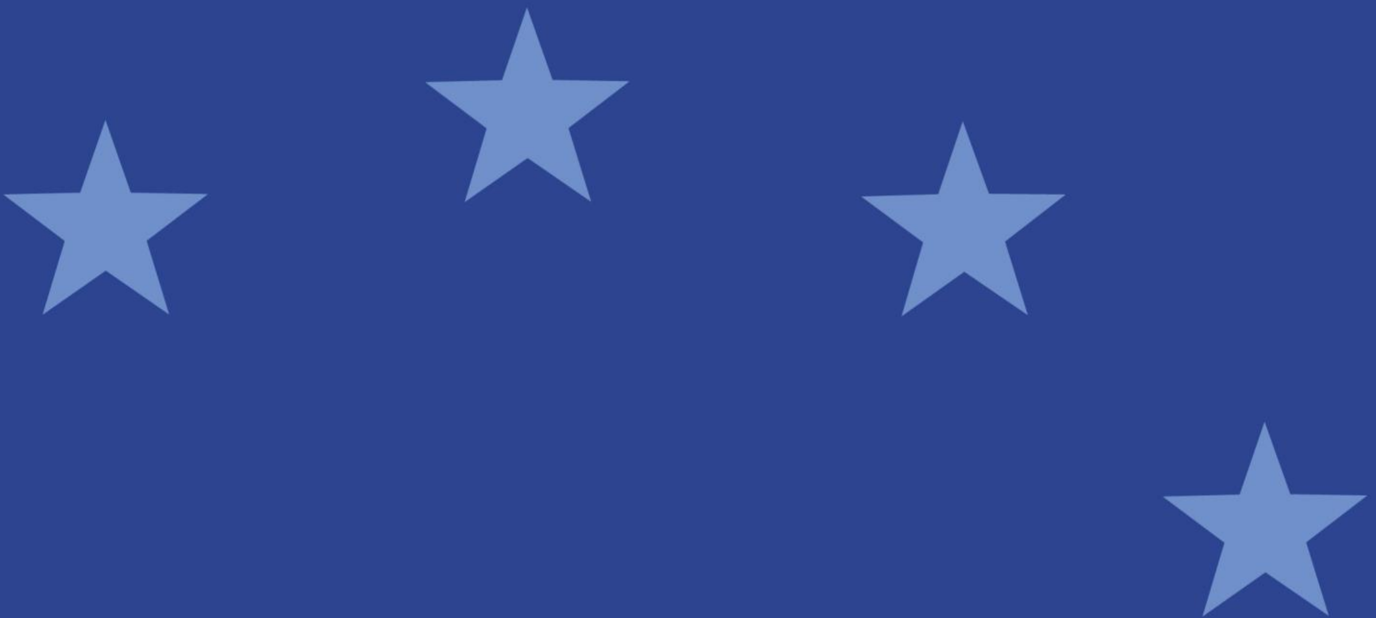
Reply form for the ESMA MiFID II/MiFIR Discussion Paper



22 May 2014

European Securities and
Markets Authority

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).

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:

i. use this form and send your responses in Word format;

ii. 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

iii. 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:

i. if they respond to the question stated;

ii. contain a clear rationale, including on any related costs and benefits; and

iii. 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 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 under the heading 'Disclaimer'.

1. Overview

2. Investor protection

2.1. Authorisation of investment firms

Q1: Do you agree that the existing work/standards set out in points 2 and 3 above provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?

<ESMA_QUESTION_1>
Yes.
<ESMA_QUESTION_1>

Q2: 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>

Q3: Do you consider that the list of information set out in point 6 Error! Reference source not found. **should be provided to Home State NCAs? If not, what other information should ESMA consider?**

<ESMA_QUESTION_3>
Yes.
<ESMA_QUESTION_3>

Q4: 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>
Not that we can determine.
<ESMA_QUESTION_4>

Q5: 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>

Q6: 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>
From a UK perspective, the list seems to correspond quite closely with existing FCA requirements
<ESMA_QUESTION_6>

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

Q7: 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>
We do agree that the CESR Protocol forms a good basis for technical standards under MiFID II, as long as suitable amendments are made to reflect the removal of passporting provisions for retail services and activities.

The standards may also need to be adjusted to reflect the possibility that member states will require third country firms to establish branches when providing services to retail or elective professionals and to include the equivalence test and details of how that will operate under MiFIR Article 46.7.

Article 34(3) of MiFID II seems at odds with paragraph 19 of the CESR paper.

We note the implication of Art 35(6) of MiFID II, that the host NCA has no option but to accept notification of branches being passported in to its member state.

Section B of the CESR paper would seem to be superfluous to the mandate provided to ESMA by MiFID II, as Art 35(11) does not mandate them to develop level two work on Art 35(8), which sets out the scope of Host NCA responsibilities.
<ESMA_QUESTION_7>

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

Q8: Do you agree data should be provided by all the execution venues as set out in footnote 24? If not, please state why not.

<ESMA_QUESTION_8>
Yes, we agree that Regulated Markets, MTFs, OTFs, SIs and other liquidity providers should provide data on the quality of the execution of transactions.

We note that MiFID II does not define the term ‘execution venue’, which presents some difficulties in interpretation. We would appreciate more analysis from ESMA as to why it has included the different types of entities within the scope of this requirement.
<ESMA_QUESTION_8>

Q9: If you think that the different types of venues should not publish exactly the same data, please specify how the data should be adapted in each case, and the reasons for each adjustment.

<ESMA_QUESTION_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_9>

Q10: 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>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_10>

Q11: 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>
The minimum annual publication should be adequate.
<ESMA_QUESTION_11>

Q12: 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>

Q13: Do you agree that trading venues should publish the data relating to the quality of execution with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.

<ESMA_QUESTION_13>
Yes. Standard reference periods and reporting details are vital to enable comparison between venues.

The specific reporting details may need to vary from one type of financial instrument to another, to remain relevant.
<ESMA_QUESTION_13>

Q14: 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>
The volume of orders received and executed would be useful information for market users. Market share should also be taken into account.

The VBBO in a single stock published at the same time would also be a good indicator.
<ESMA_QUESTION_14>

Q15: The venue execution quality reporting obligation is intended to apply to all MiFID instruments. Is this feasible and what differences in approach will be required for different instrument types?

<ESMA_QUESTION_15>
Yes, it is feasible, and we are not aware of any differences necessary.
<ESMA_QUESTION_15>

Q16: Do you consider that this requirement will generate any additional cost? If yes, could you specify in which areas and provide an estimation of these costs?

<ESMA_QUESTION_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_16>

Q17: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_17>

Q18: 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>
For Fixed Income instruments which may not be liquid there would be no index or value which could be used to determine a benchmark price. Thus a benchmark price may not be feasible for such instruments.
<ESMA_QUESTION_18>

Q19: 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>
The costs to be disclosed, and the manner of their disclosure, should reflect the different nature of the venues concerned, and the way in which costs are borne.
<ESMA_QUESTION_19>

Q20: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_20>

Q21: What would be the most appropriate way to measure the speed of execution in order to get useful data?

<ESMA_QUESTION_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_21>

Q22: 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>
The reliability and outages of each venue should be reported.
<ESMA_QUESTION_22>

Q23: 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>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_23>

Q24: Are there any adjustments that need to be made to the above execution quality metrics to accommodate different market microstructures?

<ESMA_QUESTION_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_24>

Q25: 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>

Q26: Please provide an estimate of the costs of production and publication of all of the above data and, the IT developments required? How could these costs be minimised?

<ESMA_QUESTION_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_26>

Q27: 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>
Given that execution venues would, presumably, pass any extra costs of production on to market users, increased frequency of data would inevitably increase review related costs for portfolio managers.
<ESMA_QUESTION_27>

Q28: Do you agree that investment firms should take the publication of the data envisaged in this Discussion Paper into consideration, in order to determine whether they represent a "material change"?

<ESMA_QUESTION_28>
Yes.
<ESMA_QUESTION_28>

2.4. Best execution - publication of data by investment firms

Q29: Do you agree that in order to allow clients to evaluate the quality of a firm's execution, any proposed standards should oblige the firm to give an appropriate picture of the venues and the different ways they execute an order?

<ESMA_QUESTION_29>
Yes
<ESMA_QUESTION_29>

Q30: Do you agree that when systematic internalisers, market makers, OTC negotiation or dealing on own account represent one of the five most important ways for the firm to execute clients' orders, they should be incorporated in the reporting obligations under Article 27(6) of MiFID II?

<ESMA_QUESTION_30>
Yes.
<ESMA_QUESTION_30>

Q31: 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>
Whether or not the orders have been traded directly by the firm or passed on to a third-party for execution, the reporting should include details of the market or venue traded on.

In the case of orders executed directly by the firm, the information should include how much of the order was transacted using internal proprietary flow or crossed internally as opposed to being traded as an agency order externally.
<ESMA_QUESTION_31>

Q32: 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>
The data should be aggregated to show all together. The directed orders should only need to be separated out if they represent a significant proportion of all orders, e.g. 10% or more.

Similarly with market versus limit orders, there is no need for any distinction on the part of the investment firm receiving the order – often instruction can change shape within the course of an order (especially when limits are being used or discussed), and therefore it could become over-complicated and unhelpful to separate information as to what part of the order was under different instruction. In the operation of the majority of orders, especially where a client has either made a decision regarding directing a part of the order, or placing a limit on the order or part of the order, there is undoubtedly more of a sharing of responsibility between client and investment firm in the provision of best execution. Under current interpretation, the burden of demonstrating best execution has tended to fall on the investment firm in these cases, especially if a commission is being paid by the client for an agency-type order, so it must be tempting for ESMA to try to distinguish more clearly exactly where the burden of responsibility must lie. However, the splitting of such data would not only be unhelpful for analysis, but would also begin to impede the relationship between investment firm and client, when the execution policies of both already set out to achieve the same goal of getting the best result for the client. Working together to provide best execution is the key to success rather than over-analysis of what parts of certain orders were under direction or limit.
<ESMA_QUESTION_32>

Q33: Do you think that the reporting data should separate retail clients from other types of clients? Do you think that this data should be publicly disclosed or only provided to the NCA (e.g. when requested to assess whether there is unfair discrimination between retail clients and other categories)? Is there a more useful way to categorise clients for these purposes?

<ESMA_QUESTION_33>
We do not see any need to justify the separation of retail and professional clients.

If such separation is to be required, then we would strongly argue that such reports should only be provided to the NCA.
<ESMA_QUESTION_33>

Q34: Do you agree that the investment firms should publish the data relating to their execution of orders with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.

<ESMA_QUESTION_34>
Yes. In order to maximise the usefulness of the information for investors, this is vital.
<ESMA_QUESTION_34>

Q35: What would be an acceptable delay for publication to provide the clients with useful data?

<ESMA_QUESTION_35>
One month seems reasonable.
<ESMA_QUESTION_35>

Q36: What format should the report take? Should there be any difference depending on the nature of the execution venues (MTF, OTF, Regulated Market, systematic internalisers, own account) and, if so, could you specify the precise data required for each type?

<ESMA_QUESTION_36>
We would recommend the use of industry standards in such reporting, specifically as regards identification of instrument, venue, currency, trade type, venue type and (where relevant) client
The report should be broken down by nature of execution venue, as proposed. The data should show the total number of orders received, the combined value over the period, and then sub-divided into individual transactions showing:

1) Instrument dealt
2) Execution venue used, and direct costs involved in using that venue (including rebates)
3) Average price of transaction
4) Arrival price
5) Relative performance to arrival price
6) Volume weighted average price (VWAP) over period of transaction
7) Relative performance to VWAP
8) Total volume reported to market over the period
9) Shares dealt as percentage of total volume reported
10) Percentage of shares crossed internally, if applicable

<ESMA_QUESTION_36>

Q37: Do you agree that it is proportionate to require investment firms to publish on an annual basis a summary based on their internal execution quality monitoring of their top five execution venues in terms of trading volumes, subject to certain minimum standards?

<ESMA_QUESTION_37>
Yes – an annual summary of execution quality monitoring of the top five venues by volume seems proportionate.
<ESMA_QUESTION_37>

Q38: Do you have views on how 'directed orders' covered by client specific instructions should be captured in the information on execution quality? Is it possible to disaggregate reporting for directed orders from those for which there are no specific instructions and, if so, what the most relevant criteria would be for this exercise?

<ESMA_QUESTION_38>

We do not think it necessary to separate any directed instruction from the rest – investment firm and client are meant to be working together to get the best results.
<ESMA_QUESTION_38>

Q39: 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>
The factors set out at paragraph 29 of Chapter 2.4 seem relevant, as long as these are applied proportionately. For example, if a firm executes only two orders in a class of financial instruments, or has only one retail customer, it may be proportionate to exclude these from the execution quality monitoring, and thus the summary of the monitoring.
<ESMA_QUESTION_39>

Q40: 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>
Many sophisticated buy-side firms already subscribe to external measurers of investment firms' execution quality, using the actual trading data provided quarterly. Although most TCA measurements do not take account of the distinction between directed and non-directed orders, or orders with limits imposed as opposed to market orders, there is yet sufficient data to analyse whether one investment firm is not generally as effective as another for specific instrument types and in particular markets.
<ESMA_QUESTION_40>

Q41: 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>
ESMA should try to limit the number of definitions of classes of instruments, and provide a harmonised classification. . Having too many classes of instruments on which to report would be detrimental to the efforts in gaining comparable and easily-understood reporting.
<ESMA_QUESTION_41>

Q42: 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>
They should be defined under the broadest possible terms: i.e. shares; foreign exchange; and others.<ESMA_QUESTION_42>

Q43: Is any additional data required (for instance, on number of trades or total value of orders routed)?

<ESMA_QUESTION_43>
The report should be broken down by nature of execution venue, as proposed. The data should show the total number of orders received, the combined value over the period, and then sub-divided down into individual transactions showing:

1) Shares dealt
2) Execution venue used, and direct costs involved in using that venue (incl. rebates)
3) Average price of transaction
4) Arrival price
5) Relative performance to arrival price
6) Volume weighted average price (VWAP) over period of transaction
7) Relative performance to VWAP
8) Total volume reported to market over the period
9) Shares dealt as percentage of total volume reported
10) Percentage of shares crossed internally, if applicable

<ESMA_QUESTION_43>

Q44: What information on conflicts of interest would be appropriate (inducements, capital links, payment for order flow, etc.)?

<ESMA_QUESTION_44>
It would be useful to clients to know if venues were associated with the firm, leading to the potential for conflicts of interest.

Clients would be particularly interested in the proportion of their trades sent to venues where the provision of liquidity results in a rebate to the investment firm. If the maker-taker arrangements are allowed to continue to exist, it is imperative that investment firms can justify a higher proportion of trades being sent to the venues that reward them directly for liquidity provision – these are rebates that are often not passed onto the client but retained by the investment firm, and therefore the correlation deserves more scrutiny.
<ESMA_QUESTION_44>

3. Transparency

3.1. Pre-trade transparency - Equities

Q45: 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>
Price, Volume and Buy or sell is the minimum content of an IOI, therefore to be an actionable IOI is must additionally include an explicit reference that it is actionable to avoid capturing legitimate (non-actionable) Indications of Interest. This may be evidenced if the price within the IOI is indicative or firm. If the price within the IOI is a firm price, it must have a new flag, 'ATC', which will demonstrate that the firm order stands behind the IOI and is actionable.

It is our opinion that the matching process used by crossing networks such as Liquidnet or ITG Posit does not constitute an actionable IOI, as the negotiation process does not involve a firm commitment to trade on a specific price or volume until the final phase of the negotiation; to make that sensitive information more public during any prior part of the negotiation process would be detrimental to both buyer and seller, and would not in any case improve the price discovery process for the market.
<ESMA_QUESTION_45>

Q46: Do you agree with ESMA's opinion that Table 1 of Annex II of Regulation 1287/2006 is still valid for shares traded on regulated markets and MTFs? Please provide reasons for your answer.

<ESMA_QUESTION_46>
Yes, this table is still valid for shares traded on a Regulated Market or MTF.
<ESMA_QUESTION_46>

Q47: Do you agree with ESMA's view that Table 1 of Annex II of Regulation 1287/2006 is appropriate for equity-like instruments traded on regulated markets and MTFs? Are there other trading systems ESMA should take into account for these instruments? Please provide reasons for your answer.

<ESMA_QUESTION_47>
Yes, this table is appropriate for equity-like instruments traded on a RM or MTF.
<ESMA_QUESTION_47>

Q48: 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>
No we do not consider ADT to be the appropriate measure for the Large In Scale (LIS) waiver.

We suggest basing the calculation on Average Daily Volume (ADV). This is a better representation of market activity for LIS than ADT.

Examples set out below:

Micro Cap:

Total Issuance: 100,000 shares
Using an ADV-model at 15% for a capitalisation of 100,000 will mean that all transactions moving at least 15,000 shares will be deemed large-in-scale.
Large Cap:
Total issuance for a large-cap: 100 million shares
Using an ADV-model at 25% for a capitalisation of 100 million will mean that all transactions moving at least 25 million shares will be deemed large-in-scale.

Such an ADV-model reflects the true objective of the large-in-scale waiver, that is, to protect investors executing large blocks. Moreover using a proportion rather than an absolute figure as the threshold will ensure that the waiver is dynamic and reflects the total issuance in that security.

Full table set out below:

	Micro-Cap	**Small-Cap**	**Mid-Cap**	**Large-Cap**
ADV	0 - 100,000	100,001 - 500,000	500,001 - 1 million	1 million +
LiS threshold	15%	20%	22.50%	25%

The proportions should be re-calibrated every six-months.
<ESMA_QUESTION_48>

Q49: 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>
We do not agree. We would instead recommend that ESMA base its analysis and subsequent recommendations on the broader set of metrics related to ETF trading:

- Visible "on screen" depth – or the liquidity that is traded visibly on exchange - is one element of secondary market liquidity. Market makers publicly display only a fraction of their true willing-ness to provide liquidity.

- Reserve or contingent liquidity is an important element of secondary market liquidity and may be sourced through relationships with market makers.

- The "true" liquidity of an ETF is limited only by the underlying basket liquidity.

In Europe, trade size on exchange has steadily fallen since MIFID I, OTC volumes for ETFs are currently unreported and that reserve volume is substantial and will indicate far larger trade sizes.

The most appropriate view of liquidity should be based upon the underlying securities held by the ETF.
<ESMA_QUESTION_49>

Q50: Do you think there is merit in creating a new ADT class of 0 to €100,000 with an adequate new large in scale threshold and a new ADT class of €100,000 to €500,000? At what level should the thresholds be set? Please provide reasons for your answer.

<ESMA_QUESTION_50>
Please see our answer to Q48
<ESMA_QUESTION_50>

Q51: Do you think there is merit in creating new ADT classes of €1 to €5m and €5 to €25m? At what level should the thresholds be set? Please provide reasons for your answer.

<ESMA_QUESTION_51>
Yes there is merit to creating greater granularity of the bandings.
<ESMA_QUESTION_51>

Q52: Do you think there is merit in creating a new ADT class for 'super-liquid' shares with an ADT in excess of €100m and a new class of €50m to €100m? At what level should the thresholds be set?

<ESMA_QUESTION_52>
Yes we support this proposal.
<ESMA_QUESTION_52>

Q53: What comments do you have in respect of the new large in scale transparency thresholds for shares proposed by ESMA?

<ESMA_QUESTION_53>
IMA is supportive of the objective that thresholds should be set at a level which recognises the purpose of the LIS threshold is to provide protection from market impact.

Please see our answer to Q48
<ESMA_QUESTION_53>

Q54: 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>
Please see our answer to Q48.
<ESMA_QUESTION_54>

Q55: Which is your preferred scenario? Would you calibrate the ADT classes differently? Please provide reasons for your answers.

<ESMA_QUESTION_55>
Please see our answer to Q48.
<ESMA_QUESTION_55>

Q56: 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>
Yes, as it would make the rules easier to understand and comply with.
<ESMA_QUESTION_56>

Q57: 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>
Please see our answer to Q48.
<ESMA_QUESTION_57>

Q58: 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>
For ETFs we believe that there should be a review of large-in-scale thresholds within two years, at least initially. The improved transparency brought about by the implementation of MIFIR will require a review of trading activity in order to establish whether thresholds are appropriate.

ESMAs analysis has only looked at on exchange volumes. In Europe, trade size on exchange has steadily fallen since MIFID I, OTC volumes for ETFs are currently unreported and that reserve volume is substantial and will indicate far larger trade sizes. It will be important to assess potential trading patterns after implementation.
<ESMA_QUESTION_58>

Q59: 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>
From the liquidity analysis conducted by us on a regular basis it is obvious that the market does have seasonal peaks and troughs – to perform the calculation of each financial instrument based on data of less than a full year would give rise to more frequent changes based on seasonality. A quarterly calculation based on the previous 12 month rolling averages would seem to be the most logical route.
<ESMA_QUESTION_59>

Q60: Do you agree with ESMA's opinion that stubs should become transparent once they are a certain percentage below the large in scale thresholds? If yes, at what percentage would you set the transparency threshold for large in scale stubs? Please provide reasons to support your answer.

<ESMA_QUESTION_60>
No, this adds unnecessary complexity, hindering investors ability to execute, investors rely on the protection of the whole order (including stub), and is also contingent on where LIS thresholds are set. It is, however, likely that the cost to adjust systems at venues and for market participants to take account of such a new rule would be massively disproportionate to any marginal transparency benefit to the broader market delivered by such a rule.

We feel strongly that stubs should remain protected by the large in scale waiver. It is often uncertain exactly how much of a large-in-scale order is going to get executed until immediately after the trade takes place. If the stub is immediately made public, it gives sensitive trading information to market participants who take advantage of such information concerning large order direction, thus damaging the protection that has been identified as necessary for large-in-scale traders. Follow-up orders are not an "open way to

circumvent the transparency regime" by adding volume to reach the threshold, but often a genuine desire to increase the potential crossing opportunity of a very large order that has been sent in smaller increments, even though each part is still large-in-scale. Protection of the stub is therefore just as important as protection of the original large-in-scale order, and forms the corner-stone of our belief that large institutional order flow must not be forced to be broken up into smaller, more visible transactions, with higher implicit and explicit transaction costs.
<ESMA_QUESTION_60>

Q61: Do you agree with ESMA's view that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant financial instrument? Do you agree with an annual review of the most relevant market in terms of liquidity? Please give reasons for your answer.

<ESMA_QUESTION_61>
No. ESMA's proposal will create a significant issue for Asset Managers in relation to the Reference Price Waiver (RPW). Whilst one trading venue may have the highest turnover for a specific instrument, it may not necessarily offer the best the price at any given point in time. As such this creates an issue for asset managers in demonstrating best execution as the transaction will be executed in reference to the 'most relevant market' but not the best price.

We acknowledge that this is a MiFID level 1 issue however this proposal will cause significant issues for asset managers and we would welcome clarification from ESMA on how it can be resolved.
<ESMA_QUESTION_61>

Q62: Do you agree with ESMA's view on the different ways the member or participant of a trading venue can execute a negotiated trade? Please give reasons for your answer.

<ESMA_QUESTION_62>
Yes.
<ESMA_QUESTION_62>

Q63: Do you agree that the proposed list of transactions are subject to conditions other than the current market price and do not contribute to the price formation process? Do you think that there are other transactions which are subject to conditions other than the current market price that should be added to the list? Please provide reasons for your answer.

<ESMA_QUESTION_63>
We would echo ESMA's acknowledgment generally in this Discussion Paper that future implementing measures should not limit the evolution in order types and would seek that ESMA add a final category to this list that allows for this circumstance.
<ESMA_QUESTION_63>

Q64: 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 consider that these are the two main groups.
<ESMA_QUESTION_64>

Q65: 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 we agree with ESMA's assessment.
<ESMA_QUESTION_65>

Q66: Are there other factors that need to be taken into consideration for equity-like instruments? Please provide reasons for your answer.

<ESMA_QUESTION_66>
No.
<ESMA_QUESTION_66>

Q67: 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 support this proposal.
<ESMA_QUESTION_67>

Q68: Are there additional factors that need to be taken into consideration for equity-like instruments?

<ESMA_QUESTION_68>
No.
<ESMA_QUESTION_68>

Q69: Which minimum overall sizes for iceberg orders are currently employed in the markets you use and how are those minimum sizes determined?

<ESMA_QUESTION_69>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_69>

Q70: Which minimum sizes and which methods for determining them should be prescribed via implementing measures? To what level of detail should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?

<ESMA_QUESTION_70>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_70>

Q71: Which methods for determining the individual peak sizes of iceberg orders are currently employed in European markets?

<ESMA_QUESTION_71>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_71>

Q72: 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>
We would prefer to see a consistent approach employed by and across trading platforms for determining peaks that allows users flexibility.
<ESMA_QUESTION_72>

Q73: Are there additional factors that need to be taken into consideration for equity-like instruments?

<ESMA_QUESTION_73>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_73>

3.2. Post-trade transparency - Equities

Q74: 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 the content remains valid for shares and equity-like instruments.
<ESMA_QUESTION_74>

Q75: Do you think that any new field(s) should be considered? If yes, which other information should be disclosed?

<ESMA_QUESTION_75>
ESMA should consider the adoption of an indicator that signals a deferred publication of the trade, and under what conditions that deferment took place.

<ESMA_QUESTION_75>

Q76: 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>
The current regime should be maintained. Only "SI" is required as an identifier by MiFID. Again the distinction must be made between a multilateral discretionary venue and a bilateral trading mechanism which involves the proprietary positions of the investment firm. Publishing the SI's identity would expose the risk position of the investment firm and impact asset manager's ability to carry out very large trades.
<ESMA_QUESTION_76>

Q77: Do you agree with the proposed list of identifiers? Please provide reasons for your answer.

<ESMA_QUESTION_77>
Yes, we agree with these flags, and think they would be useful in supporting the analysis of best execution, and in defining the trades to be used in the double volume cap calculations.
<ESMA_QUESTION_77>

Q78: Do you think that specific flags for equity-like instruments should be envisaged? Please justify your answer.

<ESMA_QUESTION_78>
No, these are covered by the already proposed identifiers
<ESMA_QUESTION_78>

Q79: 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 support the use of the 'L' flag in conjunction with the delayed publication discussed later in this paper.
<ESMA_QUESTION_79>

Q80: 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>
IMA supports this proposal.
<ESMA_QUESTION_80>

Q81: 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>
We believe, that a separate and explicit 'deferred publication' indicator would be useful.
<ESMA_QUESTION_81>

Q82: Do you agree with the definition of "normal trading hours" given above?

<ESMA_QUESTION_82>
Yes subject to normal trading hours being the continuous trading hours period and not inclusive of auctions.
<ESMA_QUESTION_82>

Q83: 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>
We would prefer that the existing 3-minute allowance is maintained to cater for manual activity but that the requirement to report the majority of trades "as close to real time as possible" is enforced effectively to bring average reporting times down.
<ESMA_QUESTION_83>

Q84: 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 be subject to the condition that the transaction is between an investment firm dealing on own account and a client of the firm.
The exemption from immediate publication was created to allow investment firms time to unwind their risk positions in an orderly manner; without that protection, investment firms will be less keen to make risk prices to clients in the facilitation of business. It is our opinion that only client facilitation risk trades should be exempted from immediate publication.
<ESMA_QUESTION_84>

Q85: 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>
Our members prefer option B. As outlined by ESMA the additional delay to defer publication until noon of T+1 is necessary to avoid negative consequences for firms executing large trades late in the day.

We feel that there is little difference between publishing a trade on the close of business and at the opening the following day – it leaves the investment firm no time in which to unwind his risk in a live trading environment against natural liquidity in the instrument. Noon the following day at least gives the investment firm a few more hours to unwind the risk, and would not deter the investment firm completely from making a risk price after 15:00.
<ESMA_QUESTION_85>

Q86: 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>
Thresholds should be harmonised relative to the ADT bands and further allowance be made at the lower levels in order that SME stocks are not disproportionately disadvantaged.
<ESMA_QUESTION_86>

Q87: Do you consider the thresholds proposed as appropriate for SME shares?

<ESMA_QUESTION_87>
The market impact for a trade representing a given percentage of ADT is smaller as ADT increases. Consequently, the greatest delays are appropriate in the least liquid stocks where market impact is greatest.
<ESMA_QUESTION_87>

Q88: How frequently should the large in scale table be reviewed? Please provide reasons for your answer

<ESMA_QUESTION_88>
We support the annual review of large in scale.
<ESMA_QUESTION_88>

Q89: Do you have concerns regarding deferred publication occurring at the end of the trading day, during the closing auction period?

<ESMA_QUESTION_89>
We prefer Option B which provides for deferred publication until noon the following day for the reason that such publication would have a price distorting effect during the closing auction period.
<ESMA_QUESTION_89>

Q90: 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>
We do not agree with ESMA that ADT classes are appropriate to determine pre and post trade transparency regimes.

ESMA has used trade data from the major stock exchanges to determine what a "large" ETF trade is. This is problematic because trade size on exchange has steadily fallen since MIFID I. Furthermore, OTC volumes for ETFs are currently unreported and that reserve volume is substantial and will indicate far larger trade sizes. The result of ESMA's analysis appears to indicate a large trade size of ~€1million. This will result in the vast majority of trades by volume being delayed. As indicated in Question 49 the "true" liquidity of an ETF is limited only by the underlying basket liquidity. ETFs with the same liquid underlying basket should have the same transparency regime applied.

Post trade transparency in the ETF market is likely to be a less effective tool for price discovery if reporting is delayed for the majority of traded volume. As a point of reference there is no delayed reporting or large in scale waiver for ETFs traded on US markets (both on and off exchange).

In our view, post-trade reporting on the consolidated tape is the key to inform trade volumes and a real time price discovery tool. The use of Average Daily Volume is not appropriate to determine large-in-scale waivers since ETF's are able to support far larger transactions than the ADV would indicate.

The metric used for delay should be specific to the ETF market and easier to understand from that which is currently proposed. We would propose ESMA adopts one of the two following options:

Option 1: All ETF trades reported real time (currently the situation in the US)
Option 2: Delayed reporting based on absolute value triggers

- < €10mn - Real time reporting;
- €10m - €50mn - 60mins;
- > €50mn - End of Day.

We would strongly recommend that LIS measures for ETF markets should be reviewed at a reasonable time after implementation as this legislation is being drafted using imperfect data.
<ESMA_QUESTION_90>

3.3. Systematic Internaliser Regime - Equities

Q91: Do you support maintaining the existing definition of quotes reflecting prevailing market conditions? Please provide reasons for your answer.

<ESMA_QUESTION_91>
Yes, we support this proposal.
<ESMA_QUESTION_91>

Q92: Do you support maintaining the existing table for the calculation of the standard market size? If not, which of the above options do you believe provides the best trade-off between maintaining a sufficient level of transparency and ensuring that obligations for systematic internalisers remain reasonable and proportionate? Please provide reasons for your answer.

<ESMA_QUESTION_92>
We are concerned that all of the options presented, and particularly Option B would seem to be inconsistent with the calculation of and the direction of average trade sizes. The more favourable option would be option A to reduce the lowest band to 5000, because this better reflects and acknowledges the direction of average trade sizes. We are of the view that this strikes the appropriate balance on transparency demonstrated by ESMA's own data reflecting a level of visibility more than sufficient for efficient price formation.
<ESMA_QUESTION_92>

Q93: Do you agree with the proposal to set the standard market size for depositary receipts at the same level as for shares? Please provide reasons for your answer.

<ESMA_QUESTION_93>
Yes, we support this proposal.
<ESMA_QUESTION_93>

Q94: 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>
From an ETF point of view we believe that there are clear benefits in aligning with equity market structure wherever possible. That said in the absence of a trading obligation for ETFs we are concerned about the unintended consequences of applying standards to the SI regime which may favour OTC trading over trading on regulated trading venues. We would therefore urge ESMA to provide a level of flexibility in setting standard market sizes and the consequent minimum quotation sizes.

Table 14 appears to indicate that only equity trading patterns have been analysed. An analysis of ETF trading patterns including unreported OTC volumes would be necessary to draw firm conclusions around the standard market size.

Using the equity table which is based on average transaction values would treat different funds with the same underlying securities in a different fashion. As mentioned in Question 49, the main indicator of liquidity and trading cost of an ETF is the liquidity of the underlying security. Our preference would be to have a standard market size across all ETFs. We believe investors are best served by an ETF market structure that recognises that all ETFs are designed to be liquid and that minimum quotation limits for SI's should be implemented to ensure that trades do not end up being executed by default on an OTC basis.
<ESMA_QUESTION_94>

3.4. Trading obligation for shares (Article 23, MiFIR)

Q95: 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>
Article 23, MiFIR sets out the trading obligation for shares:

1. An investment firm *shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent in accordance with Article 25(4)(a) of Directive…/…/EU, as appropriate, under their characteristics include that they:*

   a. *Are non-systematic, ad-hoc, irregular and infrequent; or*

   b. *Are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.*

2. *An investment firm that operates an internal matching system which executes client order in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multi-lateral basis must ensure it is authorised as an MTF under Directive 2014/…/EU and comply with all relevant provisions pertaining to such authorisations.*

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As stated in the Discussion paper, there are eight exemptions envisaged from the obligation; four that fall under *non-addressable liquidity trades* and four that fall under *trades determined by factors other than the current valuation of the share*.

It is our view that internal crossing within an asset manager benefits from the following proposed exemption:

An investment firm providing portfolio management services transfers the beneficial ownership of a share from one fund to another or to the fund itself, acting on behalf of both buyer and seller as asset manager, and where consequently, no other investment fund is involved. The investment firm shall be able to demonstrate that such trade is made with the sole intention of providing technical adjustments.

Concerns

Some asset managers operate allocation algorithms (such as internal crossing engines) in order to efficiently internally cross between funds. These allocation algorithms check if accounts are permitted to internally cross. It is the asset manager who makes the final call on whether to internally cross. This process is not automatic and therefore, does not meet the definition of a 'system'.

Such crosses are infrequent, controlled and asset managers are able to demonstrate that they fulfil their fiduciary and best execution requirements.

The very fact of an asset manager owning an allocation algorithm or having systems and controls in place to internally cross is irrelevant to determining whether these transactions are carried out on a non-systematic, ad-hoc, irregular and infrequent basis.

The definition currently proposed by ESMA for non-systematic, ad-hoc irregular and infrequent (i.e. activity that does not meet the frequency and systematic thresholds set for systematic internalisers – between 0.25% and 0.5%) is not the correct measurement as internal crossing by an asset manager does not meet the definition of an SI. It neither meets the definition of an MTF as the asset manager has the discretion on whether to internally cross. Allocation algorithms simply highlight that an internal crossing opportunity exists but it does not automatically cross the buying and selling interests.

Moreover, our ability to ascertain best execution for our clients is further hampered by having to pay commission (or at the very least an administration fee) and introduces counterparty credit risk to our clients.

Artificially forcing previously internally crossed transactions onto a public venue, would increase costs for our clients and alter the manner in which investors look at illiquid securities.

For international asset managers, restrictions on internal crossing may hamper their ability to balance their obligations under rule 17a-7 of the Investment Company Act of 1940 in the US. Thus, they may have an extra-territorial reach that was neither considered nor expected at Level-I.

Finally, since these trades are perfectly matched, they have no impact on public price formation.

Solution

For the purposes of the obligation, (particularly when defining non-systematic, ad-hoc, irregular and infrequent) the actual volume being internally crossed compared to the total daily volume of the firm is a more appropriate measure.

As such, we propose a threshold of 2% of the total daily volume of the firm.

Transition management trades, where the beneficial ownership is not changed, will be exempt from the threshold.

In order to benefit from the exemption therefore, the asset manager will need to demonstrate the following requirements:

1. Both client mandates of the buyer and seller allow for internal crossing;
2. The internal crossing is to the benefit of both clients when compared to routing the transaction to a broker;
3. The transaction does not contribute to the price discovery process;
4. The transaction is made with the sole intention of transferring the beneficial ownership of a share from one fund to another fund; and
5. The total volume of trades internally crossed by the firm does not go above 2% of the total volume transacted by the firm.

<ESMA_QUESTION_95>

Q96: 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>
Please see our response to Q95.
<ESMA_QUESTION_96>

Q97: 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 support this proposal.
<ESMA_QUESTION_97>

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

Q98: Do you agree with the proposed description of structured finance products? If not, please provide arguments and suggestions for an alternative.

<ESMA_QUESTION_98>

Paragraph 20 of section 3.3 of the DP describes structured finance products as follows: structured finance products are defined in MiFIR Article 2(1)(28) as "*those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets*".

Whilst we support this definition in principle, it is essential to clarify that the purpose of the security to transfer of credit risk should not be a test for the definition of structure finance products but more of a feature. There are different levels of risk transfer in securitisation deals and no security has 100% credit risk transfer.

We agree with the ESMA's approach to limit the category of Structured Finance Products to securitised debt (as provided in MiFIR Article 2(1)(28). Further, we also agree with CESR's guidance. However, it

should be noted that Collateralised Debt Obligations (CDOs) should be classed as re-securitisations. Further, Asset Backed Commercial Paper (ABCPs) should not fall within Structured Finance Products. Rather, they should fall within the definition of Money Market Instruments.

A securitisation, as set out in MiFIR Article 2(1)(8), depends on the cash flow of assets. ABCPs are based on underlying assets that are supported by liquidity and credit enhancement provided by a sponsor bank (a liquidity line); therefore, ABCPs are not dependent on the underlying assets in the same way as a standard Asset Backed Securities (ABS) but is more heavily dependent on the sponsor bank.

We agree that there are challenges to distinguishing securitised debt from standard corporates to the extent that they are both transferable securities and analysis of the prospectus would be required to make a categorisation determination.

Ultimately, we do not believe that there should be a different treatment of structured finance products and other bonds.
<ESMA_QUESTION_98>

Q99: 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 – we believe that they should be treated in the same way. Separating Structured Finance Products (SFPs) from other fixed income cash products would introduce further complexity.
<ESMA_QUESTION_99>

Q100: Do you agree with the proposed explanation for the various types of transferable securities that should be treated as derivatives for pre-trade and post trade transparency? If not, please provide arguments and suggestions for an alternative.

<ESMA_QUESTION_100>
Yes we agree.
<ESMA_QUESTION_100>

Q101: Do you agree with ESMA's proposal that for transparency purposes market operators and investment firms operating a trading venue should assume responsibility for determining to which MiFIR category the non-equity financial instruments which they intend to introduce on their trading venue belong and for providing their competent authorities and the market with this information before trading begins?

<ESMA_QUESTION_101>
We believe that categorisation of instruments, as with reference data, should be centralised and should not be undertaken at investment firm level. We do not believe it is appropriate for operators of venues or investment firms operating venues to be responsible for categorising instruments. The same instrument can trade on multiple venues. If venues were responsible for categorising the instrument, the exercise would duplicative, which would create slow processing when the information is centralised and would also lead to many inconsistencies. Even if there was a specific methodology that is applied, there is likely to be considerable inconsistencies across venues. The difficulties in the Trade Repositories data provide an example of this.

One exercise of the required categorisation is the differentiation of instruments into different asset classes. Such a categorisation involves a certain level of subjectivity and interpretation because the asset class of an instrument is not set out in the prospectus of that instrument. For example, there are certain type of corporate debt that have senior and subordinated tranches but would not be considered a structured finance product.

This inconsistency in categorisation will result in national authorities collecting different information on the same instrument that will need to be corrected for and then consolidated. This will slow rather than speed up the process. It must not be forgotten that Systematic Internalisers (SIs), investment firms trading Over The Counter (OTC) and Approved Publication Arrangements (APAs) will need to use the classifications.

If ESMA intends for certain standards of classification to be used (e.g. CFI indicators), we suggest that the reference data required for the classification and the classification process is collected and undertaken in a centralised manner (either by national authorities or ESMA). The list should then be maintained by a centralised calibrator (ESMA or an utility).

It is our view that there will unintended consequences if venues are responsible for categorisation prior to trading. An instrument may, by error fall within the incorrect category and as a result, be subject to the wrong transparency regime.

We propose that once an instrument materially trades on a venue, the venue sends the International Securities Identification Number (ISIN) to the NCA/ESMA, which in turn sources reference data centrally, applies the categorisation and makes that information available to the market.

We also propose that ESMA produces a clear methodology for classifying instruments – which should be based on the prospectus of the instrument rather than uncodified market standards.
<ESMA_QUESTION_101>

Q102: Do you agree with the definitions listed and proposed by ESMA? If not, please provide alternatives.

<ESMA_QUESTION_102>
Yes we agree.
<ESMA_QUESTION_102>

3.6. Liquid market definition for non-equity financial instruments

Q103: 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>
Average frequency of trade - component

We agree with ESMA's preferred options regarding the components for calculating liquidity. To ensure a simple and implementable approach, we support an approach based on absolute numbers rather than using a relative concept.

We recommend Option 1: the number of transactions in a given time period is a sufficient parameter for liquidity if the calibration is sufficiently dynamic.

Time period for calculation

For the time period, we propose a **monthly** calibration. We recommend that a monthly retrospective calibration will be sufficiently dynamic to detect changes in liquidity but will ensure the model is not too volatile. We agree with ESMA that defining the time period is critical and that the longer the time period, the higher the risk of skewed distribution. Further, we acknowledge that a shorter the time period may introduce more operational complexity; however, this is mitigated if a simple operational structure is introduced, that is efficiently automated.

i. A yearly calibration is inappropriate for fixed income bonds

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

Currently, a yearly calibration is used for equities. Even for equities, where instruments do not mature and where there are not multiple securities issued per issuer, a yearly calibration for equities is suboptimal. For fixed income, a yearly calibration is not workable.

Fixed income securities mature meaning that liquidity is more dynamic

One of the reasons that a yearly calibration for fixed income instruments is inappropriate is that they mature. Given that fixed income instruments have maturity dates, the liquidity of these instruments changes more dynamically over time. For example, one of the most notable features of bonds is that trading activity tends to be much greater within the first few months following issuance.

An annual calibration would be meaningless for shorter term instruments

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

There is a large and significant error margin in using yearly frequency calculations

Monthly Calibration

We recommend that a monthly calibration is more appropriate for fixed income instruments. The time period needs to be sufficiently dynamic to capture changes in trading activity but not too volatile – we believe a monthly calibration would be the best fit for achieving this. We acknowledge the operational challenges involved in implementing a more dynamic calibration; however, we stress the importance of achieving the right periodicity from an economic perspective. The liquidity and financial stability of the markets should not be sacrificed at the expense of a lack of investment by regulators in the necessary infrastructure required for the operationalisation of MiFID. We note that when transparency requirements were introduced in the US, there was a significant build out of infrastructure by US regulators to ensure a robust operational system.

Minimum number of trading days

If the calibration is sufficiently dynamic, the minimum number of trading days is not a necessary parameter. For example, the total number of trades in a month is a good estimate of the average daily turnover in a month. We would recommend ESMA should adopt the least number of parameters necessary so as to reduce the complexity of the regime and duplicative parameters. However, if ESMA decides on a long and distortive period, we believe that the minimum number of trading days is a critical parameter and should be adopted.

The calculation of the total number of trades

For the calculation of average frequency of transactions, it is essential that block level trades are used rather than allocations. Many trades in fixed income are matched. This means that once the trade is executed, it goes through an affirmation, confirmation and allocation process.

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

Currently, under transaction reporting, there is a mixture of block-level and allocation level reporting, which produces a distorted and inconsistent picture of trading in the fixed income market. We strongly recommend that this is corrected under MiFID II because of the wider implications of the reporting/publication for calibration purposes.
<ESMA_QUESTION_103>

Q104: Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA_QUESTION_104>
We agree with ESMA that Option 2 is more appropriate for the fixed income market: for the average size to be calculated based on the total turnover over a period divided by the number of trading days in that time period (ADT).

Average value of transactions (AVT) is not meaningful for the fixed income markets because there is no standard market size.
<ESMA_QUESTION_104>

Q105: Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA_QUESTION_105>

Number of market participants should not be a factor in the determination of liquidity for fixed income

Whilst we generally agree that there is a relationship between number of market participants and liquidity, we believe that it should not be incorporated as a parameter for fixed income products for the following reasons:

- ***Number of market participants does not necessarily correlate to liquidity*** – even though there is some relationship between liquidity and number of market participants, a market may have many participants but may nonetheless be illiquid in practice and vice versa. We recommend that it is not a key indicator.

- ***It will add additional unnecessary complexity*** – we recommend that including market participants would introduce unnecessary complexity both from a theoretical and an operational standpoint. We recommend that trading frequency and ADT (together with some categorisation) are sufficient parameters for determining liquidity. Other parameters would be unnecessary. Further, the number of market participants is not a parameter that can be easily monitored and calculated. Every type of participant would need to be distinguished, monitored and aggregated, which would be highly operationally intensive.

- ***There is no legal requirement under MiFID/R to incorporate market participants as a parameter*** – we suggest that Article 2 MiFIR/MiFID does not require number of market participants to be included in the calculation of liquidity but for market participants to be "considered"

in the determination of liquidity, such that following consideration if may not be a resultant parameter for the calculation of liquidity. In the fixed income market, as mentioned above, the number of market participants is not a relevant factor and introduces unnecessary complexity. It should be excluded as a factor.

ESMA approaches for capturing market participants

If ESMA does decide to use number of market participants, we agree with ESMA's approach in that it should be used as a backstop. In terms of capturing market participants, we agree with Option 1, ESMA's preferred option. In particular, we believe that Legal Entity Identifiers (LEIs) should be used. In regard to categorising retail investors, we agree with ESMA that there is no obvious definition nor could such a definition be applied across all classes of financial instruments.

The accurate identification of counterparties is widely recognised as a critical element for enhanced systemic risk monitoring and management. We recommend, where possible, for counterparty identification information to be provided in the form of LEIs.

At the Cannes Summit Meeting, the G20 stated: "we support the creation of a global legal entity identifier, which uniquely identifies parties to financial transactions". We believe that if ESMA does not mandate the use of LEIs by the national competent authorities, it will be a missed opportunity for incorporating a valuable tool for unambiguous entity identification into this important effort. Further, by not requiring the use of authoritative LEI in this project, ESMA runs the risk of making data aggregation and systemic risk analysis more difficult and less accurate.

We would highlight to ESMA that as of April 2014, the Regulatory Oversight Committee (ROC) has endorsed 13 pre- Local Operating Units (LOUs) globally, which can issue LEIs to any entity in the world that will be accepted by the regulatory community. More than 241,000 LEIs have been issued in 178 countries by these LOUs. In terms of current usage, LEIs have been mandated for use in reporting OTC derivative transactions. The regulatory community now has the opportunity to require companies to obtain LEIs from any of these entities for use in regulatory reporting and other regulatory purposes.

In our view, ESMA has the opportunity to further the goal of creating a robust LEI system. By mandating the use of the LEI for any counterparty identified in the fixed income markets, legal entities who have not already done so will need to obtain an LEI. We believe that by the time fixed income transparency is implemented, it is likely that the global LEI system will be fully operational and will no longer in an interim state, which is serving to support existing reporting requirements. As such, we urge ESMA to take a leadership role and mandate the use of the global LEI for the identification of counterparties within the data template requirements.
<ESMA_QUESTION_105>

Q106: Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

<ESMA_QUESTION_106>
We support ESMA's proposal to use the end-of-day relative bid-ask spreads as published by the most relevant market in terms of liquidity irrespective of size and type of the quotes if:

- Trading takes place on the (lit) order book of the trading venue,
- Both sides of the spread are available
- Spread has a volume attached, and
- Spread data is easily accessible via a central source.

<ESMA_QUESTION_106>

Q107: Should different thresholds be applied for different (classes of) financial instruments? Please provide proposals and reasons.

<ESMA_QUESTION_107>
The parameters should be set so all classes of financial instrument are treated the same. If there is a wide bid offer then that must suggest a less liquid instrument. This may mean that all instruments in an asset class may be categorised as illiquid but the measurement is not meant to be relative, but absolute.
<ESMA_QUESTION_107>

Q108: Do you have any proposals for appropriate spread thresholds? Please provide figures and reasons.

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>

Q109: How could the data necessary for computing the average spreads be obtained?

<ESMA_QUESTION_109>
In order to compute the average spreads, data should be obtained from trading venues. A broad range of trading venues should be included, including traditionally dealer-to-dealer MTFs and traditionally dealer-to-client MTFs.
<ESMA_QUESTION_109>

Q110: Do you agree with the proposed approach? If you do not agree please provide reasons for your answer. Could you provide an alternative approach?

<ESMA_QUESTION_110>

We agree with ESMA that Option 1 in that the liquidity parameters should be considered to be equally important and all criteria must be met.

For fixed income, the only two criteria that are relevant are total frequency of trades and ADT. With regard to these parameters, both need to be weighted equally.
<ESMA_QUESTION_110>

Q111: 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>
We do not propose an alternative approach.
<ESMA_QUESTION_111>

Q112: 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>
Scenario 3 is the most appropriate. Average daily volume should be at least 1m, and trading at least once a day on average, to be classed as liquid.
<ESMA_QUESTION_112>

Q113: Should the concept of liquid market be applied to financial instruments (IBIA) or to classes of financial instruments (COFIA)? Would be appropriate to apply IBIA for certain asset classes and COFIA to other asset classes? Please provide reasons for your answers

<ESMA_QUESTION_113>
We consider that the outcome of an effective 'liquid market' assessment should be an appropriate level of transparency whilst safeguarding liquidity.

We strongly believe that, given the divergence in liquidity profile for non-equity instruments within each class, the most appropriate approach is for liquidity to be assessed at instrument level (i.e. the IBIA approach). At this point, we do not believe that sufficient evidence is available to demonstrate that it is appropriate for COFIA to be used for any particular class of instrument, without the potential to negatively impact liquidity. However, it may be appropriate for ESMA to revisit this point in due course, once accurate and complete data is available to reach the conclusion that COIFA is appropriate for some classes of non-equity instruments.

Regardless of whether the IBIA or COFIA (or a combination of the two) is selected, it is imperative that:

- market participants and market data services suppliers have access to a central repository which confirms, at an instrument level, whether or not that instrument meets the 'liquid market' thresholds; and

- the frequency with which fixed income instruments are subject to the 'liquid market' assessment is set at an appropriate level, such that it recognises that their liquidity profile can be subject to significant volatility throughout the instrument's lifecycle.

<ESMA_QUESTION_113>

Q114: 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 proposal.
<ESMA_QUESTION_114>

Q115: Do you have any proposals on how to form homogenous and relevant classes of financial instruments? Which specifics do you consider relevant for that purpose? Please distinguish between bonds, SFPs and (different types of) derivatives and across qualitative criteria (please refer to Annex 3.6.1).

<ESMA_QUESTION_115>
We do not view issuance size as an effective factor in liquidity measurement for fixed income instruments, as this fails to recognise the impact that buy-backs and concentration of instrument ownership may have on an instrument's liquidity profile. We believe that some form of 'free-float' would be a more effective indicator.
<ESMA_QUESTION_115>

Q116: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_116>

Q117: Do you agree with the proposed approach? If not, please provide rationales and alternatives.

<ESMA_QUESTION_117>

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

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

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

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

i. Qualitative criteria

We recommend that the simplest manner of detecting sudden drops in liquidity by applying temporary suspension when there are significant market events. We recommend for the RTS to list these market events but to remain non-exhaustive such that ESMA can make a determination on additional market events in the future. We would be concerned that an exhaustive list cannot be future-proof and would result in the financial instability if an extreme event occurred that did not happen to be on the list.

ii. Quantitative calculation of a sudden drop in liquidity

We recommend that a quantitative approach that could be workable would be to align with the equities approach and use sudden drops in share price as a measure of sudden drops in liquidity.

A sudden drop in bond price does not work as a measure because there is not sufficient intra-day pricing within the bond markets to detect price drops. Rather, we recommend that if the price of a share for a company, for which there typically is sufficient intra-day pricing information, it is fair to make a determination that there will an abrupt price movement in the bond price as well. Therefore, we recommend for such an event, all the instruments issued by the affected issuer will be subject to the temporary suspension requirements based on the price drop of the share.

Treatment of information with regards to trades that are temporarily suspended

We recommend that ESMA should not require the information that relates to trades during the period that an instrument is subject to temporary suspension to be published following the lapse of temporary suspension. Trade information during this period is highly sensitive because it relates to extreme circumstance and remains sensitive even following the lapse of the extreme market event. If the information was to be made public, it would discourage the market makers from providing liquidity in extreme market circumstances, which would result in procyclical effects (such as runs) and significantly increase financial stability risks. Therefore, it is the instrument that is subject to the temporary suspension not the trade information.

Operational structure for temporary suspension

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

We recommend for temporary suspension to be applied in the following manner: when conditions for temporary suspension arise (as set by ESMA), investment firms and market operators make an application for temporary suspension. As temporary suspension needs to be implemented quickly and urgently, we suggest that the suspension apply to all market participants in that instrument once the application is received and is put on the website of the receiving national authority and ESMA. It is critical that there is a level-playing field between market participants, such that the suspension applies to all participants at the same time and all market participants have the knowledge that the suspension is in place. However, as timing will be critical, suspension needs to apply immediately following receipt and acknowledgement of the application of for temporary suspension. We recommend an ESMA taskforce review the suspension within a reasonable time and can determine whether it should remain in place or reject the application and lift the suspension. The Market Abuse Regulation should address any attempts to exploit the temporary suspension protocol.

Expiration or renewal of temporary suspension

Following the three-month period of a temporary suspension, the determination as to whether the suspension is renewed or lifted cannot be based on price. A market event may cause the price of an instrument to drop but after three months, the liquidity of the instrument may return but the price may not resume to pre-event levels (it may adjust to a new level). Therefore, we suggest that ESMA needs to determine whether the suspension for an instrument is renewed or lifted based on whether liquidity has returned to the same level prior to the initial application for temporary suspension. This can be done by comparing the frequency and ADT of the instrument in the third month of suspension to the frequency and ADT of the instrument in the month prior to suspension.
<ESMA_QUESTION_117>

Q118: Do you agree with the proposed thresholds? If not, please provide rationales and alternatives.

<ESMA_QUESTION_118>
Please see our response to Q117.
<ESMA_QUESTION_118>

3.7. Pre-trade transparency requirements for non-equity instruments

Q119: 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>
As ESMA indicates in paragraph 10 of Section 3.7, the defining feature of these systems is the provisions of liquidity from some market participants to others only on request and the requesting participant is the only counterparty to which the quote is disclosed and the only counterparty entitled to trade against it. The latter feature (the exclusivity feature) has not been incorporated into ESMA's definition. We recommend that this feature is an important component of the request for quote system.

We propose for the definition to be:

"A trading system where a quote or quotes are provided to a member or participant or client in response to a request for a quote submitted by the member or participant or client to which the quote has been

provided. The quote is exclusively provided to the requesting member or market participant or client and is indicated to be a firm quote. The requesting member or participant or client may conclude a transaction by accepting the quote or quotes provided to it on request."

We do, however, agree with ESMA that the definition should be sufficiently broad to capture a variety of protocols sharing the same core characteristics.
<ESMA_QUESTION_119>

Q120: Do you agree with the inclusion of request-for-stream systems in the definition of request-for-quote system? Please give reasons to support your answer.

<ESMA_QUESTION_120>
Yes, we agree with the inclusion of request-for-stream systems in the definition of RFQ system. Request-for-stream systems are part of the RFQ family – they are a continuous stream of implicit RFQ's from the client to which the dealer continuously responds. Request-for-stream systems are used particularly for those instruments the value of which evolves on a real-time basis, making it impossible for a responding participant or member to maintain a single price over a predefined period.
<ESMA_QUESTION_120>

Q121: Do you think that – apart from request-for-stream systems – other functionalities should be included in the definition of request-for-quote system? If yes, please provide a description of this functionality and give reasons to support your answer.

<ESMA_QUESTION_121>
We would highlight trading carried out via Bloomberg IB messaging as 'Request For Quote' trading
<ESMA_QUESTION_121>

Q122: Do you agree with the description of voice trading system? If not, how would you describe a voice trading system?

<ESMA_QUESTION_122>
We are broadly in agreement with the proposed definition of voice trading system. However, we would recommend making the following amendment to clarify that the definition should not capture bilateral voice discussions between two financial institutions (which may or may not be captured on a systematic internaliser):

"A multilateral trading system where transactions between members or participants are arranged through voice negotiation"

The inserted wording is intended to make clear the important distinction between voice trading on a venue (regulated market, MTF or OTF) and bilateral voice discussions between two financial institutions that may or may not be captured on a systematic internaliser (depending on whether the activity is deemed organised, frequent, systematic and substantial).

The current definition proposed by ESMA is:

"A trading system where transactions between members are arranged through voice negotiation"

This definition suggests that the venue can be passive in the voice negotiation. If this is the case, a telephone company or another type of telecommunications company (e.g. providing instant messaging) providing the dealers and clients with the communication systems to bilaterally trade would be classified as a voice trading venue and would need to register as an RM, MTF and OTF. This cannot be correct.

The trading venue providing the voice trading system needs to take an active role in the arrangement of the trade.
<ESMA_QUESTION_122>

Q123: Do you agree with the proposed table setting out different types of trading systems for non-equity instruments?

<ESMA_QUESTION_123>
Subject to our comments above regarding the definition of a voice-trading system, we agree with the proposed table setting out the different types of trading systems for non-equity instruments. We agree that it is useful to include trading systems not covered by the first five rows as it ensures that the definition of trading system does not rule out any functionality or impose a minimum functionality.
<ESMA_QUESTION_123>

Q124: 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>
Yes we agree with this proposition.
<ESMA_QUESTION_124>

Q125: Besides the trading systems mentioned above, are there additional trading models that need to be considered for pre-trade transparency requirements in the non-equity market space?

<ESMA_QUESTION_125>
No, we believe that the table covers all trading models.
<ESMA_QUESTION_125>

Q126: 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>
Not applicable (see our answer to DP 125 above).
<ESMA_QUESTION_126>

Q127: 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>
In the wholesale markets, there are two types of voice trading system:

(1) interdealer liquidity organized by multilateral venues; and

(2) Brokers that offer voice liquidity.
<ESMA_QUESTION_127>

Q128: How do these voice trading systems currently make information public or known to interested parties at the pre-trade stage?

<ESMA_QUESTION_128>
We do not believe it is appropriate for ESMA to dictate an exhaustive list of methods a trading system should use to fulfil its disclosure requirements (i.e. paragraph 21). We recommend that if a venue fulfils its requirements in an alternative manner, then it should be permitted to do. .
<ESMA_QUESTION_128>

Q129: 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>

As a general note, we would comment that the information to be made public by trading venues should be formulaic, and not grant trading venues too much discretion, to reduce the risk of market manipulation.
<ESMA_QUESTION_129>

Q130: 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>
Indicative prices can be very misleading- it is easy for brokers to post aggressive indicative prices , but then step back if pushed to execute. Many of these prices are not actionable.
<ESMA_QUESTION_130>

Q131: If you do not agree with the approach described above please provide an alternative

<ESMA_QUESTION_131>
Please refer to our answer to Q120.
<ESMA_QUESTION_131>

3.8. Post-trade transparency requirements for non-equity instruments

Q132: Do you agree with the proposed content of post-trade public information? If not, please provide arguments and suggestions for an alternative.

<ESMA_QUESTION_132>
We agree with ESMA that the content and format of the information made public should be harmonised and standardised as much as possible. In order for the information to be useful for the market, the information reported needs to be consistent and possible to aggregate in a meaningful way. We believe that for the MiFID II publication regime to be workable, the format should be clarified and standardised.

We support ESMA's approach to make the reporting fields for post trade publication as consistent as possible with those under the transaction reporting requirements, where it is meaningful to do so.
<ESMA_QUESTION_132>

Q133: 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>
We do not support this proposal. Disclosing the S.I. data would potentially discourage counterparties to make risk prices for the Buyside.
<ESMA_QUESTION_133>

Q134: Is there any other information that would be relevant to the market for the above mentioned asset classes?

<ESMA_QUESTION_134>
No.
<ESMA_QUESTION_134>

Q135: 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>

Yes. We would encourage ESMA not to create an overly complex system.
<ESMA_QUESTION_135>

Q136: Do you support the use of flags to identify trades which have benefitted from the use of deferrals? Should separate flags be used for each type of deferral (e.g. large in scale deferral, size specific to the instrument deferral)? Please provide reasons for your answer.

<ESMA_QUESTION_136>
We support this proposal. However as stated in our answer above, ESMA should not create an excessively complex system.
<ESMA_QUESTION_136>

Q137: 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>
We do not believe flags related to coupon (ex/cum) payments are necessary.
In fixed income, only the clean prices are reported; therefore, the ex/cum is irrelevant.
<ESMA_QUESTION_137>

Q138: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_138>

Q139: Do you agree that securities financing transactions should be exempted from the post-trade transparency regime?

<ESMA_QUESTION_139>
We agree that securities financing transactions should be exempted from the post trade transparency regime.
<ESMA_QUESTION_139>

Q140: 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>
We do not agree with ESMA's proposal. We believe a five minute reporting period for real time publication is inappropriate for fixed income. We recommend that a 15 minute publication period for real time.
<ESMA_QUESTION_140>

Q141: Do you agree with the proposed text or would you propose an alternative option? Please provide reasons for your answer.

<ESMA_QUESTION_141>
No. The proposed approach, which seeks consistency between the deferral regimes for equity and non-equity instruments, fails to appreciate important differences between equity and non-equity markets.
We would also like to draw ESMA's attention to the potential for the deferral regime to operate differently across the EU. Pursuant to MiFIR, national competent authorities must decide whether a deferral is permissible. This could have the unintended result that trading migrates to those Member States which offer the most favourable deferral regime (i.e. Member States which permit deferrals for the widest range of financial instruments and/or permit deferral without requiring market operators, trading venues or market participants to publish much information during the deferral period). We would recommend that

ESMA introduce a mechanism to ensure that national competent authorities operate a consistent deferral regime.

If deferral periods are set by reference to the time of day a transaction is executed, we would urge ESMA to consider clarifying in the RTS how this will work in the EU bearing in mind different time zones. Clarity is also needed in respect of "opening of trading on the next day". Some markets, such as foreign exchange markets, are open 24 hours a day for 5.5 days a week. It does not seem practicable, therefore, to set deferral periods by reference to either "close of trading / end of day" or "opening of trading".

We would recommend the following alternative option:

(1) We recommend that trades above the large in scale threshold receive equivalent treatment to illiquid instruments. Most instruments are only liquid up to a certain size. This is explicitly recognised in MiFIR - Article 32(3) MiFIR recognises, in the context of the derivative trading obligation, that financial instruments may only be liquid above a certain size.

(2) As indicated above, "end of day" is a concept with severe limitations. Many markets for non-equities operate 24 hours a day and, therefore, do not have an "end of day" (nor, for that matter, an "opening of business"). These concepts should therefore be avoided.

(3) The proposed deferral periods for large trades are too short as, in non-equity markets, it may take several days for liquidity providers to hedge their exposures. Without the ability to de-risk, liquidity providers may be unwilling to enter into certain types of trades which will severely reduce liquidity in certain non-equity markets or, at the very least, restrict liquidity for large trades in such markets. As non-equity markets are characterised by large trades, this would have a significant impact on market participants.

<ESMA_QUESTION_141>

Q142: Do you agree that the intra-day deferral periods should range between 60 minutes and 120 minutes?

<ESMA_QUESTION_142>
No. As indicated in our answer to Q141, we recommend that liquid trades which are above the large in scale threshold should be treated in the same way as illiquid trades. As such, the proposed intra-day deferral period is unsuitable.
For trades which are illiquid or above the large in scale threshold (which we believe should be treated in the same way as illiquid instruments) we recommend a deferral period of T+1 for the LIS trades.

For trades above size specific to the instrument threshold but below the large in scale threshold, 60-120 minutes is unnecessarily complicated. We would recommend a single deferral time of 120 minutes.
<ESMA_QUESTION_142>

Q143: Do you agree that the maximum deferral period, reserved for the largest transactions, should not exceed end of day or, for transactions executed after 15.00, the opening of the following trading day? If not, could you provide alternative proposals? Please provide reasons for your answer.

<ESMA_QUESTION_143>
No. Please see our response to Q141.
<ESMA_QUESTION_143>

Q144: 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>

No. We recommend applying the same deferral period to all non-equity asset classes. This will make it easier for market participants to understand and comply with the rules. Many market participants will have to contend with multiple transparency regimes (including, for example, the MiFIR regime for equities and third country post-trade transparency regimes).

The post-trade transparency regime will only be effective if market participants understand the rules and comply with them. Setting different deferral periods for different asset classes will add unnecessary complexity. We would urge ESMA to focus instead on setting suitable deferral periods based on the liquidity and/or size of the transaction (as we have argued for above in our answer to Q141).
<ESMA_QUESTION_144>

Q145: Do you support the proposal that the deferral for non-equity instruments which do not have a liquid market should be until the end of day + 1? Please provide reasons for your answer.

<ESMA_QUESTION_145>
No. Please see our response to Q141 above. In addition, we would note that it does not make sense to have a post-trade transparency regime that requires publication in significantly shorter timeframes than the typical trade frequency. The majority of non-equity financial instruments trade far less frequently than once a day.
<ESMA_QUESTION_145>

Q146: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_146>

Q147: 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>
No. We note that the proposal is inconsistent with CFTC implementation. Under CFTC, no trade details are public at all until the end of the deferral period (and size remains permanently masked). We support ESMA's view that the MiFIR post-trade transparency regime for non-equities should sit coherently with other post-trade transparency regime, including those of third countries. We recommend that ESMA seek to align the EU deferral periods with those already implemented in the US.
<ESMA_QUESTION_147>

Q148: 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 support this proposal.
<ESMA_QUESTION_148>

Q149: 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>

Our view is that in times of general market stress it would be appropriate to authorise extended/indefinite deferrals for sovereign debt.
<ESMA_QUESTION_149>

Q150: 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>
Yes. However post-trade transparency for these instruments should result only after the maximum delay for the instrument – if they relate to one or more other transactions on the same underlying then their publication should only take place after the delay for the original trade has expired.

As the publication of these trades serves no useful purpose, then they should be flagged as such (for example, they could be tagged as "miscellaneous" or "technical").
<ESMA_QUESTION_150>

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

Q151: Do you agree with the proposed option? Which option would be more suitable for the calibration of the large in scale requirements within an asset class?

<ESMA_QUESTION_151>
We support the application of option 2. As outline by ESMA, this approach would have the advantages of simplicity and predictability.
<ESMA_QUESTION_151>

Q152: Do you consider there are reasons for opting for different options for different asset classes? Please provide arguments.

<ESMA_QUESTION_152>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_152>

Q153: Do you agree that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity? If not, please provide arguments.

<ESMA_QUESTION_153>
Yes we agree. Requiring consistency with the assessment of liquidity is appropriate.
<ESMA_QUESTION_153>

Q154: 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>
IMA supports ESMA's proposed approach, (option 1).
<ESMA_QUESTION_154>

Q155: Do you agree that the proxy used for the determining the large in scale thresholds should be the same as the one used to assess the average size of transactions in the context of the definition of liquid markets? Please provide arguments.

<ESMA_QUESTION_155>
We support this proposal.

<ESMA_QUESTION_155>

Q156: In your view, which option would be more suitable for the determination of the large in scale thresholds? Please provide arguments.

<ESMA_QUESTION_156>
We support option 1.
<ESMA_QUESTION_156>

Q157: Alternatively which method would you suggest for setting the large in scale thresholds?

<ESMA_QUESTION_157>
We support option 1.
<ESMA_QUESTION_157>

Q158: 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 support a consistent application of LIS thresholds for orders and transactions.
<ESMA_QUESTION_158>

Q159: 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>
The transactions considered in the determination of the calculation of the thresholds should be based on all the transactions caught within the relevant regime. Thresholds should be calibrated on the basis of risk and, as such, the entities potentially exposed to the risks of the regime should be considered in the calculations.

Therefore, we agree that the pre trade transparency Large in Scale waiver should be based on transactions carried out on venues because the waiver relates only to venue trades.

As the post trade transparency requirements apply to all transactions (on and off venue), the post trade deferrals should be calculated based on all transactions, including those on trading venue, SI and OTC.
<ESMA_QUESTION_159>

Q160: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_160>

Q161: Do you agree that the large in scale regime should be reviewed no earlier than two years after application of MiFIR in practice?

<ESMA_QUESTION_161>
We are broadly supportive of a two year review period. However, we would recommend the inclusion of a mechanism to ensure that a review can be conducted earlier if it is clear that the transparency regime, or certain parts of it, is not working as envisaged. For example, wording could be added along the lines of the

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

We would urge ESMA to ensure that there is a mechanism in the EU for thresholds, or any other aspect of the transparency framework, to be reviewed if it is clear that the calibration of the regime is having a materially detrimental impact on liquidity in EU markets.
<ESMA_QUESTION_161>

3.10. Size specific to the instrument

Q162: Do you agree with the above description of the applicability of the size specific to the instrument? If not please provide reasons for your answer.

<ESMA_QUESTION_162>
Yes, we agree with the description of the applicability of the size specific to the instrument.
<ESMA_QUESTION_162>

Q163: 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>
Yes. We agree that the size specific to the instrument threshold should be set as a percentage of the large in scale size. The size specific to the instrument threshold should, however, vary between asset types and should be set at different levels for pre-trade transparency and post-trade transparency. We would recommend that the size specific to the instrument threshold is linked to:

(1) the average size of observable market reversal transactions for the instrument or class of instrument concerned (equivalent to SMS for shares);

(2) for derivatives with an underlying security, the threshold "Specific Size" (or Large Scale In for shares) of the underlying, which takes account of the threshold beyond which the risk taker will meet difficulty in hedging.
<ESMA_QUESTION_163>

Q164: 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>
Due to the requirement that a systematic internaliser will, in certain circumstances, be required to trade with other clients on the same conditions as its published quotes, the size that exposes the market maker to undue risk should be set at the size above which a market maker would adjust his initial price due to the possibility of being held to other trades. In practice, in non-equities markets for RFQ/voice trading, this threshold is small – market makers differentiate prices quite markedly for trades of a different size.

The SSTI in the SI regime should only be aligned with the SSTI in trading venues if the transparency requirements are equivalent or identical. If they are different, the SSTI should be adjusted accordingly.
<ESMA_QUESTION_164>

Q165: 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>

As one of the concerns the size specific to the instrument threshold is meant to address is the risk that a systematic internaliser could be held to multiple trades at the same prices in the same direction, thereby creating a position for the systematic internaliser that it cannot hedge, ESMA should have regard to the incidence of repeat trading in the same or similar instruments.
<ESMA_QUESTION_165>

Q166: 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>
Yes.
<ESMA_QUESTION_166>

Q167: 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>
Yes, we agree that the deferral periods for the large in scale deferral and the size specific to the instrument deferral should be different.

The size specific to the instrument threshold is by definition smaller than the large in scale threshold and is set at a level not to expose participants to undue risk. This should, broadly, equate to a level where market liquidity can absorb such trades. As such, the deferral periods specified are a suitable basis.

For LIS, there is a significant risk of undue risk if deferral periods are too short. In this case, the deferral period should be sufficient for the market to have traded in excess of (perhaps double) the amount of the LIS trade threshold.
<ESMA_QUESTION_167>

3.11. The Trading Obligation for Derivatives

Q168: Do you agree that there should be consistent categories of derivatives contracts throughout MiFIR/EMIR?

<ESMA_QUESTION_168>
We believe that it makes sense to align the categories of derivatives contracts across EMIR and MiFIR, given that the MiFIR trading obligation applies to a subset of those contracts that are subject to the EMIR clearing obligation. In categorising contracts, we also encourage ESMA to take account of the approach taken in other jurisdictions, notably the US, with a view to achieving consistency in terms of the treatment of particular contract types, where this is achievable.
<ESMA_QUESTION_168>

Q169: Do you agree with this approach to the treatment of third countries?

<ESMA_QUESTION_169>
We are supportive of the framework that ESMA has already developed in the context of EMIR for the purposes of determining which transactions have a 'direct, substantial and foreseeable effect' within the EU; in particular, we believe that the threshold for assessing a material guarantee is appropriate.
<ESMA_QUESTION_169>

Q170: Do you agree with the proposed criteria based anti-avoidance procedure?

<ESMA_QUESTION_170>
We believe that a criteria-based approach to preventing avoidance is reasonable, and encourage ESMA to adopt an approach that would maximise legal certainty for market participants.
<ESMA_QUESTION_170>

Q171: Do you think it would be reasonable for ESMA to consult venues with regard to which classes of derivatives contracts are traded on venue? Do you think venues would be well placed to undertake this task?

<ESMA_QUESTION_171>
We agree that it makes sense for ESMA to seek the input of trading venues in determining which contracts are available via a trading venue. At the same time, however, we endorse ESMA's reading of Article 32, as we believe that ESMA, rather than trading venues, must always have the final say regarding which contracts are sufficiently liquid to trade only on venue. In making this assessment, it will be important to take account of the views of market participants, as well as the experience of other jurisdictions.
<ESMA_QUESTION_171>

Q172: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_172>

Q173: 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_173>

Q174: Do you have any suggestions on how ESMA should consider the anticipated effects of the trading obligation on end users and on future market behaviour?

<ESMA_QUESTION_174>
We note that there is limited discussion of the potential phase-in of the trading obligation as provided for under Article 32(1)(b). It would be helpful if ESMA could develop an initial approach to phase-in, reflecting the differences between different types of financial counterparties.
<ESMA_QUESTION_174>

Q175: Do you have any other comments on our overall approach?

<ESMA_QUESTION_175>
In applying the trading obligation procedure, we encourage ESMA to take particular account of packaged trades, which entail two or more component trades, not all of which might be appropriate for execution on venue. In making a particular contract subject to the trading obligation, it would be helpful for ESMA to have regard to the extent to which the contract is commonly included in packaged trades.
<ESMA_QUESTION_175>

3.12. Transparency Requirements for the Members of ESCB

Q176: 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>
We agree with ESMA's approach that only a member of the ESCB is in a position to clarify whether a trade is for monetary, FX or FSB policy operations. <ESMA_QUESTION_176>

Q177: 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>
We do not believe that the test proposed by ESMA is workable in practice. In order for the exemption to be workable, the clarification must be provided prior to or at the point of execution. This is because the firm/venue must know whether to apply the transparency requirements prior to execution (the transparency requirements need to be complied with prior to execution and after execution but before settlement). However, legal documents are exchanged on the settlement date (i.e. two days or more after execution of the trade). Therefore, a clarification would occur after the transparency requirements would need to be met.

Therefore, we propose that either (i) the member of the ESCB provides a clarification when requesting a quote, which would require operational builds (special flags) and transparency compliance concerns for firms/venues (i.e. how would they demonstrate that the ESCB has provided the clarification and thereby complied with the transparency requirements), or (ii) the request for the quote by the member of the ESCB should be taken as prima facie evidence that the trade is for monetary, FX or FSB policy operations.

We recommend the second option.
<ESMA_QUESTION_177>

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

Q178: Do you have any comments on the content of requests as outlined above?

<ESMA_QUESTION_178>
The IMA would suggest ESMA ensures there is consistency of requests and normalisation of requested data (as per paragraphs 3 and 12-14 but additionally stating that NCAs should follow a standard format when making the requests and that the requests make use of industry-standard identifiers where appropriate). <ESMA_QUESTION_178>

Q179: 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>
The IMA does not support the use of the number of market participants in liquidity calculations. A firm will be unable to determine the number of market participants. It will make the determination of liquid financial instruments unpredictable.
<ESMA_QUESTION_179>

Q180: Do you consider the frequency of data requests proposed as appropriate?

<ESMA_QUESTION_180>
Data for liquidity calculations should be requested on a frequency dependent on the final rules determined for each instrument. In some cases this will involve more frequent requests for data than annually. ESMA should ensure it has the appropriate capacity to deal with the volume of data and resultant calculations.
<ESMA_QUESTION_180>

Q181: 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>
This will be dependent on instrument type. In some instances this may be as frequent as monthly.
<ESMA_QUESTION_181>

Q182: 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>
We support the proposal not to hard code standards into the technical standards. However we would encourage ESMA to generate consistent and clear data standards for submission of information.
<ESMA_QUESTION_182>

Q183: Do you consider a maximum period of two weeks appropriate for responding to data requests?

<ESMA_QUESTION_183>
We support this proposal.
<ESMA_QUESTION_183>

Q184: Do you consider a storage time for relevant data of two years appropriate?

<ESMA_QUESTION_184>
We support this proposal.
<ESMA_QUESTION_184>

4. Microstructural issues

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

Q185: 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>
Since the publication of the ESMA Guidelines, certain practices have become more prevalent and standardized, such as "drop-copy" reconciliation, continuous comparison of firm books to exchange and clearing agent records, and market maker protections. These are discussed in further detail in the specific questions referring to these topics.
<ESMA_QUESTION_185>

Q186: Do you agree with the definition of 'trading systems' for trading venues?

<ESMA_QUESTION_186>
We disagree with the definition proposed by ESMA of 'trading system' for trading venues because it is too prescriptive, and we question the added value of specifying in detail so many different elements.

ESMA's proposed definition may potentially capture non pertinent elements of a trading system, while at the same time, by appearing to be exhaustive, risks omitting one or more critical elements that are or may become (as technology progresses) pertinent to the trading system.

Existing definitions for, respectively, 'continuous order book trading system' and 'quote driven trading system,' are adequate descriptions that leave room for technology to progress and a principle-based approach to be applied. They are as follows:

'Continuous order book trading system': A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis.

'Quote driven trading system': A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself.
<ESMA_QUESTION_186>

Q187: 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>
We agree. It is our view that the requirements of Articles 48 and 49 suitable or relevant for OTC trading (including Requests-For-Quote), periodic auction trading systems (systems that match orders on the basis of a periodic auction and a trading algorithm operated without human intervention) or hybrid systems (systems falling into two or more of the other categories of trading systems where the price determination process is of a different nature than that applicable to the types of system covered by first three rows).
<ESMA_QUESTION_187>

Q188: 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>

Q189: Do you agree with the definition of "trading system" for investment firms?

<ESMA_QUESTION_189>
We agree with the definition of 'trading system' for investment firms.
<ESMA_QUESTION_189>

Q190: Do you agree with the definition of 'real time' in relation to market monitoring of algorithmic trading activity by investment firms?

<ESMA_QUESTION_190>
We support ESMA's proposal that real time market monitoring should occur within five seconds.
<ESMA_QUESTION_190>

Q191: 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>
We support ESMA's proposal of five seconds but this should be reviewed as technology progresses.
<ESMA_QUESTION_191>

Q192: Do you agree with the definition of 't+1' in relation to market monitoring of algorithmic trading activity by investment firms?

<ESMA_QUESTION_192>
We support ESMA's definition of 't+1' as meaning:

"all surveillance outputs (alerts) by the monitoring system in relation to orders that have been submitted, acknowledged, modified, cancelled, rejected, or executed on the previous trading day (until market close) are available for analysis at the start of the next day (before market opening), i.e., are computed overnight."
<ESMA_QUESTION_192>

Q193: Do you agree with the parameters to be considered to define situations of 'severe market stress' and 'disorderly trading conditions'?

<ESMA_QUESTION_193>
We agree with the definition of 'severe market stress' but disagree with the parameters considered to define 'disorderly trading conditions.'

We feel it is important for ESMA to understand that, 'disorderly trading conditions' are not per se indicated by significant short-term changes in market volume, price or the number of messages. Disorderly trading conditions may not necessarily occur when there are dramatic or severe price or volume shifts. If a security is negatively impacted by news, and dramatically sells off as a result, with a dramatic multiple increases of messages and volume, it can and should still be considered 'orderly trading' as long as it does not jeopardise exchange systems and remains controlled and limited by an firm's appropriate control systems.

In fact, adequate and prudent risk management at automated trading firms necessarily prescribes increased messaging to facilitate stable trading during moments of volatility at (constantly reassessed) prices in order to prevent mis-pricing. This 'agility' is particularly important in turbulent markets as mis-

pricing has a direct and material impact on other market participants, which could contribute to knock-on effect risk incidents.

Instead, what actually contributes to ‘disorderly trading conditions’ are significant delays, interruptions or errors in the processing of marketplace transactions. While these types of conditions can be related to periods of high volume, it is not a necessary condition. Whether due to human error or failure of information or communication systems, situations such as hanging orders (where an order has already been executed but takes extra time to confirm) and order queues (due to limited throughput) can cause market participants to panic or mis-price and systems to slow or lock. Multiple entries for the same order may inadvertently open unintended positions, inducing risk.

Hanging or throttled orders or processing problems lead to aggravated disorderly trading conditions and can produce substantial losses for market participants and jeopardise market integrity. Therefore the focus should be on strengthening the robust capacity of trading venues’ systems, particularly under duress, and the stimulation of all market participants’ investments in technology processing power, speed and innovation to manage such risks.
<ESMA_QUESTION_193>

Q194: Do you agree with the above approach?

<ESMA_QUESTION_194>
We support ESMA’s proposal in regard to organisational requirements for trading venues.
<ESMA_QUESTION_194>

Q195: Is there any element that should be added to/removed from the periodic self-assessment?

<ESMA_QUESTION_195>
No. We don’t consider there is any additional element necessary.
<ESMA_QUESTION_195>

Q196: 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>
No. Our members consider that, in terms of non-equities particularly, not all investment firms are equal based on their size and trading activity in certain instruments. Larger sell side firms will be fairly homogeneous in terms of algo flow compared to smaller firms who may vary in terms of their algo flow intra-day.
<ESMA_QUESTION_196>

Q197: Do you agree with the approach described above regarding the application of the proportionality principle by investment firms? Please elaborate.

<ESMA_QUESTION_197>
We support ESMA’s application of the proportionality principle to the organisational requirements for investment firms.

<ESMA_QUESTION_197>

Q198: Are there any additional elements that for the purpose of clarity should be added to/removed from the non-exhaustive list contained in the RTS? Please elaborate.

<ESMA_QUESTION_198>
No. However, an aggregated volume activity measure would be better suited rather than the requirements to provide a monetary value. Modelling pricing risks and the building of algos could be difficult and would lead to commercially sensitive information being made public.

<ESMA_QUESTION_198>

4.2. Organisational requirements for investment firms (Article 17 MiFID II)

Q199: Do you agree with a restricted deployment of algorithms in a live environment? Please elaborate

<ESMA_QUESTION_199>
We agree with a proportionate, risk-based and appropriate testing of algorithms, but are strongly opposed to a prescriptive list of tests that should be conducted.

Trading firms should have a process for testing core software components before they are released to the production environment. A variety of effective testing methodologies exist and each firm should employ a suite of software testing tools to suit their unique needs. Among the testing methods to consider are: unit testing, functional testing, non-functional testing, acceptance testing, and exchange-based conformance testing.

We believe firms should have the flexibility to choose to combine one or more of the steps into a single step in their process, or to elect to split a particular step into several other sub-steps. Software testing should be appropriate and proportionate to the scope, scale and 'newness' of an algorithm or a change being made. A minor parameter change or careful introduction of a well-functioning algorithm to another market vastly differs from commencing trading on a novel architectural platform. Existing best practices in software development dictate different kinds of changes that may warrant different refinements or variants of the process, depending on the nature of the changes and their potential impacts:

- A new algorithm or material changes to previous architecture should be extensively tested in a non-live environment, tested in limited production and then enter production under close supervision.

- More limited amendments or the roll-out of a well-functioning algorithm on additional exchanges should have a much less stringent, risk-based, regime: testing in limited production and then supervised production will generally suffice.

- For minor amendments, limited production may even be skipped under strictly defined circumstances.

We are very concerned that the requirements set out by ESMA in Section 4.2. In particular the 'Testing of trading systems, algorithms, and strategies' aspects are overly prescriptive and burdensome. For example, on paragraph 11 on p. 214, ESMA states that "*investment firms should, prior to deploying a trading system or trading algorithm or strategy and <u>prior to deploying updates</u>, make use of clearly delineated development and testing methodologies*." These methodologies include <u>all</u> the obligations that follow in paragraphs 12 and 13, such as performance simulations/back testing, non-live testing within trading venue testing environments. All software modifications, regardless of their magnitude, should be tested appropriately and proportionately to the modification being made. It may not be proportionate (and not always necessary) to apply all of these testing methodologies to minor software updates.

Further, it may not be proportionate to require that every update be flight tested on all venues before deployment. Whereas technical conformance tests must be carried out at each individual trading venue, disorderly market testing (or testing for compatibility with regulatory obligations) is specific to the firm's algorithms and does not necessarily need to be repeated at each individual trading venue. (Rather, a firm might take a risk-based approach and test on its primary trading market, followed by more limited tests on the markets on which it trades less.)

In keeping with the proportionality principle, therefore, we recommend ESMA replace the highly detailed, rule-based proposal as currently drafted with core principles for "adequate, proportionate, risk-based and appropriate" testing. We strongly recommend leaving firms discretion to apply appropriate and

proportionate testing procedures based on their own determination of the type of change and whether it is material versus minor. Whilst we trust ESMA acknowledges software modifications can differ in magnitude, we caution against trying to develop a set of objective criteria to qualify a modification as "material" or "minor." These are highly subjective terms that are difficult to properly apply and may be misleading to technical and other staff. Instead, those responsible for development, testing, and change management should be allowed to determine the amount and type of testing necessary to confirm that a modification is working as intended since they are best positioned to understand the scope of such a modification as well as any external impacts it may have.

ESMA should require that all development procedures adhere to best practice in order to avoid launches that might contribute to disorderly trading behaviour. In addition NCAs should periodically conduct reviews to assess the adequacy of how firms apply best practice.
<ESMA_QUESTION_199>

Q200: Do you agree with the parameters outlined for initial restriction? Please elaborate.

<ESMA_QUESTION_200>
We agree in principle with the parameters for the controlled roll-out of algorithms but not all criteria can be applied in all cases. We would expect firms to have discretion on which limits are appropriate to be applied in any one roll out
<ESMA_QUESTION_200>

Q201: Do you agree with the proposed testing scenarios outlined above? Would you propose any alternative or additional testing scenarios? Please elaborate.

<ESMA_QUESTION_201>
We agree with the principles behind the requirement to conduct testing and certification of algorithms, but are opposed to the prescriptive discussion of tests that should be conducted. Firms should determine the focus and risk for the purpose of assessment. We support exchange based testing mechanisms, but if no standardized testing environments exist than testing cannot be uniform without clear and reasonable standards which incorporate risk-based sensibility. We also reiterate that a six-month testing interval is too frequent and will cause firms to re-test software that hasn't changed. Annual testing is more than sufficient unless a material change has occurred.
<ESMA_QUESTION_201>

Q202: 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>
IMA agrees that trading firms should have a process for testing core software components before they are released to the production environment. However as software best practices continue to evolve, we believe such testing should be appropriate and proportionate. A variety of effective testing methodologies exist, and each firm should employ a suite of software testing tools to suit its unique needs.

Trading venue testing environments are not always able to simulate realistic market conditions and therefore do not reflect what can be expected of the same algorithm operating in a live environment. ESMA acknowledges this on p. 285 of the Discussion Paper, stating "*there may be cases under which the scenarios provided by trading venues might not be sufficient for [testing] purposes*," and that "*members or participants deploying new algorithms are fully responsible for testing them under appropriate scenarios*." It is not sufficiently 'real' in terms of market interactions, data or trading volumes. For instance, to be genuinely useful, non-live testing environments should include aggregate data from all related venues in order to reflect reactions across related products and markets. Obviously this would be a substantial if not prohibitive undertaking to develop and implement, and in our view, with only limited usefulness. Even without this realistic environment, present charges for use of these non-live testing environments are often prohibitively high.

ESMA should hold non-live testing out as a goal not a requirement, with allowance for study and iterative development.
<ESMA_QUESTION_202>

Q203: 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>
No, for the reason stated above, we do not believe specifying more detail in the minimum functionality of non-live testing will support the objectives of ensuring algorithms operate safely and as intended.
<ESMA_QUESTION_203>

Q204: Do you consider that the requirements around change management are appropriately laid down, especially with regard to testing? Please elaborate.

<ESMA_QUESTION_204>
We believe that the requirements laid down in paragraphs 22 and 23 under 'Sign-off and review procedures in relation to change management and testing' are essential. The core of a robust change management procedure is identifying the desired or required change, developing and testing the change, deploying the change, and verifying the change.

Beyond the elements above, we consider that ESMA goes too far in prescribing the elements of change management. Not all algorithms are suitable to performance simulations / back testing, nor do we believe that initiating, running and stopping a large number of algorithms in parallel or conducting high volume tests twice yearly are practical standards that necessarily serve the purpose of mitigating against disorderly trading conditions. This would be difficult to realise in practice because, as we have noted above, non-live testing environment are not very realistic, and such testing should certainly not take place in a live market.
<ESMA_QUESTION_204>

Q205: Do you agree with the proposed monitoring and review approach? Is a twice yearly review, as a minimum, appropriate?

<ESMA_QUESTION_205>
It is our view that an (at least) twice yearly review is too frequent. We respond to ESMA's detailed proposals below.

Paragraph 30 (p. 218): Kill Buttons

Kill switches are a necessary control functionality and we support their mandatory application for algorithms. However, we would caution that the use of kill switches is not a panacea for disruptive algorithms.

While kill switches do have merit, we urge ESMA not to encourage over reliance on their use as a risk control. Rather, in keeping with the proportionality principle, ESMA should allow firms to choose from a variety of mechanisms that may better preserve market stability, such as limits embedded in systems and controlled winding down of positions. We recommend firms develop their systems with a series of automatic curtailments based on pre-programmed parameters. Trading systems should be built to alert and/or self-curtail, at each level (participant, clearing firm, exchange), prior to the need for human kill switches. These sanity checks can be based on metrics of orders, levels of loss or profit, or other boundaries related to the type of strategy.

Paragraph 31 (p. 218): Algo Flagging

We acknowledge there is a general regulatory impetus behind the concept of flagging algorithms. This was realised for the first time in the German HFT law in March of this year. We understand regulators believe

flagging to be an assistance to surveillance, which is perceived to have become more difficult with respect to automated trading and the aggregated data it generates.

We urge ESMA to clarify by means of Guidance how flagging of algorithms should be implemented consistently throughout the EU.

Paragraph 32 (p. 219): Drop Copies

Please see our comments in response to Question 206 below.

Paragraph 33 (p. 219): Derivatives Exposure Calculation

We agree with this proposal; no comments.

Paragraph 34 (p. 219): Real Time Alerts

We agree with this proposal.

Paragraph 35 (p. 219): Monitoring for Disorderly Trading

We believe the part of this proposal that states monitoring cannot be undertaken in any circumstances by the trader in charge of the algorithm should be nuanced.

The 'three lines of defence' has become a standard concept in a modern institution's approach to managing uncertainty and preventing risk.

The three lines of defence model distinguishes among three groups (or lines) involved in effective risk management:

- Functions that own and manage risks.
- Functions that oversee risks.
- Functions that provide independent assurance.

The concept of 'three lines of defence' is applied in the context of automated trading as well. The first line of defence comprises the business' frontline staff: traders. As we have stated above in the context of kill switches, we believe the trader in charge of an algorithm is in the best position to detect signs of disorderly trading. There should always be adequate managerial and supervisory controls in place to ensure compliance and to highlight control breakdown, inadequate processes, and unexpected events. The head of a trading desk or the head of the trading department should be responsible for using and monitoring these supervisory controls. The second line is created by the oversight function(s) made up of compliance and risk management. These functions set and police policies, define work practices and oversee the business frontlines with regard to risk and compliance. The third and final line of defence is that of auditors (internal and external).

Paragraph 36 (p. 219): Necessary Authorisations

We agree with this proposal.

Paragraph 37 (p. 219): Communication Channels

We agree with this proposal.

Paragraph 38 (p. 219): CEBS/EBA Guidelines

We agree with this proposal.

With respect to trading systems in particular, we do not believe mandatory reviews of trading systems and trading algorithms on a prescribed time schedule are necessary or useful. Trading systems and trading algorithms are used daily; in other words, they are constantly being tested by live market operation. Provided proper procedures are followed with respect to initial testing and change management, ESMA should not impose additional requirements on firms in this respect. Scheduled reviews should be reserved for procedures and plans, such as business continuity and recovery plans, that aren't used and tested in practice.

Paragraph 41 (p. 220): Validation

Please see our comments above with respect to paragraph 39. First, we do not agree with the prescribed time frame; second, we do not agree that trading systems and algorithms themselves need to be subject to further testing beyond the testing to which they are subjected initially and in terms of change management. Procedures, not systems, should be reviewed.
<ESMA_QUESTION_205>

Q206: 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>
We agree with the use of drop copies in the context of monitoring. Drop copies are copies of orders that allow a firm to compare the trading venue or clearing firm view of trades and positions with the systems' internal view. This helps to assure that all systems are performing as expected and maintaining accurate and consistent views of trades and positions. The drop copy data may also be used by risk managers to view their firm's risk exposure independently of the trading system.

Drop copies should be available for all trading venues and products whenever technologically practicable. Trade reports and other information provided by drop copy should be disseminated to the consumer in real time or as near real time as technologically and operationally practicable. When used with kill switch functionality (discussed on p. 218 of DP), any in-flight trades that may occur while the kill switch takes effect will be reported and the participant will be confident in its ability to reconcile its positions.

Finally, drop copy services should not be seen as a revenue generating product for its providers. Good risk management benefits all market participants. Producers should promote the use of drop copies by providing it to consumers at no charge or a nominal fee which covers the provider's costs.
<ESMA_QUESTION_206>

Q207: Do you agree with the proposed approach?

<ESMA_QUESTION_207>
We believe that firms should consider the security of their trading and business networks and be aware of the risk of access to their network infrastructure by unauthorised personnel. We encourage the use of network firewalls, VPN connections or other security devices to prevent against unauthorised remote access, as well as the use of authentication through IDs, passwords and/or token-based systems. Detailed logging systems to record user and system activity is strongly encouraged, as well as third-party electronic security audits performed at regular intervals. Finally, we recommend a number of policies and procedures firms should have in place relating to the removal of physical and electronic access privileges.

As currently worded, many of the requirements laid out by ESMA in this section are not appropriate for small-to-medium sized firms. Some examples follow.

Paragraph 45 (p. 221): Internationally Established and Recognised IT Standards

ESMA requires firms to have an IT environment "that at least meets internationally established and recognized standards." While internationally established and recognized standards may provide

reasonable guidance for some aspects of the day to day operations of firms, generally speaking, they were not developed with the unique technical and operational needs of firms operating algorithmic trading strategies in mind. Similarly, standards are often quite rigid and were developed years ago and now represent policies and procedures that have become outdated due to the evolving nature of technology and best practices. As a result we do not believe existing internationally recognized standards are properly suited to address the needs of firms in this context

Paragraph 47 (p. 221): Minimise Risks of Cyber Attacks

ESMA requires firms to implement IT security measures that minimise the risk of cyber-attacks in line with Article 2 of Directive 2013/40/EU. This requirement is not proportionate for our members. Systems and networks typically run on dedicated and secured infrastructure and are not open to retail clients or the 'outside world'.

Paragraph 49 (p. 221): Two Factor Authentication

Two-factor authentication is not appropriate or practical in the context of automated trading systems. This is a concept applicable to screen logins for retail banking or brokerage accounts with human operation (and thus may be relevant in certain cases of DEA provision), but not for screenless servers connecting directly to exchanges. We are aware of no firm who has implemented this for automated trading systems, suggesting even the most sophisticated technology-based trading firms currently active have not found this an advisable mechanism to protect their systems. There is, however, an inherent two-factor authentication in automated trading, where traders log in to systems (whether via the dealing room's secure network or VPN) and the systems subsequently connect to exchanges, all in physically and electronically secure environments (i.e. on a controlled trading floor or in controlled server rooms).

Likewise, we are unclear what it means to "implement appropriate controls to ensure that the deployed binary codes were actually compiled from the documented source code." We agree with the principle of source code management and consider this standard best practice. It is our view that firms should maintain a source code repository to manage source code access, persistence and changes. The source code repository may be used to ascertain when software changes were made and the nature of the changes.

Paragraph 50 (p. 222): Penetration / Vulnerability Tests against Cyber Attacks

Please see our comments with respect to paragraph 47 above. We believe this requirement is reasonable in principle, but must be proportionate, and the manner of performing such tests should not be prescriptive.

Paragraph 51 (p. 222): Legal / Regulatory / Security Requirements Met by Vendor

We consider the requirement to ensure that legal and regulatory requirements, as well as IT security and continuity requirements, are met by the vendors of hardware and software supporting trading activities to be unrealistic and impractical for many firms, particularly small-to-medium and principal trading firms. Such firms do not have the contractual leverage to pass on regulatory obligations in private legal contracts. At the same time, suppliers of critical infrastructure and data service are nearly always in the position to decline acceptance of any terms they don't like as they are practically monopolists in their markets, and such parties are not expected to accept audit rights or third party reliance. In addition, if this would this require all current contracts to be renegotiated, it will take a long period of time and put the requesting party (firms) in a disadvantageous negotiating position. We suggest ESMA modify this requirement "as commercially and operationally practicable" or, alternatively, regulate such third party vendors directly.

Paragraph 52 (p. 222): Appropriate Documentation from Procured Software / Hardware

Please see our comments above with respect to paragraph 51.

Paragraph 53 (p. 222): Code Escrow

We believe the requirement to enter into a code escrow agreement with software vendors to be impractical and an onerous cost burden. While code escrow agreements are very occasionally market practice for the larger institutions such as banks and clearing firms, such agreements only relate to bankruptcy / insolvency events for business continuity purposes, never to compliance requirements or audit rights. Code escrow agreements cost approximately GBP 15k per product, so they are only entered into for the most business critical issues. Due to the exorbitant costs, this is not a realistic requirement for code generally, even if restricted to business continuity purposes, and even less for small-to-medium firms.

Paragraph 55 (p. 222): Notification of NCAs

We agree with the requirement to inform the home competent authority of breaches in the physical and electronic security measures.
<ESMA_QUESTION_207>

Q208: Is the proposed list of pre trade controls adequate? Are there any you would add to or remove from the list?

<ESMA_QUESTION_208>
We believe the list of controls proposed by ESMA, if applied proportionally with consideration to the nature, scale and complexity of a firm's business, to be adequate.

All market participants have a responsibility to implement risk controls appropriate to their role. We believe that for risk control requirements to be most effective, they should be principle-based (whether or not subject to ex-post assessment by NCAs) and consideration should be given to the location where they are implemented within the trading lifecycle. Any risk control that is overly prescriptive may fail to take into account the unique characteristics of the diverse market participants, trading strategies, and products that exist today – thus adding rather than reducing risk. Further, prescriptive requirements may quickly become obsolete as markets, technology, and trading strategies evolve.

Without prescribing specific risk control implementations, a degree of standardization across market participants, regardless of their trading strategies, may be achieved by hosting risk controls at the trading venues. ESMA states “investment firms’ controls will be partly duplicative of those of the trading venues.” This is acceptable as long as the controls that are duplicative are not prescribed or enforced ‘by proxy’ by the trading venues, on top of the investment firms’ own obligations. For market stability, it is preferable that sufficiently robust risk controls exist at the trading venues, through which all market orders must pass prior to being accepted for execution. This ensures that a baseline of risk controls are applied within the marketplace regardless of the type of access used or the type of market participant. The specific implementation of these risk controls should not be prescribed by ESMA, since trading venues are the best equipped to understand the performance of their systems, the unique needs of their markets, products and participants, and the nuances associated with introducing new functionality to their systems. Moreover, trading venues can adapt risk controls to new technology and to changes in markets and trading behaviour over time.

Three additional widely adopted trading venue-hosted pre-trade risk controls are Price Collars, Quantity Limits and Cancel-On-Disconnect: (1) A Price Collar is a dynamic price range that defines the range of prices that will be accepted for execution on a specific product by the trading venue at a given time. (2) A Quantity Limit defines the maximum order quantity that will be accepted for execution on a specific product by the trading venue (3) Cancel-On-Disconnect allows direct access participants the additional safeguard of knowing that all working orders are cancelled at the trading venue in the event that the participant loses connection to the trading venue and cannot manage their orders.

Paragraph 62 (v) (p. 224): maximum long/short overall strategy position:

ESMA should not prescribe the level of aggregation for trade controls: "per product and on a per client, group, trader or account basis," rather we prefer "at appropriate levels of aggregation for the firm's business."

Paragraph 62 (ix) (p. 224): maximum messages limit:

A high number of messages is not necessary a risk and should not be blocked or throttled unless system integrity is jeopardized: rapid price adjustments, also in market making, is essential to manage risks, to prevent mispricing and to continue providing liquidity at a tight spread, particularly under challenging market circumstances. It also facilitates quicker recovery and price discovery.

Paragraph 64 (p. 224): Automatic Blocks on Orders from a Trader

We believe this requirement is acceptable in principle, as long as there is room for firms to implement as appropriate also given their internal mapping of IDs.
<ESMA_QUESTION_208>

Q209: 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>
Trading venues should deploy and enforce the same controls in a consistent manner within the EU in order to maintain a level playing field and simplify development and compliance.
<ESMA_QUESTION_209>

Q210: Do you agree with the record keeping approach outlined above?

<ESMA_QUESTION_210>
The MiFID II text requires firms to store records, akin to post-trade transaction reports, for all orders, including modifications and deletions. We support this position. Firms should retain for retrieval all orders transmitted, including orders that are executed, modified or cancelled, for a minimum of 5 years. ESMA was tasked with providing guidance on the format of such reports so as to create the possibility for standardisation of this data. Standardisation of this data will assist regulators and competent authorities in being able to make sense of such records.
<ESMA_QUESTION_210>

Q211: 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>
Both of these suggestions would make compliance nearly impossible for market participants. Cataloguing "*each modification to any parameter input into trading algorithms*" (as suggested in paragraph 71(i) as well as the massive amounts of real time market data feeding an algorithm's decision making (paragraph 71(ii)) would require firms to have an equal amount of data processing capacity solely for record keeping purposes as for its actual business operations.

To demonstrate the magnitude of this suggestion, one medium-size firm assessed that raw market data would accumulate to 1.5-2.5 Terabytes per day, on an average trading day. One Terabyte being 1,000 Gigabites.

Such raw market data is typically processed before it serves as input for the trading algorithms. Storing such processed data would require another 1.5-7.5 Terabytes to be stored, leading to storing approximately 3-10 Terabytes a day.

As a reference, transferring one day's worth of data would take approximately 35 hours (only raw market data) to 233 hours (raw and processed data) via a wholesale high-bandwidth line (100 Megabit upload speed) under perfect circumstances (100% dedicated capacity, fault free transfer).

Data stored	Megabyte (x1024x1024)	Megabit (x8)	Seconds to transfer over 100 Megabit/second line	Hours to transfer
1.5 Terabyte	1,572,864	12,582,912	125,829	35
3.0 Terabyte	3,145,728	25,165,824	251,658	70
10 Terabyte	10,485,760	83,886,080	838,861	233

In addition, storing and sending data in a data centre (and making such data available for retrieval) requires further processing for storage in large scale databases, adding to the required transfer and processing time and storage capacity.

Storing market data for 5 years, for all end users, would therefore be of such disproportionate magnitude and expense that no firm operating anything but the most simply, binary automated trading systems will be able to comply.

In addition, firms will encounter legal issues in storing and sharing data received from third party vendors, as contractual restrictions typically prohibit or limit storage and disclosure of data to third parties.

These suggestions are not practically feasible and hugely costly. We also believe that storing such data is not necessary given an NCAs' ability to centrally, retroactively, retrieve the same market data from exchanges or third party vendors. Combining such on-demand data with the ordering data that firms are required to store and make available, this will provide the relevant NCA with all relevant information required for any investigation of any incident.
<ESMA_QUESTION_211>

Q212: Do you consider that the requirements regarding the scope, capabilities, and flexibility of the monitoring system are appropriate?

<ESMA_QUESTION_212>
We believe that the complexity of a firm's monitoring system should be proportional to the type of trading done.
<ESMA_QUESTION_212>

Q213: Trade reconciliation – should a more prescriptive deadline be set for reconciling trade and account information?

<ESMA_QUESTION_213>
We do not believe a more prescriptive deadline should be set for reconciling trade and account information.
<ESMA_QUESTION_213>

Q214: 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>
We do not believe half-yearly reviews are reasonable. Rather, we support reviews 'annually or more frequently if circumstances give rise.' In conducting a holistic business review, our view is that organisations will not likely change significantly every six months. More frequent reviews should be undertaken only in the event of a material change in the nature, scale, and complexity of the firm.
<ESMA_QUESTION_214>

Q215: Are there any elements that have not been considered and / or need to be further clarified here?

<ESMA_QUESTION_215>

Due diligence by a firm is an important factor in the provision of direct electronic access, and it is in the interest of all parties to ensure that both the user and the DEA provider have suitable controls in place to avoid any form of disruption to fair and orderly trading.
<ESMA_QUESTION_215>

Q216: 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>
We support the periodic risk-based assessment of DEA users systems and controls. We would like to emphasize that whilst the DEA Provider must understand the nature of the activity, this should not require access to the intellectual property of the algorithms that the Asset Manager will use to trade on a trading platform.
<ESMA_QUESTION_216>

Q217: 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>
We believe that the ESMA guidelines on systems and controls provide suitable flexibility. We are concerned that the benchmarking exercise would detract from efficient and appropriate risk management as follows:

(i) The central objective of a firm's controls should be to ensure compliance with an orderly market, the rules of the market and overarching regulatory compliance objectives. So long as these objectives are met, we do not see how "benchmarking" to individual standards would enhance market protection.

(ii) Firms can better manage risk and perform due diligence across multiple markets. A requirement for venue-specific calibration would add unnecessary complexity and increase the cost of providing access to the trading venue.

<ESMA_QUESTION_217>

Q218: 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>
The annual renewal process becomes more familiar the longer the asset manager has had a relationship and track record with the Broker. While the length of the relationship may, in some cases, facilitate the necessary due diligence, new clients should go through the entire vetting process covering KYC, operational risk, credit worthiness, ownership, etc, before they can start trading.
<ESMA_QUESTION_218>

Q219: Do you agree with the above approach? Please elaborate.

<ESMA_QUESTION_219>
This approach has broad industry support, and is substantially in line with the ESMA guidelines on systems and controls.

<ESMA_QUESTION_219>

Q220: 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>
The IMA supports the appropriate level of granularity required to identify individual traders or systems placing orders using direct electronic access.

Such granularity allows for the appropriate pre-trade controls to be put in place and allows for identification of the responsible person either placing the trade or behind the system that places the trade. This ensures that individual traders are clearly identified separately from traders at the investment firm providing direct electronic access.
<ESMA_QUESTION_220>

Q221: Are there any criteria other than those listed above against which clearing firms should be assessing their potential clients?

<ESMA_QUESTION_221>
No, we consider the listed criteria are sufficient.
<ESMA_QUESTION_221>

Q222: 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>
We support ESMA's proposal that clearing firms should publicly disclose their criteria to enable firms to assess their ability to participate in clearing.
<ESMA_QUESTION_222>

Q223: How often should clearing firms review their clients' ongoing performance against these criteria?

<ESMA_QUESTION_223>
A clearing firm has its own acceptance and review procedures tailored to the services it offers and the clients it serves. Client types vary significantly and thus it should be at the discretion of the clearing firm based on its client acceptance and review processes. Continuous monitoring should highlight any issues of concern and prompt earlier review.
<ESMA_QUESTION_223>

Q224: 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>
Clearing firms already perform overnight stress tests on client portfolios and monitor the overnight / intraday risk exposure to client activities. That risk exposure is an estimate of the cost of liquidation of clients' positions. Client default procedures are in place. For clearing firms that are banks, stress testing of liquidity and credit lines are in place already.
<ESMA_QUESTION_224>

Q225: 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>
Overly prescriptive regulations in this area could be counterproductive in a rapidly changing environment. It depends on the kind of limit whether real-time monitoring is necessary or not.
<ESMA_QUESTION_225>

Q226: Should clearing firms have a real-time view on their clients' positions?

<ESMA_QUESTION_226>
Clearing firms have post-trade intra-day risk systems that monitor client positions in real-time where required depending on client type, activity, and markets cleared, or once a day depending on the choices that a client has made with regard to where, how, through whom to execute, and when to allocate a trade. The intra-day monitoring systems mentioned take into account start-of-day positions as well as intra-day activity, calculating position value and risk exposure figures as well as other relevant risk parameters. Again, which parameters are actually relevant depend on client types, activities, products and markets cleared and the choices that a client has made.
<ESMA_QUESTION_226>

Q227: 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>
Risk management should reflect the risks/responsibilities that the clearing firm actually has at a particular point of time in the lifecycle of an order/trade. These orders are monitored by clearing firms in real-time and the risk in client specific accounts is monitored. When trades are allocated the risk transfers to the respective underlying clearing account.
<ESMA_QUESTION_227>

Q228: 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>
All participants involved with trading and clearing have a responsibility to implement risk controls appropriate to their role. Effective risk controls that are implemented and enforced by an entity within the marketplace are a critical component of ensuring the financial integrity of a CCP as well as the integrity of the entire marketplace. To maximize the effectiveness of a suite of risk controls, its requirements should be principles-based and consideration should be given to the location where they are implemented within the trading lifecycle. Any risk control that is overly prescriptive may fail to take into account the unique characteristics of the diverse market participants, trading venues, trading strategies, and products that exist today thus adding rather than reducing risk. Further, prescriptive requirements may quickly become obsolete as markets, technology, and trading strategies evolve.

Without prescribing specific risk control implementations, a degree of standardisation across market participants, regardless of their trading strategies, may be achieved by hosting risk controls at the trading venue. By doing so, participants are required to have each of their orders pass the trading venue's risk controls prior to being accepted for execution. This would ensure that a baseline of risk controls exists within the marketplace regardless of the type of access used or the type of market participant. The specific implementation of these risk controls should not be prescribed by ESMA since trading venues are best equipped to understand the performance of their systems, the unique needs of their markets, products and participants, and the nuances associated with introducing new functionality to their systems. Moreover,

trading venues can adapt risk controls to new technology and to changes in markets and trading behaviour over time.

As examples for trading venues-hosted pre-trade risk controls we name price collars (i.e. a dynamically adjusted range of acceptable prices for a specific product), maximum order quantity limits and cancel-on-disconnect (i.e. cancellation of all working orders in the event that a market participation loses connection to the trading venue).

We encourage all market participants to implement pre- and post-trade risk controls that are commensurate with their trading operations and risk management policies and procedures.
<ESMA_QUESTION_228>

4.3. Organisational requirements for trading venues (Article 48 MiFID II)

Q229: 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>
The requirements here should ensure that trading venues perform the appropriate due diligence on all entities applying to become members/participants of a trading venue, regardless of the type of activity in which the member is involved. However, in performing that due diligence, venues should not seek to duplicate the work done by regulators where those participants are regulated and the approach should accordingly be different.
<ESMA_QUESTION_229>

Q230: 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>
Trading venues should perform the appropriate due diligence on all entities applying to become members/participants of that trading venue. It is natural that the breadth of information required would likely be greater for a firm that is not already regulated in some way by the relevant competent authority. The criteria surrounding staff selection policy and training, business continuity, disaster recovery procedures and a firm's outsourcing policy are all areas covered during the authorisation and continuing supervision of regulated firms by their national regulator, so it would seem overly onerous, and unnecessary, to duplicate these tests with each and every trading venue on which a regulated firm may be a participant.
<ESMA_QUESTION_230>

Q231: 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>
There is a great value and a correspondingly high bar for entry to the European regulated markets and trading venues; all entities wishing to access these markets as a member/participant should meet similar entry requirements.
<ESMA_QUESTION_231>

Q232: 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>
Most of the criteria are already included in many trading venues' system capacity and monitoring practices.
<ESMA_QUESTION_232>

Q233: 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>
The IMA notes that trading venues should be obligated to monitor the member/participant's connection to the venue and should be obligated to ensure that the venue's own pre-trade risk controls are working. If, for example, a material number of Members were to become disconnected this could potentially create disorderly markets.
<ESMA_QUESTION_233>

Q234: Do you agree with the above approach?

<ESMA_QUESTION_234>
Yes
<ESMA_QUESTION_234>

Q235: 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>
We feel that feel that both approaches can be complimentary. There is a level at which latency leads to a disorderly market as firms then cannot manage their risk effectively. However, acknowledging there is tolerance in systems for some increased latency, then a minimum standard of latency could relate to usual performance, deviating only up to a factor of 'X'.
<ESMA_QUESTION_235>

Q236: Do you agree with requiring trading venues to be able to accommodate at least twice the historical peak of messages?

<ESMA_QUESTION_236>
Yes.
<ESMA_QUESTION_236>

Q237: Do you agree with the list of abilities that trading venues should have to ensure the resilience of the market?

<ESMA_QUESTION_237>
We agree with the abilities listed in paragraph 31, however we would strongly disagree with giving exchanges the ability to modify live orders. Cancellation of orders is already permissible under many of the cases listed under paragraph 31. However, amending an order should not be permitted.
<ESMA_QUESTION_237>

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Q238: 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>
Whatever framework is set forth by Trading Venues we believe that the details must be made available to market participants.
<ESMA_QUESTION_238>

Q239: 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>
We believe that the goal of any error trade policy is to promote a marketplace where all trades stand as executed. Promoting such a goal is the only effective way to ensure that no incentive exists for changing outcomes of orders sent into the market after the fact. It also helps to promote the effective use of risk controls before orders are sent to the Trading Venue. Having clear, deterministic error trade policies is a good first step towards realizing that goal.

Trading Venues should have pre-determined and unambiguous error trade policies that are not subject to discretion. These policies should include pre-determined criteria for the application of “no-bust” or “non-reviewable” price ranges. Clear error trade policies serve to protect all market participants including counterparties to error trades. If error trade policies are unclear or subject to subjective analysis, it is possible that in attempting to reduce the risk of the party responsible for the error trade, the Trading Venue may introduce risk to the counterparty who may have acted in accordance with just and equitable principles of trade.

We feel that it is the responsibility of the Trading Venue to implement an appropriate error trade policy for their markets, and encourage consistency in practices for the same types of financial instruments. This includes the time required to report an error, which should be appropriate to allow continued price discovery after the error trade decision and allow the counterparties to the error to mitigate their risk as quickly as possible. Trading Venues should also have publicly announced pre-determined “no-bust” or “non-reviewable range” criteria as part of any error trade policy.

Trading Venues should have absolute discretion to cancel, vary or correct orders and transactions in accordance with their published policy or framework.
<ESMA_QUESTION_239>

Q240: Do you agree with the above principles for halting or constraining trading?

<ESMA_QUESTION_240>
While halting trading is one way to address volatility, firms may have other controls including pre-trade controls that prevent the submission of aggressive orders that would cause volatility. That said, the general principles included under subparagraphs 34 (i) to (vii) are sensible.
<ESMA_QUESTION_240>

Q241: Do you agree that trading venues should make the operating mode of their trading halts public?

<ESMA_QUESTION_241>
We agree that trading venues should make information regarding trading halts publicly available unless constrained as a result of trading/ volatility interruptions. We would not recommend publishing sensitive parameters that can give rise to market manipulation. We therefore propose deleting ‘constraining’ in order not to provide basis for disorderly trading.
<ESMA_QUESTION_241>

Q242: 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>
A trading venue should not publish thresholds as this would raise concerns regarding market manipulation, impair market integrity, revoke anonymous trading or otherwise impair orderly trading.
<ESMA_QUESTION_242>

Q243: Do you agree with the proposal above?

<ESMA_QUESTION_243>
Standardised conformance testing for all trading systems accessing a trading venue, should include the connectivity tests mentioned as a minimum before access to the trading venue systems is granted. Included in these tests it is also recommended that the basic ability of a firm to enter, modify and delete orders on the trading platform be tested. Beyond these standard tests it ought to be left to the Trading Venue to impose any further conformance testing for new applications according to its particular business model and type of trading activity.

Beyond the introduction of a new trading application it seems difficult to apply a rule for further conformance testing based on whether the release is a minor release or not, given the subjectivity and ambiguity this introduces. We would rather see a requirement for a Trading Venue to provide a continuous, robust simulation environment that mirrors the current production environment, and concurrently any proposed upgraded future environment that the Trading Venue may introduce, in order for members/participants to carry out the appropriate due diligence on any changes, of whatever scale, at any and all times.
<ESMA_QUESTION_243>

Q244: 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>
As stated above, the Trading Venue should have the right to impose any further conformance testing for new applications according to its particular business model and type of trading activity in addition to the standard, mandated, conformance testing noted by ESMA, but this, and indeed any conformance testing or access to simulation environments, should not be a chargeable service. Charging a member/participant for test or simulation platforms provides a disincentive to the member/participant to be thorough in their testing. This seems counterintuitive; accessing the regulated markets and thorough testing of all trading applications accessing those markets should be encouraged.
<ESMA_QUESTION_244>

Q245: Should alternative means of conformance testing be permitted?

<ESMA_QUESTION_245>
The minimum standard conformance testing envisioned by ESMA and tested by the relevant trading venue seem appropriate.
<ESMA_QUESTION_245>

Q246: Could alternative means of testing substitute testing scenarios provided by trading venues to avoid disorderly trading conditions? Do you consider that a certificate from an external IT audit would be also sufficient for these purposes?

<ESMA_QUESTION_246>
We do not believe that a certificate from an external IT audit would be sufficient for these purposes. Those responsible for designing, implementing, and testing the system in question are the best suited to attest to the system's ability to avoid disorderly trading conditions.

<ESMA_QUESTION_246>

Q247: What are the minimum capabilities that testing environments should meet to avoid disorderly trading conditions?

<ESMA_QUESTION_247>
As we stated in Q246, we believe it is better to approach the testing of trading systems holistically rather than focusing on attempting to enumerate all possible disorderly trading conditions.

For any type of testing it is important that the testing environment being used provides those performing the tests with the flexibility to simulate any market condition or use case deemed to be relevant to the system's scope of functionality and intended use. Additionally, the testing environment should have the ability to repeat tests as often as necessary as well as provide data to those performing the tests so they may analyse the results of the tests.
<ESMA_QUESTION_247>

Q248: Do you agree with the proposed approach?

<ESMA_QUESTION_248>
IMA believes the controls listed above are consistent with those used today; however, we have reservations with points 48 (iii) order value and 48 (viii) market impact assessment.

> 48. (iii) – order value. Order value is simply the order price (i) multiplied by the order size (ii). Required order value in conjunction with (i) and (ii) is duplicative.
>
> 48. (viii) – market impact assessment. To be able to determine the market impact of an order it would be necessary for the system entering the order to know the entire order book at any time including liquidity not currently represented by the Trading Venue, be able to forecast order-book impact (including synthetic matching) according to the Trading Venue's matching rules, and predict how other market participants will react to a new order entering the order book. In additional to being technologically in practice this, fundamentally, is not feasible.

<ESMA_QUESTION_248>

Q249: In particular, should trading venues require any other pre-trade controls?

<ESMA_QUESTION_249>
IMA believes that the proposed list is sufficient and, in the case of 48 (iii) and 48 (viii), goes beyond what is needed to ensure market resiliency.
<ESMA_QUESTION_249>

Q250: 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>
Level 1 does not ask ESMA to determine most relevant market but rather to define all markets which are material in terms of liquidity. Furthermore, in making an assessment of materiality, the location of first admission is not relevant. ESMA should rather set a materiality threshold based on market share e.g. 10%. All venues with 10% market share or more should be considered material. To unnecessarily restrict the list to what may be a single venue will reinforce what is already a dominant position.
<ESMA_QUESTION_250>

Q251: Are there any other markets that should be considered material in terms of liquidity for a particular instrument? Please elaborate.

<ESMA_QUESTION_251>

Please see our response to Q250.
<ESMA_QUESTION_251>

Q252: Which of the above mentioned approaches is the most adequate to fulfil the goals of Article 48? Please elaborate.

<ESMA_QUESTION_252>
We prefer Option A. Option B sets up a conflict of interests and creates confidentiality issues.

Although the importance of provisions and monitoring of DEA is acknowledged it is felt that firms should continue to manage their own limits and have the ability to monitor it from a much more granular level than trading venues may be able to. It would be a big ask for trading venues as it would also thus become the responsibility of the trading venues to monitor and identify which may become problematic. In terms of monitoring it would appear to add a layer of granularity which seems unnecessary if the same level of granularity is already explored at investment firms.
<ESMA_QUESTION_252>

Q253: Do you envisage any other approach to this matter?

<ESMA_QUESTION_253>
Please see our response to Q252.
<ESMA_QUESTION_253>

Q254: 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>
Yes we agree with this list.
<ESMA_QUESTION_254>

Q255: Do you agree with the list of systems and effective controls that at least DEA providers should have in place?

<ESMA_QUESTION_255>
Different risk controls are appropriate at different points in the trade lifecycle and risk controls should not be unnecessarily duplicated at the Asset Manager, investment firm and trading venue levels.
<ESMA_QUESTION_255>

Q256: 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>

Q257: Do you consider necessary for trading venues to have any other additional power with respect of the provision of DEA?

<ESMA_QUESTION_257>
No. We do not consider that trading venues need additional powers in this respect.
<ESMA_QUESTION_257>

4.4. Market making strategies, market making agreements and market making schemes

Q258: Do you agree with the previous assessment? If not, please elaborate.

<ESMA_QUESTION_258>
We agree with ESMA's assessment.

<ESMA_QUESTION_258>

Q259: Do you agree with the preliminary assessments above? What practical consequences would it have if firms would also be captured by Article 17(4) MiFID II when posting only one-way quotes, but doing so in different trading venues on different sides of the order book (i.e. posting buy quotes in venue A and sell quotes in venue B for the same instrument)?

<ESMA_QUESTION_259>
No. We agree with ESMA on its assertion in para 17 that a market making strategy is one where an investment firm operates firm, simultaneous two-way quote in at least one financial instrument on a single venue, therefore two-way quotes applying to single or multiple venues. This is not a two-way quote spread over two venues (one side on each venue) as may be misinterpreted in Article 17 (4) by use of "across venues".

Therefore idea of 'one way quotes' is not one which is within the remit of Art 17 Additionally consideration should be given, particularly from a non-equities viewpoint, of variances in liquidity for different financial instruments.
<ESMA_QUESTION_259>

Q260: 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>
From an equities perspective 3 months would work.

From a non-equities perspective we believe that the timeframe in which a strategy should be monitored to determine whether it meets the requirements of Article 17 should be a continuous timeframe as well as taking into account that for non-equities liquidity in the market may prevent trading for prolonged periods of time. There may be a 'break' in trading a particular instrument for some days and then it is traded again. In this instance it is not clear whether this would be taken into account when determining whether a strategy would be considered to be one of market making.

<ESMA_QUESTION_260>

Q261: 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>
We consider that the determination of whether a firm is operating a market making strategy should sync with the parameters of market making agreements. Based on current market practice, the core elements of liquidity provision contracts are (1) maximum spread, (2) minimum size, and (3) minimum percentage quoting presence during applicable trading hours. If a firm meets these standards, it should be captured under the requirements of Article 17(4).
<ESMA_QUESTION_261>

Q262: Do you agree with the above assessment?

<ESMA_QUESTION_262>
We agree with ESMA's assessment.
<ESMA_QUESTION_262>

Q263: Do you agree with this interpretation?

<ESMA_QUESTION_263>
We agree a quote is firm as long as it is executable, provided this excludes "indicative" quotes.
<ESMA_QUESTION_263>

Q264: Do you agree with the above assessment? If not, please elaborate.

<ESMA_QUESTION_264>
We agree with ESMA's view that the definition of a market making strategy should only contain strategies where an investment firm operates a firm, simultaneous two-way quote in a single instrument (at least one) on a single trading venue.

<ESMA_QUESTION_264>

Q265: Do you agree with the above interpretation?

<ESMA_QUESTION_265>
We do not believe specifying "simultaneous" in a time frame is necessary. Pegging this criterion to 'one second' sets it up to become obsolete, immediately or as technology progresses, and also makes the criterion possible to evade. Instead we suggest that 'simultaneous two-way quote' be defined as where a firm "actively quotes on both sides of the order book during the same continuous trading period."
<ESMA_QUESTION_265>

Q266: Do you agree with the above proposal?

<ESMA_QUESTION_266>
We believe that the criteria of what obligates a firm to enter into a Market Making Agreement should be consistent with the obligations under such a Market Making Agreements. In this context, 'comparable size' should therefore mean in "at least minimum size."

ESMA's current proposal is to make an assessment of this parameter on the basis of the overall exposure of the firm on an ongoing basis. We understand this to mean that ESMA proposes to look to a firm's company-wide net exposure in a single product on a single trading venue (pursuant to the approach ESMA states it will take in paragraph 17 on p. 262). This approach would result in significant over-capture of firms operating many different strategies beyond market making.
<ESMA_QUESTION_266>

Q267: Do you agree with the above proposal?

<ESMA_QUESTION_267>
We consider that in this context, 'competitive prices' should therefore mean prices within the "maximum spread."

If the rules of the trading venue where the prices are posted permit market makers to post asymmetric liquidity, then quotes should be allowed to move away from the central point of the market bid-ask range, but otherwise not.
<ESMA_QUESTION_267>

Q268: Do you agree with the approach described (non-exhaustive list of quoting parameters)?

<ESMA_QUESTION_268>
We agree with ESMA's proposal to set principles applying to market making rather than 'hard-coded' conditions. We agree that ESMA should set a framework for quoting parameters that leave ample room for trading venues to design the most adequate Market Making Agreements according to the instruments

traded, market or market segment characteristics and business model. As we have stated above, we believe these parameters should reflect the content of current market practice: the main obligations arising from participation in such schemes are minimum size, maximum spread, and percentage of presence in the market during applicable trading hours.
<ESMA_QUESTION_268>

Q269: 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>
As a general gauge of orderly markets, ESMA can assess market liquidity (which generally quantifies how difficult it is to engage in a trade) by looking at the bid-ask spread and the volume present in a limit order-book. In assessing the recovery of liquidity after market volatility, ESMA should follow the methodology of Eurex Exchange's 2013 data-driven market analysis of the behaviour of high frequency trading firms in times of extreme market volatility. ESMA should examine data to uncover whether strategies flagged as market making continued to be an important source of liquidity throughout incidents of market distress; whether they continued to supply a relatively stable percent of orders available at the best bid and offer; whether aggregate participation was not skewed to one side or the other; and whether the share of passive executions remained stable relative to before the incident.
<ESMA_QUESTION_269>

Q270: 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>
Yes we support this list of requirements.
<ESMA_QUESTION_270>

Q271: Please provide views, with reasons, on what would be an adequate presence of market making strategies during trading hours?

<ESMA_QUESTION_271>
The average presence time under a market making strategy should sync with the minimum percentage presence required in a Market Making Agreement during applicable trading hours. In market practice, this varies per product, segment and per venue, though in general for liquid shares, 80% is an accepted standard. Please note, however, 80% should not be taken as a blanket metric to be applied to other instruments. Each class of derivatives, for example, has its own characteristics that may make such a standard impractical.
<ESMA_QUESTION_271>

Q272: 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>
The average presence time under a market making strategy should be the minimum percentage presence required in a Market Making Agreement during trading hours.
<ESMA_QUESTION_272>

Q273: 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>
The average presence time under a market making strategy should sync with the minimum percentage presence required in a Market Making Agreement during trading hours. In market practice, this varies per product, per venue, though in general for liquid shares, 80% is an accepted standard. We discourage ESMA from setting out prescriptive guidelines; rather ESMA should allow the trading venues to determine

presence requirements depending on the nature of the venue, instrument, segment, liquidity and market circumstances.
<ESMA_QUESTION_273>

Q274: 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>
This should be left to the discretion of the trading venues. In market practice, the main obligations arising from participation in market making schemes are: minimum size, maximum spread, and percentage of presence in the market during applicable trading hours.
<ESMA_QUESTION_274>

Q275: Do you disagree with any of the events that would qualify as 'exceptional circumstances'? Please elaborate.

<ESMA_QUESTION_275>
We agree with ESMAs definition for 'exceptional circumstances'.
<ESMA_QUESTION_275>

Q276: 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>
Natural Disasters should also be considered. The shifts of capital costs as well as sudden increases in margin requirements for one reason or another could mean that a firm may no longer be able to provide market making.
<ESMA_QUESTION_276>

Q277: What type of events might be considered under the definition of political and macroeconomic issues?

<ESMA_QUESTION_277>
Under the definition of political and macro-economic issues, We provide the following examples not as an exhaustive list, but rather to provide a sense of what these might entail:

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 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 a firm against which it would be unreasonable or disproportionate for a firm to continue trading.

At the core of any attempt to capture all possible risks, as we have seen in the last decade, is that the unpredictable occurs from time to time. Therefore we encourage ESMA to take a principles-based approach that leaves firms discretion to engage in prudent risk management, subject to ex post facto review by regulators.

The burden of proof can rest on the firm relying upon the exceptional circumstances excusal from performance. The firm should be able to show that its performance of market making obligations was adversely affected by the exceptional circumstances, that such circumstances were beyond its control, and that there were no proportionally reasonable steps to be taken to avoid the event and/or its consequences.
<ESMA_QUESTION_277>

Q278: What is an appropriate timeframe for determining whether exceptional circumstances no longer apply?

<ESMA_QUESTION_278>
Following the concept of force majeure in contract law, the timeframe for the validity of exceptional circumstances should match the reality of how long these circumstances exist. This can be validated through determination by NCAs.
<ESMA_QUESTION_278>

Q279: 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 firm or part or all of the market. We believe the trading venues are best placed to determine the appropriate procedure for restarting trading depending on the circumstances.
<ESMA_QUESTION_279>

Q280: Do you agree with this approach? If not, please elaborate.

<ESMA_QUESTION_280>
We agree with ESMA's proposals.
<ESMA_QUESTION_280>

Q281: Would further clarification be necessary regarding what is "fair and non-discriminatory"? In particular, are there any cases of discriminatory access that should be specifically addressed?

<ESMA_QUESTION_281>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_281>

Q282: 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>
We only believe that market makers should be exempt from Order to Trade Ratios. No other technological or informational advantages are appropriate.
<ESMA_QUESTION_282>

Q283: In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?

<ESMA_QUESTION_283>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_283>

Q284: 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>
We agree.
<ESMA_QUESTION_284>

Q285: 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.
<ESMA_QUESTION_285>

Q286: What should be deemed as a sufficient number of investment firms participating in a market making agreement?

<ESMA_QUESTION_286>
It is our view that the trading venue should make this determination without undue regulatory restriction.
<ESMA_QUESTION_286>

Q287: What would be an appropriate market share for those firms participating in a market making agreement?

<ESMA_QUESTION_287>
It is our view that the trading venue should make this determination without undue regulatory restriction.
<ESMA_QUESTION_287>

Q288: 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>
It is our view that the trading venue should make this determination without undue regulatory restriction.
<ESMA_QUESTION_288>

Q289: 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>
It is our view that the trading venue should make this determination without undue regulatory restriction.
<ESMA_QUESTION_289>

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

Q290: Do you agree with the types of messages to be taken into account by any OTR?

<ESMA_QUESTION_290>
We agree with ESMA's approach that "all messages related to an order (submission, price and volume modifications and deletions" should be taken into account under any OTR regime. However ESMA should clarify only messages a firm can actively control will be included in any calculation.

The purpose of introducing an Order-to-transaction (OTR) ratio as required by Article 48(6) MiFID II is to ensure orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine of a trading venue in order to ensure the capacity of the latter is not exceeded. Because the objective is to restrict the behaviour of members, any OTR calculation should only include messages the member can actively control. Therefore, acknowledgment and confirmation messages relating to an order and sent by the trading venue to the member should be excluded.

Furthermore, special attention should be given to the position of market makers having continuous quoting obligations (CQO) as required under Article 17(3) MiFID II or under any legally binding market-making agreement they have entered into with a trading venue. While market makers actively monitor and control the number of messages they send to the market, in certain circumstances they may be prohibited from reducing the number of messages to comply with the mandatory OTR regime because doing so would be contrary to their CQO. Therefore, bearing in mind this possibility of conflicting obligations, we strongly emphasize the need to provide an exemption for market makers from the application of the mandatory OTR regime as ESMA has suggested (par. 20 (ii), p. 278).
<ESMA_QUESTION_290>

Q291: What is your view in taking into account the value and/or volume of orders in the OTRs calculations? Please provide:

<ESMA_QUESTION_291>
As the purpose of introducing an OTR is managing the utilization of system capacity, IMA believe an OTR calculation should take into account the metric most likely to affect the utilization of system capacity of a trading venue.

Volume should be taken into account in this calculation which is in line with current market practice. Trading venues currently operating OTRs include the volume of orders as parameter in its calculation. From a purely functional perspective, the number of trades that result from an order is outside a member's control. In case of partial execution, an order will be split into several trades; this may affect the resulting OTR. Taking volume into account serves to correct distortions in the calculation of the OTR caused by partial execution. Additionally, from a business perspective a large order has more influence on the market than a small order and should therefore be given a higher weighting. A larger order will also have more impact on the messaging capacity of the system of a trading venue.

The value of orders should be taken into account because value has no causal link with the number of orders sent to the matching engine. Furthermore, including the value may potentially render the

calculation of any OTR more complicated, unpredictable and subject to constant changes as the 'value' of an order will be subject to price fluctuations as a result of changes in the market price. Finally, none of the above mentioned OTR systems currently put in place by trading venues take into account the value of orders in the calculation of the OTR, suggesting existing market practice has deemed this unnecessary.

Whilst ESMA is bound by the mandate given to it in Article 48(12)(b) MiFID II. However, that provision only mentions value as one possible metric besides others that may be relevant for calculating the OTR. IMA believes that the Level I text does not compel ESMA to include value as a metric for calculating the OTR.
<ESMA_QUESTION_291>

Q292: 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 are not aware of any other factor besides the number and the volume of orders and the number of transactions that would be a relevant metric for the calculation of an OTR.
<ESMA_QUESTION_292>

Q293: 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>
We agree with the scope of the OTR regime suggested by ESMA. MiFID II would only require a mandatory OTR regime for:

1. Cash instruments (excluding derivatives);
2. Traded on electronic venue; and
3. Which meet the requirement of a liquid instrument for which a liquid market exists within the meaning of Article 2(1)(17) MiFIR.

However, we would emphasize the need to determine the OTR at product level instead of instrument level to ensure a higher level of granularity, taking into account the specific characteristics of each product or group of products. This would enable tailored OTRs for each instrument and product with consideration for factors such as different trading volume, volatility or frequency of quote-updates as a result of changes in the price of the underlying instrument.
<ESMA_QUESTION_293>

Q294: 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>
We agree with ESMA's suggested approach of keeping instruments with an underlying reference cash instrument out of the scope of the mandatory OTR regime, as this is unnecessary for the reason ESMA states: "*any change in the OTR of the underlying … would affect the OTR of its derivatives*."
<ESMA_QUESTION_294>

Q295: 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>
A distinction should be made between different types of instruments but also between different products within the same range of instruments.

A higher level of granularity in determining the OTR for each instrument and product should be a guiding principle. This would enable tailored OTRs for each instrument and product with consideration for factors such as different trading volume, volatility or frequency of quote-updates as a result of changes in the price of the underlying instrument. We would like to see any OTR regime closely follow existing market practice.
<ESMA_QUESTION_295>

Q296: 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>
We agree with ESMA's suggested approach of only including in the scope of the mandatory OTR regime trading venues that are sufficiently established in the market. We also strongly believe the exemption should extend to new products launched by an existing trading venue. In both these situations, venues and products need to have sufficient time to develop without facing limitations resulting from a mandatory OTR. We do not believe ESMA should be overly concerned about the potential for regulatory arbitrage, as there already exist differences between venues with OTR regimes in place and those without, and this does not materially impact the market.

However, we do not consider that a given period of time is an appropriate metric to make the assessment as to whether a venue or product is sufficiently established. Since the aim of this approach is to temporarily shield new trading venues (and, in our view, products) from the forces of competition, a more relevant metric would to assess whether the trading venue (or product) has a particular market share (for example 20%), measured in transaction volumes.

Likewise, ESMA's should maintain current practice in granting an exemption to market makers from any mandatory OTR regime. This will also help to reduce competitive pressure on new trading venues. New trading venues should be able to appoint market makers to attract liquidity without concern that the volume of orders they generate count toward OTRs.
<ESMA_QUESTION_296>

Q297: If yes, what would be the sufficient period for these purposes?

<ESMA_QUESTION_297>
Whilst a particular period of time would be an adequate measure to assess whether a trading venue is exempt from the mandatory OTR regime, we believe that the size of the market share is a more relevant metric to make that assessment.
<ESMA_QUESTION_297>

Q298: 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>
ESMA should allow trading venues to apply a floor under which the OTR regime would not apply. Where trading venues currently operate OTRs, they have in included this concept in their respective regimes because some participants have so little impact on system capacity that, without a floor, the trading venue would allocate unnecessary resources in monitoring.

However, trading venues should establish this floor rather than ESMA, as the trading venues are the best positioned to make an appropriate assessment.
<ESMA_QUESTION_298>

Q299: Do you agree with the proposal above as regards the method of determining the OTR threshold?

<ESMA_QUESTION_299>
We do not believe ESMA's proposal is the most appropriate method for determining the OTR. The determination of the OTR should be left to trading venues. The purpose of introducing OTR is to ensure

orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine, thereby ensuring system capacity is not exceeded. The trading venue is best positioned to assess what level of messaging their systems can handle.

Establishing a multiplier (x) based on the average OTR observed on a trading venue for a group of instruments is a 'one-size-fits-all' approach that does not sufficiently take into account differences between instruments and individual products in terms of trading volume, volatility or frequency of quote-updates.

ESMA should develop an alternative approach where it formulates key principles that a mandatory OTR must comply, with but leaves it to trading venues to determine the OTR per instrument and per product based on what their systems can safely accommodate.
<ESMA_QUESTION_299>

Q300: 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>
We do not consider that this proposed approach to be optimal for the following reasons. First, the purpose of introducing an OTR is to ensure orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine of a trading venue in order to ensure the capacity of the latter is not exceeded. Past observations of the average OTR on a trading venue may provide little information on the utilization of the current and future messaging capacity of a trading venue.
Second, the average observed OTR of a trading venue in the past period may be quite different from and lower than the maximum OTR the capacity of the systems of a trading venue can handle. This may unduly limit the abilities of trading venues to make maximum use of the existing capacity. Third, if a trading venue must apply a mandatory OTR which is based solely on past observations, it is inherently limited in its ability to expand its messaging capacity and grow to meet the demands of members and members.

Therefore an OTR based on past observations may artificially reduce competition between trading venues. Any new messaging capacity it adds to its system may not be fully used if that would lead to an OTR higher than what is authorized. Therefore we believe ESMA should develop an alternative approach where it formulates key principles that a mandatory OTR must comply with but leaves to trading venues to determine the OTR per instrument and per product according to what their systems can safely accommodate.
<ESMA_QUESTION_300>

Q301: Do you believe the multiplier x should be capped at the highest member's OTR observed in the preceding period?

<ESMA_QUESTION_301>
As outlined above, the purpose of introducing OTR is to ensure orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine of a trading venue in order to ensure the capacity of the latter is not exceeded. The highest member's OTR observed in the preceding period will give an indication of what an acceptable OTR for that particular member, on the basis of that member's systems, may be, but may not provide sufficient information to determine what an acceptable OTR level for the systems of the trading venue as a whole should be.
<ESMA_QUESTION_301>

Q302: 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>
We do not believe that a multiplier (x) is an appropriate tool to determine the OTR regime for a particular trading venue. Trading venues are the best positioned to make an appropriate assessment, but in any event, we believe it is essential that any OTR regime must have sufficiently flexibility to allow for the

development of distinctive and potentially different OTRs at the level of each product if necessary to take into account different trading volume, volatility or frequency of quote-updates.
<ESMA_QUESTION_302>

Q303: 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 agree that ESMA should establish a minimum frequency on which trading venues are required to review OTR thresholds. We acknowledge in Germany this review currently takes place every 12 months under the German HFT law, but our members would ideally see a more frequent review schedule every 6 months. A twice a year assessment strikes a good balance between the need for the OTR regime to reflect up to date market developments versus the resources a trading venue has to commit to making this review. Finally, we believe trading venues should not be prevented from reviewing the adequacy of the OTR on a more frequent basis if it deems it necessary.
<ESMA_QUESTION_303>

Q304: What are your views in this regard? Please explain.

<ESMA_QUESTION_304>
Market makers should be exempt from the OTR regime. Therefore we support option (ii) of maintaining the current practice in granting an exemption for market makers and other liquidity providers.

A market maker provides a service to the market in the form of additional liquidity by continuously sending orders into the market to update his prices and provide two sided quotes. He cannot control how many of these orders will be matched by other members of the trading venue and will result in actual transactions. Therefore, he can control his level of messaging but not the OTR this level messaging will generate.

Applying a mandatory OTR regime to market makers may lead to a situation where complying with a CQO may lead to a violation of the OTR (or vice versa). This would create potentially conflicting obligations for market makers, which we do not believe is ESMAs intent. We also believe the obligation to provide liquidity should prevail over the obligation to comply with a mandatory OTR regime, as long as this does not put undue stress on the systems of a trading venue. Providing an exemption for market makers from a mandatory OTR regime may significantly reduce competitive pressure on new trading venues or existing trading venues launching new products.

We encourage ESMA to include in the mandatory OTR regime an exemption for market makers subject to CQO obligations under Article 17(3) MiFID.
<ESMA_QUESTION_304>

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

Q305: 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>
To ensure transparent, fair and non-discriminatory co-location services offered by trading venues, ESMA should consider the following factors:

a. Non-discriminatory pricing:

In order to ensure co-location services are transparent, fair and non-discriminatory trading venues must publish or make available on demand their commercial policy including the list of prices as well as the objective conditions for accessing the co-location services. In evaluating reasonableness, trading venues should offer services (a) with rates that are not so prohibitive that only a small percentage of members who

might benefit could afford them and (b) that are priced comparably to similar services offered elsewhere in the market and do not unreasonably benefit from a trading venue's unilateral control over their own data, facilities, etc.

b. The concept of equidistant cabling connections:

Trading venues should optimally offer equidistant cabling connections to eliminate latency advantages of any participant over another. This is the fairest means by which co-location services should be offered. At a minimum, trading venues should disclose the latency numbers of various co-location services so that market participants have the information required to make their own investment assessment of whether or not to make use of these services.

c. Transparency of data centre agreements:

Trading venues should make available clear documentation about their products and services with all relevant information including pricing. Under no circumstances should trading venues be allowed to inform only certain market participants of the existence of certain services. The fees charged to market participants must be uniform between market participants using the same services and should not discriminate against different classes of market participants – they should offer their services to all qualified participants on identical and transparent terms.

We believe it is essential for ESMA / NCAs to oversee co-location services:

- Since the volumes on the equity and futures markets are nearly all electronically traded, the connectivity to trading venue matching engines is a critical element of the market structure.
- Trading venues have robust testing and certification procedures to ensure the functionality and risk management controls of the connecting market participant meet the pre-determined testing criteria.
- Trading venues ensure a level playing field among all those who connect to the trading venue matching engine. They oversee all connections and latency measurements to ensure the integrity of the market.
- Trading venues oversee the physical environment to ensure the market is operating in a secure, protected and controlled manner.
- Trading venues allow any market participant who meets the technological requirements of directly connecting to the matching engine to subscribe to the co-location services. The pricing for the co-location services are the same for all market participants, regardless of volumes, and are based on physical space and electrical usage.

<ESMA_QUESTION_305>

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

Q306: Do you agree with the approach described above?

<ESMA_QUESTION_306>
We agree with the approach contemplated by ESMA.

Regulation should only intervene in commercial arrangements between parties if these arrangements generate risks which may affect the market in its entirety. Therefore we agree that regulation should only intervene in the fee structures used by trading venues if the fee structures incentivise trading behaviour leading to disorderly market conditions or if the fee structure is not sufficiently transparent for market participant to make an information decision regarding their trading behaviour.
<ESMA_QUESTION_306>

Q307: Can you identify any practice that would need regulatory action in terms of transparency or predictability of trading fees?

<ESMA_QUESTION_307>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_307>

Q308: Can you identify any specific difficulties in obtaining adequate information in relation to fees and rebates that would need regulatory action?

<ESMA_QUESTION_308>
It is essential for trading venues to have an obligation to be transparent about information relating to fees and rebates. We agree with ESMA that trading venues should publish on their website in an easy to find place or in one comprehensive document which is promptly made available, all execution fees, ancillary fees and any rebates available.

However, we would like to emphasise that transparency obligations should not be limited solely to fees and rebates but also to other services or advantages conferred to market participants. We support a marketplace that promotes transparency to all market participants in all aspects of operations including, but not limited to:

- Transparency into the process by which working orders (displayed and not displayed) are handled on all trading venues, including RMs, MTFs, and SIs.
- Transparency into all trades on all trading venues, including RMs, MTFs, and SIs.
- Transparency into the process by which orders are matched for execution by the trading venue, including the matching algorithm used by the trading venue and any priorities one order may have over another within the matching algorithm.
- Transparency into the fees associated with all executions of all trades on a trading venue.
- Transparency into the services provided by the trading venue to its participants, including pre and post-trade risk controls, market data feeds, trade execution, colocation, and network connectivity.
- Transparency into the order types available to market participants on a trading venue, including details on how each order type interacts with the market.
- Transparency into the trading venue's trade bust/adjust policy including, when it may be invoked and the potential actions the trading venue may take.

<ESMA_QUESTION_308>

Q309: Can you identify cases of discriminatory access that would need regulatory action?

<ESMA_QUESTION_309>
No.
<ESMA_QUESTION_309>

Q310: Are there other incentives and disincentives that should be considered?

<ESMA_QUESTION_310>
No.
<ESMA_QUESTION_310>

Q311: 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>
Subject to the comments above on the need for fair, transparent and non-discriminatory pricing of exchange services, we do not believe the structural parameters of fee schedules are significant inducements one way or another to trading behaviour that might lead to disorderly trading conditions.

In most cases, trading venues establish fee structures in reasonable dialogue with their commercial audience, such that they should reflect a rational approach to charging for services based on market participants' actual and bona fide use of such services. To the extent any market participant may be

incentivised to engage in non bona fide trading behaviour in order to secure better pricing (e.g. by intentionally trading specific volume or value in order to trigger bucket or tranche pricing as further discussed below), this should be investigated on the merits and dealt with, if applicable, under relevant anti-market abuse provisions.

Certain regulatory requirements or prohibitions (such as an overly restrictive view on the exceptional circumstances under which a market maker may cease providing quotes) are more likely to induce disorderly trading conditions than the parameters of fee schedules.
<ESMA_QUESTION_311>

Q312: 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>
Please see response to question 317
<ESMA_QUESTION_312>

Q313: 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>
We are supportive of ESMA's view on the removal of cliff structures.
<ESMA_QUESTION_313>

Q314: Can you identify any potential risks from charging differently the submission of orders to the successive trading phases?

<ESMA_QUESTION_314>
Please see response to question 317
<ESMA_QUESTION_314>

Q315: 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>
Please see response to question 317
<ESMA_QUESTION_315>

Q316: Are there any discount structures which might lead to a situation where the trading cost is borne disproportionately by certain trading participants?

<ESMA_QUESTION_316>
Please see response to question 317
<ESMA_QUESTION_316>

Q317: 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>
It is not necessarily the case that charging different fees for different trading phases will lead to disorderly markets. However, we note that there may be incidences where a trading venue may be able to use its

leverage in trading phases where it has the monopoly, exerting pricing power, which would lead to an anti-competitive market.

This may also incentivise higher risk behaviour of market participants seeking cheaper prices elsewhere during that trading phase.
<ESMA_QUESTION_317>

Q318: Should conformance testing be charged?

<ESMA_QUESTION_318>
Trading venues should not charge for technical conformance testing, which is a mandatory step to confirm a system's functionality while interacting with a trading venue. This process is often guided by a script of tests provided by the trading venue and is performed in a trading venue-provided test environment to simulate the production trading environment.
<ESMA_QUESTION_318>

Q319: Should testing of algorithms in relation to the creation or contribution of disorderly markets be charged?

<ESMA_QUESTION_319>
This type of testing should not be mandated but rather proposed as one in a range of options available to firms in the adequate and appropriate testing of their algorithms.

Currently many venues' non-live testing environments do not adequately reflect realistic market circumstances or have capacity adequate to the needs of firms. Also, charges associated with making use of these non-live environments are often also prohibitively expensive, creating improper incentives for trading venues in the event this kind of testing becomes mandatory.

We consider that trading venues should develop enhanced test environments that more closely simulate trading in the production environment. Testing of algorithms should not be a revenue generating product. Any charges should be nominal, only to cover the provider's costs.
<ESMA_QUESTION_319>

Q320: 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, if the cost for such testing (thus the cost for compliance) is unreasonable or disproportionate, it will discourage firms from investing sufficiently in testing their algorithms.
<ESMA_QUESTION_320>

Q321: Do you agree with the approach described above?

<ESMA_QUESTION_321>
No
<ESMA_QUESTION_321>

Q322: How could the principles described above be further clarified?

<ESMA_QUESTION_322>
An essential principle of any Market Making Scheme should be that the obligations imposed on a market maker are proportionate to the benefits conferred. The rebates and incentives given to a market maker must take into account and be proportionate to the (1) risks assumed, (2) the quality of the liquidity provided to the market and (3) the size and nature of the obligations imposed.
<ESMA_QUESTION_322>

Q323: Do you agree that and OTR must be complemented with a penalty fee?

<ESMA_QUESTION_323>
We agree that any mandatory OTR regime for instruments for which establishing an OTR is required could be complemented by a penalty fee. This is consistent with current market practice, where many trading venues already have policies addressing message rates that have evolved over the past several years into effective mechanisms for controlling excessive messaging.

Typically, these policies are two-tiered in order to address two different aspects of message rate limits. The first level of limits is usually calculated and enforced on a daily or monthly basis as a means to deter market participants from consistently sending orders that are unlikely to be matched for execution. Although specific implementations of such a policy differ among trading venues, repeated violations of the policy typically lead to a fine, which acts as a deterrent to similar behaviour in the future as well as to recoup the costs incurred by the trading venue to maintain systems capable of handling high levels of messaging.

The second level of limits is usually calculated and enforced on a real-time basis to prevent market participants from sending a large number of orders in a short enough period of time as to potentially harm the integrity of the trading venue. This limit is usually implemented as a short-term hard limit that prevents an offending market participant from sending additional orders for some amount of time.

It is difficult to standardize these types of policies across trading venues because trading systems and products vary among so much. Any regulation in this area should acknowledge the differences in markets and give trading venues the flexibility to configure their messaging policies, keeping in mind the unique characteristics of their products and the way they are traded. Requiring a messaging policy but allowing trading venue-by-trading venue and product-by-product flexibility will ensure the sound functioning of a liquid marketplace while meeting the objectives of ESMA.

Penalty fees should in any case not be imposed on market makers when the breach of the OTR is the result of an exceptional circumstance within the meaning of Article 17(3) MiFID II. A market maker cannot control or anticipate how many of its orders will be matched by other members of the trading venue and will result in actual transactions. Therefore he can control his level of messaging but not the OTR this level of messaging will generate.
<ESMA_QUESTION_323>

Q324: 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 IMA prefers Option A for the reasons stated in Q323 above. The purpose of introducing an OTR as required by Article 48(6) MiFID II is to ensure orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine of a trading venue in order to ensure the capacity of the latter is not exceeded. In this case, a homogenous methodology applicable to all trading venues may in fact create conditions for disorderly trading conditions, as each platform and its products can vary greatly. Moreover, trading venues that have invested in order to have more robust system with larger messaging capacity should therefore be able to apply different OTRs according to capacity of their systems.
<ESMA_QUESTION_324>

Q325: Do you agree that the observation period should be the same as the billing period?

<ESMA_QUESTION_325>
We agree.
<ESMA_QUESTION_325>

Q326: 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>
We agree and would defer to the trading venues as to how to define "systematic breaches."
<ESMA_QUESTION_326>

Q327: Do you consider that market makers should have a less stringent approach in terms of penalties for breaching the OTR?

<ESMA_QUESTION_327>
Yes. As stated above, market makers subject to a Continuous Quoting Obligation (CQO) for a proportion of a trading venue's trading hours that have entered into a binding written agreement as required under Article 17(3) MiFID should be exempt from any OTR regime. We agree with ESMA that any future OTR regime should preserve the market practice of permitting market makers to submit orders beyond the pre-established limit without surcharge.
<ESMA_QUESTION_327>

Q328: Please indicate which fee structure could incentivise abusive trading behaviour.

<ESMA_QUESTION_328>
We do not consider that the parameters of fee structures are significant inducements one way or another to market abuse. To the extent any market participant may be incentivised to engage in non bona fide trading behaviour in order to secure better pricing, this should be investigated on the merits and dealt with, if applicable, under relevant anti-market abuse provisions. We are not aware of any fee structure currently used by trading venue that have triggered participants to engage in abusive trading behaviour.
<ESMA_QUESTION_328>

Q329: In your opinion, are there any current fee structures providing these types of incentives? Please elaborate.

<ESMA_QUESTION_329>
No, we are not aware of any such fee structures.
<ESMA_QUESTION_329>

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

Q330: Do you agree with the general approach ESMA has suggested?

<ESMA_QUESTION_330>
IMA agrees with the approach ESMA has suggested for regulating tick sizes but would provide some additional points that are important in establishing any tick size regime.

It is clearly the intent of MiFID II that regulators control the setting of tick sizes rather than individual trading venue operators. Trading venues should be left material discretion in tailoring actual tick sizes within the parameters of a principle-based regime set by ESMA.

The regulation of tick sizes is a high impact market intervention. Non-optimal tick sizes will directly damage the price discovery process and reduce liquidity. A too fine tick size leads to thin liquidity at the top of the book, which deters those looking to trade larger volumes and may push such participants away from lit venues. A too coarse tick size leads to spreads that are too wide, raising costs for end investors and making prices unattractive for all. In both cases, the wrong regime may push trading off a venue, which is deleterious for both market participants and trading venue operators.

Markets have evolved to reflect generally correct tick sizes. This is because they have not had an external force restricting their ability to reflect the needs of market participants. If this has to change, ESMA must

be sure to implement a flexible tick size regime that is capable of adapting to changing market circumstances. ESMA should leverage the expertise of those best positioned to analyse and understand the unique characteristics of a trading venue and its participants — in this case the trading venue operators can provide that expertise.

Therefore, considering the intent of MiFID II, we believe the factors proposed to be taken into account provide a good starting point, but that other facts must also be considered such as: the volatility profile of an instrument, the volume per trade of an instrument, and the different impacts a large or small order may have on the stability of the order book. Due to the material impact tick sizes can have on the activity of market participants, however, we believe no tick size regime should be implemented without first conducting a data-driven analysis of the impact of any proposed change.
<ESMA_QUESTION_330>

Q331: 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 believe that average number of trades is an adequate proxy for liquidity in this context.
<ESMA_QUESTION_331>

Q332: 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>
Four bands seems adequate but we would recommend that the governance structure that is developed to implement and maintain this structure has within its remit the ability to revise that number if that structure deems it appropriate upon investigating results post implementation.
<ESMA_QUESTION_332>

Q333: 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>
We consider that this is the central purpose of a well implemented tick size regime. The numbers quoted as floor and cap are arbitrary and should remain open to revision. The key advantage of Option 1 is that it allows for control testing of the optimisation process.
<ESMA_QUESTION_333>

Q334: What do you think of the proposed spread to tick ratio range?

<ESMA_QUESTION_334>
The proposed spread to tick ratio range looks reasonable provided the first review is scheduled close to the roll out of the structure. It would be appropriate to review and recalibrate the starting range as deemed appropriate by a governance process that represents all important users of trading venues. However in setting any floor and ceiling levels it is vital that spreads are not artificially constrained by tick sizes, particularly as this creates cost for investors.
<ESMA_QUESTION_334>

Q335: 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>
Both factors are relevant and we recommend a combination would be more appropriate.
<ESMA_QUESTION_335>

Q336: 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>
Option 1 presents a good foundation from which to start and is easy to read, implement and monitor
<ESMA_QUESTION_336>

Q337: What is your view regarding the determination of the liquidity and price classes?

<ESMA_QUESTION_337>
The price classes suggest themselves and look uncontentious. The liquidity classes seem a reasonable place to start when initiating this approach but a large part of the appeal of option 1 is that these classes can evolve over time.
<ESMA_QUESTION_337>

Q338: 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>
We favour a regime that allows for further calibration. There will be a wide variation in the correct tick size from instrument to instrument, and it will be difficult if not impossible to calibrate perfectly any proposed tick size from first principles. We agree that any tick size regime will need to be able to take into account new data and adapt to changing market circumstances.
<ESMA_QUESTION_338>

Q339: 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>
Yes.
<ESMA_QUESTION_339>

Q340: 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>
The revision of tick size tables should take place no more frequently than every 6 months, and optimally annually.
<ESMA_QUESTION_340>

Q341: 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>
Due to the material impact tick sizes can have on the activity of market participants, we believe no tick size regime should be implemented without first conducting a data-driven analysis of the impact of any proposed change.
<ESMA_QUESTION_341>

Q342: 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>
Equivalent regulation is useful for equity-like instruments such as ETFs. We believe the general concept should be the same as for shares, but may be calibrated slightly differently, if deemed necessary by, for instance, the trading venue operators. We do not recommend implementing two different solutions/methodologies, e.g. Option 1 for shares and Option 2 for ETFs, as it would become too complex.
<ESMA_QUESTION_342>

Q343: 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>
No.
<ESMA_QUESTION_343>

Q344: Do you agree that depositary receipts require the same tick size regime as equities'?

<ESMA_QUESTION_344>
Yes, however we believe tick size regimes should be limited to shares and ETFs.
<ESMA_QUESTION_344>

Q345: If you think that for certain equity-like instruments (e.g. ETFs) the spread-based tick size regime 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>
Given the flexibility and evolutionary nature of Option 1, there is no reason to adopt an alternate approach for equity-like instruments.
<ESMA_QUESTION_345>

Q346: If you generally (also for liquid and illiquid shares as well as other equity-like financial instruments) prefer a spread-based tick size regime vis-à-vis the regime as proposed under Option 1 and tested by ESMA, please specify the reasons and provide the following information:

<ESMA_QUESTION_346>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_346>

Q347: 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>
Our preferred type of tick size regulation would be a rigorously administered pan European regime resulting in the removal of discretion from trading venues. The existence of such discretion has resulted in it being exercised in such a way as to damage the efficiency of the European equity market, this must be prevented in the future. The current disparate regimes introduce unnecessary inefficiency and risks.
<ESMA_QUESTION_347>

Q348: Do you see a need to develop a tick size regime for any non-equity financial instrument? If yes, please elaborate, indicating in particular which approach you would follow to determine that regime.

<ESMA_QUESTION_348>
No, IMA does not see any need to develop a tick size regime for non-equity instruments as those markets work differently. We are convinced that trading venues can best determine what the tick size for those instruments should be, if any.
<ESMA_QUESTION_348>

Q349: Do you agree with assessing the liquidity of a share for the purposes of the tick size regime, using the rule described above? If not, please elaborate what criteria you would apply to distinguish between liquid and illiquid instruments.

<ESMA_QUESTION_349>
Yes, we agree that there should be different tick sizes for liquid and illiquid stocks. We support the proposal that the existing definition of liquidity according to Art. 22 of the EC Regulation No. 1287/2006 of MiFID I should be taken into account.
<ESMA_QUESTION_349>

Q350: 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>
We see no benefits in option 2 over option 1.
<ESMA_QUESTION_350>

Q351: 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>
We see no benefits in option 2 over option 1.
<ESMA_QUESTION_351>

Q352: 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>
IMA does not agree that a newly admitted instrument should be treated as an illiquid instrument during the initial calibration period, as this may unnecessarily constrain trading.

We suggest that new listings be assigned to the equivalent table its peers have been assigned to, i.e. either to the table for liquid shares or to the table for illiquid shares.

For reassessment, to avoid artificially constrained trading and to stimulate growth in the IPO market, we would prefer to see more flexibility for new listings to be reassigned on a monthly basis during the first six months after listing. In order to minimize market disruptions, however, changes should only be made at the start of a month on the condition an instrument has been trading for at least a full calendar month.
<ESMA_QUESTION_352>

Q353: 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>

No. The sample is not sufficient. It is not even certain than in a six weeks period one can observe an options expiry. In any event, optimising these periods should be part of the remit of the governance structure implemented for either option.
<ESMA_QUESTION_353>

Q354: Do you agree with the proposal of factoring the bid-ask spread into tick size regime through SAF? If not, what would you consider as the appropriate method?

<ESMA_QUESTION_354>
No. SAF is a very complex approach, which creates representational ambiguity and implementation complexity. Ironically software engineers would be likely to look through the SAF construct and implement it as additional sets of tick tables rather than offsets on the arbitrarily allocated table in which the stocks start.
<ESMA_QUESTION_354>

Q355: 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>
Yes we support this proposal.
<ESMA_QUESTION_355>

Q356: 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>
We agree that it is less problematic to have a too small tick size than a too large tick size to the extent that it does not adversely create a proliferation of orders and negatively impact desired OTRs. We believe that a target spread to tick ratio of 2-4 appropriately balances those concerns vs. the risks associated with artificially constraining price discovery, especially in light of the added mechanism that an NCA may manually change the SAF if it is deemed necessary.
<ESMA_QUESTION_356>

Q357: Do you have any concerns of a possible disruption which may materialise in implementing a review cycle as envisioned above?

<ESMA_QUESTION_357>
IMA does not believe there is a need for an initial calibration period, as this might lead to market disruptions. An annual review of the SAF, preferably at the end of a calendar year, seems feasible.

To minimise disruption, tick tables and instrument classifications should be available in a standardised machine readable format, for example in the MiFID database. This should be considered the leading source rather than the current ad hoc system of emails, pdfs, spreadsheets etc., which varies by trading venue.
<ESMA_QUESTION_357>

Q358: 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>
IMA considers that for shares, a differentiation between liquid and illiquid shares makes sense, and we agree with ESMA's proposal under Section 3.1 of the Consultation Paper.
<ESMA_QUESTION_358>

Q359: 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>
Only shares and ETFs should be assigned to the regime. All other instruments should be excluded.
<ESMA_QUESTION_359>

Q360: 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 agree with ESMA's proposal to maintain the price as a dynamic factor with which to determine appropriate tick sizes during the normal course of trading and only periodically (i.e. on an annual basis) review liquidity and the average spread to appropriately adjust the tick size via the SAF for use in the subsequent period.
<ESMA_QUESTION_360>

5. Data publication and access

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

Q361: Do you agree that the guidance produced by CESR in 2010 is broadly appropriate for all three types of DRS providers?

<ESMA_QUESTION_361>
The IMA agrees with the proposition that the 2010 CESR guidance is still appropriate.
<ESMA_QUESTION_361>

Q362: Do you agree that there should also be a requirement for notification of significant system changes?

<ESMA_QUESTION_362>
Article 59(4) of MiFID II requires NCAs to keep authorised DRS providers under review to ensure on-going compliance with the authorisation requirements. In order to meet this requirement the IMA considers the notification of significant system changes by DRS to the NCA is an appropriate and necessary provision. ESMA should provide guidance and examples on what is captured by 'significant system changes'. In addition, the IMA supports ESMA's proposal for DRS to provide regular periodic reporting to NCA's on a minimum of an annual basis.
<ESMA_QUESTION_362>

Q363: Are there any other general elements that should be considered in the NCAs' assessment of whether to authorise a DRS provider?

<ESMA_QUESTION_363>
No, we do not consider any further elements are required.
<ESMA_QUESTION_363>

5.2. Additional requirements for particular types of Data Reporting Services Providers

Q364: Do you agree with the identified differences regarding the regulatory treatment of ARMs.

<ESMA_QUESTION_364>
Yes, we agree.
<ESMA_QUESTION_364>

Q365: 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>

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

Q366: Do you agree with the proposal to define machine-readability in this way? If not, what would you prefer?

<ESMA_QUESTION_366>
Article 64(1) of MiFID II requires that APA's

"the home Member State shall require an APA to have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of Regulation (EU) No 600/2014 as close to real time as is technically possible, on a reasonable commercial basis……………… The home Member State shall require the APA to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources."

The IMA supports ESMA's proposal for machine readability but we are concerned about APA's using websites to make public information. It is our view that data should be stored in a robust architecture designed to enable high speed automatic access, we do not consider that websites on their own meet these criteria.
<ESMA_QUESTION_366>

5.4. Consolidated tape providers

Q367: 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>
Consolidated tape providers (CTPs) should have the capacity to offer users an instrument-by-instrument based product, if the market participant would like to purchase the data in this format. CTPs must also have the capacity to provide data as a comprehensive tape and data at various degrees of disaggregation.

The IMA agrees that transparency information should be available without the need for value-added products to be purchased alongside. The costs related to purchasing the core CTP data must be 'at cost' or 'at cost plus'. CTPs must not establish discriminatory pricing systems based on the level of additional value-added products that their clients purchase.
<ESMA_QUESTION_367>

Q368: 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>

Q369: 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>

The IMA sees no issue with CTPs providing the stated services or any others that complement its main activity. Article 65 (4) requires that CTPs must:

"operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions."

It will be important for NCAs to ensure CTPs have robust conflicts of interest policies and procedures in place. In addition, as stated in our answer to Q367 it is vital that the core CTP data is made available on a cost plus basis that is unrelated to the level of additional value add products being purchased by a subscriber.
<ESMA_QUESTION_369>

5.5. Data disaggregation

Q370: Do you agree that venues should not be required to disaggregate by individual instrument?

<ESMA_QUESTION_370>
As outlined by ESMA the IMA considers that disaggregation by individual instrument would involve disproportionate costs which would subsequently be passed on to end users.
<ESMA_QUESTION_370>

Q371: Do you agree that venues should be obliged to disaggregate their pre-trade and post-trade data by asset class?

<ESMA_QUESTION_371>
Please see response to Q372.
<ESMA_QUESTION_371>

Q372: 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>
Whilst the IMA agrees that venues should be obliged to disaggregate their pre-trade and post-trade data by asset class. Most (if not all) trading venues already disaggregate to this level already. Our members consider that ESMA should go further and mandate that batch auction data (pre & post) must be separated out from continuous trading data. In addition venues should be mandated to disaggregate data of material indexes.

Further detail is provided in our response to Q374.
<ESMA_QUESTION_372>

Q373: 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>
As outlined by ESMA, venues should be required to disaggregate data according to the listed criteria. Our members are concerned about how *insufficient customer interest* will be demonstrated. As it is the venues who will be designing the product architecture and pricing structure for data, there is a real risk of venues manipulating these to avoid disaggregating certain streams.

It is our view that the NCA's should have a strong presumption toward disaggregation.
<ESMA_QUESTION_373>

Q374: 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>
The IMA is of the view that ESMA should mandate that market data is disaggregated with particular reference to batch auction data. The IMA consider it unacceptable that batch auction data is only made available free-of-charge at midnight, whilst all other market data is made available free-of-charge after 15-minutes.

Some venues only make available closing price batch auction data for free at End Of Day (EOD – midnight). As a result, in order to revalue their portfolios, our members are required to purchase a license for batch auction data. Such licenses themselves are often further bundled with other data services. This approach undermines the efficient and consistent dissemination of information in an easily accessible manner.

The regime for batch auction data should be consistent with delayed regime for real time data, that is, batch auction data must be made available free-of-charge at 15-minutes.
<ESMA_QUESTION_374>

Q375: What impact do you think greater disaggregation will have in practice for overall costs faced by customers?

<ESMA_QUESTION_375>
We would anticipate that disaggregation would materially reduce costs for consumers of the data with the overall benefit of reducing costs for end-investors.
<ESMA_QUESTION_375>

5.6. 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)

Q376: 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>

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

Q377: Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?

<ESMA_QUESTION_377>
Yes, do agree. However, where the extent of the excess over planned capacity is de minimis (e.g. 5-10% above planned capacity) and *readily* capable of resolution in order to meet the access request, then we would not anticipate CCPs using the fact that the request exceeds planned capacity as a ground for denying access in practice. Factors to consider are:

- the extent by which the access request results in planned capacity being exceeded;

- the extent to which additional capacity can nonetheless be built by the CCP to meet this access request in sufficient time to accommodate the increased anticipated volume, without any reduction in the risk management standards of the CCP; and

- the extent to which additional redundant capacity can built by the CCP to enable it to meet future access requests and how quickly that additional capacity can be put in place.

It is important that CCPs consider their systems'toperational reliability and scalable capacity when reviewing any access request. In principle, we agree that having regard to planned capacity is the most appropriate way to use anticipated volume as a means of determining whether or not an access request should be granted, but we query how the planned capacity threshold will operate in practice – we would be concerned if there was no discretion in the threshold and if the proposal is for such threshold to be rigid and absolute.

Principles-based test vs rule-based test

We note the opening sentence of paragraph 9 on page 343 of the DP - *ESMA preliminarily considers that access should be given whenever it does not give rise to risks that cannot be effectively managed or adequately mitigated*" ESMA preliminarily considers that access should be given whenever it does not give rise to risks that cannot be effect to a CCP, over and above the 4 specific grounds identified in Article 35(6)(a). If so, we would not be in favour of the inclusion of such a principles-based test, as the grounds on which it could be used to deny such a request are not sufficiently identifiable nor specific.
As outlined in MiFIR Article 35(6)(a), the grounds on which access may be refused by a CCP must be specific, rather than merely principles-based.

We note that grounds on which access may be refused by a CCP must be specific, rather than merely principles-based. It remains to be seen in practice how such capacity will be determined in practice, by whom and how often such capacity has to be assessed. As neither the European Commission nor ESMA have mandated how much redundant capacity should be considered "sufficient" the grounds on which access may be refused by a CCP must be specific, rather than merely principles-based. It remains to be seen how such capacity will be determined in practice, by whom and how often such capacity has to be assessed.
ESMA should review the options available to ensure there is a level playing field across Europe with regards to how sufficient redundant capacity is measured and the levels at which it is required to be set.
<ESMA_QUESTION_377>

Q378: How would a CCP assess that the anticipated volume of transactions would exceed its capacity planning?

<ESMA_QUESTION_378>
There are a number of ways CCPs can assess the anticipated volume of transactions in a business as usual environment and in stressed conditions.

In the event that the trading venue operates a pre-existing market place in the financial instrument that it would like to clear at the CCP, the CCP will conduct a forecast as to the potential share of the pre-existing market at the trading venue that may be routed to the CCP in normal and peak markets, and identify any factors that may cause significant growth in the volume of the financial instrument (such as, for example, portfolio margining at the CCP).

In the event that the trading venue is looking to facilitate clearing for a financial instrument for which the trading venue has not previously facilitated trading, the CCP may seek to anticipate volume by identifying and evaluating the nearest comparable instruments/market places, including their liquidity and past trading volumes under similar market conditions.

Among other steps, the CCP:

- for existing trading venues, carries out historical analysis;
- may discount stated anticipated volumes to cater for the fact that the trading venue may have an overly optimistic view of future volumes;
- will consider the impact of algorithmic / high frequency trading on anticipated volumes at the trading venue;
- will commonly expect to see the trading venue's own calculations, as well as carrying out its own independent analysis

In the context of access requests under MiFIR, at least some CCPs would expect that the trading venue submitting the access request to provide as part of its application its own calculations and methodologies by which it has assessed anticipated volumes.
<ESMA_QUESTION_378>

Q379: 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>
The need for a CCP to build additional redundant capacity for future access requests

It is noted that CCPs are required *at all times* to have sufficient redundant capacity. Accordingly, the NCA should consider whether the CCP *currently* has sufficient redundant capacity, but whether, immediately following the implementation of the access request, the CCP has further increased its capacity by developing sufficient *new* redundant capacity.

Access therefore requires two things:

- use of current redundant capacity to deal with the *current* access request
- building new redundant capacity to cope with potential *future* access requests

If an access request would absorb a significant majority of the current redundant capacity, there is an increased likelihood that building further additional redundant capacity for future access requests will be more of a challenge.

Minimum anticipated volume/liquidity

The level 1 text and the Discussion Paper both envisage problems being caused by large numbers of transactions being introduced to the CCP as a result of it granting the access request. The grounds on which the CCP can decline the access request are therefore predominantly risk management/operational-based.

If a CCP receives one or more requests for access from trading venues with very low volumes, there is a risk that the CCP commits a very large amount of its financial and human resources towards considering/granting the access request, for limited benefit.

We suggest that a CCP be able to reject an access request on the basis that the cost/benefit analysis for the CCP, and indeed systemically, does not justify the granting of the access request. Whilst ESMA notes in paragraph 9 on page 343 of the Discussion Paper that risk grounds are the main reason on which access should be denied, the core part of Article 35(6)(a) ("the specific conditions under which an access request may be denied, including...") does not make any reference to risk or operational issues, so ESMA is granted the discretion in the Level 1 text to specify such specific non-risk/operational grounds for denying an access request as it may choose.

There should be a minimum anticipated volume/liquidity threshold that should be met, in order for the CCP to be required to consider the access request.

The clearing members' and end users' perspectives

The risks associated with trading venues seeking access and other relevant market should also be considered:

Trading members of the trading venue: to the extent that the access request significantly increases volumes and liquidity, the trading members will need to update their systems to cater for this additional volume. This may take time.

Members of the CCP: members of the CCP will potentially be required to clear for additional clients as a result of the access request. It will take time to agree legal documentation with those clients if they are new to the clearing member. The clearing member will also need to take written instruction as to whether those new clients wish to open a separate client omnibus account or an individually segregated account, per Article 39(5) of EMIR. If the anticipated volumes of trades are extremely high, across a wide number of new clients, thought needs to be given to the ability of the clearing members of the CCP in respect of which access is being requested to support the clearing of that high volume of trades. Significant operational systems testing will also be needed before "go live"o livers of the CCP will
End users: End users will need to update their systems and their trading practices. They will need to ensure that their systems are upgraded to cope with any increase in trading volume that follows the grant of the access request, which may take time. They will potentially have to confirm their choice of clearing venue at the point of execution and will need to upgrade their systems to reflect the choice of CCPs for that trading venue.

ESMA should consider the potential situations when a CCP may be able to deny an access request on duly justified risk grounds that relate to risk management/operational concerns of the trading venue's members, its clearing members (not just risk management/operational concerns relating to the CCP itself) and/or end users.
<ESMA_QUESTION_379>

Q380: Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?

<ESMA_QUESTION_380>
We understand this question differs from Question 377 on the basis that whilst Question 377 is looking at the planned capacity from a *volume of transactions* perspective, question 380 is looking at planned capacity from a *number and type of users* perspective.

It should be noted that granting a trading venue access to a CCP would not necessarily increase the number of clearing members of that CCP - all the members of that trading venue could, in principle, choose to clear through an existing clearing member. What would potentially increase significantly is the number of Individually Segregated client Accounts (to a CCP would not necessarily increase the number of clearing members od maintained by the CCP pursuant to Article 39 of EMIR.

We note that the CCPs'eISA offerings are not sufficiently scalable today, so there is a risk that a CCP would seek to deny access on the basis that the number of end users for whom it anticipates being required to open ISAs is greater than its planned capacity. The question is then whether the CCP is able to increase its capacity in time for go live of the access request (being no later than 6 to 9 months after the date of the original access request, per Article 35(3) of MiFIR).

Our members agree that forcing a CCP to clear the positions of a large number of new end users, in an amount that *significantly* exceeds the existing capacity planning of that CCP, would be a negative end result for all concerned (end user, trading venue, clearing member and CCP). If the trade is cleared but the CCP is not able to support the increased number of users that the new trading venue would bring, that could result in poor risk management for all concerned and introduce significant default risk, both on the part of the end user/clearing member and the CCP.

Where the extent of the excess over planned capacity is de minimis and capable of resolution in a timely manner in order to meet the access request, then we would not anticipate CCPs using the fact that the request exceeds planned capacity as a ground for denying access.

RECOMMENDATION: If the extent of the excess over planned capacity is de minimis e.g. 5-10% above planned capacity and the CCP is not able to demonstrate to the satisfaction of its national competent authority that it is unable to build the required additional capacity in time, then that should not per be grounds to deny access in and of itself.
<ESMA_QUESTION_380>

Q381: How would a CCP assess that the number of users expected to access its systems would exceed its capacity planning?

<ESMA_QUESTION_381>
Existing trading venues

For existing trading venues, the CCP would have regard to the number of end users who are trading on the trading venue (rather than looking simply at the number of exchange members). As each end user would potentially need to clear the trade, they would each need to be offered the choice of levels of segregation under Article 39 of EMIR (omnibus / individual client segregation). It is that which primarily drives the scalability considerations, so it is the number of end users that needs to be considered.
<ESMA_QUESTION_381>

Q382: 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>
The primary concern is ensuring the scalability of the operational and risk infrastructure of the CCP. The question is “can the CCP cope with the operational requirements if all new clients clearing on that CCP opted for individually segregated accounts under Article 39 of EMIR (or asked for their own omnibus accounts) and can the CCP duly risk manage the positions that the new users would introduce to the CCP, both prior to and immediately following any default of a member of the CCP.
<ESMA_QUESTION_382>

Q383: In what way could granting access to a trading venue expose a CCP to risks associated with a change in the type of users accessing the CCP? Are there any additional risks that could be relevant in this situation?

<ESMA_QUESTION_383>
The take-up of ISAs under EMIR Article 39 varies by financial instrument

There is a strong preference among end users that currently clear interest rate swaps on a voluntary basis for those end users to opt for individually segregated accounts at the CCP whereas end users in the European listed derivatives market almost exclusively opt for net omnibus accounts

Accordingly, whilst the level 1 text rightly focuses on the volume of transactions, the number and type of users and arrangements for managing operational risk/complexity, the “other factors creating significant undue risks” (per Article 35(6)(a)) should also include the type of products for which access is requested, as depending on the product type in question, there may be a significant increase in the operational burden on the CCP

Obligations owed by CCPs to trading venues vary by product

For exchange traded cleared swaps, the responsibility of the exchange would typically cease as soon as the trade has been accepted for clearing by the applicable CCP.

For exchange traded listed derivatives, the exchange typically has obligations for the entire life of the financial instrument (which may stretch to several years), including but not limited to the obligation to monitor and report open interest, to monitor settlement (including physical deliveries upon exercise/expiration of the financial instrument). For these products, the CCP and the exchange therefore need to have an ongoing relationship and open communication for the duration of the life of such product.

In connection with an access request for such a product, the CCP will be required to put in place a wide range of operational features that it may not have had to cater for before access was granted.

The trading members', clearing members' and end users' perspectives

Trading members of the trading venue: to the extent that the access request significantly increases volumes and liquidity, the trading members will need to update their systems to cater for this additional volume.

Members of the trading venue: Adding a new CCP to the list of clearing venues that can clear a trade executed on the trading venue that is seeking access has significant implications for that trading venue, and its members/their clients. If not already done, the trading venue will need to consider numerous issues when adding a new CCP:

- how should its order book be restructured:
    - ➢ keep one order book and maintain one price for the relevant financial instrument, regardless of the clearing venue?
    - ➢ Support two order books, one for each clearing venue? This would involve the trading venue maintaining different prices for the relevant financial instruments?
- should the trading venue adopt a preferred clearer model or facilitate the trading member's ability to choose their own CCP at which the relevant financial instrument will be cleared?
- if the various CCPs connected to the trading venue have different trade acceptance models, how should the trading venue cater for that?
- do different approaches need to be taken for the different products with respect to the different products for which access has been granted, further adding to the complexity?

All of these issues have a direct impact on how a financial instrument is traded by the trading member. Accordingly, when considering the risks related to an access request, due regard should be given to not only to the anticipated volume of trades that will be traded/cleared following that access request, but also the impact on trading members from an operational, trading and IT perspective.

Members of the CCP: Members of the CCP will potential be required to clear for additional clients as a result of the access request. It will take time to agree legal documentation with those clients if they are new to the clearing member. The clearing member will also need to take written instruction as to whether those new clients wish to open a separate client omnibus account or an individually segregated account, per Article 39(5) of EMIR. If the anticipated volumes of trades are extremely high, across a wide number of new clients, thought needs to be given to the ability of the clearing members of the CCP in respect of which access is being requested to support the clearing of that high volume of trades. Significant operational systems testing will also be needed before "go live".

End users: The underlying end users will need to update their systems and their trading practices. They will need to ensure that their systems are upgraded to cope with any increase in trading volume that follows the grant of the access request. They will potentially have to confirm their choice of clearing venue

at the point of execution and will need to upgrade their systems to reflect the choice of CCPs for that trading venue.
<ESMA_QUESTION_383>

Q384: 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>

Q385: 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>

Q386: 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>
In practice, it is anticipated that the trading venue submitting the access request would pay all, or at least a material percentage, of the CCP's costs relating to the access request (i.e that a "pay to play" model would exist with respect to access requests). Accordingly, it is not envisaged that the costs relating to an access request would be so substantial as to create significant undue risk.
<ESMA_QUESTION_386>

Q387: 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>
Indirect clearing under EMIR and MiFID II/R is not yet supported by the underlying laws in one or more member states in Europe. This lack of harmonisation between EU law and the laws of underlying member states risks undermining the effectiveness of European regulation. We would have concerns about CCPs granting access to users who require the CCP to facilitate indirect clearing at a time when the underlying legal framework at a national level does not support such indirect clearing.
<ESMA_QUESTION_387>

Q388: Do you agree with the risks identified above in relation to complexity and other factors creating significant undue risks?

<ESMA_QUESTION_388>
Yes we agree with the risks identified.
<ESMA_QUESTION_388>

Q389: 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>

Q390: 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>

Q391: 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>
The extent of the risks would in part be driven by the correlation between the members/users of the CCP and the members/users of the trading venue. In principle, the higher the correlation, the lower the risk, because the incremental increase is in transaction volumes, not in extra members that require connectivity that did not exist prior to the access request being granted.
<ESMA_QUESTION_391>

Q392: 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>

Q393: 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>
In practice, it is anticipated that the CCP submitting the access request would pay all, or at least a material percentage, of the trading venue's costs relating to the access request (i.e that a "pay to play" model would exist with respect to access requests). Accordingly, it is not envisaged that the costs relating to an access request would be so substantial as to create significant undue risk.
<ESMA_QUESTION_393>

Q394: 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>

Q395: 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>

Q396: 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>
It should be borne in mind that granting access is not just a matter for the trading venue and the clearing house. Such connectivity has an enormous impact on the exchange and clearing house members, as well as end users. The exchange/clearing house members will need to update their IT and operational systems to cater for the new connectivity. They will also have to review and consider any changes to the rulebooks of either venue.
<ESMA_QUESTION_396>

Q397: 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>

Q398: Are there any are other conditions CCPs and trading venues should include in their terms for agreeing access?

<ESMA_QUESTION_398>
Monitoring open interest/settlement for listed derivatives

For listed derivatives (but not cleared swaps), the trading venue is required to monitor the open interest in positions executed at its venue and monitor the settlement of those contracts.

Without assistance from the CCP, trading venue #1 will have no visibility on a contract that is executed on trading venue #2 and then submitted to the CCP to close out contract #1 that was executed on trading venue #1. Accordingly, the CCP cannot simply pool all the economically equivalent contracts in one account and fail to record the details of the trading venue at which that contract was executed – the CCP and the trading venues will need to specify in their access agreement a procedure pursuant to which the CCP will notify trading venue$_n$ on a daily basis of each contract executed on trading venue$_n$ that was closed out on that day, regardless of whether the contract#2 used to close out contract #1 was or was not executed on trading venue$_n$.
<ESMA_QUESTION_398>

Q399: 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>
Yes - fees charged by a CCP to a trading venue in connection with that CCP clearing trades executed on that venue.
<ESMA_QUESTION_399>

Q400: Are there other considerations that need to be made in respect of transparent and non-discriminatory fees?

<ESMA_QUESTION_400>
It is common for CCPs that are establishing a new clearing service to offer incentive pricing to the initial group of clearing members, with a view to encouraging participation and thereby growing potential competition amongst clearing venues that clear the same/similar products. This is in the interests of regulators, as this is an important mechanism for generating sufficient interest in new platforms to generate further competition to existing incumbent venues.

Cross-subsidy of fees within silos

It is increasingly common practice for some CCPs that are part of a "silo" to use their clearing fees to subsidise the trading fees on their affiliated trading venue. Whilst not inherently anti-competitive, this "bundling" of fees could potentially be used in an anti-competitive way, were the trading venue affiliated to the CCP to reduce its trading fees to such an extent that no other trading venue can compete. The counterbalance to that risk is the existing canon of EU and member state's national competition laws, which should sufficiently address any such concerns without the need for further provisions in MiFID II / MiFIR. It does nonetheless merit monitoring by NCAs.
<ESMA_QUESTION_400>

Q401: 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>
Economic equivalence

We do agree that if a contract cleared by a CCP that was traded on one trading venue is *identical* to a contract traded on another trading venue that is also cleared by that CCP, such that the only difference between the two contracts is simply the trading venue, then the collateral requirements should be the same.

RECOMMENDATION: We strongly recommend that economic equivalence be very narrowly determined, so that it is used solely in the context of two ***identical*** contracts, where the only difference between the contracts is their trading venue.

We note that the term "economically equivalent" is not defined anywhere in the level 1 text or the Discussion Paper. Accordingly, we have no guidance as to the scope of the equivalence, nor who determines such equivalence (a CCP or an NCA?). We assume that the CCP is expected to make the determination and to discuss such determinations with its NCA, ahead of implementing any cross-product margining.

We caution against taking a one-size-fits-all approach to collateral. The appropriateness of having different margining methodologies for economically equivalent contracts turns on precisely how "economically equivalent" they are - if the contracts are completely fungible by virtue of being identical, then we agree that the margining methodologies should not be different. However, if the two trades are economically equivalent but have differences in some core (or even non-core) provisions such as size, corporate action provisions etc. then there may be grounds for its being appropriate to use differing margin methodologies and for considering that (contrary to the assertion in paragraph 44 on page 351 of the Discussion Paper) the two economically equivalent contracts do not have the same risk characteristics. We do agree that the methodology should be driven by the characteristics of the product, not the trading venue
<ESMA_QUESTION_401>

Q402: 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>
Regardless of whether a CCP or an NCA considers two financial instruments to be economically equivalent, no two different financial instruments should be *required* as a matter of regulation to be netted until the CCP has obtained sufficient legal comfort that such netting is valid, binding and enforceable for regulatory capital purposes under CRD IV (and for balance sheet netting purposes under IAS 32).
<ESMA_QUESTION_402>

Q403: 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>

Q404: 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>
An NCA should only deny access if such access could reasonably be anticipated to threaten the smooth and orderly functioning of the markets or adversely affect systemic risk. That includes liquidity fragmentation.

ESMA has no choice but to include liquidity fragmentation as a ground for the NCA declining access h both Article 35(4)(b) and Article 36(4)(b) explicitly require that liquidity fragmentation be a ground for denying access.

We do not agree that limb (a) of the definition of "liquidity fragmentation" should in all circumstances, without detailed consideration and investigation, be a ground for denying access - if two CCPs are able to clear the same trade, but separate order books are run at the trading venue for each CCP, that does not per se threaten the smooth and orderly functioning of the market nor adversely affect systemic risk - indeed, it should be perfectly acceptable for a trading venue to offer pricing for the same product for clearing at a range of CCPs and there being different prices depending upon the clearing venue, without that being considered to be fragmenting liquidity in such a way as to threaten the smooth operation of the market.
<ESMA_QUESTION_404>

Q405: How could the above mentioned considerations be further specified?

<ESMA_QUESTION_405>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_405>

Q406: 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>
Sanctions, cyber security breaches and force majeure events may be reasons why a venue would want to terminate the access arrangement.
<ESMA_QUESTION_406>

Q407: 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>

Q408: 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>
We agree with these examples.
<ESMA_QUESTION_408>

Q409: 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>

Q410: 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>

5.8. Non- discriminatory access to and obligation to license benchmarks

Q411: Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_411>
Yes.
<ESMA_QUESTION_411>

Q412: 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>
We understand that, for the purpose of evaluating product marketability, a trading venue would need a broad range of extra information, and yet more to allow them to properly monitor the regular functioning of the market on an on-going basis. The relevant feed should include benchmark values plus values on all components based on or including their weightings within an index.
<ESMA_QUESTION_412>

Q413: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_413>
Yes
<ESMA_QUESTION_413>

Q414: 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>
We understand that, for the purpose of evaluating product marketability, a trading venue would need a broad range of extra information, and yet more to allow them to properly monitor the regular functioning of the market on an on-going basis. The relevant feed should include benchmark values plus values on all components based on or including their weightings within an index.
<ESMA_QUESTION_414>

Q415: Do you agree that trading venues should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA_QUESTION_415>
In principle, we agree that benchmark values and any information concerning any issue in calculating and disseminating the index value should be promptly notified to the trading venue or CCP.

We agree with ESMA that the frequency in part depends on the nature of the index and the frequency of calculation and publication and the type of information/data concerned. Where the index is mainly used for settlement purposes, a daily data feed of index value could be considered sufficient. However where the index is mainly used for settlement purposes, daily feed of index value could be considered sufficient.
<ESMA_QUESTION_415>

Q416: Do you agree that CCPs should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA_QUESTION_416>
In principle, we agree that benchmark values and any information concerning any issue in calculating and disseminating the index value should be promptly notified to the trading venue or CCP.

We agree with ESMA that the frequency in part depends on the nature of the index and the frequency of calculation and publication and the type of information/data concerned. Where the index is mainly used for settlement purposes, a daily data feed of index value could be considered sufficient. However where the index is mainly used for settlement purposes, daily feed of index value could be considered sufficient.
<ESMA_QUESTION_416>

Q417: Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_417>
Yes
<ESMA_QUESTION_417>

Q418: Is there any other additional information in respect of composition that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_418>
For a trading venue, information around index composition is particularly relevant for the initial assessment of the characteristics of the index.

In order to carry out back testing, the trading venue may also require access not only to today's constituents of the benchmark, but all previous constituents
<ESMA_QUESTION_418>

Q419: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_419>
Yes
<ESMA_QUESTION_419>

Q420: Is there any other additional information in respect of composition that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_420>
A CCP needs information relating to index composition to perform its stress-tests.
<ESMA_QUESTION_420>

Q421: Do you agree that trading venues and CCPs should be notified of any planned changes to the composition of the benchmark in advance? And that where this is not possible, notification should be given as soon as the change is made? If not, why?

<ESMA_QUESTION_421>
Yes. We are not aware of any situations that would prevent the advance notification of such changes.
<ESMA_QUESTION_421>

Q422: Do you agree that trading venues need the relevant information mentioned above? If not, why?

<ESMA_QUESTION_422>
All the information mentioned seems necessary and reasonable. Certain information may not be relevant for some types of benchmarks.
<ESMA_QUESTION_422>

Q423: Is there any other additional information in respect of methodology that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_423>
A trading venue requires full visibility of the index methodology in order to assess whether it represent a suitable benchmark to develop an index derivatives contract.
<ESMA_QUESTION_423>

Q424: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_424>
All the information mentioned seems necessary and reasonable. Certain information may not be relevant for some types of benchmarks.
<ESMA_QUESTION_424>

Q425: Is there any other additional information in respect of methodology that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_425>
A CCP needs full visibility on methodology to the extent it shall be able to assess whether the index could be used for clearing purposes and to manage stress tests.
<ESMA_QUESTION_425>

Q426: 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>
We see no valid reason for a benchmark provider to withhold part of the information in respect of the methodology of a benchmark.
<ESMA_QUESTION_426>

Q427: Do you agree that trading venues require the relevant information mentioned above (values, types and sources of inputs, used to develop benchmark values)? If not, why?

<ESMA_QUESTION_427>
Yes, we agree that trading venues and their clients need the values, constituents and actual weightings that are used to develop benchmark values, in order to perform their regulatory obligations, in particular in relation to risk management.
<ESMA_QUESTION_427>

Q428: 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>

Q429: In what other circumstances should a trading venue not be able to require the values of the constituents of a benchmark?

<ESMA_QUESTION_429>
We do not see any circumstance under which a trading venue should not be able to require the values of the constituents of a benchmark.
<ESMA_QUESTION_429>

Q430: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_430>
Yes, we agree that CCPs and their clients need the values, constituents and actual weightings that are used to develop benchmark values, in order to perform their regulatory obligations, in particular in relation to risk management.
<ESMA_QUESTION_430>

Q431: 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>

Q432: In what other circumstances should a CCP not be able to require the values of the constituents of a benchmark?

<ESMA_QUESTION_432>
We do not see any circumstance under which a CCP should not be able to require the values of the constituents of a benchmark.
<ESMA_QUESTION_432>

Q433: Do you agree that trading venues require the additional information mentioned above? If not, why?

<ESMA_QUESTION_433>
Yes. Such transparency is vital. I would particularly state that any errors in the calculation of the benchmark value, and any corrected value, should be transmitted, not just to the trading venues and CCPs, but to the whole market, so that any users of the benchmarks is aware of the error and correction.
<ESMA_QUESTION_433>

Q434: Do you agree that CCPs require the additional information mentioned above? If not, why?

<ESMA_QUESTION_434>
Yes. Such transparency is vital. We would particularly state that any errors in the calculation of the benchmark value, and any corrected value, should be transmitted, not just to the trading venues and CCPs, but to the whole market, so that any users of the benchmarks is aware of the error and correction.
<ESMA_QUESTION_434>

Q435: Is there any other information that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_435>
Information on the performance history in terms of the value of the index on a daily basis for liquid markets or at least on a monthly basis as well as historic data on turnover rates as a result of market moves which end up in the deletion or addition of securities in benchmark composition, should also be required by trading venues and their users.
<ESMA_QUESTION_435>

Q436: Is there any other information that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_436>
Information on the performance history in terms of the value of the index on a daily basis for liquid markets or at least on a monthly basis as well as historic data on turnover rates as a result of market moves which end up in the deletion or addition of securities in benchmark composition, should also be required by CCPs and their users.
<ESMA_QUESTION_436>

Q437: Do you agree with the principles described above? If not, why?

<ESMA_QUESTION_437>
The principles seem reasonable.

At the same time we need to stress that in order to safeguard non-discriminatory access to information, the pricing and conditions of the license agreements need to be non-discriminatory as well.

In the case of pricing that means that the same pricing policy should apply for all trading venues, CCPs and their users based on objective and comparable criteria such as the quantity of the data and not on criteria applicable only to one type of user, e.g. assets under management relating to the benchmark.

In the case of the conditions of the license agreements, non-discriminatory access means equal treatment of all trading venues, CCPs and their users and no customized conditions in the license agreement that require multiple licenses for the use of the same data, based for instance on the regulatory requirements that a trading venue, a CCP or a user has (which will then mean that every time the same index is being used in order to meet different regulatory requirements a new license will be necessary).
<ESMA_QUESTION_437>

Q438: Do users of trading venues need non-publicly disclosed information on benchmarks?

<ESMA_QUESTION_438>
Yes
<ESMA_QUESTION_438>

Q439: Do users of CCPs need non-publicly disclosed information on benchmarks?

<ESMA_QUESTION_439>
Yes
<ESMA_QUESTION_439>

Q440: 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>
They should be provided with this information on the normal commercial terms.
<ESMA_QUESTION_440>

Q441: Do you agree with the conditions set out above? If not, please state why not.

<ESMA_QUESTION_441>
They seem reasonable
<ESMA_QUESTION_441>

Q442: 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>

Q443: 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>

Q444: Which specific terms/conditions currently included in licensing agreements might be discriminatory/give rise to preventing access?

<ESMA_QUESTION_444>
In the case of pricing the same pricing policy should apply for all trading venues, CCPs and their users based on objective and comparable criteria such as the quantity of the data and not on criteria applicable only to one type of users, e.g. assets under management for that benchmark.

In the case of the conditions of the license agreements, non-discriminatory access means equal treatment of all trading venues, CCPs and their users and no customised conditions in the license agreement that require multiple licenses for the use of the same data, based for instance on the regulatory requirements that a trading venue, a CCP or a user has (which would then mean that every time the same index is being used in order to meet different regulatory requirements a new license will be necessary).
<ESMA_QUESTION_444>

Q445: Do you have views on how termination should be handled in relation to outstanding/significant cases of breach?

<ESMA_QUESTION_445>
Typically there will be a provision in the licence which provides that termination or expiry of the licence will not terminate the permissions granted in respect of any Exchange Traded Products already in issue. This would effectively create a "run off" period following termination which runs until the last of the derivatives expire.
<ESMA_QUESTION_445>

Q446: 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>
We do agree with ESMA's view on this issue. It is important that benchmark providers cannot evade their responsibilities. The final decision would be difficult, and should take account of all the features of the benchmark and the way in which it is used.
<ESMA_QUESTION_446>

Q447: Do you agree that each newly released series of a benchmark should not be considered a new benchmark?

<ESMA_QUESTION_447>
Yes – these should definitely be considered to be a continuation of the old benchmark.
<ESMA_QUESTION_447>

Q448: Do you agree that the factors mentioned above could be considered when assessing whether a benchmark is new? If not, why?

<ESMA_QUESTION_448>
These factors should be taken into account. Depending on the specifics of certain benchmarks, there may be other factors which are relevant.<ESMA_QUESTION_448>

Q449: Are there any factors that would determine that a benchmark is not new?

<ESMA_QUESTION_449>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_449>

6. Requirements applying on and to trading venues

6.1. Admission to Trading

Q450: 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>

Q451: 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>

Q452: 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>

Q453: 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>

Q454: 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>

Q455: What are your experiences in respect of such arrangements?

<ESMA_QUESTION_455>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_455>

Q456: What is your view on how effective these arrangements are in performing verification checks?

<ESMA_QUESTION_456>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_456>

Q457: 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>

Q458: What are your experiences in respect of such arrangements?

<ESMA_QUESTION_458>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_458>

Q459: How do you assess the effectiveness of these arrangements in achieving their goals?

<ESMA_QUESTION_459>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_459>

Q460: 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>

6.2. 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

Q461: 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>
We agree with ESMA's proposal that a derivative whose price or value is completely dependent on the prevailing price or value of the financial instrument that has been suspended or removed from trading as its sole underlying, should also be suspended or removed as a consequence of the suspension or removal of the relevant instrument.
<ESMA_QUESTION_461>

Q462: 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>

We agree that the establishment of a method of calculating the correlation between the development of the price or value of a particular financial instrument and the development of the value of the index will be too complex.

We support ESMA's proposal that derivatives related to indices, baskets or other tradable financial instruments should be excluded when considering which derivatives should be suspended or removed as a consequence of the suspension or removal of a financial instrument.
<ESMA_QUESTION_462>

Q463: 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>
We support ESMA's proposals on the timing and format of communications.
<ESMA_QUESTION_463>

7. Commodity derivatives

7.1. Ancillary Activity

Q464: Do you see any difficulties in defining the term 'group' as proposed above?

<ESMA_QUESTION_464>
We believe that the intent of the Level 1 text which states that '(where) the main business is not the provision of investment services within [MiFID II] or banking activities under [the Banking Consultation Directive (BCD)]' is to debar EU subsidiaries of financial or banking groups with a footprint in the EU from using exemption (j). In accordance with this intent, 'group' should be read as meaning a parent and all its subsidiaries, regardless of where the group's ultimate parent is domiciled (i.e. the 'global group').

Moreover, we believe that the term 'group' as defined in MiFID II Art 4.34 referring to the Accounting Directive consists of an EU parent and all its subsidiaries, both within and outside the EU (the 'EU group'). This definition would mean that the non-EU activity of a group with an EU parent would also be included and it would not be possible to limit it to "activities of a group undertaken in the EU" as proposed by ESMA in paragraph 21, page 394. We do not understand consolidation under the Accounting Directive to operate in this way.

The Accounting Directive states the meaning of group to be 'a parent undertaking and all its subsidiary undertakings which it controls'. We strongly support the interpretation of 'control' to mean a subsidiary undertaking of which the parent is a shareholder or member pursuant to a contract entered into or pursuant to a provision in its memorandum or articles of association. We do not support paragraph 19 (V) or the concept of 'influence' given that this does not have a firm legal definition.

We do not support the proposal for only the activities of the EU-wide group to be taken into account when considering whether the activity is ancillary to the main business of the group. ESMA states that if the definition of group were to mean the EU group only, the hedging exemption in relation to commercial activities would also be applied on an EU basis only. This would be a significant problem for firms operating global commercial operations such as exploration who need to hedge their commercial risks on a global basis.
<ESMA_QUESTION_464>

Q465: 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>
We note that there are multiple tests in exemption (j) where 'capital employed' could be applied as a metric, including:

(a) That the main business of the **group** is not MiFID or BCD activity; and

(b) That own account dealing and the provision of investment services in CDs, EAs and DEAs of the **person** should, on an aggregate basis, be an ancillary activity to the main business of the group.

In the case of (a) the test should be applied to the 'global group' or the 'EU group' (see our answer to Q464), but in the case of (b) **the Level 1 text clearly indicates that the test is intended to be applied to 'persons'** (specifically, the person wishing to invoke exemption (j)), such persons being 'understood as including both natural and legal persons', by Recital 26 of MiFID II. We request consistency from ESMA as to the term 'main business of the group'.
<ESMA_QUESTION_465>

Q466: What are the main challenges in relation to both approaches and how could they be addressed?

<ESMA_QUESTION_466>
If the group is interpreted to be the 'global group ', an EU subsidiary of such a group that only undertakes the activities permitted under the (j) exemption would still not be able to utilise the (j) exemption if the main business of the 'global group' is MiFID II and/or BCD activity, even if the group conducted no other MiFID II or BCD activity within EU borders.

For example, if a banking group (i.e. one that employs more than 50% of its total of its global capital in banking activities) has no presence in the EU except for a small EU subsidiary which deals on own account in commodity derivatives to hedge exposures in precious metals, that subsidiary would not be able to use the (j) exemption because the main business of the global group is BCD activity.

If this policy correctly reflects the legislative intent behind exemption (j), then the term 'group' should be read as the 'global group'.

Alternatively, if the policy intention is that the EU subsidiary as described above should be allowed to use the (j) exemption (because the group does not conduct any other MiFID II or BCD activity in the EU or through EU subsidiaries) but only if it restricted its capital employed for dealing on own account in commodity derivatives to less than 50% of its capital, then the term 'group' should be read as the 'EU group'.

ESMA indicates that if the definition of group were to mean the EU group only, the hedging exemption in relation to commercial activities would also be applied on an EU basis only. This would be a significant problem for firms operating global commercial operations such as exploration who need to hedge their commercial risks on a global basis.

A possible disadvantage of the world-wide approach is the difficulty to assess the world-wide market size due to lack of available data.
<ESMA_QUESTION_466>

Q467: 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>
We are of the opinion that some parts of ESMA's proposed formulae for assessing whether an ancillary activity constitutes a minority of activity at group level are problematic and would lead to inappropriate outcomes. In addition, we do not believe that they are in line with the intention and stated text in Article 2 .4 of Level 1 of MiFID which allows for the exemption of intragroup transactions which serve liquidity and/or risk management purposes and transactions in derivatives which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of that group. Recital 20 of MiFID II supports this approach as it states that "... where the obligation to provide liquidity on a venue is required by regulatory authorities in accordance with Union or national laws.... the transactions entered into to meet such an obligation should be *excluded* in the assessment of whether the activity is ancillary."
<ESMA_QUESTION_467>

Q468: 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>

We support the approach used to assess the size of Trading Activity as provided on page 398 of the ESMA discussion paper since the rationale and exemptions are the same.
<ESMA_QUESTION_468>

Q469: How should "minority of activities" be defined? Should minority be less than 50% or less (50 - x)%? Please provide reasons.

<ESMA_QUESTION_469>
We agree that any activity which constitutes less than 50% of the main activity of the group should be understood to be a minority of the activities of that group.
<ESMA_QUESTION_469>

Q470: 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>
We understand accounting capital to mean capital employed by a firm which is calculated from its balance sheet and encompasses both equity and long term debt capital. We believe accounting capital to generally be the most consistent measure to determine the ancillary activity as it is easily identifiable in company accounts and audited independently on an annual basis. However using accounting capital is also problematic in that it is not possible to identify ancillary activity versus non-ancillary activity as the capital figures represent pooled not disaggregated capital.

Using economic capital as a measure would need further clarity from regulators as economic capital typically uses a variety of stress test methodology in its calculation and tends to be based on differing proprietary risk evaluation models. Consequently we believe that using economic capital may not provide regulators with a consistent result across all market participants.
<ESMA_QUESTION_470>

Q471: If economic capital were to be used as a measure, what do you understand to be encompassed by this term?

<ESMA_QUESTION_471>
As stated above, using economic capital as a measure would need further clarity from regulators as economic capital typically uses a variety of stress test methodology in its calculation and tends to be based on differing proprietary risk evaluation models.
<ESMA_QUESTION_471>

Q472: 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>
We do not believe that Trade repositories will contain the data to assess trading activity.
<ESMA_QUESTION_472>

Q473: 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>
Firms assess their overall trading activity and reconcile their daily positions using their own internal risk and back office systems. We do not foresee that firms will use TRs to assess or reconcile their trading activity. In addition TRs cannot provide a picture of overall EU and non-EU market activity given that under EMIR non-EU counterparties are not obliged to report their transactions.
<ESMA_QUESTION_473>

Q474: What do you consider to be the difficulties in defining the volume of the transactions entered into to fulfil liquidity obligations?

<ESMA_QUESTION_474>
Firms do not identify transactions that serve for liquidity obligations separately from any other transactions so currently firms would be unable to measure volumes of such trades.
<ESMA_QUESTION_474>

Q475: 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>
We support the measuring of overall trading activity at group level to mean the gross notional value of the contracts held by the entire group (minus hedging transactions).
<ESMA_QUESTION_475>

Q476: 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>

We do not believe that the granularity of asset classes detailed in the discussion paper is suitable to assess trading activity thresholds in the commodity markets given that the proposal is that by exceeding a threshold in one asset class, a firm would automatically trigger a MiFID II obligation in all asset classes. In the Energy asset class, it is much easier to exceed a trading threshold in Gas than in Oil (due to nominal contract size) even though volume of trading may be much smaller in Gas. Such a breach in a small part of trading activity could therefore trigger all trading activities to be within MiFID. We would see similar issues with other smaller asset classes such as freight.

For energy commodities we therefore suggest that they be aggregated in one asset class called "Energy Commodities". For other asset classes such as Agriculture or Freight we suggest that only if the largest traded asset class breaches the threshold then all asset classes should be in scope of MiFID.
<ESMA_QUESTION_476>

Q477: 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>
Given that only EU entities are subject to reporting derivative trades to a TR under EMIR, a large part of the commodity derivative market which is traded by non-EU entities bi-laterally and/or on markets external to the EU would not be reportable. Therefore there would be no way of incorporating these non-EU transactions into the overall market trading activity data held in European TRs.

In addition regulators need to be clear on what type of information they need to determine overall trading activity and for what purpose. If it is for systemic risk purposes, we suggest that position data is the correct data to show overall market share. This is problematic particularly for ETD trades under EMIR, as there is no obligation to report position data
<ESMA_QUESTION_477>

Q478: 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>
We suggest that ESMA takes an approach to determining thresholds as follows:

(1) For SMEs a lower percentage threshold should be set which if not breached, would mean that those firms would be out of scope of MiFID II without any further testing;

(2)For firms which do not breach the relative thresholds, but which may hold systemically relevant positions in the market we suggest that ESMA set a threshold at a higher level.

(3) We suggest that relative thresholds should be based on capital employed and market size. We do not have view on at what percentage this threshold should be set as we believe this can only be assessed once data for transactions and positions is available to ESMA.
<ESMA_QUESTION_478>

Q479: Are there other approaches for determining the size of the trading activity that you would like to suggest?

<ESMA_QUESTION_479>
We suggest that position reports to be submitted under Art 58.1 could be a better measure for assessing trading activity than trade data reports from TRs. The only positions missing from such reports would be the pure bilateral trades (i.e. not traded on an RM, MTF or OTF)
<ESMA_QUESTION_479>

Q480: 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>
We consider it could be useful to take note of existing national legislative guidance on this topic, e.g. UK guidance found in the FCA handbook PERG 13.5 in response to Q45 'What is an ancillary activity for these purposes?'

FCA states that: 'for an activity to be ancillary for these purposes, in our view it must at least be both directly related to and subordinate to the main business of the group ....where for example a commodity producer buys or sells commodity derivatives for the purposes of limiting identifiable risk of its main business. For a person who is part of a group which owns and operates refineries or manufacturing or production operations, trading related commodity derivatives is integral to the group's business in terms of managing risk and therefore is directly related to albeit it subordinate to the main business of the group.
<ESMA_QUESTION_480>

Q481: 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>
In general we support the interpretation of the hedging exemptions under Article 2 (4) (a) and (c) of MiFID II and believe that article 3 of EMIR is appropriate. However we suggest that full reference to the relevant definition of the hedging exemption as defined in EMIR is made in the Regulatory technical standards in MiFID II.
<ESMA_QUESTION_481>

Q482: 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>

We support that Article 10 of the Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR should be taken into account in relation to transactions objectively mitigating risks relating to commercial or treasury financing activity.

However, the response to question 10(c) on portfolio hedging in the related ESMA Q&A states that there must be sufficient disaggregation in order to establish a clear link between the types of contracts entered into and the commercial or treasury activity of the group. Commercial firms use complex hedging instruments across many geographies, markets, products and time horizons to reduce firm wide risk on an overall aggregate basis. Consequently we believe that disaggregating portions of this overall risk reducing activity may result in increased risks and hedging costs resulting in higher costs pass-through costs to consumers.

Regulators in other jurisdictions such as Canada have provided guidance that there will be situations where a commercial firm may qualify for the hedging exemption even where some of the trades in a portfolio could be interpreted as not being a hedge, as long as there is a reasonable commercial basis to conclude that such trades are included in the commercial firm's wider portfolio as part of its overall risk mitigation strategy.
<ESMA_QUESTION_482>

Q483: 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>
No we do not agree with this suggestion. If a firm is required to undertake position management by a trading venue under Article 57(8)(d) it should be allowed to apply the hedging exemption under Article 2(4)(c) given that it would not be able to control the direction and size of trading it would be required to undertake under liquidity obligations.
<ESMA_QUESTION_483>

Q484: 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>
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<ESMA_QUESTION_484>

Q485: Should the (timeframe for) assessment be linked to audit processes?

<ESMA_QUESTION_485>
By 'linked to audit processes', we understand that ESMA is proposing that the tests should applied to financial accounts or ledgers which have been subject to an audit. We think this would not be practical as, whilst the audit process would verify the reported numbers in the person's balance sheet and income statement, it does not (and indeed cannot) verify what proportion of that person's capital is employed specifically for dealing on own account or providing investment services in CDs, EAs, or DEAs, unless those are the person's only activities. For non-financial persons, that is unlikely to be the case as these would usually be activities conducted to support a wider physical business (the main business). Therefore linking the timeframe for testing to audit processes would serve no purpose.
<ESMA_QUESTION_485>

Q486: 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>

We strongly recommend the calculation to be taken on an average basis at points throughout a twelve month period. This approach would give a more accurate result and avoid distortions from possible sharp seasonally-related volatility spikes at a given point in time.
<ESMA_QUESTION_486>

Q487: 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>
We believe that firms should be assessed on a 3 year rolling average of their trading activity reported to regulators on an annual basis. We believe that trading activity data should be based on continual assessment throughout 12 months of the year and not based on a single snapshot at a given time. If a firm falls into MiFID II on this basis then a minimum 12 month transition period should be given to enable the firm to take the necessary operational steps to implement MiFID.
<ESMA_QUESTION_487>

Q488: Do you see difficulties with regard to the two approaches suggested above?

<ESMA_QUESTION_488>
Given the implementation challenges around a firm becoming a MiFID firm (such as the possible restructuring of trading books/financial accounting methodologies) we believe that a minimum transition period of 12 months is required further to being deemed to be a MIFID firm.
<ESMA_QUESTION_488>

Q489: 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>
We would suggest a 2 year period for MIFID II implementation under the three year rolling methodology. Firms would start collecting MiFID data in 2017 and calculating trading activity in 2018 on this basis.
<ESMA_QUESTION_489>

Q490: 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>
Yes we agree that competent authority in the place of incorporation of the entity invoking the (j) exemption should be notified should it be required. This is consistent with regulatory supervisory regimes already in place at a national level throughout the EU.
<ESMA_QUESTION_490>

7.2. Position Limits

Q491: 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>
IMA supports this proposal.
<ESMA_QUESTION_491>

Q492: 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>

IMA supports this proposed definition.
<ESMA_QUESTION_492>

Q493: 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>
On the basis of the primary legislation and ESMA's analysis, we understand that, where a fund manager manages multiple funds, the assessment of position limits will take place at the level of the individual fund, which is the relevant legal end customer in this context. Similarly, where multiple separate funds or managed accounts share a common strategy, then positions would be assessed at the level of legal entity, i.e. a fund or managed account.

We do not agree with ESMA's approach in respect of owned entities, whereby an ownership stake of 50% is taken to imply control. For example, in a private equity structure, a fund might make a substantial investment in a company, but yet maintain an arm's length relationship with the company in which it has invested, having no control over the trading positions of the portfolio company. In this situation, it would not be appropriate to aggregate the positions of the fund and the portfolio company.

Instead, ESMA should develop a set of criteria which could be used by an entity to assess whether it is in effect able to exercise control over an entity in which it has a significant ownership stake. These could ensure, for example:

- That persons responsible for the firms' trading decisions have no knowledge of or control over one another's trading activities;
- That there are appropriate controls and IT procedures in place to prevent each party gaining knowledge of the other's trading decisions.
- That there are controls on staff to ensure that staff responsible for trading decisions cannot influence the trading decisions of the other entity.

This approach could be combined with an obligation for the firm to notify its competent authority of its intention to disaggregate its positions from those of the owned entity, with the competent authority having a period of 30 days in which to object to this treatment of the relevant positions, if it felt it was unjustified; this would parallel the approach that ESMA has proposed in respect of the exemption for risk-reducing positions.

Where an entity does effect control over an owned entity, then our preference would be for aggregation of the owned entity's positions in proportion to the ownership stake, although it might make sense to require aggregation at fixed 10% intervals (to avoid overly complex real-time assessment of the precise ownership stake where this might fluctuate).
<ESMA_QUESTION_493>

Q494: 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>
Rather than seek specifically to address concert party arrangements under MiFID, we believe that it would make greater sense to rely instead on the provisions of the Market Abuse Regulation, given that such situations would already seem to be covered by market manipulation provisions set out under that text. Introducing separate provisions under MiFID would create legal uncertainty.

<ESMA_QUESTION_494>

Q495: 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 believe that determining which contracts are economically equivalent on the basis of qualitative criteria will be difficult to achieve on a real-time basis, and therefore do not support this approach. As explained below, we believe that contracts that have an explicit pricing link to an exchange-traded contract are those that should be treated as economically equivalent.
<ESMA_QUESTION_495>

Q496: 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>
Yes, we support this proposal.
<ESMA_QUESTION_496>

Q497: 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>
Of the options presented, believe option 2 to be more workable, as it will likely entail a narrower scope of application for the "economically equivalent" test, whilst also ensuring that the test is based on a quantitative standard.
<ESMA_QUESTION_497>

Q498: 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>
While we do not have specific comments regarding the framework that competent authorities could use to identify which contracts are to be considered equivalent to listed contracts, we do believe that it would be helpful if authorities could share with industry specific examples of contracts that they have concluded to be equivalent to on-exchange contracts.
<ESMA_QUESTION_498>

Q499: 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>
We agree with ESMA's proposal that when a contract is separately listed on two or more venues, then a participant's aggregated position across those venues would be relevant from the point of view of assessing its overall position for the purposes of the relevant limit.
<ESMA_QUESTION_499>

Q500: 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>
We believe that ESMA's approach to netting should reflect economic reality as far as possible, by enabling participants to net positions held across multiple venues – including third-country venues – as well as across contracts that exhibit a high degree of economic correlation (e.g. gas and gasoil).
<ESMA_QUESTION_500>

Q501: 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>
We believe that for cash-settled contracts there should still be some consideration of the underlying physical market.
<ESMA_QUESTION_501>

Q502: 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>
While we appreciate ESMA's desire to align the position limits regime with the economic profile of trading in a contract, we believe that re-assessing market size every three months would in general lead to excessively frequent adjustment of position limits. Instead, we believe that trading venues should play a more direct role in determining the period over which limits would be revisited, which we would anticipate could be in excess of a year for many markets. As a practical matter, we believe it is preferable to set limits at a level such that they are less likely to constrain trading, with downward adjustment over time as appropriate.
<ESMA_QUESTION_502>

Q503: 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>
Again, we believe that trading venues should have an explicit role in determining the length of the notice period that is provided ahead of adjustment of position limits, given that this will very much depend on the liquidity of the contract and the underlying commodity. The notice period could be expressed as a proportion of the time interval for the adjustment. For example, if a given limit were subject to review every two years, and the notice period were to be defined as at least half the adjustment period, then participants would be given 12 months to come into line with new limits. We note that the scope of grandfathering provisions is also relevant in this regard and that more generous grandfathering for existing positions would make it possible to have a shorter notice period ahead of adjustment of limits.
<ESMA_QUESTION_503>

Q504: Should positions based on contracts entered into before the revision of position limits be grandfathered and if so how?

<ESMA_QUESTION_504>

We believe that positions based on contracts entered into before the revision of positions limits should be grandfathered.
<ESMA_QUESTION_504>

Q505: 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>
We agree with ESMA's approach.
<ESMA_QUESTION_505>

Q506: 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>
We agree with ESMA's approach.
<ESMA_QUESTION_506>

Q507: 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 agree with ESMA's approach.
<ESMA_QUESTION_507>

Q508: 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>
Financial markets are structured to achieve price convergence between physical and financial commodity markets, and for futures markets to act as effective risk hedging venues for physical commodities. Settlement prices should always converge with physical market prices at expiry. 'Spot' or 'delivery' month limits restrict how many contracts a participant can hold in the period during which delivery of the physical commodity is to be made. This is when possible market squeezes can occur and dominant market positions can have the most acute effect. Further down the curve however, position limits would be less effective given reduced liquidity for long-dated contracts. Market squeezes and dominant market positions are much less likely here because markets have more time to react and counter them. We therefore strongly believe that non-spot-month limits should be adjusted in proportion to the length of time prior to the spot month.
<ESMA_QUESTION_508>

Q509: 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>
In line with our responses to other questions in this section, we support an approach whereby the competent authority of a trading venue should obtain and use the data on deliverable supply that is maintained by that trading venue. We also agree that the competent authority may choose to adjust the level of the deliverable supply as stated by the trading venue in order to reflect other factors, particularly where there is significant global trading in the contract.
<ESMA_QUESTION_509>

Q510: 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 believe global interest should be taken into account. This calls for close cooperation between authorities, particularly in the EU and US.
<ESMA_QUESTION_510>

Q511: 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>
We note that volatility can result from a lack of liquidity, which would imply that limits should be set at a sufficiently high level to avoid creating additional volatility.
<ESMA_QUESTION_511>

Q512: Are there any other considerations related to the number and size of market participants that ESMA should consider in its methodology?

<ESMA_QUESTION_512>
We agree with ESMA's views on the size and number of market participants and do not see any other consideration. We also support ESMA's statement on page 419, paragraph 77 of the discussion paper: "Concentration of positions in a market will particularly be a factor in national gas and power markets, which may need to set limits to reflect the existence of 'national champions', depending on the extent of fragmentation of former state-owned incumbents and the terms of any market maker schemes operated by venues as necessary for proper market operation. This is accommodated in the use of separate factors for different asset classes, which can reflect the individual market structures".

We also believe that where a product is traded by a small number of participants, ESMA should seek to understand the composition of market participants before determining the position limit. For example, a market with ten active participants may have two sellers and eight buyers, or just one risk management provider amongst nine participants seeking risk management services. In such markets, a single position limit may have a disproportionate impact on some of the participants.
<ESMA_QUESTION_512>

Q513: Are there any other considerations related to the characteristics of the underlying commodity market that ESMA should consider in its methodology?

<ESMA_QUESTION_513>
We agree with ESMA's view that the seasonal supply outages in the physical market, the perishability of deliverable materials and the capacity constraints (with regard to transportation and delivery) should be taken into account. We note that the absence of accurate data on production and storage of some commodities should be reflected in the consideration related to the characteristics of the underlying commodity market.
<ESMA_QUESTION_513>

Q514: 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>
Firstly, we recognise there will be difficulty in determining position limits for new contracts. We therefore encourage ESMA to consider mechanisms to ensure that the limits do not damage developing liquidity in

the new contracts. Low liquidity is not only a characteristic of new contracts, but also of many more regional or specialised commodity products. Where very few market participants exist with respect to a contract, liquidity will naturally be limited. Any consideration and/or methodology adopted for new contracts should therefore be extended to existing illiquid contracts.

We believe that the best approach would be to take each new or illiquid contract separately and consider a reasonable multiple of the current transaction size after a defined period of trading, so approach 1.

We also think that, instead of position limits, ESMA should consider relying on the position management powers available to national regulators and trading venues. New contracts often are illiquid/ immature initially and may be used by a small number of market participants. In order to accommodate the demand of hedgers and develop a robust, established market, it may be necessary to permit a small number of market participants to represent a relatively large share of the (small) market. Concerns regarding market abuse can be adequately addressed through enhanced reporting and surveillance, as necessary.
<ESMA_QUESTION_514>

Q515: 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>
We are broadly supportive of ESMA's approach as set out in the Discussion Paper.
<ESMA_QUESTION_515>

Q516: 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>
We have not identified any additional factors at this stage.
<ESMA_QUESTION_516>

Q517: 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>
We believe that this differentiation is appropriate. The potential for market squeeze or dominant positions is more acute in the spot month.
<ESMA_QUESTION_517>

Q518: How should the position limits regime reflect the specific risks present in the run up to contract expiry?

<ESMA_QUESTION_518>
The position limits regime could introduce "telescoping" limits to avoid market disruption. This would involve stating limits in the immediate period prior to contract expiry.
<ESMA_QUESTION_518>

Q519: 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>
We do not think that instances where a contract month other than prompt is primarily used as the "key benchmark contract" should cause particular problems. The key risk being addressed by limits is abusive squeezes occurring as the contract approaches expiry; spot month limits will ultimately apply to all

contract maturities as they approach expiry, regardless of whether some months are more traded than others; ESMA is also anticipating applying back month limits, which would govern all contract maturities outside of the spot month, which could apply to the "key benchmark contract" when spot month limits are not currently in effect.
<ESMA_QUESTION_519>

Q520: Do you agree that the baseline for the methodology of setting a position limit should be the deliverable supply? What concrete examples of issues do you foresee in obtaining or using the measure?

<ESMA_QUESTION_520>
Deliverable supply is the right metric for physically settled spot month contracts. For cash settled spot-month contracts, we believe that the metric should be the open interest.

We also believe that although they are expressed as percentage of open interest, limits on cash-settled spot month contracts should be as aligned as possible with limits applied to physically-settled spot month contracts.

In relation to the use of open interests for limits on physical and cash settled non-spot month contracts, as the MiFID II regime applies to a broader range of commodity derivatives than just futures and will include economically equivalent OTC contracts, it will be necessary to adjust the open interests (given is a futures related metric) to add the notional volumes of swaps relating to the relevant on-venue contract. It is also the case that certain commodities may not have a related futures contract and competent authorities will need to estimate the open interests based on notional amounts of swaps.

We also call ESMA to provide further detail on how they intend to determine the overall market size for securities contracts with a commodity underlying.
<ESMA_QUESTION_520>

Q521: If you consider that a more appropriate measure exists to form the baseline of the methodology, please explain the measure and why it is more appropriate. Consideration should be given to the reliability and availability of such a measure in order to provide certainty to market participants.

<ESMA_QUESTION_521>
In determining its methodology for the setting of position limits for physically delivered contracts ESMA should consider not only the defining of deliverable supply, but equally importantly the capacity for determination of deliverable supply.

Whether a trading venue or other related body is identified as the responsible calculation party, the ability for any one body to determine deliverable supply is limited by the scope of information available. For example, for medium to long term supply calculations, industry and government sponsored organisations (such as the International Energy Agency or, for oil, the OPEC reports) may have well established processes for determining structural supply and demand data, but for shorter term calculations it would most likely be the market participants that would be the key data providers for deliverable supply calculation.

In recommending a trading venue be responsible for determination of deliverable supply it is critical to provide a framework that enables the venue to access all relevant data and participants. In considering a more suitable calculation agent ESMA must consider the same availability and transparency of data. In support of the trading venue being the calculation agent, the availability of trading data across that particular venue may enable it to direct its focus to those participants most active in the relevant product most immediately and more effectively.

It should be noted by ESMA that commodity markets can exhibit very rapid changes in supply and demand balances given the global nature of those markets (where product may move in and out of region frequently given supply/demand/pricing arbitrage, and production volumes in some commodities can

change very rapidly). As a result the deliverable supply, particularly where a defined set of criteria is used to determine that supply, can change dramatically and very rapidly. Shorter term supply calculations could, and would likely, exhibit a level of volatility that can disrupt the efficient functioning of the market if this short term supply volatility is manifested in rapidly changing position limits based on deliverable supply.
<ESMA_QUESTION_521>

Q522: 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 support the structure proposed by ESMA, whereby a European baseline for limits is developed, with competent authorities adjusting limits to reflect the specificities of the venues that they supervise. We believe that the key to the success of this structure lies in ensuring that competent authorities take into account the experience and existing controls of the trading venues that they supervise, to ensure that limits are appropriate for a given market.
<ESMA_QUESTION_522>

Q523: 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>
As noted elsewhere, smooth implementation of position limits will be more likely if limits are expressed at level that is high enough to avoid their having a negative impact on liquidity. Once there is greater data and experience regarding the impact of limits, they could then be adjusted downward (or upwards) over time.
<ESMA_QUESTION_523>

Q524: 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>
While we do not have a strong view on the overall structure of ESMA's taxonomy for different asset classes, we note the importance of ensuring that it effectively accommodates the full range of contract types. For example, plastics could be added as a category, just as additional energy classes could be considered in order to cover bio-fuels. It is also important to ensure that the taxonomy is not applied in a restrictive way: if a contract exhibits particular characteristics that mean it is does not properly belong in an existing asset class group, then there should be scope for ESMA to create additional groupings.
<ESMA_QUESTION_524>

Q525: 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>
We support global coordination in respect of position limits, to ensure that frameworks developed in different jurisdictions are compatible and, where appropriate, harmonised. This is relevant both in the context of position limits and reporting.
<ESMA_QUESTION_525>

Q526: 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>
We support an approach that preserves a degree of flexibility to ensure that limits can be expressed in the most appropriate way for a given market, taking into account the approach followed by the trading venue in question.
<ESMA_QUESTION_526>

Q527: 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>

Q528: Do you agree that limits for option positions should be set on the basis of delta equivalent values? What processes should be put in place to avoid manipulation of the process?

<ESMA_QUESTION_528>
Yes. During the lifetime of the option, in order to minimise risk, the hedge for the option will replicate the change in delta (as opposed to the absolute value of the option). Therefore, in setting limits for options position limits should track the option delta. Regarding anti-manipulation, calculation methodology can be subject to retrospective audit from the relevant national regulator, upon request. Also, in the event options are used to hedge futures it is critical that option deltas are able to be netted with futures positions delta in order to accurately reflect commodity risk levels.
<ESMA_QUESTION_528>

Q529: 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>
As market participants will have different internal calculation methodology for calculating delta futures equivalent values, to ensure consistency with internal risk systems they should be allowed the flexibility to use their own calculations rather than those delta value published by trading venues (subject to being able to justify the calculation).
<ESMA_QUESTION_529>

Q530: Do you agree that the description of the approach outlined above, combined with the publication of limits under Article 57(9), would fulfil the requirement to be transparent and non-discriminatory?

<ESMA_QUESTION_530>
Yes, we fully agree with this approach.
<ESMA_QUESTION_530>

Q531: 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>
The level 1 MiFID II text does not allow a phased-in approach. However, at a minimum, the grandfathering of existing positions at the time of implementation of the new regime, along with setting of

“high limits” which can be calibrated over time, is required in order to avoid market disruption and mismatched hedging.
<ESMA_QUESTION_531>

7.3. Position Reporting

Q532: 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>
We agree that the position reporting regime should serve to monitor position limits. We particularly support the concept to standardise the data definitions and the format of the reporting information required by MiFID with other existing legislative texts to the greatest extent possible in order to reduce the scope for duplicative reporting.
<ESMA_QUESTION_532>

Q533: Do you agree with ESMA’s definition of a “position” for the purpose of Article 58? Do you agree that the same definition of position should be used for the purpose of Article 57? If you do not agree with either proposition, please provide details of a viable alternative definition.

<ESMA_QUESTION_533>
Yes, we agree that the definition of 'position' under article 58 should be aligned with the definition under article 57 since the position reporting requirements aim to support the position limit regime
<ESMA_QUESTION_533>

Q534: 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>

Q535: 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>
We strongly support an approach that relies on existing regulatory reporting channels, in order to minimize the burden on participants to report, as well as to maximize the consistency of data available to regulators. In particular, we believe that it would be worthwhile for ESMA to consider further how EMIR reporting could be leveraged in the context of reporting of commodities positions.
<ESMA_QUESTION_535>

Q536: 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>

We are encouraged by ESMA's proposal to use LEIs (or BIC or national codes where an LEI is not available), as this will facilitate reliance on EMIR reporting infrastructure.
<ESMA_QUESTION_536>

Q537: 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>
We have concerns regarding the confidentiality implications of the MiFID position reporting framework. In particular, we would strongly caution against any approach that would require information to be passed along a chain of intermediaries, such that investment firms would effectively have access to information on the trading activities of clients of their own clients. Even an approach based on reporting by the investment firm of information relating to its direct client is problematic, in that it is highly unlikely that the investment firm would otherwise have access to such extensive information on the client's activities (including activity that occurs OTC).
<ESMA_QUESTION_537>

Q538: 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>

Q539: 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>
We agree with ESMA's approach.
<ESMA_QUESTION_539>

Q540: 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>
We strongly support an approach that relies on existing regulatory reporting channels, in order to minimize the burden on participants to report, as well as to maximize the consistency of data available to regulators. In particular, we believe that it would be worthwhile for ESMA to consider further how EMIR reporting could be leveraged in the context of reporting of commodities positions.
<ESMA_QUESTION_540>

Q541: 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, we believe that this would significantly aid compliance with the position reporting requirements, whilst improving the consistency of reporting.
<ESMA_QUESTION_541>

Q542: 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>
We support an approach that relies on existing regulatory reporting channels, in order to minimize the burden on participants to report, as well as to maximize the consistency of data available to regulators.
<ESMA_QUESTION_542>

Q543: 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>
If reporting of delta equivalent positions is established, then consistent with question 529, the conversion to delta would need to be based on market participants' models and not be restricted by pre-defined numbers published by trading venues. Intra-day and end-of-day positions should be calculated using the previous day's delta factors.
We do not think that the preferred methodology for calculation of delta-equivalent futures position should require use of the delta value published by trading venues. Instead we think participants should be able to use their own internal models / delta calculations to ensure consistency with internal records and risk systems (subject to being able to justify the calculation).
<ESMA_QUESTION_543>

Q544: 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>
We believe that it would be helpful for ESMA to undertake a gap analysis to assess how closely this framework aligns with that of the CFTC, with an ultimate goal of achieving consistency of reporting fields where this is appropriate.
<ESMA_QUESTION_544>

Q545: 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>
We believe that it would be helpful for ESMA to undertake a gap analysis to assess how closely this framework aligns with that of the CFTC, with an ultimate goal of achieving consistency of reporting fields where this is appropriate.
<ESMA_QUESTION_545>

8. Market data reporting

8.1. Obligation to report transactions

Q546: 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>
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 suggest a number of points that we believe ESMA should consider when drafting the RTS as required under Article 26(9)(h).

Give-up and novation of derivatives contracts for clearing

As ESMA notes in paragraph 4 in the Discussion Paper, NCAs are not concerned with activities related to settlement or clearing. However, the actions of give-up and novation that occur after derivative contracts are executed in order to move them into clearing, result in new transactions to the parties to whom they are given up or novated. It would be helpful to clarify in the RTS that only the initial execution would be reportable under Article 26 and not the subsequent give-up or novation for clearing purposes.

It is worth noting here that counterparties on whose behalf a portfolio management firm will execute a derivatives trade are not required to report the original execution to a trade repository (TR) under EMIR provided the give-up/novation occurs on trade date, whereas the MiFIR obligation would be to report the execution. Therefore, a portfolio management firm that intended to rely on reporting a superset of the details required under MiFIR and EMIR to an ARM that was also a TR might need to report the execution for MiFIR, followed by a termination to close the position for EMIR purposes, before then submitting a new trade report only for EMIR purposes to reflect the contract with the clearing broker. A mechanism would be required to identify to which system (ARM or TR) a particular report is relevant.

Increases in notional

Paragraph 11(ii) in the Discussion Paper refers to partial terminations (i.e. notional decreases) as reportable - it would be helpful for any corresponding provision in the RTS to also clarify that notional increases similarly are reportable.

Compression

Paragraph 11(ii) also includes compression, and we note Field 86 in the proposed reporting data items is a flag to identify a transaction that is a result of a compression. We would suggest that ESMA specifies what, if anything, should be reported, and how, with regard to the transactions that are torn up as a result of a compression cycle.

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

Exercises

Paragraph 11(iii) considers exercises to be reportable. We assume this relates to the acquisition of the underlying security that arises as a result of an exercise, rather than the exercise of the option, warrant etc. itself. It would be helpful for this to be clarified in the RTS.

Moreover, we believe the reporting obligation should fall only on the investment firm that executes the decision to exercise and not the firm that is (or whose client is) required to deliver the security, as they will have no discretion over the exercise or delivery under the terms of the instrument.

Securities financing transactions (SFTs)

Paragraph 12 refers to both buy-backs and repos as falling with the meaning of "execution " for the purposes of Article 26, which might infer an intention that that all SFTs would be included. However, we believe that stock borrowing and lending activity should be specifically excluded, given that while title will be transferred temporarily to the borrower, the lender does not give up their interest in the asset and maintains a lien over it pending its return.

As such, and notwithstanding any transaction undertaken by the borrower using the stock concerned, we do not believe the lending/borrowing activity in itself would pose any market abuse risk.

Post-trade events

Further, it would be helpful if ESMA would clarify what transaction time should be recorded for post-trade events that are be contractual in nature and for which the time recorded would therefore more likely be a processing time rather than a transaction time.
<ESMA_QUESTION_546>

Q547: Do you anticipate any difficulties in identifying when your investment firm has executed a transaction in accordance with the above principles?

<ESMA_QUESTION_547>
Provided the RTS are clear and unambiguous with regard to the actions that constitute a transaction for the purposes of Article 26, talking account of our responses to questions 546 and 548, we do not believe firms will have difficulty in determining when they have executed a transaction.
<ESMA_QUESTION_547>

Q548: Is there any other activity that should not be reportable under Article 26 of MiFIR?

<ESMA_QUESTION_548>
As mentioned in our response to Question 546, we believe the following additional activities should be excluded from the reporting obligation under Article 26:

Delivery of stock when an option etc. is exercised by the counterparty - as the delivering party will have no discretion over the exercise or deliver under the terms of the instrument.

Stock borrowing and lending - given that while title will be transferred temporarily to the borrower, the lender does not give up their interest in the asset and maintains a lien over it pending its return. As such, and notwithstanding any transaction undertaken by the borrower using the stock concerned, we do not believe the lending/borrowing activity in itself would pose any market abuse risk.

In addition, we note that although corporate actions will not be reportable, transactions in the rights to scrip dividends are listed in paragraph 12(ii) as falling within the meaning of execution. We should be grateful for confirmation in the RTS that the exercise of entitlement or other rights under a corporate action, be it mandatory or voluntary, would not constitute a reportable activity.

Finally, we should like to clarify that the carrying out of a client's instructions to receive or transfer title to investments from/to another client or third party would not be considered to be the execution of a transaction by the firm for the purposes of Article 26.

Over-reporting

We note that firms will be required to cancel any transaction report it makes in relation to a non-reportable instrument. Although provision might be made to avoid systematic over- or under-reporting reporting, we would urge that a more pragmatic approach be taken to occasional breaches that might be made in good faith, bearing in mind that ESMA cannot guarantee that its own database of shares admitted to trading will always be 100% accurate.

Although a firm might be required to make a backdated submission should it find that a reportable transaction has been overlooked, we do not believe there would be any significant benefit in requiring cancellation of a report that it subsequently transpires should not have been made.
<ESMA_QUESTION_548>

Q549: Do you foresee any difficulties with the suggested approach? Please elaborate.

<ESMA_QUESTION_549>
Generally, we do not foresee any difficulties with the suggested approach.

We note, however, that paragraph 21(i)(c) appears to indicate that the minimum information to be sent to the receiver of the order includes the price itself, which clearly would not have been determined at the time of transmission. We suggest, therefore, that the list provided in the RTS should refer only to the conditions or limits that might be imposed on the price and not the price itself.

We also believe the RTS should in some way highlight that, like execution, "transmission" has a specific meaning for the purposes of transaction reporting, noting that Article 26(4) does not require an instruction to first be received in order to then be transmitted. As such, a portfolio management firm might elect to regard orders it places with a broker as being executed with or transmitted for the limited purposes of transaction reporting under Article 26.
<ESMA_QUESTION_549>

Q550: 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>
As a general comment, we believe it will be essential for the RTS to clearly establish the required format of fields (e.g. field length and whether the entry may contain alpha or numeric characters) where these attributes are not determined by the requirement to use a specific ISO or other standard.

We would also welcome further guidance in due course with respect to the population of transaction reports in various scenarios.

In the meantime, we would make the following comments with regard to the individual reporting fields.

Field 2	We would ask for clarity as to whether a firm that submits its report to an ARM would be expected to identify the ARM in this field or if this would be added by the ARM itself?
Field 6	ISO 8601 permits various formats for expressing dates - the RTS should specify which (e.g. YYYYMMDD or YYYY-MM-DD). This same comment would apply similarly to all other date fields.
Field 7	As above, ISO 8601 permits various formats for time - the RTS should specify which (e.g. HHMMSS of HH:MM:SS)
Field 17	We would ask for further clarification as to how this field should be populated in the case of derivatives, where the "consideration" may not be clearly defined.
Field 18	We would welcome confirmation that when a broker executes a transaction on a trading venue as agent for another firm, such as a portfolio management firm, the broker is required to inform the other firm of the MIC of that venue.

It would also be beneficial if the RTS were to confirm whether the MIC to be used here should be the operator or segment MIC as defined in ISO 10383:2012.

Fields 30-38 — We note the comment in the table concerning the application of these fields, but would suggest that this should refer only to fields 30 - 36.

Field 39 — We note that there is in fact no field 39. We would welcome confirmation that this is merely an error in the numbering.

Field 56 -57 — We believe it would be beneficial to align the use of these fields with the guidance in ESMA's EMIR Q&A TR22, which indicates that the Aii should be used where the venue concerned is classified as an Aii venue in the MiFID Database and the ISIN otherwise where available

However, whereas the EMIR requirement is for product identification purposes and therefore defaults to an interim taxonomy, these fields would need to accommodate other instrument identifiers where neither the ISIN nor Aii are used.

It is also not clear currently how these fields would be populated in the case of OTC derivatives.

Field 70 — The proposed entries for this field include only the identification of the individual or committee within the reporting firm that made the investment decision. However, in the case of a portfolio management firm reporting the execution of an aggregated trade, different individuals/committees may have made separate investment decisions for the various clients to whom the trade will be allocated.

We would suggest that an additional option be provided here to identify the transaction as a block trade. The individuals/committees concerned would then be identified in the reports of the respective allocations.

Fields 74 - 78 — In some instances, a portfolio management firm may place an order with a broker that the broker then has to work over a period of days, during which time it may be that a different trader within the firm revises the order (e.g. to truncate the execution). It would be helpful if the RTS were to clarify whether in these circumstances this field should be used to identify the trader that first placed the order or the last one that revised the instruction to the broker before execution was completed.

Field 87 — As per our response to Question 546, we envisage that this field would be used when reporting the acquisition of the underlying security that arises as a result of an exercise of the option.

Field 88 — We would welcome clarification as to whether this field should also be used for similar securities financing transactions, such as buy-backs.

Field 91 — We presume from the description provided that the intention here is to link reports of aggregated orders to those of their constituent allocations, using the venue's identifier when the aggregated trade is executed on a trading venue, or the broker's internal identifier where it is filled from the broker's own book.

<ESMA_QUESTION_550>

Q551: 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>
Legal entities

The IMA participated in the development of the ISO 17442 LEI standard in the anticipation that over time it should become the de facto standard for the unique and unambiguous identification of legal entities for business and regulatory purposes.

The introduction of trade reporting under EMIR has required firms to invest in the enhancement of their client and counterparty reference data to include the LEI as an attribute where required for EMIR reporting - the mandatory use of the LEI for transaction reporting under MiFIR will leverage the benefit of that investment.

We are therefore supportive of the introduction of the LEI for the identification of entities in transaction reports.

We would stress, however, that references to "legal person" in this context should be avoided as it creates uncertainty as to the scope - there are many entities that may be the subjects of transaction reports as clients (e.g. pension schemes and collective investment schemes), which do not have legal personality in the strict legal sense, but nonetheless can be counterparties to financial transactions. Such entities are accommodated within the definition of "legal entity" in ISO 171442 and, indeed, have been allocated LEIs and are the subject of trade reports under EMIR. We would therefore urge that they be referred to in legislation and any associated regulatory guidance as "legal entities".

In order to avoid confusion and varying market practices following the implementation of MiFIR, we would urge ESMA to clarify whether or not an entity that is eligible for the allocation of an LEI must obtain one and provide it in order that an investment firm may trade with or for that entity.

We note that paragraph 51 suggests a waterfall for the designation to use for legal entities, which stops at a national identifier where the entity is not eligible for an LEI or BIC. We are concerned that not all jurisdictions will have such a national identifier and urge that a fourth level be added to allow the use of a unique client identifier assigned by the firm itself when it is not possible to use any of the other three alternatives.

Natural persons

We agree in principle with the waterfall approach as proposed. However, we are concerned that the situation will be considerably more complex, given the suggestion in paragraph 46 that Member states might also establish waterfalls of different national identifiers within option 1. It would be unreasonable to expect investment firms, to know and understand the eligibility criteria a client would need to meet to hold particular identifier in their home jurisdiction.

We would suggest, therefore, that where a Member State has no single identification scheme that would cover all investors, it should provide a choice not a waterfall and, moreover, that ESMA should publish a list of the relevant identifiers and their formats by Member State.

In addition, while firms will have robust client take-on procedures, their ability to verify the accuracy of the identifier provided by a client is likely to vary considerably across Member States. We therefore believe that firm should not be required to undertake any verification of the identifier provided unless it has grounds to suspect that the identifier may be false or incorrect.

Data privacy

We have no concerns regarding the additional client details to be included. We understand that ESMA appreciates the importance of data protection and we would expect the RTS to impose strict data privacy requirements on ARMs as are imposed on TRs under EMIR.

We also believe the RTS should address the position of investment firms when submitting transaction reports to ARMs. In particular, we would expect to see a provision comparable with that in Article 9(4) of EMIR. Notwithstanding this, firms that wished to transmit orders to other firms, including the relevant client details, would need to ensure that clients were aware of the implications and agreed to such disclosure of personal information.
<ESMA_QUESTION_551>

Q552: What are your views on the general approach to determining the relevant trader to be identified?

<ESMA_QUESTION_552>
We appreciate the rationale for the identification of traders. However, although we understand that NCAs may find the additional personal information for clients helpful to identify those that might attempt to avoid detection by trading with or through different firms using false designations, we do not see the need to identify employees within firms using personal information. We believe NCAs would gain sufficient visibility if traders were identified using identifiers assigned by their employer firm.
<ESMA_QUESTION_552>

Q553: 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>
We have no concerns with the proposed approach to the identification of committees that make investment decisions. However, we believe the RTS must be clear that a committee identifier should be used irrespective of whether the committee makes the investment decision itself or ratifies, and therefore takes responsibility for, the decision of an individual person.
<ESMA_QUESTION_553>

Q554: 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>
As portfolio management firms, we would expect IMA members that make use of DMA services provided by the broker community to report DMA trades as normal, identifying the trader within the firm that executed the trade though the DMA facility.
<ESMA_QUESTION_554>

Q555: Do you believe that the approach outlined above is appropriate for identifying the 'computer algorithm within the investment firm responsible for the investment decision and the execution of the transaction'? If not, what difficulties do you see with the approach and what do you believe should be an alternative approach?

<ESMA_QUESTION_555>
We are generally supportive of the approach.

We would suggest that where the execution of a transaction involves a chain of algorithms, only last one in the chain should be reported.

In addition, we believe clarity is required regarding when it should be considered that a new algorithm has been created - we would suggest that this should be when the core logic of the algorithm is changed, as opposed to when it receives a different input parameter.
<ESMA_QUESTION_555>

Q556: 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>
We do not believe that IMA members, being portfolio managers, would be subject to the pre-trade transparency requirements under Articles 4 and 9 of MiFIR; hence we believe the waiver flag should be "not applicable" in the transaction reports they submit.
<ESMA_QUESTION_556>

Q557: 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>
We note that neither of the scenarios described in paragraph 91 address the position of a portfolio management firm that might execute a short sale in the course of its discretionary management of a client's portfolio. We assume, however, that the obligation to identify a short sale would apply in a similar manner to the description in sub-paragraph (i).

That being the case we have no specific concerns from the perspective of IMA members as portfolio management firms.
<ESMA_QUESTION_557>

Q558: 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>
As portfolio management firms, IMA members will always have sight of the positions they are managing for the client and will only execute decisions or instructions in relation to that portfolio. As such, the second option would be the most appropriate. We would suggest, however, that the RTS might impose option 2 where it is possible, but allowing firms to resort to option 1 where they do not have sight of the positions concerned.
<ESMA_QUESTION_558>

Q559: What are your views regarding the two options above?

<ESMA_QUESTION_559>
IMA members do not trade in a principal capacity, so we are not able to comment on this question.
<ESMA_QUESTION_559>

Q560: 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>
It is our understanding that, as now, a portfolio management firm, when aggregating transactions for multiple clients, would be expected to report the execution of the aggregated transaction with the broker, as well as the individual allocations at client level. This being the case, we would agree with the suggested approach.
<ESMA_QUESTION_560>

Q561: Are there any other particular issues or trading scenarios that ESMA should consider in light of the short selling flag?

<ESMA_QUESTION_561>
We have no other issues to raise with regard the reporting of short selling.
<ESMA_QUESTION_561>

Q562: 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>
We do not agree with the proposed approach, which would place a disproportionate burden on firms to investigate every constituent of what might be a large basket to assess not only whether or not it is admitted to trading, but also if it has applied for admission.

We would propose instead that transactions in all baskets should be reported, irrespective of their composition.
<ESMA_QUESTION_562>

Q563: 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>
As per our response to Question 562, we believe any approach that requires investigation of the individual instruments that underlie an index, or to know whether or not it represents the underlying of another reportable instrument, would place a disproportionate burden on firms.

We would propose instead that transactions in all indices should be reported, irrespective of their composition.
<ESMA_QUESTION_563>

Q564: Do you think the current MiFID approach to branch reporting should be maintained?

<ESMA_QUESTION_564>
We believe the present regime for reporting by branches should be retained, with firms able to elect whether the branch reports to the host NCA, or the head office reports to its home NCA, depending on the firm's technical infrastructure.
<ESMA_QUESTION_564>

Q565: Do you anticipate any difficulties in implementing the branch reporting requirement proposed above?

<ESMA_QUESTION_565>
We do not support the alternative proposal, which would force some firms unnecessarily to implement new internal reporting infrastructures to collect the necessary data at their head office.
<ESMA_QUESTION_565>

Q566: Is the proposed list of criteria sufficient, or should ESMA consider other/extra criteria?

<ESMA_QUESTION_566>
We believe the criteria suggested in paragraph 132 are sufficient.
<ESMA_QUESTION_566>

Q567: 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 would be supportive of harmonisation using XML, which is now used widely used across different business domains, but with provision to allow firms that submit low volumes of reports to use a more basic CSV file.

As noted in our response to Question 550, it will be key that when the reporting data items are defined in the RTS under Article 26(3), clear indication is given as to the required technical format of those items.
<ESMA_QUESTION_567>

8.2. Obligation to supply financial instrument reference data

Q568: 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>

Q569: 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>

Q570: 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>

Q571: Do you anticipate any difficulties in providing details of financial instruments twice per day?

<ESMA_QUESTION_571>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_571>

Q572: 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>

Q573: 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>

Q574: Are you aware of any available industry classification standards you would consider appropriate?

<ESMA_QUESTION_574>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_574>

Q575: 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>

Q576: Do you agree with ESMA's intention to maintain the current RCA determination rules?

<ESMA_QUESTION_576>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_576>

Q577: 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>

8.3. Obligation to maintain records of orders

Q578: 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>

Q579: In your view, what are the data elements that cannot be harmonised? Please elaborate.

<ESMA_QUESTION_579>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_579>

Q580: 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>

Q581: Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA_QUESTION_581>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_581>

Q582: 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>

Q583: 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>

Q584: 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>

Q585: Do you foresee any difficulties with the implementation of this approach? Please elaborate

<ESMA_QUESTION_585>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_585>

Q586: Do you foresee any difficulties with the proposed approach? Please elaborate

<ESMA_QUESTION_586>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_586>

Q587: Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA_QUESTION_587>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_587>

Q588: 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>

Q589: Do you foresee any problems with the proposed approach?

<ESMA_QUESTION_589>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_589>

Q590: 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>

Q591: 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>

Q592: 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>

Q593: Do you foresee any difficulties with the three options described above? Please elaborate.

<ESMA_QUESTION_593>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_593>

Q594: 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>

Q595: Are there any other type of events that should be considered?

<ESMA_QUESTION_595>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_595>

Q596: Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA_QUESTION_596>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_596>

Q597: 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>

Q598: 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>

Q599: Do you foresee any difficulties with maintaining this information? Please elaborate.

<ESMA_QUESTION_599>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_599>

8.4. Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)[1]

Q600: 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>
We support the record keeping requirements to be applied to firms engaging in HFT.
<ESMA_QUESTION_600>

Q601: Do you foresee any difficulties in complying with the proposed timeframe?

<ESMA_QUESTION_601>
The IMA supports the five year requirement to retain records for firms engaging in HFT.
<ESMA_QUESTION_601>

8.5. Synchronisation of business clocks

Q602: 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>
We would prefer synchronisation on a pan-European level.
<ESMA_QUESTION_602>

Q603: Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA_QUESTION_603>
We support this level of granularity.
<ESMA_QUESTION_603>

Q604: 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>

[1] 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.

Given ESMA is proposing that clocks be synchronised to the microsecond, we support the proposal that clocks should not diverge by more than one microsecond. However, in the event of divergence, NCAs should take into account any extreme circumstances in applying this requirement to firms.

Our view is that clocks should be synchronised on a daily basis.
<ESMA_QUESTION_604>

9. Post-trading issues

9.1. Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

Q605: 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>
The existing systems allow trading and confirmation in a timely manner. All necessary collateral management processes can be supported. Special circumstances for Asset Management companies should be considered regarding the timing aspect as all post-trading and post-affirmation processes are dependent on custody bank verification and release processes.
<ESMA_QUESTION_605>

Q606: 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>
Front office/ Trading is/ should be responsible; all relevant information is available from the moment the trade is agreed between the 2 counterparts. After the trade-match the trade with all relevant information can be sent to the CCP. No changes are necessary.
<ESMA_QUESTION_606>

Q607: What are your views on the balance of these risks against the benefits of STP for the derivatives market and on the manner to mitigate such risks at the different levels of the clearing chain?

<ESMA_QUESTION_607>
We consider that the risks are immaterial in nature and are wholly outweighed by the benefits of Straight-Through-Processing (STP) for the derivatives market.

We support the initiative contained under Article 29 MiFIR to compel clearing members to ensure the straight-through-processing of cleared derivatives, such that derivatives are submitted for clearing acceptance as quickly as is technologically practicable. We agree with ESMA that STP provides various benefits, including improving market efficiency and price formation, reducing operational risks and increasing the certainty and speed of cleared derivatives activity, thus mitigating counterparty credit risk.

We would like to clarify, with reference to ESMA's analysis of counterparty credit risk of STP at p526-527 of the DP, the timing of acceptance to clearing and timing of collateral movement involved in CCP clearing under an STP system. In particular, we note ESMA's diagram on page 526 and discussion of 'de-synchronisation' between risk arising and collateral provision at paragraph 11 of page 526. Such implies risks between the acceptance of risk by each party down the chain, for example the acceptance by the CCP of a derivative to clearing, and the transfer of collateral, for example by the Clearing Member to the CCP. However, the IMA considers that these risks simply don't necessarily exist in practice.

For example, a typical exchange traded derivative will usually be accepted for clearing by the CCP promptly. Such is the case even in the bilateral OTC space which will involve acceptance for clearing pretty promptly by the CCP also. Once accepted for clearing by the CCP, the Clearing Member can then calculate the Initial Margin (IM) required on a given day, with the client organising the funds overnight and posting the relevant IM the next day (T+1) to the clearing member. ESMA would appear to suggest that this creates material counterparty credit risk between the trade acceptance for clearing by the CCP and T+1 when IM is posted by the client of the CM. There is a credit risk for that brief period, however, we believe it would be disproportionate to amend timings of the acceptance to clearing by a CCP to remove it. We consider this to be a reasonable market practice. We note in particular that there are a number of ways that a clearing member can manage the risks of the client portfolios that they clear.
<ESMA_QUESTION_607>

Q608: 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>
With the "take-up" of the trade by the Clearing Member.
<ESMA_QUESTION_608>

Q609: 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>
It is important for ESMA to include a requirement that when a Clearing Member (CM) client undertakes trades on either an OTF or MTF, that the client is screened on a pre-execution basis. This has the benefit of moving the CM acceptance to before the trade such that acceptance to clearing by the CCP post-trade is accelerated.
<ESMA_QUESTION_609>

Q610: 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>
All required information is available at the time the trade is agreed between the 2 counterparts. The resulting trade submission can be done without any delay after the trade matching within seconds.
<ESMA_QUESTION_610>

Q611: 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>
The current process ensures an ongoing intraday risk management process at CCP level during the standard business hours and is sufficient. The existing risk management processes are designed to perform ongoing incremental risk checks for all existing and new trades. A sufficient validation process is already implemented.
<ESMA_QUESTION_611>

Q612: 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>
There are three timeframes that ESMA should consider: (i) the time between a trade being concluded and being submitted for clearing; (ii) the time the CM has to accept or reject a trade; and (iii) the time during which the CCP has to accept or reject a trade. We note that if the particular contract being traded is subject to the trading obligation under Article 28 MiFIR, all three of these timeframes will be really tight. In an exchange traded scenario: (i) conclusion/submission to clearing will be instantaneous; (ii) acceptance by the CM will be essentially zero due to the pre-trade credit check undertaken by the CM; and (iii) acceptance by the CCP can take a few seconds, to date this has been 10 seconds or less. In a bilateral scenario that is still subject to the clearing obligation there is not a hard and fast timeframe for submission. Nonetheless, we consider that it should still be as soon as possible. Current market practice can involve acceptance by the CM in 60 seconds and the CCP in 10 seconds, again. We do not see a reason to depart from this market practice.
<ESMA_QUESTION_612>

Q613: What are your views on the treatment of rejected transactions for transactions subject to the clearing requirement and those cleared on a voluntary basis? Do you agree that the framework should be set in advance?

<ESMA_QUESTION_613>
We consider that when a trade is rejected for clearing, the trade becomes void from the outset (void ab initio), as is the case in the US.
<ESMA_QUESTION_613>

9.2. Indirect Clearing Arrangements

Q614: 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 support the application of the current approach.
<ESMA_QUESTION_614>

Q615: In your view, how should it compare with current practice?

<ESMA_QUESTION_615>
As outlined above, we support the application of the current approach.
<ESMA_QUESTION_615>