



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II / MiFIR



Responding to this paper

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

Instructions

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

- i. use this form and send your responses in Word format (do not send pdf files except for annexes);
- ii. do not remove the tags of type <ESMA_QUESTION_CP_MIFID_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- 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, and
- iii. describe any alternatives that ESMA should consider.

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

Naming protocol:

In order to facilitate the handling of stakeholders responses please save your document using the following format: ESMA_CP_MIFID_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA_CP_MIFID_ESMA_REPLYFORM or ESMA_CP_MIFID_ESMA_ANNEX1

Deadline

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

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



Publication of responses

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

Data protection

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



General information about respondent

Name of the company / organisation	EFET
Confidential ¹	<input type="checkbox"/>
Activity:	Non-financial counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1 >

TYPE YOUR TEXT HERE

< ESMA_COMMENT_CP_MIFID_1 >

¹ The field will be used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account.

2. Investor protection

Q1. Do you agree with the list of information set out in draft RTS to be provided to the competent authority of the home Member State? If not, what other information should ESMA consider?

<ESMA_QUESTION_CP_MIFID_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_1>

Q2. Do you agree with the conditions, set out in this CP, under which a firm that is a natural person or a legal person managed by a single natural person can be authorised? If no, which criteria should be added or deleted?

<ESMA_QUESTION_CP_MIFID_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_2>

Q3. Do you agree with the criteria proposed by ESMA on the topic of the requirements applicable to shareholders and members with qualifying holdings? If no, which criteria should be added or deleted?

<ESMA_QUESTION_CP_MIFID_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_3>

Q4. Do you agree with the approach proposed by ESMA on the topic of obstacles which may prevent effective exercise of the supervisory functions of the competent authority?

<ESMA_QUESTION_CP_MIFID_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_4>

Q5. Do you consider that the format set out in the ITS allow for a correct transmission of the information requested from the applicant to the competent authority? If no, what modification do you propose?

<ESMA_QUESTION_CP_MIFID_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_5>

Q6. Do you agree consider that the sending of an acknowledgement of receipt is useful, and do you agree with the proposed content of this document? If no, what changes do you proposed to this process?

<ESMA_QUESTION_CP_MIFID_6>

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<ESMA_QUESTION_CP_MIFID_6>

Q7. Do you have any comment on the authorisation procedure proposed in the ITS included in Annex B?



<ESMA_QUESTION_CP_MIFID_7>

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<ESMA_QUESTION_CP_MIFID_7>

Q8. Do you agree with the information required when an investment firm intends to provide investment services or activities within the territory of another Member State under the right of freedom to provide investment services or activities? Do you consider that additional information is required?

<ESMA_QUESTION_CP_MIFID_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_8>

Q9. Do you agree with the content of information to be notified when an investment firm or credit institution intends to provide investment services or activities through the use of a tied agent located in the home Member State?

<ESMA_QUESTION_CP_MIFID_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_9>

Q10. Do you consider useful to request additional information when an investment firm or market operator operating an MTF or an OTF intends to provide arrangements to another Member State as to facilitate access to and trading on the markets that it operates by remote users, members or participants established in their territory? If not which type of information do you consider useful to be notified?

<ESMA_QUESTION_CP_MIFID_10>

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<ESMA_QUESTION_CP_MIFID_10>

Q11. Do you agree with the content of information to be provided on a branch passport notification?

<ESMA_QUESTION_CP_MIFID_11>

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<ESMA_QUESTION_CP_MIFID_11>

Q12. Do you find it useful that a separate passport notification to be submitted for each tied agent the branch intends to use?

<ESMA_QUESTION_CP_MIFID_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_12>

Q13. Do you agree with the proposal to have same provisions on the information required for tied agents established in another Member State irrespective of the establishment or not of a branch?

<ESMA_QUESTION_CP_MIFID_13>

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<ESMA_QUESTION_CP_MIFID_13>

Q14. Do you agree that any changes in the contact details of the investment firm that provides investment services under the right of establishment shall be notified as a change in the particulars of the branch passport notification or as a change of the tied agent passport notification under the right of establishment?



<ESMA_QUESTION_CP_MIFID_14>

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<ESMA_QUESTION_CP_MIFID_14>

Q15. Do you agree that credit institutions needs to notify any changes in the particulars of the passport notifications already communicated?

<ESMA_QUESTION_CP_MIFID_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_15>

Q16. Is there any other information which should be requested as part of the notification process either under the freedom to provide investment services or activities or the right of establishment, or any information that is unnecessary, overly burdensome or duplicative?

<ESMA_QUESTION_CP_MIFID_16>

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<ESMA_QUESTION_CP_MIFID_16>

Q17. Do you agree that common templates should be used in the passport notifications?

<ESMA_QUESTION_CP_MIFID_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_17>

Q18. Do you agree that common procedures and templates to be followed by both investment firms and credit institutions when changes in the particulars of passport notifications occur?

<ESMA_QUESTION_CP_MIFID_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_18>

Q19. Do you agree that the deadline to forward to the competent authority of the host Member State the passport notification can commence only when the competent authority of the home Member States receives all the necessary information?

<ESMA_QUESTION_CP_MIFID_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_20>

Q21. Do you find it useful that the competent authority of the host Member State acknowledge receipt of the branch passport notification and the tied agent passport notification under the right of establishment both to the competent authority and the investment firm?



<ESMA_QUESTION_CP_MIFID_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_21>

Q22. Do you agree with the proposal that a separate passport notification shall be submitted for each tied agent established in another Member State?

<ESMA_QUESTION_CP_MIFID_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_22>

Q23. Do you find it useful the investment firm to provide a separate passport notification for each tied agent its branch intends to use in accordance with Article 35(2)(c) of MiFID II? Changes in the particulars of passport notification

<ESMA_QUESTION_CP_MIFID_23>

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<ESMA_QUESTION_CP_MIFID_23>

Q24. Do you agree to notify changes in the particulars of the initial passport notification using the same form, as the one of the initial notification, completing the new information only in the relevant fields to be amended?

<ESMA_QUESTION_CP_MIFID_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_24>

Q25. Do you agree that all activities and financial instruments (current and intended) should be completed in the form, when changes in the investment services, activities, ancillary services or financial instruments are to be notified?

<ESMA_QUESTION_CP_MIFID_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_25>

Q26. Do you agree to notify changes in the particulars of the initial notification for the provision of arrangements to facilitate access to an MTF or OTF?

<ESMA_QUESTION_CP_MIFID_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_26>

Q27. Do you agree with the use of a separate form for the communication of the information on the termination of the operations of a branch or the cessation of the use of a tied agent established in another Member State?

<ESMA_QUESTION_CP_MIFID_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_27>

Q28. Do you agree with the list of information to be requested by ESMA to apply to third country firms? If no, which items should be added or deleted. Please provide details on your answer.



<ESMA_QUESTION_CP_MIFID_28>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_28>

Q29. Do you agree with ESMA's proposal on the form of the information to provide to clients? Please provide details on your answer.

<ESMA_QUESTION_CP_MIFID_29>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_29>

Q30. Do you agree with the approach taken by ESMA? Would a different period of measurement be more useful for the published reports?

<ESMA_QUESTION_CP_MIFID_30>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_30>

Q31. Do you agree that it is reasonable to split trades into ranges according to the nature of different classes of financial instruments? If not, why?

<ESMA_QUESTION_CP_MIFID_31>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_31>

Q32. Are there other metrics that would be useful for measuring likelihood of execution?

<ESMA_QUESTION_CP_MIFID_32>

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<ESMA_QUESTION_CP_MIFID_32>

Q33. Are those metrics meaningful or are there any additional data or metrics that ESMA should consider?

<ESMA_QUESTION_CP_MIFID_33>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_33>

Q34. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA_QUESTION_CP_MIFID_34>

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<ESMA_QUESTION_CP_MIFID_34>

Q35. Do you agree with the proposed approach? If not, what other information should ESMA consider?

<ESMA_QUESTION_CP_MIFID_35>

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<ESMA_QUESTION_CP_MIFID_35>

Q36. Do you agree with the proposed approach? If not, what other information should ESMA consider?



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<ESMA_QUESTION_CP_MIFID_36>

3. Transparency

Q37. Do you agree with the proposal to add to the current table a definition of request for quote trading systems and to establish precise pre-trade transparency requirements for trading venues operating those systems? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_37>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_37>

Q38. Do you agree with the proposal to determine on an annual basis the most relevant market in terms of liquidity as the trading venue with the highest turnover in the relevant financial instrument by excluding transactions executed under some pre-trade transparency waivers? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_38>

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<ESMA_QUESTION_CP_MIFID_38>

Q39. Do you agree with the proposed exhaustive list of negotiated transactions not contributing to the price formation process? What is your view on including non-standard or special settlement trades in the list? Would you support including non-standard settlement transactions only for managing settlement failures? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_39>

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<ESMA_QUESTION_CP_MIFID_39>

Q40. Do you agree with ESMA's definition of the key characteristics of orders held on order management facilities? Do you agree with the proposed minimum sizes? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_40>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_40>

Q41. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for shares and depositary receipts? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_41>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_41>

Q42. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for ETFs? Would you support an alternative approach based on a single large in scale threshold of €1 million to apply to all ETFs regardless of their liquidity? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_42>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_42>

Q43. Do you agree with the classes, thresholds and frequency of calculation proposed by ESMA for certificates? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_43>

Q44. Do you agree with the proposed approach on stubs? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_44>

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<ESMA_QUESTION_CP_MIFID_44>

Q45. Do you agree with the proposed conditions and standards that the publication arrangements used by systematic internalisers should comply with? Should systematic internalisers be required to publish with each quote the publication of the time the quote has been entered or updated? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_45>

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<ESMA_QUESTION_CP_MIFID_45>

Q46. Do you agree with the proposed definition of when a price reflects prevailing conditions? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_46>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_46>

Q47. Do you agree with the proposed classes by average value of transactions and applicable standard market size? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_47>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_47>

Q48. Do you agree with the proposed list of transactions not contributing to the price discovery process in the context of the trading obligation for shares? Do you agree that the list should be exhaustive? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_48>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_48>

Q49. Do you agree with the proposed list of information that trading venues and investment firms shall made public? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_49>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_49>

Q50. Do you consider that it is necessary to include the date and time of publication among the fields included in Table 1 Annex 1 of Draft RTS 8? Please provide reasons for your answer.



<ESMA_QUESTION_CP_MIFID_50>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_50>

Q51. Do you agree with the proposed list of flags that trading venues and investment firms shall made public? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_51>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_51>

Q52. Do you agree with the proposed definitions of normal trading hours for market operators and for OTC? Do you agree with shortening the maximum possible delay to one minute? Do you think some types of transactions, such as portfolio trades should benefit from longer delays? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_52>

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<ESMA_QUESTION_CP_MIFID_52>

Q53. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 20? Do you think other types of transactions should be included? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_53>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_53>

Q54. Do you agree with the proposed classes and thresholds for large in scale transactions in shares and depositary receipts? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_54>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_54>

Q55. Do you agree with the proposed classes and thresholds for large in scale transactions in ETFs? Should instead a single large in scale threshold and deferral period apply to all ETFs regardless of the liquidity of the financial instrument as described in the alternative approach above? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_55>

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<ESMA_QUESTION_CP_MIFID_55>

Q56. Do you agree with the proposed classes and thresholds for large in scale transactions in certificates? Please provide reasons for your answers

<ESMA_QUESTION_CP_MIFID_56>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_56>

Q57. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer for SFPs and for each of type of bonds identified (European

Sovereign Bonds, Non-European Sovereign Bonds, Other European Public Bonds, Financial Convertible Bonds, Non-Financial Convertible Bonds, Covered Bonds, Senior Corporate Bonds-Financial, Senior Corporate Bonds Non-Financial, Subordinated Corporate Bonds-Financial, Subordinated Corporate Bonds Non-Financial) addressing the following points:

(1) Would you use different qualitative criteria to define the sub-classes with respect to those selected (i.e. bond type, debt seniority, issuer sub-type and issuance size)?

(2) Would you use different parameters (different from average number of trades per day, average nominal amount per day and number of days traded) or the same parameters but different thresholds in order to define a bond or a SFP as liquid?

(3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or viceversa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_57>

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<ESMA_QUESTION_CP_MIFID_57>

Q58. Do you agree with the definitions of the bond classes provided in ESMA's proposal (please refer to Annex III of RTS 9)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_58>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_58>

Q59. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer per asset class identified (investment certificates, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights, structured medium-term-notes and other warrants) addressing the following points:

(1) Would you use additional qualitative criteria to define the sub-classes?

(2) Would you use different parameters or the same parameters (i.e. average daily volume and number of trades per day) but different thresholds in order to define a sub-class as liquid?

(3) Would you qualify certain sub-classes as illiquid? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_59>

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<ESMA_QUESTION_CP_MIFID_59>

Q60. Do you agree with the definition of securitised derivatives provided in ESMA's proposal (please refer to Annex III of the RTS)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_60>

Q61. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer for each of the asset classes identified (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float

single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to-Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) addressing the following points:

(1) Would you use different criteria to define the sub-classes (e.g. currency, tenor, etc.)?

(2) Would you use different parameters (among those provided by Level 1, i.e. the average frequency and size of transactions, the number and type of market participants, the average size of spreads, where available) or the same parameters but different thresholds in order to define a sub-class as liquid (state also your preference for option 1 vs. option 2, i.e. application of the tenor criteria as a range as in ESMA's preferred option or taking into account broken dates. In the latter case please also provide suggestions regarding what should be set as the non-broken dates)?

(3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_61>

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<ESMA_QUESTION_CP_MIFID_61>

Q62. Do you agree with the definitions of the interest rate derivatives classes provided in ESMA's proposal (please refer to Annex III of draft RTS 9)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_62>

Q63. With regard to the definition of liquid classes for equity derivatives, which one is your preferred option? Please be specific in relation to each of the asset classes identified and provide a reason for your answer.

<ESMA_QUESTION_CP_MIFID_63>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_63>

Q64. If you do not agree with ESMA's proposal for the definition of a liquid market, please specify for each of the asset classes identified (stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs), futures on other underlying values (i.e. volatility index or ETFs):

(1) your alternative proposal

(2) which qualitative criteria would you use to define the sub-classes

(3) which parameters and related threshold values would you use in order to define a sub-class as liquid.



<ESMA_QUESTION_CP_MIFID_64>

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<ESMA_QUESTION_CP_MIFID_64>

Q65. Do you agree with the definitions of the equity derivatives classes provided in ESMA's proposal (please refer to Annex III of draft RTS 9)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_65>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_65>

Q66. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:

(1) Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criterion to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?

(2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?

(3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_66>

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<ESMA_QUESTION_CP_MIFID_66>

Q67. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer detailed per contract type, underlying type and underlying identified, addressing the following points:

(1) Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criteria to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?

(2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?

(3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_67>

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<ESMA_QUESTION_CP_MIFID_67>

Q68. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer detailed per contract type and underlying (identified addressing the following points:

(1) Would you use different qualitative criteria to define the sub-classes?

(2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?

(3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_68>

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<ESMA_QUESTION_CP_MIFID_68>

Q69. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer per asset class identified (EUA, CER, EUAA, ERU) addressing the following points:

(1) Would you use additional qualitative criteria to define the sub-classes?

(2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average number of tons of carbon dioxide traded per day) but different thresholds in order to define a sub-class as liquid?

(3) Would you qualify as liquid certain sub-classes qualified as illiquid (or vice versa)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_69>

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Q70. Do you agree with ESMA's proposal with regard to the content of pre-trade transparency? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_70>

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<ESMA_QUESTION_CP_MIFID_70>

Q71. Do you agree with ESMA's proposal with regard to the order management facilities waiver? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_71>

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<ESMA_QUESTION_CP_MIFID_71>

Q72. ESMA seeks further input on how to frame the obligation to make indicative prices public for the purpose of the Technical Standards. Which methodology do you prefer? Do you have other proposals?

<ESMA_QUESTION_CP_MIFID_72>

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<ESMA_QUESTION_CP_MIFID_72>

Q73. Do you consider it necessary to include the date and time of publication among the fields included in Annex II, Table 1 of RTS 9? Do you consider that other relevant fields should be added to such a list? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_73>

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<ESMA_QUESTION_CP_MIFID_73>

Q74. Do you agree with ESMA's proposal on the applicable flags in the context of post-trade transparency? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_74>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_74>

Q75. Do you agree with ESMA's proposal? Please specify in your answer if you agree with:

- (1) a 3-year initial implementation period**
- (2) a maximum delay of 15 minutes during this period**
- (3) a maximum delay of 5 minutes thereafter. Please provide reasons for your answer.**

<ESMA_QUESTION_CP_MIFID_75>

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<ESMA_QUESTION_CP_MIFID_75>

Q76. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article 21? Do you think other types of transactions should be included? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_76>

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<ESMA_QUESTION_CP_MIFID_76>

Q77. Do you agree with ESMA's proposal for bonds and SFPs? Please specify, for each type of bonds identified, if you agree on the following points, providing reasons for your answer and if you disagree providing ESMA with your alternative proposal:

- (1) deferral period set to 48 hours**
- (2) size specific to the instrument threshold set as 50% of the large in scale threshold**
- (3) volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9**
- (4) pre-trade and post-trade thresholds set at the same size**
- (5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.**



<ESMA_QUESTION_CP_MIFID_77>

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<ESMA_QUESTION_CP_MIFID_77>

Q78. Do you agree with ESMA's proposal for interest rate derivatives? Please specify, for each sub-class (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to- Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) if you agree on the following points providing reasons for your answer and, if you disagree, providing ESMA with your alternative proposal:

- (1) deferral period set to 48 hours**
- (2) size specific to the instrument threshold set as 50% of the large in scale threshold**
- (3) volume measure used to set the large in scale and size specific to the instrument threshold as specified in Annex II, Table 3 of draft RTS 9**
- (4) pre-trade and post-trade thresholds set at the same size**
- (5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1), provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2), provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed (c) irrespective of your preference for option 1 or 2 and, with particular reference to OTC traded interest rates derivatives, provide feedback on the granularity of the tenor buckets defined. In other words, would you use a different level of granularity for maturities shorter than 1 year with respect to those set which are: 1 day- 1.5 months, 1.5-3 months, 3-6 months, 6 months – 1 year? Would you group maturities longer than 1 year into buckets (e.g. 1-2 years, 2-5 years, 5-10 years, 10-30 years and above 30 years)?**

<ESMA_QUESTION_CP_MIFID_78>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_78>

Q79. Do you agree with ESMA's proposal for commodity derivatives? Please specify, for each type of commodity derivatives, i.e. agricultural, metals and energy, if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

- (1) deferral period set to 48 hours**
- (2) size specific to the instrument threshold set as 50% of the large in scale threshold**
- (3) volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9**
- (4) pre-trade and post-trade thresholds set at the same size**
- (5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the**

thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_79>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_79>

Q80. Do you agree with ESMA's proposal for equity derivatives? Please specify, for each type of equity derivatives [stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs), futures on other underlying values (i.e. volatility index or ETFs)], if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

(2) size specific to the instrument threshold set as 50% of the large in scale threshold

(3) volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9

(4) pre-trade and post-trade thresholds set at the same size

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_80>

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<ESMA_QUESTION_CP_MIFID_80>

Q81. Do you agree with ESMA's proposal for securitised derivatives? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

(2) size specific to the instrument threshold set as 50% of the large in scale threshold

(3) volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9

(4) pre-trade and post-trade thresholds set at the same size

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e.

option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_81>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_81>

Q82. Do you agree with ESMA's proposal for emission allowances? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

(2) size specific to the instrument threshold set as 50% of the large in scale threshold

(3) volume measure used to set the large in scale threshold as specified in Annex II, Table 3 of draft RTS 9

(4) pre-trade and post-trade thresholds set at the same size

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_82>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_82>

Q83. Do you agree with ESMA's proposal in relation to the supplementary deferral regime at the discretion of the NCA? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_83>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_83>

Q84. Do you agree with ESMA's proposal with regard to the temporary suspension of transparency requirements? Please provide feedback on the following points:

(1) the measure used to calculate the volume as specified in Annex II, Table 3

(2) the methodology as to assess a drop in liquidity

(3) the percentages determined for liquid and illiquid instruments to assess the drop in liquidity. Please provide reasons for your answer.



<ESMA_QUESTION_CP_MIFID_84>

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<ESMA_QUESTION_CP_MIFID_84>

Q85. Do you agree with ESMA's proposal with regard to the exemptions from transparency requirements in respect of transactions executed by a member of the ESCB? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_85>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_85>

Q86. Do you agree with the articles on the double volume cap mechanism in the proposed draft RTS 10? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_86>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_86>

Q87. Do you agree with the proposed draft RTS in respect of implementing Article 22 MiFIR? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_87>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_87>

Q88. Are there any other criteria that ESMA should take into account when assessing whether there are sufficient third-party buying and selling interest in the class of derivatives or subset so that such a class of derivatives is considered sufficiently liquid to trade only on venues?

<ESMA_QUESTION_CP_MIFID_88>

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<ESMA_QUESTION_CP_MIFID_88>

Q89. Do you have any other comments on ESMA's proposed overall approach?

<ESMA_QUESTION_CP_MIFID_89>

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<ESMA_QUESTION_CP_MIFID_89>

Q90. Do you agree with the proposed draft RTS in relation to the criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU?

<ESMA_QUESTION_CP_MIFID_90>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_90>

Q91. Should the scope of the draft RTS be expanded to contracts involving European branches of non-EU non-financial counterparties?

<ESMA_QUESTION_CP_MIFID_91>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_91>

Q92. Please indicate what are the main costs and benefits that you envisage in implementing of the proposal.



<ESMA_QUESTION_CP_MIFID_92>
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<ESMA_QUESTION_CP_MIFID_92>

4. Microstructural issues

Q93. Should the list of disruptive scenarios to be considered for the business continuity arrangements expanded or reduced? Please elaborate.

<ESMA_QUESTION_CP_MIFID_93>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_93>

Q94. With respect to the section on Testing of algorithms and systems and change management, do you need clarification or have any suggestions on how testing scenarios can be improved?

<ESMA_QUESTION_CP_MIFID_94>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_94>

Q95. Do you have any further suggestions or comments on the pre-trade and post-trade controls as proposed above?

<ESMA_QUESTION_CP_MIFID_95>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_95>

Q96. In particular, do you agree with including “market impact assessment” as a pre-trade control that investment firms should have in place?

<ESMA_QUESTION_CP_MIFID_96>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_96>

Q97. Do you agree with the proposal regarding monitoring for the prevention and identification of potential market abuse?

<ESMA_QUESTION_CP_MIFID_97>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_97>

Q98. Do you have any comments on Organisational Requirements for Investment Firms as set out above?

<ESMA_QUESTION_CP_MIFID_98>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_98>

Q99. Do you have any additional comments or questions that need to be raised with regards to the Consultation Paper?

<ESMA_QUESTION_CP_MIFID_99>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_99>

Q100. Do you have any comments on Organisational Requirements for trading venues as set out above? Is there any element that should be clarified? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_100>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_100>

Q101. Is there any element in particular that should be clarified with respect to the outsourcing obligations for trading venues?

<ESMA_QUESTION_CP_MIFID_101>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_101>

Q102. Is there any additional element to be addressed with respect to the testing obligations?

<ESMA_QUESTION_CP_MIFID_102>

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<ESMA_QUESTION_CP_MIFID_102>

Q103. In particular, do you agree with the proposals regarding the conditions to provide DEA?

<ESMA_QUESTION_CP_MIFID_103>

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<ESMA_QUESTION_CP_MIFID_103>

Q104. Do you agree with the proposed draft RTS? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_104>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_104>

Q105. Should an investment firm pursuing a market making strategy for 30% of the daily trading hours during one trading day be subject to the obligation to sign a market making agreement? Please give reasons for your answer.

<ESMA_QUESTION_CP_MIFID_105>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_105>

Q106. Should a market maker be obliged to remain present in the market for higher or lower than the proposed 50% of trading hours? Please specify in your response the type of instrument/s to which you refer.

<ESMA_QUESTION_CP_MIFID_106>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_106>

Q107. Do you agree with the proposed circumstances included as “exceptional circumstances”? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_107>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_107>

Q108. Have you any additional proposal to ensure that market making schemes are fair and non-discriminatory? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_108>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_108>

Q109. Do you agree with the proposed regulatory technical standards? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_109>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_109>

Q110. Do you agree with the counting methodology proposed in the Annex in relation to the various order types? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_110>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_110>

Q111. Is the definition of “orders” sufficiently precise or does it need to be further supplemented? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_111>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_111>

Q112. Is more clarification needed with respect to the calculation method in terms of volume?

<ESMA_QUESTION_CP_MIFID_112>

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<ESMA_QUESTION_CP_MIFID_112>

Q113. Do you agree that the determination of the maximum OTR should be made at least once a year? Please specify the arguments for your view.

<ESMA_QUESTION_CP_MIFID_113>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_113>

Q114. Should the monitoring of the ratio of unexecuted orders to transactions by the trading venue cover all trading phases of the trading session including auctions, or just the continuous phase? Should the monitoring take place on at least a monthly basis? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_114>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_114>

Q115. Do you agree with the proposal included in the Technical Annex regarding the different order types? Is there any other type of order that should be reflected? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_115>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_115>

Q116. Do you agree with the proposed draft RTS with respect to co-location services? Please provide reasons for your answer.



<ESMA_QUESTION_CP_MIFID_116>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_116>

Q117. Do you agree with the proposed draft RTS with respect to fee structures? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_117>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_117>

Q118. At which point rebates would be high enough to encourage improper trading? Please elaborate.

<ESMA_QUESTION_CP_MIFID_118>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_118>

Q119. Is there any other type of incentives that should be described in the draft RTS?

<ESMA_QUESTION_CP_MIFID_119>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_119>

Q120. Can you provide further evidence about fee structures supporting payments for an “early look”? In particular, do you agree with ESMA’s preliminary view regarding the differentiation between that activity and the provision of data feeds at different latencies?

<ESMA_QUESTION_CP_MIFID_120>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_120>

Q121. Can you provide examples of fee structures that would support non-genuine orders, payments for uneven access to market data or any other type of abusive behaviour? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_121>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_121>

Q122. Is the distinction between volume discounts and cliff edge type fee structures in this RTS sufficiently clear? Please elaborate

<ESMA_QUESTION_CP_MIFID_122>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_122>

Q123. Do you agree that the average number of trades per day should be considered on the most relevant market in terms of liquidity? Or should it be considered on another market such as the primary listing market (the trading venue where the financial instrument was originally listed)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_123>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_123>

Q124. Do you believe a more granular approach (i.e. additional liquidity bands) would be more suitable for very liquid stocks and/or for poorly liquid stocks? Do you consider the proposed tick sizes adequate in particular with respect to the smaller price ranges and less liquid instruments as well as higher price ranges and highly liquid instruments? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_124>

Q125. Do you agree with the approach regarding instruments admitted to trading in fixing segments and shares newly admitted to trading? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_125>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_125>

Q126. Do you agree with the proposed approach regarding corporate actions? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_126>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_126>

Q127. In your view, are there any other particular or exceptional circumstances for which the tick size may have to be specifically adjusted? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_127>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_127>

Q128. In your view, should other equity-like financial instruments be considered for the purpose of the new tick size regime? If yes, which ones and how should their tick size regime be determined? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_128>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_128>

Q129. To what extent does an annual revision of the liquidity bands (number and bounds) allow interacting efficiently with the market microstructure? Can you propose other way to interact efficiently with the market microstructure? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_129>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_129>

Q130. Do you envisage any short-term impacts following the implementation of the new regime that might need technical adjustments? Please provide reasons for your answer.



<ESMA_QUESTION_CP_MIFID_130>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_130>

Q131. Do you agree with the definition of the “corporate action”? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_131>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_131>

Q132. Do you agree with the proposed regulatory technical standards?

<ESMA_QUESTION_CP_MIFID_132>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_132>

Q133. Which would be an adequate threshold in terms of turnover for the purposes of considering a market as “material in terms of liquidity”?

<ESMA_QUESTION_CP_MIFID_133>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_133>

5. Data publication and access

Q134. Do you agree with ESMA's proposal to allow the competent authority to whom the ARM submitted the transaction report to request the ARM to undertake periodic reconciliations? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_134>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_134>

Q135. Do you agree with ESMA's proposal to establish maximum recovery times for DRSPs? Do you agree with the time periods proposed by ESMA for APAs and CTPs (six hours) and ARMs (close of next working day)? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_135>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_135>

Q136. Do you agree with the proposal to permit DRSPs to be able to establish their own operational hours provided they pre-establish their hours and make their operational hours public? Please provide reasons. Alternatively, please suggest an alternative method for setting operating hours.

<ESMA_QUESTION_CP_MIFID_136>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_136>

Q137. Do you agree with the draft technical standards in relation to data reporting services providers? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_137>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_137>

Q138. Do you agree with ESMA's proposal?

<ESMA_QUESTION_CP_MIFID_138>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_138>

Q139. Do you agree with this definition of machine-readable format, especially with respect to the requirement for data to be accessible using free open source software, and the 1-month notice prior to any change in the instructions?

<ESMA_QUESTION_CP_MIFID_139>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_139>

Q140. Do you agree with the draft RTS's treatment of this issue?

<ESMA_QUESTION_CP_MIFID_140>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_140>

Q141. Do you agree that CTPs should assign trade IDs and add them to trade reports? Do you consider necessary to introduce a similar requirement for APAs?



<ESMA_QUESTION_CP_MIFID_141>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_141>

Q142. Do you agree with ESMA's proposal? In particular, do you consider it appropriate to require for trades taking place on a trading venue the publication time as assigned by the trading venue or would you recommend another timestamp (e.g. CTP timestamp), and if yes why?

<ESMA_QUESTION_CP_MIFID_142>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_142>

Q143. Do you agree with ESMA's suggestions on timestamp accuracy required of APAs? What alternative would you recommend for the timestamp accuracy of APAs?

<ESMA_QUESTION_CP_MIFID_143>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_143>

Q144. Do you agree with ESMA's proposal? Do you think that the CTP should identify the original APA collecting the information from the investment firm or the last source reporting it to the CTP? Please explain your rationale.

<ESMA_QUESTION_CP_MIFID_144>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_144>

Q145. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_145>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_145>

Q146. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_146>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_146>

Q147. With the exception of transaction with SIs, do you agree that the obligation to publish the transaction should always fall on the seller? Are there circumstances under which the buyer should be allowed to publish the transaction?

<ESMA_QUESTION_CP_MIFID_147>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_147>

Q148. Do you agree with the elements of the draft RTS that cover a CCP's ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_148>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_148>

Q149. Do you agree with the elements of the draft RTS that cover a trading venue's ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_149>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_149>

Q150. In particular, do you agree with ESMA's assessment that the inability to acquire the necessary human resources in due time should not have the same relevance for trading venues as it has regarding CCPs?

<ESMA_QUESTION_CP_MIFID_150>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_150>

Q151. Do you agree with the elements of the draft RTS that cover an CA's ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_151>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_151>

Q152. Do you agree with the elements of the draft RTS that cover the conditions under which access is granted? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_152>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_152>

Q153. Do you agree with the elements of the draft RTS that cover fees? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_153>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_153>

Q154. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that do you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_154>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_154>

Q155. Do you agree with the elements of the draft RTS specified in Annex X that cover notification procedures? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_155>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_155>

Q156. Do you agree with the elements of the draft RTS specified in [Annex X] that cover the calculation of notional amount? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_156>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_156>

Q157. Do you agree with the elements of the draft RTS that cover relevant benchmark information? If not, please explain why and, where possible, propose an alternative approach. In particular, how could information requirements reflect the different nature and characteristics of benchmarks?

<ESMA_QUESTION_CP_MIFID_157>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_157>

Q158. Do you agree with the elements of the draft RTS that cover licensing conditions? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_158>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_158>

Q159. Do you agree with the elements of the draft RTS that cover new benchmarks? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_159>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_159>

6. Requirements applying on and to trading venues

Q160. Do you agree with the attached draft technical standard on admission to trading?

<ESMA_QUESTION_CP_MIFID_160>

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<ESMA_QUESTION_CP_MIFID_160>

Q161. In particular, do you agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law?

<ESMA_QUESTION_CP_MIFID_161>

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<ESMA_QUESTION_CP_MIFID_161>

Q162. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA_QUESTION_CP_MIFID_162>

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<ESMA_QUESTION_CP_MIFID_162>

Q163. Do you agree with the proposed RTS? What and how should it be changed?

<ESMA_QUESTION_CP_MIFID_163>

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<ESMA_QUESTION_CP_MIFID_163>

Q164. Do you agree with the approach of providing an exhaustive list of details that the MTF/OTF should fulfil?

<ESMA_QUESTION_CP_MIFID_164>

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<ESMA_QUESTION_CP_MIFID_164>

Q165. Do you agree with the proposed list? Are there any other factors that should be considered?

<ESMA_QUESTION_CP_MIFID_165>

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<ESMA_QUESTION_CP_MIFID_165>

Q166. Do you think that there should be one standard format to provide the information to the competent authority? Do you agree with the proposed format?

<ESMA_QUESTION_CP_MIFID_166>

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<ESMA_QUESTION_CP_MIFID_166>

Q167. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?



<ESMA_QUESTION_CP_MIFID_167>
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<ESMA_QUESTION_CP_MIFID_167>

7. Commodity derivatives

Q168. Do you agree with the approach suggested by ESMA in relation to the overall application of the thresholds? If you do not agree please provide reasons.

<ESMA_QUESTION_CP_MIFID_168>

No, we strongly disagree with the current proposals for a number of reasons. Our members believe that the implementation of the rules in their current form will be seriously detrimental to the functioning of orderly markets. We have set out below our reasoning in more detail.

Cumulative application of tests

Article 2.4 of MiFID requires to take into account *at least* the *elements* mentioned thereof. Therefore, we believe that the thresholds suggested for the 'capital employed' and the 'size of trading' must necessarily be both breached to require a firm to be licensed under MiFID.

In such article the legislator describes the minority test to be performed on hand of the capital employed. The text says: "*however that factor [the capital employed] shall in no case be sufficient to demonstrate that the activity is ancillary to the main business of the group*".

Admittedly, the legislator has provided the basis so that the capital employed test is not sufficient alone to demonstrate the ancillary activity and an additional factor should be considered. This is also confirmed when reading Recital 20.

We are concerned on the potential effects on energy markets, prices and consumers

We have serious concerns as to the macroeconomic impact that ESMA's proposals will have, if implemented in their current form. As ESMA acknowledges in the consultation paper, there are a number of effects on firms that will fall into the MiFID II scope, due to the interactions with other EU legislation such as EMIR, CRD.

Furthermore, as ESMA has not been able to quantify the effects of the proposals as "*no data is available to run a simulation with different threshold levels*" it has not been possible to accurately assess the impact upon individual firms and the commodity market landscape post-2017. Also, given the uncertainty, firms are likely to make strategic responses in advance.

For example the uncertainty surrounding the market size in 2016 is beginning to impact firm's decisions to trade gas for winter 2015 (Oct 2015 – March 2016) or electricity for 2016. A reduction in market liquidity for this period would lead to firms experiencing difficulties in hedging next periods.

This uncertainty poses a degree of risk to commodity markets, the wider economy and also to market participants. This will create very strong incentives to a number of commodity market participants to exit from or strongly restricting their presence in the EU markets.

With less intermediation in commodity derivative markets producers and consumers of commodities will encounter difficulties in hedging within EU markets and market disruption may occur. This will result in producing and manufacturing entities having to bear increased risks (price volatility, interest, currency risks and credit risks) and these elements will be factored into the prices of their products.

We would like to highlight once again the very limited influence of energy/commodity companies in relation to the resilience and stability of the financial system and improved investor protection. Counterparties in the energy sectors are professionals, transparency and integrity are covered by sector regulation (REMIT) or market abuse rules (MAR) and systemic risks are monitored or regulated through EMIR.

A cautious and phased approach is preferable

Hence, in a general context of uncertainty and in the absence of reliable data, we urge ESMA to take a cautious and phased approach by setting the thresholds at relatively high levels for an initial period. The initial period should last three years.

ESMA should re-assess such levels and revise the thresholds to more proportionate levels on the basis of the experience, after evidence is produced and the macro-economic impact is fully taken into account.

A similar approach has been taken by the CFTC in the U.S., where the de-minimis threshold for Swap Dealers has been set at a higher level initially. On the basis that the CFTC will have the flexibility to adapt the level of the threshold at a later stage if a market analysis deems this necessary for the maintenance of fair markets.

Such an approach would allow markets and their participants to adapt and evolve at a more measured pace, and reduces the risk of large-scale market disruption, “liquidity flight” and regulatory arbitrage.

EFET is working on a preliminary high level impact assessment on the potential damages that a narrow exemption scheme under MiFID may cause to European energy markets and, in turn, to energy prices paid by consumers.

In summary, lower liquidity, increased volatility and increased market and credit risk will also increase barriers to entry into the energy sector and reduce medium to long-term investment in essential energy supply security. The expected damages to liquidity in wholesale markets can be qualified by:

- additional costs for hedging physical exposures associated with the bid/offer spread increase in the market;
- the increase of the close out risk premium because positions remain opened for a longer time due to lack of liquidity. This is not a cost per se but a quantitative measure of risk;
- the increased cost in finding efficient hedges because the granularity of products (time periods) offered is smaller and this increases the basis risk.

In addition, EU energy trading companies remaining in the business will have additional costs for capitalization and liquidity requirements. These costs will ‘trap liquidity’ that cannot be used for other purposes.

The reduced market liquidity will undermine competition and increases barriers to market entry as potential entrants will be determined by the higher costs or inability to hedge. These effects will in turn impact energy prices and energy consumers.

The overall impact on the EU economy may result in a significant increase in spending on energy products from consumers, at the expense of economic recovery.

We are analysing a number of assumptions and sources that we considered in order to produce a credible impact assessment that we aim to provide to ESMA for discussion in the coming weeks. The purpose of such initial assessment is to offer a starting point to ESMA to evaluate not only the costs and benefits of the regulatory measures as such (e.g. obtain data, produce a calculation and notify the NCA), but most importantly the potential effects on the European economy if MiFID will largely affect energy markets.

<ESMA_QUESTION_CP_MIFID_168>

Q169. Do you agree with ESMA’s approach to include non-EU activities with regard to the scope of the main business?

<ESMA_QUESTION_CP_MIFID_169>

Yes, we agree. This is appropriate and in line with our response to the Discussion Paper.

<ESMA_QUESTION_CP_MIFID_169>

Q170. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA_QUESTION_CP_MIFID_170>

Yes, we consider the revised method appropriate and relatively easy to implement. For further comments see response to Q172.

<ESMA_QUESTION_CP_MIFID_170>

Q171. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA_QUESTION_CP_MIFID_171>

Yes, we agree. Setting up one or more MiFID licensed firms is a potential mitigation measure for those non-financial groups that do not meet the MiFID II exemption requirements for each of their entities.

We also consider that activities undertaken by a subsidiary of the group that can invoke any other MiFID II Article 2 exemption in its own right should logically not be accounted for in the numerator of the tests of the ancillary activity exemption. For instance, this is the case for compliance-buyers of emission allowances which would be exempted as such under 2.1(e), but still would have to count the same emission allowances for the ancillary activity test, or for group treasury financing activities excluded under Art.2.1(b) and (d). Being assessed twice for the same activities in such a manner is disproportionate and inconsistent with the stated aims and policy reasons behind MiFID II.

<ESMA_QUESTION_CP_MIFID_171>

Q172. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA_QUESTION_CP_MIFID_172>

The calculation at entity level is in line with the Level 1 mandate

We believe that the calculation in relation to the ancillary activity (numerator) should be done at *person* level as was clearly mandated by the Level 1 text of MiFID II.

A calculation 'at group level' is not in our view in line with the level 1 text because the licensing regime in MiFID II applies to *persons* and the exemption from such regime applies at *person* level, as clearly defined in level 1 (article 2.1).

We believe that the currently proposed thresholds are extremely low and would lead to the adverse effects outlined above even if applied at the level of a person. An assessment at group level would result in level of the thresholds even lower.

Most importantly, the calculations and the consequences of failing the tests would affect *all* persons within the group and not only those persons involved in investment services/activities at disproportionate levels, triggering consequences (i.e. EMIR, CRD) for all of them, independently on the individual persons' activities. Additionally, the processes that would be required at parent company level are not always possible, due to different national and international regimes (e.g. accounting, classification of privileged transactions and calculation of trading activity). A full dependence between different entities within a group engaged in different activities but still counting towards the thresholds, is therefore neither appropriate nor justified.

Clear procedures are necessary to manage the transition in case of failure of the tests

Nevertheless, if ESMA maintains the proposal to consider a 'group-level' calculation, it is necessary that it provides significantly more clarity in the RTS as to how the process should work in practice.

For example, what are the steps required in case none of the entities within a group breaches the threshold levels, but altogether the level is crossed? How national competent authority will approach activities carried out until one or more entities within the group will receive a license?

We read the draft RTS in a way that, following a breach of the trading activity or capital test by *one entity* within a group, *every other unregulated entity* within such group, wherever located in the EU will be required to obtain a MiFID II license because they all need to take into account the activities 'at

group level'. This will be the case until the group has been able to restructure itself in order to ring-fence its MiFID activities.

We are concerned that performing activities regulated by MiFID II without a license may be punished by national regulators, which may include fines and criminal sanctions.

To provide comfort to firms who are going through the licensing process we feel that it is crucial that ESMA clearly allows the exclusion from the assessment of the ancillary activity exemption for activities performed by entities *in the process to require or obtain* a MiFID license or for which procedures to novate contracts have been put in place in case a licensed entity with the appropriate permissions already exists within a group. This is necessary to ensure business continuity and avoid undue consequences.

Third country entities should be able to make use of the exemption

Finally, we do not understand the reference in Recital (9) of the draft RTS 28 and point 74 (p.525) of the consultation paper to third country entities wishing to benefit from the exemption in article 2.1(j). MiFID II does not require entities wishing to benefit from the exemption to establish a branch in the European Union. Therefore, we believe that those entities should be able to make a self-assessment. Any requirement to notify the use of MiFID Art. 2 exemptions by a third country entity should remain a matter between such entity and the Member States where such entity wishes to operate, and therefore should be dealt with by national legislation rather than EU legislation.

Any arrangement that would require third country entities to set a branch in the EU for dealing on own account in commodity derivatives increases the risk of EU and third country participants moving their commodity derivatives' trading activity (risk reducing as well as risk taking) outside of the EU. Reduced liquidity, competitiveness and effectiveness of EU markets would be the result and EU exchanges in particular would struggle with the decreased levels of liquidity which we believe to be contrary to EU goals to promote growth, investment and security of supply.

<ESMA_QUESTION_CP_MIFID_172>

Q173. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA_QUESTION_CP_MIFID_173>

Level of the threshold unreasonably low

No, we strongly disagree and we underline again that the views expressed by ESMA in its consultation paper are not supported by any analysis: the setting of the threshold seems to be fully discretionary and is not backed by any impact assessment or other supporting analysis.

Given the potential severe impact on the industries in question, we believe that the setting of a threshold level presupposes a solid basis.

MiFID II refers to the concepts of 'proportionality' and 'minority'. Those criteria should ensure that non-financial firms dealing in financial instruments in a *disproportionate* manner compared with the level of investment in the main business are covered by the scope of this Directive (Recital 20).

We believe that the proposed threshold of 5% for the first test goes too far and is unreasonably low, particularly in the context of the aforementioned proportionality principle. Setting the threshold at such a low level would narrow down the existing exemption to a point that may render it practically void.

A cautious and phased approach is preferable

We believe the ESMA proposals should meet the policy objective, clearly spelled out in the wording of MiFID II, stating the "need for ancillary activities to constitute a minority of activities at a group level" in a proportionate and workable way for the entities concerned. A '*minority*' cannot logically be interpreted as only 5%. (In accounting, for instance, it is defined as 'minority interest' a significant but non-controlling ownership of less than fifty-per cent of a company's voting shares by either an investor or another company).

As proposed in response to Q168, we believe that ESMA should consider a more cautious and phased approach by setting the thresholds for both the tests at relatively higher levels for an initial period. This is necessary if ESMA considers the potential negative impacts on the real economy by the inadvertent inclusion under the MiFID regime of entities/groups that are largely non-financial.

ESMA should re-assess such higher levels and revise the thresholds if necessary on the basis of the experience, after evidence is produced and the macro-economic impact is fully taken into account.

With this in mind, we believe that a more appropriate level for the 'capital employed test' is in the range of 20-25% at minimum. We also believe that this level is coherent with the principle of proportionality and legitimate when considering the concept of *majority of the main business* in opposition to the *minority of the investment activities*.

In a regulatory environment characterised by uncertainty and a relevant change in scope for the regulation of commodity derivatives, the range we propose however is not based on evidence or analysis, but with the only intention to recommend a level sensibly high to avoid unintended consequences: if the thresholds will be ill-calibrated and will disproportionately bring commodity companies in scope of MiFID this will mainly lead to additional costs to be paid by energy costumers in terms of higher prices with a negative impact on the competitiveness of the EU.

<ESMA_QUESTION_CP_MIFID_173>

Q174. Do you agree with ESMA's intention to use an accounting capital measure?

<ESMA_QUESTION_CP_MIFID_174>

We agree in principle with this approach; however we wish to stress that it will prove difficult to extrapolate privileged transactions from the ancillary activity because they are not accounted and evidenced separately in the balance sheet.

ESMA shall acknowledge that different entities and groups may adopt one or more of the proxy methodologies suggested in paragraph 41 of Section 7 (Commodity Derivatives) of the Consultation Paper, depending on the group structure and the way in which persons classify privileged transactions.

For instance, elements including the evaluation of open positions at the end of a period (e.g. the month) and/or the collateral posted with exchanges and counterparties and/or other elements of the capital (tangible/intangible assets) re-proportioned for the relevant 'MiFID activity' may be taken into account. .

In any case, if ESMA decides to issue further guidance on the technical calculation at a later stage, it needs to be based on open consultation with stakeholders and a minimum time for implementation after any amendment given the severity of the potential consequences.

<ESMA_QUESTION_CP_MIFID_174>

Q175. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA_QUESTION_CP_MIFID_175>

The answer to this question cannot be straightforward.

In a way we believe it is not controversial that the capital employed in the main business (the denominator) should encompass equity, current debt and non-current debt. However, we invite ESMA to consider the inclusion of *provisions*, since they are part of the main business of the group.

Provisions, particularly, interest-bearing liabilities, represent an integral part of companies' balance sheets and have economic substance similar to non-current debt. Replacing the terms current-debt and non-current *debt* with *liabilities* should help clarifying this point because liabilities, in accounting terms, include also provisions (the term *debt* does not).

For the calculation of the capital employed in the ancillary activities (the numerator), ESMA shall acknowledge that different persons and groups may adopt one or more combinations of the proxies suggested at point 41, because some elements may not be separately evidenced in the accounting statements or information flow due to the specific definitions applied in MiFID.

The proxies adopted will have to be in any case documented by the entities wanting to benefit from the exemption and they should be tested against the principles underlying the ancillary activity exemption and the privileged transactions.

<ESMA_QUESTION_CP_MIFID_175>

Q176. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA_QUESTION_CP_MIFID_176>

A single energy asset class should be proposed in line with other commodity asset classes

We believe that the answer depends on the level of aggregation / disaggregation of the commodity asset classes for such test.

We propose a single energy asset class encompassing gas, power, coal and oil/oil products. The split proposed by ESMA is not least strange as ESMA uses the correlation as reason for which a breach of one asset class should trigger a person/group even to be subject to MiFID II for all commodity asset classes.

ESMA refers to the fact that ‘many’ argued for wider categories ‘asking to merge the categories related to energy into one’. Nonetheless, ESMA fails to explain the reason why this proposal, in line with the other commodities, has not been accepted. Trading in e.g. the different metals being one asset class should purportedly be less correlated than gas, power, coal, oil, and emission allowances.

Energy commodities are generally traded altogether by specialised trading companies within energy groups (utilities or producers) because of the high correlation. Similarly, market participants (producers and consumers) often use an energy commodity to produce another (e.g. coal, gas and oil for power) and in some cases there is a high level of substitutability among commodities (e.g. gas/coal for power production, gas/power for heating, gas/oil for transport, etc.).

If a single energy commodity asset class is adopted, we support the proposal to use the gross notional values of contracts because this would make the aggregations easier. Indeed, the gross notional value of contracts should be possible to calculate on the basis of EMIR reporting in derivatives, provided a single methodology for calculation of all derivatives, including in particular the non-standard ones, is provided by ESMA. This will provide for uniform, consistent and irrefutable calculation throughout the EU and across all stakeholders.

We strongly disagree with the “breach-one-breach-all” principle enshrined in ESMA’s proposal which would mean that exceeding the threshold set for a single commodity asset class will cause that the person is subject to MiFID II. This proposal would be reasonable only in case of a single asset class encompassing all energy commodities.

At the very least, we believe that gas and electricity should be grouped in a single asset class considering the very similar regulation and common oversight to which they are subject in the European Union.

In this case, or in case ESMA should stick to the current proposals of disaggregation, we believe that ESMA should consider to propose *volumes/quantities* rather than *gross notional values* when assessing the size of the trading activity. On the one side this proposal would give a more stable measurement of the market size as it would avoid taking into consideration prices, hence lower variability over time. On the other side ESMA should consider that in markets where spreads are traded *volumes/quantities* can penalise the calculation and therefore such element should be factored into the methodology proposed.

ESMA should take immediate steps to make available reliable and regular information concerning the size of the market

On a practical point of view we urge ESMA to take immediate steps to make the 2014 market size data for each commodity asset class publically available, either through collating information from the trade repositories (TR) and publishing it on ESMA’s website or through requiring the TRs to make the information available on their websites. For consistency we recommend the former approach.

Persons seeking to use the exemption should be enabled to make the required calculation through the data provided by TRs in order to foresee potential effects of MiFID II on their businesses and make according arrangements as they deem necessary from a company/group perspective. We also recommend that ESMA encourages the TRs to provide assistance to firms wishing to identify and

calculate the total value of their eligible trades. This should not exclude the possibility to use further data e.g. to identify privileged transactions.

We believe that the RTS must include an obligation for ESMA to publish reliable, consistent and freely available EU market size figures in each of the relevant commodity asset classes as a pre-condition for the exemption process to apply. In the absence of reliable data market participants will simply not be able to calculate their positions relative to the market because (i) TRs do not provide such data today, (ii) such calculation would require a contact from each firm to each single TR in the EU (iii) the provision of such numbers, as part of a regulatory requirement should take place within a regulatory and non-commercial frame. Such publication should be done on a monthly basis, no later than 2 business days following the end of the month.

We are concerned that an absence of reliable data may result in market participants not being able to calculate their positions relative to the market and that this may result in firms either:

- deciding to register on an arbitrary basis, making it impossible to compare like with like;
- taking the precautionary measure of curtailing trading activities to avoid inadvertently breaching the threshold or
- seeing themselves as having no choice other than exiting the market altogether.

To address this concern we recommend that the RTS includes a clear process for the eventuality that this data is either not available or there is material uncertainty surrounding its validity.

<ESMA_QUESTION_CP_MIFID_176>

Q177. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA_QUESTION_CP_MIFID_177>

The calculation at entity level is in line with the Level 1 mandate

We believe that the calculation in relation to the size of the trading activity (numerator) should be done at *person* level as was clearly mandated by the Level 1 text of MiFID II.

A calculation 'at group level' is not in our view in line with the level 1 text because the licensing regime in MiFID II applies to *persons* and the exemption from such regime applies at *person* level, as clearly defined in level 1 (article 2.1).

We believe that the currently proposed thresholds are extremely low and would lead to the adverse effects outlined above even if applied at the level of a person.

Most importantly, the calculations and the consequences of failing the tests would affect *all* persons within the group and not only those persons involved in investment services/activities at disproportionate levels, triggering consequences (i.e. EMIR, CRD) for all of them, independently on the individual persons' activities. Additionally, the processes that would be required at parent company level are not always possible, due to different national and international regimes (e.g. accounting, classification of privileged transactions and calculation of trading activity).

Finally, it may require additional processes to be put in place at the parent company level for the calculation and accounting of the thresholds proposed for the ancillary activity test that are not always possible considering different national and international regimes applicable to group entities (e.g. accounting, classification of privileged transactions, calculation of trading activity).

Clear procedures are necessary to manage the transition in case of failure of the tests

Nevertheless, if ESMA maintains the proposal to consider a 'group-level' calculation, it is necessary that it provides significantly more clarity in the RTS as to how the process should work in practice.

For example, what are the steps required in case none of the entities within a group breaches the threshold levels, but altogether the level is crossed? How national competent authority will approach activities carried out until one or more entities within the group will receive a license?

We read the draft RTS in a way that, following a breach of the trading activity or capital test by *one entity* within a group, *every other unregulated entity* within such group, wherever located in the EU will be required to obtain a MiFID II license because they all need to take into account the activities 'at group level'. This will be the case until the group has been able to restructure itself in order to ring fence its MiFID activities from for example its production and maintenance activities.

We are concerned that performing activities regulated by MiFID II without a license may be punished by national regulators, which may include fines and criminal sanctions. To provide comfort to firms who are going through the licensing process we feel that it is crucial that ESMA provides a process also allowing the exclusion from the assessment of the ancillary activity exemption for activities performed by entities *in the process to require or obtain* a MiFID license or for which procedures to novate contracts have been put in place in case a licensed entity with the appropriate permissions already exists within a group. This is necessary to ensure business continuity and avoid undue consequences.

Trading activities carried out on regulated markets should be accounted only partially

Finally, in regard to the market size test, we recommend that the RTS consider volumes traded and cleared on regulated markets in commodity derivatives only partially when assessing the ancillary activities. This should for instance consider a level proportional to the level of collateral posted as initial margin with CCPs.

Such an approach would *incentivize* trading and central clearing in regulated platforms resulting in mitigation of credit risk and more transparent commodity markets, complementary to the approach of *mandatory* clearing introduced through EMIR.

<ESMA_QUESTION_CP_MIFID_177>

Q178. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA_QUESTION_CP_MIFID_178>

No. We are concerned that a separate asset class for freight has the risk of creating a market that is too small.

Many energy shippers will potentially fall under MiFID II with the current thresholds and none of the shipping market participants will be able to use the hedging exemption (i.e. deduction of hedging activity from the trading thresholds) as their business is not for hedging but shipping. Freight is ancillary to other commodity business, and accordingly it would be appropriate to have freight as part of the commodity in question, i.e. gas infrastructure within the asset class on gas, electricity transmission within the asset class on electricity, etc.

Also, the creation of the category 'other derivatives' (including C10 commodities) creates uncertainty because it remains undefined what should be included in such category (what is the market size of such category?). A single asset class will result in very difficult practical considerations for the calculation of the thresholds for the ancillary activity test, due to the fact that C10 refers to any exotic derivative, from renewable certificates to transportation rights or communication bandwidths, etc.

Therefore, the creation of such category is not appropriate. We would recommend the inclusion of freight within the asset class of the commodity being transported.

Concerning other commodities, we believe it is difficult to assess their dimension. Therefore, we suggest that ESMA defines a threshold only after consideration of number of market participants, market size, significance and so on.

<ESMA_QUESTION_CP_MIFID_178>

Q179. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_179>

No, we strongly disagree and we underline again that the views expressed by ESMA in its consultation paper are not supported by any analysis. The setting of the threshold seems to be fully discretionary and is not backed by any impact assessment or other supporting analysis.

A cautious and phased approach is preferable

There is a lack of data and we would urge ESMA to work with the TRs to make this information available to firms so that they are able to determine whether or not they are likely to breach the proposed threshold.

As for the capital employed test, we believe that ESMA should consider a more cautious and phased approach by setting the thresholds for both the tests at relatively higher levels for an initial period. This is necessary if ESMA considers the potential negative impacts on the real economy that the inadvertent inclusion under the MiFID regime of entities/groups that are largely non-financial has.

ESMA should re-assess such higher levels and revise the thresholds on the basis of the experience, after evidence is produced and the macro-economic impact is fully taken into account.

In this sense, we believe that a more appropriate level for the 'market size test' is around 15%. The level we propose however is not based on evidence or analysis but with intention to recommend a level sensibly high to avoid unintended consequences.

Level of the threshold unreasonably low

We believe that a 'one-size-fit-all' threshold of 0.5% for the energy commodity asset classes listed by ESMA is extremely low. The level proposed is disproportionate and not in line with the intent of the level 1 text. The co-legislator's intention is to narrow down the existing exemption regime; however we are concerned that the level of the threshold proposed by ESMA may capture most commodity trading entities that are engaged in financial markets beyond the privileged transactions.

This may happen even for minor errors in the calculation or due to reasons beyond their control or activity i.e. markets suddenly shrinking. In other words such level would transform the ancillary activity exemption into a 'hedging exemption', which is different from the content of the level 1 text.

ESMA cannot presume that market participants are able to determine whether they are likely to fall below or beyond the suggested threshold, without any relevant data available on the market size for such calculation. At this stage, only rough estimations are possible.

We are concerned on the potential effects on energy markets, prices and consumers

We are concerned that the consequences of ESMA's current proposals would lead to the vast majority of energy trading firms being regulated as financial entities, subject to detailed oversight by financial regulators and forced to comply with onerous and costly rules on licensing requirements, clearing and margining, capital and liquidity adequacy, at times when credit conditions for much needed investments in energy infrastructures are already difficult.

These obligations would trigger a cascade of material adverse, unnecessary and unintended impacts on energy markets, energy consumers, energy prices and thus on the real economy:

- Small and medium sized energy (trading) firms will exit the market due to prohibitive compliance and prudential capital and liquidity requirements. Larger firms will curtail or close their EU trading activity in the light of increased compliance and prudential capital costs. This would have material adverse impacts on the competitive outset of the Internal Market for Energy.
- Energy swap markets benefit from having small companies continuing to engage in limited customer-facing swap transactions – in terms of (i) market participant diversity and (ii) liquidity. Accordingly, the threshold should be set to a sufficiently high level where smaller market participants will not discontinue engaging in this market enhancing activity out of concern for potential compliance costs associated with being a financial counterparty.

- Trading activity will, wherever possible, be routed via other international markets to avoid disproportionate licensing and capital costs. Trade will also migrate to purely bilateral, physical markets and products. Trading entities may seek to move outside of the European Union.
- The energy groups that will remain will have to reallocate capital within their businesses to meet the capital and liquidity ratios for their trading unit. This will “trap” liquidity in the trading unit or force consolidation of asset (generation) businesses with trading businesses in order to utilise the liquidity. Perversely, this would see financial authorities overseeing gas fields, nuclear plants, coal power plants and lignite mines etc. to oversee a minority trading business and simultaneously undermining energy regulators’ needs for effective business separation.
- Also, such a result would place constraints on operating capital and cash flow for affected market participants in the energy industry. This, in turn, will limit energy companies’ ability to make much needed investment in innovation, energy infrastructure, growth and jobs to cover such costs.
- Despite the need for increased liquidity in many European energy and commodity markets (e.g. as desired by Ofgem in the UK power market or as highlighted by ACER for the European gas markets in the recent Gas Target Model analysis) these threshold levels will adversely affect liquidity, efficiency and price discovery in energy markets as market participants either withdraw or can no longer participate to the same extent. The fall in liquidity will significantly increase the costs of risk management for energy companies and massively reduce opportunities for commodity risk management by industrial customers.
- The damage to wholesale energy markets also directly undermines the political aims of the Internal Market for Energy and the Third Energy Package. Illiquid wholesale markets reduce market competition and efficiency in the production and retail markets and energy prices for consumers and industry will increase as a result. Increased risk, constrained investment capital and poor market price signals will also undermine investment, production and consumption decisions and degrade the security of energy supplies.

These increased costs and risks come without any corresponding improvement in the risk profile or integrity of the financial markets from the perspective of energy trading firms. The energy markets are already effectively regulated, highly transparent and subject to the same high standards of conduct and integrity under REMIT. EMIR and the Market Abuse regime apply to the investment activity of energy groups.

The requirements related to MiFID will not in our view achieve a “level playing field” between financial and non-financial counterparties. Trading commodities on own account poses no threat to bank savers and no requirement to protect investors. Nor do commodity traders have access to central bank liquidity to meet liquidity requirements. Imposing the same obligations on fundamentally different businesses makes the field unplayable.

Level of the threshold differentiated per energy commodity

Should the disaggregation of energy commodities remain as proposed in the consultation, the level of the thresholds should at the very least be differentiated per commodity asset class, especially if ESMA maintains that breaching the threshold in any asset class imposes a license requirement, with the consequences that we illustrated above.

In a regulatory environment characterised by uncertainty, in the absence of reliable data on the size of the market at the time of drafting RTS, considered the relevant change in scope for the regulation of commodity derivatives and the likely extreme consequences on energy markets, consumers and prices of applying incorrectly the MiFID II scheme to non-financial entities, we strongly recommend a more cautious and phased approach by setting the threshold at relatively higher levels for an initial period.

Emission allowances and related derivatives

Finally, we want to reiterate that there is a special problem for an asset class for emission allowances as the trading of compliance-buyers may not be said to be for reducing risk purposes. Consequently, such traders may end up having a large market share just because they have to fulfil EU obligations. The European institutions are addressing many efforts to repair ‘a broken market’ such is the emission trading market in Europe currently. This remains the primary mean to achieve the decarbonisation of the European economy. Damages to the liquidity of such market would go against such efforts.

A way out of this problem is that art. 2(1)(e) and art. 2(1)(j) are used in conjunction and thereby trades made for compliance reasons are excluded from the calculation.

<ESMA_QUESTION_CP_MIFID_179>

Q180. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA_QUESTION_CP_MIFID_180>

Yes, we believe it is useful.

However, the level should be raised as a consequence of a different approach as suggested in response to Q179. We believe the de minimis threshold should be set at a more reasonable level and in any case at least at 5%.

<ESMA_QUESTION_CP_MIFID_180>

Q181. Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?

<ESMA_QUESTION_CP_MIFID_181>

In the draft RTS, “intragroup transactions” are defined by reference to Article 3 of EMIR.

Under this Article, in order for an EU counterparty to qualify a contract with another counterparty in the same group that is established in a third country, it is required that the Commission has adopted an implementing act to deem that third country as being equivalent under EMIR Article 13(2).

In the absence of such equivalence assessments, and due to the uncertainty over when such assessments might eventually be made, we would consider it more appropriate to define an “intragroup” transaction as a transaction between two counterparties belonging to the same group, maintaining a generic reference to the term group as this is in line with the text of Level 1 and the need to avoid extraterritorial application of MiFID II, as expressed by ESMA in the consultation paper at point 30.

Otherwise, in recognition of the possibility that such assessments may not be in place before 2017, we would urge that provisions be made in the technical standards for a transitional regime.

Finally, we reiterate the need to exclude trading activity in relation to carbon EU-ETS compliance. See also our answers to Q171 and Q179.

<ESMA_QUESTION_CP_MIFID_181>

Q182. Do you agree with ESMA’s conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_182>

We agree with ESMA that the notification to make use of the ancillary activity exemption should be based on calculations using the 3 year rolling average procedure.

However, we strongly disagree with the proposals for the interim period. We believe that ESMA requires a calculation that, on a practical level, will be impossible to make in the timeframe proposed. The intention in 2017 to use average data for 2016 is very difficult if not impossible to achieve for member firms.

We question also the proposal to use 2016 data as MiFID II will not yet be in force and this is inconsistent with the definition of commodity derivative which will be different under MiFID I and MiFID II. Finally, there will not be legal certainty before MiFID II is transposed into national law in July 2016.

The ancillary activity exemption and the amended definition of financial instruments together change the landscape for commodity derivatives' trading in the EU. Therefore, calculations for the ancillary activity exemption cannot be conducted based on data collected under MiFID I.

For the *capital employed test*, ESMA should consider that accounting data for firms is only audited and published within the first half of the year following the account closing date (31.12. of each calendar year usually). Also, not all firms may use the calendar year as financial year. Therefore it is clearly impossible to acquire data of the balance sheet of the group in the timeframe proposed by ESMA.

For the *market size test*, on the practical point no data can be made available by TRs regarding 2016 with a sufficient assessment time for companies. Some difficulty can be also expected to validate the data concerning both the market and the single person making use of the exemption.

Therefore, practically and legally we believe that the earliest calculations on the ancillary activity thresholds can be conducted during 2018 based on 2017 data, at a point in time when the accounts have been approved and audited.

It is unclear also why the interim solution proposed by ESMA covers one year only (2016), whilst ESMA has justified the proposal of calculation over a three years period saying that '*the amount of capital employed and the size of the trading activity in financial instruments might fluctuate from year to year. Therefore, a firm may fall within the scope of MiFID II because it fulfils the relevant criteria one year but it may qualify for an exemption from MiFID II the following year*' and it justifies the rejection of the proposal for 'a second chance' on the basis of the fact that the procedure '*relies on monthly inputs for 36 consecutive months seems to provide several chances to check the firm's position against the thresholds and decide whether to reduce the trading in these instruments in order to fulfil the requirements to benefit from the exemption in the regular annual test*'.

Therefore, we proposed that:

- The calculation should start with 2017 data i.e. notified to the NCA in 2018.
- If data concerning year 2016 will be used, the outcome of such calculation can only be a 'warning' to the entity/group that it needs to take reasonable steps to either monitor its situation closely to remain exempted or to apply for license. This should avoid that fluctuations unduly penalises certain persons.
- More time should be allowed for the notification. This should take place at the earliest at the end of June of each year.
- Starting in 2018, when a firm realises it cannot make use of the ancillary activity exemption, it should take reasonable steps to inform the competent NCA and be granted a period of 12 months to implement MiFID processes and reach full compliance.

ESMA should consider that in certain countries performing activities regulated by MiFID without a license is punished as criminal offence. In case the ancillary activity test will need to be carried out across the group, ESMA should set up a process allowing discounting from the assessment of the ancillary activity exemption also activities of entities in the same group that are in the process to require or obtain a MiFID license or for which procedures to novate contracts have been put in place in case a licensed entity with the appropriate permissions already exists within a group. This is necessary to ensure business continuity and avoid undue consequences.

<ESMA_QUESTION_CP_MIFID_182>

Q183. Do you have any comments on the proposed framework of the methodology for calculating position limits?



<ESMA_QUESTION_CP_MIFID_183>

Yes.

We urge ESMA to provide concrete examples regarding how both the spot months and other months' limits would apply in practice. This would enable firms to better understand the proposed mechanism. We are concerned that a combination of an inappropriate baseline limit, a too narrow definition of OTC economically equivalent contracts (consequently of netting) and the absence of hedging exemption for financial firms may lead to market disruption and may dry liquidity and thus impact the price discovery function in European commodity derivatives markets.

In setting position limit levels, ESMA must balance carefully multiple objectives, including preventing excessive speculation and market manipulation, while at the same time ensuring that our markets remain liquid so as to afford end users and producers of commodities the ability to hedge their commercial risk and gain accurate price discovery.

Position limits on cash-settled derivative contracts in the spot month and other months are easier to implement and monitor if based on open interest, as opposed to deliverable supply. It is appropriate to establish position limits on physically-settled derivatives contracts based on deliverable supply in the spot month, because they contemplate delivery of the underlying commodity and are, therefore, tied to the physical limits of the market.

A cash-settled derivative, however, does not provide for physical delivery. In the energy markets there is robust participation and liquidity in cash-settled energy derivatives contracts. These products serve an important function in the market, providing market participants with the ability to hedge exposure to the final contract settlement price without basis risk and allow them to avoid the risk of physical delivery that is attendant to a physically delivered contract.

By applying the same spot-month limit to cash settled derivatives, ESMA would be dismissing not only the major differences that exist between the physical and cash-settled contract markets at expiry but also the much larger size of the cash-settled market. Therefore, it is inappropriate to tie the position limits for cash-settled derivatives to the physical market (i.e., as a function of deliverable supply). At the very least, ESMA should clarify how open interest should be taken into account when setting the limits for cash-settled derivatives. We reiterate in this sense the recommendation to come up with specific examples to avoid misunderstandings.

With respect to setting positions limits for physically-settled derivatives contracts, in order to overcome the 'national champions' problem in regards to concentration of positions as pointed out by ESMA at point 14, a possible way forward is to consider European gas and power markets respectively at continental level when determining the deliverable supply. We fear that exchanges may not be the best place for collection of such data or at least their information should be cross-checked with data made available by ACER and gas and power system operators.

We believe that such a geographic aggregation is reasonable in reason of the efforts to achieve the single energy market. Furthermore, often contracts related to certain locations (e.g. German electricity baseload or Dutch gas hub) are used as proxies to manage positions in the surrounding and illiquid/inexistent, national markets. However, coordination between national competent authorities is necessary.

The meaning of the sentence used by ESMA in point 21 is unclear: 'The baseline figure will be 25% (...) for the appropriate prediction of deliverable supply that will be available to meet the obligations arising for the other months' in reference to other months limit. We fear that if the deliverable supply considered is too small compared with the open interest, it would be very easy breaching the limits. It is unclear how seasonality will be taken into account and market swings (e.g. contraction/expansion of the market size with the sentiment about general economic conditions).

For contracts beyond the spot month the consideration of the open interest is preferable at least to consider the appropriateness of the limits proposed. It is of utmost importance that the process of determining this deliverable supply is fully transparent and market participants are involved at an early stage.

<ESMA_QUESTION_CP_MIFID_183>

Q184. Would a baseline of 25% of deliverable supply be suitable for all commodity derivatives to meet position limit objectives? For which commodity derivatives would 25% not be suitable and why? What baseline would be suitable and why?

<ESMA_QUESTION_CP_MIFID_184>

In general it seems reasonable for physically settled spot-month commodity derivative contracts. However, it is key how the calculation of the deliverable supply is made.

When determining the deliverable supply of European gas and power markets respectively we believe it is essential to consider such markets in their entirety at Union or continental level. This should be very helpful in solving the 'national champions' problem in regards to concentration of positions as mentioned by ESMA at point 14.

ESMA must ensure position limits for physically-settled spot-month commodity derivative contracts are sufficiently large so they do not drain liquidity out of the futures settlement process. The integrity of futures settlement prices depends, in large part, on the volume of transactions and the variety of participants trading gas during the closing period. Also, less liquidity and fewer participants in the physically delivered contract could create greater opportunity for manipulation of the settlement process.

For positions in other months, we believe that the suitability of deliverable supply is more limited, therefore the baseline should be set on the basis of the open interest. At the very least the open interest should be the key element to be taken into account when setting the baseline.

More in general we support the view that is more appropriate setting initially a higher limit, and after collection of data on positions and after a reasonable period calibrate the limits based on evidence.

<ESMA_QUESTION_CP_MIFID_184>

Q185. Would a maximum of 40% position limit be suitable for all commodity derivatives to meet position limit objectives. For which commodity derivatives would 40% not be suitable and why? What maximum position limit would be suitable and why?

<ESMA_QUESTION_CP_MIFID_185>

The maximum position limit at 40% is likely to be suitable in most of the cases for liquid markets. However, it may not be appropriate in all markets, especially if they are emerging markets, which can be especially illiquid. In such circumstances, exceptions should be allowed, as a small number of participants may be required to represent a proportionately higher share of the market (for example in the helium market) until such time as the market is more established and lower limits can be used. The methodology should be future-proofing to avoid undue constraints in the development of commodity derivative markets.

<ESMA_QUESTION_CP_MIFID_185>

Q186. Are +/- 15% parameters for altering the baseline position limit suitable for all commodity derivatives? For which commodity derivatives would such parameters not be suitable and why? What parameters would be suitable and why?

<ESMA_QUESTION_CP_MIFID_186>

We welcome that ESMA recommends a methodology that allows adjusting the limits. However, it is very difficult to assess without the figures of deliverable supply and open interest estimates for each of the relevant markets.

<ESMA_QUESTION_CP_MIFID_186>

Q187. Are +/- 15% parameters suitable for all the factors being considered? For which factors should such parameters be changed, what to, and why?

<ESMA_QUESTION_CP_MIFID_187>

We understand that ESMA has a statutory mandate to consider volatility.

We also recognise that volatility may have a residual value in terms of reflecting illiquidity issues. We nevertheless highlight that if open interest is used to determine other month limits, the other factors become incidental. This is because open interest numbers would already factor in such matters as maturity of contracts, volatility, number and size of participants and characteristics of underlying commodity markets.

<ESMA_QUESTION_CP_MIFID_187>

Q188. Do you consider the methodology for setting the spot month position limit should differ in any way from the methodology for setting the other months position limit? If so, in what way?

<ESMA_QUESTION_CP_MIFID_188>

We reiterate the importance of determining the deliverable supply in a reasonable manner and to make these figures available for scrutiny to the market participants who will be relying upon such numbers in the planning of their day-to-day business. Please see also the answer to Q183. Especially we reiterate the need to consider open interest for months other than the spot months or the possibility to consider multipliers for the spot-month deliverable supply. Even in this case we believe that the risk of inconsistency is high.

It will be necessary to adjust the open interest to add the notional volumes of OTC contracts relating to the relevant on-venue contracts. It is also the case that certain commodities may not have a related futures contract and competent authorities will need to estimate the open interest based on notional amounts of swaps and other relevant OTC contracts (e.g. options and forwards).

Open interest data should be available via TRs as a result of EMIR reporting.

Finally, the difference between commodities means that some are durable and can be stored indefinitely and some cannot; therefore, for some commodities production deliverable supply should also include stock levels (i.e. surplus production stored from a prior period).

<ESMA_QUESTION_CP_MIFID_188>

Q189. How do you suggest establishing a methodology that balances providing greater flexibility for new and illiquid contracts whilst still providing a level of constraint in a clear and quantifiable way? What limit would you consider as appropriate per product class? Could the assessment of whether a contract is illiquid, triggering a potential wider limit, be based on the technical standard ESMA is proposing for non-equity transparency?

<ESMA_QUESTION_CP_MIFID_189>

We do not have a suggestion in general because any new commodity derivative market has its own characteristics very much dependent on the structure of the underlying physical market (supply and demand concentration). We believe that exceptions should be possible as a contract transitions from being new and illiquid to mature and liquid.

The methodology should ensure that the limits do not damage developing liquidity in new contracts. Low liquidity however 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.

<ESMA_QUESTION_CP_MIFID_189>

Q190. What wider factors should competent authorities consider for specific commodity markets for adjusting the level of deliverable supply calculated by trading venues?

<ESMA_QUESTION_CP_MIFID_190>

The geographic scope for the calculation of the deliverable supply is another important element to be considered because the level of the position limit is much more stringent if, for instance, the deliverable supply is calculated on the basis of a national market rather than being the entire Union.

We believe that where a geographical market is commonly used as a proxy for hedging positions in adjacent European markets the deliverable supply of these adjacent European markets should be added to the deliverable supply in the primary geographic market. For example, companies active in eastern European markets hedge positions using German futures as liquid future markets are not yet in place for these markets (Indeed as experience in gas markets in the Netherlands and France has shown, the ability to hedge positions at the NBP was a precursor to setting up liquid financial commodity trading in these markets).

We believe that if open interest is used for all other months, then this metric would take into account all relevant factors particular to the relevant commodity contract: it would then not be necessary to provide for an adjustment mechanism driven by an exhaustive list of factors.

<ESMA_QUESTION_CP_MIFID_190>

Q191. What are the specific features of certain commodity derivatives which might impact on deliverable supply?

<ESMA_QUESTION_CP_MIFID_191>

For energy commodities logistic issues are quite relevant. Especially in gas and power markets it is important to consider the various elements: the production, the import and storage facilities, the transportation and transmission facilities.

Climatic variables can also have an impact. For instance seasonality (related to weather conditions) and the possibility to store energy is another very important element that may affect the deliverable supply from one month to another or in the same month year after year (mild winter vs. cold winter). Also, e.g. ports which get frozen over in winter can have significant activity in other seasons and if a limit is set as an *average* over a year then it will not be possible to accommodate the busy times. For oil and oil products, e.g. Gasoil, the availability of barges, loading slots, storage are all important elements and they can vary significantly between locations and grades.

<ESMA_QUESTION_CP_MIFID_191>

Q192. How should 'less-liquid' be considered and defined in the context of position limits and meeting the position limit objectives?

<ESMA_QUESTION_CP_MIFID_192>

This should apply to contracts traded by relatively few counterparties or in low volumes.

We would recommend any methodology takes into account a range of factors in assessing market liquidity including (but not restricted to) – bid/offer spread, number of participants, frequency of trading, market volatility, etc.

<ESMA_QUESTION_CP_MIFID_192>

Q193. What participation features in specific commodity markets around the organisation, structure, or behaviour should competent authorities take into account?

<ESMA_QUESTION_CP_MIFID_193>

We believe that national competent authorities should seek to understand the composition of market participants before determining the position limit.

For example, a market with a low number of active participants may have a very narrow number of sellers and more buyers or just one risk management provider. In such markets, a single position limit may have a disproportionate impact on some of the participants.

<ESMA_QUESTION_CP_MIFID_193>

Q194. How could the calculation methodology enable competent authorities to more accurately take into account specific factors or characteristics of commodity derivatives, their underlying markets and commodities?

<ESMA_QUESTION_CP_MIFID_194>

European gas and electricity markets are subject to extensive regulation and oversight. The involvement of ACER and national regulators (e.g. Ofgem, BNetzA, CRE, etc.) is a safeguard to ensure that the competent authorities are supported by the right competences when taking into account the factors and the characteristics of the underlying commodity markets.

For other energy commodities, specialized independent commodities' markets information providers can help improve the competent authority's understanding of the underlying commodity markets.

We do not agree with ESMA's assumption that position limits should move up in direct proportion to the flexibility of the relevant commodity market. In fact, in our members' experience, the reverse is likely to be true. This is because the more inelastic a market is (in terms of few points of delivery, geographic specificity, and seasonality) the more tolerance will be required to incorporate inadvertent large positions. Thus, we recommend giving the competent authorities maximum discretion over the calculation methodology for each commodity.

<ESMA_QUESTION_CP_MIFID_194>

Q195. For what time period can a contract be considered as "new" and therefore benefit from higher position limits?

<ESMA_QUESTION_CP_MIFID_195>

We believe that a minimum time could be set e.g. 24 months and/or give national authorities discretion to adjust the limits in line with actual speed of market development. However, competent authorities should have discretion to take a view on the relative maturity of a contract after this initial period. After such a period the contract can be either subject to the 'standard approach' or being considered 'illiquid' and therefore limits should be set by taking into account this specificity.

<ESMA_QUESTION_CP_MIFID_195>

Q196. Should the application of less-liquid parameters be based on the age of the commodity derivative or the ongoing liquidity of that contract.

<ESMA_QUESTION_CP_MIFID_196>

On the ongoing liquidity of the product, we believe that the age is irrelevant as contract may never reach trading levels which are sufficiently high to result in the need for a position limit to be applied, indeed some markets lose liquidity over time and may need their parameters adjusting if liquidity does not recover.

<ESMA_QUESTION_CP_MIFID_196>

Q197. Do you have any further comments regarding the above proposals on how the factors will be taken into account for the position limit calculation methodology?

<ESMA_QUESTION_CP_MIFID_197>

No.

<ESMA_QUESTION_CP_MIFID_197>

Q198. Do you agree with ESMA's proposal to not include asset-class specific elements in the methodology?

<ESMA_QUESTION_CP_MIFID_198>

Yes. We agree with ESMA that the methodology should provide competent authorities with sufficient scope to take into account the specificities of the different markets without incorporating asset-class specific elements *in the methodology*. The characteristics of the asset-classes should be taken into account by the competent authorities *when setting the limit itself*.

Also, it is critical that open interest is used as the metric for other month limits as open interest will factor in asset specific elements relevant to the particular commodity in question.

<ESMA_QUESTION_CP_MIFID_198>

Q199. How are the seven factors (listed under Article 57(3)(a) to (g) and discussed above) currently taken into account in the setting and management of existing position limits?

<ESMA_QUESTION_CP_MIFID_199>

We believe that these factors would be taken into account through the use of open interest for non-spot month limits and deliverable supply for spot month limits.

<ESMA_QUESTION_CP_MIFID_199>

Q200. Do you agree with the proposed draft RTS regarding risk reducing positions?

<ESMA_QUESTION_CP_MIFID_200>

We agree with the proposed draft RTS on risk reducing positions. However, we do not fully share the view of ESMA that *each trade* can be tagged to identify whether it is a hedge or a speculative trade or position. Whilst we agree that a certain level of disaggregation is necessary, entities with a complex and large underlying commodity portfolio necessarily consider derivatives entered into for the reduction of commercial risks related to *the portfolio* and the distinction may not *always* be identifiable for each single trade.

We also think it is critical that this concept of risk-reducing transactions is considered in conjunction with the “ancillary activities exemption”. In particular, given that only non-financial entities can benefit from the hedging exemption, ESMA should approach any final decisions on thresholds applicable to the “ancillary activities exemption” with extreme caution.

Amongst other things, a knock-on effect of having too many market participants categorised as financial entities, especially those with significant physical operations, would be that such entities could not utilise the hedging exemption without considerable restructuring of their operations. If such entities are unable to hedge above the proposed position limits, this may render them unwilling or unable to enter into strategically important commodity supply transactions.

In general, we note that the draft RTS on position limits do not contain definitions that are key to evaluate the full impact of the rules proposed (for example “spot month”).

<ESMA_QUESTION_CP_MIFID_200>

Q201. Do you have any comments regarding ESMA’s proposal regarding what is a non-financial entity?

<ESMA_QUESTION_CP_MIFID_201>

No.

<ESMA_QUESTION_CP_MIFID_201>

Q202. Do you agree with the proposed draft RTS regarding the aggregation of a person’s positions?

<ESMA_QUESTION_CP_MIFID_202>

Yes, partially.

We support the view that positions of a person should not be aggregate with position of other subsidiaries of a mutual parent. However, we disagree that the positions should be aggregated on a whole position basis. They should be rather done on a pro-rata basis otherwise certain positions would be counted twice.

<ESMA_QUESTION_CP_MIFID_202>

Q203. Do you agree with ESMA’s proposal that a person’s position in a commodity derivative should be aggregated on a ‘whole’ position basis with those that are under the beneficial ownership of the position holder? If not, please provide reasons.

<ESMA_QUESTION_CP_MIFID_203>

No, we disagree. Positions should be rather aggregate on a pro-rata basis otherwise certain positions would be counted twice.

<ESMA_QUESTION_CP_MIFID_203>

Q204. Do you agree with the proposed draft RTS regarding the criteria for determining whether a contract is an economically equivalent OTC contract?

<ESMA_QUESTION_CP_MIFID_204>

We support the proposal of RTS to determine whether a contract is an economically equivalent OTC contract.

However, we note that in the CP ESMA seems to refer to 'ETDs' as opposed to OTCEE, whilst in other parts (RTS) it refers in general to contracts trading on a trading venue (which include OTC venues such as MTFs and OTFs). Clarity is necessary.

<ESMA_QUESTION_CP_MIFID_204>

Q205. Do you agree with the proposed draft RTS regarding the definition of same derivative contract?

<ESMA_QUESTION_CP_MIFID_205>

Yes, we agree. On the practical point of view, we believe that it should be made clear how this equality will be communicated to the market.

<ESMA_QUESTION_CP_MIFID_205>

Q206. Do you agree with the proposed draft RTS regarding the definition of significant volume for the purpose of article 57(6)?

<ESMA_QUESTION_CP_MIFID_206>

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<ESMA_QUESTION_CP_MIFID_206>

Q207. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA_QUESTION_CP_MIFID_207>

Yes, we agree. However, a clear definition of OTC in this context should be provided for the avoidance of doubts.

<ESMA_QUESTION_CP_MIFID_207>

Q208. Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?

<ESMA_QUESTION_CP_MIFID_208>

No, we disagree. We believe that the proposed procedure is extremely impractical if it has to be applied in all cases and may definitely hinder the ability of managing risks related to the commercial activity. Thirty calendar days for a silent or explicit approval are an infinite time compared with how commodity derivative markets work.

We believe that an 'ex-ante approval' should be set as general rule. Such ex-ante approval should allow firms to obtain comfort that they can be exempted up to a level that is deemed appropriate by the NCA based on the commercial activity carried out by such entity. However, it should be possible for entities to deviate from such pre-approved exemption in case of needing.

Market participants entering into positions beyond the approved ex-ante exemption should be able to demonstrate the need for deviations.



<ESMA_QUESTION_CP_MIFID_208>

Q209. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA_QUESTION_CP_MIFID_209>

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<ESMA_QUESTION_CP_MIFID_209>

Q210. Do you agree with the reporting format for CoT reports?

<ESMA_QUESTION_CP_MIFID_210>

Yes, we agree with the format. However, it remains unclear the definition of the granularity of the 'name of Commodity Derivative Contract'. Therefore, we ask ESMA to provide examples to assess the impact.

<ESMA_QUESTION_CP_MIFID_210>

Q211. Do you agree with the reporting format for the daily Position Reports?

<ESMA_QUESTION_CP_MIFID_211>

Yes, we agree on the reporting formats. However, we would like to highlight issues in terms of the process proposed.

<ESMA_QUESTION_CP_MIFID_211>

Q212. What other reporting arrangements should ESMA consider specifying to facilitate position reporting arrangements?

<ESMA_QUESTION_CP_MIFID_212>

We believe that a similar approach to the U.S. can be implemented: the end-client can directly send the relevant information to the CFTC without passing through the chain of intermediaries, which protects client confidentiality vis à vis the intermediaries.

We also point out that this provision, if it forces clients' information to pass through the whole chain of intermediaries, may conflict with national privacy laws.

Non-financial entities may not want to disclose their positions to e.g. their clearing banks in order to be reported. Therefore, we strongly recommend that at least there is an option for firms that are not investment firms to report directly their positions. This should not require massive additional costs considering that many firms provide already reports to TRs directly or via third party providers.

<ESMA_QUESTION_CP_MIFID_212>

8. Market data reporting

Q213. Which of the formats specified in paragraph 2 would pose you the most substantial implementation challenge from technical and compliance point of view for transaction and/or reference data reporting? Please explain.

<ESMA_QUESTION_CP_MIFID_213>

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<ESMA_QUESTION_CP_MIFID_213>

Q214. Do you anticipate any difficulties with the proposed definition for a transaction and execution?

<ESMA_QUESTION_CP_MIFID_214>

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<ESMA_QUESTION_CP_MIFID_214>

Q215. In your view, is there any other outcome or activity that should be excluded from the definition of transaction or execution? Please justify.

<ESMA_QUESTION_CP_MIFID_215>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_215>

Q216. Do you foresee any difficulties with the suggested approach? Please justify.

<ESMA_QUESTION_CP_MIFID_216>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_216>

Q217. Do you agree with ESMA's proposed approach to simplify transaction reporting? Please provide details of your reasons.

<ESMA_QUESTION_CP_MIFID_217>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_217>

Q218. We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

<ESMA_QUESTION_CP_MIFID_218>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_218>

Q219. Do you agree with the proposed approach to flag trading capacities?

<ESMA_QUESTION_CP_MIFID_219>

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<ESMA_QUESTION_CP_MIFID_219>

Q220. Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details



<ESMA_QUESTION_CP_MIFID_220>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_220>

Q221. Do you agree with ESMA's approach for deciding whether financial instruments based on baskets or indices are reportable?

<ESMA_QUESTION_CP_MIFID_221>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_221>

Q222. Do you agree with the proposed standards for identifying these instruments in the transaction reports?

<ESMA_QUESTION_CP_MIFID_222>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_222>

Q223. Do you foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity? If so, do you have any alternative proposals?

<ESMA_QUESTION_CP_MIFID_223>

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<ESMA_QUESTION_CP_MIFID_223>

Q224. Do you anticipate any significant difficulties related to the implementation of LEI validation?

<ESMA_QUESTION_CP_MIFID_224>

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<ESMA_QUESTION_CP_MIFID_224>

Q225. Do you foresee any difficulties with the proposed requirements? Please elaborate.

<ESMA_QUESTION_CP_MIFID_225>

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<ESMA_QUESTION_CP_MIFID_225>

Q226. Are there any cases other than the AGGREGATED scenario where the client ID information could not be submitted to the trading venue operator at the time of order submission? If yes, please elaborate.

<ESMA_QUESTION_CP_MIFID_226>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_226>

Q227. Do you agree with the proposed approach to flag liquidity provision activity?

<ESMA_QUESTION_CP_MIFID_227>

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<ESMA_QUESTION_CP_MIFID_227>

Q228. Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

<ESMA_QUESTION_CP_MIFID_228>

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<ESMA_QUESTION_CP_MIFID_228>

Q229. Is the approach taken, particularly in relation to maintaining prices of implied orders, in line with industry practice? Please describe any differences?

<ESMA_QUESTION_CP_MIFID_229>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_229>

Q230. Do you agree on the proposed content and format for records of orders to be maintained proposed in this Consultation Paper? Please elaborate.

<ESMA_QUESTION_CP_MIFID_230>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_230>

Q231. In your view, are there additional key pieces of information that an investment firm that engages in a high-frequency algorithmic trading technique has to maintain to comply with its record-keeping obligations under Article 17 of MiFID II? Please elaborate.

<ESMA_QUESTION_CP_MIFID_231>

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<ESMA_QUESTION_CP_MIFID_231>

Q232. Do you agree with the proposed record-keeping period of five years?

<ESMA_QUESTION_CP_MIFID_232>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_232>

Q233. Do you agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation? Please elaborate.

<ESMA_QUESTION_CP_MIFID_233>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_233>

Q234. Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.

<ESMA_QUESTION_CP_MIFID_234>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_234>

Q235. Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.



<ESMA_QUESTION_CP_MIFID_235>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_235>

Q236. Do you agree with ESMA's proposal to submit a single instrument reference data full file once per day? Please explain.

<ESMA_QUESTION_CP_MIFID_236>

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<ESMA_QUESTION_CP_MIFID_236>

Q237. Do you agree that, where a specified list as defined in Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data is submitted when the first quote/order is placed or the first trade occurs on that venue? Please explain.

<ESMA_QUESTION_CP_MIFID_237>

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<ESMA_QUESTION_CP_MIFID_237>

Q238. Do you agree with ESMA proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of new financial instruments.

<ESMA_QUESTION_CP_MIFID_238>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_238>

9. Post-trading issues

Q239. What are your views on the pre-check to be performed by trading venues for orders related to derivative transactions subject to the clearing obligation and the proposed time frame?

<ESMA_QUESTION_CP_MIFID_239>

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<ESMA_QUESTION_CP_MIFID_239>

Q240. What are your views on the categories of transactions and the proposed timeframe for submitting executed transactions to the CCP?

<ESMA_QUESTION_CP_MIFID_240>

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<ESMA_QUESTION_CP_MIFID_240>

Q241. What are your views on the proposal that the clearing member should receive the information related to the bilateral derivative contracts submitted for clearing and the timeframe?

<ESMA_QUESTION_CP_MIFID_241>

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<ESMA_QUESTION_CP_MIFID_241>

Q242. What are your views on having a common timeframe for all categories of derivative transactions? Do you agree with the proposed timeframe?

<ESMA_QUESTION_CP_MIFID_242>

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Q243. What are your views on the proposed treatment of rejected transactions?

<ESMA_QUESTION_CP_MIFID_243>

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<ESMA_QUESTION_CP_MIFID_243>

Q244. Do you agree with the proposed draft RTS? Do you believe it addresses the stakeholders concerns on the lack of indirect clearing services offering? If not, please provide detailed explanations on the reasons why a particular provision would limit such a development as well as possible alternatives.

<ESMA_QUESTION_CP_MIFID_244>

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Q245. Do you believe that a gross omnibus account segregation, according to which the clearing member is required to record the collateral value of the assets, rather than the assets held for the benefit of indirect clients, achieves together with other requirements included in the draft RTS a protection of equivalent effect to the indirect clients as the one envisaged for clients under EMIR?



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