the various request for quote systems that also operate a central order book and data from voice trading systems to gain an accurate overview of what would not cause undue risk to a liquidity provider.

<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>

WMBA continues to emphasise the value in the aggregation of collected data sets. We would also urge ESMA to take into the account overall liquidity in a market as well as its periodic variations and cycles.

This would be best done by the evaluation of liquidity on an ongoing basis as the characteristics of any financial instrument will constantly be transient and liable to shift between regimes.

<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>

WMBA does not agree that the SSI should be set with reference to the LiS.

As detailed in Q.163, the SSI waiver needs to be instrument specific in its very nature and therefore set dependent upon the requirements of that market place and its participants rather than with reference to more generic factors specifically including LiS.

WMBA would request ESMA to, at a minimum, disassociate the application and function of the ‘LiS’ waivers available from those available under the ‘Instrument Specific’ waivers such that this latter set are more closely tied to the nature of the platform and its participants. WMBA understands that the public transparencies of a trading system should be the same or equivalent across their different natures and the methodologies adopted. Different modalities of operating a trading system are built to cater for the different requirements pertaining to those products rather than segregating any part of the system or subset of participants.

Please see our answer to Q.31 which emphasises that the SSI waiver needs to be applied on an instrument by instrument basis even when the LiS waiver may also be applicable. In setting the thresholds ESMA should take account of the type of participants, nature of the risk transfer, and methods adopted by the relevant OTF venue. We would refer here to ESMA's notes [on page 164 point 45] that in these models the provision of liquidity by participant firms involves taking on significant risk onto the trading book.

Therefore, WMBA does not concur that volume alone is a sufficient scalar. Further items such as frequency of trades and the number of participants needs to be taken into account. We would request that a sufficient list be developed by ESMA for NCAs to take into account when authorising the SSI waivers.

As observed in the table, the normal operation of an RFQ, RFS and hybrid and voice-traded systems, in the absence of any of the waivers, would be infeasible. In order for platforms to make public all requests and their responses via real time publication, this would not only be technologically impossible but also injure the business model beyond the point of offering any utility whatsoever. It is further operationally uneconomic for all these prescriptive publications to be repeatedly issued and updated for each and every enquiry received or anything "that may lead to an execution”. The outcome of this would be a totally disproportionate publication for any trades that are not subsequently eligible to qualify for one of the available waivers.

Moreover, in a market place where participation is limited to a small set of wholesale participants transacting periodically in large size trades inappropriate to a continuous order book market, the waiver regime immediately becomes critical. However, these regimes are neither complete nor assured. In the first instance therefore, WMBA notes that even during the deferral periods all enquiry details towards a possible transaction other than volume would need to be published. This would injure both parties. We do not believe it was in the intention of the level one text to make common parts of the traded market either impracticable or offshore.

WMBA would also note as mentioned in the answer to question 122 above, the definition of voice trading system for multilateral wholesale markets needs to embrace the entire functional set as one that includes communication via compliant and recorded instant messaging systems or email at a minimum. We again underline that in application to voice trading systems, a wholesale market broker acting as arranger in receipt of indications of interest can disseminate trade information simultaneously to all participants or members of the system in a multiple-to- multiple manner.

Evidently SSI waivers, when granted to a venue, need to be granted to all equivalent venues.

<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>

WMBA disagrees with the ESMA proposal. For the avoidance of doubt, it would be preferable that the deferral periods be the same for both LiS and SSI qualifying trades.

We would rather advocate simplicity in conferring the same deferral regimes to both classes of waiver thresholds. It the opinion of WMBA that the SSI waiver is more relevant to the pre-trade jeopardies for liquidity but, as noted in our answers above, post trade disclosure to the trading peer groups would consequently feed back to being punitive to the pre-trade provision of liquidity and capital commitments. Consequently we envisage no gain by invoking the regimes at different thresholds since at the relevant trigger points, the affect is the same.

To elaborate, calibrating the two regimes to use two different time periods may cause confusion in the market and mean burdensome work for the venues, participants, market observers and supervisors. Indeed, with OTF and MTF markets only consisting of wholesale participants, this would not affect retail investors. Meanwhile, one single set period for both deferrals enables the public and other observers to make simple sense of the reports in respect of the timeframes relevant to the transactions, whilst the observers do not lose out on post trade transparency.

A further point on post trade transparency that needs to be made is the evidence from observing the implementation of TRACE in the US fixed income markets. Enquiries into the data available in TRACE in the almost two decades since its imposition have always and only been by other wholesale market participants. The wider retail and media market participants have had no demand for detailed information on illiquid and episodically traded corporate bonds. WMBA would also reiterate the point that the outcome of TRACE was to move liquidity from the entire wholesale markets from the corporate bond markets to the CDS market. The cash bond markets in the US have remained retail only in the years since and gain pricing only from reference to the CDS benchmarks. We note that these facts have never been acknowledged by either the EU Commission nor by ESMA.

<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>

No, WMBA does not agree. Rather, we would endorse a more granular approach within MiFID corresponding to the application of the IBIA method. This is clearly not the incumbent method within EMIR. One way to illustrate this is to note that the pre-trade liquidity environment is far more important and sensitive for liquidity provision and risk transfer than the post trade processes that trade is sent to.

We further note to ESMA that:

1. the precise scope of the EMIR clearing obligation classes is still uncertain and only once those classes are known with certainty (following the clearing obligation consultation) can we properly comment on the extent to which alignment of the MiFIR classes is desirable;
2. as ESMA appears to acknowledge, not everything that becomes subject to the clearing obligation will necessarily pass the venue and/or liquidity tests outlined in the DP;
3. the EMIR and MiFIR classes should not be forced into alignment and we expect that there may be contracts that are mandatorily clearable but which do not become subject to the trading obligation, as is the position in the US; and
4. when it comes to the consultation on the RTS, ESMA must pay special attention to *packaged transactions* as highlighted in our responses to questions 131 above. WMBA underline that the trading obligation should only apply where all transactions in the package are treated as a group that satisfies both venue and liquidity tests.

In regards of Post trade Risk Reduction and Compression Services:

1. WMBA note that making these post trade risk reduction services subject to a trading mandate may effectively prevent the services from achieving their risk reducing objectives and make them impossible to deliver;
2. this would have a substantial negative impact on risk management efforts in contrast to the G20 policy goals as formulated in Pittsburgh 2009. It would also effectively contradict the explicit objective of the aforementioned Recital 27 of MiFIR that the regulation “is not intended to prevent the use of post trade risk reduction services”; and
3. WMBA therefore request that ESMA clarifies that a compression service run (also called a compound transaction), which meets the above criteria, will not be made subject to the trading obligation, even though particular constituent component transactions may be subject to the clearing mandate.

<ESMA\_QUESTION\_168>

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

<ESMA\_QUESTION\_169>

Yes, WMBA does agree. However, we would ask for clarity on whether this may be achieved by clients self-certifying the information in the two categories rather than requiring a certified materiality test by the venue. We do remain concerned about the potential for conflicting international rules and encourage ESMA to work with its international peers (notably the CFTC and IOSCO) to ensure a harmonized approach internationally.

<ESMA\_QUESTION\_169>

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

<ESMA\_QUESTION\_170>

Yes, WMBA does agree. We do note some concerns that the criteria should be based on an assessment that must take account of the counterparties' subjective intentions and should not automatically lead to a conclusion that an arrangement is deliberately designed to evade.

<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>

Yes, WMBA does broadly agree. However, we would urge ESMA to adopt a careful approach in understanding that venues could be acting from a purely commercial motive rather than acknowledging their standing capabilities.

In this regard, venues need to meet the standards set out in MiFID and therefore should have objective controls and sufficient capacity in place to make an independent judgement. Venues will have a commercial incentive to nominate large numbers of contracts, many of which would potentially fail the liquidity test of which ESMA is the arbiter.

Experience from Dodd-Frank in the US has highlighted the risks of a purely venue-led approach.

In order to reduce the potential for unhelpful risks and unnecessary burdens :

1. venues should be restricted to nominating those classes of derivative contracts which they can prove are traded on their venue;
2. venues should have regard to the liquidity test that ESMA will perform when nominating contracts and venues should be prevented from nominating obviously illiquid contracts.

<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>

WMBA would endorse the same treatment and definitions of liquidity for both transparency and trading obligation purposes. For the avoidance of doubt however, this does not mean that we would endorse the same thresholds across the instruments or purposes.

<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 are different from bonds. WMBA does appreciate that ESMA should have due regard to a product's lifecycle. Re-assessing the liquidity of a derivative poses challenges (for ESMA) which are different from those faced in assessing the liquidity of fixed income instruments that have a naturally decaying liquidity as the instrument approaches maturity. Moreover, all derivatives are different from one another and their prices and overall market liquidity will be affected by a variety of different factors.

Because constant recalibration to reflect constantly changing liquidity is clearly not practicable, the periodic reassessment of liquidity should occur every six months. We refer here to our reply to Question 114.

<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>

Evidence from US SEFs demonstrates that trading instruments which have been declared "made available to trade" ("MAT") has shown that liquidity in a normally liquid instrument can be materially reduced simply by virtue of the imposition of a trading obligation (either on a short term basis, with the result that liquidity returns eventually to its pre-trading levels or on a long-term basis, resulting in a permanent reduction of liquidity).

It will therefore be imperative to fully assess the anticipated effects of imposing a trading obligation. In this regard we would stress the need for ESMA to seek views of end-users and relevant trade bodies representing end-users. WMBA would therefore encourage ESMA to conduct a detailed study of the effect the obligation to trade certain derivatives (those subject to the MAT rule) on SEFs had on the relevant class of derivatives.

<ESMA\_QUESTION\_174>

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

<ESMA\_QUESTION\_175>

WMBA has no other comments.

<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>

WMBA has no other comments.

<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>

WMBA has no other comments.

<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>

WMBA notes that its members have recently and are currently supplying trade files of all classes of derivatives to ESMA for the purposes of consulting of thresholds and waivers.

<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>

WMBA notes that its members have recently and are currently supplying trade files of all classes of derivatives to ESMA for the purposes of consulting of thresholds and waivers.

<ESMA\_QUESTION\_179>

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

<ESMA\_QUESTION\_180>

WMBA notes that its members have found that the load of responding to data requests had been very onerous on staff numbers and their other commitments. Therefore, WMBA request that ESMA first reach to the NCAs who are the recipients of transaction reporting, and also to the Trade Repositories who now have a significant body of data from EMIR reporting requirements.

<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>

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<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>

WMBA has no other comments.

<ESMA\_QUESTION\_182>

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

<ESMA\_QUESTION\_183>

WMBA notes that this is too short given the nature of the requests that do not correspond to the existing methods of reporting, nor the storage of transactions and data.

<ESMA\_QUESTION\_183>

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

<ESMA\_QUESTION\_184>

Yes WMBA agree.

<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>

WMBA finds this scope problematic. Firstly the term and usage of ‘Algorithmic Trading' is poorly defined and ill-considered. It would appear to WMBA that ESMA has in general applied a crude and anodyne read over of cash equity market structures and retail activities into the non-equity and wholesale space.

1. ESMA does not recognise the fact that venue operators of MTFs and OTFs are all 'investment firms' by necessity under authorisation. Therefore, the majority of section 4 draws a contrast between these two sets of market participants, where in fact they are not autonomous. Therefore, WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk;
2. WMBA would urge ESMA to dismiss the term 'Algorithmic Trading' and replace it with 'High Frequency Trading' and 'Cognitive Trading' because all investors will use VWAP and other numeric tools to execute a trade which carry none of the risks that may concern ESMA. Consequently much of section 4 appears to WMBA to be ill-targeted;
3. WMBA would also therefore urge ESMA to redesign the methodologies employed throughout Section 4 to capture outcomes rather than definitions;
4. in general, we consider the focus through the section to increase the complexities and potential for confusion under supervision. Additionally, requirements in general do not appear proportional. A proportional application of the Guidelines should take into account the nature, scale and complexity of different businesses. By definition, this should encompass some flexibility for firms to exercise discretion as to which, and to what extent, requirements apply to their businesses;
5. while ESMA explicitly states it “recognises that the risks stemming from algorithmic trading activities (for firms themselves and/or for the fair and orderly functioning of markets) are not homogenous across all firms, ESMA has nevertheless removed any discretion for firms when it goes on to state that the extensive list of organisational requirements in the following section “should constitute a minimum.” We believe this statement is fundamentally contrary to the proportionality principle; and
6. WMBA would recommend ESMA adopt an approach that simplifies the nature, scale and complexity factors and requires reviews ‘*annually or more frequently if circumstances give rise*.’ In conducting a holistic business review, our view is that organisations will not likely change significantly every six months. A more frequent self-assessment should be undertaken only in the event of a material change in the nature, scale, and complexity of the investment firm.

<ESMA\_QUESTION\_185>

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

<ESMA\_QUESTION\_186>

WMBA affirms ESMA’s comments that ‘*Other systems such as request-for-quote or voice trading should not be considered within the scope of this specific piece of regulation’*. Therefore, it will follow that most of section 4 will not apply to business arranged and executed on OTFs, nor as OTC trades.

WMBA also notes that its members operate a great many MTFs operating as ‘Investment Firms’ using voice hybrid and non-order book methodologies. The term ‘hybrid’ becomes problematic here as ESMA employs it throughout section 4 quite differently to its usual usage and common understanding as an electronic and voice interaction for multi-to-multi wholesale venues. Therefore, again we urge ESMA reconsider the scope and definitions throughout section 4 to refocus on outcomes and away from process.

WMBA firmly disagree with direct mapping employed by ESMA between systems<->venues. Rather, trading systems are the deployment of risk and capital whereas venues are neutral facilities. In this regard, the segregations of the terms ‘*trading systems’* from *‘trading venues’* here is at best confusing and misleading. ESMA need to make a proper distinction of those participants deploying capital and therefore owning risk and positions from the venue infrastructure.

To remedy, WMBA would urge a much more narrow definition of *'trading systems'*. We would attempt a definition which is combined with the deployment and use of the accepted MTF language around the interactions of a system. The use of the term ‘*Hybrid Scenario's’* should in fact only apply to those pieces of venues and FMIs which are the electronic and non-discretionary components.

<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>

Yes, WMBA agrees. It follows from the replies to Q185 that OTFs and wholesale MTFs operated by investment firms are not suitable or relevant for most or all of the provisions under Section 4. Global non-equity wholesale markets are materially different to EU cash equity venues, a fact not apparent from the drafting of the discussion paper.

WMBA further notes that many of the systems and methods, mainly ‘voice-hybrid’, employed by its members are not only employed in the EU but in fact form a system or a set of systems of venues, all multilateral and neutral, which execute orders and arrange liquidity across a great many countries and regions around the globe and its time zones.

<ESMA\_QUESTION\_187>

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

<ESMA\_QUESTION\_188>

WMBA also notes that its members operate a great many MTFs operating as ‘Investment Firms’ using voice hybrid and non-order book methodologies. The term ‘hybrid systems’ therefore becomes problematic here as ESMA employs it throughout section 4 quite differently to its usual usage and common understanding as an electronic and voice interaction for multi-to-multi wholesale venues.

WMBA would urge ESMA to use different terminology which is only applicable to those investment firms acting as principal or agent and to exempt neutral venue operators which have no capacity to hold positions. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

WMBA would make the analogy under UK FSMA 2000 here to the unintentional collision of COBS and MAR rules

<ESMA\_QUESTION\_188>

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

<ESMA\_QUESTION\_189>

No, WMBA does not agree. We understand that the majority of the definitions of paragraph 9 don’t apply to the venues operated by WMBA member firms [upstream connectivity; trading engine; downstream connectivity; and infrastructure to monitor the performance.

WMBA would urge ESMA to use different terminology which is only applicable to those investment firms acting as principal or agent and to exempt neutral venue operators which have no capacity to hold positions. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

WMBA would make the analogy under UK FSMA 2000 here to the unintentional collision of COBS and MAR rules

<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>

This question is not relevant to WMBA members operating MiFID venues.

However, we note the conflagration of the term ‘*investment firms’* as position taking market participants which is not correct. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

<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>

This question is not relevant to WMBA members operating MiFID venues.

However, we note the conflagration of the term ‘*investment firms’* as position taking market participants which is not correct. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

<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>

This question is not relevant to WMBA members operating MiFID venues.

However, we note the conflagration of the term ‘*investment firms’* as position taking market participants which is not correct. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

<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>

Yes, WMBA does agree.

<ESMA\_QUESTION\_193>

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

<ESMA\_QUESTION\_194>

No, WMBA does not agree because ESMA sets out an overly prescriptive and detailed approach which to us represents a simple read over of cash equity considerations. Rather, we believe the level 1 MiFIR asked rather more from ESMA, which should adopt an approach which is more proportionate to each of the complexity and the classification of clients using the venue. This is especially the case for venues operated by WMBA members being wholesale, global and distinctly non-retail.

<ESMA\_QUESTION\_194>

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

<ESMA\_QUESTION\_195>

It follows from our answer to Q185 that WMBA does not believe the proposals around the periodic self-assessment to be at all suitable. Particularly here, we believe that the requirements proposed in paragraph 48 are disproportionate and poorly defined for wholesale venues.

<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>

This question should not be relevant to WMBA members operating MiFID venues. However, we note the conflagration of the term ‘*investment firms’* as position taking market participants which is not correct. WMBA would recommend ESMA look at the *'Limited Licence/Activity'* category of investment firm (as defined under the UK FSMA 2000] and create an EU wide equivalent to capture those firms which take no positions and have no market nor credit risk.

<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>

No, WMBA does not agree with the approach described by ESMA precisely because it appears to us as prescriptive rather than proportional. WMBA also only recognises ESMA’s approach as only tangential to members’ operating models. Here the NCAs should be given more flexibility in their supervision of investment firms, especially those operating MTFs and OTFs.

<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>

No, WMBA does not see additional elements and endorses a simpler approach.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_199>

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

<ESMA\_QUESTION\_200>

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<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>

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<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>

This question should not be relevant to WMBA members operating MiFID venues. However, we should stress here that it should not be the responsibility of the venue operators to develop testing venues for market participants as could possibly be inferred from paragraph 5.

<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>

This question should not be relevant to WMBA members operating MiFID venues. However, we should stress here that it should not be the responsibility of the venue operators to develop testing venues for market participants as could possibly be inferred from paragraph 5.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_206>

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

<ESMA\_QUESTION\_207>

This question is not relevant to WMBA members.

<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>

No, WMBA does not find the list appropriate for investment firms operating MTFs and OTFs in non-equity markets. Specifically, members are not in a position to enact the following, principally because the venues do not, nor should they as arrangers, know the positions of their clients, nor the underlying chain:

1. maximum long/short positions;
2. maximum long/short overall strategy position;
3. repeated automated execution throttles;
4. outbound message rates; and
5. maximum messages limit

This is especially true for the non-order book venues.

<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>

WMBA would simply ask for proportionality and supervisory derogation in terms of venue pre-trade controls.

<ESMA\_QUESTION\_209>

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

<ESMA\_QUESTION\_210>

WMBA would simply ask for proportionality and supervisory derogation in terms of pre-trade controls

<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>

WMBA would refer to the poor definition of algorithms and note that these parameters duplicate certain other conduct requirements for member venues.

<ESMA\_QUESTION\_211>

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

<ESMA\_QUESTION\_212>

WMBA would refer to the poor definitions of both ‘algorithms’ and of ‘investment firms’. We therefore note that these parameters duplicate certain other conduct requirements for member venues.

<ESMA\_QUESTION\_212>

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

<ESMA\_QUESTION\_213>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_214>

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

<ESMA\_QUESTION\_215>

No WMBA does not see additional elements

<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>

WMBA would simply request that providers of DEA take on the responsibilities for their clients.

<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>

No, this would frequently be inappropriate for MTFs and OTFs. WMBA would simply ask for proportionality and supervisory derogation in terms of venue that do not have any ‘members’ but only clients.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_218>

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

<ESMA\_QUESTION\_219>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_222>

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

<ESMA\_QUESTION\_223>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_225>

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

<ESMA\_QUESTION\_226>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

Yes, WMBA broadly agree with the principle that trading venues should perform due diligence on all types of entities willing to become members/participants of a trading venue which permits algorithmic trading through its systems. This describes the current practice. However, we do not agree with the prescriptive nature of the due diligence standards proposed by ESMA in section 4.3 paragraphs 5-7.

<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>

It is the view of WMBA that the list of minimum requirements is far too prescriptive. In general, ESMA should leave the articulation of the framework to the NCAs rather than setting out inappropriate lists. Whilst many of the specifics listed by ESMA are impractical, it may also be the case that it is misdirected for several types of venues or their users. Certainly the guidance in paragraph 5 fails to understand the critical difference between the responsibilities upon the venue and those on the client, principally tending towards duplication.

In particular:

1. the requirement in paragraph 5(v.) *'Testing of algorithms to ensure they cannot create or contribute to disorderly trading conditions*’ cannot be achieved as members/participants are highly unlikely to provide trading venues, to which they are clients but not members, with access to their algorithms and existential intellectual property;
2. the requirement in paragraph 5(ii.) ‘*staff selection policy and training practice’* cannot be achieved as members/participants are global banking, energy or utility institutions whose HR policies clearly cannot be scrutinized either individually or collectively by those platforms and venues that they use; and
3. similarly the requirement in paragraph 5(iii.) ‘*staff composition, structure and segregation of the risk, compliance and monitoring* functions’ is far too onerous for venues to complete

Rather, WMBA would propose that ESMA recommend venues to take the representations made by authorised firms as is currently the case. Evidently, if this was not the better method, there would be little value in authorising the client financial institutions themselves whatsoever. WMBA reiterate the common theme in section 4 that this simplistic read over from retail equity markets is utterly inappropriate where clients are all and solely professional and eligible clients who are large global financial institutions. Further and specifically, the definition of ‘Algorithmic’ is inappropriate.

<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>

No WMBA does not agree, rather we would advocate a level playing field. The ‘Proportionality Principal’ would argue that position could apply in the reverse in cases where the non-investment firms and non-credit institutions are sophisticated professional clients. There is a great value and a correspondingly high bar for entry to the European regulated markets and trading venues; all entities wishing to access these markets as a member/participant should meet similar entry requirements.

<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>

No, WMBA firmly does not agree. It is the view of WMBA that the list of parameters to be monitored in real time by trading venues is overly prescriptive and onerous. We note that the difficulties we envisage here principally stem from the inappropriate definitions of ‘algorithmic’ and ‘trading system’ described above and also from an approach that does not take into account client classification, the nature and global reach of the platforms and venues, and also the nature and complexity of the products in multilateral venues.

WMBA members operate automated platforms in the EU including ‘BGC Trader’, ‘BrokerTec’, and ‘Trad Ex’. They will also operate SEFs under Dodd-Frank rules in the EU. Paragraph 11, points i) to vi) do not describe, and are not suitable for, these multilateral venues. They will offer streaming prices and indicative quotes across a great many instruments, products and packages, but these are not available and suitable for HFT.

Therefore, WMBA would specifically recommend deletion of all the points in Paragraph 11 and replace with an outcome orientated set of obligations which only apply to those financial instruments which are determined and specified under the trading obligation in MiFID2 and execute typically more than once per second.

WMBA further reiterates the point that where clients are authorised persons as professional and eligible clients under MiFID, then the venue and platforms need to be able to accept their representations rather than obliged to perform duplicate supervision to their NCA

<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>

No, WMBA firmly does not agree. It is the view of WMBA that the prescriptions for periodic reviews by trading venues are overly prescriptive and unsuitable. This should be based upon outcomes and conferred to the supervisory process by the NCAs.

<ESMA\_QUESTION\_233>

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

<ESMA\_QUESTION\_234>

No, WMBA firmly does not agree with the approach towards capacity and systems performance proposed by ESMA. Once again, we reiterate that this recommendation likely derives from a cash equity template and is not applicable to purely wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA specifically questions paragraph 17 which notes ‘*ESMA undertook a fact-finding exercise in 2011 engaging with 26 European trading venues which had a broadly reassuring outcome*…’ In fact no WMBA member firms were involved or contacted by ESMA (to the best of their recollections). This simply highlights in issues with scope and appropriateness that the enlarged scope of MiFID2 captures. Again we request ESMA to define the scope here to HFT and cash equity markets.

WMBA further note to ESMA that member platforms are employed across a great variety of markets, products and venues including as SEFs under Dodd-Frank and across Asian markets. Participants are not usually EU persons. This means that ESMAs understanding of ‘Capacity’, especially as employed in its proposal in paragraph 23 (ii.) does not capture the workflows and loading of WMBA member platforms. Therefore, the prescriptive approach as laid out is no suitable for supervisory NCAs to easily adopt.

<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>

The concept of latency is inappropriate and likely derives from a cash equity template and is not applicable to purely wholesale ‘hybrid’, non-retail and non-equity markets. Of the two principles offered, WMBA would prefer the principle “no order lost, no transaction lost”.

It is the view of WMBA that the list of parameters to be monitored in real time by trading venues is overly prescriptive and onerous. We therefore understand that ESMA should not determine such questions as these relate to commercial rather than regulatory issues.

<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>

The overarching view of WMBA is that these are more complicated issues than presented here by ESMA, specifically in that WMBA members employ their platforms for much wider and broader usage both in respect of products and regions. Furthermore, WMBA view many of these capacities beyond prudential thresholds as commercial rather than regulatory issues.

<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, WMBA do broadly agree and underline that without capacity and resilience in a global wholesale market where clients have broad and easy accessible choices, then these criteria are necessary for daily survival. Therefore, proportionality is again at the heart of the answer and has not been considered by ESMA due to the ill-defined scope of Section 4.

WMBA therefore would recommend:

1. that the proposal in paragraph 31 be appended to add, ‘where appropriate’ before setting out the list of venue arrangements; and
2. that the proposal for ‘*make public’* in paragraph 32 be appended to ‘make *available to system participants and clients upon request*’. This is because competition between venues could not be possible if the capabilities and IP of each venue were immediately open to competing offerings. WMBA members compete intensively and are closely aware that market participants benefit greatly from open access and competition.

WMBA further notes that, ‘*mechanisms to manage volatility’* is ill defined and not suitable to wholesale ‘hybrid’, non-retail and non-equity markets. Therefore we recommend that this should be removed.

<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>

No, WMBA does not agree and would urge more proportionality to be employed with the discretion conferred to NCA supervision. Specifically, we recommend that the proposal for ‘*publication’* be appended to ‘*make available to system participants and clients upon request’*. This is because competition between venues could not be possible if the capabilities and IP of each venue were immediately open to competing offerings. WMBA members compete intensively and are closely aware that market participants benefit greatly from open access and competition.

<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>

WMBA would endorse that venues have the minimum degree of discretion possible to mitigate operational risks unintentionally arising but which preserves the neutrality of the venue.

<ESMA\_QUESTION\_239>

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

<ESMA\_QUESTION\_240>

No, WMBA does not agree and would urge more proportionality be employed by ensuring that venues set out their principles for halting or constraining trading in their ‘*terms and conditions’* and also in their ‘*Rulebooks’*.

Therefore, the principals set out in paragraph 34 (i. – vii.) should only apply where venues have not already set these out in the more formal and prescriptive arrangements in *terms and conditions’* and also in their ‘*Rulebooks’.*

<ESMA\_QUESTION\_240>

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

<ESMA\_QUESTION\_241>

No, WMBA firmly does not agree. Specifically, we recommend that the proposal for ‘*publication’* of actual operating mode of their trading halts public, to be appended to a reference to the framework in the ‘*terms and conditions’* or in the ‘*Rulebook’;* which would ‘*make available to system participants and clients upon request’*.

This is because:

1. making trading halts public may encourage the ‘gaming’ and manipulation of the system by participants to create discontinuities;
2. competition between venues could not be possible if the capabilities and IP of each venue were immediately open to competing offerings. WMBA members compete intensively and are closely aware that market participants benefit greatly from open access and competition.

<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>

No, WMBA firmly does not agree. Specifically, we recommend that the proposal for ‘*publication’* of actual thresholds to be appended to a reference to the framework in the ‘*terms and conditions’* or in the ‘*Rulebook’;* which would ‘*make available to system participants and clients upon request’*. This is because competition between venues could not be possible if the capabilities and IP of each venue were immediately open to competing offerings. WMBA members compete intensively and are closely aware that market participants benefit greatly from open access and competition

<ESMA\_QUESTION\_242>

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

<ESMA\_QUESTION\_243>

WMBA does agree with the extent of proposals on conformance testing and notes that this is universally and widely done currently.

<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>

WMBA recommends that these capabilities be stated and described in the Rulebook of the venue.

<ESMA\_QUESTION\_244>

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

<ESMA\_QUESTION\_245>

WMBA recommends that any alternative means of conformance testing be stated and described in the Rulebook of the venue.

<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>

In the view of WMBA, given that traders may be required to disclose, on a regular or ad-hoc basis, *a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject*, it is unnecessary to require trading venues to duplicate this information by being required to test the algorithms.

WMBA considers that a certificate from an external IT audit be deeply inappropriate for wholesale venues such as those operated by WMBA members which anyway need to conform to the highest standards across multiple regulatory environments around the globe.

<ESMA\_QUESTION\_246>

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

<ESMA\_QUESTION\_247>

In the view of WMBA, there should be minimum capabilities, but these would be specific to each venue and therefore determined under supervision and by the NCA.

<ESMA\_QUESTION\_247>

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

<ESMA\_QUESTION\_248>

No, WMBA firmly does not agree. We underline that the approach suggested by ESMA fails to be cognisant of the difference between an operators of a venue (MTF or OTF) as an arranger and the mode of acting as an agent for a counterparty. The ESMA proposal in paragraph 48 (v. vi. and viii.) would not be possible for the operator of a wholesale venue whilst at the same time injuring the very necessary and vital neutrality of the venue to arrange and execute trades without any bias.

Rather the requirement for pre-trade controls should take into account the nature of the participants and therefore confer the discretion to the NCA.

<ESMA\_QUESTION\_248>

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

<ESMA\_QUESTION\_249>

No, WMBA does not believe there are any further pre-trade controls desirable.

<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>

No, WMBA does not agree that the mechanisms to manage volatility in Article 48(5) are at all suitable for MTF and OTF venues wholesale ‘hybrid’, non-retail and non-equity markets. Rather, there is widespread open access and competition, therefore the notion of material liquidity is not appropriate.

Further, the concept implicit in the ESMA proposals of the listing of a designated contract and a made available to trade concept do not apply. Therefore WMBA would propose that the term ‘regulated markets’ as the ‘relevant markets’ in paragraph 54 be replaced by the singular reference to ‘Regulated Markets’ (RM’s) as per the MiFID categorisation.

<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>

As per our answer to Q250, WMBA would propose that the term ‘regulated markets’ as the ‘relevant markets’ in paragraph 54 be replaced by the singular reference to ‘Regulated Markets’ (RMs) as per the MiFID categorisation.

<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>

WMBA do support ‘Option A’. We would add that WMBA member venues should set out a general framework in their ‘Rulebooks’ as currently required for MTFs and as consistent with the pertaining regime in the US under Dodd-Frank. Further we would endorse that the venue is only able to look through to the first level of client participation.

<ESMA\_QUESTION\_252>

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

<ESMA\_QUESTION\_253>

No, WMBA does not believe there are any other approaches.

<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>

No, WMBA firmly does not agree since making public would deter competition between venues. Specifically, we recommend that the proposal for ‘publication’ of the list of elements, to be appended, being available in the ‘terms and conditions’ or in the ‘Rulebook’; which would ‘make available to system participants and clients upon request’.

With regards to the content of the list, WMBA does not agree that venues are able to monitor position related metrics in paragraph 65 (i. d. ii.) pre-trade and post trade risk management trade controls and position limits.

<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>

No, WMBA firmly does not agree. Specifically, we do not agree that MTF and OTF venues are able to monitor position related metrics in paragraph 65 (i. d. ii.) pre-trade and post trade risk management trade controls and position limits.

<ESMA\_QUESTION\_255>

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

<ESMA\_QUESTION\_256>

No, WMBA does not believe there are any other clarifications.

<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>

No, WMBA does not believe there are any other additional powers since venues have limited access to their clients’ onward DEA provisions. Therefore, these are the responsibilities of the DEA provider.

<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>

No, WMBA does not agree and would request that ESMA develop a more precise, separated and applicable definition of each of, ‘*market making agreements’* and, ‘*market making schemes’*. Specifically, in non-equity markets the provision of liquidity is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts. Briefly therefore, participants may stream liquidity around the key points in interest rate, volatility and credit curves.

<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, WMBA does not agree and notes again that non-equity markets feature a provision of liquidity which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts.

<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>

This should not be applicable to wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA simply notes again that non-equity markets feature a provision of liquidity which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts.

<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>

This should not be applicable to wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA simply notes again that non-equity markets feature a provision of liquidity which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts

<ESMA\_QUESTION\_261>

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

<ESMA\_QUESTION\_262>

No, WMBA does not agree and notes that MTFs and OTFs operated by WMBA members only have clients and no ‘members’. These clients are usually eligible counterparty participants.

<ESMA\_QUESTION\_262>

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

<ESMA\_QUESTION\_263>

Yes, WMBA does agree with the interpretation of “posting firm quotes”

<ESMA\_QUESTION\_263>

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

<ESMA\_QUESTION\_264>

No, WMBA does not agree. This should not be applicable to wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA simply notes again that non-equity markets feature a provision of liquidity which is often streaming indications or commitments at points on an interest rate, volatility or credit curve, and the combinations and interpolations of these which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts.

<ESMA\_QUESTION\_264>

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

<ESMA\_QUESTION\_265>

No, WMBA does not agree with this prescription of simultaneity of liquidity provision. It has no validity with the concepts of arranging and working up of transactions that take place over time. Rather, it is the executions that may be simultaneous. Therefore, this concept should not be applicable to wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA simply reminds again that non-equity markets feature a provision of liquidity which is often streaming indications or commitments at points on an interest rate, volatility or credit curve, and the combinations and interpolations of these which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts

<ESMA\_QUESTION\_265>

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

<ESMA\_QUESTION\_266>

No, WMBA does not agree with this prescription of ‘comparable size’. It has no validity with the episodic nature of trading in wholesale ‘hybrid’, non-retail and non-equity markets. Rather, participants are not looking to cross the spread and there are no designated contracts.

WMBA simply reminds again that non-equity markets feature a provision of liquidity which is often streaming indications or commitments at points on an interest rate, volatility or credit curve, and the combinations and interpolations of these which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts

<ESMA\_QUESTION\_266>

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

<ESMA\_QUESTION\_267>

No, WMBA does not agree with this prescription of ‘competitive prices’. It has no validity with the open access and highly competitive multilateral nature of trading in wholesale ‘hybrid’, non-retail and non-equity markets. Rather participants are able to access a great variety of venues, none of which owns a liquidity pool and will usually not have a CLOB with a depth of market, but is able to discover liquidity upon request.

WMBA simply reminds again that non-equity markets feature a provision of liquidity which is often streaming indications or commitments at points on an interest rate, volatility or credit curve, and the combinations and interpolations of these which is very different to that which ESMA is seeking to read across because of both the nature of participants and the wide array of potential contracts

<ESMA\_QUESTION\_267>

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

<ESMA\_QUESTION\_268>

No, WMBA does not agree with this prescription of quoting parameters. These issues are of tangential and very limited relevance. Therefore, the scope should be restricted to the RM category of venues. Indeed, we remind that the limited fact-finding exercise undertaken by ESMA in 2013 did not consult any WMBA markets and likely did not address the wider scope of MiFID2 to wholesale ‘hybrid’, non-retail and non-equity markets.

WMBA member venues are open 24 hours per day and available across all regions, not solely in the EU.

<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>

WMBA does not concur that the market making schemes under Article 48 of MiFID2 have effectively contributed to more orderly markets.

<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>

WMBA notes that the usage of the term ‘investment firm’ is not appropriate here as many authorised investment firms under MiFID are not able to take principal or agency positions. These specifically would include WMBA members as ‘Limited Licence’ and ‘Limited Activity’ Firms under FSMA 2000 permissions.

The requirements in this question apply to the market participants and so are not relevant to WMBA members.

<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>

No, WMBA does not agree that this is applicable to wholesale ‘hybrid’, non-retail and non-equity markets. Indeed WMBA member venues are open 24 hours per day and available across all regions, not solely in the EU.

<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>

No, WMBA does not agree that this is appropriate to wholesale ‘hybrid’, non-retail and non-equity markets

<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, WMBA does not agree. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets

<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>

WMBA sees no further and additional areas that that agreement should cover.

<ESMA\_QUESTION\_274>

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

<ESMA\_QUESTION\_275>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_276>

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

<ESMA\_QUESTION\_277>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_277>

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

<ESMA\_QUESTION\_278>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_278>

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

<ESMA\_QUESTION\_279>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_279>

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

<ESMA\_QUESTION\_280>

Yes WMBA does agree with this approach.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

WMBA sees this as a competency of the Rule Book of the market operator.

<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>

WMBA notes that whilst ESMA states in paragraph 46, “Currently there are two main types of market making activity in evidence,” that neither of these describe those seen in the MTFs and other venues currently operated by WMBA members. Therefore, the considerations and ESMA proposals under paragraphs 52, 53, 54 are in general inappropriate.

WMBA would replace the constriction to ‘liquid markets’ proposed by ESMA to ‘Regulated Markets’ under MiFID. There is no relevance and suitability beyond this.

<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>

WMBA would replace the constriction to ‘liquid markets’ proposed by ESMA to ‘Regulated Markets’ under MiFID. There is no relevance and suitability beyond this.

<ESMA\_QUESTION\_285>

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

<ESMA\_QUESTION\_286>

No, WMBA does not agree. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets.

<ESMA\_QUESTION\_286>

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

<ESMA\_QUESTION\_287>

No, WMBA does not agree. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets.

<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>

No, WMBA does not agree. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets.

<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>

No, WMBA does not agree. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets.

<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>

Yes, WMBA agrees.

<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>

No, WMBA does not agree that this is relevant. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. 4.5. Order-to-transaction ratio [OTRs] have no value in wider venue sets. These prescriptive recommendations are clearly not applicable to wholesale non-CLOB, ‘hybrid’, non-retail and non-equity markets.

Rather, there are no designated contracts but a functional streaming liquidity across curves and other pricing factors. We would urge ESMA to consider the increased scope of MiFID rather than simply read across inappropriate cash equity venue content.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<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, WMBA does not agree. Please see our answer to question 293.

<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, WMBA does not agree. Please see our answer to question 293.

<ESMA\_QUESTION\_296>

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

<ESMA\_QUESTION\_297>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<ESMA\_QUESTION\_298>

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

<ESMA\_QUESTION\_299>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<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>

No, WMBA does not agree. Please see our answer to question 293.

<ESMA\_QUESTION\_303>

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

<ESMA\_QUESTION\_304>

No, WMBA does not agree. Please see our answer to question 293.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_305>

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

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

<ESMA\_QUESTION\_306>

Yes, WMBA concurs with the approach.

<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>

No, WMBA does not identify any practice that would need regulatory action.

<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>

No, WMBA does not identify any specific difficulties in obtaining adequate information.

<ESMA\_QUESTION\_308>

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

<ESMA\_QUESTION\_309>

No, WMBA does not identify any cases of discriminatory access that would need regulatory action.

<ESMA\_QUESTION\_309>

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

<ESMA\_QUESTION\_310>

Yes, WMBA would also identify that schemes may be in place to differentiate between market takers and market makers. A wholesale market broker may treat these differently.

None 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\_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>

No, WMBA does not consider 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>

##### 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>

No, WMBA does not consider any fee structures that would foster a trading behaviour leading to disorderly trading conditions

<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>

No, WMBA does not consider any volume related fee structures should be banned.

<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, WMBA cannot identify any potential risks from charging differently the submission of orders to the successive trading phases.

<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>

No, WMBA cannot identify any potential distortions to competition.

<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>

No, WMBA cannot identify any discount structures which might lead to a situation where the trading cost is borne disproportionately by certain trading participants. WMBA would remind ESMA that it is self-evident that in the open access architectures of non-equity MTFs and OTFs, market participants have wide choice and therefore the ability and powers to self-regulate.

<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, WMBA cannot identify any disorderly trading from these structures.

<ESMA\_QUESTION\_317>

##### Should conformance testing be charged?

<ESMA\_QUESTION\_318>

No, WMBA believes this is up to the venues and may be stated in their ‘Rulebooks’ or ‘Terms and Conditions’.

<ESMA\_QUESTION\_318>

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

<ESMA\_QUESTION\_319>

No, WMBA believes this is up to the venues and may be stated in their ‘Rulebooks’ or ‘Terms and Conditions’.

<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>

No, WMBA sees this as not relevant.

<ESMA\_QUESTION\_320>

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

<ESMA\_QUESTION\_321>

No, WMBA firmly does not agree. These are the business choices and competencies of the venues. ESMA should require proportionate policies to be stated in their ‘*Rulebooks’* or ‘*Terms and Conditions’.* Beyond that, this is up to the role of supervision by NCAs.

<ESMA\_QUESTION\_321>

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

<ESMA\_QUESTION\_322>

It follows from WMBA answer to Q321 above that this is not required.

<ESMA\_QUESTION\_322>

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

<ESMA\_QUESTION\_323>

No, WMBA sees this as not relevant. It is important that ESMA revises any approach to OTR to exclude MTF and OTF venues.

<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>

No, WMBA sees this as not relevant. It is important that ESMA revises any approach to OTR to exclude MTF and OTF venues.

<ESMA\_QUESTION\_324>

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

<ESMA\_QUESTION\_325>

No, WMBA sees this as not relevant. It is important that ESMA revises any approach to OTR to exclude MTF and OTF venues.

In order to clarify this situation we would urge ESMA to:

1. revise the definition of ‘market making schemes as prescribed above; and
2. remove the concept of OTR from MTF and OTF venues.

<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, WMBA sees this as not relevant. It is important that ESMA revises any approach to OTR to exclude MTF and OTF venues.

<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>

No, WMBA sees this as not relevant. It is important that ESMA revises any approach to OTR to exclude MTF and OTF venues.

<ESMA\_QUESTION\_327>

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

<ESMA\_QUESTION\_328>

WMBA would not encourage or endorse the linking of fee structures to any potential or observed abusive trading behaviour. Rather, fee structures are purely commercial and behavioural issues are a matter for regulatory supervision in respect of a client’s own authorisations.

<ESMA\_QUESTION\_328>

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

<ESMA\_QUESTION\_329>

No, WMBA does not see any such incentives.

WMBA would not encourage or endorse the linking of fee structures to any potential or observed abusive trading behaviour. Rather, fee structures are purely commercial and behavioural issues are a matter for regulatory supervision in respect of a client’s own authorisations.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_331>

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

<ESMA\_QUESTION\_332>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_332>

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

<ESMA\_QUESTION\_333>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_333>

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

<ESMA\_QUESTION\_334>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_336>

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

<ESMA\_QUESTION\_337>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_343>

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

<ESMA\_QUESTION\_344>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_344>

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

<ESMA\_QUESTION\_345>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_345>

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

<ESMA\_QUESTION\_346>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<ESMA\_QUESTION\_360>

Data publication and access

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

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

<ESMA\_QUESTION\_361>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_361>

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

<ESMA\_QUESTION\_362>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_362>

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

<ESMA\_QUESTION\_363>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_363>

Additional requirements for particular types of Data Reporting Services Providers

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

<ESMA\_QUESTION\_364>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_364>

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

<ESMA\_QUESTION\_365>

**WMBA is only making comments in respect of post trade risk reduction services**

The fact that a post trade risk reduction service run, which meets the above criteria, is executed in an all-or-nothing fashion means that the component transactions are executed in bulk and all have the same execution time. A compound transaction resulting from a post trade risk reduction service exercise can consist of multiple thousands of component transactions. The amount of time needed to publish the complete set of component transactions will depend on the publication facility’s ability to receive and publish the large amounts of data representing all component transactions. If post trade risk reduction service component transactions become subject to post trade transparency requirements, the publication facility will accordingly need to support receiving and publishing several thousands of transactions in bulk with the speed and within the time frame with which the transactions would need to be published.

ESMA should clarify that an APA to be used for portfolio compression data publication purposes, and an APA to be used post trade risk reduction service data publication purposes (should post trade risk reduction services be made subject to APA publication), should support the format to be reported by the portfolio compression service provider/post trade risk reduction service provider as well as the speed and time frame within which data needs to be reported (in line with the interpretation of “as soon as technologically possible” in this context).

<ESMA\_QUESTION\_365>

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

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

<ESMA\_QUESTION\_366>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_366>

Consolidated tape providers

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

<ESMA\_QUESTION\_367>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_367>

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

<ESMA\_QUESTION\_368>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_368>

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

<ESMA\_QUESTION\_369>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_369>

Data disaggregation

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

<ESMA\_QUESTION\_370>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_370>

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

<ESMA\_QUESTION\_371>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_371>

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

<ESMA\_QUESTION\_372>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_372>

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

<ESMA\_QUESTION\_373>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_373>

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

<ESMA\_QUESTION\_374>

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<ESMA\_QUESTION\_374>

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

<ESMA\_QUESTION\_375>

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<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>

**In regards of Post trade Risk-Reduction and Compression Services**

If post trade risk reduction services component transactions become subject to post trade transparency requirements, WMBA would request that ESMA clarifies that for each component transaction resulting from the post trade risk reduction service exercise, one of the two investment firms who are parties to the relevant component transaction should make the transaction public and that the same approach as used for any non post trade risk reduction service transactions should be used to decide which one of those parties should make the transaction public.

<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>

No, WMBA disagrees, because:

1. the question pre-supposes ‘access’ is therefore secondary to existing arrangements;
2. the question therefore implies a hierarchy of the vertical integrated venues, since a vertically integrated CCP-Exchange could not in these terms ‘deny’ itself;
3. WMBA understands that the moral hazard over open access provisions would be better served and in effect nullified if a vertically integrated CCP-Exchange first diminished their own integrated access prior to denying any third party venue access on the grounds of capacity;
4. WMBA understands that it is normally the case that external venues only supply a small fraction of volumes relative to that in the vertically integrated pipeline, therefore point [iii] above should apply; and
5. the CCP should have available and planned for adequate headroom capacity under the CPSS-IOSCO Principals for FMI.

Therefore, at a minimum such a provision could only be possible provided that this ground for denial of access is applied in a non-discriminatory manner ensuring that it is applied equally to all trading venues including those falling within the same group as the CCP.

<ESMA\_QUESTION\_377>

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

<ESMA\_QUESTION\_378>

WMBA understands that CCPs should be expected to produce transparent guidelines which set out how it will assess whether and in what circumstances the anticipated volume of transactions would exceed its capacity planning in order to ensure that the assessment is applied to all trading venues in a non-discriminatory manner not favouring particular trading venues.

<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>

WMBA notes that whilst there will always be operational risks that grow in proportion to volume and usage; in the case of CCPs its more likely that a more diverse population of transactions, less reliance on a single venue and the demands for a CCP to update its connectivity and technology to accept multiple venues will lower total risks rather than raise them.

<ESMA\_QUESTION\_379>

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

<ESMA\_QUESTION\_380>

Yes, WMBA agrees provided that, as per our answer to Question 377, this ground for denial of access is applied in a non-discriminatory manner ensuring that it is applied equally to all trading venues including those falling within the same group as the CCP.

<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>

As with Question 378, WMBA notes that CCPs should be expected to produce transparent guidelines which set out how it will assess whether and in what circumstances the number of users expected to access its systems would exceed its capacity planning in order to ensure that the assessment is applied to all trading venues in a non-discriminatory manner not favouring particular trading venues.

<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>

WMBA notes that whilst there will always be operational risks that grow in proportion to volume and usage, in the case of CCPs it is more likely that a more diverse population of transactions, less reliance on a single venue and the demands for a CCP to update its connectivity and technology to accept multiple venues, will lower total risks rather than raise them

<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>

WMBA does not believe that there are any greater risk emanating from allowing new trading platforms to access a CCP. In fact, nothing in the legislation suggests that CCPs will have to lower their membership requirements which at all times need to be in line with EMIR.

Equally, CCPs would be expected to continue managing their risks, through margin calls etc. as per EMIR – in a non-discriminatory fashion irrespective of the trading venue on which the trade was executed.

Therefore, beyond the scale risk elaborated under Q378, there are no other additional risks that would be relevant in this situation.

<ESMA\_QUESTION\_383>

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

<ESMA\_QUESTION\_384>

WMBA underlines that CCPs should be expected to produce transparent, clear and non-discriminatory guidelines determining when the anticipated operational risk would exceed its operational risk management design.

<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>

WMBA would suggest that in the setting out of demonstrable arrangements for managing operational risk, a CCP shall likely improve its overall risk exposure and its management in opening access. Each CCP should draw up objective and non-discriminatory operational standards (including risk management standards) and apply these standards, as set out in Article 35(1) of MiFIR. Further, that per the penultimate paragraph of Article 35(1) of MiFIR, there should be an over-arching principle that a CCP should not be required to lower its risk management standards.

<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>

WMBA does not think that meeting the costs for a CCP to comply with MiFID would create any significant undue risk. Rather, we think that the costs would be investments in a more open and therefore safer architecture. There is definitely a positive cost v benefit trade-off from the consequent transparency.

It should also be highlighted that paragraph 37 of the Discussion Paper currently omits charges made to the trading venue by the CCP. Such costs should be included as relevant costs. This category of costs should also include costs of any additional capital or other resource requirements.

<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>

WMBA understand that it can be expected that, in general terms, this should not be significant in the EEA context because of common rules in MiFIR and EMIR. However, in a global business there are, and will be, third country linkages in terms of products and services where a lack of legal or regulatory harmonisation could generate the kind of risk envisaged in the question.

For example, indirect clearing under EMIR and MiFID2/R is not yet supported by the underlying laws in one or more member states in Europe. This lack of harmonization between EU law and the laws of underlying member states risks undermining the effectiveness of European regulation.

<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>

No, WMBA does not agree, CCPs are not complex organisations in terms of their factor risks and balance sheet.

<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>

WMBA simply notes that a CCP without the risk management and connectivity technologies and capabilities to manage the provision of access would not apply and list a product for mandatory clearing. Nor would this be granted by ESMA. Therefore, any such risks will not materialise.

<ESMA\_QUESTION\_389>

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

<ESMA\_QUESTION\_390>

Yes, WMBA does agree.

<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>

WMBA notes the rising operational risks and capacities of connectivity but does not foresee any particular rise to material risks.

<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>

WMBA notes again that any rise to material risks because of arrangements for managing operational risk would be borne from the connectivity and processing capacities. However, we do not foresee any particular rise to material risks.

<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>

WMBA notes that granting access to CCPs may require risk control mechanisms or infrastructure requirements that are not currently supported and which may give rise to costs that would create significant undue risk.

For example, a CCP may operate a ‘client clearing model’. This, in turn, might require the venue to invest in expensive third party pre-trade credit screening technology, significantly increasing the cost to the venue while also adding operational risk to the process.

<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>

WMBA notes that a CCP that requires a venue to have its own membership or account with the CCP in order to submit trades, perform allocation etc., has the potential to expose the trading venue to significant undue risk.

For example, in the event of a settlement/‘take-up’ failure by a counterparty or counterparty’s clearer the venue could in effect become counterparty to the trade. Venues are typically limited activity firms in terms of their regulatory capital position and are therefore not in a position to become a counterparty and therefore the trades are either agreed bilaterally or torn up.

<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>

No, WMBA does not think that granting access creates unmanageable risks for trading venues from the involvement of different legal regimes. In fact, venues have become particularly adept at managing the requirements that arise from an absence of regulatory recognition.

<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>

No, WMBA does not recognise any further risks.

<ESMA\_QUESTION\_396>

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

<ESMA\_QUESTION\_397>

No, WMBA does not agree.

<ESMA\_QUESTION\_397>

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

<ESMA\_QUESTION\_398>

WMBA notes that the condition in paragraph 35(iv) (a) should include the requirement that the access arrangement be non-discriminatory.

<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>

This is not relevant to WMBA.

<ESMA\_QUESTION\_399>

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

<ESMA\_QUESTION\_400>

WMBA endorses that where fees charged by CCPs for clearing services are bundled together with other services, each component of the overall fee should be made transparent.

<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>

Yes, WMBA agrees. CCPs should be expected to apply the same margin off-sets and margin relief regardless of the trading venue on which the contracts are traded.

<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>

WMBA is in favour of facilitating the use of position off-setting, in conjunction with a CCP providing cross-margining, consistent with EMIR. We would like to see a firmer legal stance by both ESMA and NCAs to consider two financial instruments to be economically equivalent and therefore to be netted (be that via position offset, pre-default payment net or close-out net).

Most particularly, WMBA notes that the term “economically equivalent” is not defined anywhere in the level 1 text or the Discussion Paper. Accordingly, we see this as becoming a real obstacle to open access and efficient economic netting. The markets would benefit from official guidance as to the scope of the equivalence and some clarity as to whom determines such equivalence (ESMA, Commission services, an NCA or even the CCP?). We assume that where a CCP is expected to make the determination and to discuss such determinations with its NCA, it shall be bound to do so with most regard to the economic benefits accruing to itself rather than the wider market place.

WMBA remains in favour of non-discriminatory practices being followed by CCPs in relation to position closure / netting but recognise that differences in contract terms may make this more difficult to achieve as between comparable listed derivative contracts traded on different trading venues. The issues set out above are likely to preclude the position closure/netting of a listed derivative contract traded on one trading venue with a listed derivative contract traded on a different trading venue.

WMBA are also in favour of payment netting the payments relating to a contract executed at one trading venue with the payments relating to a contract executed at another trading venue. Pre-default payment netting is a legitimate requirement under the non-discriminatory access arrangements, which CCPs should be required to provide if requested by a trading venue.

<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>

WMBA are firm supporters of both open access and the interoperability of CCPs. Therefore, we would welcome this provision to grant a trading venue the ability to require a CCP to offer margin offsets/cross product margining, especially if it is already offering such a service for an incumbent trading 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>

WMBA agree with Question 404(a). In relation to Question 404(b), we cannot see how a national competent authority would make a determination in relation to liquidity fragmentation. Further, the ability to aggregate trading venues allows clients to avoid the effects of liquidity fragmentation, although we recognise that non-fungible contracts may lead to liquidity fragmentation which trading venues cannot remedy.

<ESMA\_QUESTION\_404>

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

<ESMA\_QUESTION\_405>

WMBA does not believe that the considerations should be further specified.

<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>

No, WMBA understands that the provision of access per se can only reduce risks. We do, however, note that the commensurate reduction in prices and costs could create situations where investment and commitment are both harder to make in a scenario of lower retained earnings.

<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>

WMBA notes that this approach would appear to contradict ESMA's own guidance in para 66 on page 355, which states that "ESMA considers that the calculation of a trading venue's annual notional amount should be conservative" - which would suggest the LOWER value be used, not the higher one that is advocated in paragraph 67 on page 356.

In many cases, notional is a meaningless metric. For example, a 30 year bond contract with notional EUR 100,000 leads to a greater exposure to a given shift in interest rates than a short term interest rate contract of notional EUR 1 million. For interest rate instruments, notional could be calculated on a 10 year equivalent basis or similar, which would more accurately reflect the risk than pure notional.

<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>

This question is not relevant to WMBA members.

<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>

This question is not relevant to WMBA members.

<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>

WMBA does not have further considerations. WMBA notes that itself and its members calculate notional amounts simply and single sided.

<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>

Yes, WMBA agrees that trading venues require the information stated, for the reasons elaborated in the proposal.

<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>

WMBA does agree with ESMA’s analysis in paragraph 16 that “trading purposes” covers all the functions exercised by a trading venue in relation to the trading of a benchmark product, namely product development, market operations and surveillance. For the purpose of evaluating product marketability, a trading venue needs a broad range of information, including historical series of the index value, methodology (including the formula for index and expiry calculation, selection and rebalancing methodology, weighting rules), the actual composition, historical changes to the index composition and conditions for the availability of such information to market participants. This information will also permit assessment of whether an index has proper characteristics to support the development of a derivatives market that is sound and has integrity.

On an on-going basis, certain information (as described below) should be available in a timely fashion in order to properly monitor the regular functioning of the market, in particular when the trading venue for the exchange traded product is also managing the market where the underlying is traded.

The following data and feeds are required:

1. a data stream of the index values and expiry prices- this may be real-time, periodic or end of day, according to the type of index and frequency of its calculation and publication; and
2. a feed of and/or access to any corrections/recalculations / restatements of a benchmark value

At least daily:

1. data files containing relevant corporate action information;
2. index value at end of day;
3. open and closing price files;
4. exchange rate data files; and
5. access to historical index values for at least 2 years

<ESMA\_QUESTION\_412>

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

<ESMA\_QUESTION\_413>

This is not relevant to WMBA.

<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>

WMBA does not find this relevant to member’s business models.

<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>

Yes, WMBA does agree. The benchmark values should be provided on a non-discriminatory basis, i.e. they should be notified at the same point in time at which they are available to other licensees. WMBA notes that ESMA should state that ESMA should write 'published' rather than 'calculated'.

<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>

Yes, WMBA does agree. The benchmark values should be provided on a non-discriminatory basis, i.e. they should be notified at the same point in time at which they are available to other licensees. WMBA notes that ESMA should state that ESMA should write 'published' rather than 'calculated'.

<ESMA\_QUESTION\_416>

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

<ESMA\_QUESTION\_417>

Yes, WMBA does agree.

<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>

WMBA does not know of any other information required by a trading venue in addition to those points in Q. 416 above.

<ESMA\_QUESTION\_418>

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

<ESMA\_QUESTION\_419>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

Yes, WMBA does agree. It is not clear to us in what circumstances such advance notification would not be possible, so we would encourage ESMA to specify that the owner of the benchmark should use all reasonable efforts to notify the trading venue/CCP in advance.

We encourage ESMA to apply the IOSCO principles for Benchmarks to all applicable areas within the DP, so as to promote standardisation of the regulatory approach to benchmarks across borders - such an approach may also facilitate cross-border recognition of the same.

<ESMA\_QUESTION\_421>

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

<ESMA\_QUESTION\_422>

Yes, WMBA does agree. It is not clear to us in what circumstances such advance notification would not be possible, so we would encourage ESMA to specify that the owner of the benchmark should use all reasonable efforts to notify the trading venue/CCP in advance.

We encourage ESMA to apply the IOSCO principles for Benchmarks to all applicable areas within the DP, so as to promote standardisation of the regulatory approach to benchmarks across borders - such an approach may also facilitate cross-border recognition of the same.

<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>

We encourage ESMA to apply the IOSCO principles for Benchmarks to all applicable areas within the DP, so as to promote standardisation of the regulatory approach to benchmarks across borders - such an approach may also facilitate cross-border recognition of the same.

<ESMA\_QUESTION\_423>

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

<ESMA\_QUESTION\_424>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

Yes, WMBA does agree that venues require information in line with IOSCO principles, we would expect trading venues to be provided with this information. We note, however, this does not extend to the details of individual transactions which are aggregated into a volume weighted average index.

<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>

WMBA does not know of any other information required by a trading venue in addition to those points in Q. 416 above.

<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>

WMBA notes that this does not extend to the details of individual transactions which are aggregated into a volume weighted average index. There may be other instances where the traded components are private to the counterparties and their supervisors.

<ESMA\_QUESTION\_429>

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

<ESMA\_QUESTION\_430>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<ESMA\_QUESTION\_432>

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

<ESMA\_QUESTION\_433>

No, WMBA does not agree. There is actively an ongoing debate amongst major index administrators as to how any 're-fixing' policies should be set out.

This area is not commonly agreed. Further, it is common market practice to make ‘re-fixes’ available via a broadcast screen and to notify interested parties via email. It may be the case that not all parties are known by the administrator or that the technology cannot provide for simultaneous broadcast across all media. Therefore ESMA should adopt a *'best endeavours'* policy.

<ESMA\_QUESTION\_433>

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

<ESMA\_QUESTION\_434>

No, WMBA does not agree. There is active an ongoing debate amongst major index administrators as to how any 're-fixing' policies should be set out.

This area is not commonly agreed. Further, it is common market practice to make ‘re-fixes’ available via a broadcast screen and to notify interested parties via email. It may be the case that not all parties are known by the administrator or that the technology cannot provide for simultaneous broadcast across all media. Therefore ESMA should adopt a *'best endeavours'* policy.

<ESMA\_QUESTION\_434>

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

<ESMA\_QUESTION\_435>

Yes, WMBA would also expect changes in the composition and pricing of a benchmark to be notified in a timely manner to ensure the least disadvantage to trading venues.

<ESMA\_QUESTION\_435>

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

<ESMA\_QUESTION\_436>

This is not relevant to WMBA.

<ESMA\_QUESTION\_436>

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

<ESMA\_QUESTION\_437>

Yes, WMBA agrees with the principles described. Further, we would emphasise that the same terms, availabilities and timings of data availability should be provided outside any vertical silo as it is available within. Moreover, this availability needs to apply to the full content of the provisions as well as key terms and pricing.

<ESMA\_QUESTION\_437>

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

<ESMA\_QUESTION\_438>

No, WMBA disagrees. This would be self-contradictory, that is that the information would then become public.

<ESMA\_QUESTION\_438>

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

<ESMA\_QUESTION\_439>

No, WMBA disagrees. This would be self-contradictory, that is that the information would then become public.

<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, WMBA disagrees. This would be self-contradictory, that is that the information would then become public.

<ESMA\_QUESTION\_440>

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

<ESMA\_QUESTION\_441>

Yes, WMBA does agree with the conditions set out.

<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>

No, WMBA does not understand that there are any further conditions.

<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>

No, WMBA does not believe that further conditions should be within the legal scope. Further, we would note that in general we believe certain commercial operations hold too much intellectual property relative to that of the market participants which leads directly to fragmentation and higher costs for end users.

<ESMA\_QUESTION\_443>

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

<ESMA\_QUESTION\_444>

WMBA would believe that overly prescriptive ***'equivalence'*** conditions beyond the general economic factors and similarly widespread intellectual property rights over the risk and positions of market participants have both contributed to market fragmentation and access restrictions, therefore:

1. we would encourage an open and straightforward approach to encourage competition and fungibility; and
2. that the licences between proprietary rights holders and associated trading venues and/or CCPs should be at arms length and on the same basis as similar commercial arrangements made by independent providers.

Internal cross charging/allocation arrangements should reflect these terms and prices and be transparent to trading venues/CCPs seeking access to a benchmark under this provision CCP perspective. Where there is a benchmark provider integrated with a trading venue, it is important that the trading venue access the benchmark on an unbundled basis with no cross-subsidy so as to enable third parties trading venues/CCPs to obtain access on comparable commercial terms.

<ESMA\_QUESTION\_444>

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

<ESMA\_QUESTION\_445>

WMBA understands that in regards to termination, a licence may be terminated for convenience on sufficient notice (with licence to continue until the expiry of any existing outstanding traded instruments) or immediately on any applicable breach or act of insolvency etc. Typically, there will be a provision which provides that termination or expiry of the licence will not terminate the permissions granted in respect of any Exchange Traded Products already in issue. This would effectively create a “run off” period following termination which runs until the last of the derivatives expire.

<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>

No, WMBA disagrees. For the benefit of simplicity, all benchmarks should be treated the same. This would be overly prescriptive and interfere with prospective benchmarks legislation.

<ESMA\_QUESTION\_446>

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

<ESMA\_QUESTION\_447>

No, WMBA disagrees. It follows from our answer to Q. 446 above that all benchmarks should be treated the same.

<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>

No, WMBA disagrees. It follows from our answer to Q. 446 above that all benchmarks should be treated the same.

<ESMA\_QUESTION\_448>

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

<ESMA\_QUESTION\_449>

No, WMBA disagrees. It follows from our answer to Q. 446 above that all benchmarks should be treated the same.

<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>

WMBA notes here that market operators are defined as operators of RMs only. Therefore wholesale market brokers as operators of MTFs and OTFs are not in scope here.

<ESMA\_QUESTION\_450>

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

<ESMA\_QUESTION\_451>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<ESMA\_QUESTION\_454>

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

<ESMA\_QUESTION\_455>

This is not relevant to WMBA.

<ESMA\_QUESTION\_455>

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

<ESMA\_QUESTION\_456>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<ESMA\_QUESTION\_457>

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

<ESMA\_QUESTION\_458>

This is not relevant to WMBA.

<ESMA\_QUESTION\_458>

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

<ESMA\_QUESTION\_459>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

No, WMBA does not agree. The primary responsibility for suspensions needs to sit with the venue under ongoing supervision by its NCA, any reversed methodology will create confusion and impracticable interpretation requirements by a great many venues directly causal to damaging investor interests as highlighted in paragraph 23.

WMBA understands that this competence should be limited in scope to underlying instruments listed on Regulated Markets (RM) and their 'Delta-One' (solely and directly dependant) derivatives. We query here usage of 'RM' in the question. For instance could the suspension be triggered by the operator of an MTF where the MTF lists the stock or share?

Where the underlying is not a specific incorporated entity, such as a crude oil contract or a currency for instance, this clearly should not apply. We note here examples of possible sanctions that could affect a financial instrument listed on an RM.

Further, it is unclear to WMBA how CFDs may be affected in light of a suspension. Clearly, further details and specifications of scope are therefore urged in this respect. WMBA would endorse that the primary listing market be identified and made the responsible party in this respect. Clearly this may not be a 'Regulated Market' or 'Exchange'.

<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, WMBA disagrees. It follows from our answer to Q. 461 above that all baskets and other derivatives which are not 100% correlated should not be treated with the same suspensions.

WMBA does, however, support the meaning of paragraph 25 which requires flexibility above given that venues offer a plethora of instruments which will always require a proportionate approach in order for contracts to continue to trade in an orderly way.

<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>

WMBA agrees with the communications formats suggested in Q 463.

<ESMA\_QUESTION\_463>

Commodity derivatives

Ancillary Activity

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

<ESMA\_QUESTION\_464>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<ESMA\_QUESTION\_465>

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

<ESMA\_QUESTION\_466>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<ESMA\_QUESTION\_478>

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

<ESMA\_QUESTION\_479>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA

<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>

This is not relevant to WMBA and LEBA.

<ESMA\_QUESTION\_484>

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

<ESMA\_QUESTION\_485>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<ESMA\_QUESTION\_487>

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

<ESMA\_QUESTION\_488>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

This is not relevant to WMBA and LEBA.

<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>

WMBA and LEBA agree that hedges excluded from the position limits regime should remain consistent with hedges excluded from the clearing threshold under EMIR and, therefore, agree that the definition of risk reducing trade under MiFID2 should be the same as under EMIR, i.e. article 10(3) of EMIR and article 10 of the EMIR regulatory technical standards (EU N° 149/2013).

<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>

WMBA and LEBA concur that the definition of non-financial entity (NFE) under the MiFID2 position limits regime should be aligned with the definition of non-financial counterparty (NFC) under article 2(9) of EMIR, which excludes entities which must obtain licence under existing European financial services legislation as set out in the definition of ‘financial counterparty’ under article 2(8) of EMIR (i.e. investment firms, credit institutions, insurance companies, UCITS and their asset management companies, AIFs and their management companies, pension funds).

However, we note with concern ESMA's proposal in paragraph 14 that MiFID2 would use the existing comparable definition within EMIR of non-financial counterparty. The definition of NFE does not currently appear to consider application to third country entities. A third country credit institution with no presence in the EU will not be required to seek authorisation under the Banking Directive, and so under the current definition would qualify as a NFE. For the purpose of alignment with the EMIR NFC concept, the definition should be amended to cover entities established in the EU which are not required to seek authorisation under the relevant directives, and entities established outside the EU which would not have been required to seek authorisation if they had been established in the EU.

WMBA and LEBA further note that if the definitions of economically equivalent OTC contracts and of netting are not sufficiently broad, an entity that may be required to be licensed under MiFID2 (and which, therefore, would no longer be an NFE) will not be able to rely on the hedging exemption to the position limits regime and that this prohibition will materially limit its ability to manage the risks associated with its commercial activities effectively

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

However, we do note that, in principle, we support rules aiming at tracking 'concert parties'. As this notion of ‘concert parties’ is not referenced in article 57(12), ESMA may not be able to introduce level 2 measures on this point. In any case, if ESMA was to introduce such rules, we would support alignment with principles that were enforced under the legislative texts that already use this concept. We also believe that "the circumstances where it is appropriate to aggregate positions even for unconnected persons where they are tied together in a common purpose" (page 409 of the Discussion paper, Paragraph 20) must be proved by the competent authority in charge of enforcing the position limits regime.

<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>

Position limits apply to commodity derivatives contracts covered by the MiFID2 definition of financial instruments (as stated in article 57 as well as recitals 127, 130 and 131). However to accurately reflect the net risk-exposure of market participants, underlying physical positions, including non-derivative contracts, should be taken into account.

Therefore, WMBA and LEBA agree with ISDA and EFET in noting the following:

1. ESMA should set a list of EU listed contracts subject to the limits in order to bring legal certainty to the scope of the position limits regime;
2. it is essential that written contracts from different location should have the same notion of equivalence to ensure that the commodity risk exposures are accurately reflected. Since position limits will apply to net positions, netting must be allowed also between underlying physical (non-derivative) contracts and the on-venue contract subject to the position limits;
3. ESMA should not impose an artificial restriction on the ability to net cash-settled and physically-settled non-derivative contracts if the contracts are economically equivalent. The level 1 text ac-accurately sets that the economic equivalence is in the heart of the calculation of a position and not a legal equivalence. The purpose of level 1, clearly stated in article 57.1 (a), is to ‘prevent market abuse’ and ‘support orderly pricing and settlement conditions’. These objectives go with a definition of netting that reflects the reality of these global markets;
4. the industry strongly supports a mechanism that is sufficiently broad and legally clear (i.e. measurable). In this respect, we believe that the first approach is not sufficiently broad because the criteria are cumulative. We also think that the implementation in the European Union of the second approach would need to be tailored to meet a much broad pool of contracts rather than the list of 28 contracts but potentially to all on-venue contracts. But we believe that the second approach offers a more practicable set of equivalence criteria by setting out the specific types of contracts which could be considered to be equivalent and that this type of approach would facilitate implementation. We suggest that ESMA considers defining qualitative criteria (which may be the same for certain commodities) per asset class, i.e. a) Oil, b) Gas and power, c) Metals, d) Agriculture;
5. we note with concern that ESMA’s comments in the Discussion Paper indicate that it intends to interpret economically equivalent OTC contracts as meaning only MiFID financial instruments. In order to ensure a workable netting regime, market participants should be allowed to net against the underlying physical positions, including contracts that are not commodity derivatives (e.g., certain REMIT instruments and other physical contracts, e.g. coal and oil, or spot con-tracts). This greater pooling of positions and the provision of netting to allow bona fide hedges to be offset against physically settled transactions would therefore facilitate the accurate presentation of commodity risk levels;
6. in addition, a wider definition along the lines noted above is consistent with how the market hedges physical transactions which generally do not qualify as MiFID financial instruments (for example, (i) physically delivered metal forwards and options not traded on an MTF, not being for commercial purposes or having characteristics of other derivative financial instruments are hedged with LME futures; (ii) wholesale energy products subject to the REMIT carve out are hedged with power futures on European power exchanges; and (iii) OTC physically settled Loco London good delivery gold can be hedged with COMEX (non-EU venue) futures);
7. also, we encourage ESMA to consider the need for "proxy hedging" when considering economically equivalent OTC contracts. Proxy hedging occurs when a risk related to a particular product is managed by hedging with a different product. For example, a participant may choose to hedge jet fuel exposure with ICE Europe Gas Oil Futures Contracts, since this ICE futures contract is both a key price determinant in European jet fuel markets and a highly liquid risk management tool. For the market to function as efficiently as possible and for all participants to have the ability to continue to offer, and benefit from, price risk management services, the position limit regime should allow for netting between proxy hedging contracts as economically equivalent contracts;
8. we recognise that there are challenges in defining proxy hedging contracts and in this regard refer ESMA to the CME Group rules and guidance on Exchange for Related Position (EFRP) transactions. EFRP’s are used by market participants to establish, move or liquidate exchange positions by executing the exchange product versus an OTC contract. There are several types of EFRPs, including an Exchange of Futures for Physical (EFP), which is defined as, "the simultaneous execution of an Exchange futures contract and a corresponding physical transaction or a for-ward contract on a physical transaction." In determining what may qualify for the physical component of the EFP the CME Group provides the following in its guidance (see link provided);
9. "The related position component of the EFRP must involve the product underlying the Exchange contract or a by-product, related product or OTC derivative instrument that is reasonably correlated to the corresponding Exchange instrument;
10. the related position component of an EFRP may not be a futures contract or an option on a futures contract;
11. where the risk characteristics and/or maturities of the related position differ from the instrument underlying the Exchange contract, the parties to the EFRP may be required to demonstrate the correlation between the products and the methodology used in equating the futures to the related position. In all cases, the related position transaction must be comparable with respect to quantity, value or risk exposure of the corresponding Exchange contract."

<http://www.cmegroup.com/tools-information/lookups/advisories/market-regulation/files/RA1311-5.pdf>; and

1. the CME Group rules and guidance highlight both the need for proxy hedging capabilities and a general level of accepted market practice. ESMA requests suggested amendments to the second approach to determining economically equivalent OTC contracts (see Q497). We suggest that the CME Group rules and guidance on EFP transactions could be considered as the basis of an additional proxy hedging criterion for economically equivalent OTC contracts under the second approach.

<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>

WMBA and LEBA generally agree that it would be appropriate to base equivalence on the substitutability of the underlying commodity for such contracts. This is consistent with the legislative text in MiFID2 which calls for a determination of economic equivalence.

<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>

WMBA and LEBA generally agree that alignment of the two definitions would ensure global regulatory consistency in a global market. The definitions provide a logical sub-set of contracts to ensure that the resulting application of position limits would meet the European Parliament and Council’s aims of preventing market abuse and supporting orderly pricing. A consistent approach across jurisdictions also greatly reduces the complexity of systems and controls required by global firms subject to both the CFTC and EU 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>

WMBA and LEBA note that for contracts considered to be economically equivalent to listed contracts, then they must be widely accepted as fungible by CCPs and other FMIs. Once the definition of economically equivalent OTC contracts is set with sufficient width and certainty, then the implementation and supervision will be much easier. We therefore believe that the response to this question largely depends upon the definition of economically equivalent OTC contracts. We also believe that CCPs and trading venues will be essential in conveying the necessary data for determining economically equivalent positions to listed contracts.

<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>

WMBA and LEBA note that for contracts considered to be economically equivalent to listed contracts, then they must be widely accepted as fungible by CCPs and other FMIs. Therefore, in order that the 'same' derivative contract is not to be a subset of economically equivalent contract and therefore useful in creating completion and economies of netting, other elements have to be taken into account such as the settlement process.

The intention of article 57(6) of MiFID2 is to apply a single position limit across multiple trading venues where "the same" contract is traded. However, as a practical matter, we question if ESMA will be able to monitor and to resolve disputes with respect to position limits, in respect of trading venues located outside the EU.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

<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>

Deliverable supply is the right metric for physically settled spot month contracts. For cash settled spot-month contracts, we believe that the metric should be the average daily volume. WMBA and LEBA firmly oppose the use of the term ‘*open interest’* since it not only pre-supposes and denotes a CCP cleared market but one in which the cleared contracts become the intellectual property of a particular vertical clearing silo. These concepts are at once incorrect and at odds with the open access mandate conferred from MiFID level 1. LEBA publishes monthly market data on energy market volumes and for most of the major EU energy markets, the proportion of traded volumes which are cleared is well under 10%. Therefore, we fail to understand how this could be any proxy worth measuring.

WMBA and LEBA do not think that it is preferable to set position limits for any contracts beyond near date futures deliveries which are vulnerable to squeezes and other manipulation of the delivery process. We would request that ESMA provide further detail on how they intend to determine the overall market size for securities contracts with a commodity underlying. We highlight that there are significant implementation issues that need to be considered further.

In particular: (i) the definition of deliverable supply/open interest; (ii) ensuring that the deliverable supply/open interest is based on reliable, accurate and current information; and (iii) the fact that some energy products are combusted into other traded contracts.

Further, the differences between many classes of commodities means some that some are durable and can be stored indefinitely [oil] and some cannot be stored for a minute [power]; this means that for some commodities as well as production, then deliverable supply should also include stock levels (i.e. surplus production stored from a prior period).

<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>

WMBA and LEBA do not think that it is preferable to set position limits for any contracts beyond near date futures deliveries which are vulnerable to squeezes and other manipulation of the delivery process.

We agree that amending the position limit on a real-time basis is not only unnecessarily but unfeasible and that setting it for a fixed (excluding exceptional circumstances) period is preferable. With regard to the period itself, we propose that position limits on a contract are fixed for an initial period of two years and with annual reviews thereafter with amendments to the limits only where necessary.

<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>

WMBA and LEBA underline that the period must be sufficient to ensure that the adjustment does not disrupt the market. Many commodity derivatives markets are by nature illiquid. If the period is too short then the sudden adjustment that a major market participant might need to make could create stressed conditions in the concerned market.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

<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>

No, WMBA and LEBA disagree with any the determination of a central or primary trading venue, let alone one apparently backed by an EU agency. This directly contravenes not only the competition objective of MiFID2 but the rights to do business in the Lisbon Treaty directly.

We further reiterate that if the concept of ‘*same contract’* is to be used in EU law, then interoperability and contract fungibility between clearing houses should also be facilitated.

<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, WMBA and LEBA disagree with the use of a measure of “significant volume” as this goes far beyond the requirements from level 1 and in anointing a central venue it directly contravenes not only the competition objective of MiFID2.

<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>

WMBA and LEBA agree that competent authorities apply the methodology in a different way for the spot month and to all other months along the curve, considered in aggregate. We highlight that not all commodity markets follow the same vanilla date structure.

<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>

'Spot' or 'delivery' month limits restrict how many contracts a participant can hold in the period during which delivery of the physical commodity is to be made. This is where dominant market positions can have the most acute effect. Further down the curve however, position limits may be less effective given reduced liquidity for long-dated contracts. If a market participant holds a large position further ‘down the curve’ markets have sufficient time to react. Therefore, in the view of WMBA and LEBA, the main focus of the position limit regime should be on the spot month and to the extent that limits needs to be applied to other months they should sufficient to allow the normal functioning of the market and not unnecessarily restrict liquidity.

We also believe that it is important to take account of contract design and related specifications in addition to deliverable supply. Market distortions do not simply arise due to the size of the position built by a market participant in a particular commodity but also can arise due to the manner in which a contract is designed. In certain cases, using deliverable supply alone as the single determining factor when setting a position limit for a commodity is insufficient as it is also necessary to take into account specific characteristics of that commodity, for example, logistical constraints i.e. ease with which the commodity can be delivered or extracted given contract delivery points

<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>

WMBA and LEBA firmly disagree with ESMA’s proposal for trading venues to provide data on the deliverable supply underlying their contracts. This is quite simply because as the principal set of venues arranging and executing prompt, physical forward and derivative energy market contracts, are members are not close to, nor responsible for the deliverable supply. Further, this rather ill-thought out idea would require the same data to be determined and published repeatedly by all venues offering the same contract. Evidently this sets out not only to be irrelevant and inefficient, but it directly undermines the competition and open access philosophy that underpins the MiFID level 1 text.

Rather, we would advise ESMA that the relevant TSO or supranational body such as the IEA, ACER or the OECD are the correct bodies to determine deliverable supply. In the case of power and gas, ESMA should closely cooperate with ACER who are closely cogniscent of the underlying supply, demand and transport characteristics of the EU energy markets.

<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>

WMBA and LEBA firmly oppose the use of the term ‘*open interest’* since it not only pre-supposes and denotes a CCP cleared market, but one in which the cleared contracts become the intellectual property of a particular vertical clearing silo. These concepts are at once incorrect and at odds with the open access mandate conferred from MiFID level 1.

WMBA and LEBA do endorse a harmonised regime globally for key economically-linked contracts both exchange traded and OTC is critically needed where the fundamentals of the underlying commodity markets are global. It would be a grave concern if a global commodity has different position limits depending on whether it falls within the CFTC regulation or the EU MiFID regime. Coordination between relevant EU and non-EU competent authorities having access to regional or national trade repositories is essential to measure the overall size of the relevant commodity derivatives markets.

Therefore, terms which are venue and entity specific such as and especially, ‘*open interest*’ which confer IP rights between and fragmenting otherwise identical contracts in different jurisdictions would contradict the desired outcomes. Further, imposing limits that do not reflect the global nature of commodity markets would cause substantial fragmentation and would be detrimental to risk management.

<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>

WMBA and LEBA underline that both actual and implied volatility measures are abundantly available across all derivative and physical commodity markets. Indeed, our member firms operate these markets daily. Therefore, we fail to understand the ESMA statement referring to the absence of published or easily obtained information on volatility. This is simply incorrect.

However, WMBA and LEBA believe that volatility is not a relevant criterion for the purpose of the calculation methodology of limits and we do not clearly see at this time how ESMA proposes to incorporate volatility into position limit calculations.

Volatility is natural to markets and reflects the market adjusting to new information. If regulators believe that the effect is driven by some sort of abuse, they have sufficient powers under MAR to take action. We do not believe that position limits prevent volatility. There is evidence that in some cases limits may even lead to increased volatility if they are inappropriately calibrated.

<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>

WMBA and LEBA agree with ESMA's views on the size and number of market participants and do not see any other consideration. We also support ESMA's statement on page 419, paragraph 77 of the discussion paper: "Concentration of positions in a market will particularly be a factor in national gas and power markets, which may need to set limits to reflect the existence of 'national champions', depending on the extent of fragmentation of former state-owned incumbents and the terms of any market maker schemes operated by venues as necessary for proper market operation. This is accommodated in the use of separate factors for different asset classes, which can reflect the individual market structures".

We also believe that where a product is traded by a small number of participants, ESMA should seek to understand the composition of market participants before determining the position limit. For example, a market with ten active participants may have two sellers and eight buyers, or just one risk management provider amongst nine participants seeking risk management services. In such markets, a single position limit may have a disproportionate impact on some of the participants.

<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>

WMBA and LEBA would remind ESMA that seasonal supply outages in the physical market, the perishability of deliverable materials and the capacity constraints (with regard to transportation and delivery) should be taken into account. We reiterate that to obtain accurate data on production and storage of some commodities, ESMA should closely cooperate with ACER who are closely cogniscent of the underlying supply, demand and transport characteristics of the EU energy markets.

<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>

WMBA and LEBA believe that instead of position limits, ESMA should consider relying on the position management powers available to national regulators and trading venues. New contracts often are illiquid and immature initially and may be used only by a small number of market participants.

<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>

No WMBA and LEBA disagree on the proposed usage of both ‘*open interest’* and ‘*volatility’*:

1. we firmly oppose the use of the term ‘*open interest’* since it not only pre-supposes and denotes a CCP cleared market, but one in which the cleared contracts become the intellectual property of a particular vertical clearing silo. These concepts are at once incorrect and at odds with the open access mandate conferred from MiFID level 1; and
2. we believe that *volatility’* is only a backwards looking factor. Statistical analysis would provide far better information on the past performance of the observed price populations.

<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, WMBA and LEBA believe that instead of position limits, ESMA should consider relying on the position management powers available to national regulators, TSO’s and trade repositories.

<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>

Again, WMBA and LEBA believe that instead of position limits, ESMA should consider relying on the position management powers available to national regulators, TSO’s and trade repositories. Notwithstanding this, in the case of forward maturities an alternative methodology to imposing position limits is to instead require market participants to disclose their position upon coming within a certain range and then to explain the reason for having that position to the relevant NCA. This promotes greater transparency for the market and regulators while not artificially restricting liquidity in contracts that are not subject to logistical constraints associated with the delivery period (expiration).

<ESMA\_QUESTION\_517>

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

<ESMA\_QUESTION\_518>

WMBA and LEBA believe that using a contract month other than prompt as the "key benchmark contract" should not cause any particular problems. Indeed, the UK is setting power CFDs under UK Electricity Market Reform (EMR) on the season ahead price because it is more suitable and appropriate.

Indeed, with the key risks being addressed by limits as abusive squeezes occurring in designated futures contracts as it approaches expiry, this shall mitigate the main risks.

<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>

WMBA and LEBA would recommend conferring these issues to the relevant NCAs and to ACER.

<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>

Deliverable supply is the right metric for physically settled spot month contracts. For cash settled spot-month contracts, we believe that the metric should be the average daily volume.

We firmly oppose the use of the term ‘*open interest’* since it not only pre-supposes and denotes a CCP cleared market but one in which the cleared contracts become the intellectual property of a particular vertical clearing silo. These concepts are at once incorrect and at odds with the open access mandate conferred from MiFID level 1.

<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>

In determining its methodology for the setting of position limits for physically delivered contracts, ESMA should consider not only the defining of deliverable supply, but equally importantly the capacity for determination of deliverable supply.

WMBA and LEBA reiterate that trading venues however have no competencies in advising of deliverable supply. For medium to long term supply calculations, industry and government sponsored organisations (such as ACER, the International Energy Agency or OPEC reports) may have well established processes for determining structural supply and demand data, but for shorter term calculations it would most likely be the market participants that would be the key data providers for deliverable supply calculation.

<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>

WMBA and LEBA believe that instead of position limits, ESMA should consider relying on the position management powers available to national regulators, TSO’s and trade repositories.

<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>

WMBA and LEBA think that position limits should be sufficiently high until the regulators are able to assess the data.

<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>

WMBA and LEBA understand that the characteristics for each class outlined by ESMA relate to the relevant exchange contract not necessarily the OTC and physical forward markets and these differences will need to be recognised when applying a methodology. We would therefore recommend that limits are only applied and limited to the relevant exchange contract.

<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>

WMBA and LEBA understand that the characteristics for each class outlined by ESMA relate to the relevant exchange contract not necessarily the OTC and physical forward markets and these differences will need to be recognised when applying a methodology. We would therefore recommend that limits are only applied and limited to the relevant exchange contract.

<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>

WMBA and LEBA note that different units appropriate to the individual market conventions only become relevant should the limits not be delimited to the relevant exchange contract. Otherwise ESMA should work with the market participants and trade associations to explore the specific units used across the panoply of commodity markets. We remind that LEBA publishes market traded volumes monthly and is well used to normalising units across different conventions and maturities.

<ESMA\_QUESTION\_526>

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

<ESMA\_QUESTION\_527>

WMBA and LEBA believe that ESMA should defer to the relevant markets here. However, care needs to be taken not to coerce OTC and physical trades into inappropriate daily limits.

<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>

WMBA and LEBA believe that instead of position limits, ESMA should consider relying on the position management powers available to national regulators, TSO’s and trade repositories. If setting limits for options positions, then these limits should track the option delta.

<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>

Firstly, WMBA and LEBA firmly disagree as we note that, as a set of trading venues, our members do not publish delta-equivalent futures positions. Therefore, this proposal appears unfeasible. It also would suggest an anti-competition approach from ESMA towards MiFID and the choice of market structure offerings.

Secondly, we note that option deltas (and other factor model quanta) have nothing to do with futures contracts. This suggested approach is of some concern to us.

Further, and more importantly, market participants will have different internal calculation methodology for calculating risk equivalent values from which to ensure consistency with internal risk systems. These will be more accurate and appropriate than any that may be voluntarily published by any trading venues.

Given the importance of good risk management, the ESMA suggested approach is of some concern to us.

<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>

WMBA and LEBA agree.

<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>

Unfortunately, WMBA and LEBA understand that the level 1 MiFID2 text does not allow a phased-in approach.

<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>

WMBA and LEBA doubt the appropriateness nor efficacy of setting up a ‘Position Reporting for Commodities’. Moreover, we underline that trading venues do not know the positions of their clients nor the underlying chain. In acting as venues and arrangers, rather than as agent to either side of any transaction, it is of utmost importance that venues are not compromised by knowing the motive and urgency of either side to a trade.

Further, given the market participants are offered a choice of venues, no single venue, very properly, is able to reconstruct the position of any client form only their perspective of their client’s activities. This is straightforward, proper and self-evident. Yet it would appear that ESMA and MiFID2 are attempting to bend this reality. Further, we do not understand why this specific position reporting is to be put in parallel to EMIR reporting, where the same information is supposed to end up anyway. They consequently do not see the additional value of this specific reporting.

We believe that ESMA could simply filter the information collected by Trade Repositories for purposes of monitoring their position limits regime for ‘financial instruments’. For gas and power, we urge ESMA to use the very detailed data reporting regime under REMIT. We remind that ACER have developed a TRUM in close cooperation with the entire industry that has 64 data fields per transaction.

Setting up a separate reporting regime for MiFID not only adds complexity and duplications but it is also prone to error if the relevant data and fields are not taken over from EMIR. Market participants would like to avoid a separate reporting chain, as this is just costly duplicity.

<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>

Yes, WMBA and LEBA agree that the definition of 'position' under article 58 should be aligned with the definition under article 57 since the position reporting requirements aim to support the position limit regime. The position reporting requirements should therefore apply to contracts traded on a trading venue and economically equivalent OTC contracts. We oppose the use of the term ‘*open interest’* since it not only pre-supposes and denotes a CCP cleared market, but one in which the cleared contracts become the intellectual property of a particular vertical clearing silo. These concepts are at once incorrect and at odds with the open access mandate conferred from MiFID level 1.

<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>

WMBA and LEBA note that the position reporting requirements fall upon investment firms as market participant counterparties rather than onto the venues. However, we are concerned that where counterparties are not EU persons, then this obligation may confer onto the venue who evidently would not be able to provide any sensitive position data.

Any requirement to report spread and other complex trades on a disaggregated basis should be consistent with the reporting requirements imposed by other jurisdictions. For example, in certain circumstances, market participants should be permitted to report positions based on a diversified commodity index on a consolidated basis (e.g., where the index is commonly known and the weightings of individual components are publically available). Where this this obligation may confer onto the venue, it would require the arbitrary setting of reference (or ‘per leg’) prices and we would request ESMA advice on best practice in this situation.

<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>

WMBA and LEBA agree with ESMA's approach to use reporting protocols used for other transactions reporting under MiFID2.

<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>

ESMA's proposal to use LEI, BIC, National code waterfall logic will mean existing EMIR reporting methodology can be leveraged minimising new builds and facilitating implementation. WMBA and LEBA reiterate the call for ESMA to defer to both REMIT and EMIR reporting wherever possible.

<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>

WMBA and LEBA underline that trading venues do not know the positions of their clients and particularly not the underlying chain. In acting as venues and arrangers, rather than as agent to either side of any transaction, it is of utmost importance that venues are not compromised by knowing the motive and urgency of either side to a trade. Further, given the market participants are offered a choice of venues, no single venue, very properly is able to reconstruct the position of any client form only their perspective of their client’s activities.

Clearly therefore market participants should report positions directly to their respective NCA. Therefore, we query why ESMA has even included trading venues amongst the options.

However, we note that;

1. a great many participants in the EU trading venues are not EU persons and therefore the reporting regime will be of little or minimal value due to incompleteness;
2. in power and gas markets over 95% of the trades and therefore of positions are in physical forwards which are not ‘financial instruments’ and therefore not reportable as trades nor positions. In this case we query to ESMA what the possible value could be of the remaining stump of positions derived only from the cash settled transactions or those which are CCP cleared?;
3. WMBA and LEBA therefore do not understand why this specific position reporting is to be put in parallel to EMIR reporting, where the same information is supposed to end up anyway. They consequently do not see the additional value of this specific reporting;
4. we believe that ESMA could simply filter the information collected by Trade Repositories for purposes of monitoring their position limits regime for ‘financial instruments’;
5. for gas and power we urge ESMA to use the very detailed data reporting regime under REMIT; and
6. ESMA should ensure that any information published by ESMA, the competent authorities, or individual trading venues does not reveal the positions of individual market participants. This is a particular concern in physical commodity markets where contracts based on specific delivery points may be used by a small number of market participants.

<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>

Quite clearly, WMBA and LEBA advocate that ESMA confer this obligation onto the trade repositories set up under EMIR for this purpose.

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

However, regardless of the way in which ESMA seeks to obtain information on clients and their underlying clients, investment firms should not be prohibited from dealing with clients who are unable to provide the required information (either in relation to themselves or in relation to their underlying clients), as this is likely to result in significant barriers to market access for end clients

<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>

WMBA and LEBA firmly disagree with ESMA’s proposal. We query why, across all energy markets in the EU where only a small proportion of total volume is traded on ‘exchange’ [power and gas less than 10%; oils less than 35%] that ESMA could feasibly justify this proposal?

Further, in light of the equivalence of organised venues under MiFID2, we would ask ESMA to clarify the use of the language ‘*on-exchange’* and whether this refers across all organised venues, third country equivalents or only to RMs?

<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>

WMBA and LEBA note that this is not directly relevant to trading venues from our answer to Q.537 above.

However, in principle WMBA and LEBA do agree that position reporting should seek to use reporting formats for other regulations and in particular those that are in place or being considered for REMIT transactions and EMIR trade reporting or even for transaction reporting under MiFID where the underlying are financial instruments.

<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>

Yes, WMBA and LEBA agree that to support the direct position reporting by investment firms to NCAs, trading venues should be required to provide reference data, most particularly UTIs on on-venue and economically equivalent OTC contracts.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

<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>

This is not directly relevant to WMBA and LEBA as non-position taking venue operators.

We would, however, note that the fields, whilst sufficient, do duplicate both reporting under EMIR and under REMIT. Therefore, we would urge ESMA to confer those responsibilities into a single report where appropriate.

<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>

WMBA and LEBA, as non-position taking venue operators, do not understand how such venues could publish a Commitment of Traders Report each week when they do not know the positions of either their clients or other market participants who are not their clients. As described in Q.532 and Q.537, such a process would be duplicative across all RM’s, MTF’s and OTF’s and more importantly, injurious to best execution standards and conflicts of interest.

We would, therefore, ask ESMA if this report requirement was made in error at MiFID2 level 1 and should be reassigned to the *trade repositories* who were set up under EMIR for precisely this purpose.

<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>

WMBA broadly agrees with ESMA’s proposals for what constitutes a “transaction” and “execution of a transaction” for the purpose of Article 26 of MiFIR.

However, we would like to highlight the following principles:

1. ESMA defines a Transaction as: “any change (not related to corporate actions or valuations) in an investment firm’s position and/or their client’s position in a reportable instrument” but provides no clarification as to what constitutes a client’s position. WMBA members arrange trades and as such provide the investment activity of receipt and transmission of orders (however, the UK NCA has already confirmed that whilst WMBA members transmit orders they do not do so for the purpose of execution). As a result the end-users enter into a bi-lateral transaction to purchase or sell a financial instrument and, hence, there is a change in the client’s position in the reportable instrument. Under MiFID1 this type of activity is not reportable by an arranger. However, the proposed wording seems ambiguous in relation to this type of activity. WMBA requests that additional clarification be provided in the technical advice that firms only conducting the investment activity of receipt and transmission of orders) are excluded from the transaction reporting requirements;
2. transaction reporting under Article 26 of MiFIR should, where possible, be harmonised with other European reporting regimes (e.g. REMIT, EMIR, SFT and other shadow banking initiatives) as this will smooth the expansion of transaction reporting for future products;
3. ESMA will be aware that under MiFID2004/39/EC, “Clearing Brokers/Central Counterparties” were excluded from a transaction reporting obligation as they were not “executing a transaction”. Whilst we note that activities not related to settlement or clearing are excluded from the reporting obligation, there may be some ambiguity. For example, where an executing broker executes a bilateral OTC transaction with a counterparty and that position is subsequently novated to a Clearing House, then it is not clear as to whether this new trade would be reportable under MiFIR. Legally there are two separate transactions; however, there is a grey area between what is considered a transaction for settlement and clearing purposes and a transaction under MiFIR. It would be helpful for ESMA to clarify in the RTS that only the initial execution would be reportable and not the subsequent give up or novation for clearing purposes;
4. it would be useful for firms if ESMA should clarify what transaction time should be recorded for post trade events as these may be contractual in nature. Therefore, the time recorded is more likely to be a processing time as opposed to a transaction time;
5. WMBA has concerns with regards to Paragraph 16 of the Discussion Paper which requires non-reportable transactions to be cancelled by the investment firm. MiFID1 currently allows firms, at the discretion of the local NCA, to “over report” transactions where such over reporting applies to products that are believed by the investment firm to be reportable; and
6. WMBA considers that in the continuing absence of a golden source of reportable products, NCAs should continue to be allowed the discretion to permit firms to over report products as opposed to risk under reporting.

<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>

Yes, WMBA does anticipate difficulties. A wholesale market broker will always need to anticipate where it is acting as an investment firm and where it is acting as a venue when in fact it fulfils both capacities. In particular, whilst a wholesale market broker almost always acts in the capacity as arranger between two counterparties, it may also act as agent onto an organised venue or under its own name onto a venue in the process of arranging a matched principal packaged or strategy trade. Evidently, reporting obligations will vary both in each case and within these cited examples. This is further subject to the EMIR exclusions governing any transactions covering 'give ups'.

Where wholesale market brokers are executing legs of a packaged trade onto a further venue, they may appear to be acting as principal onto that venue with the consequence of over reporting the same transaction.

Where there is unambiguous guidance as outlined in our response to Q546, then WMBA does not believe that there will be any difficulties in identifying where an investment firm has executed a trade. However, to provide additional clarity, WMBA members would welcome the creation of a central source listing all instruments which are traded or admitted to trading on a trading venue which they would be entitled to rely upon for the purpose of transaction reporting.

<ESMA\_QUESTION\_547>

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

<ESMA\_QUESTION\_548>

WMBA notes, see response to Q546 above

<ESMA\_QUESTION\_548>

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

<ESMA\_QUESTION\_549>

Yes, WMBA does foresee difficulties with the suggested approach and would like to highlight the following areas of concern on behalf of its members:

1. WMBA is concerned that there appears, as long as the recipient receives the required information, to be no discretion to refuse to transaction report on behalf of the transmitter. As the reporting process will require the recipient firm to maintain extra static data (in respect of the transmitter clients) and could result in additional costs, WMBA is of the opinion that the recipient firm should be given the discretion to refuse to provide the service; and
2. beneficiary information may not be available in the required timescales of T+1. In these instances, firms would support the current requirement to report at the block level to be maintained and that any reporting of allocations be undertaken by the investment manager.

<ESMA\_QUESTION\_549>

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

<ESMA\_QUESTION\_550>

WMBA would make the following comments:

1. WMBA are supportive of the use of LEI as client identification for legal persons; however, they would like to highlight the following areas of concern on behalf of its members. Client Identifiers under MiFID should, where possible, be harmonised with other European reporting regimes (e.g. REMIT, EMIR, SFT and other shadow banking initiatives);
2. the technical advice places an obligation on the Counterparty to obtain an LEI before it can commence or continue trading. However, it is not clear whether there is a legal obligation under MiFID/MiFIR for clients of an EEA regulated firm to get an LEI where they are eligible. This therefore introduces ambiguity into a process where different firms and different NCAs could choose to interpret regulation differently in making LEI a feature of tradability determination;
3. the current proposal places the burden on Investment firms to determine whether a Legal Person is or is not eligible for an LEI and, hence, should be reported with or without an LEI. WMBA are concerned that as a result of the above, the complex arrangements that exist and the wide variety of legal structures at counterparties that investment firms will not be in the position to make this determination;
4. firms are comfortable with encouraging their clients to apply for LEIs and usage under MiFIR will be high amongst Investment firms who also have an EMIR reporting obligation. Yet the regulation does not state that Investment firms should take on the obligation to ensure that clients apply and maintain their LEI’s. Hence, WMBA would encourage the technical advice to provide further clarity where the Investment firm considers an LEI to be appropriate but the Counterparty refuses to apply; and
5. the extra information, which must be available to firms regarding the beneficial owner of the transaction so that they can transaction report, introduces some complexities on which our members would welcome clear guidance from ESMA. For example, would investment firms be expected to complete full Know Your Client (KYC) procedures on the beneficial owner, who under previous transaction reporting regimes may have been unknown to the investment firm? This extra KYC step is indirectly achieved today with the client to a transaction having responsibility for KYC of the beneficial owner. WMBA would welcome clarity from ESMA as to whether the venue or wholesale market broker in the capacity of an investment firm would therefore be expected to conduct KYC on such underlying clients. In answering this question, ESMA should consider whether this extra layer of KYC provides further benefit when compared to the duplication of cost.

**In regards of Post trade Risk-Reduction and Compression Services**

See responses to Q132 and Q135.

A compound transaction resulting from a post trade risk reduction service exercise can consist of multiple thousands of component transactions. If such components transactions are not clearly identified as a separate category of transaction information when part of any transaction reporting, market participants would be misled into assuming that such component transaction represent price forming addressable market liquidity.

In the set of proposed fields, there is already a compression flag (field 86 in Annex 8.1.1. Table of fields) indicating that a transaction resulted from a compression exercise. Post trade risk reduction services asks that, unless any of the already proposed fields can be used for such purposes, a specific post trade risk reduction service flag should be introduced to indicate that a transaction originates from a post trade risk reduction service.

<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>

WMBA notes that given a client base that excludes the retail category, members would not be venues to, or arranging trades between, any 'Natural Persons'. In respect of Professional and Eligible Clients in the EU, WMBA would endorse a *'self-certification'* regime under which the venue serves information provided by the client most particularly their LEI or BIC.

Whilst WMBA is therefore supportive of the move to use LEI for the identification of Legal Persons. We wish to raise the following points:

1. the proposals in the Discussion paper put the burden on Investment firms to determine whether a Legal Person is or is not eligible for an LEI and, hence, should be reported with or without an LEI. We do not believe that firms are in the position to make this determination. The Local Operating units are better placed to make these determinations. In addition the Regulation does not state that Investment firms should take on the obligation to ensure their clients apply for LEIs; and
2. in addition, it is not clear as to whether it is a legal obligation under MiFID/MiFIR for clients of EEA regulated firms to get an LEI where they are eligible to get one. This, therefore, introduces ambiguity into a process where different firms and different NCAs could choose to interpret regulation differently in making LEI a feature of tradability determination.

Firms are comfortable with encouraging their clients to apply for LEIs and usage under MiFIR will be high amongst Investment firms who also have an EMIR reporting obligation. Yet the regulation does not state that Investment firms should take on the obligation to ensure that clients apply and maintain their LEIs.

For clients with neither an LEI nor a BIC code, it is suggested that the current alternative is used and that is a unique identifier used to identify the client across the investment firm.

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

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

<ESMA\_QUESTION\_551>

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

<ESMA\_QUESTION\_552>

WMBA notes here that the members, in acting as both venues and arrangers, need to be able to legally rely upon the trader IDs provided by clients. Further, we would request ESMA to provide more definite advice to venues on the data protection obligations and limits as to the storage, use and transmission of the trader IDs provided by clients.

<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>

WMBA understands that this question refers to the scope of clients acting as investment firms.

<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>

WMBA understands that this question refers to the scope of clients acting as investment firms.

<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>

WMBA understands that this question refers to the scope of clients acting as investment firms.

<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>

In those cases where the obligation falls onto the venue to transaction report, WMBA does not see any problem with identifying specific waivers and their appropriate flags for transaction reporting.

We further underline that the population of flags for transaction reporting should be different for those made to the public.

WMBA would further underline that market participants may need to rely on the venues for the transaction reporting of flags.

<ESMA\_QUESTION\_556>

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

<ESMA\_QUESTION\_557>

No, WMBA does not agree because the venue may not receive all of the information to transaction report in a timely fashion from the counterparties, most especially in respect of non-MiFIR clients. Therefore, in those cases where the obligation falls onto the venue to transaction report, the venues should be allowed to report non-complete information fields on a 'best efforts' basis.

WMBA would agree that a simple short sale flagging approach is best to identify that a transaction represents a short sale of sovereign debt. However, identifying short-selling at a legal entity level at an Investment Firm using transaction reports is not possible and WMBA would like to highlight the following points to support their view:

1. transaction reporting often occurs real time;
2. although overall positions are of course monitored for risk management and settlement purposes these monitoring systems are entirely separate from trade capture systems. Individual traders will be able to determine that they themselves are going short on their individual trading accounts but they will not on a transaction per transaction basis be able to determine/nor flag if their transaction will cause the Firm to go short. Chinese walls and data segregation means that this data is not – deliberately – available to individual traders;
3. firms have implemented systems and controls in order to comply with their obligations under the existing short selling regulation which includes disclosures monitoring and checks to the firms list of securities for which they have the market making exemption; and
4. firms will, in addition, have separate monitoring to ensure that settlement can be effected on a timely basis.

Hence, we do not think transaction reports are a suitable medium for monitoring short selling activity at a legal entity level.

WMBA suggest, therefore, that this field might be used to consider short positions at a firm trading account level but should bear in mind that many transactions flagged in this way may not ultimately at end of day result in a short position. An alternative approach to reporting would be to include an additional field designating on which aggregation (desk, firm, group, etc.) the short selling status has been determined.

<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>

Subject to its response to Q 557, WMBA considers that Option 1 is the most appropriate whereby the firm will rely upon the voluntary disclosure of a client as to whether a transaction is a short sale (upon request by the firm to the client to disclose such information).

<ESMA\_QUESTION\_558>

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

<ESMA\_QUESTION\_559>

Subject to its response to Q 557, WMBA considers that Option 1 where an investment firm reports a sale from its own perspective and would not short sale flag the purchase from the client.

<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>

WMBA does not consider the aggregation of trades in respect of the reporting of short-selling as being relevant to venues and arrangers.

<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>

WMBA does not identify any particular issues.

<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>

WMBA agrees with ESMA and does not identify any particular issues.

<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>

WMBA suggests that approach (iii) is the most suitable approach for indices but, as with other reportable financial instruments, we would welcome the creation and maintenance of a central source of reportable financial instruments to ensure all investment firms treat a transaction on the same index as reportable.

<ESMA\_QUESTION\_563>

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

<ESMA\_QUESTION\_564>

WMBA does not think that the current approach to branch reporting should be maintained. It agrees with ESMA that the current regime based on where the relevant service is difficult to administer and could result in some transactions not being reported and some transactions being submitted to both the home and host state regulator.

<ESMA\_QUESTION\_564>

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

<ESMA\_QUESTION\_565>

WMBA does not anticipate any major difficulties in complying with the requirements and welcomes the simplification of the branch reporting requirement as laid out in the proposed technical advice

<ESMA\_QUESTION\_565>

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

<ESMA\_QUESTION\_566>

WMBA confirms that the list of criteria is sufficient.

<ESMA\_QUESTION\_566>

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

<ESMA\_QUESTION\_567>

WMBA agrees with paragraph 142 inclusive of "any readable format". We note that different markets, different platforms and different participants create a variety of equally applicable answers to this question.

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

We would be supportive of non-proprietary formats including XML/FpML.

<ESMA\_QUESTION\_567>

Obligation to supply financial instrument reference data

##### Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?

<ESMA\_QUESTION\_568>

WMBA does not agree with the proposals, most especially in respect of transactions executed on MTFs and OTFs where there is no "admission to trading" formalisation. We do not recognise the context here of any notion of a "request for admission to trading", nor do we recognise the context here of any omission or removal from trading.

Moreover, as MIFID2 scope is almost infinitely broadened out, the submission of delta files becomes valueless and without perimeters for MTFs and OTFs. Whilst WMBA recognises that this may be relevant for designated contracts which are liquid and listed on RMs and equity MTFs for continuous trading over many years, it should be limited only to these specific and designated contracts. That is, a waiver regime would not be appropriate.

<ESMA\_QUESTION\_568>

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

<ESMA\_QUESTION\_569>

Yes, WMBA would anticipate a broad range of difficulties and impossibilities. Rather, we would note that venues are currently in a position to provide a factor list of those contract types and parameters that pertain to those risks and their derivatives being traded on MTFs and progenitors to OTFs.

One example here would be FX options where an OTF could provide a list of tenors, currency pairs, structures and deltas that are offered. This is also done currently in SEF rulebooks.

<ESMA\_QUESTION\_569>

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

<ESMA\_QUESTION\_570>

Yes, WMBA does see difficulties. Please see the answer to Q569 above. We would further note the issues surrounding "Big Data" that would also accrue.

<ESMA\_QUESTION\_570>

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

<ESMA\_QUESTION\_571>

Yes, WMBA does see difficulties. Please see the answer to Q569 above. We would further note the issues surrounding "Big Data" that would also accrue.

<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>

Please see the answer to Q 569 above. WMBA would encourage ESMA to incorporate the factors and curves that the market currently utilises.

<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>

Subject to the caveats below, WMBA notes that some of the reference data elements are available to its members. However, the context of the question is entirely imported from an RM or 'exchange' environment of very few designated contracts. ESMA has not embraced and understood the scope of markets and products conferred into the regime by the expansion of MiFID2 and adjusted the methodologies appropriately.

WMBA notes that the information is only relevant at an asset class and generic level which would imbue an almost infinite repetition of exactly the same terms across the panoply of possible product combinations.

WMBA is concerned with the reference to investment firms in this question as Article 27 of MiFIR only requires trading venues and systematic internalisers to provide reference data and requests that ESMA provides further clarification as to when investment firms are required to report this data.

Where an instrument identifier is designated for an instrument, this identifier should have all the relevant reference information stored with it on many public data providers (e.g. with an ISIN the Issuer Country, Issuer Name etc. can easily be referenced on a data provider such as Bloomberg). To provide any of this information in reference data reports from trading venues and systematic internalisers would be redundant and so should not be required, as it would place a disproportionate burden on firms to fill in such redundant information, and increases the risk of error.

<ESMA\_QUESTION\_573>

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

<ESMA\_QUESTION\_574>

WMBA notes that any industry classifications endorsed by ESMA need to fall into the category of open access and utility codifications. We note in this respect that the widespread CDS code is private and copyrighted, therefore would be highly inappropriate.

Further, WMBA does endorse ISIN or ‘Aii’ codes which are not currently used for derivatives.

Considerable changes to procedures for creating derivative instruments may be required should the instrument identifiers be mandated to use a narrow class of identifiers. Therefore, CFI classification and ISDA Taxonomy may be more appropriate to use for derivatives. ISDA and its members would be happy to work with ESMA to provide information on work done with ISDA taxonomy for derivatives.

Further details around use of the "Other" classification will be required as, at present, is it not clear where derivative products fit into the proposed classification.

For example, the "Futures" and "Options" sections seem to have been created with listed derivatives in mind and so it appears that non-listed derivatives would fall within the "Other" category.

<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>

Yes, WMBA does foresee the same difficulties listed in Q573 above as we do not recognise any division between derivatives based upon a single reference entity or those based upon an index.

<ESMA\_QUESTION\_575>

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

<ESMA\_QUESTION\_576>

WMBA considers that where the current determination works well our members feel it should continue.

<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>

WMBA understands that the responsibility to determine the RCA and route the transaction reports rests solely with the NCAs. We further note that this understanding is consistent with the fact that there is no proposed field for the RCA to be indicated for Instrument Reference Data and therefore we understand that our understanding is in line with ESMA's.

<ESMA\_QUESTION\_577>

<ESMA\_QUESTION\_1>

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<ESMA\_QUESTION\_1>

Obligation to maintain records of orders

##### In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.

<ESMA\_QUESTION\_578>

WMBA confirms that option 1 is our preferred approach. Member firms store data in their own systems depending on such parameters, market practice and conventions such as market typologies which themselves cross-map to post trading conventions which have been widely adopted.

They have further been built to connect to clients, post trade infrastructures and middleware. WMBA would therefore report data in formats suitable and appropriate to that storage. Mandating changes to infrastructures across the breadth of hitherto OTC markets would involve remarkable resource allocations and consequent systemic risk.

Further, WMBA also notes that certain of the fields alluded to in the DP are currently chargeable by vendors and middleware. These include, but are not limited to: Markit 'Red Codes' and Swift codes.

<ESMA\_QUESTION\_578>

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

<ESMA\_QUESTION\_579>

WMBA notes that most of the characteristics of orders are not standardised for derivatives. We refer to our answer in 578 above that the costs incumbent upon the infrastructures to change the systems in place would not be proportionate to any benefits to a system that currently works well.

<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>

Not applicable for WMBA

<ESMA\_QUESTION\_580>

##### Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA\_QUESTION\_581>

WMBA notes that whilst counterparty IDs may be mapped to the LEI (if the counterparty has one), for many clients of MTFs and OTFs those entities may not be EU residents and so the reporting of orders may need another solution.

<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>

Yes, WMBA does foresee difficulties as venues are entirely dependent upon the timely and correct information represented to them by the clients. The venue cannot be expected to revert and amend reports of orders upon the subsequent delayed receipt of information.

<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>

No, WMBA does not see any applicable solutions given the wide diversity of products, participant types and trading solutions currently employed.

<ESMA\_QUESTION\_583>

##### Do you believe that this approach allows the order to be uniquely identified If not, please elaborate

<ESMA\_QUESTION\_584>

No, WMBA disagrees and would emphasise that this approach suggested by ESMA goes far in excess of the mandate conferred in Level 1. Evidently venues already have capably and automated methods for the identification and labelling of orders.

This is especially important where order stacks are randomised under the rules of the venue to deter HFT abuses. Rather, any standardised and imposed identification for orders needs to connect and closely align with the Unique Trade Identifier [UTI] regime.

WMBA considers that both the LEI and UTI regimes are of paramount importance to get systemic risk monitoring into trade repositories. Therefore, until such point as UTIs are widely taken up and transmitted across the middleware into the FMIs, the identification of orders on a standardised and uniform basis should not be considered.

<ESMA\_QUESTION\_584>

##### Do you foresee any difficulties with the implementation of this approach? Please elaborate

<ESMA\_QUESTION\_585>

The main difficulties foreseen by WMBA are that the ESMA suggestions are a simplistic read-over from equity markets and are inappropriate and ill-suited for those markets coming into the scope of MiFID2:

1. that most instruments traded do not have either ISINs or ‘aii’ codes. Rather they are derivatives, FX and money-market instruments without any such; and
2. most orders on MTFs and OTFs are for transactions that involve multiple legs and for which the details and terms will evolve over time. Therefore the identification becomes meaningless over time and would need a series of sub identifications for any legs and their changing specifications as time passes and the relative positions of market prices change.

Rather, WMBA would urge ESMA to capture the evolved market practices into a form of codification and embrace the efficencies and suitability which these confer in their specific ways.

<ESMA\_QUESTION\_585>

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

<ESMA\_QUESTION\_586>

Yes WMBA does foresee difficulties:

1. WMBA consider that other than firms dealing in HFT and Algorithmic trading the current timescale of one second to be adequate for the synchronisation of business clocks;
2. WMBA members (along with a number of other market participants|) currently use manual time stamping machines which are only calibrated to record time to the nearest second. The WMBA is concerned that the new requirements would make these machines obsolete and involve a substantial software replacement cost for venues without any commensurate benefit to clients or execution quality. Please see answers to questions 603, 604, 605; and
3. WMBA would respectfully suggest that the proposed millisecond reporting requirement is limited to firms conducting only High Frequency Trading on Regulated Exchanges. Other firms should be required to use their best endeavours to complete this field but in the absence of the necessary details, these field reporting could possibly be completed by applying zeroes to the microsecond fields.

<ESMA\_QUESTION\_586>

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

<ESMA\_QUESTION\_587>

Yes, WMBA does foresee difficulties. These mainly occur from a simplistic and ill-suited read-over from equity markets to the broader scope of instruments captured in MiFID2.

Given the almost infinite number of products offered, managing and relabeling sequence numbers would be burdensome and of no benefit.

Given the almost continuously evolving nature of any orders on MTFs and OTFs, the process of reapplication of sequence numbers and mappings would render them meaningless and never able to be utile at any point in time.

Given that orders relate to multiple legs of transactions across multiple executions a simplistic sequence could not be maintained. Frequently, several of the legs would also be executed on further venues and therefore have implications on other regimes.

Rather, WMBA would urge ESMA to capture the evolved market practices into a form of codification and embrace the efficiencies and suitability which these confer in their specific ways.

<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>

WMBA understands that breaking orders down into two genus, *limit order* and *stop order*, would be feasible but of no conceivable use or value.

<ESMA\_QUESTION\_588>

##### Do you foresee any problems with the proposed approach?

<ESMA\_QUESTION\_589>

Yes, WMBA does foresee difficulties. These mainly occur from a simplistic and ill-suited read-over from equity markets to the broader scope of instruments captured in MiFID2. Please see our comments in answers 586, 587 to elaborate around the complexities across order types and complexities.

<ESMA\_QUESTION\_589>

##### Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.

<ESMA\_QUESTION\_590>

WMBA again notes that ESMA has offered a simplistic read across from equity markets which is inappropriate to the broader scope of MiFID2. MTF, OTF and OTC markets, especially those beyond the cash equity arena, are open 24 hours and bear little resemblance to the templates offered.

<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>

WMBA does 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 are feasible.

<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>

No, WMBA disagrees. Priority of orders are not standardised across venues with methods of prioritisation ranging from priority number, time within prices and random allocation within price. The order priority criteria are set out in the rules of the venues and are designed to obtain the best overall result for the clients. ESMAs proposals here would dramatically worsen execution quality for clients. WMBA considers that the current proposal is too granular and does not reflect the current strategies of the venues

<ESMA\_QUESTION\_592>

##### Do you foresee any difficulties with the three options described above? Please elaborate.

<ESMA\_QUESTION\_593>

Yes WMBA does foresee difficulties. These mainly occur from a simplistic and ill-suited read-over from equity markets to the broader scope of instruments captured in MiFID2.

Specifically, and by ESMA’s own terms and definitions adopted, these methods should only be applied to orders on CLOBs and therefore restricted to RMs and to some MTFs. Evidently many MTFs and all OTFs will not utilise CLOBs to arrange and discover liquidity. Voice, hybrid and volume matching systems would not prioritise orders, and often, even on CLOBs the priorities orders resting on the same price point are constantly randomised. Further, orders are often spread across complex sets of spreads and intermingled with those based upon other pricing factors such as volatility and correlations.

Therefore, the scope of giving orders priority numbers should be specified and confined to "on CLOBs and where this applies".

<ESMA\_QUESTION\_593>

##### Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.

<ESMA\_QUESTION\_594>

No, WMBA disagrees that the list is relevant. Continuing from comments in the answers to Q. 590,591,592,593 above; these categories mainly occur from a simplistic and ill-suited read-over from equity markets to the broader scope of instruments captured in MiFID2.

Whilst WMBA notes that the specific order instructions themselves are not irrelevant, they do not cover the wider list of situations for contingent and spread orders which may be contingent upon sufficient liquidity and the counterparty credit availability of the available market prices.

As a first step, we would direct ESMA to the methodology developed behind the more comprehensive order list developed in the 'REMIT TRUM'. Further however, we would urge ESMA to consider only requesting these specified details where the orders are only interacting with prices and liquidity confined to "on CLOBs and where this applies".

<ESMA\_QUESTION\_594>

##### Are there any other type of events that should be considered?

<ESMA\_QUESTION\_595>

WMBA would refer to the answers to Q. 590,591,592,593, 594 above and note that an order could interact with several liquidity pools simultaneously.

<ESMA\_QUESTION\_595>

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

<ESMA\_QUESTION\_596>

Yes, WMBA would note that an order may also be passed in the capacity of an 'arranger'. Indeed, this is more normally the case of the business mode of a wholesale market broker both in acting as a venue and as an arranger both in the name passing and agency models.

We would refer ESMA to the details on the websiteWG of WMBA under the 'role of the name passing broker' [http://www.wmba.org.uk/pages/index.cfm?page\_id=52&title=execution\_policy\_under\_mifid].

<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>

In principal, WMBA does not foresee any difficulties in adding flags to market maker activities, provided those representations are clearly provided by clients.

However, we would note that this is extraordinarily rare in OTC markets because they act primarily as volume discovery tools as designated market maker liquidity is always in minimal, nominal and retail amounts. Therefore, these schemes are worthless and irrelevant in wholesale liquidity pools.

Therefore, the definition of market maker in OTC markets needs to be more properly defined.

<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>

Yes, WMBA foresees difficulties. It follows from our answers Q. 590,591,592,593, 594, 595 above that linking transaction UTIs to any pre-existing order IDs could only be done in simple and liquid CLOBs. Therefore, it is unlikely that this would be possible in venues other than an RM. WMBA further notes two points: this requirement goes beyond and in excess of the level one requirements; and, this requirement has no or little cost benefit. This is not a requirement for SEFs under Dodd-Frank in the US.

<ESMA\_QUESTION\_598>

##### Do you foresee any difficulties with maintaining this information? Please elaborate.

<ESMA\_QUESTION\_599>

Yes, WMBA foresees difficulties. Evidently from Q.598 above it would be difficult to maintain records if the initial linked records are not available. Conversely, the maintenance of records for UTIs and indeed for USIs where the trades had been transmitted for SEF execution would be feasible and indeed is currently required under Dodd-Frank in the US.

<ESMA\_QUESTION\_599>

Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)[[3]](#footnote-4)

##### Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.

<ESMA\_QUESTION\_600>

Yes, WMBA foresees difficulties. It follows from our answers Q. 590, above that recording order times with granularity greater than the scale of 1 minute is neither possible nor does it make sense in markets other than those accommodating HFT via Direct Electronic Access. This only applies to the very small subset of markets that were scoped into MiFID1 and could only be done in simple and liquid CLOBs. Therefore, it is unlikely that this would be possible in venues other than an RM.

<ESMA\_QUESTION\_600>

##### Do you foresee any difficulties in complying with the proposed timeframe?

<ESMA\_QUESTION\_601>

This is not relevant to WMBA.

<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>

WMBA would only see any synchronisation of clocks to be feasible and useful in those markets and related infrastructures and systems that facilitate what could be designated and defined as 'High Frequency Trading' [HFT]. We would emphasise here that HFT is not simply algorithmic execution, it would be a methodology that entails 'round turns' to be traded within a single second or far less. This is irrelevant to all those markets being newly brought into scope in MiFID2. Beyond that narrow specification, transactions may take any periods up to and including weeks to complete.

For any other transactions beyond those done fully electronically and under DEA and/or sponsored access, this concept is redundant and irrelevant.

Where HFT may apply, which is solely on RMs and Equity MTFs, WMBA believes that any regulation in this area should relate to the maximum divergence to UTC allowed rather than to prescribe the technology that market participants must use to achieve it.

Basing synchronisation on a specific protocol or a single source will be significantly challenging or costly for many market participants. PTP is costly to implement and could represent a high technical barrier to entry for many market participants. GPS and a single source also presents some very real practical obstacles. For example, all market participants would have to be granted fair access to collocation roofs.

<ESMA\_QUESTION\_602>

##### Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA\_QUESTION\_603>

No, WMBA disagrees with the proposal for a requirement. We recognise that the synchronisation of business clocks may be useful for conducting cross venue monitoring and detecting circumstances of market abuse; however, they do not consider the precise timeframe should be mandated in the technical standard. Again, we emphasise that transactions made on OTFs and MTFs organised by our members take from several seconds to arrange and execute to any period up to and including a number of weeks. It is simply farcical to measure these in anything under the scale of a minute denominations. Evidently ESMA shall need to apply proportionality in this technical standard.

WMBA would propose that where communications are conducted by multiple means (i.e. voice, instant messenger, electronic means) synchronisation of all systems is not plausible and it would propose that firms should only be mandated to use their best endeavours to ensure synchronised time reporting. The method of synchronisation should be left to the firm and would be undertaken either electronically of manually based on the size.

<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>

As indicated in its response to Q 586 (other than for High Frequency Trading on Regulated Exchanges) WMBA considers a divergence of one minute to be acceptable.

<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>

WMBA notes that currently and in lieu of any mandate to clear transactions in derivatives, the industry recognises the benefits in CCP clearing with the implication that a significant proportion of OTC derivatives are cleared on a voluntary basis. According to ISDA data available at www.swapsinfo.org, since the start of 2014 approximately 90% of USD/EUR/GBP/JPY IRS and CDX/iTraxx CDS index products have been cleared voluntarily by the industry. Typically, trading venues notify clearing houses electronically, and as soon as technologically practicable, of transactions which are required to be cleared. This notification generates a chain of information which, at any given point in time, identifies the clearing status of the transaction. This is a robust and efficient system which has been proven to function well for trading venues, clearers and counterparties alike.

WMBA would be generally supportive of requirements which ensure, in accordance with Article 29(2) MiFIR, that trading venues have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing where such requirements acknowledge, reiterate and are tailored to the current practice in the market.

WMBA simply notes that venues need to be closely connected to relevant FMIs, most especially the clearing CCPs determined and specified by the client counterparties for derivatives. This communication needs to be two way, timely and articulate in order not only to transmit trades but to offer trade certainty in the provision of liquidity. This has been widely achieved both before and in accordance with the preparations for EMIR across the EU.

<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>

There are currently no legally prescribed timeframes for the period starting from the conclusion of a transaction in derivatives to its submission to a CCP. The timeframe is currently determined by commercial expedience demands. WMBA would be generally supportive of timeframe requirements which ensure, in accordance with Article 29(2) MiFIR, that trading venues have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing where such requirements acknowledge, reiterate and are tailored to the current practice in the market.

WMBA notes that EMIR confers these responsibilities onto counterparties who may in turn outsource this to the venues. In this respect it has been imperative for members to have in place sufficient and timely two-way connectivity to all FMIs, most particularly the relevant CCPs.

WMBA emphasises that pre-trade screening is not the responsibility of the venue but rather of the clearing broker. It is normally the case in wholesale markets that the market participant is also their own clearing broker. Therefore, WMBA would caution ESMA against placing any pre-trade credit screening onus onto the venues as this would quite simply fracture and fragment liquidity at the point of its formation. Rather, we would endorse ESMA ensuring that any obligations around the certainty of novation are owned by the relevant clearing member. Please see our comments in Q 607 relevant to this issue.

<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>

WMBA is a firm supporter of STP and member firms currently have these processes in place for post trade connectivity’s to FMIs. We consider the balance of risks to be firmly positive, the simple evidence to which has been the widespread voluntary take-up by the industry to date.

WMBA agrees that submission of a transaction to a CCP should take place on an ‘*as soon as technologically practicable*’ basis as is the case currently. This clearly requires trading participants/clients to submit relevant information to the venue, clearing members and CCPs to facilitate STP.

<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>

This is not relevant to WMBA.

<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>

This is not relevant to WMBA.

<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>

WMBA agrees that submission of a transaction to a CCP should take place on an ‘*as soon as technologically practicable,’* basis, as is the case currently.

As highlighted in Q607, to effect STP on a timely basis, trading participants need to provide sufficient information to the various parties along the trade processing chain. In this respect, we note ESMA's reference to CFTC guidance (in paragraph 21 of section 9.1) but would caution ESMA against developing technical standards replicating these guidelines given the different legal framework in the US.

Any requirements in the EU with regards to possible pre-trade checks, acceptance, post trade processing, including clearing and settlement, would have to take due account of the different structures that will exist in the EU going forward, including voice/RFQ type structures in an OTF.

<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>

WMBA views the current processes to be adequate. We also note that we consider these issues to be more suited to the scheduled review of EMIR.

<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>

This is not relevant to WMBA

<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>

WMBA understand that those trades submitted on a voluntary basis should be settled as bilateral trades if rejected from the CCP. This procedure, whichever outcome may be deemed suitable, needs to be clearly set out before any clients are on-boarded to a venue. We note that this is currently the case as set out in the *Rulebooks* and *Terms and Conditions* of WMBA member firms.

For transactions under mandatory clearing requirements, the failure to be accepted should not happen due to the obligations on the clearing members. There may, however, need to be a regime for also enabling bilateral settlement if no CCP is able to accept a trade concluded under the presumption of novation (as opposed to the alternative ‘void ab initio’ option).

WMBA would urge ESMA here to develop a clear protocol to understand when a trade is precisely and legally executed. We note here the differences between contract law and commercial law which may be materially moving this point when arrangers transit into becoming venues and trades are mandated into FMI’s.

<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>

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<ESMA\_QUESTION\_614>

##### In your view, how should it compare with current practice?

<ESMA\_QUESTION\_615>

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<ESMA\_QUESTION\_615>

1. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-2)
2. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-3)
3. Please note that this section has to be read in conjunction with the section on the “Record keeping and co-operation with national competent authorities” in this DP. [↑](#footnote-ref-4)