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

Responding to this paper

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

Instructions

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

* use this form and send your responses in Word format (do not send pdf files except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_CP\_MIFID\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* 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:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | British Bankers’ Association |
| Confidential[[1]](#footnote-1) |  |
| Activity: | Banking sector |
| Are you representing an association? |  |
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_CP\_MIFID\_1>

The British Bankers’ Association (BBA) is the leading trade association for the UK banking sector with 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide.  Eighty per cent of global systemically important banks are members of the BBA.  As the representative of the world’s largest international banking cluster the BBA is the voice of UK banking.

In preparing our response, BBA Members have worked closely with a number of other Associations, including the Association for Financial Markets in Europe (AFME), the International Swaps and Derivatives Association (ISDA), the Futures Industry Association Europe (FIA Europe), the International Capital Market Association (ICMA), and the Association of Foreign Banks (AFB). In order to avoid duplication of effort, and to assist ESMA, BBA has not repeated the detail of certain answers, where BBA Members’ views correspond to those of other Associations. Nevertheless, where indicated under each relevant question below, in weighing responses, we ask ESMA to treat BBA’s response to the relevant question as if it included the full text of other associations’ responses as indicated.

BBA’s response is very much written from the perspective of how regulation can best serve the needs of users of the financial markets. Investors need efficient and fair markets in which they can invest and disinvest confidently and with minimum cost and optimal returns; issuers need efficient and fair markets in which they can raise capital cost-effectively; financial markets need optimal involvement of investors, issuers, and intermediaries to serve the financial needs of the European economy, European businesses, and European citizens. All of these considerations are highly relevant to the European Commission’s Capital Markets Union agenda.

BBA draws ESMA’s attention in particular to the serious concerns which we and other Associations express under Section 3 of the consultation about ESMA’s approach to the definition of liquidity and the calibration of transparency requirements as they affect non-equity markets.

< ESMA\_COMMENT\_CP\_MIFID\_1>

* Investor protection

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

<ESMA\_QUESTION\_CP\_MIFID\_1>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, in particular as regards:

* The need to grandfather existing firms into the new regime;
* The need to modify provisions on anti-money-laundering controls;
* The need for more flexibility as regards the programme of initial operations;
* The need for a description of the rationale, rather than an assessment, of the firm’s choice of national regulatory system.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_1>

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

<ESMA\_QUESTION\_CP\_MIFID\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_2>

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

<ESMA\_QUESTION\_CP\_MIFID\_3>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_3>

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

<ESMA\_QUESTION\_CP\_MIFID\_4>

Yes, but it is important that the criteria are applied proportionately and pragmatically

<ESMA\_QUESTION\_CP\_MIFID\_4>

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

<ESMA\_QUESTION\_CP\_MIFID\_5>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, in particular as regards:

* Flexibility not to provide a fax number;
* Clarity over the ‘designated contact person’;
* Simplification of the provisions on qualifications and training

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_5>

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

<ESMA\_QUESTION\_CP\_MIFID\_6>

Yes. BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, in particular as regards the need for clarity on when the Competent Authority decides that the application is complete. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_6>

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

<ESMA\_QUESTION\_CP\_MIFID\_7>

See BBA’s response to Q 1-6. It is important that the assessment of accuracy and completeness is undertaken pragmatically in the context of the application

<ESMA\_QUESTION\_CP\_MIFID\_7>

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

<ESMA\_QUESTION\_CP\_MIFID\_8>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_8>

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

<ESMA\_QUESTION\_CP\_MIFID\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_9>

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

<ESMA\_QUESTION\_CP\_MIFID\_10>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, in particular as regards the need for Competent Authorities to accept only a high-level description of the arrangements and business model. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_10>

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

<ESMA\_QUESTION\_CP\_MIFID\_11>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, in particular as regards the need for flexibility of format and content, and proportionate assessment by Competent Authorities. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_11>

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

<ESMA\_QUESTION\_CP\_MIFID\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_14>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_14>

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

<ESMA\_QUESTION\_CP\_MIFID\_15>

BBA considers that notifications of changes in branch particulars should focus on material changes, and in this context, any further acknowledgment ESMA could provide of materiality considerations would be helpful. For example, with regard to notifications concerning the termination of the operation of the branch, the provision needs to be interpreted flexibly and pragmatically. In many instances businesses will be wound down over time and, whilst it is reasonable to set out a schedule for the planned termination, it will not always be possible, or in the interests of clients, to adhere strictly to any pre-determined schedules. It is also not clear to what extent material changes to the already communicated termination schedule would need to be notified.

<ESMA\_QUESTION\_CP\_MIFID\_15>

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

<ESMA\_QUESTION\_CP\_MIFID\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_17>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_17>

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

<ESMA\_QUESTION\_CP\_MIFID\_18>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_19>

No, we do not agree entirely. In particular, it will be important that the Home Member State applies the requirement for “all necessary information” pragmatically and reasonably. Some of the information requirements can be interpreted in different ways so firms should be given sufficient leeway to submit information in a range of formats and level of detail as long as they are in line with the overall requirements, rather than authorities expecting and assessing an application’s completeness according to their own expectation of specific content being covered (something firms would not be necessarily aware of). We welcome the objective of reducing the risk of inconsistent national approaches to passporting notifications. However, it is not clear what external mechanism would exist for firms to raise concerns if they felt that a certain competent authority was interpreting the information unduly prescriptively, thus delaying the review period which only starts to run from the time that the information has been assessed to be complete and correct. ESMA are encouraged to give further thought to enhancing supervisory convergence in this context.

<ESMA\_QUESTION\_CP\_MIFID\_19>

1. Do you agree with proposed means of transmission?

<ESMA\_QUESTION\_CP\_MIFID\_20>

Yes, we agree. Whilst we generally support a move towards electronic means of communication, given for example potential technology issues and varying protocols in firms, we believe that firms should be given maximum flexibility and the ESMA should allow for both paper and electronic options for transmitting the information. We believe that the language options should make it clear that all competent authorities will accept notifications in “a language that is customary in the sphere of international finance”, typically considered to refer to English. We welcome the appointment of designated contact points by Competent Authorities.

<ESMA\_QUESTION\_CP\_MIFID\_20>

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

<ESMA\_QUESTION\_CP\_MIFID\_21>

Yes we believe that this would be useful. It would also be useful if it could be specified within which period such receipt should be provided, e.g. within 1 week. Furthermore, it will be particularly important for an investment firm to be notified when the authority considers the application to be complete and the clock has started.

<ESMA\_QUESTION\_CP\_MIFID\_21>

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

<ESMA\_QUESTION\_CP\_MIFID\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_23>

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

<ESMA\_QUESTION\_CP\_MIFID\_24>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_24>

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

<ESMA\_QUESTION\_CP\_MIFID\_25>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_25>

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

<ESMA\_QUESTION\_CP\_MIFID\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_28>

No. We think that the requirement for a written declaration by the third country competent authority that the firm is subject to effective supervision, specifying the services and activities for which it is authorised – in RTS 5 Article 1(1)(k) – should be deleted. The European Commission will have confirmed the effectiveness of the third country’s supervision in determining the equivalence. MIFIR Article 47 already provides for cooperation and exchange of information between ESMA and the third country’s competent authorities: that is the route which ESMA should use to establish the supervisory and enforcement status of the applicant firm. Furthermore, in practice, it may be difficult or impossible for the third country firm to obtain such a declaration from its competent authority for this purpose. The absence of such a declaration, because, for example, the relevant competent authority was not prepared to provide it, or there are delays in providing it, should not be used to justify refusal in circumstances where a firm is in fact duly authorised and regulated, and ESMA itself has access to the relevant information about the effectiveness of supervision directly from the relevant competent authority.

If ESMA considers it necessary for the third country firm to include in the application some form of statement about the third country firm’s supervisory and enforcement status, it should be possible for the third country firm itself to make a declaration that it is duly regulated, which ESMA would then be able to verify through its direct contacts with the third country jurisdiction.

Article 1(1)(k) should therefore be deleted, or at least amended to read: “a written declaration by the third country firm stating that the firm is duly regulated in the third country, specifying which investment services, activities, and ancillary services it is authorised to provide in its home jurisdiction.

<ESMA\_QUESTION\_CP\_MIFID\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_29>

We do not have any comments on the text of RTS 5 Article 2.

However, in relation to Article 2.2, it needs to be clearly stated that ‘change’ means a significant change in the information provided which, in the reasonable opinion of the applicant third country firm, would materially affect ESMA’s decision whether to register the third country firm, or the basis on which it was registered. It would be helpful for ESMA to provide a statement, for example in guidance or a Q&A, to this effect. Our members would suggest that branches should only have to report changes to the extent that authorised EU firms would have to report changes.

<ESMA\_QUESTION\_CP\_MIFID\_29>

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

<ESMA\_QUESTION\_CP\_MIFID\_30>

BBA has participated in and supports the Association for Financial Markets in Europe’s response as regards:

* The need for appropriately defining ‘execution venues’ and the fact the market makers and liquidity providers should not be considered as such;
* The need for appropriate treatment of RFQ and voice trading systems;
* The need to differentiate requirements for Systematic Internalisers from those for trading venues;
* The recognition that the ‘point-in-time information’ would be detrimental to Systematic Internalisers (SIs). Indeed, for less liquid instruments, particularly fixed-income, this requirement would effectively unveil to the market all the positions taken by SIs in particular financial instruments. This requirement will simply discourage SIs to perform their function which is central in MIFID II;
* The need to review the timing of the reports. We do not think it is effective to have the information aggregated on a daily basis. Information at an aggregated level over a longer period of time provides information on the quality of execution in a meaningful and appropriate way. Also, in order to avoid compromising SIs, we would suggest that the information should be made public ‘within 3 months of each quarter end’ instead of ‘within one month of each quarter end’;
* The need to avoid duplicative data reporting;
* The need to adapt certain requirements to different asset classes.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response

<ESMA\_QUESTION\_CP\_MIFID\_30>

1. Do you agree that it is reasonable to split trades into ranges according to the nature of different classes of financial instruments? If not, why?

<ESMA\_QUESTION\_CP\_MIFID\_31>

ESMA’s proposal to split trades into ranges relates to the ‘point-in-time-information’. As our members do not support having ‘point-in-time information’ disclosed we think that the ranges should not apply.

<ESMA\_QUESTION\_CP\_MIFID\_31>

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

<ESMA\_QUESTION\_CP\_MIFID\_32>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular:

* The need for more tailoring to different types of venue, and
* The impracticality of some of the proposed requirements in RFQ and voice trading markets.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_32>

1. Are those metrics meaningful or are there any additional data or metrics that ESMA should consider?

<ESMA\_QUESTION\_CP\_MIFID\_33>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its concerns about duplicative reporting and client confidentiality. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_33>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_34>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its proposed use of percentages rather than aggregate values. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_34>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_35>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular the need not to require publication of commercially sensitive information. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_35>

1. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA\_QUESTION\_CP\_MIFID\_36>

BBA has participated in and supports the Association for Financial Markets in Europe’s response; in particular we note the following:

* It seems that ESMA is going beyond the level 1 text by requiring information on the quality of execution obtain to apply to all execution venues rather than to the top 5 execution venues. With regards to the several summaries required by ESMA to be reported under Article 6(2) to (e) under RTS 7, we do not think ESMA has any power to require this information to be reported.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_36>

* Transparency

1. Do you agree with the proposal to add to the current table a definition of request for quote trading systems and to establish precise pre-trade transparency requirements for trading venues operating those systems? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_37>

Yes. However, BBA agrees with the Association for Financial Markets in Europe’s response, and its call for amendments in:

* The definition of Request For Quote trading system
* The information required to be made public by an RFQ system

In order to calibrate them to the specific features of RFQ systems, and the needs of their users. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_37>

1. Do you agree with the proposal to determine on an annual basis the most relevant market in terms of liquidity as the trading venue with the highest turnover in the relevant financial instrument by excluding transactions executed under some pre-trade transparency waivers? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_38>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, including its proposal that:

* Only price-forming trades should be used
* Auctions should be excluded.

<ESMA\_QUESTION\_CP\_MIFID\_38>

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

<ESMA\_QUESTION\_CP\_MIFID\_39>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response, in particular the proposed amendment to RTS8 Article 6:

1. *dealing on own account with another member or participant who acts for the account of* ***or on behalf of*** *a client;*
2. *dealing with another member or participant where both are executing orders on own account;*
3. *acting for the account of* ***or on behalf of*** *both buyer and seller;*
4. *acting for the account of* ***or on behalf of*** *the buyer where another member or participant acts for the account of* ***or on behalf of*** *the seller; and*
5. *trading for own account against a client order.*

We also support AFME’s call for clarity that the exhaustive list includes securities financing transactions; exchange for physical trades; and the exchange of ordinary shares for depository receipts; and for consistency with the exhaustive list under RTS8, Article 2. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_39>

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

<ESMA\_QUESTION\_CP\_MIFID\_40>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_40>

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

<ESMA\_QUESTION\_CP\_MIFID\_41>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_41>

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

<ESMA\_QUESTION\_CP\_MIFID\_42>

BBA has participated in and agrees with the Association for Financial Markets in Europe’s response, and its support for the alternative approach based on a single LIS threshold of €1 million. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_42>

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

<ESMA\_QUESTION\_CP\_MIFID\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_43>

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

<ESMA\_QUESTION\_CP\_MIFID\_44>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_44>

1. Do you agree with the proposed conditions and standards that the publication arrangements used by systematic internalisers should comply with? Should systematic internalisers be required to publish with each quote the publication of the time the quote has been entered or updated? Please provide reasons for your answers.

<ESMA\_QUESTION\_CP\_MIFID\_45>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_45>

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

<ESMA\_QUESTION\_CP\_MIFID\_46>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_46>

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

<ESMA\_QUESTION\_CP\_MIFID\_47>

BBA shares the Association for Financial Markets in Europe’s concerns, and agrees with its preference for ESMA’s DP Option 1. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_47>

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

<ESMA\_QUESTION\_CP\_MIFID\_48>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response, in particular:

* Its call for clarity that the list includes exchange for physical trades; and the exchange of ordinary shares for depository receipts;
* Its call for consistency of the exhaustive lists under RTS8, Article 2, and RTS 8, Article 6.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_48>

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

<ESMA\_QUESTION\_CP\_MIFID\_49>

BBA has participated in the Association for Financial Markets in Europe’s response. We support the concerns AFME expresses, and the remedy it proposes, regarding clarification of responsibility for reporting where a firm is trading with a Systematic Internaliser. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_49>

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

<ESMA\_QUESTION\_CP\_MIFID\_50>

Yes

<ESMA\_QUESTION\_CP\_MIFID\_50>

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

<ESMA\_QUESTION\_CP\_MIFID\_51>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s approach.

<ESMA\_QUESTION\_CP\_MIFID\_51>

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

<ESMA\_QUESTION\_CP\_MIFID\_52>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s approach, and its call for:

* APAs to be available to support firms during their standard market hours;
* Portfolio trades to be reported only when the whole basket is complete.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_52>

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

<ESMA\_QUESTION\_CP\_MIFID\_53>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and the modifications they propose to ESMA’s proposals. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_53>

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

<ESMA\_QUESTION\_CP\_MIFID\_54>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. We agree with the concerns AFME expresses about the proposed classes and thresholds, the need for better calibration, and the amendments to ESMA’s draft tables that AFME proposes. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_54>

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

<ESMA\_QUESTION\_CP\_MIFID\_55>

BBA agrees with the Association for Financial Markets in Europe’s support for ESMA’s alternative proposal of a standard €5 million threshold.

<ESMA\_QUESTION\_CP\_MIFID\_55>

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

<ESMA\_QUESTION\_CP\_MIFID\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_56>

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

<ESMA\_QUESTION\_CP\_MIFID\_57>

BBA has participated in the responses of the Association for Financial Markets in Europe and the International Capital Market Association. In weighing responses to this question, we ask ESMA to bear in mind that BBA shares many Members with AFME and ICMA, and to give weight to the views they express accordingly. We agree with and support AFME’s and ICMA’s criticisms of the COFIA approach as regards fixed income markets.  It is clearly crucial that regulation of transparency in these markets is appropriately calibrated so that the definition of liquidity does not capture significant amounts of trades that are in fact illiquid.  Whilst BBA prefers AFME’s proposed approach, both AFME’s and ICMA’s proposed approaches would significantly improve on ESMA’s proposals.  We emphasise that ESMA should engage closely with users of and intermediaries in these markets to ensure a better calibration, and a regime that supports, and does not damage, investors’ willingness to invest in illiquid instruments, and intermediaries’ and market users’ willingness to provide liquidity.  This need is particularly important in the context of the European Commission’s Capital Markets Union agenda.

<ESMA\_QUESTION\_CP\_MIFID\_57>

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

<ESMA\_QUESTION\_CP\_MIFID\_58>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and the amendments they propose to ESMA’s proposals

<ESMA\_QUESTION\_CP\_MIFID\_58>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer per asset class identified (investment certificates, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights, structured medium-term-notes and other warrants) addressing the following points:
   1. Would you use additional qualitative criteria to define the sub-classes?
   2. Would you use different parameters or the same parameters (i.e. average daily volume and number of trades per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you qualify certain sub-classes as illiquid? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_59>

The BBA shares the Association for Financial Markets in Europe’s concerns in particular:

* The broad definition of securitised derivative which would capture a wide range of diverse securities
* The need for ESMA given the general definition of securitised derivative to take a granular approach
* The rebuff of the presumption that prima facie, the presence of a market maker implies liquidity in all markets

<ESMA\_QUESTION\_CP\_MIFID\_59>

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

<ESMA\_QUESTION\_CP\_MIFID\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_60>

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

<ESMA\_QUESTION\_CP\_MIFID\_61>

BBA supports the concerns expressed in the International Swaps and Derivatives Association’s response, in particular:

* The need for sufficient granularity in the venue test and the liquidity test;
* The importance of not conflating on-venue and off-venue instruments;
* The need not to bring into scope OTC derivative transactions that are not listed on venues.
* The inappropriateness of the COFIA approach and the broad scope of the proposed liquidity provision, which would include too many illiquid instruments.
* The need for appropriate treatment of packaged trades.

BBA supports the concerns expressed by the Futures Industry Association Europe as regards on-venue derivatives, in particular:

* The need to use pre-trade order book data;
* The need to use broader data sets
* The need to use number of contracts rather than notional value;
* The need for a properly calibrated time line for calculations.
* The need to refine the classes of instruments used;
* The need to extend the maturity frontier from three to four months;
* The need for more granularity in the average trade per day and average notional amount per day parameters

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of ISDA’s and FIA Europe’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_61>

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

<ESMA\_QUESTION\_CP\_MIFID\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_62>

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

<ESMA\_QUESTION\_CP\_MIFID\_63>

BBA supports the concerns expressed by the Futures and Industry Association Europe as regards on-venue derivatives. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of FIA Europe’s response.

<ESMA\_QUESTION\_CP\_MIFID\_63>

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

<ESMA\_QUESTION\_CP\_MIFID\_64>

BBA supports the concerns expressed by the Futures and Industry Association as regards on-venue derivatives. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of FIA Europe’s response.

<ESMA\_QUESTION\_CP\_MIFID\_64>

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

<ESMA\_QUESTION\_CP\_MIFID\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_65>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criterion to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_66>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criteria to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_67>

1. Do you agree with ESMA’s proposal for the definition of a liquid market? Please provide an answer detailed per contract type and underlying (identified addressing the following points:
   1. Would you use different qualitative criteria to define the sub-classes?
   2. Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?
   3. Would you define classes declared as liquid in ESMA’s proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA\_QUESTION\_CP\_MIFID\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_68>

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

<ESMA\_QUESTION\_CP\_MIFID\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_69>

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

<ESMA\_QUESTION\_CP\_MIFID\_70>

No. The BBA supports the concerns expressed in the response of the International Swaps and Derivative Association and AFME that the proposed RFQ definition could disrupt the RFQ market in derivatives.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s and ISDA’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_70>

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

<ESMA\_QUESTION\_CP\_MIFID\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_71>

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

<ESMA\_QUESTION\_CP\_MIFID\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_72>

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

<ESMA\_QUESTION\_CP\_MIFID\_73>

BBA supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_73>

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

<ESMA\_QUESTION\_CP\_MIFID\_74>

BBA supports the Association for Financial Markets in response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response

<ESMA\_QUESTION\_CP\_MIFID\_74>

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

<ESMA\_QUESTION\_CP\_MIFID\_75>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular the amendments they advocate to ESMA’s proposed reduction of reporting delays to five minutes. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_75>

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

<ESMA\_QUESTION\_CP\_MIFID\_76>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and the modifications they propose to ESMA’s proposals. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_76>

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

<ESMA\_QUESTION\_CP\_MIFID\_77>

BBA has participated in and supports the responses of the Association for Capital Markets in Europe and the International Capital Market Association, in particular their call for better calibration of Large in Scale and Size Specific to the Instrument thresholds, to ensure that transparency requirements are properly calibrated in fixed income markets to align with the needs of market users. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s and ICMA’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_77>

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

<ESMA\_QUESTION\_CP\_MIFID\_78>

BBA supports the concerns expressed in the International Swaps and Derivatives Association’s response, in particular:

* Its identification of the need for lower Large in Scale and Size Specific to the Instrument thresholds.
* The need for appropriate treatment of packaged trades.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of ISDA’s response.

<ESMA\_QUESTION\_CP\_MIFID\_78>

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

<ESMA\_QUESTION\_CP\_MIFID\_79>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_79>

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

<ESMA\_QUESTION\_CP\_MIFID\_80>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_80>

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

<ESMA\_QUESTION\_CP\_MIFID\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_81>

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

<ESMA\_QUESTION\_CP\_MIFID\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_82>

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

<ESMA\_QUESTION\_CP\_MIFID\_83>

BBA agrees with the concerns in the response of the International Capital Market Association that four weeks’ deferral is not long enough to enable firms to protect certain trades in fixed income markets.

BBA supports the International Swaps and Derivatives Association’s identification of the need for longer deferrals for Large in Scale and illiquid derivative transactions; and for consistency of national Competent Authorities’ standards.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of ICMA’s and ISDA’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_83>

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

<ESMA\_QUESTION\_CP\_MIFID\_84>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and the significant concerns it expresses about ESMA’s proposed COFIA approach. BBA also agrees with the concerns expressed by the International Capital Market Association as regards the unworkability of the COFIA and in the fixed income market. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s and ICMA’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_84>

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

<ESMA\_QUESTION\_CP\_MIFID\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_85>

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

<ESMA\_QUESTION\_CP\_MIFID\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_86>

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

<ESMA\_QUESTION\_CP\_MIFID\_87>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_87>

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

<ESMA\_QUESTION\_CP\_MIFID\_88>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response as regards the foreign exchange derivatives market. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_88>

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

<ESMA\_QUESTION\_CP\_MIFID\_89>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response as regards the foreign exchange derivatives market.

BBA supports the International Swaps and Derivatives Association’s call for the ‘sufficiently liquid’ test to be applied at a more granular level in the derivatives market.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s and ISDA’s responses.

<ESMA\_QUESTION\_CP\_MIFID\_89>

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

<ESMA\_QUESTION\_CP\_MIFID\_90>

BBA has participated in, and supports, the Association for Financial Markets in Europe’s response as regards the foreign exchange derivatives market. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_90>

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

<ESMA\_QUESTION\_CP\_MIFID\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_91>

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

<ESMA\_QUESTION\_CP\_MIFID\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_92>

* Microstructural issues

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

<ESMA\_QUESTION\_CP\_MIFID\_93>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its reservations and proposed amendments regarding business continuity arrangements, in particular with regard to:

* The need to simplify and clarify the definition of disorderly and disruptive scenarios;
* The need for flexibility as regards back-up plans
* The need not to impose business continuity arrangements that are bespoke to each venue
* The need for flexibility so that firms can act in clients’ best interests.
* The need for flexibility to accommodate the circumstances of smaller firms.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_93>

1. With respect to the section on Testing of algorithms and systems and change management, do you need clarification or have any suggestions on how testing scenarios can be improved?

<ESMA\_QUESTION\_CP\_MIFID\_94>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its reservations and proposed amendments regarding systems and change management. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_94>

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

<ESMA\_QUESTION\_CP\_MIFID\_95>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its interpretations of pre- and post-trade controls. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_95>

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

<ESMA\_QUESTION\_CP\_MIFID\_96>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, including its reservations as regards non-equity markets. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_96>

1. Do you agree with the proposal regarding monitoring for the prevention and identification of potential market abuse?

<ESMA\_QUESTION\_CP\_MIFID\_97>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its opposition to a general obligation on firms to monitor for market abuse where the firm does not have information to do so. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_97>

1. Do you have any comments on Organisational Requirements for Investment Firms as set out above?

<ESMA\_QUESTION\_CP\_MIFID\_98>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its call for appropriate clarification as regards the treatment of requests for quote and disorderly markets. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_98>

1. Do you have any additional comments or questions that need to be raised with regards to the Consultation Paper?

<ESMA\_QUESTION\_CP\_MIFID\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_99>

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

<ESMA\_QUESTION\_CP\_MIFID\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_100>

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

<ESMA\_QUESTION\_CP\_MIFID\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_101>

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

<ESMA\_QUESTION\_CP\_MIFID\_102>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its proposed controls regarding test instruments. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_102>

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

<ESMA\_QUESTION\_CP\_MIFID\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_103>

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

<ESMA\_QUESTION\_CP\_MIFID\_104>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular:

* Its stress that the regime needs to be based on a deliberate intention by a firm to be a market maker;
* The need to take account of ESMA’s Technical Advice on HFT and algorithmic trading, with only proprietary order flow in scope;
* The need to clarify the timeline for agreeing and exiting from a market making agreement;
* Its call for flexibility for investment firms’ market making strategy in exceptional market conditions.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_104>

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

<ESMA\_QUESTION\_CP\_MIFID\_105>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular:

* The need not to make assessments on a monthly, not daily, basis;
* Its call for clarity on the interpretation of market hours.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_105>

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

<ESMA\_QUESTION\_CP\_MIFID\_106>

BBA has participated in and supports the Association for Financial Markets in Europe’s call for clarity in the interpretation and application of ESMA’s proposals. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_106>

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

<ESMA\_QUESTION\_CP\_MIFID\_107>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular:

* The need to take account of the circumstances of the firm, as well as the decision by the venue, in determining whether the firm is in ‘exceptional circumstances’
* The need not to make public the occurrence of exceptional circumstances;
* The need not to require firms to monitor the occurrence of exceptional circumstances;
* The need to take account of IT disruptions.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_107>

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

<ESMA\_QUESTION\_CP\_MIFID\_108>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, in particular as regards:

* The need for a firm to be able to suspend in line with its own analysis and ability to continue with its market making strategy;
* The need for a broader definition of ‘stressed market conditions’;

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_108>

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

<ESMA\_QUESTION\_CP\_MIFID\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_109>

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

<ESMA\_QUESTION\_CP\_MIFID\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_110>

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

<ESMA\_QUESTION\_CP\_MIFID\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_111>

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

<ESMA\_QUESTION\_CP\_MIFID\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_112>

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

<ESMA\_QUESTION\_CP\_MIFID\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_113>

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

<ESMA\_QUESTION\_CP\_MIFID\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_114>

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

<ESMA\_QUESTION\_CP\_MIFID\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_115>

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

<ESMA\_QUESTION\_CP\_MIFID\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_116>

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

<ESMA\_QUESTION\_CP\_MIFID\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_117>

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

<ESMA\_QUESTION\_CP\_MIFID\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_118>

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

<ESMA\_QUESTION\_CP\_MIFID\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_119>

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

<ESMA\_QUESTION\_CP\_MIFID\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_120>

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

<ESMA\_QUESTION\_CP\_MIFID\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_121>

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

<ESMA\_QUESTION\_CP\_MIFID\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_122>

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

<ESMA\_QUESTION\_CP\_MIFID\_123>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_123>

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

<ESMA\_QUESTION\_CP\_MIFID\_124>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_124>

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

<ESMA\_QUESTION\_CP\_MIFID\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_125>

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

<ESMA\_QUESTION\_CP\_MIFID\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_126>

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

<ESMA\_QUESTION\_CP\_MIFID\_127>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_127>

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

<ESMA\_QUESTION\_CP\_MIFID\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_128>

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

<ESMA\_QUESTION\_CP\_MIFID\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_129>

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

<ESMA\_QUESTION\_CP\_MIFID\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_130>

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

<ESMA\_QUESTION\_CP\_MIFID\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_131>

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

<ESMA\_QUESTION\_CP\_MIFID\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_132>

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

<ESMA\_QUESTION\_CP\_MIFID\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_133>

* Data publication and access

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

<ESMA\_QUESTION\_CP\_MIFID\_134>

BBA supports the Association for Financial Markets in Europe’s agreement with ESMA’s proposal. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_134>

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

<ESMA\_QUESTION\_CP\_MIFID\_135>

BBA supports the Association for Financial Markets in Europe’s agreement with ESMA’s proposal, and its call for consistency; between DRSP and investment firm obligations. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_135>

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

<ESMA\_QUESTION\_CP\_MIFID\_136>

BBA supports the Association for Financial Markets in Europe’s call for consistency between DRSP and investment firm obligations. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_136>

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

<ESMA\_QUESTION\_CP\_MIFID\_137>

BBA supports the Association for Financial Markets in Europe’s concerns about ESMA’s proposals. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_137>

1. Do you agree with ESMA’s proposal?

<ESMA\_QUESTION\_CP\_MIFID\_138>

BBA supports the Association for Financial Markets in Europe’s call for new venues to make data freely available, and its concerns about the operational burdens on CTPs. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_138>

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

<ESMA\_QUESTION\_CP\_MIFID\_139>

BBA supports the Association for Financial Markets in Europe’ call for a 3 month period for substantial changes, and its call for ‘free, non-proprietary, open standards’, rather than ‘free open source software’. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response <ESMA\_QUESTION\_CP\_MIFID\_139>

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

<ESMA\_QUESTION\_CP\_MIFID\_140>

BBA supports the Association for Financial Markets in Europe’s concerns on the practical implications of allowing firms to report to more than one APA. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_140>

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

<ESMA\_QUESTION\_CP\_MIFID\_141>

BBA supports the Association for Financial Markets in Europe’s call for only APAs to assign trade IDs.

<ESMA\_QUESTION\_CP\_MIFID\_141>

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

<ESMA\_QUESTION\_CP\_MIFID\_142>

BBA agrees with the Association for Financial Markets in Europe that APA publication and the actual execution times are sufficient.

<ESMA\_QUESTION\_CP\_MIFID\_142>

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

<ESMA\_QUESTION\_CP\_MIFID\_143>

BBA agrees with the Association for Financial Markets in Europe’s comments on the need for unambiguous trade sequencing. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_143>

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

<ESMA\_QUESTION\_CP\_MIFID\_144>

BBA agrees with the Association for Financial Markets in Europe’s call for both the venue and the APA to be identified in the trade report.

<ESMA\_QUESTION\_CP\_MIFID\_144>

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

<ESMA\_QUESTION\_CP\_MIFID\_145>

BBA supports the Association for Financial Markets in Europe’s call for separation of auction data from continuous trading data for equities.

<ESMA\_QUESTION\_CP\_MIFID\_145>

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

<ESMA\_QUESTION\_CP\_MIFID\_146>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its concerns, and proposed amendments, to clarify the hierarchy of responsibility for trade reporting, and to ensure the quality of information reported. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_146>

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

<ESMA\_QUESTION\_CP\_MIFID\_147>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its concerns, and proposed amendments, to clarify the hierarchy of responsibility for trade reporting, and to ensure the quality of information reported. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response

<ESMA\_QUESTION\_CP\_MIFID\_147>

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

<ESMA\_QUESTION\_CP\_MIFID\_148>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its:

* Support for access between trading venues and CCPs;
* Expectation that CCPs should be able to handle the incremental volumes created by a new trading venue, and not seek to avoid competition;
* Analysis that incompatibility of trading venue and IT systems is not an issue for operational risk / complexity;
* Call for clarity on which insolvency law / default procedure applies if the trading venue and CCP are in different jurisdictions.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_148>

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

<ESMA\_QUESTION\_CP\_MIFID\_149>

BBA has participated in and supports the Association for Financial Markets in Europe’s response, and its recommendations to enhance the effectiveness of MIFID provisions on access to CCP and venues, in particular its call for clarity of clarity of interpretation of, and controls over, the ability to deny access on grounds of

* IT incompatibility;
* Threat to the viability or minimum capital requirements of a trading venue;
* Incompatibility of infrastructure;
* Clearing of products outside a CCP’s EMIR authorisation.

In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_149>

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

<ESMA\_QUESTION\_CP\_MIFID\_150>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_150>

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

<ESMA\_QUESTION\_CP\_MIFID\_151>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_151>

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

<ESMA\_QUESTION\_CP\_MIFID\_152>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_152>

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

<ESMA\_QUESTION\_CP\_MIFID\_153>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_153>

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

<ESMA\_QUESTION\_CP\_MIFID\_154>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_154>

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

<ESMA\_QUESTION\_CP\_MIFID\_155>

BBA has participated in and supports the Association for Financial Markets in Europe’s response. In weighing responses to this question, we ask ESMA to treat BBA’s response as if it included the full text of AFME’s response.

<ESMA\_QUESTION\_CP\_MIFID\_155>

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

<ESMA\_QUESTION\_CP\_MIFID\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_156>

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

<ESMA\_QUESTION\_CP\_MIFID\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_157>

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

<ESMA\_QUESTION\_CP\_MIFID\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_158>

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

<ESMA\_QUESTION\_CP\_MIFID\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_159>

* Requirements applying on and to trading venues

1. Do you agree with the attached draft technical standard on admission to trading?

<ESMA\_QUESTION\_CP\_MIFID\_160>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_160>

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

<ESMA\_QUESTION\_CP\_MIFID\_161>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_161>

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

<ESMA\_QUESTION\_CP\_MIFID\_162>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_162>

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

<ESMA\_QUESTION\_CP\_MIFID\_163>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_163>

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

<ESMA\_QUESTION\_CP\_MIFID\_164>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_164>

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

<ESMA\_QUESTION\_CP\_MIFID\_165>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_165>

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

<ESMA\_QUESTION\_CP\_MIFID\_166>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_166>

1. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?

<ESMA\_QUESTION\_CP\_MIFID\_167>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_167>

* Commodity derivatives

1. Do you agree with the approach suggested by ESMA in relation to the overall application of the thresholds? If you do not agree please provide reasons.

<ESMA\_QUESTION\_CP\_MIFID\_168>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_168>

1. Do you agree with ESMA’s approach to include non-EU activities with regard to the scope of the main business?

<ESMA\_QUESTION\_CP\_MIFID\_169>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_169>

1. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA\_QUESTION\_CP\_MIFID\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_170>

1. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA\_QUESTION\_CP\_MIFID\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_171>

1. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA\_QUESTION\_CP\_MIFID\_172>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_172>

1. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_173>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_173>

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

<ESMA\_QUESTION\_CP\_MIFID\_174>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_174>

1. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA\_QUESTION\_CP\_MIFID\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_175>

1. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA\_QUESTION\_CP\_MIFID\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_176>

1. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA\_QUESTION\_CP\_MIFID\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_177>

1. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA\_QUESTION\_CP\_MIFID\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_178>

1. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_179>

1. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA\_QUESTION\_CP\_MIFID\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_180>

1. Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?

<ESMA\_QUESTION\_CP\_MIFID\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_181>

1. Do you agree with ESMA’s conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA\_QUESTION\_CP\_MIFID\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_182>

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

<ESMA\_QUESTION\_CP\_MIFID\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_183>

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

<ESMA\_QUESTION\_CP\_MIFID\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_184>

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

<ESMA\_QUESTION\_CP\_MIFID\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_185>

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

<ESMA\_QUESTION\_CP\_MIFID\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_186>

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

<ESMA\_QUESTION\_CP\_MIFID\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_187>

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

<ESMA\_QUESTION\_CP\_MIFID\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_188>

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

<ESMA\_QUESTION\_CP\_MIFID\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_189>

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

<ESMA\_QUESTION\_CP\_MIFID\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_190>

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

<ESMA\_QUESTION\_CP\_MIFID\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_191>

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

<ESMA\_QUESTION\_CP\_MIFID\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_192>

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

<ESMA\_QUESTION\_CP\_MIFID\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_193>

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

<ESMA\_QUESTION\_CP\_MIFID\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_194>

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

<ESMA\_QUESTION\_CP\_MIFID\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_195>

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

<ESMA\_QUESTION\_CP\_MIFID\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_196>

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

<ESMA\_QUESTION\_CP\_MIFID\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_197>

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

<ESMA\_QUESTION\_CP\_MIFID\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_198>

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

<ESMA\_QUESTION\_CP\_MIFID\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_199>

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

<ESMA\_QUESTION\_CP\_MIFID\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_200>

1. Do you have any comments regarding ESMA’s proposal regarding what is a non-financial entity?

<ESMA\_QUESTION\_CP\_MIFID\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_201>

1. Do you agree with the proposed draft RTS regarding the aggregation of a person’s positions?

<ESMA\_QUESTION\_CP\_MIFID\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_202>

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

<ESMA\_QUESTION\_CP\_MIFID\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_203>

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

<ESMA\_QUESTION\_CP\_MIFID\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_204>

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

<ESMA\_QUESTION\_CP\_MIFID\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_205>

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

<ESMA\_QUESTION\_CP\_MIFID\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_206>

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

<ESMA\_QUESTION\_CP\_MIFID\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_207>

1. Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?

<ESMA\_QUESTION\_CP\_MIFID\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_208>

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

<ESMA\_QUESTION\_CP\_MIFID\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_209>

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

<ESMA\_QUESTION\_CP\_MIFID\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_210>

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

<ESMA\_QUESTION\_CP\_MIFID\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_211>

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

<ESMA\_QUESTION\_CP\_MIFID\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_212>

* Market data reporting

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

<ESMA\_QUESTION\_CP\_MIFID\_213>

Under the current UK FCA MiFID 1 regime firms with an obligation to report do so using the services of an Approved Reporting Mechanism (ARM). It is expected that the ARMs will continue to take transaction data from their client firms using the messaging standards currently in place albeit extended to cater for the additional data elements that are required under MiFIR (EU) 600/2014.

Firms submitting data through an ARM should be allowed to retain flexibility in terms of the format they send to their ARM. Any requirements in MiFID II should not directly cover the process by which firms submit to an ARM but rather the format through which ARMs report to regulators.

Where new messaging requirements arise under MiFIR then firms would prefer to use standardised formats such as FpML and not proprietary or customised formats allowing them to leverage existing technical capabilities and infrastructure.

Hence, firms envisage that implementing non-XML based formats such as FIX would take the most effort to implement. Similarly TREM which is a customized XML format and is not an industry standard may also prove more challenging for some firms to implement.

<ESMA\_QUESTION\_CP\_MIFID\_213>

1. Do you anticipate any difficulties with the proposed definition for a transaction and execution?

<ESMA\_QUESTION\_CP\_MIFID\_214>

Firms welcome ESMA’s efforts to define what constitutes a ‘transaction’ and ‘execution’ for the purposes of transaction reporting. We also welcome the clarity on the activities that are not included in the definition.

<ESMA\_QUESTION\_CP\_MIFID\_214>

1. In your view, is there any other outcome or activity that should be excluded from the definition of transaction or execution? Please justify.

<ESMA\_QUESTION\_CP\_MIFID\_215>

We suggest ESMA considers the following

1. Securities Financing Transactions (SFTs)

Firms welcome ESMA’s decision to exclude (SFTs) from the scope of transaction reporting. However, firms would welcome more clarity on Article 3 (3) (a) of the draft RTS 32 as there is likely to be a difference in the timing of the implementation of MiFIR (EU) 600/2014 and the Securities Financing Transaction Regulation 2014/0017 (COD) - (SFTR), as well as potential exemptions from reporting under the SFTR which will not be carried through to the MiFIR reporting framework under the current draft RTS 32.

Firms should not be required to report SFTs under MiFIR for the period between MiFIR implementation and SFTR implementation, nor should they need to transaction report SFTs if they are exempt from reporting under SFTR.

To avoid any confusion, RTS Article 3 (3) (a) should be redrafted to read as follows: “Securities financing transactions”

The same definition of “securities financing transaction” as is used in RTS 8 could be provided – namely “securities financing transactions means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell or sell-buy back transaction”.

2. Primary Market Activity:

Firms would appreciate clarification on the inclusion / exclusion of activities described as “issuance, allotment, subscriptions and placements” which appears to describe primary market activities which are typically publically announced. These activities would appear to meet the criteria specified under paragraph 26 of the consultation paper for exclusion as dates are generally known in advance; investors elect to participate in book building in advance of the primary issue and prices are standard across all investors.

3. Novations & Assignments

Firms would welcome further clarification on the exclusion of activities described in the consultation paper with regards to Novations & Assignments of Derivatives. Our current understanding is that the remaining party of a novation has no transaction reporting responsibility as it is part of a novation and there is no change in notional for them. Can ESMA confirm both stepping-in and stepping-out parties in a novation have an obligation to transaction report as a new trade and as a termination respectively, as in both cases, there is a decrease and an increase in notional of the trade before expiry?

4. Exercise and Assignment

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

Firms agree the underlying deliverable itself is reportable as a new transaction. However there is some confusion over whether this applies to early exercises only and not from expiry exercises. There is wording in the exclusions around 'Pre-determined contractual or mandatory events where no investment decision is taken' and 'Creation, expiration and redemption of derivatives'. Therefore, we do not believe transactions resulting from option expiry on contractual termination date should be reportable.

5. Reporting by non-EEA branches of EEA firms:

With regards to ESMA’s clarification as to what constitutes ‘execution', ESMA states in the consultation paper (paragraph 8) that direct action by the investment firm clearly constitutes execution and this includes where it acts through its branches regardless of whether these are located inside or outside the EEA. ESMA also states that unlike subsidiaries, branches have the same legal entity as the investment firm itself and therefore activity by them is reportable. We would like clarification that the statement means that non-EEA branches of EEA firms are required to separately report to EU regulators. We would welcome confirmation that it is not ESMA’s intention to require non-EEA branches of EEA firms to separately transaction report to EU regulators, as opposed to MIFID investment firms flagging whether part of the activity was carried out by one of their branches (whether based inside or outside the EEA). In order to avoid any misunderstanding firms would like ESMA to confirm in the draft RTS that non-EEA branches of EEA firms will not be required to report to EU regulators.

6. Baskets and Sectors

We assume that the Exclusion in RTS 32 Article 3 (3) (h) was intended to include changes in compositions of baskets and sectors which are also not reportable after a transaction has occurred. For clarity the proposed wording should be amended to read:

“A change in the composition of an index, **basket or sector** after a transaction occurred”

<ESMA\_QUESTION\_CP\_MIFID\_215>

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

<ESMA\_QUESTION\_CP\_MIFID\_216>

As ESMA acknowledged there is little scope within the Level one text to simplify the approach but our members thought it worth highlighting some of the complexities at ESMA’s request, with the proposal. Whilst we appreciate that the provision of transmission of order arrangements are optional we envisage that commercial client pressure may require firms executing client business to provide an infrastructure to support the additional data required to be transmitted with orders

Clients might require all firms with whom they execute / clear business to offer a transmission or order arrangement to ensure that they have a complete reporting solution.

Where such conditions are not met by all of the clients’ service providers the client will be required to build a reporting infrastructure where the transmission criteria are not met (e.g. where the client is unable to provide all required transmission data on a timely basis).

Notwithstanding the comments above, it is our members’ understanding that the transmission of an order mechanism is intended to apply irrespective of whether the non-transmitting investment firm is acting in a principal capacity or an agency / quasi-agency capacity, and irrespective of the way in which the relevant transaction between the two investment firms arises. For example, a firm which is acting on a discretionary basis and which transacts with a dealer (which is an investment firm) on the basis of a Request for Quote should consider itself to have “transmitted an order” (and therefore should not itself transaction report the relevant transaction) provided that the conditions in Article 4(1) of RTS 32 have been satisfied. We should be grateful for confirmation of this understanding.

Finally, Article 4(4) of RTS 32 requires receiving firms to validate data received from a transmitting firm for “obvious errors” and omissions prior to submission to the regulators. From a systems-build perspective, this will be a significant, costly and onerous exercise. Furthermore, it could also lead to a fragmented service offering as not all industry participants will have the sufficient scale, technical and financial capability and may result in increased costs to end users. It is also unclear what is meant by “obvious errors” – receiving firms should be able to rely on the information provided to them by the transmitting firm, and so we suggest this reference is deleted (or at least clarified as to its meaning). This requirement has a disproportionate effect on smaller firms.

<ESMA\_QUESTION\_CP\_MIFID\_216>

1. Do you agree with ESMA’s proposed approach to simplify transaction reporting? Please provide details of your reasons.

<ESMA\_QUESTION\_CP\_MIFID\_217>

While, firms agree in principle with ESMA’s proposed approach it should be noted that it is not a “one size fits all” approach. This approach for example does not consider the characteristics of some OTC derivatives products which may make the determination of the buyer and seller subjective, leading to inconsistencies in reporting between firms. For example, in a swap transaction it is not always clear which counterparty to the trade originated the transaction and therefore who should be assigned as buyer or seller of the trade. In order to ensure the determination of buyer and seller is done as consistently and as accurately as possible, firms would urge ESMA to work with the industry to develop Level 3 guidelines regarding pre-set criteria as a standard mechanism to determine the buyer and seller for different types of asset classes of OTC derivatives.

For example the industry already uses conventions that assign roles to counterparties to a trade e.g. in the case of a fixed / float interest rate swap, the payer of the fixed rate may be assigned the role of BUYER and the payer of the floating rate may be assigned the role of the SELLER.

Additionally, firms would prefer to opt for an approach which is consistent and harmonised with the requirements to retain detailed records of orders. If ESMA decides to opt for this approach for transaction reporting, we would suggest for this approach to also be applied to orders to be stored under RTS 34/35 so that the buyer/ seller information is stored in a consistent manner.

Firms would also raise concerns with the new approach for reporting laid out in scenario 4. Most notably, that ESMA appears to be confusing the trading capacity of Agent with receipt and transmission of an order which is incorrect. In this scenario, John Smith is reflected as a buyer; however Firm X is acting as agent, and should therefore be reported as the buyer.

Furthermore, Firm Y would view Firm X as its counterparty and not John Smith/retail client. This would be of particular concern where firms have private banks acting in an agency capacity on behalf of retail clients trading with their investment banks. The investment bank cannot and will not have access to the retail client information, and as such cannot report this.

ESMA must not confuse trading in Agency capacity with receipt and transmission of orders.

Lastly, firms would remind ESMA that in the current reporting regime, the ability to report a transaction in a single model identifying buyer and seller as a “principal cross” or “agency cross” enables firms to minimise the number of reports it sends to NCAs via its ARM and reduces the cost of Transaction Reporting charged by ARMs. In the current scenarios ESMA has only specified a single report for Agency transactions. Firms would ask that this scenario be expanded to include Matched Principal. Additionally firms have outlined in response to question 219 that ESMA consider a new trading capacity: Facilitation to help ESMA identify where firms are facilitating clients. Should ESMA agree with the recommendation to include Facilitation in the scope of trading capacity, firms would ask ESMA to also include this in the scenario of sending a single transaction report to an ARM.

<ESMA\_QUESTION\_CP\_MIFID\_217>

1. We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

<ESMA\_QUESTION\_CP\_MIFID\_218>

**General Comments**

Where a product is identified using an ISIN in field 54, then subsequent instrument fields should not need populating. This approach will minimise the risk of inaccuracies across the industry and make it more likely regulators receive the correct standard of data. We accept that in certain instances such as OTC and to a lesser extent where Aii is used this approach does not provide the detail that regulators require but with ISINs it is possible to rely on the associated reference data**.**

In general, firms believe that, in order to achieve clarity as to the population of each transaction reporting field, this will require detailed scenarios at an asset class level, to be analysed and an explanation as to how fields are expected to be populated for each of the scenarios. We therefore encourage ESMA to work with the industry to put in place a transaction reporting guide (Level 3 Guidelines), which will assist firms in achieving consistent and accurate reporting. In the absence of such a guide, investment firms may interpret the population of each field differently. In addition firms suggest that ESMA clearly identifies where fields are mandatory, optional or non-applicable in the draft RTS 32 or in Level 3 Guidelines.

In light of ESMA’s experience with EMIR reporting may we suggest that ESMA specifies as part of the Technical Standards the validation required for each field so that firms with reporting obligations are able to implement this at the outset rather than retrospectively as with EMIR.

The BBA members would propose that ESMA work with the industry to agree asset class scenarios, golden instrument identifiers & product taxonomies. This should also be aligned with other MiFID reporting requirements where appropriate.

**Field Specific comments**

Further to the above, we would like to make the following comments and suggested amendments on the ESMA’s proposed fields:

**Natural person information: Fields 8 – 19 & 23-34**- Firms would like to reiterate their concern with the amount of personal data that ESMA is suggesting be included in each transaction report. We believe that ESMA’s proposals to have natural persons identified by a national ID number robustly and uniquely identifies each natural person and should therefore be enough for transaction reporting purposes. We do not agree that additional information such as the name, the surname, the date of birth, the country of residence and the post code is required in order for competent authorities to monitor for market abuse.

The proposed additional information might on the contrary overcomplicate the report with unnecessary attributes. For example, we question how including the date of birth of an individual in the reports is considered as an essential piece of information for market abuse purposes when that person is already uniquely identified by their national ID number. Also two natural persons will not have the same national ID number so we do not see how adding its date of birth to the report will provide any additional useful information to the regulators.

In addition, ESMA also requires the post code of natural persons to be identified in the reports. As ESMA is aware individuals frequently change addresses and/or could have multiple addresses. For all these reasons, we think that requiring firms to include all this additional information in the transaction reports is not properly justified, and is unreasonable and disproportionate. We would urge ESMA to review the amount of personal data that it proposes to include in transaction reports and to reduce it to a minimum.

In the consultation paper (paragraph 98), ESMA’s acknowledges concerns related to data protection and states that it will ensure full compliance with the data protection law. Providing personal data in transaction reports greatly increases the risk of personal data fraud, risks of identity theft and raises important privacy concerns under EC Data Protection Directive. The industry would like to understand how ESMA will mitigate these risks.

**Execution Time: Field 41-** Firms would ask ESMA to set a fixed format (UTC) for reporting of execution timestamp to enable firms to implement more efficiently and enable their control frameworks to operate with a standard field length.

**Information on prices: Fields 45 -50 –**  The consideration field is subject to interpretation and question e.g. listed futures transactions do not have a ‘settlement consideration’ and other derivative transactions will have complex calculations to determine consideration, a consideration in many cases not existing at all.

Currency throughout a trade is not always consistent, with executed price currency (field 47), underlying instrument currency where applicable (field 48) and consideration (settlement) currency often differing (field 50), which can be dependent on client / counterparty preference.

The simplest example being where a client requests settlement in a different currency to the currency in which the trade was executed. The requirement for the information reported in fields 45-48 to match information provided in field 50 would result in firms being required to convert values for the purpose of transaction reporting inconsistent with what NCAs observe in market and firm records. Furthermore, it is anticipated that the consideration value sought (excluding commission and accrued interest) is already provided in other required fields, as this value does not typically align with the ‘settlement value’ this would not be consistent with what NCAs observe in market and firm records.

**Instrument identification code: Field 54** – Firms note that the details required when using an AII (or Aii) would not accommodate the information that is provided to the regulator today. Firms suggest that field 54 should only be populated with the Exchange Product code. The information on the venue is already specified in Field 51 so there is no need to include this information twice.

ESMA has not allowed an alternative identifier where neither an ISIN nor AII exist. We suggest that an option is included to cater for such occurrences otherwise firms will be unable to make the necessary transaction reports.

An OTHER category would allow a report to be made and ESMA should encourage firms to minimise use of the OTHER categorisation.

**Instrument classification: Fields 55 - 56** – The CFI code is not available for OTC derivatives as it currently only exists for listed instruments with an ISIN.

Firms suggest that where the CFI code is unavailable for classes of derivatives that are traded on a platform under MiFIR that firms derive their own internal CFI in the interim until international standards are agreed for UPI.

**Ultimate underlying instrument code: Field 58** - Firms would ask ESMA to revise the guidance in RTS 32 so that derivatives where there is for example no underlying ISIN, Aii, ISO or LEI can be reported as ‘OTHER’. Examples would include FX derivatives, CDS and commodities such as gold.

**Baskets: Field 58** - This field poses problems in terms of the potential large number of underlying ISINs that firms might have to populate in this field.

For example an Equity Swap on a bespoke basket of the FTSE250 index with the banking stocks removed – would result in a repeating group population in excess of 200 lines. The 25 alphanumerical characters allowed will not be sufficient to accommodate these types of baskets.

Firms suggest that where an ISIN or name (if the name is official) is available to identify baskets, sectors or indices then these should be allowed to be used as opposed to free form text which is likely to be widely different amongst firms and therefore less helpful to regulators in detecting market abuse.

Firms would ask that Article 3 (3) (h) is amended to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred:

“A change in the composition of an index **or basket** after a transaction occurred is not reportable”

**Option style: Field 61** – Not all complex options fit into these categories – firms suggest that where a complex option does not fit into the categories listed then ESMA specify an additional category designated “COMPLEX” for this purpose.

**Result of the exercise: Field 63** – the value N might be considered redundant. Furthermore, firms agree the underlying deliverable itself is reportable as a new transaction but do not feel that its linkage is necessary and would be technically complex for firms whereby derivative products and underlying products (i.e. Equities) are booked and persisted through separate systems and flows.

**Up-front payment: Fields 65-66** – Could ESMA clarify that these fields are only populated in the case of CDS transactions?

**Trader identification code: Field 68 -69**

Field 68 should be amended as follows in order to remove an inconsistency between the title and its accompanying text:

“Trader identification code type (execution)”

Firms would like to reiterate their concern with ESMA’s proposal to have traders identified by National ID numbers. BBA members would suggest that there are other more suitable items of identification that could be used and are already used within firms to identify individuals, for example the National Competent Authorities registration number. While we understand the need for a unique national ID number to be used for natural persons when they are clients, we do not think this is justified in the case of a trader working within a firm and already identified by the NCA via the registration number. A trader ID need not be identified more broadly. Moreover, a registration number is better than a personal ID, as it does not inherit the problem of people with dual nationalities

**Short selling indicator: Field 77**

Given that some clients who are also MiFID investment firms have an obligation to report to ESMA, it would be duplicative for firms to also report that these clients are short selling For those clients who are NOT MiFID investments firms, there should be no obligation for the reporting firm to capture this information.

Mindful of the above, we would recommend the removal of article 10 (2)and certainly would object to suggestions applying a “best efforts” approach to this as there is no requirement for the client to provide this information To the extent ESMA determines that it cannot delete Article 10(2), it should at least be amended to read: “Where an investment firm’s client is the seller in the transaction, the investment firm shall be obliged to identify the sale as a short sale if its client has identified the sale as a short sale to the investment firm”. Investment firms should only be expected to pass on information actually provided to them by their clients in this respect.

Furthermore, ESMA is proposing for our member firms to identify whether the sale was short at the time of execution and at legal entity level. Having this information identified at the time of execution would be extremely challenging /close to impossible for firms to achieve. If ESMA wants this information to be identified at entity level then we would suggest the short selling flag requirement under transaction reporting to be as aligned as far as possible with the firms’ obligations under the Short Selling Regulation (SSR). In this case, reporting firms would identify whether they are gross short in applicable securities at the end of the day, without taking into account short sales undertaken in a market making capacity. This solution would allow firm’s to provide more meaningful information to the regulators whom would be more able to rely upon this data. Also, this approach would allow all firms to use their existing mechanism put in place under SSR and avoid major undertakings with implementation. This is the preferred approach by BBA members.

Alternatively, if the above solution is not satisfactory for ESMA, we would like ESMA to consider the short selling flag to be applied at desk/book level at the time of execution. Again, it is extremely challenging to capture short selling information at legal entity level, and at the time of execution. Indeed, firms may be taking many orders across different trading desks/ locations that are over-riding each other with regards to short selling at an entity level. Especially when using a systemic approach such as a VWAP model. Therefore the most appropriate way for firms to flag the information at the time of execution would be to flag it at desk/book level. This is an approach which is currently being used in the USA

**Field 80b**

In addition for reconciliation and control purposes firms would suggest an additional field that represents an identifier – unique to the firm to identify the transaction report. Field 80 could be used for this purpose but not where the Field is used for venues unique ID. Hence, we suggest an additional alternative field be provided.

**Report Status – Field 81**

Members are concerned that only N(new) and C(cancel) are applicable, and there is no mention of A(amend).

This will create an unnecessary additional volume of reports. We would – welcome the possibility to amend reports instead of cancelling and then reporting new trades.

<ESMA\_QUESTION\_CP\_MIFID\_218>

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

<ESMA\_QUESTION\_CP\_MIFID\_219>

ESMA may find it beneficial to remove the field name – ‘Trading Capacity’ and replace it with the field name ‘Reporting Capacity’.

Firms recognise that one of the objectives of a transaction report is to identify market abuse through changes in the position within firms. Through the use of ‘Trading Capacities’, NCAs can detect changes in beneficial ownership for example through the use of “Principal”, “Agent” or when they are fulfilling client orders simultaneously – “Matched Principal”. However, “Matched Principal” capacity only identifies some of the scenarios where a firm interposes itself between buyer and seller, without taking a position.

To provide a more complete view of where firms are acting as facilitator between buyer and seller having already identified the other side to a position , firms would suggest that ESMA considers broadening (i.e. create an additional trading capacity category in addition to the three above) the scope of the permissible scenarios for Trading Capacity to include ”Facilitation”. Firms would for example use this trading capacity where they are facilitating a client order across multiple venues or executions but where the facilitator makes no profit or loss other than previously disclosed fee or commission. This is a recognised behaviour within firms where their internal systems and controls mean that they have credit risk against market side and client side counterparties but no position risk and would enable NCAs to clearly identify this activity as part of their surveillance. The reason why trades that firms facilitate in this way cannot fall under the existing definition of Matched Principal is because the trading is not always simultaneously.

The definition of ‘facilitation’ should be specific to Transaction Reporting and should be used by firms in their transaction reports when their role in the transaction is unambiguous i.e. client orders that are filled both from the firm inventory and the venue would continue to be classified as Principal for example. Positions taken by the investment firm on the back of a client derivative trade would therefore be classified as Principal.

Firms believe that by including this additional capacity NCAs will be better able to identify firms who have taken Principal positions and differentiate this from instances where they take positions momentarily to facilitate a client trade.

A typical example of a facilitation trade would be where a firm receives a client order that is routed straight to the market. The firm will receive filled orders from different venues across the trading day and then once the entire order is completed / or once the market closes the firm will then book the transaction(s) back to the client. The market fills are held on the firm’s account until the trade is booked out to the client. Hence the transaction is not simultaneous and can therefore not be identified as matched principal.

<ESMA\_QUESTION\_CP\_MIFID\_219>

1. Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details

<ESMA\_QUESTION\_CP\_MIFID\_220>

Yes.

Firms would highlight that they will be dependent on the trading venues to provide waiver specific information. If the information is provided accurately and timely to the investment firms then there should be no problem in populating this field

It is likely that some non-EEA venues will not populate this field and indeed this problem exists today.

<ESMA\_QUESTION\_CP\_MIFID\_220>

1. Do you agree with ESMA’s approach for deciding whether financial instruments based on baskets or indices are reportable?

<ESMA\_QUESTION\_CP\_MIFID\_221>

Firms agree with the approach stated in Article 11. However, we would ask that Article 3 (3) (h) is amended to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred:

“A change in the composition of an index **or basket** or sector after a transaction occurred”

<ESMA\_QUESTION\_CP\_MIFID\_221>

1. Do you agree with the proposed standards for identifying these instruments in the transaction reports?

<ESMA\_QUESTION\_CP\_MIFID\_222>

Firms are concerned about ESMA’s proposals to have baskets identified by the underlying components **which are reportable financial instruments**. Once a basket has been identified as reportable (i.e. at least one component of the basket is a financial instrument admitted to trading or traded) we would suggest all the component of the basket to be identified in the report. As ESMA is aware the components of baskets can change continuously and this would require firms to perform filters on a continuous basis which would be technically very complex and disproportionate.

As per our response to question 218 Field 58 poses problems in terms of the potential large number of underlying ISINs that it might be needed to populate in this field.

For example, an Equity Swap on a bespoke basket of the FTSE250 index with the banking stocks removed – would result in a repeating group population of in excess of 200 lines.

Firms suggest that where ISINs or official names are available to identify baskets, sectors and indices then these should be used as opposed to free form text which is likely to be widely different amongst firms and therefore less helpful to regulators in detecting market abuse.

In addition, the BBA members would be willing to work with ESMA to establish consistent product taxonomy, including a golden source of reportable instruments.

<ESMA\_QUESTION\_CP\_MIFID\_222>

1. Do you foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity? If so, do you have any alternative proposals?

<ESMA\_QUESTION\_CP\_MIFID\_223>

In order to achieve clarity as to the population of the fields relating to the branches involved in the transaction – firms consider that it would be useful to define more precisely the scenarios and to set out the relationships between branches to ensure that this field is populated consistently. We would suggest this be reflected in level 3 guidelines.

In addition, although we support ESMA’s proposal for investment firm to report all their transactions to their home component authority, ESMA has not considered the case of **EEA branches of non-EEA firms**, where the competent authority of the home office will be based outside the EU. In this case, firms would suggest for EEA branches of non-EEA firm to report to the competent authority of their location (i.e. the host competent authority). We would therefore suggest the draft RTS 32 Article 13 (5) to include the following:

‘All transaction reports for transactions executed in whole or in part by the investment firm, including through its branches, shall be sent to the home competent authority of the investment firm. ***Where the transaction is executed by an a EEA branch of a non-EEA investment firm, reports must be sent to the host competent authority of the investment firm based in the Union***

<ESMA\_QUESTION\_CP\_MIFID\_223>

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

<ESMA\_QUESTION\_CP\_MIFID\_224>

Whilst we accept the point that LEI will be more widely accepted / widespread by 2017 ESMA should be aware that firms may still transact with firms who don’t have an LEI if only to close out existing positions / reduce exposure to a counterparty. Indeed, ESMA’s proposal might be significantly challenging for existing clients who have already entered into positions. Whilst both the buyer and seller will strive to get this completed ahead of the compliance date, it is a concern that if some clients with positions are unable to get the LEI approved by the compliance date then this may result in the firms being penalized for events outside their controls. For this reason and for transactions with those clients then it would be useful for ESMA to permit reporting using BIC codes. Firms would also appreciate consistency across NCA’s in their implementation of trade ability criteria for clients without LEIs

Members also have concerns that by the Jan 2017 deadline LEI might not yet be fully rolled out and this could firms in a difficult situation when facing a non EEA counterparty in a jurisdiction where LEI is not yet mandatory. Practically firms would need their client to acquire LEI in order to allow us to make the transaction while another non-MiFID Firm would not impose this. Therefore members would welcome a phase-in period where alternative identifiers (like BIC) would be allowed still during the first year (2017).

Furthermore we would urge ESMA to consult with the Regulatory Oversight Committee (ROC) and Local operating Units (LOU) and review the pricing for the maintenance of the LEI for NFC (non-financials). The yearly cost to maintain the LEI in a valid status can be high if taking into consideration the low number of trades they have, and might lead to large number of LEI to go into “lapsed” status.

Firms anticipate that it is not ESMA’s intention to curtail investment activity to EEA domiciled clients and counterparties, there is however concern that the mandatory usage of LEIs could unintentionally result in this restriction emerging, should the expected progress in LEI global adoption not be fully realised prior to 2017.

<ESMA\_QUESTION\_CP\_MIFID\_224>

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

<ESMA\_QUESTION\_CP\_MIFID\_225>

**Over reporting**:

Firms wish to reiterate that although best efforts will be made not to over-report; **we do not think that over-reporting should be explicitly precluded in the RTS**. When in doubt firms will prefer to over-report to ensure they meet their transaction reporting obligations. We therefore do not think firms should be penalised (required to back report) for over-reporting as long as they make best efforts not to over-report and the information they send is complete and accurate.

Firms would like to reiterate that in the absence of a golden source of reportable products, firms will report on a best endeavours basis and err on the side of caution and report transactions where there is an element of doubt.

**Calculation of positions:**

Firms welcome ESMA’s efforts to define ‘transaction’ and ‘execution of a transaction’ for transaction reporting purposes. As stated in the draft RTS 32 Article 3, not all actions and transactions are included in the transaction reporting scope. As not all actions/transactions are reportable it would be impossible for competent authorities to use transaction reports to calculate firms’ exact positions. However, the draft RTS 32 Article 14(5) (a), seem to require investment firms to ‘have adequate arrangements in place to ensure that the transaction reports submitted by the firm accurately reflect the changes in position of the firm’. Firms are concerned that compliance with Article 14 (5) (a) as currently written will not be possible i.e. some of the excluded transactions although occurring for example solely as a result of external events do in themselves have an impact on the positions of the firm and/or its clients. ESMA further clarifies its rationale in excluding these transactions in Paragraphs 10 – 14 of the Consultation Paper.

Firms therefore suggest for Article 14 (5)(a) to be redrafted in order to take into consideration the limitation of Article 3: ’ the transaction reports submitted by the firm when viewed cumulatively accurately reflect the changes in position of the firm and/or its clients in the financial instrument at the time the changes in position took ***place and taking into consideration the limitations imposed by Article 3(3) of RTS 32.’***

<ESMA\_QUESTION\_CP\_MIFID\_225>

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

<ESMA\_QUESTION\_CP\_MIFID\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_226>

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

<ESMA\_QUESTION\_CP\_MIFID\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_227>

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

<ESMA\_QUESTION\_CP\_MIFID\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_228>

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

<ESMA\_QUESTION\_CP\_MIFID\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_229>

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

<ESMA\_QUESTION\_CP\_MIFID\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_230>

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

<ESMA\_QUESTION\_CP\_MIFID\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_231>

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

<ESMA\_QUESTION\_CP\_MIFID\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_232>

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

<ESMA\_QUESTION\_CP\_MIFID\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_233>

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

<ESMA\_QUESTION\_CP\_MIFID\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_234>

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

<ESMA\_QUESTION\_CP\_MIFID\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_235>

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

<ESMA\_QUESTION\_CP\_MIFID\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_236>

1. Do you agree that, where a specified list as defined in Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data is submitted when the first quote/order is placed or the first trade occurs on that venue? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_237>

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

<ESMA\_QUESTION\_CP\_MIFID\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_238>

* Post-trading issues

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

<ESMA\_QUESTION\_CP\_MIFID\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_239>

1. What are your views on the categories of transactions and the proposed timeframe for submitting executed transactions to the CCP?

<ESMA\_QUESTION\_CP\_MIFID\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_240>

1. What are your views on the proposal that the clearing member should receive the information related to the bilateral derivative contracts submitted for clearing and the timeframe?

<ESMA\_QUESTION\_CP\_MIFID\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_241>

1. What are your views on having a common timeframe for all categories of derivative transactions? Do you agree with the proposed timeframe?

<ESMA\_QUESTION\_CP\_MIFID\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_242>

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

<ESMA\_QUESTION\_CP\_MIFID\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_243>

1. Do you agree with the proposed draft RTS? Do you believe it addresses the stakeholders concerns on the lack of indirect clearing services offering? If not, please provide detailed explanations on the reasons why a particular provision would limit such a development as well as possible alternatives.

<ESMA\_QUESTION\_CP\_MIFID\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_244>

1. Do you believe that a gross omnibus account segregation, according to which the clearing member is required to record the collateral value of the assets, rather than the assets held for the benefit of indirect clients, achieves together with other requirements included in the draft RTS a protection of equivalent effect to the indirect clients as the one envisaged for clients under EMIR?

<ESMA\_QUESTION\_CP\_MIFID\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_245>

1. The field will used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account. [↑](#footnote-ref-1)