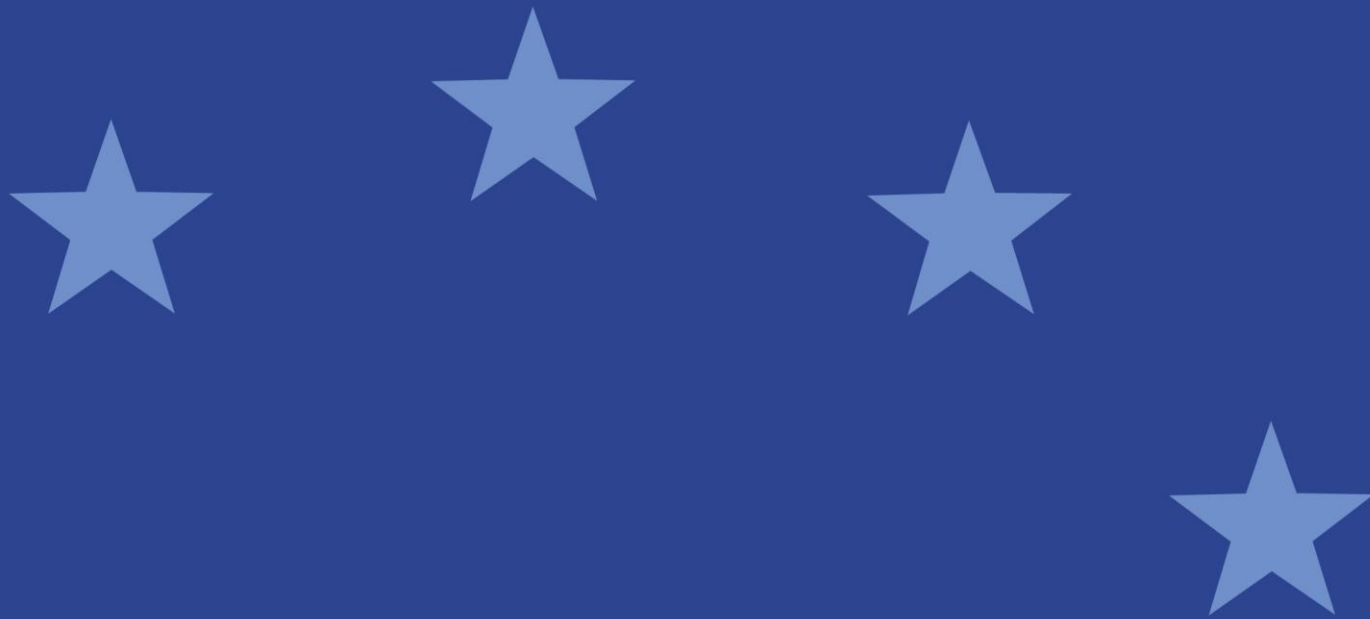


Reply form for the Consultation Paper on MiFID II / MiFIR



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:

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

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

Naming protocol:

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

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

Deadline

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

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



Publication of responses

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

Data protection

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

General information about respondent

Name of the company / organisation	Click here to enter text.
Confidential ¹	<input type="checkbox"/>
Activity:	Choose an item.
Are you representing an association?	<input type="checkbox"/>
Country/Region	Choose an item.

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Yes. The categories of information to be provided seem to be essential.

<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>

Yes. The information about the tied agents seems reasonable.

<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>

Yes, this seems reasonable.

<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>

The greater range of information to be provided where a branch is to be set up seems reasonable.

Whereas MiFID II Article 35(4) requires the competent authority of the home Member State to communicate details of the accredited compensation scheme of which the investment firm is a member, the draft RTS 3 Article 5.2(g)(vi) seems to place this disclosure requirement on the investment firm as part of its programme of operations.

Indeed Annex VIII of draft ITS4 sets out the form by which the home Member State competent authority should inform the host Member State competent authority of this information.

<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>

No comment.

<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>

This seems reasonable.

<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>

This seems reasonable.

<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>

This seems reasonable.

<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>

No comment.

<ESMA_QUESTION_CP_MIFID_16>

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

<ESMA_QUESTION_CP_MIFID_17>

Yes. This is fundamental to harmonising the process across the EU.

<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>

Yes.

<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>

Yes, this seems reasonable. However, it must be clear that the time starts when all the information required under the RTS/ITS is received, and it should not be up to the home Member State competent authority to add further information requirements.

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

While supporting electronic means, hard copy transmission of notification forms should be available, even to those competent authorities that will accept transmission by electronic means.

<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>

Such acknowledgement of receipt is something that we would strongly support.

We note that there is no such requirement on the host Member State competent authority to acknowledge receipt of passport notification under the freedom to provide investment services and activities. This would also prove useful to the notifying investment firm.

<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>

No comment.

<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>

No comment.

<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>

This seems practical.

<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>

Yes. This will be clearer than merely listing any changes.

<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>

No comment.

<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>

This seems reasonable.

<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>

Yes. It would, however, be useful if Article 1(1)(l) of RTS5 were extended to require the third country firm to state not just the investment services it intends to provide, but specifics of the member states in which it intends to operate.

<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>

Yes. It may be worth stipulating that where the information is provided in one of the official languages of a Member State, that this is appropriate in the circumstances.

It may also be useful if Article 3 of RTS 5 set out the information referred to in Article 46(5) of Regulation No 600/2014.

<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>

While the approach taken seems, superficially, reasonable, given the massive quantity of data that would be required to be disclosed execution venues there seems to have been little consideration given to how (or indeed whether) this data would be used by (or could be useful to) investment firms in assessing best execution. There has been no cost benefit analysis of whether the way in which ESMA propose to implement the level one text is the best way of doing so.

To some extent it seems that it seems that ESMA have identified all the information that could be disclosed, rather than looking at what information would be of use to these firms that have to make use of it, for the purposes of best execution.

It is noted that the division of equities into ranges is different in RTS 6 (based on the size of the each specific transaction) and RTS 7 (where it is based on the value of the daily turnover). We consider that the sub-division of financial instruments should be based on what is appropriate for the situation. That suitable for execution venues need not be the same as that for investment firms, however, it is important that, where the information provided by execution venues has to be used by investment firms, then the information is consistent. Thus, if

execution venues are reporting at a granular level, it should be a simple process for investment firms to aggregate the sub-divisions together to make their report.

<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>

Yes. I would refer to the points raised in my answer to Q35 about the excessive granularity of the proposed classes.

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>

No comment.

<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>

The proposed metrics seem reasonable as far as they go. We do, however, feel that simply dividing markets into two groups (quote- or order-driven) is overly simplistic, as described in our response to Q30. There are significant differences between, for instance, regulated markets and systematic internalisers, even though both may be order-driven. As such the specifics of additional data to be published needs to be extended to reflect this greater real diversity in the way in which execution venues operate.

<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>

Given the volume of data (a single execution venue can have several hundred thousand lines of stock, and thus, on a conservative calculation an execution venue may have to publish 1.63bn data items each quarter, or 6.5bn per year) it will be vital that the information is published in a way that is machine readable, so that it can be extracted into computer systems to allow for analysis.

This is even more obvious when it is considered that investment firms may have to deal with scores, if not hundreds, of execution venues.

<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>

We agree with ESMA (paragraph 29) that, the reporting requirements on execution quality apply to all investment firms that execute client orders. It is not clear that this should apply to portfolio managers, as

- They do not **execute** order but, on the whole, will place orders with brokers for them to execute.
- They do not execute **client** orders, but with orders arising from their own discretionary decisions to act. They do not receive orders from clients.

It is important that the distinction between firms placing orders for execution and firms executing orders is clear in the final text, so that investment firms know with which rules they should be complying.

It is our opinion that where portfolio managers do place deals with brokers (market makers or other liquidity providers) who may in turn fill the orders from a regulated market, MTF or OTF, then they should include the broker as their execution venue for inclusion as a venue in the list of top five venues, where relevant under Article 24(1) of MiFID II, rather than under Article 27(6).

Where investment firms place client orders with brokers for them to execute, it is essential that they receive the information produced under RTS 6, in order that they are able to comply with RTS7. This information must be accessible in machine readable format, so that it can be properly analysed by computer.

We are concerned about the 'standard taxonomy', referred to in paragraph 30 and set out in RTS 7 Article 4. It has been developed in order to meet a different requirement elsewhere in MiFID II. It does not seem to be appropriate to use it to meet the requirements of Article 27(1)(b). We would also note that Article 9(5) of MiFIR only relates to non-equity instruments. The granularity of the classification as set out in Article 4 is such that there are 38 classes of financial instrument. This seems excessive, given that the purpose of the required disclosure is to allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on terms most favourable to their clients (MiFID Level 1, Recital 97).

The granularity of the classification should be reduced. Even reporting on the higher level of type of financial instrument (e.g. equity, bond etc.) would leave 15 different classes of instrument, but this would be less overwhelming for investors than the current proposal.

The numbering in Article 4 of RTS 7 seems to have gone awry. Sections 3-15 should be subsections of section 2.

<ESMA_QUESTION_CP_MIFID_35>

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

<ESMA_QUESTION_CP_MIFID_36>

The scope of Article 27(10)(b) and Article 27(6) requires ESMA to consider the "content and the form of information to be published" and that the requirement to publish and summarise such information is limited to "...for each class of financial instruments, the top five execution venues in terms of trading volumes ...and information on the quality of execution obtained". ESMA's advice goes considerably beyond this.

As a result we strongly disagree with the proposals set out in RTS 7. The proposals would result in huge glut of information being published, which would mislead or discourage any retail customer from considering it. Nor is most of the information required under the Level 1 text. Much more useful would be a pared down block of information about the top five execution venues used, and a readable analysis of how the firm achieved a good quality of execution.

Looking at Article 30(1) of the Level 1 Directive it is clear that Article 27: best execution (and the consequent requirements under RTS 6 & 7) do not apply to transactions with eligible counterparties. Therefore, any such transactions should not be included in the information published, nor should the transactions be taken into account when considering the value, volume or number of orders executed. This feeds through to my comments on Article 5.6.

Any inclusion of data on transactions, to which best execution does not apply, in a report to be used to assess best execution must lead to confusion, if the data is skewed as a result, or add nothing of value, if the information is not changed as a result.

Looking at the specific requirements of Article 5 of the RTS7

Article 5.1: We question the proposal that the information on all client orders should be disclosed on a monthly value. Any such information should only need to be disclosed aggregated on an annual basis. There is no justification in MiFID Level 1 for requiring this information to be provided annually, but aggregated on a monthly basis.

Indeed, if the 14 fields of information for each of the top five venues have to be reported for all 38 classifications of financial instrument, and need to be reported on a monthly basis, then this means that an investment firm would need to publish 31,920 pieces of data:

$$14 \times 5 \times 38 \times 12 = 31920$$

As a rough estimate: this would cover about 228 pages.

If an investor wants to make use of this information to compare the execution quality of a number of different firms, then the amount of information that they have to wade through becomes massively excessive. It is unrealistic to expect investors to be able to make use of this information. The most likely result is that anyone thinking of doing so would be put off by the sheer quantity of data. It would be a lot more likely to be of use to consumers if it was significantly reduced.

Article 5.2: as in our answer to Question 35 we consider that the suggested 38 classes of financial instrument is far too granular to be useful to investors. We would prefer no more than the 15 top-level classes to be used.

Article 5.3: by 'trading volume' does ESMA mean the value of trades executed on that venue, or the number of trades? The value would seem to make more sense, especially as Article 5.4 requires the number of trades to be disclosed.

Article 5.4: while this subsection requires the disclosure of the number of orders executed on that execution venue *in numbers* and *in percentage* of total executed orders, the table provided in Annex I only has one column entitled 'Numbers of orders executed on this execution venue'.

Article 5.5: there is no definition of what is meant by 'passive' and 'aggressive' orders within this RTS. It is also unclear as to whether the percentage disclosed should be of the number or the value of those orders. We would also dispute there being any justification in the Level 1 text for requiring this level of granularity of disclosure by investment firms.

Article 5.6: there is no requirement or justification in the MiFID Level 1 text for subdividing the information provided by client type. Indeed, as noted above, orders executed for eligible counterparties are not caught within the scope of Article 27, or therefore by RTS 7. This requirement should be deleted.

Article 5.7: it can be argued that the client orders that are directed, by the client, to a specific execution venue should not be included in the total of disclosable orders. The purpose of the disclosure under RTS7 is to allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on terms most favourable to their clients (MiFID Level 1, Recital 97). Orders which have been directed by the client, rather than by the firm should be excluded from this disclosure from the start, rather than being included then highlighted. Their inclusion would not add anything to the client's understanding, and may lead to unnecessary confusion.

Article 5.8: there is no indication of the information to be included in the field provided in the table in Annex 1. Given that the text merely refers to the existence of close links, was ESMA intending that a simple Y/N response would be adequate?

The existence of close links with execution venues are already dealt with by other sections of the Directive (e.g. Article 10 of MiFID II) and need not be included here.

Article 5.9: we question the proposal that information on the existence and monthly value of any payments, discounts or rebates received from the execution venue together with a description of the nature of any non-monetary benefits should be disclosed. Any such information should only need to be disclosed, if at all, on an annual basis. There is no justification in MiFID Level 1 for requiring this information to be provided on a monthly basis.

Article 5.10: we question the proposal that the monthly value of fees and charges paid, expressed as a percentage of the firm's total costs, should be disclosed. Any such information should only need to be disclosed, if at all, on an annual basis. There is no justification in MiFID Level 1 for requiring this information to be provided at all, let alone on a monthly basis.

Article 5.11: the existence and nature of conflicts of interest are already required to be managed and, if necessary, disclosed under other sections of the Directive (MiFID Level 1 Article 23 and 24) and need not be duplicated here. There is no indication of how much information ESMA expect to be included in the field provided in the table in Annex 1. We strongly argue that it is not appropriate to require this disclosure here, when it is covered perfectly adequately by other sections of MiFID II, and is not justifiable from the Level 1 text of Article 27(6).

In summary we would suggest that the table in Annex 1 should be reduced to the following:

Class of instrument			
Top 5 venues	Value of orders executed on this as percentage of total	Trading systems operated	Execution venue website link
Name and Venue Identifier			

Name and Venue Identifier			
Name and Venue Identifier			
Name and Venue Identifier			
Name and Venue Identifier			

As a result the tidal wave of information to be disclosed to investors would be reduced as follows:

$$3 \times 5 \times 15 = 225$$

Article 6: it is clear that the Level 1 text intends firms to provide some detailed information about their top five execution venues, and 'information on the quality of execution obtained'. Nothing in Article 27(6) or Recital 97 of MiFID II Level 1 justifies the amount of information that ESMA is proposing that firms provide on non-top five venues.

While Article 6(1)(a), (c), (d) and (e) seem perfectly reasonable, subsection (b) seems to be an attempt to extend the information disclosure required on the top five execution venues to all the others used by the firm as well. There is no justification in the level 1 text for any such extension of the disclosure requirement.

It seems that Article 6(1)(b) takes Article 5 disclosure requirements on a firm's top five execution venues and merely extends the disclosure requirements to all execution venues used by the firm – with the exception that the information need not be broken down by class of financial instrument, and the following need not be disclosed:

- Volume of orders
- Number of orders and
- Link to the venue's website.

As such if the firm uses 130 execution venues over the course of the year, they would need to provide a further 18,000 data fields:

$$(130-5) \times 12 \times 12 = 18000$$

As a rough estimate: this would cover another 60 pages.

Our objection to the specific disclosures required under Article 6(1)(b) are the same as set out in our comments on the requirements of Article 5, with the additional objection that there is no justification for this unilateral extension of the requirements on firms with respect to their top five execution venues to all the others that they use.

Article 8: As above, we object to the proposal that data should be aggregated for each month. There is no basis for this in the Level 1 text, nor would it be helpful for investors in their use of this data, given the massive overload of data fields ($31920 + 18000 = 49920$ data fields each year for each investment firm they are considering) with which they could be faced, if the proposals go through in their current form.

The requirement that the data must be published within one month of the previous year end may also prove problematic. RTS 6 states, Article 8, that each execution venue should publish its information within one month at each quarter end. Investment firms will, therefore, have to publish their information, which is based on that from the execution venues, on the same day that the execution venues publish it. This gives them no time to conduct the analysis required by Article 6 of RTS 7.

Given that firms need a reasonable time to make use of the execution venue information we would suggest that the deadline for investment firms to publish their information be set to one month **after** that for the execution venues.

There is a further general point relating to third country execution venues. Article 2(1) is clear that investment firms must include, within their definition of execution venues, entities performing functions similar to execution venues which are based in third countries. As such they are required to include any such third country execution venues in their top five execution venues as necessary, and include them in their analysis of execution quality under Article 6 of RTS 7.

There is, obviously, no requirement equivalent to RTS 6 applying to third country execution venues. As such, it may prove difficult to get some of the required information from these venues. It is important, therefore, to include in RTS7 some proportionality clause, requiring investment firms to make reasonable efforts to get the relevant information, but to provide the best possible quality of information to customers where this proves impracticable.

<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>

We agree with the definition of the most relevant market as the one with the highest turnover. However we consider that trades executed under the pre-trade transparency waiver should be included in the calculation. These trades contribute to the liquidity on the venue.

However by making one venue the point at which that market will use for applying the Reference Price Waiver (RPW) then we would suggest there needs to be a check that the market does provide continuous two quotes and does not have the highest turnover simply due to a large number of blocks being reported on it but no other material trading.

<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>

The Investment Association agrees with ESMA's proposed list of negotiated transactions. However ESMA suggests that there will be flexibility going forward as markets evolve. It is imperative that the list of transactions is consistent across Member States. We would encourage EMSA to bring forward proposals on how any changes will be communicated to firms.

<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>

We welcome the expansion of the Order Management Facility (OMF) waiver beyond reserve and stop orders to all orders held in an OMF.

<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>

ADT is an unsuitable measure of ETF liquidity and market impact due to the incomplete ADT data set and the fact that this metric does not recognise the liquidity of the underlying securities.

We support the alternative approach based on a single Large in Scale (LIS) threshold. This proposal would, we believe, result in a simpler market structure and a level playing field for all ETFs with little or no market impact

<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>

We support ESMA's proposal that large in scale orders remain protected under the large in scale waiver regime even when, following partial execution, they fall below the relevant large in scale threshold provided that the price or other relevant conditions for execution are not amended following execution. Protecting stub orders provides an important safeguard for our members' execution strategies.

The proposed approach maintains the ability to execute large orders through order books without revealing sensitive information to the market, which would have otherwise exposed the end-investor to market impact and higher costs.

<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>

Our members consider that systematic internalisers (SI's) should be required to publish a quote with a timestamp. This will improve the quality and reliability of quotes being offered, and thus the quality of execution to the Buy Side.

<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>

We are comfortable with this definition.

<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>

We agree with the proposed classes by average value of transactions and applicable standard market size, including for ETFs.

<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>

We welcome ESMA's amendment to the definition of transactions not contributing to the price discovery process. We would suggest ESMA clarify that, 'where no other investment firm is involved', would include situations where the asset manager uses a broker obtain the current mid-price and delegate transaction reporting obligations.

We support the list being exhaustive as it will create consistency across all the member states.

<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>

The proposed list of information appears sufficient.

<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>

These additional quantitative criteria appear to be a sensible provision as it would aid in forensic examination of trading data.

<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>

Our view remains that the identifiers should mirror the Market Model Typology (MMT) as closely as possible. Firms have already invested in systems to provide such identifiers. Reporting systems are closely integrated into trading and other core IT architecture. Significant

testing is required for changes to firms' core systems. As such costs for any changes are disproportionately high.

Clearly for the Large in Scale (LiS) waiver flag, if the trade is large enough to benefit from the post trade transparency exemption, the flag should only be published after this point.

<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>

We agree with ESMA's proposals on normal trading hours. This should also include auctions. The requirement for the maximum possible delay should include a provision that firms should provide the information as soon as technically possible but within a maximum of one minute.

<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>

Yes we agree.

<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>

Regarding deferral of trade publication, we continue to believe that moving to End Of Day (EOD) trade publication will inhibit SME liquidity and increase the cost of trading those securities.

<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>

We consider that the ETF market could support a greater proportion of trades being reported immediately. We also believe there should be a more granular approach to the delays (we have included a 60 minute delay category) which would result in benefits for market quality and ETF investors.

In our view the following alternative proposal merits further consideration:

- Trade size <€10mn – immediate reporting
- Trade size €10mn-<€50mn – 60 minute delay
- Trade size >€50mn – End of day reporting

As with pre-trade transparency, market practitioners generally do not favour Average Daily Turnover (ADT) as a metric given that it could lead to an uneven playing field between funds with the same underlying exposure (and hence liquidity) and would result in unnecessary complexity without obvious benefit for market quality or the end-investor.

<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>

Per the letter dated 27 February to Mr Maijoor, the Investment Association does **not** agree with ESMA's proposal for the definition of liquid markets.

The Instrument-by-Instrument Approach (IBIA) that ESMA proposed in its 2014 Discussion Paper on Regulatory Technical Standards (RTS) for MiFID II/MiFIR represented the framework that would have had the best chance of reflecting the idiosyncrasies of bond market liquidity, in the view of the majority of market participants. However, we take note of ESMA's preferred Class of Financial Instruments Approach (COFIA) to determine bond market liquidity, the principal merit being its operational simplicity. Building on this rationale, we suggest that this framework can be further developed, within the constraints of the Level 1 text and without radical changes to the COFIA parameters that ESMA proposed in its Consultation Paper on the draft RTS of 19 December 2014.

Having worked with Trax®, a provider of capital market data, trade matching and regulatory reporting services to the securities markets, we propose the below alternative, simplified COFIA parameterisation with fewer classes and different issue size thresholds.

Liquid class	Investment Association issue size threshold (€BN) ²
European Sovereigns	≥2.00
Non-European Sovereigns	≥2.00
Publics	≥5.50
Convertibles	≥1.25
Covered	≥1.25
Corporates	≥2.00

We do **not** agree with the combination of classes and issue size thresholds specified in the Consultation Paper (RTS 9; Annex III; Table 1) for bonds. We have 4 reasons for disagreeing with the proposals:

1. The dataset used in the CP analysis is not sufficiently complete or accurate
2. The analysis identifies that significantly more value traded is captured on the proposed class definitions than under the liquidity criteria alone
3. The analysis identifies that outside European sovereigns, the proposed classes in the CP are not an accurate representation of the liquidity criteria
4. The analysis identifies that the proposed waivers and deferrals do little to mitigate the incorrect classification of illiquid bonds as liquid, and a significant proportion of trades in bonds classified as liquid are actually illiquid and in trade sizes below the SSTI waiver

1. The dataset used in the CP analysis is not sufficiently complete or accurate

The data described on pg. 102 of the December Consultation Paper is not sufficiently complete or accurate for the purposes of determining the transparency regime for bonds. Please see Fig. 1 for further details.

- For the completeness of the data in the CP, analysis could be hindered by national competent authorities access to data beyond the scope of MiFID I reportable instruments. This would be consistent with the observation that the dataset in the CP identifies fewer bonds that traded than Trax has identified. Trax, a MarketAxess subsidiary, is a provider of bond pricing, volume and reference data products in Europe and we believe that Trax's analysis used a broader and more appropriate data set than ESMA. The data used in the Consultation Paper identified ~28K bonds that traded during a 12 month period, whereas Trax data identifies ~41K bonds on a comparable basis.
- The accuracy of the data in the CP analysis for bonds could be further restricted by variable methodologies which may have been adopted by each competent authority when submitting data to ESMA; and an inability to identify non-price forming intra-entity trades.

² Based on Trax analysis plus incorporates member feedback

Figure 1

Comparison of ESMA and Trax datasets

Summary of data treatment

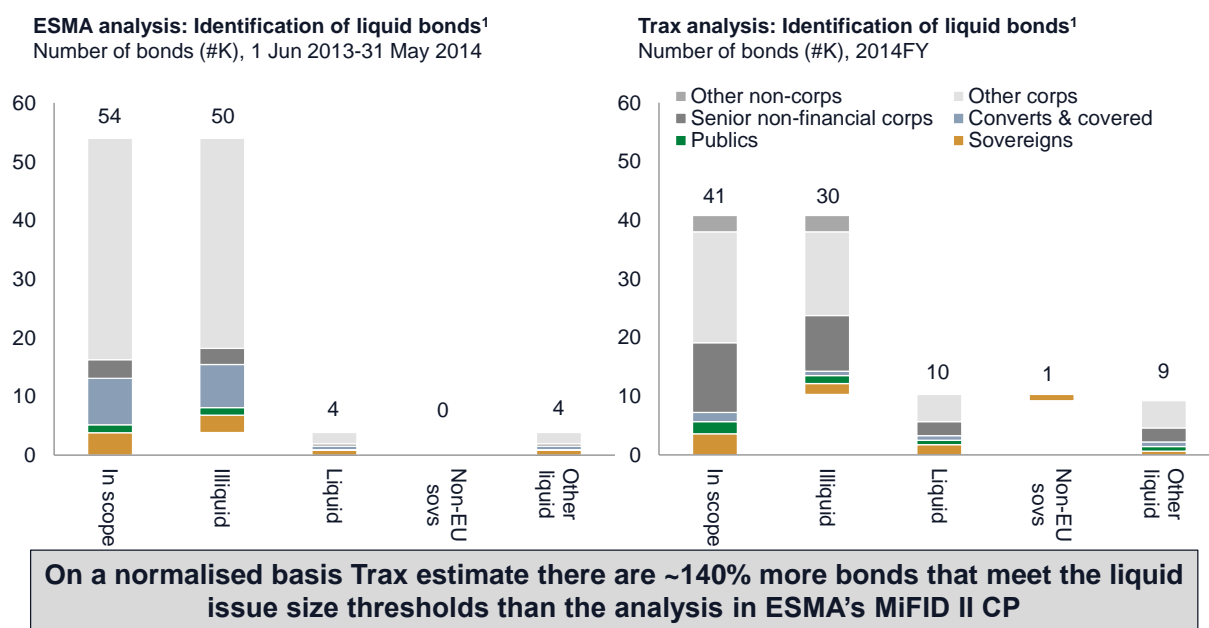
	ESMA	Trax
Source	Transaction reporting data from up to 25NCAs	Trax clients
Period	1 June 2013-31 May 2014	1 Jan 2014 – 31 Dec 2014
Single counted	✓ (variable methodology)	✓ ¹
Intra entity transactions	Included	Removed
Scope	All financial instruments available for trading at the beginning of the period of the data collection and for all financial instruments admitted to trading during the period of the data collection	All financial instruments that traded
Secondary markets only	✓ (variable methodology)	✓ ²
Exclude MMI	✓ (variable methodology)	✓ ³
FX treatment	Issue data: TBC Trade data: At trade date	Issue data: At issuance Trade data: At trade date
	54K bonds; 51% traded	41K bonds; 100% traded

1. Double counted trades removed through matching and passive matching; 2. Exclude transactions where trade date is prior to issue date; 3. Instruments with maturity <=397 days are excluded

Note: 933 instruments (accounting for 28K trades) are excluded from Trax data due to incomplete data on issuance size

The incomplete data used by ESMA for the CP proposals is a key driver for ESMA to underestimate the number of bonds that would be classified as liquid under the COFIA framework proposed in the CP. In particular, at the proposed issue size thresholds, we estimate there are ~10K bonds above the issue size threshold; ~140% more than ESMA identify (Fig. 2).

Figure 2



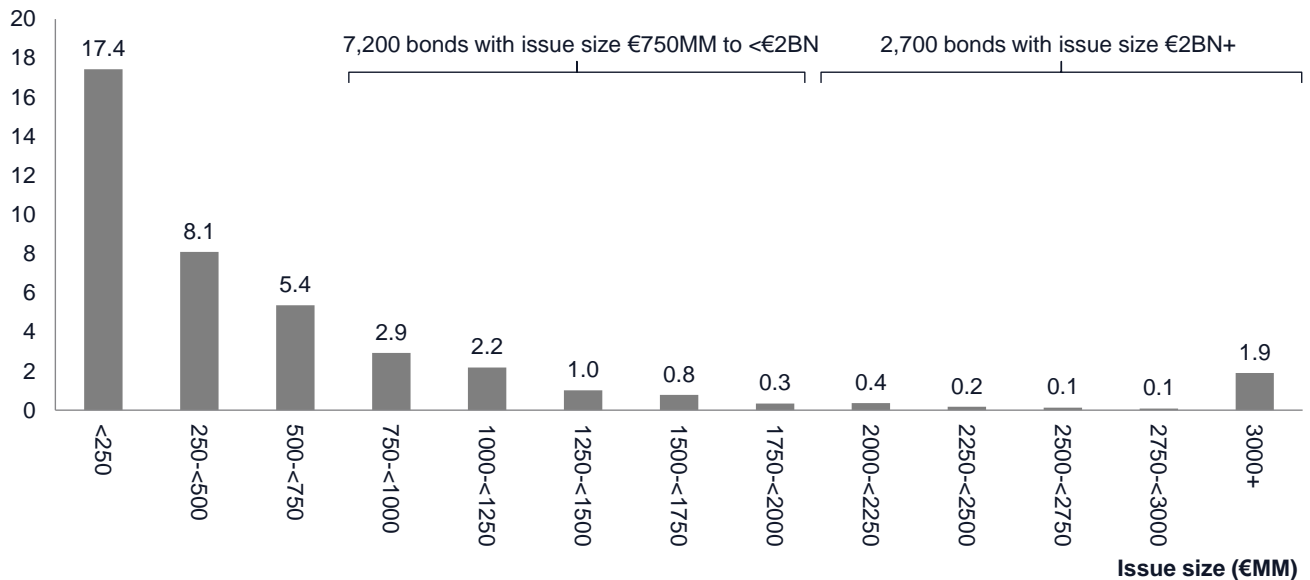
These findings are consistent with the analysis that identifies approximately 10K bonds that have an issue size above €750MM (Fig. 3).

Figure 3

Trax analysis: bonds by issue size

Number of bonds (#K) by issue size (€MM), 2014FY¹

Trax analysis



1. Only includes bond that traded in 2014

2. The analysis identifies that significantly more value traded is captured on the proposed class definitions than under the liquidity criteria alone

93%³ of value traded across all classes of bonds takes place in those bonds that are captured by the proposed liquid classes. Only 81%² of value traded takes place in bonds that meet ESMA's liquidity criteria alone. Therefore the proposed classes in the CP capture 12% more value traded than the liquidity criteria alone.

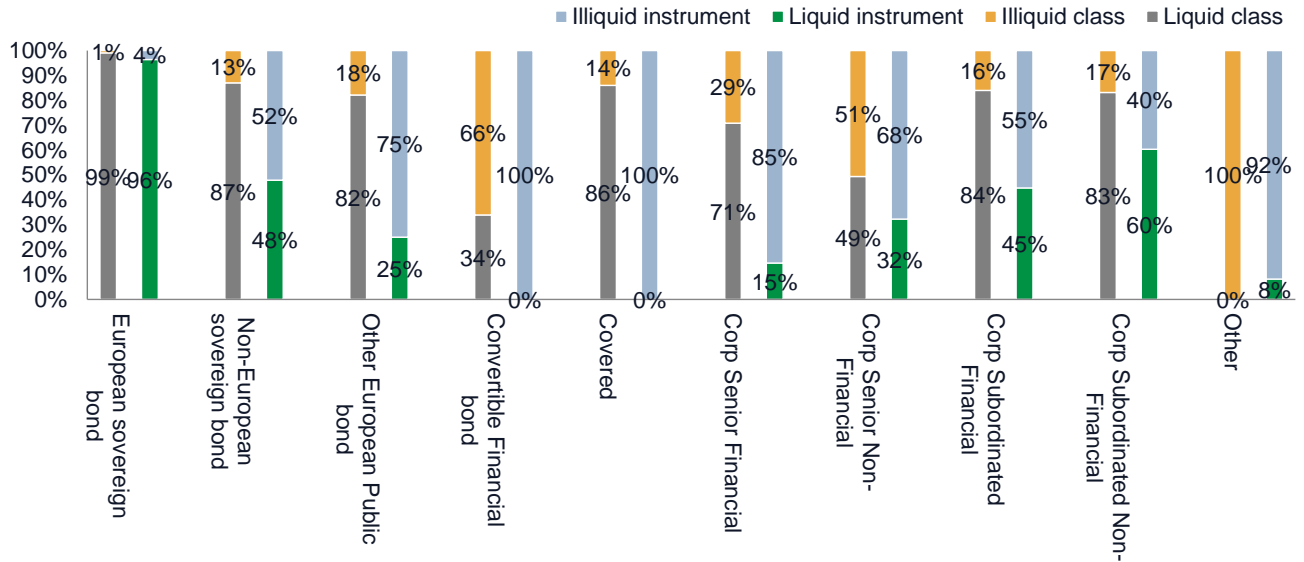
The difference in value traded captured by the proposed CP classes vs. ESMA's liquidity criteria differ significantly by class. For example, in European sovereign bonds the classes capture 3% more value traded than would be captured by applying solely the liquidity criteria, and by contrast Corporate Senior Financials class captures 56% more value traded than would be captured by applying solely the liquidity criteria. This indicates that the higher capture rate of the proposed COFIA model is primarily driven by capturing significantly more volume as liquid in classes outside European sovereign bonds.

³ Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria;

Figure

Liquid markets by class – EMSA's proposed COFIA vs. ESMA's liquidity criteria

Nominal trade value classified as liquid vs. illiquid (€MM), 2014



Liquid class: Trades in instruments where issuance size equal to or above threshold defined by ESMA; Liquid instrument: Bond traded at least 400 trades per year, on at least 200 days per year and at least €100K nominal trade value / day

Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria;

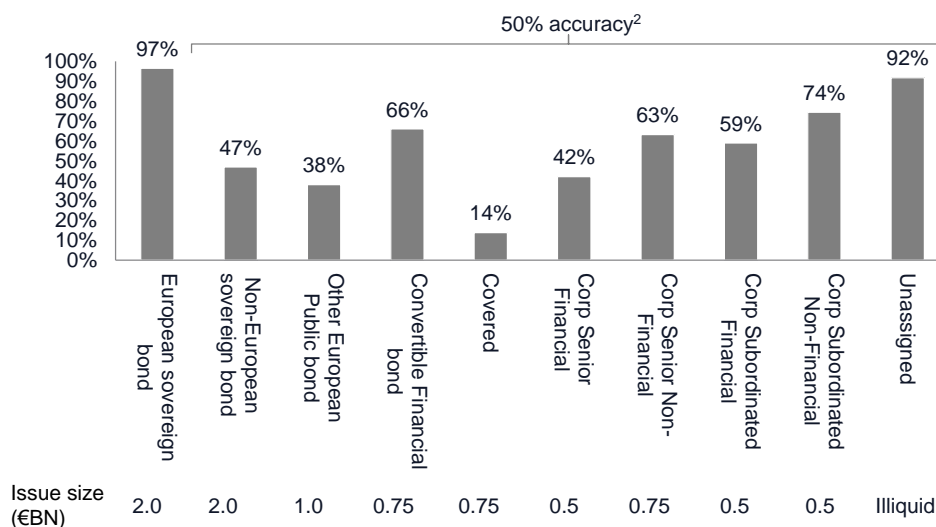
Note 2: Including bonds issued in 2014 leads to a reduction in the percentage of instruments that meet the liquidity criteria but does not change the overall result

3. The analysis identifies that outside European sovereigns, the proposed classes in the CP are not an accurate representation of the liquidity criteria

Figure 5

Two-sided test: Accuracy of liquid markets by class

Nominal value traded correctly classified (%)¹, 2014



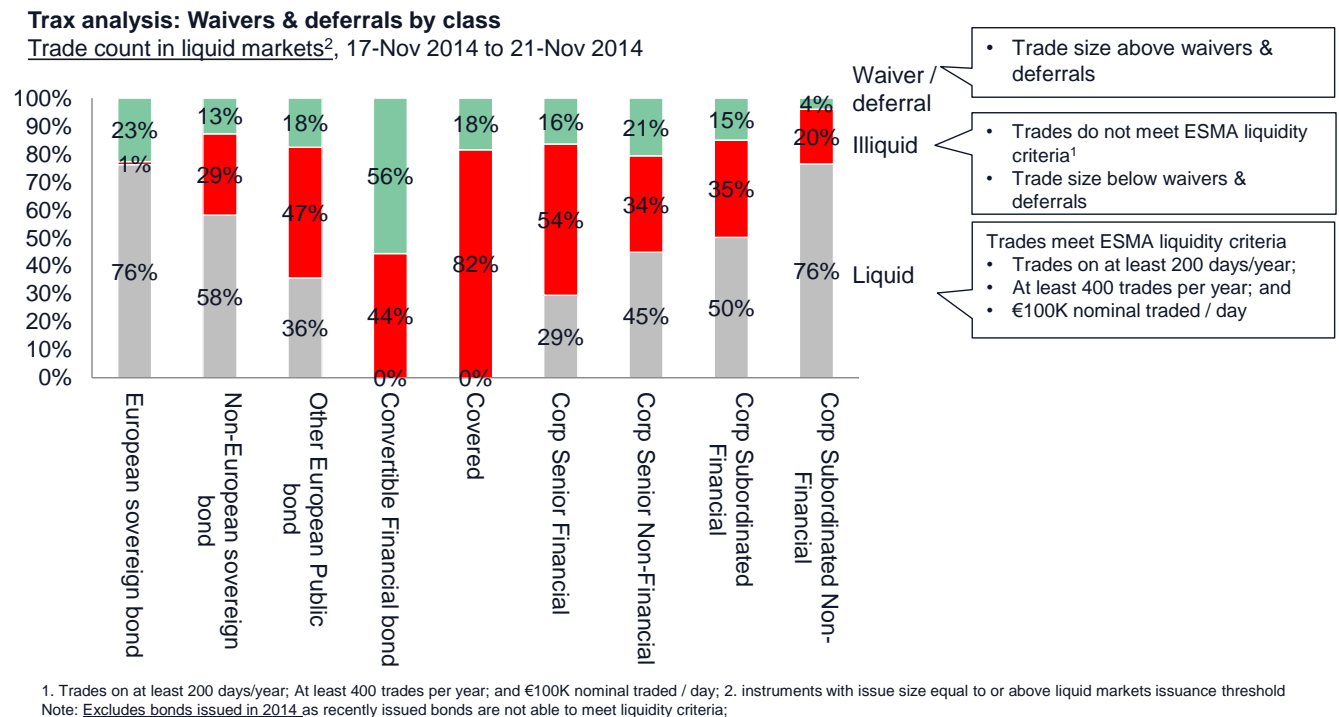
Perspectives

- Accuracy measures percentage of nominal value traded in bonds correctly identified as liquid or illiquid vs. liquidity criteria³ in CP
- Average overall accuracy 85%²
- Accuracy differs significantly by class
 - High accuracy of European sovereign bonds (97%)
 - Low accuracy of other classes (50%)²

1. (Nominal value traded of ISINs above the liquidity criteria with issuance equal to or above liquidity threshold + Nominal value traded of ISINs below the liquidity criteria with issuance below liquidity threshold) / Total nominal value traded; 2. Weighted average based on nominal value traded; 3. Bond traded at least 400 trades per year, on at least 200 days per year and at least €100K nominal trade value / day; Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria

4. The analysis indicates that the proposed waivers and deferrals do little to mitigate the incorrect classification of illiquid bonds as liquid; a significant proportion of trades in bonds classified as liquid are actually illiquid (as defined by the liquidity criteria) and in trade sizes below the SSTI waiver

Figure 6



Recommended enhancements

On the basis that a legitimate, pragmatic and achievable aim is to identify classes of instruments that most faithfully represents the liquidity criteria without introducing unnecessary complexity,

The Investment Association, based on Trax's analysis, supports the following changes to the COFIA model:

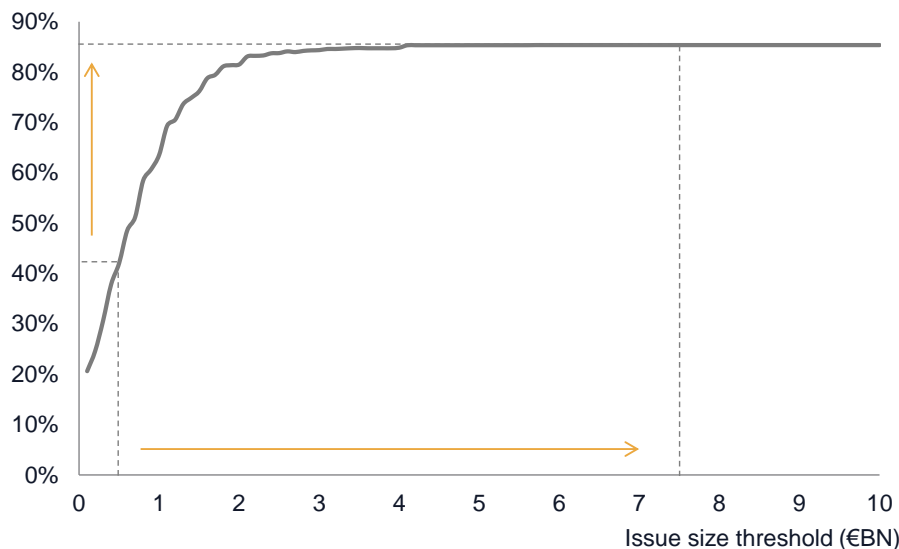
- Set the issue size threshold for each class such that it maximises the accuracy of each class against the liquidity criteria, based on nominal value traded; and
- Eliminate those classes that do not improve accuracy

The accuracy of each class against the liquidity criteria changes depending on the issue size threshold. The issue size thresholds in the CP do not maximise the accuracy of each class to the liquidity criteria. The below example shows how the accuracy of the liquid class definition for Corporate Senior Financial bonds changes based on the issue size threshold. Accuracy is maximised using an issue size threshold of €7.4BN.

Figure 7

Corporate Senior Financial: Accuracy by issue size
Nominal value traded correctly classified (%)¹, 2014

Example



Perspectives

- Issue size thresholds used in the CP do not maximise the correct classification (based on nominal value traded) of bonds as liquid or illiquid (vs. liquidity criteria)
- Example
 - Corporate senior financials issue size threshold set at €0.5BN in CP, which correctly classifies 42% of value traded
 - Increasing issue size threshold to €7.4BN increases the accuracy of bond classification as liquid vs. illiquid to 85%

1. (Nominal value traded of ISINs above the liquidity criteria with issuance equal to or above liquidity threshold + Nominal value traded of ISINs below the liquidity criteria with issuance below liquidity threshold) / Total nominal value traded;

Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria; Note 2: Bonds with issue size >€10BN are not shown on the chart

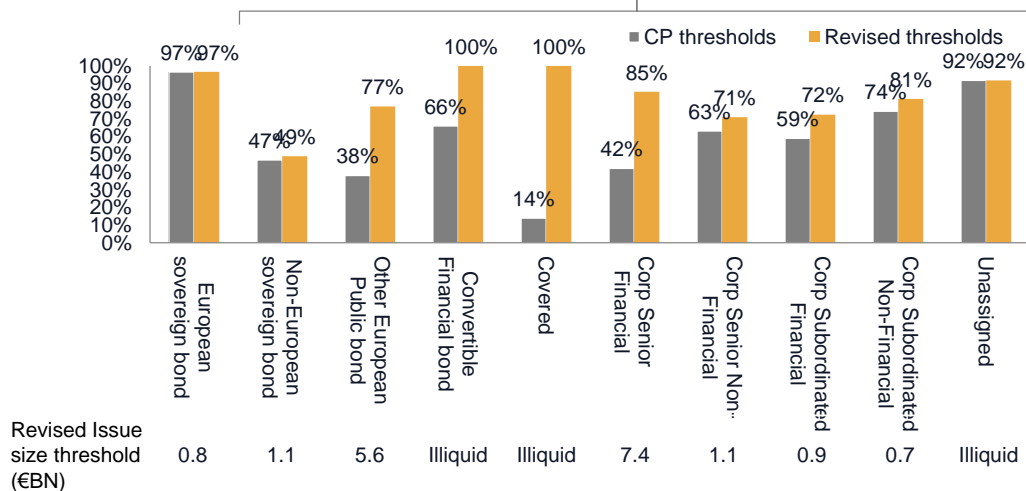
Revising the issue size thresholds such that they maximise the accuracy of each class against the liquidity criteria increases the accuracy of classes outside European Sovereign bonds by 15PPS to 65%.

Figure 8

Two-sided test: Accuracy (vs. liquidity criteria) of liquid markets by class

Nominal value traded correctly classified (%)¹, 2014

Revised threshold accuracy 65%² (+15PPS vs. CP thresholds)



Perspectives

- Issue size thresholds determined by identifying the maximum level of accuracy (correct classification of liquid and illiquid bonds) based on value traded

1. (Nominal value traded of ISINs above the liquidity criteria with issuance equal to or above liquidity threshold + Nominal value traded of ISINs below the liquidity criteria with issuance below liquidity threshold) / Total nominal value traded; 2. Weighted average based on nominal value traded

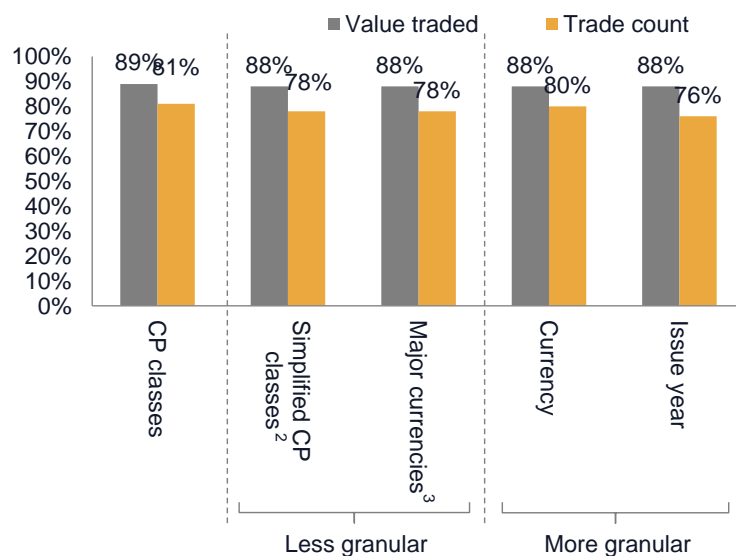
Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria

A more granular set of classes that leads to a significant improvement in accuracy against this optimised⁴ version cannot be found. (see Fig. 9). Nevertheless, we have been able to identify a less granular, simplified set of classes with similar accuracy (see Fig. 9).

Figure 9

Two-sided test: Accuracy (vs. liquidity criteria) of liquid markets

Nominal value & trade count correctly classified (%), 2014¹



1. Accuracy based on issue size thresholds that maximise accuracy for each class 2. Major currencies: 4 classes (EUR, USD, GBP, other); 3. Simplified CP 6 classes (European Sovereigns, Non-European Sovereigns, Publics, Convertible, Covered, Corps)
Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria

Perspectives

- Accuracy of a range of classes has been tested; including both more and less granular classes than in the CP
- Classes capture characteristics not identified in ESMA MiFID II CP class definitions
 - Currency
 - Year of issue
- Limited evidence to support more granular classes improves accuracy of COFIA

Consequently, The Investment Association supports the adoption of a simplified set of classes, as set out below.

Simplified CP class	CP class
European Sovereigns	European sovereign bond
Non-European Sovereigns	Non-European sovereign bond
Convertible	Convertible Financial bond Other (Convertible non-financial bonds)
Covered	Covered
Corps	Corp Senior Financial Corp Senior Non-Financial Corp Subordinated Financial Corp Subordinated Non-Financial
Publics	Other European Public bond Other (Non-European Public bond)

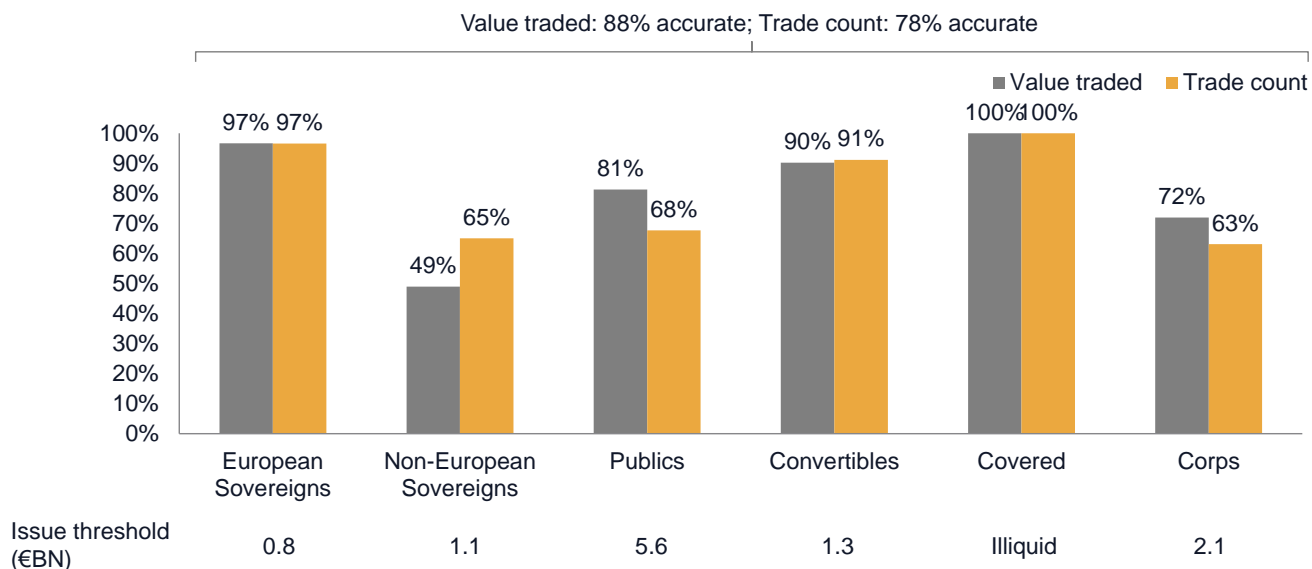
The accuracy and issue sizes of the simplified CP classes are described below.

⁴ The same classes have been used but issue size thresholds have been changed to maximise the accuracy of each class

Figure 10

Two-sided test: Accuracy of liquid markets by class

Nominal value traded and trade count correctly classified (%), 2014



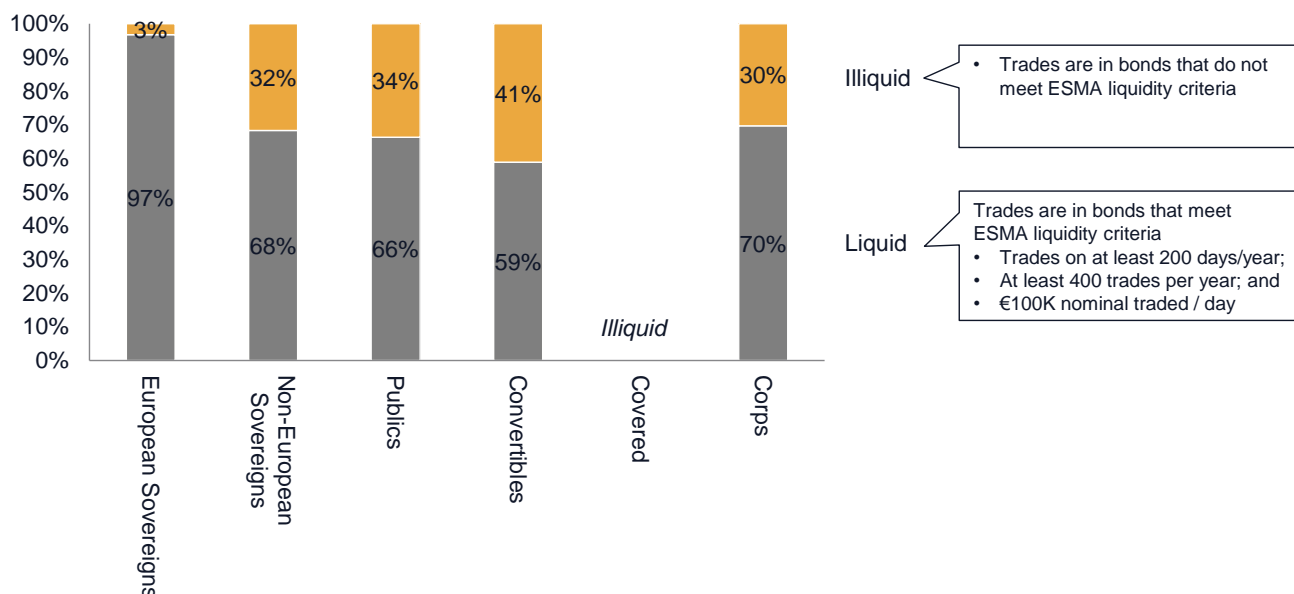
Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria

Despite the improved accuracy, significant misclassification of illiquid bonds⁵ as liquid persists (see Fig.11).

Figure 11

Profile of trades in liquid markets by class

Trade count in liquid markets¹, 2014



1. Liquid instruments identified using COFIA

Note: Excludes bonds issued in 2014 as recently issued bonds are not able to meet liquidity criteria

⁵ As defined by ESMA's liquidity criteria in the CP

As such, our specific amendments to draft RTS 9, Table 1, Annex III, pg 154 therefore, are below:

BOND – LIQUID CLASSES			
BOND TYPE	DEBT SENIORITY	ISSUER SUB-TYPE	ISSUANCE SIZE
European Sovereign Bond			Greater or equal to € 2.000.000.000
Non-European Sovereign Bond			Greater or equal to € 2.000.000.000
Other European Public Bond			Greater or equal to € 1.000.000.000 5.500.000.000
Convertible Bond		Financial Financial & Non-Financial	Greater or equal to € 750.000.000 1.250.000.000
Covered Bond			Greater or equal to € 750.000.000 1.250.000.000
Corporate Bond	Senior Senior & Subordinated	Financial Financial & Non-Financial	Greater or equal to € 500.000.000 2.000.000.000
Corporate Bond	Senior	Non-financial	Greater or equal to € 750.000.000
Corporate Bond	Subordinated	Financial	Greater or equal to € 500.000.000
Corporate Bond	Subordinated	Non-financial	Greater or equal to € 500.000.000

<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>

Please see out response to Q57.

<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>

Exchange traded notes (ETN) and commodities (ETC) should be included in the same liquid market, pre- and post-trade transparency regime as applies to ETFs given they trade, clear and settle in the same way as ETFs.

<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>

Package transactions need to be addressed for transparency rules

Package transactions (packages) are not currently addressed in ESMA's draft technical standards document. Packages are an important form of trading which allows investors to obtain more beneficial pricing than they would otherwise. While packages transactions are not explicitly mentioned in the Level 1 text, we believe that ESMA has sufficient powers to address this within the Level 2 rule-making process. Given the importance of packages we would urge

ESMA to consider a workable treatment for them in the pre- and post-trade transparency rules applying within venues and the SI regime.

We explain the importance of package transactions and propose how to address this below.

Importance of package transactions

There are good reasons for trading package transactions.

Packages allow investors to reduce their transaction costs: a single package of components traded together can be less expensive than executing the individual components separately as multiple transactions. Package transactions also help to manage execution risk because executing a single transaction avoids the timing and other mechanical and process risks that can come with making multiple transactions. Packages are often tailored to provide risk-return characteristics in the form of a single transaction in an efficient and cost-effective manner to investors.

The vast majority of our derivatives use focuses on providing a liability hedge to pension funds. We execute, on behalf of our pension fund clients, both interest rate and inflation swaps over a range of maturities to match and mitigate the equivalent risks to their projected annual cash flows. To accurately hedge the risks related to cashflows of pension funds at different maturities, it is important to execute a collection of swaps with different maturity dates instead of one single swap transaction.

We are able to source better pricing for our clients by grouping the swaps together and trading them simultaneously as a package, which allows us to access a small number of dealer banks and avoid alerting the wider market which could negatively impact liquidity.

While the individual components of the package may have a notional below the relevant threshold (LIS or SSTI), the package as a whole would typically be large, and if an equivalent single swap was traded it would exceed the relevant threshold.

Within such packages, the individual components are economically similar in nature and have very similar risk characteristics given that they only differ in maturity dates. Therefore the pricing of one component would impact the pricing of another component in the package.

Alerting the market (both pre-trade and post-trade) to the individual components of the package shall discourage liquidity providers from providing the best price. This is because altering the market of the positions would increase their cost of offloading the risk, which could be spread out over days. This would have a negative impact on pricing and therefore increase costs to investors.

If packages are not addressed appropriately within the pre- and post-trade transparency rules by ESMA, this could either negatively impact pricing for investors, or discourage investors from managing their risk accurately and force them into trading them as an average single

transaction with a larger notional above the threshold. The end result would be either greater costs to investors or greater risk being retained in the financial system.

Proposed treatment for packages

Definition of package transaction:

We are aware that ESMA and the NCAs may be concerned that adoption of our proposal may lead to market participants creating packages of instruments purely for the purposes of avoiding the transparency regime or derivatives trading obligation. We recognise these concerns and suggests that this could be achieved by defining package transactions as follows:

A “package transaction” is a transaction comprising two or more components, each of which is a bond, structured finance product, emission allowance or derivative where:

- (i) the components are priced as a “package” with simultaneous execution of all such components;
- (ii) the execution of each component is contingent on the execution of the other components; and
- (iii) each component must be able to stand alone and must be able to bear economic risk; and
- (iv) the components are economically similar in nature such that the pricing of one component can affect the pricing of the other component; or the components must have a reasonable degree of correlation

We propose addressing the package transactions a follows:

1. Subject to point 3 below, if each component of a package transaction is liquid
 - a. The package transaction should be considered liquid
 - b. The Percentage Threshold for each individual component in a packaged transaction is equal to the notional of the relevant component expressed as a percentage of its relevant threshold (LIS or SSTI). If the sum of the Percentage Thresholds for all components in the packaged transaction is above 100%, then the packaged transaction (and each of its components) is above the relevant threshold (LIS or SSTI). *
2. Subject to point 3 below, if the package transaction contains liquid and illiquid components
 - a. The package transaction should be considered illiquid
 - b. The Percentage Threshold for each individual component in a packaged transaction is equal to the notional of the relevant component expressed as a percentage of its relevant threshold (LIS or SSTI). If the sum of the Percentage Thresholds for all components in the

packaged transaction is above 100%, then the packaged transaction (and each of its components) is above the relevant threshold (LIS or SSTI). *

3. For the purposes of MiFIR articles 8.1, 10.1, 18.1 and 18.2, all components of a package have to be tradeable on a single venue for the package to be considered "traded on a venue"

4. If the package transaction comprises 5 or more components, the package transaction should be considered illiquid

* Percentage Threshold approach explained:

The approach aims to, in a simple manner, replicate the package of instruments into a single instrument to test whether it would indeed be above the threshold (SSTI or LIS purposes) or not if it were traded as a single instrument.

For example, if an investor wishes to hedge cash flows at 5-year and 15-year points using EUR interest rate swaps, to create an accurate hedge the investor would trade a package of two EUR swaps at 5-year and 15-year maturities. Alternatively, the investor could enter into a single swap with an average 10-year maturity to try to replicate the risk profile but with less accuracy.

However, while the individual swaps in the package of swaps could each be below the relevant threshold, the equivalent single swap would have a larger notional and could therefore be above the threshold, as illustrated below. Given the 5-year and 15-year swaps are economically similar in nature, the pricing of one swap is likely to impact the pricing of the other. By not recognising this, ESMA could create an incentive for the market to trade in the equivalent single average instruments, rather than the package of instruments that provide a more accurate hedge: the result would be to provide a less perfect hedge, thereby retaining risk in the system.

The suggested Percentage Threshold approach provides a way to calibrate this and ensures that package transactions are not disproportionately disadvantaged.

	More accurate hedge		Less accurate hedge
	EUR 5yr swap	EUR 15yr swap	EUR 10yr swap
Notional	60m	60m	120m
Threshold (SSTI or LIS)	100m	100m	100m
Percentage Threshold	60%	60%	120%

There should be mechanisms in place for ESMA to be able to refresh liquidity analysis to reflect changing market liquidity.

Market conditions and the liquidity of instruments can change over time. ESMA needs to have a mechanism in place so that it can monitor this and refresh the analysis when necessary.

Zero-coupon swaps should be treated as being illiquid Zero-coupon swaps should be deemed to be illiquid instruments.

Zero-coupon swaps are less liquid than par interest rate swaps and are not normally quoted. They are usually only priced when requested because they are bespoke instruments typically constructed to match a specific investor's cashflow. We therefore do not believe these should be classified as liquid.

In the draft regulatory technical standards (see Consultation Paper – Annex B, p.166, Table 23) it is not clear whether the fixed to float single-currency swaps classified as being liquid include zero-coupon swaps. We expect that most of the analysis conducted for determining the liquidity of these swaps would have been based on par interest rate swaps and not zero-coupon interest rate swaps. We believe zero-coupon swaps should be excluded from this table and be considered to be illiquid.

<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>

Zero-coupon swaps should be treated as being illiquid Zero-coupon swaps should be deemed to be illiquid instruments

Zero-coupon swaps are less liquid than par interest rate swaps and are not normally quoted. They are usually only priced when requested because they are bespoke instruments typically constructed to match a specific investor's cashflow. We therefore do not believe these should be classified as liquid.

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_69>

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>

We agree with ESMA's amendment to the definition of Request For Quote order system to add the exclusivity provision.

We are concerned that the definition of an RFQ trading system for the purposes of the pre-trade transparency regime could disrupt how RFQ systems function in the market. These types of trading venue provide liquidity and point-in-time prices in markets where there might not be continuous buying and selling interest. The definition proposed by ESMA in the draft RTS would appear to require that RFQ responses (below the SSTI level) are to be made public

which would create disincentives for liquidity providers to give their best price and would exacerbate the 'winner's curse' and execution slippage.

The definition proposed by ESMA is as follows: "a trading system where a quote or quotes are published in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request."

This definition is a departure from ESMA's May Discussion Paper which states: "a trading system where a quote or quotes are only provided to a member or participant in response to a request submitted by one or more other members or participants. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request."

While we is supportive of the amendment to specify that the quote is executable exclusively by the requesting member or market participant, we have significant concerns about the requirement for quotes to be published in response to a request for a quote, particularly in light of Table 1, Annex 1 of RTS 9 which specifies that the information to be made public is "the bids and offers and attaching volumes by each responding party".

We recommend that this field be amended to specify that composite bids and offers be required to be published, to avoid the field being interpreted as requiring individual RFQ responses be made public as and when they are received.

If individual RFQ responses are required to be published, the proper functioning of the RFQ market could be disrupted. In such an environment, liquidity providers would have no incentive to return with their best price in the shortest possible time frame. Additionally, with information on the RFQ being made available to those who are not party to the RFQ, there is a significant risk that the market may move (in an adverse direction) before the trade is executed and the hedge is found. To manage this risk, liquidity providers would be forced to widen their prices which would not be in the best interests of the market.

Package transactions need to be addressed for transparency rules

Package transactions (packages) are not currently addressed in ESMA's draft technical standards document. Packages are an important form of trading which allows investors to obtain more beneficial pricing than they would otherwise. While packages transactions are not explicitly mentioned in the Level 1 text, we believe that ESMA has sufficient powers to address this within the Level 2 rule-making process. Given the importance of packages we would urge ESMA to consider a workable treatment for them in the pre- and post-trade transparency rules applying within venues and the SI regime.

We explain the importance of package transactions and propose how to address this below.

Importance of package transactions

There are good reasons for trading package transactions.

Packages allow investors to reduce their transaction costs: a single package of components traded together can be less expensive than executing the individual components separately as multiple transactions. Package transactions also help to manage execution risk because executing a single transaction avoids the timing and other mechanical and process risks that can come with making multiple transactions. Packages are often tailored to provide risk-return characteristics in the form of a single transaction in an efficient and cost-effective manner to investors.

The vast majority of our derivatives use focuses on providing a liability hedge to pension funds. We execute, on behalf of our pension fund clients, both interest rate and inflation swaps over a range of maturities to match and mitigate the equivalent risks to their projected annual cash flows. To accurately hedge the risks related to cashflows of pension funds at different maturities, it is important to execute a collection of swaps with different maturity dates instead of one single swap transaction.

We are able to source better pricing for our clients by grouping the swaps together and trading them simultaneously as a package, which allows us to access a small number of dealer banks and avoid alerting the wider market which could negatively impact liquidity.

While the individual components of the package may have a notional below the relevant threshold (LIS or SSTI), the package as a whole would typically be large, and if an equivalent single swap was traded it would exceed the relevant threshold.

Within such packages, the individual components are economically similar in nature and have very similar risk characteristics given that they only differ in maturity dates. Therefore the pricing of one component would impact the pricing of another component in the package.

Alerting the market (both pre-trade and post-trade) to the individual components of the package shall discourage liquidity providers from providing the best price. This is because altering the market of the positions would increase their cost of offloading the risk, which could be spread out over days. This would have a negative impact on pricing and therefore increase costs to investors.

If packages are not addressed appropriately within the pre- and post-trade transparency rules by ESMA, this could either negatively impact pricing for investors, or discourage investors from managing their risk accurately and force them into trading them as an average single transaction with a larger notional above the threshold. The end result would be either greater costs to investors or greater risk being retained in the financial system.

Proposed treatment for packages

Definition of package transaction:

We are aware that ESMA and the NCAs may be concerned that adoption of our proposal may lead to market participants creating packages of instruments purely for the purposes of

avoiding the transparency regime or derivatives trading obligation. We recognise these concerns and suggests that this could be achieved by defining package transactions as follows:

A “package transaction” is a transaction comprising two or more components, each of which is a *bond, structured finance product, emission allowance or derivative* where:

- (i) the components are priced as a “package” with simultaneous execution of all such components;
- (ii) the execution of each component is contingent on the execution of the other components; and
- (iii) each component must be able to stand alone and must be able to bear economic risk; and
- (iv) the components are economically similar in nature such that the pricing of one component can affect the pricing of the other component; or the components must have a reasonable degree of correlation

We propose addressing the package transactions as follows:

1. Subject to point 3 below, if each component of a package transaction is liquid
 - a. The package transaction should be considered liquid
 - b. The Percentage Threshold for each individual component in a packaged transaction is equal to the notional of the relevant component expressed as a percentage of its relevant threshold (LIS or SSTI). If the sum of the Percentage Thresholds for all components in the packaged transaction is above 100%, then the packaged transaction (and each of its components) is above the relevant threshold (LIS or SSTI). *
2. Subject to point 3 below, if the package transaction contains liquid and illiquid components
 - a. The package transaction should be considered illiquid
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3. For the purposes of MiFIR articles 8.1, 10.1, 18.1 and 18.2, all components of a package have to be tradeable on a single venue for the package to be considered "traded on a venue"
4. If the package transaction comprises 5 or more components, the package transaction should be considered illiquid

* Percentage Threshold approach explained:

The approach aims to, in a simple manner, replicate the package of instruments into a single instrument to test whether it would indeed be above the threshold (SSTI or LIS purposes) or not if it were traded as a single instrument.

For example, if an investor wishes to hedge cash flows at 5-year and 15-year points using EUR interest rate swaps, to create an accurate hedge the investor would trade a package of two EUR swaps at 5-year and 15-year maturities. Alternatively, the investor could enter into a single swap with an average 10-year maturity to try to replicate the risk profile but with less accuracy.

However, while the individual swaps in the package of swaps could each be below the relevant threshold, the equivalent single swap would have a larger notional and could therefore be above the threshold, as illustrated below. Given the 5-year and 15-year swaps are economically similar in nature, the pricing of one swap is likely to impact the pricing of the other. By not recognising this, ESMA could create an incentive for the market to trade in the equivalent single average instruments, rather than the package of instruments that provide a more accurate hedge: the result would be to provide a less perfect hedge, thereby retaining risk in the system.

The suggested Percentage Threshold approach provides a way to calibrate this and ensures that package transactions are not disproportionately disadvantaged.

	More accurate hedge		Less accurate hedge
	EUR 5yr swap	EUR 15yr swap	EUR 10yr swap
Notional	60m	60m	120m
Threshold (SSTI or LIS)	100m	100m	100m
Percentage Threshold	60%	60%	120%

<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>

Yes, it is also our understanding that this proposal is widely supported across the industry.

<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>

The Investment Association supports ESMA's recommendation that market operators should be responsible for determining the methodology for calculating the indicative price which is close to the price of the trading interest and that a clear and comprehensive description of the methodology should be disclosed by market operators to the public beforehand. In our view, EU trading venues should be encouraged to compete in as many aspects of their business as

possible and clear and comprehensive disclosure will allow market participants to compare different methodologies adopted by market operators.

<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>

No, we do not consider that the date and time of publication is necessary, given the date and time of the trade is published, we do not see what this requirement would add.

<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>

Yes we agree with the application of the proposed flags.

<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>

The Investment Association does not agree with ESMA's proposal. We believe a five minute reporting period for real time publication is inappropriate for fixed income.

It is important to learn the lessons from the implementation of comparable requirements such as TRACE in the US. European fixed income markets are relatively less liquid than their US counterparts hence the implementation of an aggressive post-trade publication schedule would amplify the liquidity challenge in such markets.

We recommend that a 15 minute publication period for real time is maintained and there is no step down to 5 minutes. The liquidity profile of the fixed income market is such that a 5 minute requirement would do significant damage to the levels of liquidity.

<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>

We agree that the publication of 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 as these

transactions do not contribute to the price discovery process and the administrative burden and costs for market participants of reporting these transactions would be substantial..

In addition we believe in specie transfers should be included in the list to exempt certain transactions determined by factors other than the current market value, where the in specie transfer does not result in a change to beneficial ownership. This will occur, for example, where the underlying holdings in a collective investment scheme are transferred out into a segregated mandate following a client redemption request. The exchange of financial instruments in this case is determined by factors other than the current market value and will be determined either by the client or by the manager of the collective investment fund in accordance with the constitutive documents governing the operation of the collective investment fund.

<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>

Eliminate LIS threshold floors so that LIS and SSTIs can go up as well as down

LIS threshold floor being set at the current LIS threshold for most class of financial instruments means that in practice the LIS (and therefore the SSTIs) can only move up from the current levels. This assumes that instruments will only become more liquid over time. This is not appropriate as liquidity can increase or decrease. We request ESMA to eliminate the LIS threshold floors so that the LIS and SSTI thresholds can either increase or decrease to accurately reflect the output of the analysis.

SSTI threshold should be 10% of LIS threshold

We believe setting the SSTI threshold at 50% of the LIS threshold would be too high. It would take only two trades at the SSTI notional for it to reach the LIS notional, and it would therefore be likely to negatively impact pricing. Liquidity providers would be concerned their quotes could be easily filled at a level above the LIS threshold in aggregate.

Furthermore, given the COFIA approach is not perfect and creates false positives, we believe it is important to set the thresholds to be lower to mitigate the negative impacts of this.

<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>

Package transactions need to be addressed for transparency rules

Package transactions (packages) are not currently addressed in ESMA's draft technical standards document. Packages are an important form of trading which allows investors to obtain more beneficial pricing than they would otherwise. While packages transactions are not explicitly mentioned in the Level 1 text, we believe that ESMA has sufficient powers to address this within the Level 2 rule-making process. Given the importance of packages we would urge ESMA to consider a workable treatment for them in the pre- and post-trade transparency rules applying within venues and the SI regime.

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Within such packages, the individual components are economically similar in nature and have very similar risk characteristics given that they only differ in maturity dates. Therefore the pricing of one component would impact the pricing of another component in the package.

Alerting the market (both pre-trade and post-trade) to the individual components of the package shall discourage liquidity providers from providing the best price. This is because altering the market of the positions would increase their cost of offloading the risk, which could be spread out over days. This would have a negative impact on pricing and therefore increase costs to investors.

If packages are not addressed appropriately within the pre- and post-trade transparency rules by ESMA, this could either negatively impact pricing for investors, or discourage investors from managing their risk accurately and force them into trading them as an average single transaction with a larger notional above the threshold. The end result would be either greater costs to investors or greater risk being retained in the financial system.

Proposed treatment for packages

Definition of package transaction:

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concerns and suggests that this could be achieved by defining package transactions as follows:

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- (iv) the components are priced as a “package” with simultaneous execution of all such components;
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- (vi) each component must be able to stand alone and must be able to bear economic risk; and
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The approach aims to, in a simple manner, replicate the package of instruments into a single instrument to test whether it would indeed be above the threshold (SSTI or LIS purposes) or not if it were traded as a single instrument.

For example, if an investor wishes to hedge cash flows at 5-year and 15-year points using EUR interest rate swaps, to create an accurate hedge the investor would trade a package of two EUR swaps at 5-year and 15-year maturities. Alternatively, the investor could enter into a single swap with an average 10-year maturity to try to replicate the risk profile but with less accuracy.

However, while the individual swaps in the package of swaps could each be below the relevant threshold, the equivalent single swap would have a larger notional and could therefore be above the threshold, as illustrated below. Given the 5-year and 15-year swaps are economically similar in nature, the pricing of one swap is likely to impact the pricing of the other. By not recognising this, ESMA could create an incentive for the market to trade in the equivalent single average instruments, rather than the package of instruments that provide a more accurate hedge: the result would be to provide a less perfect hedge, thereby retaining risk in the system.

The suggested Percentage Threshold approach provides a way to calibrate this and ensures that package transactions are not disproportionately disadvantaged.

	More accurate hedge		Less accurate hedge
	EUR 5yr swap	EUR 15yr swap	EUR 10yr swap
Notional	60m	60m	120m
Threshold (SSTI or LIS)	100m	100m	100m
Percentage Threshold	60%	60%	120%

Eliminate LIS threshold floors so that LIS and SSTIs can go up as well as down

LIS threshold floor being set at the current LIS threshold for most class of financial instruments means that in practice the LIS (and therefore the SSTIs) can only move up from the current levels. This assumes that instruments will only become more liquid over time. This is not appropriate as liquidity can increase or decrease. We request ESMA to eliminate the LIS threshold floors so that the LIS and SSTI thresholds can either increase or decrease to accurately reflect the output of the analysis.

SSTI threshold should be 10% of LIS threshold

We believe setting the SSTI threshold at 50% of the LIS threshold would be too high. It would take only two trades at the SSTI notional for it to reach the LIS notional, and it would therefore be likely to negatively impact pricing. Liquidity providers would be concerned their quotes could be easily filled at a level above the LIS threshold in aggregate.

Furthermore, given the COFIA approach is not perfect and creates false positives, we believe it is important to set the thresholds to be lower to mitigate the negative impacts of this.

<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>

TYPE YOUR TEXT HERE

<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>

Our members do not want different transparency regimes in different Member States. Non-standard transparency requirements could create distortions in the market and the opportunity for regulatory arbitrage. Additionally, it is not clear how different deferral regimes could be communicated to market participants in a timely manner.

<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>

Yes we support these proposals. However we maintain our concern over whether NCAs are well placed to assess and monitor such a decline in liquidity across all Member States in real time.

<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>

Yes.

<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>

There are significant adverse incentives for venues to push for derivatives to be declared subject to the trading obligation.

ESMA should have a presumption the derivatives should not be subject to this obligation unless there is solid data to support its inclusion in this category.

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

Firstly we welcome the proposal to exclude technical trades from the trading obligation.

Non-discriminatory access to trading venues

Implementation of the derivatives trading obligation will significantly increase the importance of derivatives trading venues. Experience in the US, however, suggests that implementation of an execution requirement has not fully addressed competition shortcomings in the market, whereby:

- **A small group of dealers are able transact with each other on exclusive “dealer-only” trading platforms, commonly referred as the “inter-dealer” or “D2D” market. These platforms deny access to all other types of market participants, including investors (e.g., investment funds, insurance companies, corporations, etc.).**
- **For investors, the only way to transact with that group of dealers is either bilaterally or on a limited number of “dealer-to-customer” or “D2C” trading platforms.**

This market structure is suboptimal in a number of respects, as it restricts the ability of investors to execute freely with any other counterparty, limits investors' choice of trading protocols, compromises investors' ability to execute the most favourable prices, inhibits new liquidity providers from entering the market, and engenders concentration of risk in the dealer community.

We believe that authorities should use the implementation of MiFIDII as an opportunity to address this situation. Specifically, it is important that non-discriminatory access requirements are applied across all trading venues to ensure that the largest incumbent dealers are not in a position to push venues to maintain historical market structures that advantage the dealer community at the expense of investors.

<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>

No. In our view it is not necessary or appropriate for the trading obligation to apply to third country entity to third country entity trades where the clearing obligation under EMIR does not

apply to the relevant transactions by virtue of an equivalence assessment under Article 13 of EMIR.

ESMA's current proposal could capture trading between two non-EU counterparties neither of whom are subject to a clearing obligation or a trading obligation under their local law or are subject to conflicting or duplicative local law trading requirements (for example, a Swiss entity trading with a US entity) and are exempt from the clearing obligation under Article 13 of EMIR but subject to the EU trading obligation. In our view, such transactions cannot be properly interpreted as having a direct, substantial and foreseeable effect within the Union or an evasion of the provision of MiFIR and is not justified on the grounds of the risk posed by such trades. Furthermore, it is likely to be impossible for such entities to comply with the EU trading obligation. Accordingly, we would urge ESMA to specify in the draft MiFIR RTS that the criteria will not have been met if the clearing obligation does not apply to the transaction as a result of the application of Article 13 of EMIR.

<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>

No, the draft RTS should not be extended to contracts involving EU branches of non-EU NFCs, as this is not in line with the EMIR anti-avoidance provisions.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_92>

6. 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>

No. ESMA's list provides a basis for testing but the firms should develop scenarios that are suitable for them and which are communicated to the NCA.

<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>

These provisions could generate excessive testing by firms or venues. Non-live testing on every venue may create significant delays and cost in bringing new functionality to market. Ultimately this will be paid for by the end investor.

<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>

We support the requirement for a market impact assessment but ESMA should not create an exhaustive list of requirements for such a test. This should be left to firms to determine. Firms already have an incentive to monitor, implement and evolve such market impact controls.

<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>

Yes. The Investment Association supports ESMA's proposals in this area.

<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>

The Investment Association believes that Smart Order Routers (SORs) operating within buy-side Order Management Systems (OMS) should not be included within the remit of the algorithmic trading definition.

In the Level 1 recitals buy-side Order Management Systems (OMS) are specifically excluded by the algorithmic trading provisions.

MiFID Level 1 Article 17 text references algorithmic trading in relation to connection to venues. SORs do not connect to venues, they connect to brokers.

Buy-side SORs are materially distinct from algorithmic trading black boxes (algos) being operated by brokers. They are hugely different and have an impact on the operation of markets which is orders of magnitude less than brokers' algos.

Brokers' algorithms are 'massively multiplayer' on both sides. That is, they have multiple orders from multiple clients on the input side. On the output side they have multiple venues including the firm's own balance sheet and it makes multiple executions at high frequency, in microsecond intervals on a continuous basis throughout the trading day. These interactions occur without significant human intervention.

Broker Algo: Continuous Real Time Execution in Microsecond increments

Client Order ---□		---□ Venue
Client Order ---□		---□ Venue
Client Order ---□	BROKER ALGO	---□ Venue
Client Order ---□		---□ Venue
Client Order ---□		---□ Venue
Client Order ---□		---□ Venue

Buy Side SORs are only executing one order, then they stop. So they are only single track input, with the possibility of multiple track outputs. They do not operate as a continuous matching system like a broker's algo does.

Buy-side SOR: Staccato execution driven by sequential human initiation

---□ Broker
---□ Broker



(Human Initiated) Single Order

--- ☐ BUYSIDE SOR

--- ☐ Broker

--- ☐ Broker

--- ☐ Broker

--- ☐ Broker

Buy Side SORs act as controls on brokers' algos in that they set limits on price, timing, venue and volume of execution.

We strongly consider that EMSA should draw a distinction between the hugely impactful brokers algos and single track SORs operating within buy-side Order Management Systems as outlined in level 1.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We support these proposals. If firms consider they are likely to hit the 30% threshold they should have already signed a pre-agreement with the venue that will come into force if they hit the limit.

<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>

We consider that market makers should be present more than 50% of the time. A 50% provision does not represent an adequate control on firms claiming to be market makers. Two way quotes should be made available in size for the significant majority of the day for a firm to be classified as truly operating a market making strategy.

<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>

Market makers are needed in such extreme circumstances. The withdrawal of liquidity by market makers is likely to exacerbate such situations. Our members would support stringent requirements on market makers to supply liquidity. However we believe this should be achieved through contractual requirements in their market making agreements not through additional fees to operate in ‘exceptional circumstances’.

<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>

Yes we agree in principle with ESMA’s proposal. However ESMA should clarify only messages a firm can actively control will be included in any calculation.

The purpose of introducing an Order-to-transaction (OTR) ratio as required by Article 48(6) MiFID II is to ensure orderly trading conditions on trading venues by controlling the number of orders members may send to the matching engine of a trading venue in order to ensure the capacity of the venue is not exceeded.

As the objective is to restrict the behaviour of members, any OTR calculation should only include messages the member can actively control. Therefore, acknowledgment and

confirmation messages relating to an order and sent by the trading venue to the member should be excluded from the calculation.

<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>

TYPE YOUR TEXT HERE

<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>

Yes, the Investment Association supports this proposal.

<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>

We agree that monitoring should cover all trading phases and that it should take place on at least a monthly basis.

<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>

We support ESMA's draft RTS. Our members consider however that trading venues should provide testing environments at cost. That is, the provision of testing environments by the

venue should not become a source of profit. Such monopoly provision of testing represents a cost to the market generally that will ultimately be passed on to the end investor.

<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>

We support most of ESMA's proposals in this area. However in relation to market data fees, we consider there should be more extensive obligations on venues. As outlined in our response to the previous MiFID consultation, our members believe that venues should:

- **Provide full transparency of their fees by having them published on the ESMA website.**
- **Provide transparency on the ESMA website of the amount of revenue generated by market data fees, both in absolute terms and as a percentage of total revenue. This information should be updated at least annually.**

<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>

Absent a trading obligation for ETFs there is a real risk that an inflexible tick size regime that ignores the underlying liquidity of an ETF will favour trading away from regulated lit markets. This is particularly an issue for the larger more liquid funds and ETFs where the underlying securities trade with very tight spreads (e.g. money market or short duration funds). The proposal has been drafted absent a detailed data-driven study of the potential impacts to the ETF market hence a level of flexibility in its implementation will be necessary to avoid unnecessarily distorting markets.

We propose two different alternatives to address possible flight from lit markets due to an inappropriate tick size table:

- **An additional liquidity band for ETFs be implemented with more granular tick sizes for “Very Liquid” ETFs (in addition to the default Liquid Band currently proposed).**
- **The alternative to a more granular ETF specific liquidity band for “Very Liquid” ETFs would be to move ETFs into a more appropriate tick size outside their price range (within the current Liquid Category).**

The exceptions process would be available when an ETF had demonstrated a spread to tick ratio of three on a consistent basis or the underlying securities traded in tighter spreads than tick size table indicated. This would allow manual adjustments of the tick size to a more appropriate band (outside the instruments current price range) or the ETF could be moved into the “Very Liquid” ETF band.

<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>

We welcome including ETFs in the most liquid category and therefore newly issued ETFs will fall into a tick size category based on price. That said there may be a need to apply the exception process as described in Question 124 for a new fund based on the experience of the ETF issuer and Stock Exchange and the observable underlying spreads of the product (for example a money market type fund in the current low rate environment would require a smaller tick size than the current tick size table would indicate).

It is therefore critical that there is a review of the tick size of a newly launched ETF within the prescribed 6 week period. There should be an analysis of the spread to tick ratio to determine the most appropriate tick size.

<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>

We agree with the approach regarding Corporate Actions for ETFs.

<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>

For ETFs as described in Questions 124 and 125, tick sizes may need to be adjusted to take into account the underlying liquidity of the security

<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>

An annual review of the liquidity bands would be appropriate.

<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>

Absent a Trading Obligation for ETFs and the ability for venues that operate outside the tick size regime to price improve order flow, there should be vigilance about order flow migrating

away from lit central limit order books in the implementation phase. The exceptions process should be able to be activated immediately if there is evidence that this occurring.

<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>

The proposed regulatory standards should incorporate the exceptions process for ETFs as described above.

<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>

For ETFs we do not believe there is a requirement to halt trading on other exchanges if a “Material Market in terms of Liquidity” suspends trading. That said we value the transparency of trading halts and advise that more than 10% should constitute a material threshold for ETFs.

<ESMA_QUESTION_CP_MIFID_133>

- **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>

Yes, The Investment Association supports the proposal to empower NCA's to require periodic reconciliations. It is important the Data Reporting Service Providers (DRSPs) supply accurate information to the market.

<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>

The services provided by DRSPs represent critical market infrastructure, as such our members would support strict maximum recovery times.

<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>

Our members would support this, however NCAs should review the DRSP's opening hours to ensure they are appropriate. In addition DRSPs should be required to consult their users and get NCA approval if they want to change their opening hours.

<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>

The Investment Association considers that three months is too long a period. If a venue is live and active trading is occurring, it is important the market has appropriate visibility on these trades. We would suggest reducing this period to one month.

<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>

We support ESMA's proposals in respect of machine readability. We would note that these criteria should imply more than just publishing on a public website. Information should be made available in high speed architecture.

<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

Avoiding duplication of reports is a key aspect of the CTP regime. As such we support ESMA's proposals in this area. We note that the requirement only to report exclusively to a single APA may be easier to comply with than investing in reporting architecture to support duplicate reporting flags.

<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>

We envisage that CTPs will add their own IDs whether it is required by regulation or not, in order for them to maintain their databases. As such we support the requirement to assign trade IDs at the CTP level. The regulation should set out the format of these IDs, such that trade IDs from different CTPs can be aggregated efficiently.

<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>

As outlined in our response to Q141, we would envisage CTPs will add this information to their databases. As such both the trading venue timestamp and the CTP timestamp should be made available.

<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>

Given the existence of high frequency trading, we recommend timestamps should be held at an accuracy of microseconds.

<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>

The Investment Association supports ESMA's proposals and would add some further requirements:

- **If a venue is not going to provide disaggregated data. The judgement that there is insufficient demand should be require approval by the NCA.**
- **The full set of information provided to the NCA to support this request should be made publicly available on the venue's website.**
- **Disaggregated data from auctions, particularly end of day auctions should be made available, without the requirement to buy any other data product and on the same timeframe as other data.**

<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>

Yes we agree.

<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>

The Investment Association supports ESMA's proposal to have the obligation on the seller unless the transaction is with an SI.

<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>

Please see our response to Q152.

<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>

Please see our response to Q152.

<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>

Please see our response to Q152.

<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>

Please see our response to Q152.

<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>

The Investment Association is aware that there are many complexities in the application of RTS governing the granting of access to CCPs and venues. In general we agree with ESMA's proposals in this area.

Our members are concerned with ensuring increasing levels of access and interoperability between venues and CCPs. We consider that there are significant disincentives for venues and CCPs to provide access in the way envisaged by ESMA. As such, we believe the Commission should review in detail the market outcome following implementation of Article 35 and 36, 24 months following the implementation for MiFID II (The Level 1 Article 90 review).

<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>

Fee structures should be non-discriminatory not just on a firm by firm basis but across groups. Fees must not be used to defend silos of venues and CCPs. The net cost to all venues, must be equivalent and non-discriminatory.

<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>

Yes, the proposals, including the changes from the discussion paper, seem reasonable.

<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>

Yes. These seem reasonable.

<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>

Yes, these seem reasonable, and reflect the comments raised in response to the earlier consultation by ESMA.

<ESMA_QUESTION_CP_MIFID_159>

7. 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_167>

8. 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>

TYPE YOUR TEXT HERE

<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>

We agree with ESMA's approach; considering the totality of a group's activities is vital to ensure appropriate use of the relevant MiFID exemptions.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

On p.512 of the CP, ESMA proposes that MiFID activities should be treated as ancillary to the main business of an entity's group where they constitute no more than 5% of the group's main business. We note that this represents a significant change in approach in comparison with the earlier Discussion Paper (which considered a threshold of 50%). We strongly support the revised approach. Setting the threshold at 50% would not have been in line with the intent of the legislator, which was to mitigate systemic risk, improve the functioning of the market and

increase levels of investor protection by limiting the application of MiFID exemptions. We further believe that the 5% threshold is justified given that the calculation excludes hedging activity.

<ESMA_QUESTION_CP_MIFID_173>

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

<ESMA_QUESTION_CP_MIFID_174>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_174>

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

In addition to considering whether a person's MiFID activities constitute a minority of activities at group level, the size of the firm's trading activity has to be compared with the size of the overall market trading activity to determine whether it meets the test of being an ancillary activity in the context of MiFID exemptions. For this test, ESMA suggests setting the threshold at 0.5% of the overall market trading activity by asset class, using the calculation methodology set out on p.518 of the CP. We note that this threshold has been set at a low level, something

we strongly welcome. The intention of the legislator was to ensure that MiFID exemptions are limited in their application, and ESMA's approach is in line with this.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

While we appreciate the rationale for basing spot month limits on deliverable supply for certain contracts, given that the intention of the regime is ultimately to prevent squeezes in the physical market, we believe that open interest is a more appropriate measure for setting limits in the non-spot month, given that delivery of the commodity cannot occur in the non-spot month. This would have the benefit of closer alignment with the existing US framework. It also overcomes some of the data challenges inherent in determining deliverable supply: while ESMA will be able to draw on the knowledge of trading venues, their visibility over deliverable supply is unlikely to be fully comprehensive (e.g. the LME would be able to provide data on supply held in LME warehouses, but this would only give a partial picture of the deliverable supply in a given metal contract). For the spot month, we support basing limits on deliverable supply.

We further believe that limits for cash-settled and physically-settled contracts should not be set at the same level, given that these contracts are not fungible and exhibit different characteristics. As far as cash-settled contracts are concerned, we believe that open interest

provides a more appropriate metric for setting limits. Open interest has the additional benefit of being easier to calculate, given the availability of EMIR trade repository data (which would also provide information on economically equivalent OTC positions).

As to the appropriateness of the proposed limits by market, it is almost impossible to address this question meaningfully without an initial indication of the figure for deliverable supply, so that market participants can assess the likely impact of a baseline limit expressed as a percentage of that amount. As part of its powers under MiFIDII Article 57(4), ESMA should maintain on its website an up-to-date assessment of the relevant denominators according to which position limits are expressed. If it does not, then there is a significant risk of understatement of the size of the market if individual authorities are required to make this calculation themselves based on potentially incomplete data.

Drafting suggestion

RTS 29 recital 10 is replaced with the following:

(10) The national competent authority of the trading venue for the commodity derivative will calculate a baseline position limit for the commodity derivative. This shall be calculated by reference to physical supply for spot-month limits in physically settled contracts. For non-spot month limits and limits on cash-settled contracts, the limit shall be calculated by reference to open interest. The baseline shall be specified in the number of lots of the relevant commodity derivative and shall distinguish between cash and physically settled contracts.

<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>

TYPE YOUR TEXT HERE

<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 appreciate ESMA's desire to ensure an appropriate degree of harmonisation in terms of the establishment of position limits by individual competent authorities, but question whether it is necessary to set an explicit range in which position limits should be set, something that potentially goes beyond ESMA's mandate to establish a methodology for the calculation of position limits. At a minimum, we would suggest that ESMA clarify that a competent authority may set a limit outside of these parameters in exceptional circumstances where justified by the specific characteristics of the contract in question.

On a related note, it might also be necessary for a competent authority to vary or suspend a position limit in situations of extreme market stress, where the position limit is perceived to be undermining effective market functioning (e.g. significant geopolitical developments or

unexpected changes to physical supply of the underlying commodity). This should be recognised in the RTS.

Drafting suggestions

Draft RTS 29 Article 2 is amended through the addition of the following:

5a. Where, due to the specific characteristics of the contract, a competent authority sets a limit that is outside of the range referred to in Article 1(5), it shall explain the reasons to ESMA.

7. A competent authority shall be entitled to vary the limits referred to in Article 1(5) in exceptional circumstances, as warranted to ensure orderly trading.

<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>

TYPE YOUR TEXT HERE

<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 do not consider that it makes sense to express non-spot months in terms of deliverable supply and believe that open interest is a more meaningful metric regarding market size.

<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>

It would be proportionate and appropriate to allow for a grace period for new contracts to allow trading to develop before position limits apply. Position limits should be phased in to avoid distorting trading in illiquid markets and should only apply when sufficient trading is well established

<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>

An accurate calculation would take into account the deliverable supply stored in official (i.e. exchange-affiliated) and non-official warehouses

<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>

Deliverable supply is the measurement of the amount of supply that can leave the warehouse. The main feature to consider is whether the commodity is cash- or physically-settled.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We support the concept that the factors referred to in Article 57(3) are not intended to be exhaustive; it is reasonable that competent authorities should be able to take into account additional factors as relevant to the contract in question.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_199>

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

<ESMA_QUESTION_CP_MIFID_200>

The IA agrees with this proposal and particularly welcomes consistency with EMIR in this aspect.

<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>

Article 57(1) MiFID II states that position limits do not apply to positions that are held for the reduction of risk relating to commercial activities by non-financial entities. A number of comments were received by ESMA in response to the May 2014 DP that suggested that the definition of non-financial entity should include an entity that is located outside the EU but would be a non-financial entity if it were established in the EU. ESMA proposes to follow this approach.

We support ESMA's suggested approach, as it is aligned with the EMIR approach to central clearing and best maintains a level playing field between EU and non-EU entities. We believe that this would limit the scope for competitive distortions arising from regulation.

<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>

As noted at p.545 of the Consultation Paper, MiFIDII Article 57(12)(b) requires ESMA to develop the methods to determine when the positions of a person should be aggregated within a group. The term group is defined in Article 4(34) by cross-reference to Article 2(11) of Directive 2013/34/EU (the Accounting Directive). In the context of the Accounting Directive, a

group is “a parent undertaking and all its subsidiary undertakings”. ESMA notes that the proposals relating to position limits should be read in relation to this definition.

We believe that it is of fundamental importance that ESMA address directly the application of limits in a fund management context. We set out below what we believe would be the most workable approach.

1. Aggregation of group positions: exclusion of funds

While ESMA does not address this question directly, we believe that it can be reasonably inferred from the primary legislation that MiFIDII position limits are intended to apply at the level of investment fund, rather than a fund manager. This would best conform to the drafting

of Article 57(1) which refers to positions which a 'person' can hold. This reading is also reflected in Draft RTS 30 Article 2(2), which states:

Positions that are held by an intermediary on behalf of a client shall not count towards that intermediary's own position limits regardless of whether, for reasons of market practice, operational structure or legal framework, the positions are held by the intermediary as principal.

We therefore suggest that ESMA build on its analysis of what constitutes a 'group' by clarifying that positions held by AIFs and UCITS are not to be aggregated at either manager level or by the investor in a fund.

Drafting suggestions

RTS 30 should be amended through addition of the following:

2a. An AIFM or UCITS management company shall not be required to aggregate the positions of the AIFs or UCITS that it manages in commodity derivatives with its own positions.

3. Where a person holds units or shares in an AIF or UCITS then it shall not be required to aggregate the positions of the AIF or UCITS in commodity derivatives with its own positions.

2. Aggregation of group positions: consideration of control

2a Investors' positions in funds

Assuming that ESMA does adopt an explicit carve-out for funds, then questions will inevitably arise in the implementation of the framework by competent authorities as to the extent to which aggregation is required by managers of funds or investors in funds.

As noted above, the position in respect of fund managers is arguably clear, in as much as it cannot be held to be the 'person' who owns the position.

The position of an investor in a fund is more challenging.

The CP refers to the appropriateness of applying limits at the level of the end customer in order to address the risk of a customer holding, through several intermediaries, positions which are individually of moderate size but in aggregate may be considered significant.

Our understanding is that this point is not directly relevant from the point of view of an investor that owns shares in a fund, but relates more to situation in which an investment firm holds assets on behalf of an a third party under a client relationship.

For the fund investors, the more relevant consideration is presumably whether the ownership stake amounts to control as defined in the Accounting Directive, which discusses control as follows:

(31) Consolidated financial statements should present the activities of a parent undertaking and its subsidiaries as a single economic entity (a group). Undertakings controlled by the parent undertaking should be considered as subsidiary undertakings. Control should be based on holding a majority of voting rights, but control may also exist where there are agreements with fellow shareholders or members. In certain circumstances control may be effectively exercised where the parent holds a minority or none of the shares in the subsidiary. Member States should be entitled to require that undertakings not subject to control, but which are managed on a unified basis or have a common administrative, managerial or supervisory body, be included in consolidated financial statements.

While funds might seek to avoid situations in which an investor has control over the fund (by ensuring that no investor has more than 49% of voting shares or by introducing non-voting share classes), it is nevertheless conceivable that in certain situations an investor could meet this definition of control.

The difficulty for the investor in this scenario is that it could be in such a position of 'control' and yet have minimal ability to or interest in steering the day-to-day trading and investment decisions of the fund (including its positions in commodity derivatives). Indeed, it would be unlikely that the investor would have any real-time visibility in respect of the fund's positions.

In this situation, it would be far more reasonable to determine whether aggregation is required on the basis of whether the investor controls the fund's positions in commodity derivative markets, rather than basing this on whether 'control' as defined for accounting purposes is present.

Indeed, the CFTC has gone further still, and clarified that a 'pool participant' should not aggregate the positions of the fund with its own. This avoids the problems of lack of visibility of the fund's positions and also avoids the matter of whether aggregation should be on a full or partial basis, as discussed further below. We strongly recommend that ESMA consider such an approach in the context of the MiFIDII framework. We believe that this would be compatible

with the primary legislation given that the regime is intended to apply to the “person” that holds the position.

Drafting suggestions

RTS 30 should be amended through addition of the following:

3. Where a person holds units or shares in an AIF or UCITS then it shall not be required to aggregate the positions of the AIF or UCITS in commodity derivatives with its own positions.

Alternatively:

3. Where a person holds units or shares in an AIF or UCITS then it shall not be required to aggregate the positions of the AIF or UCITS in commodity derivatives with its own positions, unless it controls the trading activities of the AIF or UCITS.

2b Funds’ investments in portfolio companies

A similar issue arises in the context of a fund’s investment in a corporate entity that is subject to position limits. Again, it is important that the final rules clarify whether aggregation of the portfolio company’s positions is required.

As noted above, owning a majority of a company’s voting shares does not necessarily imply control over its trading decisions, and it is important to appreciate that this sort of relationship is very different to that of corporate groups. Ideally, explicit provision should be made for disaggregation of positions where there is no control of the portfolio company’s trading decisions.

Indeed, we would not that forcing separate corporate entities to share position information (for example between a company and a fund that owns its equity) might lead to forcing firms to breach information barriers and risk the transmission of inside information between entities.

Drafting suggestions

RTS 30 should be amended through addition of the following:

4. Where an AIF or UCITS holds a majority of voting capital in an entity that holds positions in commodity derivatives then it shall not be required to aggregate the positions of that entity with its own, unless it controls the trading activities of that entity. To the extent that it does not control the trading activities of that entity, the AIF or UCITS shall have in place information barriers to ensure that information on positions in commodity derivatives is not shared between

persons responsible for executing the firm's trading strategy for the AIF or UCITS and the entity in which the AIF or UCITS holds an ownership stake.

3. Alternative solutions: guidance

As noted above, we believe that these issues are of sufficient importance that they should be addressed through legislation as a matter of priority. Alternatively, if ESMA concludes that this cannot be addressed via its present mandate, then we would welcome an approach based on Level 3 guidelines to ensure consistency of approach across competent authorities.

<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>

On p.546 of the CP, ESMA sets out its view that the commodity derivative positions of a person should be aggregated on 'whole' position basis with those that are under the beneficial ownership of the position holder which means that although a firm may own a percentage of another firm it must aggregate the position in its entirety and not on a pro rata basis the position held by that firm according to the percentage of its holding). ESMA notes that this approach could lead to double counting and seeks stakeholders views on whether they consider any issues may arise from such.

As described in our response to Q.202, there are more fundamental questions surrounding the scope of aggregation that we believe could be helpfully addressed by ESMA in its work on position limits.

As regards the matter of whether aggregation is on a pro rata basis according to ownership stake, we believe that pro rata aggregation is preferable to aggregation of the whole position. While aggregation of the whole position would in theory make for a more straightforward calculation (particularly in situations where an entity's ownership stake fluctuates), it would create a misleading impression of its overall position in the relevant commodity derivative contract, which would detract from the goal of ensuring that regulators have a better insight into participants' positions.

Drafting suggestion

RTS 30(2)1 is amended as follows: "...Such aggregation shall be made on a whole position basis and not on a pro rata basis..."

<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>

ESMA notes on p.547 of the CP that a majority of respondents to the CP favoured a CFTC-style approach to assessing which OTC contracts are economically equivalent to exchange-traded positions (and therefore to considered in assessing a participant's position vis-à-vis position limits). ESMA proposes that the criteria for an economically equivalent OTC be based

on an OTC contract being referenced to an exchange-traded derivative (ETD) contract that is traded on a trading venue within the European Union, or has fundamentally the same characteristics with regard to the contract specification as the relevant ETD contract.

We strongly believe that this is the most appropriate approach. ESMA notes the fact that industry views on this matter differ and that some participants would prefer a broader approach to economically equivalent contracts in order to maximize the scope to net long and short positions. We believe that a broad approach would make the regime near-impossible to apply on a real-time basis. Indeed, we would encourage ESMA to consider further how the RTS on this point can be drafted so as to maximise legal certainty and to create a framework in which participants can develop automated monitoring systems for their commodity positions. We believe that deletion of the Article 3 para 1 sub-bullet (b) would be welcome in this regard.

<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>

The IA agrees with this proposal.

<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>

We believe that it is reasonable that the position limit regime be bounded at European level; however, we nevertheless believe that netting across contracts traded in other jurisdictions should be permissible in order to ensure that position limits reflect the economic reality of a participants' activities.

Drafting suggestions

RTS Article 5(1) is amended as follows:

A person's position in a particular commodity derivative shall be the summation of its positions held in that commodity derivative on trading venues within the European Union and, its positions held in economically equivalent OTC contracts to that particular commodity derivative and its positions held in highly correlated contracts on third-country trading venues.

<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>

ESMA is required under Article 57(12)(f) to determine the procedure by which non-financial entities that are holding positions for the purpose of risk-reduction may be exempted from the position limits regime.

ESMA proposes that a person applies for a general exemption from a position limit for risk-reducing positions for a commodity derivative to the competent authority for the trading venue for that contract. The competent authority may require the person to demonstrate that a specific position is risk reducing and may withdraw the exemption for that position if insufficient information is provided. ESMA proposes that each competent authority should have up to 30 calendar days to consider a request for a general exemption and to decide whether to approve it, after which a reply will be given.

We support ESMA's approach, as we consider it makes sense to set a defined period over which a regulator will consider a participant's request to rely on this exemption. We believe that 30 days strikes a reasonable balance between giving regulators enough time to deal with such requests and ensuring that participants are given a steer within a suitably short period of time.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_210>

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

<ESMA_QUESTION_CP_MIFID_211>

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<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

In its May DP, ESMA explored the possible approaches for identifying an end client in the context of position reporting. ESMA does not revisit this issue in the present CP. We believe that this point could reasonably be addressed via additional guidelines for market participants, which are alluded to on p.555 of the CP. We would strongly favour the development of a reporting framework that protects the confidentiality of all clients' positions and encourage



ESMA to address this point as a matter of priority in any future work to help guide implementation of the reporting obligations.

We also note ESMA's comment that it "may explore ways in which it is possible for investment firms to meet their obligations for reporting exchange traded derivatives under Article 58(2) by delegating the reporting to that required by Article 58(3)". We believe that any measures designed to reduce the operational burden of reporting and limit duplication are to be welcomed.

<ESMA_QUESTION_CP_MIFID_212>

9. 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>

Many Investment Association members will have limited or no experience currently of the formats listed other than FIX. However, given clear message field formats and data dictionary definitions, firms should be able to work with any XML-based format.

Notwithstanding the above, we anticipate that ARMs will offer alternative formats to submitting firms, which they would then translate to whatever format ESMA ultimately determines should be used to provide the data to NCAs.

<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>

We believe that both are sufficiently well defined.

<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>

Securities financing transactions (SFTs)

We welcome ESMA's decision to exclude SFT from the scope of transaction reporting. However, there is likely to be a difference in the timing of the implementation of MiFIR and the Securities Financing Transaction Regulation ("SFTR"), as well as potential exemptions from reporting under the SFTR which will not be carried through to the MiFIR reporting framework if the current draft RTS 32 remains the same.

We presume that it is not ESMA's intention for firms to report Securities Financing Transactions under MiFIR for the period between MiFIR implementation and SFTR, nor that it is ESMA's intention that there any reporting exemptions in SFTR should not apply with respect to MiFIR. In order to avoid any confusion, we would urge that Article 3(3)(a) of the proposed RTS 32 be simplified to read as follows:

"Securities financing transactions as defined under Regulation 2014/0017(COD), the Securities Financing Transaction Regulation"

Give-up/novation

We welcome the clarification in paragraph 13 of the consultation that transactions solely for the purposes of clearing and settlement should not be reportable. Although the footnote (62) suggests that in some scenarios the clearing broker would have the obligation to report the original execution rather than the executing broker, Investment Association members have

indicated that, as portfolio managers dealing as agent for their clients, they would report their counterparty for the initial trade as the Executing Broker.

Exercise of options and other financial instruments

Paragraph 21 of the consultation paper appears to suggest that when a financial instrument is exercised the firms concerned should report only the delivery of the underlying. This suggests that the intention is that the report should be similar to any purchase/sale of the underlying instrument except that Field 63 would be "Y" (instead of "N"). However, paragraph 22 (indent iii.) appears to confirm that ESMA intends that the exercise itself would be a reportable transaction. We urge ESMA to ensure that the final RTS are unambiguous with regard to the requirements and would add that we do not believe both levels of transaction should be reportable.

Transfers of investments to/from client portfolios

We do not believe that the transfer of investments by a client to/from a portfolio maintained with or managed by an investment firm would be reportable by the firm and would welcome clarification that this is indeed ESMA's intention.

Transmitted orders per Article 4 of the proposed RTS 32

We are concerned that the exclusion of transmitted orders from the definition of execution is left too much to inferences elsewhere. Given that the extension of the concept to orders that are generated by firms acting on a discretionary basis is both new and exclusively in the context of transaction reporting, we believe it would be helpful to include it specifically under the proposed Article 3(5), as follows:

For the purpose of Article 26 of Regulation (EU) 600/2014 the term execution shall not include:

- (a) investment advice as defined under Article 4(4) Directive 2014/65/EU;
- (b) where the investment firm sends an order to a third party successfully in compliance with Article 4(1) of this Regulation; or
- ~~(a)~~(c) where the investment firm introduces two parties to each other without interposing itself between those parties.

<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

We do not foresee any difficulties for Investment Association members.

<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>

We do not agree.

We believe the current difficulties with population of the buy/sell indicator are principally to do with interpretation of certain trading scenarios and how this flows along the reporting chain. We do not believe these will be solved by altering the reporting fields as proposed. Moreover, the proposed approach would in fact require a more complex translation of the trade data, with firms needing to transfer the same client and counterparty identification data in their systems to the either the buyer or seller field in the transaction report depending on the direction of the trade.

We believe the current buy/sell indicator approach should be retained, assisted by more detailed guidance on how it should be populated in the different trading scenarios. We believe strongly that ESMA should produce a reporting manual, similar to the Transaction Reporting User Pack (TRUP) provided by the FCA today in the UK, which would contain guidance such as this.

Aggregated transactions

We would welcome clarity concerning the approach to reporting when a portfolio manager places an aggregated order (for multiple client portfolios) with a broker. Given the obligation to report the client details, as mandated by the Level 1 MiFIR text, a firm that is trading for clients in the course of discretionary management activity will be required to report transactions at allocation level. Where the shares do not at any time pass through the hands of the firm, we do not believe it should be required to also report the execution of the order at aggregated (block) level, which would provide no additional information - we should be grateful for confirmation that this will be the case.

Subsequent intervention by a different trader

In our response to Discussion Paper 2014/548 we noted that instances may arise when a trader at a portfolio management firm places an order with a broker that the broker then works over a period of days, during which time a different trader within the portfolio management firm intervenes to revise the order (eg. to stop further executions in the light of the limited liquidity of the stock concerned). We would welcome clarification as to which trader should be reported - the one that placed the order originally or the last one to revise the instruction before execution was completed.

<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>

Field 2 Identification code - we do not believe it should be necessary to add the country code to front of the identifier (for non-legal entities) when this will already be provided as part of the entity code type. For example, when identifying a UK individual, the identification code type would be GBNI, so the identification code

itself should be simply the National Insurance number. In our response to Discussion Paper 2014/548 we commented that firms should not be required to verify the accuracy of any national identifier provided by the client unless it had grounds to suspect that the identifier is false or incorrect. We ask that this be made clear in the final RTS. Similarly, we believe that firms should, for these purposes, be able to accept a client's claim that they do not have any of the identifiers listed for their nationality and therefore generate a concatenated identifier.

Fields 5-34 Buyer/seller details - as discussed in our response to Q217, we do not agree with the proposed approach and ask that the current approach, as proposed in Discussion Paper 2014/548, be retained to identify consistently the counterparty and the client together with the direction of the trade. We note that ESMA offers assurance in paragraph 98 of the consultation that it will ensure full compliance with data protection law and that Article 66(3) of Directive 2014/65/EU (MiFID) will oblige Member States to require ARMs to maintain data confidentiality, but this has not addressed the concerns of firms that the RTS should provide explicitly that they will not be in breach of any data privacy laws by reporting the required data. To this end, we believe strongly that the RTS should contain a provision similar to Article 9(4) of EMIR.

Field 41 Trading time - we would suggest that for post-trade events that have no specific execution time during the day firms should have flexibility to report either a default time of 00:00:00.0Z or a time that is captured at the point of entry into their system.

Fields 53/54 Instrument identification - It would be helpful to include similar guidance to that provided in the EMIR Trade Reporting Q&A to clarify that where an exchange trade derivative has been allocated both an ISIN and an Aii, firms should report according to the identifier shown for the relevant exchange in ESMA's MiFID Database. No indication is provided currently as to how these fields should be

completed in the case of OTC derivatives and baskets that have neither an ISIN nor an Aii

Fields 55/56 Instrument classification - Similarly, no indication is given as to how these fields should be completed in the case of OTC derivatives and baskets.

Field 58 Underlying instrument code - It will be necessary to accommodate the reporting of multiple underlying instruments in the case of a basket - we presume, therefore, that this would be a repeatable field, but this is not clear from the draft RTS.

Where the underlying is an instrument identified by the Aii, we believe this should be limited to the venue and exchange product code elements, as required for field 54.

Field 76 Waiver indicator - as the waiver indicator will be required only for market facing executions, it will be necessary to provide for another indicator (or for the field to be left blank) in the case of client-side trades, for which the indicator is not required.

<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>

Investment Association members trade only as agent for their clients; we therefore have no comment to make on the proposed approach. <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>

We do not foresee any difficulties for Investment Association members.

<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>

We do not agree.

We maintain that it would be unnecessarily burdensome for many firms to investigate every constituent of what might be a large basket or index to establish if just one might be an instrument that is admitted to trading on an EEA venue or has applied for admission. We would therefore propose that firms should be able to either report transactions in all baskets should be reported, irrespective of their composition, or just those that contain one or more reportable instruments.

<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>

We agree with the proposal for the identification of indices. However, further to our response to Q221, in which we propose that firms are given the option to report all trades in baskets, we would further suggest that in those instances all constituents should also be reported.

With such flexibility in relation to baskets, firms would be able to choose between reporting only where a basket contains one or more reportable instruments, in which case only the relevant underlying instruments would be listed, or reporting in the case of all baskets, in which case they would need to report all the underlying instruments. Firms would make this choice according to the method that was most appropriate to their activities and systems capability.

<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>

We do not foresee any significant difficulties for Investment Association members, but would ask for clarification that a firm would be able to choose between the head office collecting reports from its branches for onward transmission in a consolidate report or branches reporting directly to the firm's home NCA.

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

We do not foresee any significant difficulties for Investment Association members in obtaining LEIs for their entity clients and validating their authenticity at that stage.

We do not believe it is ESMA's intention that firms should subsequently be required to continually or periodically ensure that those LEIs had not "lapsed" due to non-payment by the client of the annual maintenance fees, and would be concerned if this were the case in the absence of a true golden source of LEI data before the Global LEI System is in place, with an efficient and automated mechanism to check the status. We would add that the purpose of the LEI in transaction reporting is purely for the purposes of identifying the entity concerned uniquely and, as such, we believe the currency of the underlying reference data about that entity should not be a consideration.

<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

We do not agree with ESMA's assertion that firms should accept total responsibility for determining which instruments are reportable in the absence of a reliable "golden source" of data on the instruments that are admitted to trading and potential uncertainty as to whether or not an application has been made for the new admission of a particular instrument to trading. We appreciate ESMA's desire to limit over-reporting and suggest provision be made to avoid systematic over- or underreporting reporting. However, we continue to urge that a more pragmatic approach be taken to occasional breaches that might be made in good faith. In

particular, we do not believe there would be any significant benefit in requiring cancellation of a report made in good faith at the time that it subsequently transpires was for a non-reportable instrument. Similarly, we believe NCAs should be permitted and encouraged to take a pragmatic approach to enforcement in the event that a firm reports late having initially missed that an application had been made for admission to trading in spite of its best efforts.

<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>

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<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>

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<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>

We welcome ESMA's revised proposals and support the requirement for HFT firms to record records at a microsecond granularity.

<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>

Yes we support the proposal for records to be retained for five years.

<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>

No comment.

<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>

No comment

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

10. 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>

We consider that the pre-trade checks to be performed by Trading Venues are not required in the ETD market as the intention of the MiFIR level 1 text is already met through the market's current structure. Article 29 (2) of MiFIR states that "*CCPs, Trading Venues and investment firms which act as clearing members....shall have in place effective systems, procedures and arrangement in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems*". Where binding contractual arrangements arise upon trade execution under the rulebooks of Trading Venues and CCPs this requirement is met. Also, the introduction of pre-trade checks would cause significant disruption to the ETD market. Therefore we propose that Article 3 of the draft RTS be amended so as to exclude from the pre-trade check requirement those orders that benefit from certainty of clearing upon trade execution through the binding contractual arrangements of the Trading Venue and CCP rulebooks.

We recognise the inherent difference between OTC and ETD markets and would therefore stress that this response is applicable for ETD only.

Certainty of Clearing

To ensure market integrity and user confidence, ETD markets include rules to ensure that certainty of clearing is an in-built design feature. In a multilateral anonymous counterparty ETD market, the credit risk of counterparties is mitigated through the rulebooks of the Trading Venues and their associated CCPs, which set out membership standards, contractual arrangements, operational processes and technology infrastructure requirements for Trading Venue members and clearing members.

Trading Venues rules require that for every exchange member executing on the market there is a clearing member that is contractually obliged to stand behind the trade either as buyer or as seller of the contract. Under the contractual obligations of the CCP rules, these Trading Venue contracts are then discharged and are immediately replaced with a legally binding contract between the buying clearing member and the CCP on the one hand, and the selling clearing member and the CCP on the other.

The enforcement of standing data requirements by the technology platforms of the Trading Venue and the CCP (based upon the standard contract specifications of the Trading Venue) means that all orders submitted must meet the precise requirements of the contract specification in order to be accepted for execution. Any incorrect orders (for example, invalid exercise prices, expiry dates or tick values) are rejected by the Trading Venue at the point of order submission. As such, any transactions arising from the execution of such orders are in

a format that will be accepted for clearing by the CCP. Robust, resilient and integrated high performance messaging interfaces between clearing members, Trading Venues and CCPs provide for the near real time transfer of transactions from the Trading Venue to the CCP and for the immediate re-transmission of such transactions to the relevant clearing members.

The contractual arrangements of the Trading Venue and CCP ensure certainty of clearing of trades executed on the Trading Venue and meet the requirements of Article 29 (2) of MiFIR. We therefore propose that Article 3 of the draft RTS be amended so as to exclude from the pre-trade checks orders submitted for derivative contracts by those clearing members who are members of Trading Venues and their associated CCPs where *binding contractual obligations* arise between the Trading Venue members and their clearing members, and *consequently between the clearing members and the CCP immediately upon execution of the Trading Venue transaction*.

Market Disruption

Although ESMA has not undertaken a cost benefit analysis on the impact of requiring pre-trade client order level checks to be undertaken, it should be understood that this would cause a fundamental re-structuring of the ETD market infrastructure and negatively impact execution quality and service for end user clients. In order for client level credit limit checks to be undertaken, this would require a real-time interactive link between the CCP, the Trading Venue, the clearing member and the client, plus each Executing Broker and its clearing member (should that execution route still be viable) for the calculation of the impact of the trade upon the existing positions of the client and resultant margin requirement by the CCP and the transmission of this information to the other parties.

Currently asset managers and pension funds submit aggregated orders on behalf of multiple funds to Trading Venues requiring execution of such orders so as to obtain average prices / volume weighted average prices. They will use a number of different executing brokers to undertake this activity, determined by such factors as cost, quality of execution service, product expertise, market expertise and quality of research. For pre-trade checks to work in practice, the Trading Venue and the CCP would need to know the identity of each originating client for which the order is submitted and for the CCP to be able to identify the positions held by each such client. This would require asset managers and pension funds to fundamentally change the way in which their orders are submitted to Trading Venues and the way in which positions are held by CCPs. Such a change could potentially force such participants out of the European ETD market.

The impact of each individual order upon the margin requirement of the client and the impact upon the client's limit would then need to be translated into a number of lots of that order that can be submitted for execution. In order to avoid the introduction of latency into the execution of such orders, where Trading Venues have already invested significant sums of money to reduce trade execution times down to milliseconds, Trading Venues, CCPs and clearing members would need to completely re-engineer the market infrastructure and face the significant technology challenge of implementing pre-trade order limit checks with lower processing times than that of the Trading Venue's matching algorithm

In the event of any delay or interruption of the transmission of this information between the parties, this could result in orders not being executed at all (with clients effectively being shut out of the market through no fault of their own) or orders being submitted for execution behind other members' orders and for such orders potentially to be executed at an inferior price than that which would have been available if they had been submitted with no delay.

The extent to which the obligations pursuant to Article 29(2) and draft RTS 37 apply to Trading Venues operated by firms located outside the EU and/or to non-EU CCPs that have been recognised under Article 25 EMIR should be clarified. It would also be helpful to define the scope of "clearing member" as this is not currently defined in the level 1 text.

<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>

Our members agree with the proposed timelines of 10 seconds for electronic trading on venue in concept, 10 minutes on a venue when traded non-electronically and 30 minutes when executed bilaterally.

It is our view that, in order to accommodate occasional extreme peaks in activity, the timeframe for submitting executed transactions to the CCP should be **an average of not more than 10 seconds** (measured over the Trading Venue's hours of trading) rather than an absolute 10 second measure. It should be the responsibility of the relevant NCA to ensure that the Trading Venue and its CCP have sized their technology infrastructures and messaging interfaces so as to be able to meet this standard.

<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>

For bilateral contracts, ESMA proposes that the CCP should provide the information related to the transaction that they received for clearing to the clearing member. Because the information would be received by the CCP in the format and with the content required by its rules, the information could be transferred swiftly. ESMA proposes that the clearing member should receive the information within 60 seconds from the receipt by the CCP.

We support the suggested approach and believes this should apply to OTC contracts regardless of whether they are cleared on a mandatory or voluntary basis. We also suggest that clearing members should be able to accept trades by a variety of means (with checks potentially being performed by the CCP).

<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>

In order to accommodate peaks in trading activity, the timeframe for submitting executed transactions to the CCP should be **an average of not more than 10 seconds** (measured over the Trading Venue's hours of trading) rather than within 10 seconds.

<ESMA_QUESTION_CP_MIFID_242>

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

<ESMA_QUESTION_CP_MIFID_243>

For ETD trades, given the certainty of clearing obtained through the contractual obligations that arise upon execution of a transaction, the concept of rejection for such trades by the CCP *does not arise in the normal course of activity*. Indeed, given the anonymous multilateral counterparty model of ETD markets, where counterparties are not exposed to their undisclosed trading counterparty, the impact of rejection of matched trades by the CCP relating to the creditworthiness of, for example, the selling clearing member would result in the trades of those clearing members who were the buyer(s) of the trade also being rejected, despite there being no issue with their part of the transaction. It is for this very reason that anonymous, multilateral counterparty Trading Venues and their CCPs have rulebooks that provide certainty of clearing as the invalidation of seemingly good trades for one counterparty would severely undermine the integrity of the market and cause a significant lack of confidence in its users.

In order to prevent the adverse impacts upon the integrity of the market and confidence of its users that trade rejection would bring, the CCP relies upon immediate post-trade risk management of the trade and will undertake regular, frequent intra-day assessments of the impact of transactions upon the portfolio of positions held at the CCP by each clearing member / account of the clearing member to confirm the appropriate margin cover is held and, if necessary, making an intra-day call for additional margin or, in extremis requiring the clearing member to reduce his risk exposure by trading to close out part of his position. In turn, clearing members undertake the same regular margin cover / risk exposure calculations in respect of its exchange members and other clients across multiple markets and, if necessary, call for additional intra-day margin or otherwise manage down the position through further trading in the market.

Notwithstanding the above, all Trading Venues and CCPs do have provisions in their rules relating to the invalidation of trades; generally relating to trades arising as a result of disorderly market activity or having occurred as a result of a Trading Venue technology issue, for example, messaging infrastructure failure or matching algorithm problem. In such circumstances, Trading Venues and CCPs may determine to adjust the execution price of transactions, rather than to invalidate such trades. We would ask ESMA to note that where a CCP would look to reject a trade due to a technical problem under Article 7 (4), it would be extremely unlikely that the CCP would have been able to have either notified the counterparties of the rejection or to have rectified the problem within the 10 second timeframe proposed for re-submission.

<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>

(1) We welcome the proposed draft RTS as a positive development in establishing criteria for indirect clearing structures which seek to acknowledge legal and commercial realities, whilst continuing to deliver choice and transparency of protection to users of clearing infrastructure.

(2) There are however key areas where the current consideration of exchange-traded derivative clearing structures does not automatically or helpfully map across to OTC client clearing under EMIR.

(3) Whilst we strongly support similar reconsideration of indirect clearing as it applies in the context of the EMIR clearing obligation, it is essential to note that it will not be possible simply to copy across the settled form of the MiFID RTS as part of the EMIR Review for the reasons set out below.

(4) We expect this topic to be addressed for OTC client clearing as part of an open and transparent consultation process under the EMIR Review, once that formally commences, and are keen to ensure that there is no suggestion that this topic is being addressed once and for all in the current MiFID consultation.

(5) The following aspects in particular dictate potentially different or additional considerations in an EMIR context:

- The nature of the EMIR clearing obligation is different in substance to that contemplated under MiFID II. Under EMIR, it is arguable that indirect clearing structures which are not expressly recognised as permissible will simply not be available for use by those looking to satisfy the EMIR clearing obligation, narrowing means of access.
- Indirect clearing must also be made to work for access to non-EU EMIR-recognised CCPs, and through non-EU brokers, so that these can equally be used by those looking to satisfy their EMIR clearing obligation.

We believe that a revised EMIR approach will allow the natural development of commercially viable indirect clearing offerings in due course, with the benefit of the further time available as a result of the likely timing and phase-in provisions for the EMIR clearing obligation.

<ESMA_QUESTION_CP_MIFID_244>

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?

<ESMA_QUESTION_CP_MIFID_245>

Yes, subject to the points made in our response to Question 244.

<ESMA_QUESTION_CP_MIFID_245>