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| 22 May 2014 |

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

Responding to this paper

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

***Instructions***

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

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

Responses are most helpful:

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

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

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

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

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

***Publication of responses***

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

***Data protection***

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

Overview

Investor protection

Authorisation of investment firms

##### Do you agree that the existing work/standards set out in points and provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

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

<ESMA\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_2>

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

<ESMA\_QUESTION\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_3>

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

<ESMA\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_4>

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

<ESMA\_QUESTION\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_5>

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

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

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

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

<ESMA\_QUESTION\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_7>

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

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

<ESMA\_QUESTION\_8>

First, we have a serious concern regarding the definition of “execution venues”.

Article 17, paragraph 3 of the Directive states that:

*Member States shall require that for financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No .../2014 each trading venue and systematic internaliser and for other financial instruments each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis and that following execution of a transaction on behalf of a client the investment firm shall inform the client where the order was executed. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.*

Footnote 24 states that:

*Execution venue means a regulated market, a Multilateral Trading Facility (MTF) an Organised Trading Facility (OTF), a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.*

Footnote 24 hence provides a definition for “Execution venue”. We consider that a footnote in a Discussion Paper is NOT an acceptable vehicle to provide a definition.

With regards the issue of which “venues” should establish periodic reports:

Establishing periodic reports will induce costs for the “venue”. In the case of OTC liquidity provider, for instance an equity broker specialized in SMCs and willing to facilitate some of his clients’ trades, this cost could become unbearable compared to the benefits he gets from facilitating the execution of some orders. An entry barrier would hence be created, that, further to the ISPs, would be detrimental for the investors (less counterparts for facilitation) and for issuers (negative impact on liquidity).

Such periodic reports would bring value to the community only if the venue has a certain level of activity on the considered instrument. Reporting data related to the purely ad hoc activity of an OTC liquidity provider would bring no added value, at least compared with costs induced.

We believe that, when the activity of a market maker or a liquidity provider undertaken outside of an execution venue is ad hoc, irregular and infrequent, so that it does qualify as a Systematic

Internaliser, no periodic reporting on the execution quality shall be required.

Finally, we believe that the obligation to provide periodic reporting on the execution quality shall apply for regulated markets, Multilateral Trading Facilities (MTF), Organised Trading Facilities (OTF) and systematic internalisers.

<ESMA\_QUESTION\_8>

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

<ESMA\_QUESTION\_9>

As mentioned in the answer to Q8, we believe that the value added by having ad hoc and infrequent market makers / liquidity providers to publish data related to their “execution quality” will be low compared with potential costs / negative impact for the community.

Our preferred option is to exempt OTC market makers / liquidity providers no qualifying as systematic internalisers. If such exemption was not reached, we believe that for these actors, the requirement should be limited to a periodic reporting of the volume executed.

We also believe that the approach should be differentiated for different instrument types (see our answer to Q15).

<ESMA\_QUESTION\_9>

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

<ESMA\_QUESTION\_10>

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<ESMA\_QUESTION\_10>

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

<ESMA\_QUESTION\_11>

We believe that, when it comes to data related to the quality of execution by trading venues, reliability and meaningfulness of data are far more important than frequency.

It should also be noted that too frequent publication could lead to instability in the way to interpret the data and in erratic changes in investment firms best execution policies.

From this point of view, a yearly publication, as specified in MiFID II, appears sufficient.

<ESMA\_QUESTION\_11>

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

<ESMA\_QUESTION\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_12>

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

<ESMA\_QUESTION\_13>

The only interest of requiring venues to publish data related to “the quality of execution” is to make it possible for investment firms (i) to compare the indicators across venues and (ii) to make decisions with regards their execution policy based on these indicators.

As a consequence, we believe that data published should be simple, easy to understand and easily comparable from one venue to the other (being admitted that marginal venues, like occasional market makers, that do not meet the SI quantitative criteria, should not be obliged to publish all indicators).

<ESMA\_QUESTION\_13>

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

<ESMA\_QUESTION\_14>

Although it is probably not sufficient for the investment firms to build their execution policy, the volume of orders received and executed is indeed a good indicator to compare execution venues: it is a basic data, homogeneous from one venue to the other, hence easily comparable across venues.

On the contrary, the notion of a “VBBO” that would be “published at the same time” raises serious concerns:

-it is mostly adapted for equities, and its relevance for other instruments should be thoroughly considered;

-using VBBOs published by different venues would require to aggregate publications, which is one of the objectives for a future consolidated tape. Building such aggregation ahead of the decision to build a consolidated tape is hardly advisable in terms of costs, legitimacy, etc.

-VBBOs are not comparable from one venue to the other, as they just about prices, and do not take into account the size of available bids and offers.

To be really useful and comparable from one venue to the other, indicators have to mix prices and available volumes, eg to measure depth-weighted spreads or spread-limited depth.

For instance:

-for a given size, what would be the average spread between the bid (or the composite bids) and the offer (or the composite offers) matching this size on the considered venue?

-the size would have to be calibrated for each instrument; it could be a given multiple of the Standard Market Size for equities and the Size Specific to the instrument for non-equities;

-for a given spread (or acceptable impact), what would be the average size available on the considered venue?

Obviously, these indicators would make sense mostly for liquid instruments, and could not be required for occasional market makers, that do not meet the SI quantitative criteria (see answer to Q8).

<ESMA\_QUESTION\_14>

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

<ESMA\_QUESTION\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_15>

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

<ESMA\_QUESTION\_16>

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<ESMA\_QUESTION\_16>

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

<ESMA\_QUESTION\_17>

The available liquidity on a given trading venue can be measured in two ways, that are largely complementary:

-ex ante visible liquidity: this is related to the size of interests that are disclosed on the platform, and that can be deemed available when the order is sent to the platform;

-ex post recorded liquidity: this is related to the liquidity effectively captured by an incoming aggressive order (typically an order “at market”). It may differ from the ex ante visible liquidity for two reasons: (i) the incoming order may face iceberg orders, that constitute an unexpected source of liquidity and (ii) if the incoming order exceeds the size available at the first limit in the order book, orders at the next limits can be withdrawn.

In order to be homogeneous and comparable from one venue to the other, “ex ante visible liquidity” and “ex post recorded liquidity” should be measured for a common order size (eg, for a given instrument, the same for all venues), and expressed in spread to the initial first limit.

For equities, the size could be defined by reference to the Standard Market Size for the instrument. For non-equities, the reference could be the Size Specific to the instrument.

In order to be meaningful, both indicators would have to be measured on real executed orders, and on a statistical basis (which tends to mean that they should be measured on a yearly basis).

For instance, for a given equity, the platforms could be required to provide, on a yearly basis, for aggressive orders with a size between 4 and 6 times the SMS for the equity:

-the initially estimated spread to the first limit;

-the ex-post recorded spread to the initial first limit.

<ESMA\_QUESTION\_17>

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

<ESMA\_QUESTION\_18>

See answers to Q14 and Q17: we believe that price per se is not a good indicator for execution quality, and has to be reported to size.

Hence, we support the use of depth-weighted benchmarks to evaluate execution quality (that can be bid-offer spreads, or spreads to the first limit).

<ESMA\_QUESTION\_18>

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

<ESMA\_QUESTION\_19>

We believe that costs should be taken into account to measure execution quality only when they are explicitely charged to the final beneficial owner of the transaction.

In the equity world, for instance, brokers absorb the exchange, clearing and settlement costs as their own costs, and they charge an all-in fee to their client.

In such instance, exchange, clearing and settlement costs are not relevant when it comes to measuring the quality of execution.

<ESMA\_QUESTION\_19>

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

<ESMA\_QUESTION\_20>

Likelihood and speed of execution are in our view close indicators: both are relevant only on placed orders, for which the interest of the investor is to be executed in full and quickly enough so as not to be exposed to the market trend for too long.

From this point of view, two sets of indicators could be of use for financial markets users:

-the time to execution for a given size of the orders initially placed at the first limit. For equities, the time to execution could be the average time required to fill a size equivalent to the Standard Market Size on the orders initially placed at the first limit and not modified / cancelled before they got filled at least for a size equivalent to the SMS for the considered stock;

-the proportion of orders initially placed at the first limit (or within a given spread to the first limit) and that are modified or cancelled before they get even partially filled (and before the end of the trading period).

Nota: most of the indicators proposed would not be appropriate for certain types of trading systems (for instance, measuring a time to execution would not make sense for a quote-driven order book, with only market makers providing placed orders)

<ESMA\_QUESTION\_20>

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

<ESMA\_QUESTION\_21>

See answer to Q20.

<ESMA\_QUESTION\_21>

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

<ESMA\_QUESTION\_22>

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<ESMA\_QUESTION\_22>

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

<ESMA\_QUESTION\_23>

See answer to Q20: we believe that data on cancelled orders is useful, as it provides a view on the stability of liquidity proposed by a venue.

As mentioned above, a good indicator could be the proportion of orders initially placed at the first limit (or within a given spread to the first limit) and that are modified or cancelled during the same trading day before they get even partially filled.

<ESMA\_QUESTION\_23>

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

<ESMA\_QUESTION\_24>

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<ESMA\_QUESTION\_24>

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

<ESMA\_QUESTION\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_25>

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

<ESMA\_QUESTION\_26>

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<ESMA\_QUESTION\_26>

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

<ESMA\_QUESTION\_27>

For a Financial institution, increasing the frequency of venue execution quality data can increase costs in two different ways:

-as a producer of such data, if the entity intervenes as a Systematic Internaliser (running statistics, checking the quality / reliability of outcoming indicators, etc.);

-as a user of such data, since a change in venue execution quality data is supposed to be analysed to determine whether the execution policy has to be modified.

Our estimate is that:

-data generation (for trading platforms and systematic internalisers) will generate significant investment costs;

-on top of these initial costs, running costs will be a linear function of the frequency (should the frequency double, running costs to generate / use the data would double);

-the cost to use and interpret the data will not depend on the size of the financial institution. As a consequence, increasing the frequency of reporting would raise the entry barrier to the detriment of smaller players.

We also would like to underline that, because most data should be averages, increasing the frequency of reporting could lead to erratic moves in the indicators, with no benefit for the community.

Finally, we believe that a yearly publication of venue execution quality data would be appropriate, while any sub-quarter frequency would induce disproportionate costs with no clear benefit for the community. *Nota: the US publication regime works on a monthly period (at least for Sec Rule 606).*

<ESMA\_QUESTION\_27>

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

<ESMA\_QUESTION\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_28>

Best execution - publication of data by investment firms

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

<ESMA\_QUESTION\_29>

We believe that defining standards to “allow clients to evaluate the quality of a firm’s execution” is a very complex task. It requires an in-depth thinking that has not yet been undertaken, as shown by the very generic and vague terms used by ESMA (“appropriate picture of the venues” or “the different ways they execute an order”). We hence cannot agree with the approach proposed by ESMA, where the definition of obligations for investment firms would precede the analysis of the real functioning of markets and of the investors’ needs.

As a first contribution to this needed analysis, we would like to outline the following.

First, it is crucial when thinking about quality of execution to distinguish between products for which the market is fundamentally order-driven (basically, shares) and products that are, at least in the current market structure, price-driven (virtually all non-equity products). A client order on a price-driven product is usually executed in one shape, in front of a liquidity provider (which can intervene under the form of an SI, a market maker on a multilateral platform, or as an OTC counterparty). To the contrary, a client order on an order-driven product will often be indexed on a given benchmark (VWAP, TWAP, Implementation Shortfall, etc.), and the investment firm in charge of the execution will act as an agent and will slice it into child orders, which will be executed over a certain period of time. Hence, the same principles cannot be applied to assess the quality of the execution for an order-driven product and for a price-driven product.

Second, when thinking about order-driven products, the difference between parent order (the client order) and child orders (the market orders) is crucial in assessing the quality of execution.

As stated above, the client will in most cases set a benchmark for the execution of its order (the parent order). In order to provide the best possible performance against this benchmark, the investment firm will slice the parent order into child orders which are then executed. To be more precise, each child order is the result of a complex decision making process, where the investment firm has to decide (i) when to send a child order into the market(s), (ii) what should be the size of that child order, (iii) what should be the type of that child order (“at market”, “limit”, etc.) and, last, (iv) on which venue should that child order be executed.

It is critical to agree that steps (i), (ii) and (iii) described above are covered by the discretion of the intermediary, and are not considered under its best execution obligations.

Only step (iv) – which is noticeably the less impacting in terms of performance of the execution – is covered by the firm’s best execution obligations.

This is in our view the reason why investors and investment firms have developed the use of Transaction Cost Analysis tools, which provide an assessment of quality of execution the parent orders. Still, it is clear that the use / publication of TCA data cannot – at least under MiFID 2 – be considered as a regulatory obligation, neither for the investors nor for the intermediaries.

Third, when thinking about price-driven products, we believe that the concept of “quality of execution” needs to de refined.

Specifically, when an investment firm, acting as an SI, a market maker on a RFQ platform or an OTC counterparty, receives an order to be executed against its own account, what can its best execution obligation be?

Shouldn’t it be considered that the investment firm received a “specific instruction”?

<ESMA\_QUESTION\_29>

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

<ESMA\_QUESTION\_30>

As detailed in our answer to Q29, we believe that the question of “best execution” has to be specifically addressed when a firm acts as a systematic internaliser, as a market maker or as an OTC counterparty.

For instance, when an investor sends an order through an RFQ platform to different market makers and chooses to execute its order in front of one of the respondent, what could the “best execution” obligation of this respondent be?

Should the respondent consider that it received a directed order (e.g. an order with the specific instruction to execute it against its own account)?

Should the respondent even consider that it received a client order, or should it consider that is just played its role as a market maker?

In the end, we consider that (i) the issues surrounding “best execution” should be further analysed and that (ii) in any case, the data published under the reporting obligations set by Article 27(6) of MiFID II should be consistent (in terms of granularity and venue identification) with the data published under the post trade transparency obligations.

<ESMA\_QUESTION\_30>

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

<ESMA\_QUESTION\_31>

We believe that best execution data should only be transmitted to clients by the entity in charge of directly executing orders.

The entities transmitting orders have to report to clients on the implementation of the order transmission mandate (best selection).

<ESMA\_QUESTION\_31>

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

<ESMA\_QUESTION\_32>

Theoritically speaking, the information related to the reporting obligations under Article 27(6) of MiFID II is relevant mostly for non-directed orders.

This being stated: (i) the first requirement would be to agree on the scope of directed orders (see our answer to Q30) and (ii) not sure whether implementing such distinction would be feasible.

<ESMA\_QUESTION\_32>

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

<ESMA\_QUESTION\_33>

From what is detailed above (see our answer to Q30), it can be understood that, in real terms, the significance of the reporting data is likely to be close to nihil for institutional clients: (i) for order-driven products, they want to assess the quality of execution at the level of the parent orders, which cannot be covered by MiFID 2 best execution principles, (ii) orders on price-driven products should be assimilated to directed orders.

It hence would make sense differentiating between institutional clients (eligible and professional ones) and retail clients when defining the reporting data to be made available by investment firms.

With regards publication: we believe that data should be made available to the NCA and to clients as per the core obligation in the Level 1 text, but that the firms should not be required to be made it public.

<ESMA\_QUESTION\_33>

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

<ESMA\_QUESTION\_34>

We believe that investment firms should make available to their clients (and not publish) the data relating to their execution of orders with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method.

<ESMA\_QUESTION\_34>

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

<ESMA\_QUESTION\_35>

We believe the data should be computed on an annual basis, and should be provided in the next month after the end of the computation period.

<ESMA\_QUESTION\_35>

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

<ESMA\_QUESTION\_36>

As detailed above, we do not see how the concept of “best execution” (and hence the interest of a reporting) would apply when a firm acts as a systematic internaliser, as a market maker or as an OTC counterparty.

<ESMA\_QUESTION\_36>

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

<ESMA\_QUESTION\_37>

Under the precision that (i) this obligation should only be for the firms executing the orders and (ii) that the issue of firms acting as a systematic internaliser, as a market maker or as an OTC counterparty is specifically treated, we agree that it is proportionate to require investment firms to make available to the NCA and to their clients (and not to publish) on an annual basis a summary based on their internal execution quality monitoring of their top five execution venues in terms of trading volumes.

<ESMA\_QUESTION\_37>

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

<ESMA\_QUESTION\_38>

See our answer to Q32: theoritically speaking, the information related to the reporting obligations under Article 27(6) of MiFID II is relevant mostly for non-directed orders.

This being stated: (i) the first requirement would be to agree on the scope of directed orders (see our answer to Q30) and (ii) not sure whether implementing such distinction would be feasible.

<ESMA\_QUESTION\_38>

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

<ESMA\_QUESTION\_39>

We agree, provided the summary is not published widely, but rather made available to clients and to the NCA.

<ESMA\_QUESTION\_39>

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

<ESMA\_QUESTION\_40>

See our answers pot previous question.

We believe that an in-depth analysis is required, that would specifically differentiate between order-driven products and price-driven products.

<ESMA\_QUESTION\_40>

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

<ESMA\_QUESTION\_41>

As stated above, we believe that it is first required to run an in-depth analysis that would specifically differentiate between order-driven products and price-driven products. For price-driven products, we are not convinced that the reporting proposed under Article 27(6) of MiFID II makes any sense.

<ESMA\_QUESTION\_41>

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

<ESMA\_QUESTION\_42>

We believe that it is first required to run an in-depth analysis that would specifically differentiate between order-driven products and price-driven products. For price-driven products, we are not convinced that the reporting proposed under Article 27(6) of MiFID II makes any sense.

<ESMA\_QUESTION\_42>

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

<ESMA\_QUESTION\_43>

No.

<ESMA\_QUESTION\_43>

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

<ESMA\_QUESTION\_44>

We are of the opinion that investment firms should have to declare any interest in their top five venues.

We also believe that the practice of payment for order flow should be banned.

<ESMA\_QUESTION\_44>

Transparency

Pre-trade transparency - Equities

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

<ESMA\_QUESTION\_45>

We agree that the minimum content of information for an Indication of Interest to be considered as actionable is (i) Instrument, (ii) Size, (iii) Side and (iv) Price. Equally important is the information that an Indication of Interest must NOT contain to be considered as actionable: the IOI must not be subject to any condition. In other terms, for an IOI to be considered actionable, the receiving party of the IOI must be in a position to transform it into an executed transaction unilaterally, e.g. without having to require any further agreement / action from the issuing party.

This is paramount to ensure compliance with the obligation for actionable IOI to reflect only "available trading interest".

As a matter of example, we consider that "traditional" equity Indications Of Interest sent through Bloomberg by brokers are NOT actionable IOIs:

-in most instances, the price for a potential transaction is not provided,

-their transformation into an executed transaction is conditioned to a discussion between the broker and the investor, regarding important features of the potential transaction (including, but not limited to: price, size really available on the broker side, size of the investor order, necessity for the broker to engage his own account, etc.)

<ESMA\_QUESTION\_45>

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

<ESMA\_QUESTION\_46>

Table 1, Annex 2 of Regulation 1287/2006 appears still globally valid for shares traded on regulated markets and MTFs, with regards both the description of trading systems and the summary of information that is appropriate to be made public.

Still, for “trading system not covered by the first three”, we are of the opinion that the information to be made public should include the price (“level”) of order or quotes, but also the quantity available for each price. Not requiring the quantity to be made public would provide an undue advantage to the platforms under this qualification against other trading systems (including Systematic Internalisers).

<ESMA\_QUESTION\_46>

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

<ESMA\_QUESTION\_47>

Our understanding is that the trading systems described in Table 1, Annex 2 of Regulation 1287/2006, that were historically developed for shares, are currently also supporting trading for equity-like instruments traded on Regulated Markets and MTFs, and we are of the opinion that the related pre-trade transparency requirements are then also valid for equity-like instruments.

Still, we believe that, on top of those described in the Table, other trading systems are used for equity-like instruments.

Specifically, Request-for-quote systems are used in the equity-like space, as they answer to specific constraints on the investors' side (for instance, getting a competitive price for a significant size on a given ETF, without sending too strong a signal into the market). For such RFQ systems, the description proposed by ESMA in the non-equity chapter (page 151 of the Discussion Paper) appear appropriate. With regards the summary of information that is appropriate to be made public, we have the same remarks as expressed for non-equity products in our answer to Q124. We hence propose to enrich Table 1, Annex 2 of Regulation 1287/2006, accordingly

<ESMA\_QUESTION\_47>

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

<ESMA\_QUESTION\_48>

As stated in the Discussion Paper, the large in scale waiver is "designed to protect large orders from adverse market impact and to avoid abrupt price movements". In other worlds, for each given stock, the LIS waiver should be set so as to reflect the capability of the order book to absorb a large order without excessive immediate impact, and to regenerate quickly enough after the said order is executed.

The LIS waiver obviously cannot be set on a stock per stock basis. To keep the framework workable, a two steps approach probably needs to be implemented:

-step 1 should be intended at defining classes of stocks deemed homogeneous enough with regards the ability of the order book to absorb a large order

-step 2 would aim at calibrating the LIS threshold for each class.

Under current regime, the classes used to determine the LIS threshold are based on the ADT of stocks, and we understand that ESMA intends to keep that approach, while refining the number of classes.

While ADT can be used as an imperfect proxy for liquidity, we are not convinced that it gives a fair view of the ability of the order book to absorb a large order and to regenerate rapidly after such execution. In our view, the ability for an order book to absorb large orders in a given stock would be better reflected by measuring the available liquidity at the best bid and offer for the said stock.

Note: given the recent evolution of technology, and the ability of most players to withdraw their orders placed beyond the first limit when they see that the first limit is being absorbed by a large order, we believe that only the first limit should be taken into account.

Finally, we would prefer the LIS threshold to be based on the depth at the best bid and offer (DBBO) for the stock. The classification of stocks per ADT ranges could be preserved, but it would in our opinion require:

-in depth analysis to check that ADT and DBBO are correlated enough so that defining ADT classes provides homogeneous populations from an ASBBO point of view,

-calibration of the LIS threshold for each class of stocks on the basis of the DBBO for the said class of stocks.

<ESMA\_QUESTION\_48>

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

<ESMA\_QUESTION\_49>

In our opinion, the determination of the LIS threshold for non-equity instruments should depend on the type of instruments.

For instruments that fundamentally replicate the performance of a stock (notably Depositary Receipts), we believe that the LIS threshold should replicate the LIS threshold of the reference stock, so as to avoid creating regulatory arbitrage and avoid inducing trading migration across instruments.

For instruments that are not based on a single stock underlying (e.g. ETFs), we believe that the LIS threshold should be calibrated by taking into account the characteristics (e.g. mostly the DBBO, see our answer to Q48) of the instruments, but also these of the underlying instruments.

As a matter of fact, in addition to the definition provided under Article 4(1)(46) of MiFID II, ETFs have some specific characteristics that have a defining impact on their liquidity:

-ETFs in the EU are providing exposure to a liquid basket of underlying securities, typically by tracking an index;

-due to the open-end nature of ETFs the number of units issued for trading can be increased (creation) or decreased (redemption) to meet investors’ demand.

As a consequence of these two specific features, the liquidity of the basket of securities to which the ETF is providing exposure can be accessed through the creation & redemption process, adding to the intrinsic liquidity of the ETF.

The purpose of defining a large in scale threshold is to limit market impact, which is not driven by the liquidity of the ETF itself but by the liquidity of the underlying securities.

The large in scale threshold for an ETF providing exposure to an extremely liquid basket of components should therefore be higher than the one of an ETF on a less liquid underlying, regardless of the actual ADT of the ETFs.

ADT is therefore not a relevant indicator to qualify large in scale for ETFs. This criterion could be used to measure the intrinsic liquidity of the ETF itself but is not relevant for the liquidity of the underlying components, which is the key element to assess potential market impact on ETF trades.

<ESMA\_QUESTION\_49>

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

<ESMA\_QUESTION\_50>

As detailed in our answer to Q48, we are not convinced that classes of ADT are the best way to create homogeneous populations of stocks from a LIS point of view, and we would favor using the DBBO.

If the ADT is proven to be correlated with the DBBO, then creating a new ADT class from EUR 100,000 to EUR 500,000 could indeed be useful.

<ESMA\_QUESTION\_50>

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

<ESMA\_QUESTION\_51>

Same answer as for Q50.

<ESMA\_QUESTION\_51>

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

<ESMA\_QUESTION\_52>

Same answer as for Q50.

<ESMA\_QUESTION\_52>

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

<ESMA\_QUESTION\_53>

The new pre-trade transparency large in scale table proposed by ESMA in Table 4 is quite similar to Table 2 in Regulation (EC) No 1287/2006: it does contain more classes, but the thresholds are globally the same as the ones applied since 2007.

Such thresholds would fail to taking into account the fundamental changes that have affected European equity markets since 2006, when Table 2 in Regulation (EC) No 1287/2006 was calibrated. In particular, liquidity has got more fractioned than it used to be, the viscosity of order books has reduced, making orders books more reactive to large orders, with deeper impact of large orders on the price formation process.

This evolution in European equity markets microstructure is particularly well illustrated by the evolution of the Average Value Trade.

For the purpose of the exhibits below, we have used ESMA database (<http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=14&language=0&pageName=MiFIDLiquidSearch>), with filters:

-focusing on those shares for which an AVT is available and for which the average number of transactions is at least 10,

-excluding data that are visibly erroneous (for instance, figures re the number of “Daily Transactions” provided for Austria for 2013 and updated on the 25/02/2014 look wrong: for ERSTE GROUP BANK AG, the daily number of transactions cannot be 292,565, which rather seems to be the annual number of transactions over 2013), or not relevant (some rows are related to ETFs).

It is clear that the ADT of European stocks has decreased significantly since 2006, and is now less differentiated between classes of ADT:

-for stocks with an ADT above EUR 100m, the AVT has nearly been divided by 6 over the period and is now below EUR 7,500;

-for stocks with an ADT between EUR 50m and EUR 100m, the AVT has been divided by 5 over the period and is now slightly above EUR 5,000;

-etc.

Exhibit: the Average Value Trade has significantly decreased since 2006



We believe that:

-the AVT gives a fair view of the viscosity of an order book (which could be used as an alternative to the DBBO, see our answer to Q48);

-the new LIS table should reflect the reduction of viscosity in the order books, and the increased sensitivity of the price formation process to large orders.

We hence propose an alternative table for LIS thresholds, which would be based on ADT and on AVT:



The advantage of that solution would be that, if the average size of transaction increases, the LIS threshold would evolve accordingly, to reflect the increased capability of the order book to absorb large orders.

<ESMA\_QUESTION\_53>

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

<ESMA\_QUESTION\_54>

The proposed approach for ETFs raises several concerns:

-first, as detailed in our answer to Q48, we are not convinced that classes of ADT are the best way to create homogeneous populations of instruments from a LIS point of view, and would favor using the DBBO,

-second, as detailed in our answer to Q49, we believe that the LIS threshold for equity-like instruments that are not based on a single stock underlying (typically ETFs) should be calibrated by taking into account the characteristics of the instruments, but also these of the underlying instruments,

-third, we are of the opinion that calibrating the LIS thresholds with a view to limiting the proportion of turnover captured for the considered instruments is a diversion of the LIS concept. The calibration of the LIS threshold should solely be based on the purpose of the LIS waiver that is, as stated in the Discussion Paper itself, "to protect large orders from adverse market impact and to avoid abrupt price movements".

Finally, we are of the view that for ETFs, the LIS threshold could be calibrated by using a two steps approach:

-step 1 would be to compute the threshold that would be given by the table set for equities, based on the characteristics of the ETF itself,

-step 2 would be to compute, for each equity used as an underlying by the ETF, the result given by dividing the LIS threshold of the stock by its weighting in the performance of the ETF.

The LIS threshold for the ETF should be the lower of the figures computed.

This approach being probably too complex to implement (including because the underlying instruments may not be subject to MiF2 so that step 2 proves impossible to implement), we suggest defining large in scale based on the notional of each trade rather than on ADT classes. EUR 5 million could be a threshold that would enable transparency while allowing for limited market impact. This is however an arbitrary level for lack of one actually based on the liquidity of each underlying.

<ESMA\_QUESTION\_54>

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

<ESMA\_QUESTION\_55>

For certificates, we believe that the calibration of the LIS threshold should depend on the fact that the instrument can be considered to be economically equivalent to the shares issued by the same issuer, or not.

If the certificate can be used as an alternative to trading on the reference stock from the same issuer, then the LIS for the certificate should replicate the LIS for the share, so as to avoid creating regulatory arbitrage and avoid inducing trading migration across instruments.

If the certificate is a fully “autonomous” instrument (we understand for instance that it is the case for Spanish participaciones preferentes), then the LIS threshold should be calibrated based on its own liquidity features.

<ESMA\_QUESTION\_55>

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

<ESMA\_QUESTION\_56>

See our answer to Q55; for certificates the same principle should apply to calibrate pre-trade and post-trade transparency LIS thresholds.

<ESMA\_QUESTION\_56>

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

<ESMA\_QUESTION\_57>

See our answer to Q55 and Q56 for certificates.

<ESMA\_QUESTION\_57>

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

<ESMA\_QUESTION\_58>

We are of the opinion that the calibration of the LIS thresholds should be reviewed regularly once MiFIR applies. A first review two years after MiFIR and Level 2 apply looks reasonable.

<ESMA\_QUESTION\_58>

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

<ESMA\_QUESTION\_59>

The calculation should be performed annually.

Note: the table we propose in our answer to Q53 may not need to be reviewed, since the evolution of the AVT for each stock would automatically induce the adaptation of the LIS threshold.

<ESMA\_QUESTION\_59>

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

<ESMA\_QUESTION\_60>

Making stub orders transparent once they fall below a certain percentage of the LIS threshold would induce an increased level of complexity in the management of orders and create risks for investors and intermediaries with no clear benefit for the community.

We hence do not agree that stub orders should become transparent once they are a certain percentage below the LIS threshold.

<ESMA\_QUESTION\_60>

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

<ESMA\_QUESTION\_61>

Yes, we agree that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant financial instrument, and that the most relevant market should be determined through an annual review.

<ESMA\_QUESTION\_61>

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

<ESMA\_QUESTION\_62>

Yes, we agree with ESMA’s view on the different ways the member or participant of a trading venue can execute a negotiated trade.

<ESMA\_QUESTION\_62>

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

<ESMA\_QUESTION\_63>

The proposed list of transactions are subject to conditions other than the current market price and do not contribute to the price formation process is globally valid, but it could be enriched to encompass, for instance, (i) exchanges of securities basket with ETFs, (ii) transactions used to hedge creation / redemption of ETFs, (iii) exchange of collateral, etc.

More importantly, we believe that, as expressed by ESMA in other parts of the Discussion Paper, the future implementing measures should not limit possible changes in the order types and innovation in markets. We hence recommend adding a final item to the list, in order to incorporate other transactions types that would result from such changes / innovations.

<ESMA\_QUESTION\_63>

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

<ESMA\_QUESTION\_64>

Yes, we agree that ‘stop orders’ and ‘reserve or iceberg orders’ are the two main groups of order management facilities ESMA should focus on.

<ESMA\_QUESTION\_64>

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

<ESMA\_QUESTION\_65>

Yes.

<ESMA\_QUESTION\_65>

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

<ESMA\_QUESTION\_66>

Not that we are aware of.

<ESMA\_QUESTION\_66>

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

<ESMA\_QUESTION\_67>

Yes, we agree that the minimum size for a stop order should be set at the minimum tradable quantity of shares in the considered trading venue.

<ESMA\_QUESTION\_67>

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

<ESMA\_QUESTION\_68>

Not that we are aware of.

<ESMA\_QUESTION\_68>

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

<ESMA\_QUESTION\_69>

In the current European framework, the minimum overall size and the minimum displayed size for Iceberg Orders are set by each exchange, on the ground of heterogeneous rules:

-in Austria and Germany, the order must be 1,000 shares at least, and 10% at least of the order must be displayed;

-on Euronext markets (France, Belgium, Netherlands, Portugal), the only constraint is that the minimum display size is 10 shares;

-on the London Stock Exchange, the minimum display size is 40% of the Normal Market Size for the relevant stock;

-in Italy, the display size must be at least EUR 10,000;

-in Spain, the minimum display size is 250 shares;

-on Nordic markets (Denmark, Finland, Sweden), the only constraint is that the order must be a round lot;

-in Norway, the display size must be at least NOK 10,000.

<ESMA\_QUESTION\_69>

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

<ESMA\_QUESTION\_70>

Generally speaking, we are of the opinion that minimum size of Iceberg Orders should be a multiple of the minimum display size.

In order to obtain an appropriate level of harmonization will leaving a sufficient level of discretion to the individual market, the future implementing measures could set an common minimum multiple (for instance, the minimum size would be 3 times the minimum display size), with the ability of each market to set higher levels.

<ESMA\_QUESTION\_70>

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

<ESMA\_QUESTION\_71>

See our answer to Q69.

<ESMA\_QUESTION\_71>

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

<ESMA\_QUESTION\_72>

In order to avoid adding fragmentation into the markets, we are of the opinion that the minimum display size should be a decent part of the Average Value Trade for the relevant stock (on the same model as the one currently used by the London Stock Exchange).

<ESMA\_QUESTION\_72>

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

<ESMA\_QUESTION\_73>

Not that we are aware of.

<ESMA\_QUESTION\_73>

Post-trade transparency - Equities

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

<ESMA\_QUESTION\_74>

Yes, for post-trade transparency purpose, we agree that the content of the information currently required under existing MiFID is still valid for shares and applicable to equity-like instruments.

Note: for Systematic Internalisers, because of the nature of the activity and since the SI has to commit its capital to provide liquidity, we are of the opinion that the venue identifier should remain a generic one (“OTC”). See our answer to Q76.

<ESMA\_QUESTION\_74>

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

<ESMA\_QUESTION\_75>

We do not see the need to add any new field to be made public for transactions on shares.

<ESMA\_QUESTION\_75>

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

<ESMA\_QUESTION\_76>

As a preliminary remark, it is worth reminding that, while there are currently few active Systematic Internalisers in the equity space, the trading obligation set by Article 23 of MiFIR for equities, together with the increased obligations for equity-like products, could foster the development of SI, as an alternative for investors to Regulated Markets and MTFs.

It is hence particularly important that potential liquidity providers are not discouraged from becoming SI.

Publishing the SI's identity in the post-trade transparency flow would expose the risk position of the investment firm, and would make the SI status totally unattractive.

Based on the above, we believe that the current post-trade transparency regime should be retained.

<ESMA\_QUESTION\_76>

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

<ESMA\_QUESTION\_77>

The proposed list of trade flags appears appropriate for the purpose of post-trade transparency in the equity space.

Still, we would like to highlight the fact that, in order for post trade transparency to be effective, the way data is aggregated and made available is at least as important as the level of information to be made transparent.

From this point of view, we are of the opinion that the lack of a European consolidated tape will be detrimental to the effectiveness of post-trade transparency, and we would have preferred a unique and comprehensive consolidated tape to be put in place through a public procurement process.

<ESMA\_QUESTION\_77>

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

<ESMA\_QUESTION\_78>

The proposed “Technical trade flag” looks generic enough to cover these instances, so we did not identify additional flags for equity-like instruments.

Trading in equity-like instruments can generate specific situations, especially in terms of trades which either represent non-addressable liquidity or ones where the exchange of financial instrument is determined by factors other than the current market valuation of the instrument (creation / redemption of ETFs, exchanges of securities basket with ETFs, etc.).

<ESMA\_QUESTION\_78>

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

<ESMA\_QUESTION\_79>

We are of the opinion that an effective and well-calibrated post trade transparency would contribute positively to the price formation process. That’s why we support selected enrichments of the post-trade information, provided they do not require overweening investments.

We hence support the introduction of a flag for trades that benefit from the large in scale deferral.

<ESMA\_QUESTION\_79>

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

<ESMA\_QUESTION\_80>

As stated in our answer to Q80, we support selected enrichments of the post-trade reports, provided (i) they can be deemed to really improve the contribution of post-trade transparency to the price formation process and (ii) they do not require excessive investments.

From that point of view, we share the view that the market mechanism and trading mode would be valuable information – and are not duplicates of an existing tag, since a given trading platform can use several mechanisms / trading modes –, but we see no value in introducing a tag related to the publication mode.

<ESMA\_QUESTION\_80>

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

<ESMA\_QUESTION\_81>

In our view, answering the question of whether MiF2 post-trade transparency regime should be applied to Securities Financing Transactions requires considering 3 different aspects: (i) appropriateness of MiF2 post-trade transparency regime for SFTs, (ii) consistency across equity and bond SFTs and (iii) subsidiarity between MiF2 and the future SFT regulation.

With regards the applicability of MiF2 post-trade transparency regime to Securities Financing Transactions: SFTs do not result in an outright exposure to the security in question and thus are very different in nature to outright trades. In many cases the securities involved are posted as effective collateral. Such trades are often not extremely sensitive to market price (so may be misleading) and also can be subject to features (haircuts or other specific bilateral agreements between counterparties) that are relevant from an SFT point of view, but could hardly be reflected under MiF2 post-trade transparency regime.

With regards the need for consistency for SFTs on shares and SFTs on bonds, it has to be noted that MiFIR level 1 text does not make any difference in the treatment of SFTs based on the type of underlying. Article 20.3.(B) related equities and Article 21.5.(B) related to non-equities are indeed quite similar: “ESMA shall develop draft regulatory technical standards […] to specify […] the application of the obligation […] to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument.”

From this point of view, we believe that question 81 (related to SFTs on equities) and question 139 (related to SFTs on bonds) should have respected the same parallelism.

With regards the need for a sufficient level of subsidiarity between MiF2 and the future SFT regulation, we believe that Securities Financing Transactions cannot be submitted to 2 different post-trade transparency regimes. In other terms, either SFTs are submitted to MiF2 post-trade transparency regime, in which case the future SFT regulation should rely on MiF2 for post-trade transparency purposes, or SFTs are exempted from MiF2 post-trade transparency regime, to let the future SFT regulation develop a regime specifically designed for SFTs.

In the end, based on the above, we believe that both equities and bonds Securities Financing Transactions should be not be covered by MiF2 post-trade transparency regime, and that the future SFT regulation should develop a specific regime that will better fit the specific features of SFTs.

<ESMA\_QUESTION\_81>

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

<ESMA\_QUESTION\_82>

Yes, we agree that the market opening hours as published by the market operator, excluding auctions, should be considered as ‘normal trading hours’.

<ESMA\_QUESTION\_82>

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

<ESMA\_QUESTION\_83>

The calibration of the maximum permissible delay to make post-trade information available should take into account the operational constraints for some types of transactions. For instance, when a trader agrees a transaction with a client in the course of a phone conversation, he may not be in a situation to immediately input the transaction in his Order Management System, which will generate the post-trade publication. For such transaction, a 1 minute delay may be too short if the start point is considered to be the time at which the trade is verbally agreed.

Rather than shortening the existing 3-minutes allowance, we consider that the key to bring the average publication time down is to ensure that the requirement to report “as close to real time as possible” is effectively enforced and that IT systems are not designed to use the maximum permissible deferral for publication.

<ESMA\_QUESTION\_83>

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

<ESMA\_QUESTION\_84>

Yes, we agree that the deferred publication regime is designed to protect investment firm dealing on own account to answer the needs of clients (which can be other brokers / dealers) in large transactions.

<ESMA\_QUESTION\_84>

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

<ESMA\_QUESTION\_85>

Generally speaking, we have serious concerns with regards (i) the use of ADT computed on a yearly basis as a proxy for the available liquidity at a given point in time and (ii) the fact of setting fixed thresholds for the purpose of calibrating the post-trade transparency deferrals.

For post-trade transparency purposes, like for pre-trade transparency purposes (see our answer to Q48 and followings), we believe that further analysis is required to identify indicators that would better reflect the prevailing conditions for the relevant instrument, specifically in terms of liquidity.

This being stated, we believe it is important to understand that reducing post-trade deferral periods for large in scale transactions will ultimately result in reducing the appetite for risk of liquidity providers, and the ability of investors to find counterparties to enter into / exit from an equity strategy. In the end, this will impact the ability of corporate issuers to use equity markets as a financing source.

Let’s take the instance of a stock with a decent ADT, say EUR 75m, for which an investor is seeking to obtain a block price for EUR 25m at 2:00 PM.

Using Option A would mean that the transaction will have to be made public at the end of the day. In other terms, the counterparty has 40% of the trading session (given the relative weight of the closing auction, it would mean 50% of the daily volume) to unwind part of his position before his exposure is known to the other market participants. For most liquid stocks, impact models indicate that being one third of the volume creates an impact of 10 basis points in average, which equals to a cost of 5 basis points for the size traded over the period. No statistical figures can be found for larger POVs (Participation On Volumes) that are commonly considered as senselessly aggressive.

This means that the counterparty to the investor would bear a cost of 5 bips (with is probably more than his commission) only to unwind half of his position, while sending a strong signal into the market, and will be left with half of his position to unwind in front of informed participants…

This short example shows that, under model A, investors are unlikely to find counterparties for sizes above 20% of the ADT, or will have to pay significant risk premiums.

Finally, and based on the above:

-for the purpose of calibrating post-trade transparency deferrals, we believe that ESMA should try to identify indicators that would be more appropriate than ADT to reflect the prevailing liquidity conditions,

-if the choice is between the existing regime and options A and B, we would favour retaining the existing regime,

-if the choice is only between options A and B, we would favour Option B.

<ESMA\_QUESTION\_85>

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

<ESMA\_QUESTION\_86>

See our answer to Q 85. The number of ADT classes is a minor stake in that concern.

<ESMA\_QUESTION\_86>

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

<ESMA\_QUESTION\_87>

For SME shares, the impact of trading is a multiple of the impact for most liquid shares.

The proposed thresholds under options A and B do not take this effect into account, and appear massively insufficient.

It has to be underlined that such post-trade transparency regime for SMEs will indubitably result in increased difficulties for SME issuers to finance their development through equity markets.

<ESMA\_QUESTION\_87>

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

<ESMA\_QUESTION\_88>

We believe the large in scale table should be reviewed on an annual basis.

<ESMA\_QUESTION\_88>

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

<ESMA\_QUESTION\_89>

Post-trade publication during the closing auction would have a distorting effect on the price formation process during the auction, which would be all the more detrimental as the closing price is often used for valuation purposes.

Regardless of the option retained, we recommend avoiding any publication during the closing option.

<ESMA\_QUESTION\_89>

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

<ESMA\_QUESTION\_90>

There can be value in using the same classes for pre-trade and post trade transparency regimes. More importantly, we would like to underline that (i) we feel reticent about using the ADT as a proxy for prevailing liquidity and that (ii) for ETFs, if based on liquidity, the pre-trade and post-trade transparency regimes should be calibrated using the inherent liquidity of the ETF, but also the liquidity of the underlying and the capability to create / redeeme shares of the ETF.

This being stated, in order to keep things simple and consistent between pre-trade and post-trade transparency, we suggest using the same absolute notional per trade threshold for deferred publication as for large in scale as detailed in our answer to Q54, and adding 2 thresholds for investors protection:

|  |  |
| --- | --- |
| Minimum qualifying size of transaction for permitted delay | Timing of publication |
| 5,000,000 | 60 minutes |
| 20,000,000 | 120 minutes |
| 50,000,000 | EOD |

<ESMA\_QUESTION\_90>

Systematic Internaliser Regime - Equities

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

<ESMA\_QUESTION\_91>

We believe that the definition of “Quotes reflecting prevailing market conditions” as “quotes close in price to comparable quotes for the same share in other trading venues” is appropriate, since it ensures that the quoted prices provide meaningful information to systematic internalisers’ clients, without creating unjustified constraints for the systematic internalisers.

We hence agree that the existing definition of “Quotes reflecting prevailing market conditions” in the Implementing Regulation (EC) No 1287/2006 should be maintained.

<ESMA\_QUESTION\_91>

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

<ESMA\_QUESTION\_92>

As illustrated by Table 14 in the Discussion Paper, the Average Value Trade has significantly decreased for most European stocks since 2007, to such an extent that 95% of stocks now have an AVT below EUR 10,000 (vs less than 35% in 2008).

We believe that this evolution should be reflected in the calculation of the standard market size, as the SMS induces constraints for systematic internalisers.

In that respect, our favoured solution would be to create new AVT classes, so as to keep a sufficient level of differentiation across stocks. Specifically, the current [ EUR 0 - EUR 10,000] class should be broken up in 3 new classes:

-one for the [ EUR 0 - EUR 3,000] AVT range, with an EUR 1,500 SMS,

-one for the [ EUR 3,000 - EUR 6,000] AVT range, with an EUR 4,500 SMS,

-one for the [ EUR 6,000 - EUR 10,000] AVT range, with an EUR 8,000 SMS.

If the choice is only between the three options detailed in point 20 of the Discussion Paper, then we would favour Option A, which is to maintain the existing classes while lowering the standard market size for the smallest class from EUR 7,500 to EUR 5,000.

<ESMA\_QUESTION\_92>

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

<ESMA\_QUESTION\_93>

Since depositary receipts are basically equivalent to the underlying share, we believe that the SMS for a depositary receipt should be set at the same level (\*) as the one for the underlying share, in order to avoid trading migration across instruments.

(\*) Assuming that 1 ADR represents 1 underlying share. If the ADR represents x shares, then the SMS for the ADR should be x times the SMS for the share.

<ESMA\_QUESTION\_93>

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

<ESMA\_QUESTION\_94>

For other equity like instruments: either the instrument is economically equivalent to a given share, in which case we believe that the SMS should be derived from the SMS of the underlying share, or it is not, in which case the SMS for the instrument should be computed based on the same table as the one used for equities, considering the AVT for the instrument.

<ESMA\_QUESTION\_94>

Trading obligation for shares (Article 23, MiFIR)

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

<ESMA\_QUESTION\_95>

Recital 19 of MiFIR (“an investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside a trading venue on an occasional, ad hoc and irregular basis.”), together with the fact that the trialogue agreed text did not deem it necessary to give ESMA the mandate to specify the definition of what is “non-systematic, ad hoc, irregular and infrequent”, seem to indicate that, regardless of the discrepancies in terminology, the determination of what is “non-systematic, ad-hoc, irregular and infrequent” should be defined within the same parameters applicable for the systematic internaliser definition.

This being stated, even more important than ensuring the convergence of criteria between the SI definition and the definition of what is “non-systematic, ad hoc, irregular and infrequent”, we believe that it will be crucial to make it possible to assess the “non-systematic, ad hoc, irregular and infrequent” criteria on an activity per activity basis, and not for an investment firm as a whole.

Let’s consider the example of an investment firm dealing with two clearly different and identified sets of clients, like individuals or retailers on the one hand and institutional investors on the other hand. If the firm executes some of the orders against its own proprietary capital, we consider that the “non-systematic, ad hoc, irregular and infrequent” criteria should be assessed independently for each of the fore-mentioned flows. In the end, it could for instance be appropriate to qualify the activity in front of the retail flow as an SI, while the traditional ad hoc facilitation of institutional clients’ orders could remain OTC.

If the investment firms could not have a granular approach, they could be forced to stop providing some of the services that they currently offer, but that would not fit in the categories induced by their main business. This would ultimately lead to impoverish the available offer for clients, with no benefit for the community.

<ESMA\_QUESTION\_95>

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

<ESMA\_QUESTION\_96>

Generally speaking, we believe that:

-it will be difficult to drawn a clear line between “Non-addressable liquidity trades” and “Trades determined by factors others than the current valuation of the share”, since the latter are in our view a sub-set of the first category;

-in any case, trying to define an exhaustive list would not be appropriate, since the future implementing measures shall not limit possible changes in the order types and innovation in markets.

This being stated, and in consistence with our answer to Q63, we believe that the proposed list of “Non-addressable liquidity trades” and “Trades determined by factors others than the current valuation of the share” is globally valid, but it could be enriched to encompass, for instance, (i) exchanges of securities basket with ETFs and (ii) transactions used to hedge creation / redemption of ETFs.

Finally, we are of the opinion that the list should not be considered as limitative, as market evolution has proved that new situations always appear, due notably to economical and financial factors.

<ESMA\_QUESTION\_96>

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

<ESMA\_QUESTION\_97>

Yes, we believe it is appropriate to include benchmark and/or portfolio trades in the list of those transactions determined by factors other than the current valuation of the share.

<ESMA\_QUESTION\_97>

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

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

<ESMA\_QUESTION\_98>

We disagree with this definition, but believe we should clarify that it is essential that the purpose of the security to transfer of credit risk should not be a test for the definition of structure finance products but a feature.

There are different levels of risk transfer in securitisation deals and often a security does not have 100% credit risk transfer<ESMA\_QUESTION\_98>

<ESMA\_QUESTION\_98>

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

<ESMA\_QUESTION\_99>

No, there is no need to distinguish separately

<ESMA\_QUESTION\_99>

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

<ESMA\_QUESTION\_100>

No, we do not agree.

Typically systems, legal arrangements, workflows, taxonomies and market infrastructure are very different between products such as transferrable securities and products more traditionally classed by market participants as derivatives.

As such, the inclusion of some transferrable securities in the MiF definition of derivatives will have profound implications on the infrastructure that supports these markets. ESMA should consider very carefully any such requirements and should consult on them separately. The implications of poorly constructed technical standards in this area could result in profound unintended consequences.

<ESMA\_QUESTION\_100>

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

<ESMA\_QUESTION\_101>

Where an instrument is introduced on more than one trading venue, it should be incumbent upon the Competent Authorities that supervise those venues to ensure that the same instrument is included within the same category on each Venue.

A clear, concise and specific taxonomy and/or system of product identifiers will be required to ensure there is no confusion, and the only practical way in which this can be achieved is through a centralised process operated between NCAs and ESMA.

Given the difference in transparency regimes between product types, it seems vital that such a classification of a product is made before it is admitted to a trading venue.

In addition, it is important to consider that the transparency regime only applies to instruments traded on a trading venue.

Therefore, it is first important to determine the meaning of this term.

The pre trade transparency and post trade transparency requirements for SIs and venues only capture an instrument if it is traded on a trading venue“ (Article 8(1), Article 10(1), Article 18(1) and Article 21(1) MiFIR). Therefore, if an instrument is traded on a trading venue, venues, SIs and investment firms OTC will need to make the trades public and Sis will need to meet the pre trade transparency obligations.

The term “traded on a trading venue” is intended to mean that only instruments that are actually traded on venues should be in scope of the requirements rather than instruments simply admitted to trading.

Specifically, MiFID/R makes a clear differentiation between “traded on a trading venue” and “admitted to trading”.

The pre and post trade transparency requirements do not specify that instruments admitted to trading shall be in scope. Therefore, it is inappropriate to treat the term “traded on a trading venue” equal to “admitted to trading”.

Such a differentiation is also consistent with market practice. There are many instruments listed on exchanges (i.e. admitted to trading) for purposes other than trading. For example, many securitisations that are issued are repo-ed out to the European Central Bank. One criterion for ECB eligibility is that the instrument needs to be listed. However, these instruments are never traded on the exchange.

We also believe that there will unintended consequences if venues are responsible determining the category of instruments prior to trading if any errors occur. The result will be that an instrument may be categorised incorrectly and will be subject to the wrong transparency regime.

<ESMA\_QUESTION\_101>

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

<ESMA\_QUESTION\_102>

No we do not agree.

The term “Contracts for difference” is extremely broad and, in many interpretations, could include a significant range of derivative products. It does not seem to be ESMA’s intention to capture derivatives (such as Non Deliverable Forward foreign exchange for example) within this definition. If indeed it is ESMA’s intention to capture contracts that provide for the cash settlement of the different in market value movements for a transferrable security between 2 dates (or some such similar contract) then the definition of CFD should clearly state this.

Bonds: It is clear that the definition of “sovereign” issuer within MiFID does not incorporate non Member States. That said, it should be noted that it would not be appropriate to include all non-Member State issues government debt within the same “generic bond” category. There are vast differences in market parameters between the major G5/G10 bond markets at one end, and small emerging markets on the other. ESMA should ensure sufficient granularity within the definition of “generic bond” to ensure suitable transparency regimes are in place.

To reduce confusion amongst market participants, it would be helpful if a term such a “government debt” (instead of generic bonds) could be used to categorise bonds issued by the governments of non-Member States.

Generally the COFIA approach is to be discouraged, except in some asset classes such as FX and OTC derivatives whereby a grouped approach makes sense due to the customizability of these products (most notably maturity). Thus, the approach to thresholds and other classifications should be at an instrument level. The COFIA approach encourages too broad a classification within an asset class and does not recognize how the market operates and how different the liquidity can be in two seemingly very similar products or securities.

As mentioned above, we believe securitised derivatives should be categorised as SFPs and not derivatives.

<ESMA\_QUESTION\_102>

Liquid market definition for non-equity financial instruments

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

<ESMA\_QUESTION\_103>

**For Bonds:**

Yes, it is important to consider both a minimum number of transactions as well as the minimum number of trading days. However option 1 will suffice provided the period for calculation is monthly as opposed to yearly.

We believe that a monthly calibration period for bonds represents a reasonable compromise between accuracy and operational reality. Annual recalibration for bonds is totally inappropriate given how liquidity in these products changes over time. In addition, given that bonds have a maturity date (as opposed to equities) – and in many cases this maturity date is short – an annual process is inappropriate in context of products that may only have a 1,2 or 3 year life

We also refer to the analytical work undertaken by AFME on this topic and support their conclusions on this point. In addition, in line with previous comments, trades should be included at the block level (as opposed to allocations) and non price forming trades should be excluded.

**For OTC Derivatives:**

We support option 3, while noting that a class of OTC derivatives should only be considered liquid if it trades multiple times per day, and trades on each and every trading day.

Furthermore, within derivatives markets a proportion of trades are executed as part of a package. By package transaction, we mean: (i) two or more components that are priced as a package with simultaneous execution of all components; and (ii) the execution of each component is contingent on the execution of the other components (a "Package Transaction"). A Package Transaction is designed to provide desired risk-return characteristics effectively in the form of a single transaction with efficiencies in execution cost and reduction in risk (market and operational) achieved through concurrent execution. In general, we recommend that the application of the various requirements of MiFID II / MiFIR to the trading of components as a Package Transaction should be considered separately from the application of the requirements to those same instruments when traded on a standalone basis. This is particularly important for the application of the pre-trade and post-trade transparency requirements and the derivatives trading obligation. Generally, we recommend that each transaction comprising a package must be considered liquid in order for the package to be subject to the transparency rules or the derivatives trading obligation. The presence of illiquid instruments in the package should permit the package to benefit from waivers for pre-trade transparency, deferrals for post-trade transparency, and not be subject to the derivatives trading obligation.

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

We recommend that ESMA take into consideration the following aspects of the OTC derivatives market:

-whether or not a particular class of derivatives is centrally cleared. Central clearing is increasingly becoming a key part of the OTC derivatives market structure. As CCPs have to go through their own regulatory approval and prove that a particular contract is liquid before it is clearable, we believe that this should be taken into account as part of the liquidity assessment. This is particularly true of OTC derivative contracts which have been declared subject to the mandatory clearing obligation in EMIR. It is important to note it is not true that a class of derivatives that has sufficient liquidity to support Central Clearing is also sufficiently liquid to support a Trading Obligation; and

-whether the collateral terms of an OTC derivatives contract form part of its liquidity assessment. Non-standard collateral terms for OTC derivatives, in particular where derivatives are uncollateralised, can be a determinant of liquidity

**For FX:**

We partially agree with ESMA and support Option 3 as being the most preferable option in calculating the average frequency of transactions. We suggest that it would be preferable to calculate the ‘average frequency’ using the number of transactions over a consecutive time period, the period being of sufficient time to allow the collated data to be normalized, considering disruption events or other events that cause unusual trading patterns.

<ESMA\_QUESTION\_103>

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

<ESMA\_QUESTION\_104>

**For FX:**

Option 1 is preferable for FX. Given the unique role that FX performs as the basis of the global payments system, the market is typified as consisting of a high number of low notional transactions. We believe that Option 2 (total turnover divided by the number of trading days) would give an artificially high representation of what could constitute an average transaction size and if implemented could unintentionally classify illiquid trades as being liquid

**For Bonds:**

Option 1 is not appropriate given the wide spread of trade sizes in Fixed Income markets. Option 2 provides a better basis and will be easier to calculate and recalibrate in the future. While the definition of option 2 is, perhaps, open to debate, the goal here is to find a way to define liquidity… and one factor (the average amount that trades each day) would be useful. The average amount should be measured in terms of notional amount as opposed to market value to best accommodate the nature of the products and the markets. (for example zero coupon bonds trade at a significant discount to par so the notional amount is a better measure of the “quantity” in this instance and is, relatively, a more comparable measure vis-à-vis bonds that pay a coupon).

**For OTC Derivatives:**

For OTC derivatives, the average size of transactions should be calculated in accordance with Option 1 (total notional over a specified period divided by the number of transactions in that period).

Uneven distributions of transactions over time do not need to be addressed as part of this limb of the liquid market definition. It can better be addressed by the first criterion (average frequency of transactions). As described in our response to DP 103 above, the calculation of average frequency of transactions should take into account the number of days on which a particular class of OTC derivatives is traded. We would recommend that the draft RTS, which will set the parameters and methods for calculating liquidity thresholds, should require that both the average frequency and average size criterions are always met

<ESMA\_QUESTION\_104>

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

<ESMA\_QUESTION\_105>

**For Bonds:**

We consider that the “number and type of market participants” criterion should be based, or at least include a threshold regarding the number of members or participants of a trading venue with a contractual arrangement to provide liquidity in a financial instrument traded at least on one trading venue.

The same minimum number of contractually engaged liquidity providers could probably be used for all classes on non-equity financial instruments.

Option 1 reflects better the intent of Level 1 text in our view, but the time period in question is very important.

ESMA should insist on the use of LEI as the sole method of identifying parties to transactions throughout the MiFID2/MiFIR technical standards

We refer to the quantitative analysis undertaken by AFME in relation to this question and support their conclusions

**For OTC Derivatives:**

We strongly oppose option 3 which does not reflect the structure of OTC Derivatives markets. We do however support option 1, noting that only market participants with a reasonable level of engagement in the markets should be taken into account. As such, participants that only trade on a de-minimis basis (perhaps less than 10 trades in a 6 month period) should be excluded from the count

**For FX:**

We partially support Option 2 as being the most preferable method in assessing data related to market participants and we consider number of liquidity providers on a trading venue to be a good reflection of the market’s ability to provide liquidity in a particular financial instrument. The FX market does not typically require contractual arrangements to provide liquidity, but we would suggest the number of market participants who are authorized to respond to (not request) an RFQ or voice request (thereby providing liquidity) is a good proxy. This number could easily be obtained from the venues.

<ESMA\_QUESTION\_105>

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

<ESMA\_QUESTION\_106>

No, we do not agree.

For Bonds and SFPs, as well as Derivatives, the approach raises several concerns:

-end-of-day spread may not be representative of the spread incurred by the market members during the course of the trading session;

-end-of-day spreads may not be reliable, as they could be fed by players that have no intention to trade;

-measuring a spread irrespective of the type, and even more importantly, of the size of the quotes, can be misleading, as a narrow spread on a very limited size should in no instance be considered as an evidence of liquidity for institutional players.

We consider that an alternative should be explored, on the back of a cost / benefit analysis:

- rather than publishing “end-of-day relative bid-ask spreads”, markets could be asked to publish averages, over each trading session, of the observed spread. Such average could be based on a certain number of daily randomly determined snapshots;

- in order to be meaningful, spreads need to be related to available sizes. Relative spreads could be measured for (i) the Average Value Trade and (ii) the Size Specific for the given instrument

This is particularly relevant in FX where the market operates 24 x 5.5 so there is no “end-of-day” per-se.. However spreads do vary significantly at different hours reflecting which core timezones are taking the lead.

For new instruments, it should be sufficient for Venues to provide a justified assurance that their expectation of the typical bid/ask spread in that instrument should fall within the definition required for “liquid”.

<ESMA\_QUESTION\_106>

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

<ESMA\_QUESTION\_107>

We do agree that there should be a different approach for bonds/SFPs compared with derivatives and also with equities. However, there should not be different thresholds for different bond/SFP asset classes.

It is a function of markets that different segments are characterised by different spreads. This feature should be a fundamental building block of the liquidity definition. This is particularly relevant in FX.

<ESMA\_QUESTION\_107>

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

<ESMA\_QUESTION\_108>

We believe ESMA should consult separately on this topic once the data necessary to fully evaluate the topic has been received by ESMA.

<ESMA\_QUESTION\_108>

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

<ESMA\_QUESTION\_109>

Average spreads will need to be provided by the markets, since they are not on realized transactions, but on orders, which are not available elsewhere.

<ESMA\_QUESTION\_109>

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

<ESMA\_QUESTION\_110>

**For Bonds:**

Given the market structure and the suitability of bonds for an IBIA approach, in such circumstances product needs to pass all 4 tests, otherwise given the diversity across all products in all markets, there will be circumstances where a clearly illiquid product technically passes 3 of the 4 tests (for example). If we are to have 4 tests, then they should be applied.

**For OTC Derivatives:**

The application of the COFIA approach enables a more relaxed methodology aligned to Option 2. In such cases the Average Size of Transactions and the Average Frequency of Transactions are the two most important criteria and should be met in all cases. In addition, one of the other two criteria should be met.

**For FX:**

We recommend option 1, that all 4 criteria should be applied.

<ESMA\_QUESTION\_110>

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

<ESMA\_QUESTION\_111>

No, we do not propose an alternative.

<ESMA\_QUESTION\_111>

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

<ESMA\_QUESTION\_112>

**For Bonds:**

We consider that the approach chosen to build the 6 proposed scenarios is fundamentally incorrect, in that it starts from theoretically set levels for the considered thresholds, with no regard for the operational reality of what “liquid” can mean for a bond.

How could a bond – or any given financial instrument – be considered as liquid if it does not trade on each trading day? We do not follow how this could be considered compatible with the definition of liquidity in the Directive (Article 4.1.25), requiring to have “ready and willing buyers and sellers on a continuous basis”?

If the Average Daily Volume were to be considered a valid threshold (see answer to Q104), then, for bonds, it should be set relatively to the issuance size of the instrument.

For instance, it could be considered that the average ADV has to be above 0.4% of the issuance size (which is equivalent to saying that the full size of the bond should be exchanged on a yearly basis);

Also, the approach is based on yearly averages, which cannot be appropriate for instruments whose liquidity situation can vary significantly over relatively limited periods of time.

Further, a threshold of either EUR 100k or EUR 1mm ADT cannot be appropriate, given that the median trade size of government bonds is EUR 1.4mm and corporate bonds is EUR 150k (greater than the proposed thresholds).

We consider that the same thresholds should apply for all bonds (when it comes to liquidity, investors in bonds share similar stakes and concerns across the various sub-categories).

Based on the above, we believe that the following thresholds could be set for bonds:

-at least 4 trades a day in average;

-traded each and every day;

-average ADV is at least 0.4% of the issuance size;

-at least 4 market makers available on the instrument. We believe that 100% of EuroMTS Index (ex-CNO Etrix) and EMTX Inflation-Linked bonds are above this level;

-average spread should be below 10 bps.

We strongly favour a IBIA approach for bonds and SFP – given the dynamics of the market it is not meaningful to group bonds and call them liquid or illquid bonds based on qualitative criteria. COFIA (with suitable granularity) would suffice for OTC derivatives.

Looking at Annex 3.6.1 liquidity is not driven by these criteria. Liquidity is driven by many different factors based on supply and demand. For example, the term of the instrument does not singularly drive its liquidity.

-There are many factors that change on an ongoing basis.

-Two instruments that may have similar trading behaviour one day may differ the next because of change in supply/demand of one of those instruments caused by one differing factor.

-There are too many differing factors.

-Market integrity would be compromised if whole groupings of bonds were deemed “liquid” or “illiquid” and thus treated in the same way

In determining the liquidity thresholds, where there is a role for expert judgement to come into play, this should be supported by quantitative studies – so a combined approach would be appropriate – as such we recommend option 1.

It is clear that in assessing liquidity, the most recent data should be the most relevant and thus the most highly weighted.

We would expect liquidity to be assessed at a minimum of every 3 months, though there is no reason why this should not be a dynamic process given that the transaction reporting process contained within MiFID2/R will ensure that regulators have the necessary information to do this.

There should also be a process whereby market participants could apply to have an instrument reassessed should it be manifestly incorrect.

It is hard to see how an instrument that does not trade at least 4 times (initial trade plus hedge) each trading day can be considered liquid.

**FOR OTC Derivatives and FX:**

For FX products as well as some IRS and CDS derivatives it would be sensible to group them together (typically in each individual currency with a group representing a range of maturities.. so for example, for Non-Deliverable Forwards, there would be a number of tenor groups – perhaps <1m, <3m, <6m, <1y, <2y, >2y – as opposed to considering each maturity separately.

<ESMA\_QUESTION\_112>

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

<ESMA\_QUESTION\_113>

In our view, and generally speaking, the concept of COFIA is mostly relevant for non-listed derivatives, while the IBIA should be implemented for non-equity transferable securities.

It is very important that any COFIA approach should go into an appropriate degree of granularity in order to avoid overly broad instrument capture. A broad-brush classification could have very inappropriate implications for some classes of derivatives (most notably equity derivatives), where most OTC is by definition bespoke and “standardized derivatives” have already largely migrated to cleared and listed futures and options.

To avoid these unintended consequences, a COFIA determination will need to be based on a very developed taxonomy in line with the response from ISDA on this topic.

The IBIA approach is most appropriate for bonds and structured finance products

The IBIA approach is most appropriate for fixed income cash bonds for the following reasons (in addition to the points regarding why the COFIA approach is not appropriate):

-the fixed income cash bond market is highly heterogeneous;

-the IBIA approach is more precise.

In addition, the IBIA approach can be implemented in a simple manner as proposed by AFME <ESMA\_QUESTION\_113>

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

<ESMA\_QUESTION\_114>

We have no alternative proposals, although we refer to the work undertaken by ISDA with reference to this question and support their conclusions.

<ESMA\_QUESTION\_114>

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

<ESMA\_QUESTION\_115>

**For Bonds:**

We do not believe that COFIA is appropriate for bonds and SFPs.

We believe it should be clarified that cross currency swaps are interest products (as opposed to FX swaps which are FX products)

Otherwise the categorization looks reasonable, noting again the need to ensure sufficient subcategories within the “non EU sovereign debt” sub-product type

Annex 3.6.1 works well for FX, with product type and ccy pair forming a good basis, with maturity “buck-ets” within those.

**For OTC Derivatives and for FX:**

In recent years we have worked closely with ISDA to develop a comprehensive and meaningful taxonomy for OTC Derivatives and FX. This taxonomy has been gradually adopted across the industry and is constructed in a manner commensurate with the needs of these trades.

We refer to ISDA’s response to this question, and support their conclusions. <ESMA\_QUESTION\_115>

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

<ESMA\_QUESTION\_116>

**For Bonds:**

The taxonomy seems relevant, noting that the IBIA approach should be applied.

**For OTC Derivatives:**

For Derivatives we have been engaged with ISDA in an analysis of these markets and refer to their response to this question and support their conclusions.

**For FX:**

The taxonomy seems relevant.

<ESMA\_QUESTION\_116>

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

<ESMA\_QUESTION\_117>

**For Bonds and for OTC Derivatives and for FX:**

It appears relevant to use a mix a quantitative data and qualitative arguments to document a drop in liquidity that would justify a temporary suspension of pre-trade and post-trade obligations.

It is vital that Competent Authorities and ESMA can respond to a crisis in a very short period. In extremis, the process should not prevent and intra-day determination and suspension

Thus, for the temporary suspension provisions to be fit for purpose, the measures need detect sudden drops in liquidity in real time (or thereabouts) and apply immediately. As such, the periodic liquidity assessment approach proposed for the assessment of a liquid market is not appropriate for the temporary suspension. If the calculation requires a period of data collection, it will not be able to detect sudden drops of liquidity in a timeliness needed to protect the markets and mitigate financial stability risks

One cause of sudden drops in liquidity is the occurrence of a significant market event. As such, ESMA should develop an indicative list of such events with their prima facie implication. This is not to say that all drops in liquidity are caused by such events, but it would provide an a priori approach for a range of “common” scenarios.

It is vital that temporary suspensions are communicated to the market in a public manner and in a way that does not require each market participant to continually monitor a webpage or similar communication approach. For example, a master webpage plus the ability to subscribe to pushed updates might be a suitable solution.

<ESMA\_QUESTION\_117>

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

<ESMA\_QUESTION\_118>

As above, it is vital that Competent Authorities and ESMA can respond to a crisis in a very short period. The 60% and 80% numbers appear rather arbitrary and may prove, in some circumstances, difficult to measure, thus the process should include both quantifiable objective criteria but also factor in qualitative features including market consultation

As mentioned in our answer to Q117, the approach should enable almost immediate temporary suspensions to occur in extremis<ESMA\_QUESTION\_118>

<ESMA\_QUESTION\_118>

Pre-trade transparency requirements for non-equity instruments

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

<ESMA\_QUESTION\_119>

An important characteristic of a request-for-quote system is that the quotes provided by the responding participants are provided directly to the requesting member.

We hence propose to slightly complement the proposed definition, which would become:

“A trading system where an actionable quote or actionable quotes are only provided to a member or participant in response to a request for quote submitted by one or more other members or participants. The quote is exclusively provided to the requesting member or participant, who may conclude a transaction by accepting the quote or quotes provided to it on request.”

Such definition for request-for-quote systems appears sufficiently broad to capture all RFQ systems, regardless of the protocol / technology used.

<ESMA\_QUESTION\_119>

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

<ESMA\_QUESTION\_120>

Request-for-stream systems are a sub-variety of request-for-quote systems, their inclusion in the definition appears legitimate provided the stream is not provided on an indicative basis.

Request-for-stream systems are particularly of use for those instruments whom value evolves on a real-time basis, making it impossible for a responding participant / member to maintain its price over a predefined period.

<ESMA\_QUESTION\_120>

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

<ESMA\_QUESTION\_121>

The complemented proposed definition for request-for-quote systems (see answer to Q119) appears sufficiently broad to capture all RFQ systems, regardless of specific functionalities used.

We note that the ESMA trading system notations should be determined for trading protocols on a case- by-case basis based on the core characteristics. The trading venue or investment firm should declare the type of ESMA trading system notation the protocol falls under. Fixed income has a broad array of trading protocols that are appropriate for the highly heterogeneous fixed income market and, as such, it is inappropriate to attempt to categorise specific trading protocols on an a priori basis.

<ESMA\_QUESTION\_121>

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

<ESMA\_QUESTION\_122>

The term “voice trading system” is used in articles 8 and 9 of the Regulation.

Both articles are related to “trading venues”, which are defined as “a regulated market, an MTF or an OTF” (MiFID, article 4.1.(24))

“Voice trading system” hence exclusively refers to multilateral venues.

It is all the more important to underline this characteristic of “voice trading systems” as financial institutions often interact by bilateral voice discussions.

-For instance, an asset manager and a bank can decide to open a specialized phone line between them, so as to ease their interactions. This line can then be used by the asset manager to request a quote from the bank on a given financial instrument, which may end-up with the execution of a transaction.

-We believe that, in such situation, the bank may have to qualify its activity on the instrument as a Systematic Internaliser (depending on whether its activity is deemed “organised, frequent, systematic and substantial”), but that the transaction cannot be considered to have been executed on a voice trading system.

-If such bilateral interaction was to be captured by the “voice trading system” definition, who would be the operator of such system? Would it be the asset manager? Would it be the bank? Would it be the telecom operator providing the specialised line?

Based on the above example, and in order to avoid any doubt, we believe that the definition of a “voice trading system” must explicitly refer to the multilateral nature of any such trading system.

We hence propose the following complemented definition:

“A multilateral trading system where transactions between members are arranged actively by the operator of the venue through voice negotiation”

We also believe that it is not good policy to try to superimpose the technology used in a solution with the protocol being operated. By way of example, an RFQ approach to trading can be implemented via Electronic or Voice means, but it is no less an RFQ system as a result. As such the definition of “voice trading system” should include any medium that replicates voice negotiation.

<ESMA\_QUESTION\_122>

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

<ESMA\_QUESTION\_123>

No, although we do agree partially.

We believe that table 16 uses correct distinction between various trading models, and covers the full scope of existing and potential multilateral trading systems for non-equity instruments.

We recommend modifying the description of the system for the “Request-for-quote system” and for the “Voice trading system”, as specified in our answers to Q119 and Q122.

Furthermore the definition of Quote Driven Trading System should be amended to “A system where the transactions are concluded on the basis of firm quotes that are continuously made available to participants”.

<ESMA\_QUESTION\_123>

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

<ESMA\_QUESTION\_124>

**For Bonds and for FX and OTC Derivatives:**

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

Requests for quotes on and off venues are privately negotiated. In venues it is typical for a real money client to request a quote from 5 dealers. The client needs at least 3 quotes to prove best execution and asking from 5 dealers provides increased certainty that he/she will indeed receive the minimum quotes back, allowing for late responses or, in some cases, no quotes if the market maker has no inventory or other reasons. The responses that are returned to the client are bilaterally private, in other words, the dealers party to the request for quote will not see each other's quotes. This allows market makers to protect their risk by ensuring that no-one can move the market against the potentially winning quote. Once the client has secured the best price within the live auction and the dealer subsequently accepts the trade, that winning dealer is privy to immediate cover information ie the differential between the accepted price and the next best price. The other dealers will know, after a rules-determined time period, if they covered, tied or if they traded away (meaning they provided the 3rd or lower best price).  Again the post trade information that is disseminated is deliberately designed to ensure that winners curse is reduced as much as possible & is only available to those dealers that participated in the auction.

If full disclosure was required to the wider public, the risk for the responding entity would in-crease as other price makers could price against them, leading to a race to the bottom (as market makers price against each other) and market makers unable to hedge their risks/unwind their positions.

This is all the more important as, outlined in paragraph 10, RFQ systems are prevalent only for those markets/instruments characterised insufficient trading interest to support continuous trading. Such instruments are often characterised by:

- The fact that, for a given instrument/class of instruments, investors often have similar interests at the same time, so that revealing an interest is equivalent to revealing the side of the position taken by the counterparty to this interest;

- The difficulty for liquidity providers to find a counterpart to unwind their position, lead-ing them to manage imperfect hedges.

For these instruments, imposing full transparency on bids and offers provided by entities responding to RFQs would increase the risk taken by market makers in a domain where no effective hedge is available.  As a result, it would discourage market makers to answer RFQs and would increase investor costs, leading to greater borrowing costs for issuers.

We understand that ESMA is limited by the Level 1 requirements, which requires venues to disclosure bids, offers and depth of trading interest to the public (Article 8 MiFIR).  However, we note that Article 8 provides that the pre trade transparency requirements should be calibrated to the trading system.

We believe that the appropriate level of transparency for RFQ systems remains between the requestor and the price provider, and support the proposals of AFME, ISDA and GFXD in this regard.

**Additionally for OTC Derivatives:**

We refer to our earlier comments concerning Package Transactions, and recommend that (for all types of trading venue, including RFQ) where a component transaction of the package benefits from a pre-trade transparency waiver, the entire package should benefit from the waiver. This is consistent with our recommended treatment of packages for post-trade transparency (a Package Transaction should benefit from a post-trade deferral where at least one component transaction benefits from a deferral) and for the derivatives trading obligation (a Package Transaction should not be subject to the trading obligation unless all component transactions are mandated for clearing and deemed sufficiently liquid).

<ESMA\_QUESTION\_124>

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

<ESMA\_QUESTION\_125>

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<ESMA\_QUESTION\_125>

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

<ESMA\_QUESTION\_126>

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<ESMA\_QUESTION\_126>

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

<ESMA\_QUESTION\_127>

Inter-dealer brokers are multilateral "all-to-all" systems ["B2B"] as defined away from dealer to client ["B2C"] bilateral negotiations which are now more likely captured under the Systematic Internaliser regime.

This may be broadly categorised as:

-‘Voice on voice’ trading: whereby one or more brokers speak to one or more clients or counterparties either through spoken or through email or instant messaging;

-‘Voice on electronic’ trading: whereby the trader asks the broker to act on his/her behalf through voice means following which the broker acts on his/her behalf via non- voice electronic means;

-RFQ as Order book/liquidity search

<ESMA\_QUESTION\_127>

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

<ESMA\_QUESTION\_128>

IDBs widely advertise pre-trade information to all interested parties in the trading system.

Dissemination is done including:

-indicative screen prices or other price related factors (such as yields, rates, volatilities or correlations);

-announcements via telephone or voice box or through electronic messaging and/or email;

-reports of RFQ / RFS requests

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

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

<ESMA\_QUESTION\_128>

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

<ESMA\_QUESTION\_129>

With the proviso that the definition of Voice Trading System is amended to include the concept that such systems are multilateral in nature. Should they encompass voice RFQ’s then the comments of Q124 above apply equally here.

<ESMA\_QUESTION\_129>

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

<ESMA\_QUESTION\_130>

For requests with a size above the “Size Specific” threshold (and below the “Large in Scale threshold”) for the considered instrument, the platform operator is required to publish “indicative pre-trade bid and offer prices”.

Still, we believe that the rule used to compute these indicative prices should be:

-shared between across platforms,

-as simple and predictable as possible.

From this point of view, we support the idea that, for requests with a size above the “Size Specific” threshold for the considered instrument, the platform operator should be required to publish the less aggressive bid and the less aggressive offer amongst the answers received from the responding participants / members.

In any case, we are of the opinion that pre-trade requirements for request-for-quote systems should be calibrated, as detailed in our answer to Q124 with a period during which, while the bids and offers are actionable, they are not pre-trade transparent

Whatever the case, it should not be possible to reverse out underlying data by applying knowledge of the methodology used to generate the published prices.

<ESMA\_QUESTION\_130>

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

<ESMA\_QUESTION\_131>

See answer to Q130

<ESMA\_QUESTION\_131>

Post-trade transparency requirements for non-equity instruments

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

<ESMA\_QUESTION\_132>

Given that the settlement date of a transaction has a bearing on the price, it would be appropriate to include settlement date in the details published.

We believe an approach for the data for LIS trades where the notionals are capped (in a similar way to the approach adopted in the US) would be ideal, however may not be permitted by the level 1 text. If this were to be the case then the GFXD would support an approach where the volume (notional) of a transaction, for those transactions exceeding the large in scale thresholds, should be deferred from any public reporting for a period of time that is long enough to enable the participant’s sufficient time to appropriately manage any associated risks. We believe such a period to be of the order of multiple months and refer to the responses of AFME, ISDA and GFXD in regard to this topic.

Global consistency is key in what data is reported publically and when it is reported. It does not make sense for one side of the trade to be public before the other.

<ESMA\_QUESTION\_132>

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

<ESMA\_QUESTION\_133>

Revealing the name of the Systematic Internaliser will have profound implications for non-equity markets. This part of the legislation is to provide more transparency as to how the market is pricing, not to enable a given participant to know which other market participants are positioned in the market.

Furthermore we do not agree with quarterly SI reports which would introduce an even greater un-level playing field between those participants classified as an SI and those able to trade OTC outside the SI regime.

<ESMA\_QUESTION\_133>

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

<ESMA\_QUESTION\_134>

Please refer to our answer to Q133

<ESMA\_QUESTION\_134>

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

<ESMA\_QUESTION\_135>

**For bonds,** We believe there are many benefits to the use of trade flags.

**For Bonds/SFPs** we refer to the detailed answer provided by AFME to this question, and we support their conclusions.

**For OTC Derivatives:**

We concur with the analysis undertaken by ISDA in terms of a limited set of trade flags, and support their conclusions

<ESMA\_QUESTION\_135>

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

<ESMA\_QUESTION\_136>

No, such flags are unnecessary as it is evident if a deferral was used from the trade time.

<ESMA\_QUESTION\_136>

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

<ESMA\_QUESTION\_137>

For bonds we believe the price should be reported “clean”, therefore the ex/cum flag is unnecessary.

<ESMA\_QUESTION\_137>

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

<ESMA\_QUESTION\_138>

**For Bonds:**

We support the conclusions of AFME in regard to this question

**For derivatives:**

We support the conclusions of ISDA in regard to this question.

**For FX:**

We believe specificities inherent to a prime brokerage (PB) relationship should be taken into account when considering if trades should be reported. The industry is currently actively engaged in achieving a model suitable for prime brokers as the CFTC is again consulting on PB issues. In order to avoid the similar intricate and time-consuming process engaged by the industry in the US in order to obtain the CFTC relief, we urge the regulator to consider the prime brokerage framework when finalising the rules on post trade reporting under MiFIR.

<ESMA\_QUESTION\_138>

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

<ESMA\_QUESTION\_139>

Securities financing trades do not result in an outright exposure to the security in question and thus are very different in nature to outright trades. In many cases the securities involved are posted as effective collateral. Such trades are often not extremely sensitive to market price (so may be misleading) and also can be subject to haircuts or other specific bilateral agreements between counterparties. As such they should be excluded.

<ESMA\_QUESTION\_139>

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

<ESMA\_QUESTION\_140>

For non-equity securities, 5 minutes is extremely aggressive. We believe the consideration should be given to global alignment, noting that TRACE in the US operates at 15 minutes as a basic minimum. As in the case of TRACE, the initial calibration should be significantly longer (perhaps 1 hour) with a view to tightening up the criteria over time as marker practices and market infrastructures become sufficiently adapted to the new regime. We recommend that ESMA should resist the temptation to move straight to a tight timeframe and learn the lessons of other jurisdictions which have successfully implements transparency regimes

In addition it should be noted:

-a 15 minute publication period is a more achievable time period for resolving issues in the trade booking and allocation workflows;

-the US TRACE system has a 15 minute post trade publication requirement – we believe strongly suggest that ESMA ensure operational consistency between the US and Europe. Operational consistency will enable firms to leverage off their existing publication systems, which will reduce the cost of implementation on an initial and ongoing basis, which will reduce the end costs to investors of the MiFID regime. Also, global operational consistency will ensure that firms trading in Europe are not at a disadvantage to US counterparts due to unlevel playing fields;

-a 15 minutes rather than five minute reporting period will significantly increase the quality of the data with very little detriment to the usefulness of the data from a price discovery perspective. To reiterate, the fixed income market trades fairly infrequently (see table below – showing most bonds trade less than once a day); therefore, a ten minute longer time period will not change the value of the data. However, we stress that poor quality data will have more significant adverse impacts on the usefulness of the data.

For FX, alignment with the US would be helpful due to the cross border nature of the markets.

For OTC Derivatives and for FX we believe that 15 minutes is a reasonable timeframe and aligns well with other jurisdictions.

<ESMA\_QUESTION\_140>

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

<ESMA\_QUESTION\_141>

**For FX:**

-FX is cross-border therefore alignment with other jurisdictions is key

-There needs to be consistency between NCAs

-ESMA should clarify on whether 15:00 is CET or another time, and should look carefully at whether there should in fact be any concept of end of day in a market that trades 24 x5.5

-Clarification on when the opening of trading is, especially for global/e-trading books

**For Bonds and SFPS:**

We do not agree with ESMA that the size specific threshold and large in scale threshold should only apply to liquid instruments. The conditions under MiFIR Article 11 are not stated to be mutually exclusive.

MiFIR Articles 11 and 21 provides that all the details of the trade may be deferred in circumstances where there is a large in scale, a trade in an illiquid instrument or a trade above a size specific to the instrument. Publication of volume information may be allowed for an extended time period of deferral based on thresholding of the aforementioned conditions. We urge ESMA to reconsider these principles and adopt a regime that incorporates this framework set out under MiFIR.

The fixed income market requires market makers to take on risk to facilitate client trades. As such, in fixed income, if a market maker does not have sufficient time to hedge or unwind its position, then it will be exposed to undue risk. Therefore, we strongly recommend that the delay for the size specific to the instrument whereby it would cause undue risk to the liquidity provider and the large in scale threshold is sufficiently long to prevent the undue risk materialising. The undue risk in fixed income is the winner’s curse. Therefore, the deferral regime needs to be calibrated to the risk – the winner’s curse.

In the market maker model, transparency can create a winner’s curse, making it costly for dealers to hedge their position and unwind their risk. This works as follows. After a market maker executes a transaction with an investor, they enter the interdealer market to hedge their risk. Even after hedging their risk, they will hold on to a certain level of credit risk (the larger the size of the position, the greater the risk), over time they will unwind that position and risk. However, if the trade is made public before the market maker can hedge and unwind his risk position, other dealers can benefit by taking up contrarian positions in the interdealer market, thereby making it difficult for the successful bidder to offset the risk of the position. Market makers will need to compensate for this risk of adverse price movements by increasing the transaction costs that they charge to investors. Investors will require compensation for these increased costs from the issuers of bonds (governments and companies), in the form of higher borrowing costs. Therefore, an appropriate time delay for price publication and extended delay of the volume sufficient to permit hedging and unwinding of risk prevents these adverse effects

It should be noted that unwinding a position can take upto several months for large and/or illiquid positions.

As such the deferrals proposed by ESMA are inappropriate for fixed Bond/SFP markets.

**For OTC Derivatives:**

We refer to the analysis undertaken by ISDA in relation to this question and support their conclusions.

<ESMA\_QUESTION\_141>

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

<ESMA\_QUESTION\_142>

We agree with the proposed deferrals for price information, but not for the deferrals for trades greater than LIS and trades in illiquid instruments.

We note the quantitative work carried out by AFME in their response to this answer and support their conclusions.

In addition, in support of global consistency for trade equal or above the large in scale threshold, we support a multiple month delay to volume publication.

<ESMA\_QUESTION\_142>

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

<ESMA\_QUESTION\_143>

Market makers require months not days to hedge/unwind their risk. We refer to our response to Question 142 for reasons and our alternative proposal. We strongly disagree with the time delays for the publication of volume information – intraday deferrals are not a meaningful delay. We propose a multiple month delay.

<ESMA\_QUESTION\_143>

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

<ESMA\_QUESTION\_144>

We do not believe there should be different periods across different classes of bonds, although different periods would be appropriate for derivatives and for equities and for FX.

<ESMA\_QUESTION\_144>

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

<ESMA\_QUESTION\_145>

For the reasons set out above in answer to Question 142, a T+1 delay for illiquid instruments is not appropriate to ensure that market makers will have sufficient time to hedge their risks and unwind their positions. The more illiquid an instrument, the more difficult it is for a market maker to hedge and unwind risk. Without a meaningful deferral, it will discourage market makers from participating in illiquid markets, which will introduce procyclical effects, and will make commitment of capital expensive. Therefore, we strongly recommend that illiquid instruments benefit from the maximum extended time delay of multiple months (that we recommend for LIS trades for liquid instruments).

We note that even with a multiple month deferral for volume, we note that there will be significant adverse impacts on illiquid markets if the price is published with a deferral of 48 hours. As illiquid markets have such little depth, other market makers will be able to immediately identify the market maker with the position and be able to take contrarian positions.

We support AFME’s, GFXD’s and ISDA’s proposed transparency deferrals.

<ESMA\_QUESTION\_145>

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

<ESMA\_QUESTION\_146>

**For Bonds:**

We do not support one universal deferral period. For example, small trade sizes for instruments with issue sizes greater than EUR500mm would not need to benefit from deferrals. Deferrals are an important feature of any proposed transparency framework, but they should only be applied where they benefit the market.

**For Derivatives and FX:**

We recommend that a universal deferral period should be adopted for all OTC derivative classes and FX which do not have a liquid market.

<ESMA\_QUESTION\_146>

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

<ESMA\_QUESTION\_147>

For Bonds: Yes, we agree.

For OTC Derivatives and FX:

For transactions in illiquid OTC derivatives classes and FX, we recommend an initial 48 hour deferral period, after which all details except size should be published, and an extended time period of deferral of multiple months, after which size should be published.

We support AFME’s, GFXD’s and ISDA’s proposed transparency deferrals.

<ESMA\_QUESTION\_147>

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

<ESMA\_QUESTION\_148>

We do not agree that publication should be authorised for an indefinite period only in limited circumstances. MiFIR Article 21(4) does not provide that the aggregation should only apply in limited circumstances. We stress that the aggregation and other deferrals have been introduced to ensure that liquidity providers are not exposed to excessive risks and are not discouraged from committing capital to facilitate client trades. We recommend that the aggregation should be based on the need to mitigate these risks. Therefore, we suggest that ESMA to calibrate these risks.

<ESMA\_QUESTION\_148>

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

<ESMA\_QUESTION\_149>

Generally, we believe that if appropriate delays and extended delays are set for all bond and SFPs such that they mitigate risks for liquidity providers, it will not be necessary to set a preferential treatment for sovereign bonds>

<ESMA\_QUESTION\_149>

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

<ESMA\_QUESTION\_150>

We recommend that transactions determined by other factors than the valuation of the instrument should be excluded from the scope of publication >

<ESMA\_QUESTION\_150>

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

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

<ESMA\_QUESTION\_151>

**For Bonds:**

We disagree with ESMA’s opinion that the post trade and pre trade large in scale should be computed at the level of asset classes or classes of financial instruments for the sake of consistency with the current regime for shares.  The fixed income market is not the same as the equities market and the same regime should not be applied

Option 2 is far too simplistic for securities products.  Given the need for an IBIA approach for Bonds and SFPs, only option 1 is sensible.  That Large-In-Scale thresholds should be determined without any further consideration of liquidity within an asset class largely ignores the fundamental features of non-equities markets – particularly the absence of the “homogeneous pat-terns of liquidity” assumed in support of this option.  Furthermore it does not align with the empirical studies conducted in recent years by industry associations such as AFME.

**For OTC Derivatives and FX:**

For OTC Derivatives that reference a specific underlying instrument (for example an option on a bond) which, itself, has a Large in Scale Threshold, then the LIS Threshold of the OTC Derivative should be the same as for the underlying instrument.

However, not all OTC Derivatives specifically reference an underlying instrument for which an LIS Threshold will have been set (for example an Interest Rate Swap).  For such products, a granular COFIA works on the assumption that the classification is sufficiently granular to aggregate the instruments, for example different groups by currency and then maturity “buckets and, as such, Option 2 would be workable.

<ESMA\_QUESTION\_151>

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

<ESMA\_QUESTION\_152>

**For OTC Derivates:**

Within OTC derivatives, given the degree of customization possible, it is feasible to group transactions in different currencies by ranges of maturities… Thus – for example - a 10 yr product would be comparable with a 10yr 1 month product. This approach has been implemented with reasonable success in the US, and we would encourage similar approach under MiFID.

**For Bonds:**

Such an approach is not appropriate for transferrable securities when inventory (and thus the number of possible products) is substantially more limited and market conditions for two, on the face of it, similar instruments can be wildly different.

<ESMA\_QUESTION\_152>

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

<ESMA\_QUESTION\_153>

**For Bonds:**

Yes, the IBIA approach should be used in both instances for Bonds and SFPs.

**For OTC Derivatives:**

Option 2 appears most viable when a COFIA approach is used.

**For FX:**

We believe the options for determining liquidity and large in scale should be consistent and for FX this is a more granular COFIA model and recommend that the large in scale thresholds should be applied to the sub-product, currency pair and maturity of a transaction

<ESMA\_QUESTION\_153>

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

<ESMA\_QUESTION\_154>

Large in scale, however, is a threshold used for the purposes of publication deferrals. Looking to the purpose of the deferrals, we understand that they are to ensure that liquidity providers are not discouraged from committing capital to facilitate client trades by permitting market makers to have sufficient time hedge and unwind their risks

Thus, with respect to the purpose of the deferral for large in scale compared to the normal trade size, ADT is not an appropriate proxy. ADT calculated by dividing the total volume turnover by the number of trading days. This measure does not approximate trade size that is large such that market makers would require a longer time period of deferral.

We refer to the analysis conducted by AFME on this point, and support their conclusions with reference to this question

<ESMA\_QUESTION\_154>

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

<ESMA\_QUESTION\_155>

No, we do not agree. Please refer to our answer to Q154

<ESMA\_QUESTION\_155>

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

<ESMA\_QUESTION\_156>

No, we do not agree with either option. Please refer to our answer to Q154.

<ESMA\_QUESTION\_156>

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

<ESMA\_QUESTION\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_157>

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

<ESMA\_QUESTION\_158>

No. We do not believe the large in scale waiver for post trade should differ from pre trade because the pre trade waiver is only relevant non-RFQ and non-voice trading systems

**For OTC Derivatives:**

ESMA should give due consideration to the pre-trade transparency requirements for instruments traded as part of a Package Transaction.

We recommend that where one or more component transactions of the package benefit from a waiver, it is imperative that the entire transaction benefit from a waiver from pre-trade transparency in order that the entire package can be agreed between participants away from a venue (with any relevant legs being registered to a venue if required, as would be the case with any components that are ETDs or derivatives subject to the derivative trading obligation). This would also be consistent with our recommended treatment of packages for post-trade transparency (a Package Transaction should benefit from a post-trade deferral where at least one component benefits from a deferral) and for the derivatives trading obligation (a Package Transactions should not be subject to the trading obligation unless all component transactions are mandated for clearing and deemed sufficiently liquid).

<ESMA\_QUESTION\_158>

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

<ESMA\_QUESTION\_159>

Yes we agree.

<ESMA\_QUESTION\_159>

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

<ESMA\_QUESTION\_160>

No we do not support this approach. The market structure in non-equity markets is completely different to equity markets, thus basing the conditions for deferral of publication on the same criteria is nonsense. The fact that a significant majority of bonds do not trade every day suggests a different model to equities is needed. Likewise the very different market structures in Derivatives do not lend themselves well to an equities derived model.

<ESMA\_QUESTION\_160>

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

<ESMA\_QUESTION\_161>

A 2 year review period is reasonably sensible, however ESMA should build in a mechanism to conduct such a review earlier if it is manifestly obvious that the regime is not working as envisaged .

<ESMA\_QUESTION\_161>

Size specific to the instrument

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

<ESMA\_QUESTION\_162>

Yes noting previous comments to ensure that the definition of Voice Trading system should include the term “multilateral

<ESMA\_QUESTION\_162>

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

<ESMA\_QUESTION\_163>

We agree with ESMA that the methodology to calculate size specific to the instrument should have regard to not exposing liquidity providers to undue risk, with a view regarding whether liquidity providers would be able to hedge their risk

**For Bonds:**

We do not agree with ESMA (under paragraph 11), that size specific to the instrument should be linked to the concept of SMS in the equities regime.  MiFID/R is clear that the purpose of size specific to the instrument is to introduce a threshold that is calibrated to the risks of liquidity providers.  This is a completely different concept to standard market size – which is a threshold to determine the standard tick size.  Further, the equities market is very different from the fixed income market, in that it is not dependent on market makers committing capital to facilitate trades.

Unlike a single class of shares, each fixed income security is dissimilar in terms of maturity, coupon, interest rate, liquidity, and rating. This creates imbalances in the number of buy and sells orders placed by investors for a bond at any one time, especially in the current time of market stress. In this context, dealers’ own account trading has a crucial role in ensuring continuous markets and allowing client’s orders to be matched gradually over time. If market makers are discouraged from committing capital, clients’ flows would be unmatched. Such un-matched flows cause two problems: one is that the bond’s price may change abruptly, even if there has been no shift in either supply or demand for the bond. Second is that either buyers have to pay more, or sellers have to accept lower prices, if they want to make their trade immediately. It is therefore crucial that the new transparency regime is appropriately calibrated in order to protect liquidity in the market place.

Therefore, the size specific to the instrument threshold should be calibrated to the features and risks of the fixed income market and not the equities market.

We refer to the analysis undertaken by AFME on this topic.

Specifically:

We propose that ESMA take a risk-based approach to calculating the threshold and suggest the following thresholds are appropriate for post-trade transparency for bonds and SFPs.

For Issue sizes of >5bn EUR for both liquid and illiquid instruments) the SSTI should be EUR 1mm and for issue sizes between EUR 500mm and 5bn (again for both liquid and illiquid instruments) the SSTI should be set at EUR 500,000.  Issue sizes of below EUR500mm should have an effective SSTI of zero as they are illiquid.

For pre trade transparency, all issue sizes should have a SSTI set at EUR 150,000

**For OTC Derivatives and FX:**

For OTC Derivatives that reference a specific underlying instrument (for example an option on a bond) which, itself, has an SSTI, then the SSTI of the OTC Derivative should be the same as for the underlying instrument.

However, not all OTC Derivatives specifically reference an underlying instrument for which an SSTI will have been set (for example an Interest Rate Swap).  For such products, the structure of the markets and the nature of the products (notably that there are no restrictions on inventory as there are in securities markets) mean that calibration of the SSTI is a percentage of the LIS threshold is a more appropriate approach, and we would expect SSTI to be a small percentage of the LIS.

<ESMA\_QUESTION\_163>

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

<ESMA\_QUESTION\_164>

We believe ESMA should consult further on this topic, having gathered suitable information on which to base a quantitative assessment in conjunction with the market. ESMA should consider the size at which an SI would need to adjust its price, as well as the size at which the execution of a hedge can be achieved without incurring undue costs.

<ESMA\_QUESTION\_164>

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

<ESMA\_QUESTION\_165>

No

<ESMA\_QUESTION\_165>

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

<ESMA\_QUESTION\_166>

For Bonds:

No – as explained in our answer to Q163

For OTC Derivatives and FX, we agree with the description<ESMA\_QUESTION\_166>

<ESMA\_QUESTION\_166>

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

<ESMA\_QUESTION\_167>

No – as explained in our answer to Q163. The deferral period for the LIS deferral and the SSTI deferral should be different (with the LIS deferral period being longer than the SSTI deferral period).

<ESMA\_QUESTION\_167>

The Trading Obligation for Derivatives

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

<ESMA\_QUESTION\_168>

Yes, we agree, it seems logical, given the need of a straightforward and consistent process from trading to clearing standard derivatives.  Imposing different conditions or criteria could be confusing for the market. Any additional conditions for a clearable asset or sub-asset class to be subject to trading on a regulated trading venue should be very clear and the market should know sufficiently in advance which categories of asset or sub-asset classes will also be subject to an obligation to be traded on a regulated trading venue.

As previously mentioned, we believe the ability to execute Package Transactions is vital in these markets, and the Trading Obligation should accommodate such Packages.

<ESMA\_QUESTION\_168>

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

<ESMA\_QUESTION\_169>

Yes, given that the two main cases are i) when there is a guarantee from a EU financial counterparty or ii) when the trade is done between two European branches of non-EU financial  counterparties. However, like in EMIR Commission Regulation N°285/2014 of 13 February 2014, the latter should effectively be limited to two European branches of non-EU financial counterparties and not extend to non-EU non-financial counterparties, as is indicated in the DP, p.187, para 9 ii.

<ESMA\_QUESTION\_169>

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

<ESMA\_QUESTION\_170>

Anti-avoidance procedures for trading should be consistent with anti-avoidance procedures for clearing.

<ESMA\_QUESTION\_170>

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

<ESMA\_QUESTION\_171>

Yes, it would be a good idea that trading venues  - and the rest of the industry through consultation - be involved in the determination of classes of derivative contracts to be subject to the obligation of trading on regulated trading venues.  It would make sense that trading venues who will make available their platform for the trading obligation be involved in the determination of which products are sufficiently liquid to be subject to such an obligation .

 This would also be in line with the procedure as set out in EMIR where ESMA receives from NCAs a notification of an availability to clearing of a certain asset class. Without going as far as in EMIR or in the US where DFA requires trading venues to notify ESMA of availability to trade, it would ensure a proper and necessary involvement of market stakeholders.

<ESMA\_QUESTION\_171>

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

<ESMA\_QUESTION\_172>

**Whether ‘average frequency’ should be understood to refer to the number of trades over a given time period, the number of days on which trading occurred over that time period or both.**

Average frequency should take into account both the number of trades over a given period of time as well as the number of days on which trading occurred over that time period. Both measures are important and complement each other. To be liquid, a derivative would have to trade both several times over a period of time and most of the days of a period of time. Otherwise, peaks in activity might give a false impression of liquidity as measured by frequency.

**Whether the ‘average size’ should be based on the notional and the number of trades in the given period, the notional and the number of trading days, or some other measure.**

The average size should be the notional amount divided by the number of trading days.

**The most appropriate data for calculating ‘spreads’.**

Spreads cannot be measured end-of-day. Random snapshots have to be taken during the day in order to have a picture which is as accurate as possible. Spreads are also dependent on size, so the snapshots would have to be calibrated for a given ticket amount.

**The extent to which the given time period will need to vary by asset class.**

Our inclination is to say no, the time period should be the same whatever the asset class of the derivative is. That way, the criteria used to measure liquidity is consistent across asset classes. The regulator can then easily compare the liquidity of one asset class with the other. Do we agree ? Would different time periods be justified per different asset class ?

<ESMA\_QUESTION\_172>

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

<ESMA\_QUESTION\_173>

We find the question ambiguous. Is ESMA asking about the liquidity of a given derivative which is executed or are they asking about the liquidity of a given type of derivative over time?

If it is the former, a derivative is only liquid when the trade is executed at inception. After that, the trade is illiquid.

If it is the latter, changing market conditions might change dramatically the liquidity of a given type of derivatives.

The recalibration of the assumptions poses a dilemma between accuracy and efficiency. Accuracy would favour recalibration on a permanent basis to reflect market changing liquidity. Efficiency would prescribe recalibrating liquidity for a given type of derivatives only once a quarter.

<ESMA\_QUESTION\_173>

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

<ESMA\_QUESTION\_174>

ESMA has the benefit of the precedent of SEF trading and of instruments Made Available to Trade (“MAT”) under the Dodd Franck Act. So ESMA should study closely the effect the obligation to trade certain derivatives on SEFs have on the market.

<ESMA\_QUESTION\_174>

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

<ESMA\_QUESTION\_175>

The objective should be to have a trading obligation framework as consistent as possible with the clearing obligation framework. Transparency and predictability should govern the process of determination of which clearable derive asset classes will also be subject to a trading obligation on a regulated trading venue .

<ESMA\_QUESTION\_175>

Transparency Requirements for the Members of ESCB

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

<ESMA\_QUESTION\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_176>

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

<ESMA\_QUESTION\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_177>

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

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

<ESMA\_QUESTION\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_178>

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

<ESMA\_QUESTION\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_179>

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

<ESMA\_QUESTION\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_180>

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

<ESMA\_QUESTION\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_181>

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

<ESMA\_QUESTION\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_182>

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

<ESMA\_QUESTION\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_183>

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

<ESMA\_QUESTION\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_184>

Microstructural issues

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

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

<ESMA\_QUESTION\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_185>

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

<ESMA\_QUESTION\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_186>

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

<ESMA\_QUESTION\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_187>

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

<ESMA\_QUESTION\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_188>

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

<ESMA\_QUESTION\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_189>

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

<ESMA\_QUESTION\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_190>

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

<ESMA\_QUESTION\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_191>

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

<ESMA\_QUESTION\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_192>

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

<ESMA\_QUESTION\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_193>

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

<ESMA\_QUESTION\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_194>

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

<ESMA\_QUESTION\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_195>

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

<ESMA\_QUESTION\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_196>

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

<ESMA\_QUESTION\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_197>

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

<ESMA\_QUESTION\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_198>

Organisational requirements for investment firms (Article 17 MiFID II)

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

<ESMA\_QUESTION\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_199>

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

<ESMA\_QUESTION\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_200>

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

<ESMA\_QUESTION\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_201>

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

<ESMA\_QUESTION\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_202>

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

<ESMA\_QUESTION\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_203>

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

<ESMA\_QUESTION\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_204>

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

<ESMA\_QUESTION\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_205>

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

<ESMA\_QUESTION\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_206>

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

<ESMA\_QUESTION\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_207>

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

<ESMA\_QUESTION\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_208>

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

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

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

<ESMA\_QUESTION\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_210>

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

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

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

<ESMA\_QUESTION\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_212>

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

<ESMA\_QUESTION\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_213>

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

<ESMA\_QUESTION\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_214>

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

<ESMA\_QUESTION\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_215>

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

<ESMA\_QUESTION\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_216>

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

<ESMA\_QUESTION\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_217>

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

<ESMA\_QUESTION\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_218>

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

<ESMA\_QUESTION\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_219>

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

<ESMA\_QUESTION\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_220>

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

<ESMA\_QUESTION\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_221>

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

<ESMA\_QUESTION\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_222>

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

<ESMA\_QUESTION\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_223>

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

<ESMA\_QUESTION\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_224>

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

<ESMA\_QUESTION\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_225>

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

<ESMA\_QUESTION\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_226>

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

<ESMA\_QUESTION\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_227>

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

<ESMA\_QUESTION\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_228>

Organisational requirements for trading venues (Article 48 MiFID II)

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

<ESMA\_QUESTION\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_229>

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

<ESMA\_QUESTION\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_230>

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

<ESMA\_QUESTION\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_231>

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

<ESMA\_QUESTION\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_232>

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

<ESMA\_QUESTION\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_233>

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

<ESMA\_QUESTION\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_234>

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

<ESMA\_QUESTION\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_235>

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

<ESMA\_QUESTION\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_236>

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

<ESMA\_QUESTION\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_237>

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

<ESMA\_QUESTION\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_238>

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

<ESMA\_QUESTION\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_239>

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

<ESMA\_QUESTION\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_240>

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

<ESMA\_QUESTION\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_241>

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

<ESMA\_QUESTION\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_242>

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

<ESMA\_QUESTION\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_243>

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

<ESMA\_QUESTION\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_244>

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

<ESMA\_QUESTION\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_245>

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

<ESMA\_QUESTION\_246>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_246>

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

<ESMA\_QUESTION\_247>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_247>

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

<ESMA\_QUESTION\_248>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_248>

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

<ESMA\_QUESTION\_249>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_249>

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

<ESMA\_QUESTION\_250>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_250>

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

<ESMA\_QUESTION\_251>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_251>

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

<ESMA\_QUESTION\_252>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_252>

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

<ESMA\_QUESTION\_253>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_253>

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

<ESMA\_QUESTION\_254>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_254>

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

<ESMA\_QUESTION\_255>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_255>

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

<ESMA\_QUESTION\_256>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_256>

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

<ESMA\_QUESTION\_257>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_257>

Market making strategies, market making agreements and market making schemes

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

<ESMA\_QUESTION\_258>

Over the years, technological and organisational developments have increased the liquidity in most financial markets in a substantial way. The role played by banks as market makers has been one of the key drivers in this positive outcome. It is therefore important that the obligations and rewards associated with the market making role are well balanced to preserve the positive impact they are having in markets. In particular, too high risks will translate into higher costs for users due to the extra capital requirements which will be imposed on the bank as a market maker.

That being said, Societe Generale agrees that the requirements in Articles 17 and 48 of MiFID II in terms of market making agreements are correlated and should be addressed jointly.

<ESMA\_QUESTION\_258>

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

<ESMA\_QUESTION\_259>

We agree with ESMA’s view that the type of strategy to be captured under Article 17(4) of MiFID II should only be considered as posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues. But for the avoidance of doubt, it should not be interpreted as a two-way quote spread over two venues (one side on each venue).

There would be adverse consequences in capturing the posting of one-way quotes across different trading venues. It would have a detrimental effect on strategies pursued by investment firms which practical purpose is to harmonise prices on a given financial instrument across trading venues will increasing liquidity.

<ESMA\_QUESTION\_259>

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

<ESMA\_QUESTION\_260>

According to us, three months is the right timeframe to monitor the performance.

<ESMA\_QUESTION\_260>

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

<ESMA\_QUESTION\_261>

According to us, the strategy should meet the requirements 80 percent of the time.

<ESMA\_QUESTION\_261>

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

<ESMA\_QUESTION\_262>

We agree with ESMA’s assessment.

<ESMA\_QUESTION\_262>

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

<ESMA\_QUESTION\_263>

We agree with ESMA’s interpretation. To reinforce the point, it means that if the market maker has a “last look”, the quote sent is not firm.

<ESMA\_QUESTION\_263>

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

<ESMA\_QUESTION\_264>

We agree with ESMA’s assessment that the definition of market making strategy only contains strategies where an investment firm operates a firm, simultaneous two-way quote in at least one financial instrument on a single trading venue.

<ESMA\_QUESTION\_264>

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

<ESMA\_QUESTION\_265>

We agree with ESMA’s interpretation.

<ESMA\_QUESTION\_265>

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

<ESMA\_QUESTION\_266>

We need further information from ESMA on this proposal before we can give our opinion on it.

<ESMA\_QUESTION\_266>

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

<ESMA\_QUESTION\_267>

We agree with ESMA’s proposal.

<ESMA\_QUESTION\_267>

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

<ESMA\_QUESTION\_268>

We agree with ESMA’s approach.

<ESMA\_QUESTION\_268>

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

<ESMA\_QUESTION\_269>

“Orderly markets” could be defined as those where a participant is able to buy or sell a financial instrument in a relatively short amount of time and where the subsequent effect on the price of the underlying asset is solely due to factors specific to the transaction, e.g. its size.

“Orderly markets” being already hard to define, quantifying the contribution of market making schemes on such a state becomes extremely challenging. As a consequence, we would not try to define the parameters to assess such impact.

<ESMA\_QUESTION\_269>

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

<ESMA\_QUESTION\_270>

We agree with nearly all of ESMA’s list of requirements bare one point. We have an issue with point ix: “commit to settle, close or transfer all open positions to another member in case of retreating from the market”.

In point ix, “Retreating” could have different meanings: it could be i) resigning from a market agreement and/or it could mean ii) leaving the market altogether, because the investment firm is involved in a resolution mechanism or on a voluntary basis.

In any of the cases above, the investment firm should have the ability to dispose of its open position as it sees fit, including keeping the positions in its books. Classical examples of such behaviours could be found during the last financial crisis, when market makers choosing to carry open positions in financial instruments (more or less structured) in order to minimise the impact on the market in case of force selling in illiquid to non-existent markets. Such strategies have been vindicated with the recovery in price and liquidity of such instruments a few years later.

<ESMA\_QUESTION\_270>

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

<ESMA\_QUESTION\_271>

80 percent seems to be the appropriate figure as trading venues are generally open during a longer period than the one during which the bulk of the activity is taking place. This allows some flexibility for periods of high volatility (around the release of important economic data or central banks speeches) or if a market participant experiences some technical problems preventing it from fulfilling its obligations during a short period of time.

<ESMA\_QUESTION\_271>

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

<ESMA\_QUESTION\_272>

We would agree with consistency between the two obligations, but would welcome further dialogue 0n the topic to fully understand the potential implication of this requirement.

<ESMA\_QUESTION\_272>

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

<ESMA\_QUESTION\_273>

For cash equities, we would agree that presence of market making strategies during trading hours be the same across instruments and trading models.

However, for equity-like and non-equity instruments, the diversity of markets and financial instruments warrant further in-depth considerations before deciding how the requirement should apply. We do not welcome a “one size fits all” approach on this point which would lead to unintended consequences in terms of liquidity and market functioning for certain financial instruments. Specifically, we believe that the concept of “presence of market making strategies during trading hours” is not relevant for RFQ system, where the market maker does not take the initiative of proposing a price, but is supposed to answer requests. For such systems, market makers could be asked to answer a minimum proportion of the requests submitted to him.

<ESMA\_QUESTION\_273>

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

<ESMA\_QUESTION\_274>

Such additional obligations should be left to the discretion of the trading venues and be the result of discussions between market makers and such trading venues.

<ESMA\_QUESTION\_274>

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

<ESMA\_QUESTION\_275>

In Article 17(7)(c) of MiFID II, ESMA is mandated to draft regulatory technical standards to determine “the situations constituting exceptional circumstances referred to in paragraph 3, including circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm’s ability to maintain prudent risk management practices as laid down in paragraph 1.”

In the Discussion Paper, ESMA is limiting these exceptional circumstances to two categories: “(i) technological issues including problems with a data feed or other system that is essential in order to be able to carry out a market making strategy; and (ii) internal risk management issues, which would encompass problems in relation to capital or clearing”.

So we do not disagree with the list provided, it is just too restrictive.

<ESMA\_QUESTION\_275>

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

<ESMA\_QUESTION\_276>

We view ESMA’s list as too limited and potentially disruptive for the orderly functioning of markets. If market makers do not have the ability to shelter themselves in case of extreme volatility or political or macroeconomic major events, they will be reluctant to act as market makers and to provide the liquidity the market participants need them to offer in order to function in an orderly fashion.

We would add the following factors:

-Circumstances of extreme volatility;

-Political and macroeconomic issues;

-Major shifts in capital costs;

-Exceptional and sudden increases in margin requirements.

<ESMA\_QUESTION\_276>

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

<ESMA\_QUESTION\_277>

This is a non-exhaustive list but can be sued as a series of examples.

Political issues:

-Acts or threats of terrorism, war (whether declared or not), hostilities (whether declared or not), invasion, mobilisation, embargo, rebellion, revolution, insurrection;

-Contamination by hazardous properties including radiation;

-Pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device;

-Discontinuation of electricity supply;

-Industrial actions, riots, civil unrest or commotion, strikes, go slows, lock outs;

-Acts or threats of cyber sabotage;

Macro-economic issues:

-Restrictive tax policies;

-Insolvency or bankruptcy of systemically critical institutions (e.g. Lehman);

-Deteriorating labour markets;

-Unfavourable credit conditions;

-Inflation;

-Debt ceiling restrictions;

-Extreme currency destabilisation;

-Material economic crises;

-Any circumstance which affect a nation’s economic relations with another nation, resulting from actions within or outside government control;

Other circumstances which contradict the investment firm’s ability to trade prudently:

-Acts of God (such as, but not limited to, fires, explosions, earthquakes, extreme storms, adverse weather events);

-Health pandemics (e.g. the next SARs);

-Structural collapse;

-Decisions from market authorities or issuers (e.g. to close trading for the instrument, a related or dual listed instrument, or a derivative);

-Restricted ability, for whatever reason, to hedge positions;

Any circumstances beyond the control of an investment firm against which it would be unreasonable or disproportionate for a firm to continue trading.

<ESMA\_QUESTION\_277>

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

<ESMA\_QUESTION\_278>

The timeframe for the validity of exceptional circumstances should match the reality of how long these circumstances exist. So the timeframe can be as short as a few seconds to as long as a number of days or weeks.

<ESMA\_QUESTION\_278>

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

<ESMA\_QUESTION\_279>

The appropriate procedure to restart normal trading activities depends on whether the exceptional circumstances have impacted an individual investment firm or part or all of the market. So depending on the circumstances, the procedure might involve only one firm or the whole market. Trading venues should have in place a process to determine how the market should operate when such circumstances materialise.

<ESMA\_QUESTION\_279>

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

<ESMA\_QUESTION\_280>

No specific view to report.

<ESMA\_QUESTION\_280>

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

<ESMA\_QUESTION\_281>

Trading venues must set these requirements to ensure that all the member firms have the appropriate financial strength, systems, compliance, etc. in place to be present on their platform. As such it will always create a barrier to entry which is necessary. The requirements might vary from one trading venue to another depending on the products, the terms of the market making agreement…

As such further clarification might be welcome.

Our answer to the second question is “No”.

<ESMA\_QUESTION\_281>

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

<ESMA\_QUESTION\_282>

It is difficult to give a definitive answer to such a question. As a principle, it seems counterintuitive to have such mechanisms in which the participant to a market making scheme on a liquid instrument should benefit from an advantage. However, as mentioned in footnote 111 of the Discussion Paper, such advantages do exist for certain markets and certain financial instruments.

We would then recommend that such practices should be proposed by the trading venues in the context of their mark making schemes and should be reviewed by the appropriate National Competent Authority to validate its compliance with the regulation.

<ESMA\_QUESTION\_282>

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

<ESMA\_QUESTION\_283>

We agree with AFME on the fact that limiting firms in taking part in market making schemes would not be fair and non-discriminatory.  Market making schemes by their nature must be open ended.

<ESMA\_QUESTION\_283>

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

<ESMA\_QUESTION\_284>

Yes we agree that the market making requirements in Articles 17 and 48 of MiFID II are mostly relevant for liquid instruments.

<ESMA\_QUESTION\_284>

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

<ESMA\_QUESTION\_285>

No other assessment of liquidity than the one under Article 2(1)(17) of MiFIR.

<ESMA\_QUESTION\_285>

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

<ESMA\_QUESTION\_286>

We do not think that a specific number should determine if a market making agreement has a sufficient amount of participating investment firms. Whether or not a market making agreement has a sufficient number of investment firm participants could depend on various different market factors e.g. liquidity in the market, type of instruments traded by the market makers and circumstances that may impact the market and its participants. We do not think that designating a specific number in these circumstances would be the correct basis for determining if a trading venue must offer a market making scheme or not.

<ESMA\_QUESTION\_286>

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

<ESMA\_QUESTION\_287>

We do not see market share as a criteria to determine participation in a market making agreement.

<ESMA\_QUESTION\_287>

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

<ESMA\_QUESTION\_288>

See answer to question 288.

<ESMA\_QUESTION\_288>

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

<ESMA\_QUESTION\_289>

Isn’t the exact same question as Q283? In which case, please refer to our answer to that question.

<ESMA\_QUESTION\_289>

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

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

<ESMA\_QUESTION\_290>

Our understanding of ESMA’s position is that any order submission, modification or cancellation should be taken into account to compute the Order-to-transaction ratio.

Even though this position looks reasonable to us, we consider that the rules governing the OTR computation should be further specified, since some orders types could raise a doubt regarding the way to compute the ratio. For instance:

-some markets may manage the amendment of an order as the cancellation of the existing order and the submission of a new order, which could be counted as two messages. Other markets may support modification of orders as such;

-some order types natively encompass features that trigger automatic modifications or cancellations by the market, without further intervention from the participant (Fill or Kill, Immediate or Cancel, Peg orders, etc.). Should such modifications / cancellations feed the computation of the OTR?

Globally speaking, we believe that:

-ESMA should ensure that such all order types will receive an homogeneous treatment, from an OTR point of view, across European markets,

-considering the primary purpose of the OTR computation, which is to make sure that instructions sent by the market participants do not saturate the system capacity, only messages sent by the participants should be taken into account, while messages directly induced by the order type should be excluded.

<ESMA\_QUESTION\_290>

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

<ESMA\_QUESTION\_291>

The primary purpose of the Order-to-transaction ratio, which is to make sure that instructions sent by the market participants do not saturate the system capacity, would naturally mean computing the ratio as the total number of orders (including modifications and cancellations sent by the participant) divided by the number of transactions executed.

Still, as pointed out by the Discussion paper, such computation could be gamed by executing a number of small size aggressive orders to adjust the number of transactions used as the divisor in the ratio.

Conversely, a consideration-based ratio would be less subject to gaming strategies, as such strategies would require the participant to take significant risks, that would end-up being disproportionate with the expected benefits.

We hence support the idea that the Order-to-transaction ratio should be computed as the relative weight of orders and transactions in terms of value (turnover).

<ESMA\_QUESTION\_291>

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

<ESMA\_QUESTION\_292>

We believe that, if a given market supports trading on several types of underlying, the OTR for each relevant participant should be computed per asset class, in order to avoid mixing heterogeneous data (for instance, an OTR for equity, an OTR for equity-like, an OTR for bonds, etc.).

<ESMA\_QUESTION\_292>

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

<ESMA\_QUESTION\_293>

The OTR regime is indeed relevant only for liquid instruments traded on electronic trading systems.

Still, we are not sure to fully understand the following sentence: “it may be sufficient to determine the OTR for cash instruments (considering within this category bonds, equity and equity-like instruments) that are traded on electronic trading venues, since any change in the OTR of the underlying (or any regulatory change thereof) would affect the observed OTR of its derivatives.”

Does this mean that ESMA does not intend to apply the OTR regime on derivative products, or does it mean that ESMA intends to calibrate the OTR regime (including the thresholds) for derivatives on the ground of the OTR regime for the underlying instruments?

The latter would be totally wrong, as derivative and cash trading patterns are not necessarily linked for a given investment firm.

We have reasons to believe that certain high frequency strategies can use derivative products only, with no intervention on the underlying cash instruments, and hence would not be captures by an OTR regime limited to cash instruments.

<ESMA\_QUESTION\_293>

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

<ESMA\_QUESTION\_294>

See our answer to Q293: of course, financial instruments which reference a cash instrument(s) as underlying could be excluded from the scope of the OTR regime, but we would like to underline that we have reasons to believe that certain high frequency strategies can use derivative products only, with no intervention on the underlying cash instruments, and hence would not be captures by an OTR regime limited to cash instruments.

<ESMA\_QUESTION\_294>

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

<ESMA\_QUESTION\_295>

No, we see no rationale for such distinction.

<ESMA\_QUESTION\_295>

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

<ESMA\_QUESTION\_296>

The experience of the implementation of MiF in the equity space shows that the main difficulty for a new trading venue is to attract liquidity. The first liquidity makers in a new trading venue often are arbitrage activities, which operate with a significant order cancelation ratio. Therefore, implementing the OTR regime from inception could be quite detrimental to the emergence of new venues.

We hence agree with considering within the scope of a future OTR regime only trading venues which have been operational for a sufficient period in the market.

<ESMA\_QUESTION\_296>

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

<ESMA\_QUESTION\_297>

In order to avoid regulatory arbitrage, we believe that the OTR regime should be enforced on a new trading venue no later than 2 years after the creation of the venue.

<ESMA\_QUESTION\_297>

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

<ESMA\_QUESTION\_298>

We are not too sure what benefit would be expected from establishing an activity floor under which the OTR regime would not apply, but we see the risk of an arbitrage: for instance, since Article 48.6 of the Directive is clearly intended to apply at the level of the “member or participant”, there could be a risk to have entities using multiple accesses / memberships to remain under the activity floor.

<ESMA\_QUESTION\_298>

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

<ESMA\_QUESTION\_299>

It appears indeed reasonable to determine the OTR threshold as a multiple of the average OTR observed on the trading platform on liquid instruments for the preceding observation period.

<ESMA\_QUESTION\_299>

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

<ESMA\_QUESTION\_300>

Provided that the observation period to determine the ‘average observed OTR’ on the venue is representative enough, we are of the opinion that the approach would be appropriate.

<ESMA\_QUESTION\_300>

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

<ESMA\_QUESTION\_301>

We do not believe that the multiplier x should be set as a function of the highest member’s OTR observed in the preceding period.

Indeed, the OTR regime is not designed to capture a minimum number of members, or a minimum share of the activity on the platform.

One the one hand, the OTR regime is explicitly aimed at impeding the development of trading strategies that would saturate the system capacity of the platform, and would ultimately result in disorderly trading conditions.

On the other hand, a trading platform is supposed to have robust enough an infrastructure to support the normal course of its business, and to be able to cope with activity peaks.

Hence, we are of the opinion that the OTR regime should be calibrated to capture trading schemes that would clearly be abusive compared with the “usual” trading pattern on the relevant platform.

From this point of view, we believe that the multiplier should be expressed as a function of the standard deviation of the distribution of the members’ observed OTR in the preceding observation period, in order to specifically capture those members which developed divergent strategies.

<ESMA\_QUESTION\_301>

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

<ESMA\_QUESTION\_302>

Given the purpose assigned to the OTR regime, we believe it would not be reasonable to claim that a “one size fits all” multiplier could be set beyond any serious observation.

On the contrary, we believe that the multiplier should be expressed as a function of the standard deviation of the distribution of the members’ observed OTR in the preceding observation period.

<ESMA\_QUESTION\_302>

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

<ESMA\_QUESTION\_303>

We believe that the OTR threshold should be assessed and reviewed on an annual basis.

<ESMA\_QUESTION\_303>

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

<ESMA\_QUESTION\_304>

It is in our view of paramount importance to ensure that the OTR regime does not hinder the activity of market makers and liquidity providers, which is crucial on many instruments.

We are hence of the view that the OTR computation should exclude the trading activity of market makers / liquidity providers.

<ESMA\_QUESTION\_304>

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

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

<ESMA\_QUESTION\_305>

Société Générale supports the efforts of ESMA to determine factual criteria in order to ensure that co-location services are provided in a ‘transparent’, ‘fair’ and ‘non-discriminatory’ manner.

In our view, the factors to consider in ensuring that co-location services – and virtually any service provided by market venues - are provided in a ‘transparent’, ‘fair’ and ‘non-discriminatory’ manner should be the following:

- With regards “transparency”, trading venues should be required to publish or make available on demand their commercial policy including the list of services and prices. Prices should be transparent and should not discriminate against different classes of market participants.

- With regards “non-discrimination”, the list of products / services supplied by a trading venue should be available to all markets participants through clear and accessible documentation. This documentation should include detailed specifications regarding the objective conditions for a market participant to access each service.

- With regards “fairness”, services should be available on a stand-alone basis and market participants should not be required to pay for a bundled package just to access a specific service. It is also crucial to ensure that prices are reasonable and affordable. In that respect, prices should be comparable:

a) between similar services from the same venue (for instance, a venue should not offer a “regular” co-location service and an “enhanced” co-location service at very different prices)

b) between similar services from different trading venues with similar services from other industries, notably Server Hosting.

<ESMA\_QUESTION\_305>

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

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

<ESMA\_QUESTION\_306>

We agree that, in order to ensure that fees are fair, transparent and non-discriminatory, it is important that:

- the detail of the services provided and the detail of the fee structure are publicly available;

- the fees are sufficiently granular to ensure that members are not required to pay for a bundled offer just to access a sub-set of it;

- the price, terms and conditions of each service is based on objective criteria.

<ESMA\_QUESTION\_306>

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

<ESMA\_QUESTION\_307>

No.

<ESMA\_QUESTION\_307>

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

<ESMA\_QUESTION\_308>

No.

<ESMA\_QUESTION\_308>

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

<ESMA\_QUESTION\_309>

While they may not be directly discriminatory, we believe that several types of practices should be prohibited, since they lead to unequal treatment of members:

- venues should not be authorized to set a limit for the number of market makers they allow (see our answer to Q283 in the Discussion Paper);

- market access with best performance / highest speed should not be restricted to certain vendors / members

- while volumes discounts are legitimate, trading venues should not be authorised to offer permanent benefits to some of their members (for instance, a venue should not be allowed to offer free shares to its first / main members).

<ESMA\_QUESTION\_309>

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

<ESMA\_QUESTION\_310>

The list of three types of incentives and disincentives drafted by ESMA (rebates for market makers, volume discount and penalties for excessive Order to trade Ratio) appear comprehensive.

<ESMA\_QUESTION\_310>

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

<ESMA\_QUESTION\_311>

We do not believe that fee schedules are the most efficient tool to decrease the probability of trading behavior that may lead to disorderly and unfair trading conditions.

Still, it is intuitive that fees set independently from the level of activity may encourage such trading behaviors, while penalties for excessive OTRs may be a means to discourage them.

<ESMA\_QUESTION\_311>

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

<ESMA\_QUESTION\_312>

See our answer to Q311.

<ESMA\_QUESTION\_312>

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

<ESMA\_QUESTION\_313>

Yes.

<ESMA\_QUESTION\_313>

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

<ESMA\_QUESTION\_314>

Some venues charge differently orders executed during the continuous trading phase and those executed during the opening / closing auction, for which they keep benefiting from some kind of a monopoly.

Theoretically speaking, such differentiated pricing could influence trading behavior. For instance, this could lead intermediaries to execute orders with a “close” reference before the auction, taking more risk to benefit from reduced fees.

Still, in practical terms, it is not obvious that such impact has really been observed. Before envisaging any action, we believe that ESMA should collect factual evidence, by comparing the evolution of the weight of auctions between venues with / without such differentiated pricing.

<ESMA\_QUESTION\_314>

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

<ESMA\_QUESTION\_315>

See our answer to Q311.

We also believe that practices of “payment for flow”, where the member of a trading venue pays a specific fee or takes in charge all or part of the trading fees due by a third party to face its flow, should be prohibited.

<ESMA\_QUESTION\_315>

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

<ESMA\_QUESTION\_316>

In theory, yes, but none that we are aware of in the real world.

<ESMA\_QUESTION\_316>

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

<ESMA\_QUESTION\_317>

See our answer to Q314.

<ESMA\_QUESTION\_317>

##### Should conformance testing be charged?

<ESMA\_QUESTION\_318>

Conformance testing is mandatory and should not be discouraged by a specific charge.

<ESMA\_QUESTION\_318>

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

<ESMA\_QUESTION\_319>

The testing of algorithms is mandatory and should not be discouraged by a specific charge.

<ESMA\_QUESTION\_319>

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

<ESMA\_QUESTION\_320>

Yes, increasing the cost of testing by putting in places fees for conformance / algorithm testing will inevitably have a negative impact on the depth of testing.

<ESMA\_QUESTION\_320>

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

<ESMA\_QUESTION\_321>

Before we comment on para 27 to 30, we would like to clarify our understanding:

- a “market making” agreement is an agreement signed between a firm engaged in a market making strategy and the trading venue where this strategy is implemented;

- a “market making scheme” is a scheme where, in order to induce more firms to sign market making agreements, a venue proposes rebates to firms engaged in market making agreements;

- the constraints detailed in para 30 would be valid only for market making agreements covered by a market making scheme, they should not apply to market making agreements that do not benefit from rebates.

On this ground, our main comment on para 30 is related to 30.3: we do not agree that “The system should ensure that firms are not only present when additional provision of liquidity is not necessary, but also when it is needed”. Such a principle would be arbitrary by nature, and would conflict with the ability for market makers to withdraw their quotes under certain extreme conditions. In that domain, we consider that the minimum presence time is the only valid criterion.

<ESMA\_QUESTION\_321>

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

<ESMA\_QUESTION\_322>

See our answer to Q321.

<ESMA\_QUESTION\_322>

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

<ESMA\_QUESTION\_323>

We agree that the OTR regime could be complemented with a penalty fee.

Still:

- we believe  that such penalty fee should not apply when the breach of the OTR is due to exceptional market conditions,

- we reiterate that the OTR computation should exclude the trading activity of market makers / liquidity providers (see our answer to Q304).

<ESMA\_QUESTION\_323>

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

<ESMA\_QUESTION\_324>

The OTR regime is explicitly aimed at impeding the development of trading strategies that would saturate the system capacity of the platform, and would ultimately result in disorderly trading conditions.

The OTR threshold and the related penalty fee hence have to take into account the system capacity of the trading venue, and the cost to expend this capacity.

The penalty hence cannot be set by the ESMA through an homogeneous methodology, and has to be designed by each trading venue.

<ESMA\_QUESTION\_324>

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

<ESMA\_QUESTION\_325>

Yes.

<ESMA\_QUESTION\_325>

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

<ESMA\_QUESTION\_326>

Yes, we believe that the penalties should be applied only when the OTR is systematically breached.

The notion of “systematic breaches of the OTR” should be defined by the relevant trading venue. For instance, it could be set so as to capture those breaches that, on the ground of its rules, require an adaptation of its system capacity.

<ESMA\_QUESTION\_326>

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

<ESMA\_QUESTION\_327>

We reiterate that the OTR computation should exclude the trading activity of market makers / liquidity providers (see our answer to Q304), and that market makers / liquidity providers should in no case not have to pay penalties for breaching the OTR.

<ESMA\_QUESTION\_327>

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

<ESMA\_QUESTION\_328>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_328>

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

<ESMA\_QUESTION\_329>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_329>

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

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

<ESMA\_QUESTION\_330>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_330>

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

<ESMA\_QUESTION\_331>

We are of the opinion that for equities, the best indicator for liquidity in the context of Article 49 is indeed the average number of daily trades.

As stated in point 4.8.13 of the Discussion Paper, it allows granularity for the calibration of the tick size, is easily observable, is stable and does not constitute redundant information.

It is also worth noting that, even though the liquidity indicator in Article 49 does not aim at the same objective as the definition of liquidity in Article 2.17.(b) of MiFIR - and hence do not need to be identical -, using the average number of trades for the purpose of Article 49 is consistent with the fore-mentioned definition.

<ESMA\_QUESTION\_331>

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

<ESMA\_QUESTION\_332>

In our view, the granularity to be used to determine the liquidity profile of financial instruments in the context of Article 49 should be set so that:

- there are not too many ranges of liquidity: the tick-size regime must remain simple and manageable by all market players; it is also important that each liquidity range captures enough instruments to make statistical analysis relevant (specifically for the sake of impact analysis);

- there are not too few ranges of liquidity. In particular, there must be enough liquidity bands so that, when an instrument moves from one band to the next, the impact on tick size is not so large that it could create disruptions to the trading activity.

We believe that his advocates for a number of liquidity bands set between 3 and 5.

<ESMA\_QUESTION\_332>

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

<ESMA\_QUESTION\_333>

When discussing tick sizes, and specifically when trying to define the optimal balance between favoring liquidity aggregation and taking the risk of increasing viscosity too much, it is important (i) to remind about the recent evolution of equity market microstructure and (ii) to set clear objectives.

In the context of the implementation of MiFID, tick sizes have been used as a tool for competition between venues: reduced tick sizes would attract certain arbitrage flows (since the cost of over-bidding is directly correlated to tick size), that in return would attract agency execution flow, under the constraint of best execution.

This resulted in a massive fall of tick sizes (on most stocks, they got divided by 10 between 2006 and the FESE agreement in 2009), with reduced spreads (which can be seen as a benefit for each investor willing to buy or sell a stock), but also less stability in the price formation process, since liquidity aggregates on far more prices, and hence in far lower quantities.

In the end, we consider that the reform in the tick size regime must aim at ending the decrease in tick sizes, and we believe that a moderate increase of tick sizes could be beneficial for the equity markets.

This being stated, we agree that, for any given instrument, the best indicator to calibrate the tick size in an optimal way is somehow to use the spread-to-tick ratio, that should neither be too low nor too high.

<ESMA\_QUESTION\_333>

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

<ESMA\_QUESTION\_334>

As mentioned above, we agree that the spread-to-tick ratio is the best indicator to define the optimal level of viscosity for a given stock.

This being said, we also believe that the notion of spread would deserve to be refined, as it is fully meaningful only when related to a minimum available size: a narrow bid-ask spread for minimal available sizes is less relevant than the effective spread for a tradable size. In other worlds, we are of the opinion that tick sizes should be calibrated by taking into account volume-based-spreads - to - tick ratio. In that instance, the spread should be measured as the effective spread for volumes that should be a multiple of the Standard Market Size for the considered instrument.

Given the proposed indicator (eg the ratio between the observable bid-ask spread and the tick size, regardless of the size available at the best limits), our experience is that, for liquid instruments, the ratio is correct around 1.5, and should not fall below 1.2 or exceed 2.0.

<ESMA\_QUESTION\_334>

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

<ESMA\_QUESTION\_335>

In our opinion, as exposed above, the harmonized tick size regime should provide a table that will be as simple as possible to implement, with enough bands (both in terms of price and liquidity) to avoid huge steps when moving from one band to the other, and that will aim at keeping the spread-to-tick ratio (at least for most liquid stocks) in a range between 1.2 and 2.0.

We hence believe that the tick size should be based on a targeted spread-to-tick ratio range, and that liquidity bands and price bands should then be set to build as homogeneous as possible populations.

As stated in our answer to Q332, we believe that his advocates for a number of liquidity bands set between 3 and 5.

<ESMA\_QUESTION\_335>

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

<ESMA\_QUESTION\_336>

Operationally speaking, the tick size table proposed under Option 1 is slightly more complex than the FESE tables currently implemented, since it uses 4 liquidity bands instead of two. Yet, this should not impact market players too much, since the change in liquidity bands will not need to be managed on a real-time basis. Only price movements could determine a tick size on an intra-day basis, which is already the case with FESE tables, hence something the industry has already adapted for.

The proposed table hence appears reasonably easy to read, implement and monitor.

The details provided in Appendix 4.8.1. (specifically with regards the original table and the refined table) seem to indicate that the price and liquidity bands have been properly set so as to define homogeneous populations of stocks from a spread-to-tick point of view.

<ESMA\_QUESTION\_336>

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

<ESMA\_QUESTION\_337>

Regarding the number of bands: as stated in our answer to Q332, we believe that the number of liquidity bonds is appropriate and so is the number of price bands, which is similar to those currently implemented through the FESE tables.

Regarding the liquidity and prices levels: as stated in our answer to Q335, the details provided in Appendix 4.8.1. seem to indicate that the levels chosen for liquidity have been appropriately set to define homogeneous populations in terms of spread-to-tick ratio.

Theoretically speaking, the table proposed under Option 1 appears properly set to optimize the spread-to-tick ratio amongst European equities.

<ESMA\_QUESTION\_337>

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

<ESMA\_QUESTION\_338>

Recent past shows that (i) equity market microstructure can evolve quite rapidly as a reaction to context changes and (ii) in this domain, regulations can have unintended indirect effects.

As a matter of example, we believe that, while regulators were volunteer in introducing some competition amongst trading platforms through the implementation of MiFID, they did not foresee the impact on tick sizes (that got divided by 10) or Average Value Trades (that got divided by more than 3), hence the reason why they had not built any reactive tool for review and remediation.

Based on this experience, we strongly recommend that any reform impacting market microstructure comes with the ability to remediate to any unintended effect, after a given observation period. This clearly encompasses the capability to further calibrate any such reform (including tick size regime) on the basis of the observed impact.

<ESMA\_QUESTION\_338>

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

<ESMA\_QUESTION\_339>

We are of the opinion that the tick size regime proposed under Option 1 goes in the right direction, and believe that its calibration and monitoring mechanisms offer a good level of predictability to market participants.

Still, as detailed in our answer to Q338, we learnt from past experiences that regulations can have massive unintended effects, and we hence support the idea that, particularly when it comes to changes impacting market microstructure, any reform should (i) be tried on a limited scope before it is fully implemented and (ii) come with tools to remediate to any unintended effect, after a given observation period.

Regarding the tick size regime – and regardless of the Option finally retained –, we recommend to have a test in real conditions on a panel of stocks, before implementing the new rule on a European basis.

<ESMA\_QUESTION\_339>

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

<ESMA\_QUESTION\_340>

We believe that, once implemented, the tick size regime proposed under Option 1 could work with a yearly re-calibration.

More importantly, and as detailed in our answer to Q339, we consider that the tick size regime should be tested for some time on a sample of stocks before being implemented on a European basis.

<ESMA\_QUESTION\_340>

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

<ESMA\_QUESTION\_341>

Our understanding of the impact study presented in Appendix 4.8.1. is that Option 1 tick size regime should result in:

-globally speaking, an increase of tick sizes;

-specifically for most liquid stocks (representing close to 95% of European Equity flows), a rather balanced effect, with 1/3 of the stocks with an unchanged tick size, 1/3 with an increase (median impact: \*2) and 1/3 with a decrease (median impact: /2);

-an impact that will probably differ from one country to the other, inter allia because all countries do not currently use the same FESE table.

This being stated, it is really difficult to guess the impact of such changes on the activity of market participants.

The magnitude of changes being relatively moderate, one would expect that the impact on activity should not be massive.

Still, and as detailed in our answer to Q339, so as to avoid any significant unintended effect on market microstructure and activity, we recommend running a test in real conditions on a panel of stocks, before implementing the new rule on a European basis.

<ESMA\_QUESTION\_341>

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

<ESMA\_QUESTION\_342>

When it comes to equity-like instruments, the most instinctive answer would be to apply the same tick size regime as for equities.

Still, the implementation of MiFID has shown that tick sizes can be used as a tool for competition between trading venues. While MiF2 intends at putting an end to this competition, by harmonising tick sizes across venues for each instrument, it is probably important to ensure that the new tick size regime does not create risk of migration of trading across instrument types, and more generally that the tick size regime applied on equities does not have significant unintended effects on other products.

In our view, that question should be raised on a global basis (e.g. for equity-like but also for non-equities), and should consider different treatments between various classes of instruments, the most obvious split being between instruments that are economically equivalent to shares (Depositary Receipts, German Genussscheine, Spanish Participaciones Preferentes, etc.) and instruments based on equity underlying (amongst Exchange Trade Funds, Securitised Derivatives, Futures, Options, etc.).

Defining the regime to be applied for instruments that are economically equivalent to shares is probably more urgent than for other instruments, so as to circumvent risks of arbitrage.

<ESMA\_QUESTION\_342>

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

<ESMA\_QUESTION\_343>

Regardless of the option that will be retained, changes on the tick size regime used for equities will have side effects on other instruments, including outside the equity-like space.

For instance, market making strategies on futures may be impacted by a change in the tick size used for equities, since the spread for the futures (be it single stock futures or index futures) and the spread for the underlying stock(s) – e.g. the hedge – may evolve differently afterwards, which could impact the profitability of the activity and the appetite for risk of market makers.

Such side effects will have to be very carefully monitored, as, if they were to be of a significant magnitude, they may require either a re-calibration of the equity tick size regime, or the definition and implementation of an equivalent regime for some non-equity instruments. In our opinion, this is an additional reason advocating for a cautious implementation of the new equity tick size regime, that ideally should be first tested in real conditions on a panel of stocks, so as to check that all induced effects are identified and properly managed.

<ESMA\_QUESTION\_343>

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

<ESMA\_QUESTION\_344>

In order to avoid the migration of trading across instrument types, we believe that instruments that are economically equivalent to a given share – which includes Depositary Receipts – should be subject to the same tick size as the instrument they are a substitute for, irrespective of their own liquidity.

<ESMA\_QUESTION\_344>

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

<ESMA\_QUESTION\_345>

As stated in our answers to Q342 and Q343, we are of the opinion that the side effects of the new equity tick size regime on instruments based on equity underlying (be it equity-like or non-equity) will need to be closely monitored.

For such instruments, the definition of a tick size shall take into account the own liquidity of the instrument, but also the liquidity of its underlying.

Specifically for ETFs, we believe that the regime defined for equities should be applied, but that it should be based on the highest liquidity level between the ETF and its underlying basket.

For instance:

-for an ETF with low intrinsic liquidity but based on a liquid basket – this can be the case for a EUROSTOXX 50 with limited Asset Under Management –, the tick size should be dictated by the liquidity of the basket,

-conversely, the tick size for a liquid ETF on an emerging basket should be based on the intrinsic liquidity of the ETF.

This proposed options ensures that tick sizes differences alone do not create arbitrages between similar ETFs from different issuers.

If this option appears too complex to implement, a spread-based tick regime could be more appropriate.

<ESMA\_QUESTION\_345>

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

<ESMA\_QUESTION\_346>

As stated in our answers to previous questions, we believe that the tick size regime proposed under Option 1 should not have too much of an impact on the spread-to-tick.

In any case, as detailed in our answers to Q339 to Q343, regardless of the regime finally retained, we strongly recommend running a test in real conditions on a panel of stocks, before implementing the new tick size regime on a European basis.

<ESMA\_QUESTION\_346>

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

<ESMA\_QUESTION\_347>

For equity-like instruments we do not see any theoretical reason not to apply the same tick size regime as for equities.

This being stated, we strongly recommend implementing the new regime first on a sample of instruments – that would include equity-like instruments –, so as to check that any unintended effect is identified and properly managed.

<ESMA\_QUESTION\_347>

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

<ESMA\_QUESTION\_348>

As detailed in our answer to Q343, we believe that the implementation of a new tick size regime could have side effects on the activity around some related non-equity instruments, specifically securitised derivatives and futures, by impacting the microstructure for the natural hedge of these instruments.

Such side effects may not require the definition of a tick size regime, but in any case we recommend implementing the new regime first on a sample of instruments, so as to check that any unintended effect is identified and properly managed.

<ESMA\_QUESTION\_348>

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

<ESMA\_QUESTION\_349>

As stated in our answer to Q331, we are of the opinion that the liquidity indicator in Article 49 should be consistent with the definition of liquidity in Article 2.17.(b) of MiFIR.

Still, aligning the liquidity indicator in Article 49 on the definition of liquidity in Article 2.17.(b) of MiFIR is not our favored option, as it would not allow enough granularity in the tick size table, and would in particular impose massive changes on the tick size of an instrument moving from the liquid to the illiquid category.

As detailed in our answer to Q332, we believe that the number of liquidity bands for the purpose of the new tick size regime should be set between 3 and 5.

<ESMA\_QUESTION\_349>

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

<ESMA\_QUESTION\_350>

The tick sizes proposed under Option 2 are globally derived from FESE Table 2, which is already implemented by one of the main European markets (London Stock Exchange, except for 3highly Liquid Stocks, subject to FESE table 1).

We are not too sure what the Discussion Paper refers to when mentioning “the largest band”. If this relates to the price band above 100,000.00, we hardly see this as a material concern, since virtually no stock should be captured in that band.

<ESMA\_QUESTION\_350>

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

<ESMA\_QUESTION\_351>

In order to remain implementable, the new tick size regime must rely on a table with a reasonable number of liquidity and price bands.

This is particularly true for price bands, as changes from one band to the other will determine tick size changes on an intra-day basis.

We hence believe that the table proposed under Option 2 should not be refined further to the 20 price bands it already contains.

Re the liquidity dimension of the proposed table, as stated in our answer to Q349, we believe that increased granularity could be useful with regards the liquidity bands.

<ESMA\_QUESTION\_351>

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

<ESMA\_QUESTION\_352>

As detailed in our answers to previous questions, we believe that a cautious approach should be taken to implement the new tick size regime.

This is particularly true for newly admitted instruments, for which the price formation process may be more fragile than for other stocks. In order to favour stability in the price discovery for these instruments, we agree that they treated as an illiquid instrument during an initial calibration period.

Nota: we believe that this should apply whatever option is finally retained.

<ESMA\_QUESTION\_352>

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

<ESMA\_QUESTION\_353>

Yes, a six weeks calibration period appear appropriate for all instruments admitted to the pan-European tick size regime under Option 2.

<ESMA\_QUESTION\_353>

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

<ESMA\_QUESTION\_354>

We do agree that the impact of the new tick size regime will have to be carefully monitored.

Still, we have serious concerns with regards the “Spread Adjustment Factor” approach proposed under Option 2, as we believe that this approach could fuel and somehow institutionalise a “race to the bottom” in terms of tick sizes.

Indeed, the proposed framework looks quite ill-balanced with regards the impact of the SAF on tick sizes of stocks from 2017 onwards: the outcome of any calibration exercise (be it after the 6 weeks initial calibration period or after each yearly review) can only be a decrease of the tick size, and never an increase.

For instance, based on the average spreads measured in June 2014, we found out that, were Option 2 to be applied, 70% of Footsie 100 stocks would have their tick size reduced compared with the current one. We do not consider that such an evolution can be considered a desirable outcome of MiF2 implementation.

In the end, we consider that the SAF approach would be appropriate only if the floor on spread-to-tick ratio is complemented by a ceiling that, for most liquid stocks, should not be above 2.0 to 2.5 (see our answer to Q356).

<ESMA\_QUESTION\_354>

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

<ESMA\_QUESTION\_355>

As detailed in our answer to Q334, we believe that the notion of bid-ask spread would deserve to be refined, as it is fully meaningful only when related to a minimum available size: a narrow bid-ask spread for minimal available sizes is less relevant than the effective spread for a tradable size. In other worlds, we are of the opinion that tick sizes should be calibrated by taking into account volume-based-spreads - to - tick ratio. In that instance, the spread should be measured as the effective spread for volumes that should be a multiple of the Standard Market Size for the considered instrument.

Looking at the bid-ask spread, our experience is that, for liquid instruments, the ratio is correct around 1.5, and should not fall below 1.2 or exceed 2.0.

We hence do not share the view that an average bid-ask spread of less than two ticks should be considered as too narrow.

<ESMA\_QUESTION\_355>

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

<ESMA\_QUESTION\_356>

In theory, an abnormally important spread-to-tick ratio would create arbitrage opportunities, the realisation of which would in turn reduce the spread.

Still, setting an upper ceiling to the bid-ask spread could be useful to make sure that the tick sizes remain adapted to each instrument and that the viscosity in the order book does not fall below reasonable levels, that would harm the price formation process.

We hence support the idea of setting an upper ceiling to the spread-to-tick ratio. For most liquid stocks, we believe that the average spread-to-tick should not be above 2.0 or 2.5.

<ESMA\_QUESTION\_356>

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

<ESMA\_QUESTION\_357>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_357>

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

<ESMA\_QUESTION\_358>

We consider that a cautious approach has to be taken in defining a tick size regime for equity-like instruments, but we do not see strong rationale to exclude illiquid non-equity instruments from the scope of the tick size regime.

As detailed in our answers to questions Q342 to Q345, we believe that the tick size regime for equity like instruments should:

-depend on the type of instrument, making a clear difference between instruments that track the performance of a given share and other instruments,

-for instruments that track the performance of a given share, be based on the liquidity of that share,

-for other instruments, take into account both the intrinsic liquidity of the instrument and the liquidity of the underlying.

<ESMA\_QUESTION\_358>

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

<ESMA\_QUESTION\_359>

As detailed in our answers to Q343 and Q348, we believe that – regardless of which option is ultimately retained – the implementation of a new tick size regime could have side effects on the activity around some related non-equity instruments, specifically securitised derivatives and futures, by impacting the microstructure for the natural hedge of these instruments.

Such side effects may not require the definition of a tick size regime, but in any case we recommend implementing the new regime first on a sample of instruments, so as to check that any unintended effect is identified and properly managed.

<ESMA\_QUESTION\_359>

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

<ESMA\_QUESTION\_360>

We favour a periodic revision of tick sizes, rather than a dynamic mechanism, since the latter would require significant investments from all markets participants to adapt, and could produce significant unintended effects, with no easy method to limit these.

Given the variety of direct and indirect effects that will need to be monitored when reviewing tick sizes, and the need for an in-depth analysis of these effects, we believe that a yearly review would be appropriate.

<ESMA\_QUESTION\_360>

Data publication and access

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

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

<ESMA\_QUESTION\_361>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_361>

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

<ESMA\_QUESTION\_362>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_362>

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

<ESMA\_QUESTION\_363>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_363>

Additional requirements for particular types of Data Reporting Services Providers

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

<ESMA\_QUESTION\_364>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_364>

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

<ESMA\_QUESTION\_365>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_365>

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

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

<ESMA\_QUESTION\_366>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_366>

Consolidated tape providers

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

<ESMA\_QUESTION\_367>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_367>

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

<ESMA\_QUESTION\_368>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_368>

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

<ESMA\_QUESTION\_369>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_369>

Data disaggregation

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

<ESMA\_QUESTION\_370>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_370>

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

<ESMA\_QUESTION\_371>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_371>

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

<ESMA\_QUESTION\_372>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_372>

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

<ESMA\_QUESTION\_373>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_373>

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

<ESMA\_QUESTION\_374>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_374>

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

<ESMA\_QUESTION\_375>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_375>

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

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

<ESMA\_QUESTION\_376>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_376>

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

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

<ESMA\_QUESTION\_377>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_377>

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

<ESMA\_QUESTION\_378>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_378>

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

<ESMA\_QUESTION\_379>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_379>

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

<ESMA\_QUESTION\_380>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_380>

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

<ESMA\_QUESTION\_381>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_381>

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

<ESMA\_QUESTION\_382>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_382>

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

<ESMA\_QUESTION\_383>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_383>

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

<ESMA\_QUESTION\_384>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_384>

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

<ESMA\_QUESTION\_385>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_385>

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

<ESMA\_QUESTION\_386>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_386>

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

<ESMA\_QUESTION\_387>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_387>

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

<ESMA\_QUESTION\_388>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_388>

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

<ESMA\_QUESTION\_389>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_389>

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

<ESMA\_QUESTION\_390>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_390>

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

<ESMA\_QUESTION\_391>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_391>

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

<ESMA\_QUESTION\_392>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_392>

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

<ESMA\_QUESTION\_393>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_393>

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

<ESMA\_QUESTION\_394>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_394>

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

<ESMA\_QUESTION\_395>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_395>

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

<ESMA\_QUESTION\_396>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_396>

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

<ESMA\_QUESTION\_397>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_397>

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

<ESMA\_QUESTION\_398>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_398>

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

<ESMA\_QUESTION\_399>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_399>

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

<ESMA\_QUESTION\_400>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_400>

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

<ESMA\_QUESTION\_401>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_401>

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

<ESMA\_QUESTION\_402>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_402>

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

<ESMA\_QUESTION\_403>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_403>

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

<ESMA\_QUESTION\_404>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_404>

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

<ESMA\_QUESTION\_405>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_405>

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

<ESMA\_QUESTION\_406>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_406>

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

<ESMA\_QUESTION\_407>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_407>

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

<ESMA\_QUESTION\_408>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_408>

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

<ESMA\_QUESTION\_409>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_409>

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

<ESMA\_QUESTION\_410>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_410>

Non- discriminatory access to and obligation to license benchmarks

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

<ESMA\_QUESTION\_411>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_411>

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

<ESMA\_QUESTION\_412>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_412>

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

<ESMA\_QUESTION\_413>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_413>

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

<ESMA\_QUESTION\_414>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_414>

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

<ESMA\_QUESTION\_415>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_415>

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

<ESMA\_QUESTION\_416>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_416>

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

<ESMA\_QUESTION\_417>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_417>

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

<ESMA\_QUESTION\_418>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_418>

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

<ESMA\_QUESTION\_419>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_419>

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

<ESMA\_QUESTION\_420>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_420>

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

<ESMA\_QUESTION\_421>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_421>

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

<ESMA\_QUESTION\_422>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_422>

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

<ESMA\_QUESTION\_423>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_423>

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

<ESMA\_QUESTION\_424>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_424>

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

<ESMA\_QUESTION\_425>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_425>

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

<ESMA\_QUESTION\_426>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_426>

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

<ESMA\_QUESTION\_427>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_427>

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

<ESMA\_QUESTION\_428>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_428>

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

<ESMA\_QUESTION\_429>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_429>

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

<ESMA\_QUESTION\_430>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_430>

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

<ESMA\_QUESTION\_431>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_431>

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

<ESMA\_QUESTION\_432>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_432>

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

<ESMA\_QUESTION\_433>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_433>

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

<ESMA\_QUESTION\_434>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_434>

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

<ESMA\_QUESTION\_435>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_435>

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

<ESMA\_QUESTION\_436>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_436>

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

<ESMA\_QUESTION\_437>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_437>

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

<ESMA\_QUESTION\_438>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_438>

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

<ESMA\_QUESTION\_439>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_439>

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

<ESMA\_QUESTION\_440>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_440>

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

<ESMA\_QUESTION\_441>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_441>

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

<ESMA\_QUESTION\_442>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_442>

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

<ESMA\_QUESTION\_443>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_443>

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

<ESMA\_QUESTION\_444>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_444>

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

<ESMA\_QUESTION\_445>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_445>

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

<ESMA\_QUESTION\_446>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_446>

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

<ESMA\_QUESTION\_447>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_447>

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

<ESMA\_QUESTION\_448>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_448>

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

<ESMA\_QUESTION\_449>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_449>

Requirements applying on and to trading venues

Admission to Trading

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

<ESMA\_QUESTION\_450>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_450>

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

<ESMA\_QUESTION\_451>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_451>

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

<ESMA\_QUESTION\_452>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_452>

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

<ESMA\_QUESTION\_453>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_453>

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

<ESMA\_QUESTION\_454>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_454>

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

<ESMA\_QUESTION\_455>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_455>

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

<ESMA\_QUESTION\_456>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_456>

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

<ESMA\_QUESTION\_457>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_457>

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

<ESMA\_QUESTION\_458>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_458>

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

<ESMA\_QUESTION\_459>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_459>

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

<ESMA\_QUESTION\_460>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_460>

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

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

<ESMA\_QUESTION\_461>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_461>

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

<ESMA\_QUESTION\_462>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_462>

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

<ESMA\_QUESTION\_463>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_463>

Commodity derivatives

Ancillary Activity

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

<ESMA\_QUESTION\_464>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_464>

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

<ESMA\_QUESTION\_465>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_465>

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

<ESMA\_QUESTION\_466>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_466>

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

<ESMA\_QUESTION\_467>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_467>

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

<ESMA\_QUESTION\_468>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_468>

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

<ESMA\_QUESTION\_469>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_469>

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

<ESMA\_QUESTION\_470>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_470>

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

<ESMA\_QUESTION\_471>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_471>

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

<ESMA\_QUESTION\_472>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_472>

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

<ESMA\_QUESTION\_473>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_473>

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

<ESMA\_QUESTION\_474>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_474>

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

<ESMA\_QUESTION\_475>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_475>

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

<ESMA\_QUESTION\_476>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_476>

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

<ESMA\_QUESTION\_477>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_477>

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

<ESMA\_QUESTION\_478>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_478>

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

<ESMA\_QUESTION\_479>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_479>

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

<ESMA\_QUESTION\_480>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_480>

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

<ESMA\_QUESTION\_481>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_481>

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

<ESMA\_QUESTION\_482>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_482>

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

<ESMA\_QUESTION\_483>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_483>

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

<ESMA\_QUESTION\_484>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_484>

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

<ESMA\_QUESTION\_485>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_485>

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

<ESMA\_QUESTION\_486>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_486>

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

<ESMA\_QUESTION\_487>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_487>

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

<ESMA\_QUESTION\_488>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_488>

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

<ESMA\_QUESTION\_489>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_489>

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

<ESMA\_QUESTION\_490>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_490>

Position Limits

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

<ESMA\_QUESTION\_491>

For simplicity reasons, we think that the definition of risk reducing trade under MiFID II should be the same as under EMIR.

<ESMA\_QUESTION\_491>

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

<ESMA\_QUESTION\_492>

We agree with ESMA’s proposed definition.

<ESMA\_QUESTION\_492>

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

<ESMA\_QUESTION\_493>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_493>

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

<ESMA\_QUESTION\_494>

We are of the opinion that unconnected persons acting together should be analysed as having a single position for position limits purposes.

<ESMA\_QUESTION\_494>

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

<ESMA\_QUESTION\_495>

We think that the EU market and its regulation are specific and need the most simple and objective approach. European market participants already have to comply with a high number of rules and regulation in the commodity area (notably EMIR, MiFID, MAD/MAR and REMIT) and we think that implementing the second approach would be complex and burdensome.  
In addition, given that position limits will be set at national level, an approach which is as objective as possible is needed to ensure consistency accross the EU.  
That is why we are of the opinion that the first approach is more appropriate.<ESMA\_QUESTION\_495>

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

<ESMA\_QUESTION\_496>

Société Générale agrees that for these contracts the underlying physical commodity is the most important criterion.

<ESMA\_QUESTION\_496>

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

<ESMA\_QUESTION\_497>

In our view, the definition given by the CFTC of “economically equivalent” contracts cannot be used within the EU because there are major differences between both jurisdictions: definition of financial instruments, scope of contracts subject to positions limits, reporting requirements.

In that context, the first approach is appropriate.

<ESMA\_QUESTION\_497>

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

<ESMA\_QUESTION\_498>

NCAs should liaise with the relevant trade repositories.

<ESMA\_QUESTION\_498>

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

<ESMA\_QUESTION\_499>

Yes, we agree.

<ESMA\_QUESTION\_499>

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

<ESMA\_QUESTION\_500>

Yes, we agree.

<ESMA\_QUESTION\_500>

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

<ESMA\_QUESTION\_501>

To define market size, the depth of the underlying physical market should be taken into account where possible including for cash settled markets.

With regard to physically settled contracts, the deliverable supply is the main criterion for spot limit but the open interest could also be usefully used and should be the key factor for non spot period

In all circumstances, we think that open interest of economically equivalent OTC contracts are also a key element to be taken into account.

<ESMA\_QUESTION\_501>

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

<ESMA\_QUESTION\_502>

It is indeed appropriate to set the position limits for a fixed period.

At this stage, it is not realistic to implement position limits on a real-time basis.

<ESMA\_QUESTION\_502>

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

<ESMA\_QUESTION\_503>

Market participants should have a 3 to 6 months adjustment period for any change in position limits.

<ESMA\_QUESTION\_503>

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

<ESMA\_QUESTION\_504>

We do think that these positions should be grandfathered. Otherwise new positions limits’ requirements may have a detrimental effect on the liquidity.

<ESMA\_QUESTION\_504>

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

<ESMA\_QUESTION\_505>

Yes, we agree.

<ESMA\_QUESTION\_505>

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

<ESMA\_QUESTION\_506>

The ESMA’s proposal appears relevant to us.

<ESMA\_QUESTION\_506>

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

<ESMA\_QUESTION\_507>

We think it is appropriate to set an overall limit covering all months combined.

Methodology of position limits for the spot month should involve the relevant clearing houses as they are in charge of the physical settlement.

We also would like to raise that for other position limits using a single-month limits’ system, a methodology should be in place allowing to monitor positions in accordance with the maturities.

<ESMA\_QUESTION\_507>

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

<ESMA\_QUESTION\_508>

The deliverable supply is the main criterion for the spot month limit whereas for the forward month the assessment can be done using the total amount of existing supply (if possible).

<ESMA\_QUESTION\_508>

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

<ESMA\_QUESTION\_509>

For spot month limit, data should be given by the relevant CCPs. In other cases, trading venues should provide data.

<ESMA\_QUESTION\_509>

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

<ESMA\_QUESTION\_510>

Yes we agree.

<ESMA\_QUESTION\_510>

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

<ESMA\_QUESTION\_511>

Société Générale does not think that the volatility is a relevant criterion because it does not necessarily reflect speculation. The criterion of the volume seems more appropriate.

<ESMA\_QUESTION\_511>

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

<ESMA\_QUESTION\_512>

No.

<ESMA\_QUESTION\_512>

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

<ESMA\_QUESTION\_513>

No.

<ESMA\_QUESTION\_513>

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

<ESMA\_QUESTION\_514>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_514>

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

<ESMA\_QUESTION\_515>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_515>

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

<ESMA\_QUESTION\_516>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_516>

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

<ESMA\_QUESTION\_517>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_517>

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

<ESMA\_QUESTION\_518>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_518>

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

<ESMA\_QUESTION\_519>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_519>

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

<ESMA\_QUESTION\_520>

We do agree but we would like to raise that:

-“deliverable” should be understood as the “storable” supply in the different delivery points,

-the limit should be applied within the few days prior to the maturity date.

<ESMA\_QUESTION\_520>

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

<ESMA\_QUESTION\_521>

See answer to Q501.

<ESMA\_QUESTION\_521>

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

<ESMA\_QUESTION\_522>

We do agree.

<ESMA\_QUESTION\_522>

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

<ESMA\_QUESTION\_523>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_523>

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

<ESMA\_QUESTION\_524>

Firstly, we would like to raise that “inflation rates and economic statistics” do not have to fall within the scope the commodity markets for the purpose of position limits.

Secondly, we recommend to separate “base metal” and “precious metals”.

<ESMA\_QUESTION\_524>

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

<ESMA\_QUESTION\_525>

All EU trading venues and trading venues from third countries should be taken into account.

<ESMA\_QUESTION\_525>

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

<ESMA\_QUESTION\_526>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_526>

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

<ESMA\_QUESTION\_527>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_527>

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

<ESMA\_QUESTION\_528>

We agree.

<ESMA\_QUESTION\_528>

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

<ESMA\_QUESTION\_529>

For listed positions, the use of delta value published by trading venues is relevant whereas for OTC economically equivalent contracts we support the use by markets participants of their own internal models.

<ESMA\_QUESTION\_529>

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

<ESMA\_QUESTION\_530>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_530>

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

<ESMA\_QUESTION\_531>

As a significant market participant we have a concern regarding the cost of the IT developments needed as well as the timing. We should have sufficient time to adapt our IT and to be able to comply with these new rules.

<ESMA\_QUESTION\_531>

Position Reporting

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

<ESMA\_QUESTION\_532>

On the one hand, we note that as drafted Article 58.2 contains a reporting obligation on equivalent OTC contracts which are applicable only for investments firms. In other words, a contract entered into between two NFC or with a non-EU firm would not subject to this reporting obligation. This could be detrimental for the efficiency of the EU position limits regime.

On the other hand, we note that Article 58.3 contains an obligation for members and participants of trading venues to provide on a daily basis those trading venues with details of their own positions and their clients’ positions in on-venue contracts. We are wondering whether this could achievable in a context where market participants are only aware of transactions carried out for their clients.

<ESMA\_QUESTION\_532>

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

<ESMA\_QUESTION\_533>

We do not understand whether ESMA would require a reporting on a net or gross basis.

Indeed, on point 14, ESMA considers that a position is the net accumulation of purchase and sell transactions in a particular commodity derivative whereas on point 16, ESMA states that all positions must be reported on a gross basis.

<ESMA\_QUESTION\_533>

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

<ESMA\_QUESTION\_534>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_534>

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

<ESMA\_QUESTION\_535>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_535>

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

<ESMA\_QUESTION\_536>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_536>

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

<ESMA\_QUESTION\_537>

Société Générale favors option 3.

<ESMA\_QUESTION\_537>

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

<ESMA\_QUESTION\_538>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_538>

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

<ESMA\_QUESTION\_539>

Yes, we do think that the determination of the central competent authority should be made according to volumes traded on-exchange. However, we think that a flexible approach should be foreseen allowing (1) market participants to choose another national competent authority for reporting purposes and (2) to modify the central competent authority easily if volumes traded on another exchange increase significantly.

<ESMA\_QUESTION\_539>

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

<ESMA\_QUESTION\_540>

Absolutely.

<ESMA\_QUESTION\_540>

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

<ESMA\_QUESTION\_541>

Yes.

<ESMA\_QUESTION\_541>

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

<ESMA\_QUESTION\_542>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_542>

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

<ESMA\_QUESTION\_543>

See our answer to Q528.

<ESMA\_QUESTION\_543>

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

<ESMA\_QUESTION\_544>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_544>

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

<ESMA\_QUESTION\_545>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_545>

Market data reporting

Obligation to report transactions

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

<ESMA\_QUESTION\_546>

Yes, we broadly agree with ESMA’s proposals for what constitutes a “transaction” and “execution of a transaction for the purposes of Article 26 of MiFIR”.

However, we would like to raise a number of points:

It is not clear how Exchange For Swaps (EFS) on commodities for instance should be reported. Indeed, after having entered into an OTC derivative transaction, the two counterparties novate the transaction, usually on same day, to a Clearing House. Should the two transactions be reported or only the OTC transaction? We think that only the OTC transaction should be reported as only it relates to an execution.

In case of clearable transactions (in particular for Exchange Trades Derivatives – ETDs -), ESMA should precise which transactions are reportable, as the execution of clients orders involve many steps and third parties: executing brokers, clearing brokers, the trading venue, the CCP, clients’ custodians. We think that reportable transactions should only encompass those entailing an execution or a Reception/Transmission of an Order (RTO). Thus, related transactions between clearing brokers, the CCP and custodian should not be reported as they don’t relate to executions or RTOs. In particular, the reporting give-up trades (when the executing broker gives up the clearing to a different clearing broker) should be specified: In our opinion, only the execution should be reported, not the give-up to the clearing broker.

Repurchases under repurchase agreements (repos and reverse repos) are not in MiFID1 scope (for reporting purpose). We do not understand regulators’ objectives when including this type of transactions in MiFID2/MiFIR scope. All the more in view of the forthcoming Regulation on Securities Financing Transactions (SFTs) which appears to be the adequate regulation to encapsulate all requirements relating to SFTs.

Besides, we note that Q81 of ESMA Discussion Paper on MiFID2 (related to post-trade transparency on equities) implies the inclusion of SFTs, while the corresponding question Q139 on post-trade transparency on non-equities does not.

A minima, a unique position should be taken to either include all SFTs in all MiFID2/MiFIR scope or to exclude them.

§ 15. v should be further clarified to specify the precise non-reportable events or actions depending on securities types. We think it should precise the list of un-reportable events (as it does) and not list products (reference to structured finance products, etc.).

§ 15. vi should be further specified. We are afraid that the distinction between reportable intra-entity transactions and non-reportable transaction may not appear clear to investment firms, resulting in different interpretations and inconsistent reporting arrangements across investment firms. We suggest a reference is made to a trading venue operated by the same legal entity (as a Systematic Internaliser, etc.). The same precision could be added to § 12.ii.

§ 114 and 115 states that ESMA “golden source” could not be used to select the financial instruments eligible to the transaction reporting (or more precisely the financial instruments for which transactions on them or having them as underlying should be reported). We strongly question the adequateness of such a choice, as it would result in each investment firm developing a costly “internal golden source”, yielding to inevitable discrepancies between those golden sources and to a general situation of over- or under-reporting by virtually all investment firms. This would in turn jeopardize the stability of the future reporting and regulators ability to exploit the reporting. This risk is further compounded by the significant enlargement of eligible financial instruments.

In view of all the trading venues being supervised by ESMA, we propose instead:

That ESMA maintains a Golden Source listing all the financial instruments for which transactions on them or having them as underlying should be reported;

That in case investment firms were to detect omissions in the Golden Source, they report their transactions on the missing instruments or having the missing instruments as underlying and they report immediately the discrepancy to ESMA.

Indeed, ESMA seems best placed to demand from the trading venues that they report to them with diligence all the new financial instruments. This in turn seems to be the most reliable and the most cost-efficient way to ensure an efficient and consistent transaction reporting in line with regulatory expectations.

<ESMA\_QUESTION\_546>

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

<ESMA\_QUESTION\_547>

No. The answer to this question is closely linked to the answer of the different points highlighted above. Provided they are addressed a consistent way so as to provide investment firms with unambiguous reporting criteria, no specific difficulty is expected.

<ESMA\_QUESTION\_547>

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

<ESMA\_QUESTION\_548>

Yes, we believe that the reporting of Securities Financing Transactions should not be part of MiFID2/MiFIR as mentioned earlier, That being said, we do not believe that there are other activities that should not be deemed reportable.

<ESMA\_QUESTION\_548>

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

<ESMA\_QUESTION\_549>

Yes, we think that asset managers should have the ability to report directly the name of the funds for which they trade. Indeed, in some European jurisdictions, asset managers are not obliged to communicate to their brokers the allocation of their orders between the different funds they manage: They can allocate executed orders afterwards. This implies that brokers would not get the identity of the final clients to the orders they execute and that asset managers would have to report them instead.

In addition, ESMA should provide detailed guidance to trading venues that will have to transaction report on behalf of entities not subject to MiFIR. Attention should be paid on the fact that all the requested reportable information may not necessarily be available to trading venues having to transaction report on behalf of certain entities. More specifically, the two following instances should be considered:

-when a Regulated Market reports to its home regulator all transactions of their members, resulting in the home regulator to dispense those members to report these transactions (example of Euronext);

-when a trading venue proposes its members to transaction report for their account, provided the member provides the venue with all reportable data (as do certain other Regulated Markets).

<ESMA\_QUESTION\_549>

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

<ESMA\_QUESTION\_550>

A minima, ESMA should standardise the format of the reference data to be obtained from venues and in turn used in the reporting. We think that this should be all the more achievable since ESMA supervises them and since these data will feed ESMA golden source.

Field 18: Venue of execution:

We strongly advise that ESMA takes the opportunity to request that all EEA trading venues provide systematically their MIC in their execution files. Indeed, this information is often missing today resulting in firms having difficulties to identify and report the correct MIC.

Field 20: Counterparty identification code:

Where the transaction is executed on an anonymous order book, we strongly advise to populate the field with the MIC of the market (and not with the LEI of the CCP), as this appears to be the most natural choice and is the simplest solution for the industry.

Field 57: Instrument identification code:

How does ESMA envisage that firms report products for which a request for admission to trading has been made yet don't have an ISIN?

Field 83: Waiver flag:

Likewise, ESMA should demand that EEA trading venues convey systematically the value of waiver flag to facilitate its inclusion in investment firms’ Transaction reporting.

Field 91: Report Matching Number:

We would like to stress the following points:

Field taxonomy should be aligned on the one soon to be prescribed by the FSB for UTIs, USIs;

As for riskless principal trading, the Report Matching Number attributed to the “market side” will be independent to the one attributed to the “client side”

While we expect the EEA trading venues to provide their members with these numbers for all the executions made with them, we are afraid that trading venues outside the EEA may not be willing to systematically populate this field, in turn making it impossible for the market participants to agree on a unique number. For this reason, we suggest this number not to be compulsory in those instances;

As regards OTC transactions, while for transactions on OTC derivatives firms subject to EMIR have already agreed upon a process where the applicable UTI is exchanged on trade confirmation, we would like to stress that a process yielding to an equivalent result in terms of UTI exchange would have first to be agreed and implemented at industry level, which might result in sizeable work for the industry and the related organizations;

On another hand, we are afraid that the number of available fields to adequately report complex derivatives may be insufficient. As this is a complex issue, ESMA should elaborate very precise guidelines on how the many kinds of complex derivatives should be reported, bearing in mind that in view of the variety and the complexity of those derivatives and the fact that the reporting will probably never entail the necessary level of details to exhaustively report the characteristics of any kind of complex derivative, ESMA will have to opt for a sometimes imperfect reporting of at least transactions main characteristics. The industry would welcome a close dialogue with ESMA when elaborating those detailed standards, so that those transactions are reported the same way to all involved national regulators, even if in some instances imperfectly. This is all the more necessary as it is likely to entail significant development costs at investment firm level.

<ESMA\_QUESTION\_550>

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

<ESMA\_QUESTION\_551>

Yes, for the identification of natural persons, we would like to formulate the following proposals:

National regulators should work in close interaction with the investment firms they supervise in order to achieve a workable identification system.

There is already a simple identification system of natural persons, used across Europe: it is the identification of bankrupt persons (“interdits bancaires”), which is composed of person’s birth date in DDMMYY format followed by the 5 first letters of person’s last name. We strongly advise to use this system or a system similar to that one as it considerably simplifies the process for all parties. In any instance, the client identification should be permanent, i.e. not prone to change over time.

Reportable data for natural persons should be limited to the extent possible to this identification (i.e. not be comprised with other client data). In case of need, national regulators could request from an investment firm the details of a given client / of a given set of clients, or retrieve those data or some of them by themselves.

National regulators should work closely with the relevant national authorities in charge of personal data protection to ensure that the selected identifications numbers do not infringe or would not let investment firms infringe some injunctions of applicable personal data protection laws when transaction reporting. This difficulty is obviously compounded by existing banking secrecy laws in Europe.

The implementation of the reporting of natural person identification could be phased over time: At inception (in January 2017), client’s identification would be requested for all new clients being nationals/residents of the country of incorporation of the investment firm. One year later, this obligation would be extended to all existing nationals/residents of that country. In January 2019, it would be extended to all nationals/residents of EEA countries.

Investment firms should be subject to the reporting of clients’ identification on a best efforts basis, at least to start with. Indeed, at inception, one should not face a situation where banks could not accept orders from some clients or would be prevented from accepting them in case of a missing identification (notwithstanding the fact that banks should at any time abide by applicable KYC, AML, prevention of financial crime… obligations), as they may be detrimental to markets liquidity and orderly operation.

As for Legal Persons:

Likewise, one should not face a situation where banks would be prevented from accepting a client order in case of a missing LEI, at least at inception.

Going further, for legal persons without an LEI nor a BIC code, we do not believe that sufficiently standardised national codes enable to identify all persons with a reasonable level of reliability. For this reason, we think that for those legal persons, the reporting of an internal code is a more operational solution both for investment firms and for regulators.

Furthermore, in view of the incurred complexity of collecting, propagating and reporting natural person identification and details following the proposed framework, we question its proportionality to the expected benefit for regulators. It is likely that the information collected by regulators would not achieve a sufficient level of reliability enabling them not to rely on additional enquiries to their reporting firms, as they do today.

Based on ESMA current proposal, we would like to stress that MiFIR request to report final client’s identification – especially for natural persons - is likely to entail a huge change management process for all banking retail networks. Indeed, retail networks will have, not only to collect client’s identification number, which source and format will depend on client’s nationality, residence, … depending on each national regulator’s choice but also to populate these data in their systems and in turn convey them down to bank’s trade execution tools. This is further compounded by the fact that:

-National identification numbers chosen by national regulators may not be consistent from one regulator to the other (ranging from national social security number to national identity card number, authorization of residence number, passport number, etc.);

-Many of the identification numbers will evolve over time (for instance for national identity cards, authorizations of residence, passports …).

As a matter of fact, retail networks currently collect systematically sufficient client identification information, but this information is kept manually in client’s file. Furthermore, the collected identification information may be much more homogeneous than the currently considered identification numbers by the various national regulators and will for sure differ in many instances from those requested for MiFIR transaction reporting. The collection, registration, maintenance and conveyance between bank’s various information systems will thus result in tremendous changes in client relationship handling and data collection, and in information systems.

But the same type of concerns apply to banking secrecy laws in general, as for instance evidenced with the implementation of EMIR (where in many instances, banks have to collect their client’s prior authorisation to be able to report client’s name in EMIR report – notwithstanding instances where client’s prior authorisation is not legally binding according to the laws of client’s country of residence).

As regards the identification of legal persons, while we recognise the advantages expected from the widest possible usage of LEIs, one should not disregard the difficulties currently encountered by investment firms to collect their clients’ LEI, especially when the regulation requesting these LEIs does not apply directly to them. This is indeed evidenced with EMIR, where investment firms are in some instances confronted with blunt refusals from non-European clients to apply for an LEI. And here, we have again to deal with the same banking secrecy issues as those recalled above (again evidenced for EMIR reporting, where investment firms strive sometimes unsuccessfully to secure clients’ approval).

Furthermore, it is not clear whether, even in Europe, there is a legal obligation for clients of regulated firms to get an LEI.

In addition, the fact that LEIs have to be renewed on an annual basis already triggers situations where clients LEIs are not valid any longer, because the client has not renewed it in time.

<ESMA\_QUESTION\_551>

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

<ESMA\_QUESTION\_552>

We think that the identification of the trader should be simplified along the lines of our proposals listed in our answer to Q551.

<ESMA\_QUESTION\_552>

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

<ESMA\_QUESTION\_553>

Yes .<ESMA\_QUESTION\_553>

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

<ESMA\_QUESTION\_554>

We indeed think that in the case of a Direct Market Access (DMA) or of a Sponsored Access, since the order is directly inputted by the client in the order routing system, it is not relevant to report the identification of a trader of the investment firm. (In other words, the fields related to the identification of the trader who takes the decision should be left blank.) If the order routing system is an automaton, automaton identification will have to be reported for trade execution.

<ESMA\_QUESTION\_554>

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

<ESMA\_QUESTION\_555>

Yes, considering the points §76, §77 and §82.iii, we believe that this approach is appropriate shall it be authorized to identify the algorithms responsible for both the investment decision and the execution with the same identifier, where required.

<ESMA\_QUESTION\_555>

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

<ESMA\_QUESTION\_556>

Yes, the way waivers should be reported must be standardized by ESMA. Based on that, while the identification of the relevant waiver is practically possible, it will indeed entail significant evolution in information systems as virtually all order routing systems and all execution feedbacks from venues will have to be amended to include these additional information. These changes will in addition span over years since investment banks will be constrained by venues information systems releases calendars.

Furthermore, ESMA should demand that EEA trading venues convey systematically the value of waiver flag to facilitate its inclusion in investment firms’ Transaction reporting.

<ESMA\_QUESTION\_556>

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

<ESMA\_QUESTION\_557>

Yes. Nevertheless, we question the consistency of reporting short sale flags on transactions carried out by exempted activities under the Short Selling Regulation, since these activities are indeed exempted.

In addition, the value of the reported short sell flag should be determined based on trader’s book, not based on bank’s aggregate position. Indeed, as the transaction reporting is viewed by regulators as a privileged tool to enable them to detect possible market abuses, a short sell information relating to trader’s book seems much more relevant for that purpose than an information relating to the whole firm position. Furthermore, as the Short Selling Regulation already requests from firms to report their aggregate short sell positions, the additional reporting of short sell flags related to whole firm position would not provide regulators with much added value.

<ESMA\_QUESTION\_557>

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

<ESMA\_QUESTION\_558>

Option 1 is the most appropriate one.

That being said, investment firms should not be held accountable in the event a given client would not provide the value of the short sell flag for a given order. Indeed, banks should be subject to a best efforts obligation in collecting client’s value of the short sell flag.

<ESMA\_QUESTION\_558>

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

<ESMA\_QUESTION\_559>

Option 1 is the most appropriate one.

<ESMA\_QUESTION\_559>

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

<ESMA\_QUESTION\_560>

Yes, we agree with ESMA’s proposed approach in relation to reporting aggregated transactions.

<ESMA\_QUESTION\_560>

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

<ESMA\_QUESTION\_561>

No, not to our opinion.

<ESMA\_QUESTION\_561>

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

<ESMA\_QUESTION\_562>

Yes, we agree with ESMA’s proposed approach.

Now we would like to stress again the necessity for ESMA to maintain a golden source of the financial instruments eligible to the transaction reporting (or more precisely the financial instruments for which transactions on them or having them as underlying should be reported). Not doing this would result in each investment firm developing a costly “internal golden source”, yielding to inevitable discrepancies between those golden sources and to a general situation of over- or under-reporting by virtually all investment managers. This would in turn jeopardize the stability of the future reporting and regulators ability to exploit the reporting. This risk is further compounded by the significant enlargement of eligible financial instruments. Furthermore, the costs incurred by each investment firm developing their own golden source does not match the benefit incurred by the absence of a maintenance of a golden source by ESMA.

In view of all the trading venues being supervised by ESMA, we propose instead:

-that ESMA maintains a Golden Source listing all the financial instruments for which transactions on them or having them as underlying should be reported;

-that in case investment firms were to detect omissions in the Golden Source, they report their transactions on the missing instruments or having the missing instruments as underlying and they report immediately the discrepancy to ESMA.

Indeed, ESMA seems best placed to demand from the trading venues that they report to them with diligence all the new financial instruments. This in turn seems to be the most reliable and the most cost-efficient way to ensure an efficient and consistent transaction reporting in line with regulatory expectations.

<ESMA\_QUESTION\_562>

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

<ESMA\_QUESTION\_563>

We think that the third option is the more consistent and the more practical one.

<ESMA\_QUESTION\_563>

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

<ESMA\_QUESTION\_564>

We strongly support ESMA proposal that, should investment firm’s head office hold all the reportable information, it has the ability to make a unique reporting to its home regulator, the latter one dispatching the reporting to the concerned host regulators as the case may be.

<ESMA\_QUESTION\_564>

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

<ESMA\_QUESTION\_565>

No. We strongly support ESMA proposal that, should investment firm’s head office hold all the reportable information, it has the ability to make a unique reporting to its home regulator, the latter one dispatching the reporting to the concerned host regulators as the case may be.

Now, ESMA need to specify the detailed information the head office has to report in those instances.

<ESMA\_QUESTION\_565>

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

<ESMA\_QUESTION\_566>

Yes, the proposed list of criteria sufficient.

<ESMA\_QUESTION\_566>

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

<ESMA\_QUESTION\_567>

We support the xml format.

<ESMA\_QUESTION\_567>

Obligation to supply financial instrument reference data

##### Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?

<ESMA\_QUESTION\_568>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_568>

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

<ESMA\_QUESTION\_569>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_569>

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

<ESMA\_QUESTION\_570>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_570>

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

<ESMA\_QUESTION\_571>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_571>

##### What other aspects should ESMA consider when determining a suitable solution for the timeframes of the notifications? Please include in your response any foreseen technical limitations.

<ESMA\_QUESTION\_572>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_572>

##### Do you agree with the proposed fields? Do trading venues and investment firms have access to the specified reference data elements in order to populate the proposed fields?

<ESMA\_QUESTION\_573>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_573>

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

<ESMA\_QUESTION\_574>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_574>

##### For both MiFID and MAR (OTC) derivatives based on indexes are in scope. Therefore it could be helpful to publish a list of relevant indexes. Do you foresee any difficulties in providing reference data for indexes listed on your trading venue? Furthermore, what reference data could you provide on indexes?

<ESMA\_QUESTION\_575>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_575>

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

<ESMA\_QUESTION\_576>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_576>

##### What criteria would you consider appropriate to establish the RCA for instruments that are currently not covered by the RCA rule?

<ESMA\_QUESTION\_577>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_577>

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

Obligation to maintain records of orders

##### In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.

<ESMA\_QUESTION\_578>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_578>

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

<ESMA\_QUESTION\_579>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_579>

##### For those elements that would have to be harmonised under Option 2 or under Option 3, do you think industry standards/protocols could be utilised? Please elaborate.

<ESMA\_QUESTION\_580>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_580>

##### Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA\_QUESTION\_581>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_581>

##### Do you foresee any difficulties maintaining records of the Client IDs related with the orders submitted by their members/participants? If so, please elaborate.

<ESMA\_QUESTION\_582>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_582>

##### Are there any other solutions you would consider as appropriate to track clients’ order flows through member firms/participants of trading venues and to link orders and transactions coming from the same member firm/participant?

<ESMA\_QUESTION\_583>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_583>

##### Do you believe that this approach allows the order to be uniquely identified If not, please elaborate

<ESMA\_QUESTION\_584>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_584>

##### Do you foresee any difficulties with the implementation of this approach? Please elaborate

<ESMA\_QUESTION\_585>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_585>

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

<ESMA\_QUESTION\_586>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_586>

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

<ESMA\_QUESTION\_587>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_587>

##### Would the breakdown in the two categories of order types create major issues in terms of mapping of the orders by the Trading Venues and IT developments? Please elaborate

<ESMA\_QUESTION\_588>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_588>

##### Do you foresee any problems with the proposed approach?

<ESMA\_QUESTION\_589>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_589>

##### Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.

<ESMA\_QUESTION\_590>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_590>

##### Do you agree that standardised default time stamps regarding the date and time at which the order shall automatically and ultimately be removed from the order book relevantly supplements the validity period flags?

<ESMA\_QUESTION\_591>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_591>

##### Do venues use a priority number to determine execution priority or a combination of priority time stamp and sequence number?

<ESMA\_QUESTION\_592>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_592>

##### Do you foresee any difficulties with the three options described above? Please elaborate.

<ESMA\_QUESTION\_593>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_593>

##### Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.

<ESMA\_QUESTION\_594>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_594>

##### Are there any other type of events that should be considered?

<ESMA\_QUESTION\_595>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_595>

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

<ESMA\_QUESTION\_596>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_596>

##### Do you foresee any problems with the proposed approach? Do you consider any other alternative in order to inform about orders placed by market makers and other liquidity providers?

<ESMA\_QUESTION\_597>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_597>

##### Do you foresee any difficulties in generating a transaction ID code that links the order with the executed transaction that stems from that order in the information that has to be kept at the disposal of the CAs? Please elaborate.

<ESMA\_QUESTION\_598>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_598>

##### Do you foresee any difficulties with maintaining this information? Please elaborate.

<ESMA\_QUESTION\_599>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_599>

Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)[[3]](#footnote-4)

##### Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.

<ESMA\_QUESTION\_600>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_600>

##### Do you foresee any difficulties in complying with the proposed timeframe?

<ESMA\_QUESTION\_601>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_601>

Synchronisation of business clocks

##### Would you prefer a synchronisation at a national or at a pan-European level? Please elaborate. If you would prefer synchronisation to a single source, please indicate which would be the reference clock for those purposes.

<ESMA\_QUESTION\_602>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_602>

##### Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA\_QUESTION\_603>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_603>

##### Which would be the maximum divergence that should be permitted with respect to the reference clock? How often should any divergence be corrected?

<ESMA\_QUESTION\_604>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_604>

Post-trading issues

Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

##### What are your views generally on (1) the systems, procedures, arrangements supporting the flow of information to the CCP, (2) the operational process that should be in place to perform the transfer of margins, (3) the relevant parties involved these processes and the time required for each of the steps?

<ESMA\_QUESTION\_605>

**OTC Derivatives**

(1)The regulatory and the system, procedure, and arrangement frameworks should ensure as much certainty of clearing at execution as possible in order to reduce market participants’ credit and counterparty risks.

(2)The limitation of  credit and counterparty risks can be achieved by setting up an STP process starting at pre-trade. Pre-execution limit checks should be carried out, meaning that (i) where the counterparty is not clearing on its own behalf, the client’s limits with its appointed clearing broker are not exceeded and (ii) the clearing broker has posted sufficient margin at the CCP. The work conducted in the US on STP rules on pre-execution credit checks can be useful in that respect. Another way to mitigate credit and counterparty risks would be to extend upon strict conditions the current practice of credit facilities from CCPs to clearing members. In order to achieve workable solutions, a dialogue should be established between CCPs and market participants under ESMA umbrella.

(3)The relevant parties in these processes are the executing broker, the trading platform (e.g. OTF),  the clearing broker (sometimes the executing and clearing broker are one single entity) and the CCP. And sometimes the Middleware (e.g. MarketWire).

The timeframe for each of the steps should seek to minimize delays, while accommodating legitimate business processes such as trade allocation and suchlike.  Whatever the case, a CCP should not take longer than 1 minute from the submission of a trade for clearing to accept or reject the trade.

OTC derivative transactions should be traded pursuant to industry standard execution terms which are being currently developed (e.g. the FIA-ISDA Cleared Derivatives Execution Agreement recently published) or equivalent rules of trading venue rulebooks.  The treatment of rejected OTC derivative transactions is particularly important.

Two additional important remarks:

-There is need of an absolute clearable product certainty prior to execution. Hence, sufficient product granularity is required to achieve such certainty. A public list of clearable products should be maintained by ESMA. The same comments are being made in our response to ESMA Consultation Paper on the Clearing Obligation.

-Whenever possible, the execution and clearing architecture of Dodd-Frank in the US should be replicated as a significant number of market participants are already using that architecture.

**ETD**

Contrary to OTC markets, clearing in the ETD markets is largely STP. It is well established, highly automated and works properly. Hence, any change to the current framework would have to be carefully balanced with unintended consequences of such changes.  A number of issues (certainty of clearing at execution,  product clearing certainty, and consequences of rejected transactions) at stake in the OTC context are not relevant in the ETD one.

<ESMA\_QUESTION\_605>

##### In particular, who are currently responsible, in the ETD and OTC context, for obtaining the information required for clearing and for submitting the transaction to a CCP for clearing? Do you consider that anything should be changed in this respect? What are the current timeframes, in the ETD and OTC context, between the conclusion of the contract and the exchange of information required for clearing on one hand and on the other hand between the exchange of information and the submission of the transaction to the CPP?

<ESMA\_QUESTION\_606>

**OTC Derivatives**

Currently, the process between a self-clearing market participant and a counterparty who clears through a clearing broker can be described pursuant to the following four step approach:

The self-clearing market participant and the counterparty submit the details of the trade and of the clearing broker to the agreed CCP though a relevant MiddleWare.

After checking the self-clearing participant and clearing broker clearing limits, the agreed CCP sends a clearing request to the clearing broker.

The clearing broker checks the counterparty’s credit limits and accepts or rejects the trade for clearing.

After receiving the confirmation of acceptance of the trade by the clearing broker, the CCP clears the transaction.

Currently, there are no regulatory timing requirements with respect to OTC derivative clearing. Sometimes time-limits are stipulated in CCP rulebooks though. We are of the view that a quick and robust process from execution to clearing should be the rule. The setting up a true STP process from pre-execution time with proper credit limit checks should allow to set up such quick and robust process. The timeframe should not exceed the end of the trade date like in the US.

**ETD**

Contrary to the OTC derivative clearing context, the ETD clearing context is well established and it operates properly and timely.  Hence, any change to the current framework would have to be carefully balanced with unintended consequences of such changes.

Currently, the ETD clearing process can be described as follows:

Parties are bound by the exchange rules and the standard clearing documentation in place (e.g. FIA terms of business and give-up agreement documentation between executing and clearing broker).

Orders are matched (subject to validation) at the exchange and are automatically submitted to the CCPs.

The clearing broker is responsible for fulfilling margin calls made by the CCP.

There is always an alternate  clearing broker and hence there is always a clearing member to clear the trade.

<ESMA\_QUESTION\_606>

##### What are your views on the balance of these risks against the benefits of STP for the derivatives market and on the manner to mitigate such risks at the different levels of the clearing chain?

<ESMA\_QUESTION\_607>

The aim should  be to build an STP framework with sufficient mitigating measures at each level of the chain. As provided in our response to Q605, pre-execution limit checks and conditional credit facilities  should provide such mitigation of risks.    The process from execution to clearing should be short enough to not jeopardize the trade itself. It should not exceed the end of the trade date like in the US.

<ESMA\_QUESTION\_607>

##### When does the CM assume the responsibility of the transactions? At the time when the CCP accepts the transaction or at a different moment in time?

<ESMA\_QUESTION\_608>

**OTC Derivatives**

Generally, the CM assume responsibility for the transaction upon its acceptance of the trade in accordance with the relevant trading venue or CCP rulebook (i.e. after having performed the counterparty  credit limit checks).

**ETD**

A clearing member assume responsibility immediately upon execution by virtue of a back to back chain of contracts from client through an executing broker and clearing broker to a CCP.

<ESMA\_QUESTION\_608>

##### What are your views on how practicable it would be for CM to validate the transaction before their submission to the CCP? What would the CM require for this purpose and the timeframe required? How would this validation process fit with STP?

<ESMA\_QUESTION\_609>

OTC Derivatives

Yes, we think that a system of non-revocable pre-approval of the trade by a clearing broker before its submission to the CCP should be practicable subject to proper pre-trade credit checks (the US CFTC rules that a significant number of market participants have already to comply with are worth considering).

<ESMA\_QUESTION\_609>

##### What are your views on the manner to determine the timeframe for (1) the exchange of information required for clearing, (2) the submission of a transaction to the CCP, and the constraints and requirements to consider for parties involved in both the ETD and OTC contexts?

<ESMA\_QUESTION\_610>

See responses to Q605 & 606.

<ESMA\_QUESTION\_610>

##### What are your views on the systems, procedures, arrangements and timeframe for (1) the submission of a transaction to the CCP and (2) the acceptance or rejection of a transaction by the CCP in view of the operational process required for a strong product validation in the context of ETD and OTC? How should it compare with the current process and timeframe? Does the current practice envisage a product validation?

<ESMA\_QUESTION\_611>

See response to Q606.

<ESMA\_QUESTION\_611>

##### What should be the degree of flexibility for CM, its timeframe, and the characteristics of the systems, procedures and arrangements required to supporting that flexibility? How should it compare to the current practices and timeframe?

<ESMA\_QUESTION\_612>

See response to Q606.

<ESMA\_QUESTION\_612>

##### What are your views on the treatment of rejected transactions for transactions subject to the clearing requirement and those cleared on a voluntary basis? Do you agree that the framework should be set in advance?

<ESMA\_QUESTION\_613>

The industry shall have to use the cleared derivative execution agreements standards that have been published by CCPs such as LCH (LCH execution standard terms for client clearing) and ISDA/FIA (ISDA-FIA Cleared Derivatives Execution Agreement). These standard agreements provide the fallbacks in case of a rejection of a trade.

<ESMA\_QUESTION\_613>

Indirect Clearing Arrangements

##### Is there any reason for ESMA to adopt a different approach (1) from the one under EMIR, (2) for OTC and ETD? If so, please explain your reasons.

<ESMA\_QUESTION\_614>

We welcome the removal of the original proposal under EMIR pursuant to which all clearing members should be obliged to offer indirect clearing .

However, in relation to the requirements which remained for those who elected to offer indirect clearing, we think that EMIR level 1 allows more flexibility than those which are in the EMIR RTS.

<ESMA\_QUESTION\_614>

##### In your view, how should it compare with current practice?

<ESMA\_QUESTION\_615>

No comment.

<ESMA\_QUESTION\_615>

1. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-2)
2. Please see the description of Option 2 regarding tick sizes below. [↑](#footnote-ref-3)
3. Please note that this section has to be read in conjunction with the section on the “Record keeping and co-operation with national competent authorities” in this DP. [↑](#footnote-ref-4)