



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II / MiFIR



19 December 2014

Responding to this paper

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

Instructions

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

- i. use this form and send your responses in Word format (do not send pdf files except for annexes);
- ii. do not remove the tags of type <ESMA_QUESTION_CP_MIFID_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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



Publication of responses

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

Data protection

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



General information about respondent

Name of the company / organisation	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>

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<ESMA_QUESTION_CP_MIFID_2>

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

<ESMA_QUESTION_CP_MIFID_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_3>

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

<ESMA_QUESTION_CP_MIFID_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_4>

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

<ESMA_QUESTION_CP_MIFID_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_5>

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

<ESMA_QUESTION_CP_MIFID_6>

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<ESMA_QUESTION_CP_MIFID_6>

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



<ESMA_QUESTION_CP_MIFID_7>

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<ESMA_QUESTION_CP_MIFID_7>

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

<ESMA_QUESTION_CP_MIFID_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_8>

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

<ESMA_QUESTION_CP_MIFID_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_9>

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

<ESMA_QUESTION_CP_MIFID_10>

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<ESMA_QUESTION_CP_MIFID_10>

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

<ESMA_QUESTION_CP_MIFID_11>

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<ESMA_QUESTION_CP_MIFID_11>

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

<ESMA_QUESTION_CP_MIFID_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_12>

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

<ESMA_QUESTION_CP_MIFID_13>

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<ESMA_QUESTION_CP_MIFID_13>

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



<ESMA_QUESTION_CP_MIFID_14>

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<ESMA_QUESTION_CP_MIFID_14>

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

<ESMA_QUESTION_CP_MIFID_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_15>

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

<ESMA_QUESTION_CP_MIFID_16>

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<ESMA_QUESTION_CP_MIFID_16>

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

<ESMA_QUESTION_CP_MIFID_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_17>

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

<ESMA_QUESTION_CP_MIFID_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_18>

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

<ESMA_QUESTION_CP_MIFID_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_20>

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



<ESMA_QUESTION_CP_MIFID_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_21>

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

<ESMA_QUESTION_CP_MIFID_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_22>

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

<ESMA_QUESTION_CP_MIFID_23>

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<ESMA_QUESTION_CP_MIFID_23>

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

<ESMA_QUESTION_CP_MIFID_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_24>

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

<ESMA_QUESTION_CP_MIFID_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_25>

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

<ESMA_QUESTION_CP_MIFID_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_26>

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

<ESMA_QUESTION_CP_MIFID_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_27>

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



<ESMA_QUESTION_CP_MIFID_28>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_28>

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

<ESMA_QUESTION_CP_MIFID_29>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_29>

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

<ESMA_QUESTION_CP_MIFID_30>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_30>

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

<ESMA_QUESTION_CP_MIFID_31>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>

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<ESMA_QUESTION_CP_MIFID_32>

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

<ESMA_QUESTION_CP_MIFID_33>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_33>

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

<ESMA_QUESTION_CP_MIFID_34>

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<ESMA_QUESTION_CP_MIFID_34>

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

<ESMA_QUESTION_CP_MIFID_35>

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



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<ESMA_QUESTION_CP_MIFID_36>

3. Transparency

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

<ESMA_QUESTION_CP_MIFID_37>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_37>

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

<ESMA_QUESTION_CP_MIFID_38>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_39>

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

<ESMA_QUESTION_CP_MIFID_40>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_40>

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

<ESMA_QUESTION_CP_MIFID_41>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_41>

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

<ESMA_QUESTION_CP_MIFID_42>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_42>

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

<ESMA_QUESTION_CP_MIFID_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_43>

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

<ESMA_QUESTION_CP_MIFID_44>

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<ESMA_QUESTION_CP_MIFID_44>

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

<ESMA_QUESTION_CP_MIFID_45>

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<ESMA_QUESTION_CP_MIFID_45>

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

<ESMA_QUESTION_CP_MIFID_46>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_46>

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

<ESMA_QUESTION_CP_MIFID_47>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_47>

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

<ESMA_QUESTION_CP_MIFID_48>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_48>

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

<ESMA_QUESTION_CP_MIFID_49>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_49>

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



<ESMA_QUESTION_CP_MIFID_50>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_50>

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

<ESMA_QUESTION_CP_MIFID_51>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_51>

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

<ESMA_QUESTION_CP_MIFID_52>

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<ESMA_QUESTION_CP_MIFID_52>

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

<ESMA_QUESTION_CP_MIFID_53>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_53>

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

<ESMA_QUESTION_CP_MIFID_54>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_54>

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

<ESMA_QUESTION_CP_MIFID_55>

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<ESMA_QUESTION_CP_MIFID_55>

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

<ESMA_QUESTION_CP_MIFID_56>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_56>

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

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

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

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

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

<ESMA_QUESTION_CP_MIFID_57>

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<ESMA_QUESTION_CP_MIFID_57>

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

<ESMA_QUESTION_CP_MIFID_58>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_58>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_59>

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<ESMA_QUESTION_CP_MIFID_59>

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

<ESMA_QUESTION_CP_MIFID_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_60>

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

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

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

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

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

<ESMA_QUESTION_CP_MIFID_61>

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<ESMA_QUESTION_CP_MIFID_61>

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

<ESMA_QUESTION_CP_MIFID_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_62>

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

<ESMA_QUESTION_CP_MIFID_63>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_63>

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

(1) your alternative proposal

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

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



<ESMA_QUESTION_CP_MIFID_64>

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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.

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TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_65>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_66>

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<ESMA_QUESTION_CP_MIFID_66>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_67>

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<ESMA_QUESTION_CP_MIFID_67>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_68>

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<ESMA_QUESTION_CP_MIFID_68>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_69>

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<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>

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<ESMA_QUESTION_CP_MIFID_70>

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

<ESMA_QUESTION_CP_MIFID_71>

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<ESMA_QUESTION_CP_MIFID_71>

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

<ESMA_QUESTION_CP_MIFID_72>

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<ESMA_QUESTION_CP_MIFID_72>

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



<ESMA_QUESTION_CP_MIFID_73>

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

<ESMA_QUESTION_CP_MIFID_74>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_74>

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

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

<ESMA_QUESTION_CP_MIFID_75>

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

<ESMA_QUESTION_CP_MIFID_76>

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<ESMA_QUESTION_CP_MIFID_76>

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

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



<ESMA_QUESTION_CP_MIFID_77>

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<ESMA_QUESTION_CP_MIFID_77>

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

(1) deferral period set to 48 hours

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

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

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

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1), provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2), provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed (c) irrespective of your preference for option 1 or 2 and, with particular reference to OTC traded interest rates derivatives, provide feedback on the granularity of the tenor buckets defined. In other words, would you use a different level of granularity for maturities shorter than 1 year with respect to those set which are: 1 day- 1.5 months, 1.5-3 months, 3-6 months, 6 months – 1 year? Would you group maturities longer than 1 year into buckets (e.g. 1-2 years, 2-5 years, 5-10 years, 10-30 years and above 30 years)?

<ESMA_QUESTION_CP_MIFID_78>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_78>

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

(1) deferral period set to 48 hours

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

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

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

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

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

<ESMA_QUESTION_CP_MIFID_79>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_79>

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

(1) deferral period set to 48 hours

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

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

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

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

<ESMA_QUESTION_CP_MIFID_80>

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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_83>

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

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

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

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



<ESMA_QUESTION_CP_MIFID_84>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_84>

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

<ESMA_QUESTION_CP_MIFID_85>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_85>

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

<ESMA_QUESTION_CP_MIFID_86>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_86>

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

<ESMA_QUESTION_CP_MIFID_87>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_87>

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

<ESMA_QUESTION_CP_MIFID_88>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_89>

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

<ESMA_QUESTION_CP_MIFID_90>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_90>

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

<ESMA_QUESTION_CP_MIFID_91>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_91>

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



<ESMA_QUESTION_CP_MIFID_92>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_92>

4. Microstructural issues

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

<ESMA_QUESTION_CP_MIFID_93>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_93>

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

<ESMA_QUESTION_CP_MIFID_94>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_94>

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

<ESMA_QUESTION_CP_MIFID_95>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_95>

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

<ESMA_QUESTION_CP_MIFID_96>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_96>

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

<ESMA_QUESTION_CP_MIFID_97>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_97>

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

<ESMA_QUESTION_CP_MIFID_98>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_98>

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

<ESMA_QUESTION_CP_MIFID_99>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_99>

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



<ESMA_QUESTION_CP_MIFID_100>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_100>

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

<ESMA_QUESTION_CP_MIFID_101>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_101>

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

<ESMA_QUESTION_CP_MIFID_102>

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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_105>

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

<ESMA_QUESTION_CP_MIFID_106>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_106>

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

<ESMA_QUESTION_CP_MIFID_107>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_107>

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



<ESMA_QUESTION_CP_MIFID_108>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_108>

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

<ESMA_QUESTION_CP_MIFID_109>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_109>

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

<ESMA_QUESTION_CP_MIFID_110>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_110>

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

<ESMA_QUESTION_CP_MIFID_111>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_111>

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

<ESMA_QUESTION_CP_MIFID_112>

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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_113>

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

<ESMA_QUESTION_CP_MIFID_114>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_114>

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

<ESMA_QUESTION_CP_MIFID_115>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_115>

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



<ESMA_QUESTION_CP_MIFID_116>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_116>

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

<ESMA_QUESTION_CP_MIFID_117>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_117>

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

<ESMA_QUESTION_CP_MIFID_118>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_118>

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

<ESMA_QUESTION_CP_MIFID_119>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_119>

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

<ESMA_QUESTION_CP_MIFID_120>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_120>

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

<ESMA_QUESTION_CP_MIFID_121>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_121>

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

<ESMA_QUESTION_CP_MIFID_122>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_122>

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

<ESMA_QUESTION_CP_MIFID_123>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_123>

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

<ESMA_QUESTION_CP_MIFID_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_124>

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

<ESMA_QUESTION_CP_MIFID_125>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_125>

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

<ESMA_QUESTION_CP_MIFID_126>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_126>

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

<ESMA_QUESTION_CP_MIFID_127>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_127>

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

<ESMA_QUESTION_CP_MIFID_128>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_128>

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

<ESMA_QUESTION_CP_MIFID_129>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_129>

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



<ESMA_QUESTION_CP_MIFID_130>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_130>

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

<ESMA_QUESTION_CP_MIFID_131>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_131>

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

<ESMA_QUESTION_CP_MIFID_132>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_132>

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

<ESMA_QUESTION_CP_MIFID_133>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_133>

5. Data publication and access

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

<ESMA_QUESTION_CP_MIFID_134>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_134>

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

<ESMA_QUESTION_CP_MIFID_135>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_135>

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

<ESMA_QUESTION_CP_MIFID_136>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_136>

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

<ESMA_QUESTION_CP_MIFID_137>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_137>

Q138. Do you agree with ESMA's proposal?

<ESMA_QUESTION_CP_MIFID_138>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_138>

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

<ESMA_QUESTION_CP_MIFID_139>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_140>

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



<ESMA_QUESTION_CP_MIFID_141>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_141>

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

<ESMA_QUESTION_CP_MIFID_142>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_142>

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

<ESMA_QUESTION_CP_MIFID_143>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_143>

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

<ESMA_QUESTION_CP_MIFID_144>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_144>

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

<ESMA_QUESTION_CP_MIFID_145>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_145>

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

<ESMA_QUESTION_CP_MIFID_146>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_146>

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

<ESMA_QUESTION_CP_MIFID_147>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_147>

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



<ESMA_QUESTION_CP_MIFID_148>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_148>

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

<ESMA_QUESTION_CP_MIFID_149>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_149>

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

<ESMA_QUESTION_CP_MIFID_150>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_150>

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

<ESMA_QUESTION_CP_MIFID_151>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_151>

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

<ESMA_QUESTION_CP_MIFID_152>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_152>

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

<ESMA_QUESTION_CP_MIFID_153>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_153>

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

<ESMA_QUESTION_CP_MIFID_154>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_154>

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

<ESMA_QUESTION_CP_MIFID_155>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_155>

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

<ESMA_QUESTION_CP_MIFID_156>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_156>

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

<ESMA_QUESTION_CP_MIFID_157>

Introduction

Recital 40 of MiFIR and Consistency of any Level 2 Measures With Articles 101 and 102 TFEU

MSCI remains deeply concerned that ESMA's broad and expansive interpretation of Article 37 MiFIR could lead to an imposition of universal access and licensing obligations for all indexes, irrespective of their relevance, and the nature and availability of the underlying data. In that connection, MSCI would like to point to recital 40 of MiFIR and the principles following from Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") that those provisions refer to.

Recital 40 of MiFIR provides explicitly that "(t)he licensing duties under [MiFIR] should be without prejudice to the general obligation of proprietary owners of benchmarks under competition law, and Articles 101 and 102 TFEU in particular, concerning access to benchmarks that are indispensable to enter a new market." (Emphasis added). MSCI agrees with this general principle underpinning compulsory licensing of products under EU competition law, as formulated in the case law of the EU Courts.² Against that backdrop, MSCI believes that only inputs which are indispensable to secure interoperability of CCPs and trading venues, and which are otherwise unavailable, should be covered by licensing obligations under Article 37 MiFIR and level 2 measures. Such a reading of Article 37 MiFIR would be consistent both with the general case law of the EU Courts and the objectives pursued by MiFIR itself, as reflected, inter alia, in Recital 40 cited above. Indexes that have reasonable substitutes are not indispensable, precisely because they are substitutable. This is the case for many indexes that measure the same market or strategy, and this is further evidenced by the fact that financial product issuers can and do switch index providers. To that end, ESMA should assess on a case-by-case basis whether and to what extent the access and licensing obligations envisaged in Article 37 are relevant for any given index (category), rather than making such a determination on a generalized and indiscriminate basis for all indexes or for an entire category of indexes across an entire industry.

² Case T-201/04 Microsoft v Commission, judgment of the General Court of 17 September 2007, paras 332-333.

Potential Violation of the Right to Property, the Principle of Proportionality, and the EU's International Legal Commitments under the WTO

An additional and related concern with respect to Article 37 MiFIR and potential level 2 measures is that overly broad and indiscriminate licensing obligations would be irreconcilable with the principles of proportionality and respect for property, as enshrined in EU law, as well as the EU's international obligations, as reflected in the WTO's General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS), in particular.

Article 17 of the Charter, stipulates that “the use of property may be regulated by law in so far as necessary for the general interest.”³ (Emphasis added). This requirement also applies to indexes and certain specific data enshrined in such indexes which are or contain the intellectual property rights of the index or data owners. In the same vein, the lack of a case-by-case assessment of indispensability of an input, where access to such input is mandated by Article 37 MiFIR, would be disproportionate and incompatible with Article 5(4) of the Treaty on the European Union (TEU).⁴ This provision binds both the EU Institutions and specialized agencies, such as ESMA. For similar reasons, the onerous access and licensing obligations under Article 37 MiFIR raise doubts as to their compatibility with certain binding international agreements, such as the WTO GATS and TRIPS Agreements in particular, which contain specific safeguards for providers of certain financial services into the EU market and their intellectual property rights in particular.

MSCI, for these and other reasons, believes that the principle of proportionality and the respect for property rights as referred to above, as well as the international legal obligations to which EU legislation is subject, command a more narrow interpretation of access and licensing obligations under Article 37 MiFIR. Thus, and for the same reasons, any implementing measures elaborated by ESMA should also be based on such a narrow construction of access obligations, rather than a broad and reading of Article 37 which would be inconsistent with both general principles of EU and WTO law.

Specific Issues

- It appears from the wording of Articles 20.4-5 RTS that discrimination with respect to price and non-price conditions in a license agreement would only be permitted if there is an objective justification for such differentiation. That not only goes far beyond EU competition rules but also Article 37 MiFIR as written. EU competition rules condemn discriminatory practices only if the index owner or administrator is dominant in the relevant market, and in the absence of objective justification, or where discrimination is a product of collusive practices. Thus, a blanket prohibition of allegedly discriminatory conditions would be at odds with the principles following from Articles 101 and 102 TFEU. A more narrow application, by contrast, would not raise these legal concerns, or at least would do so only to a lesser extent.

³ OJ C 364/1, 18 December 2000.

⁴ OJ C 83/13, 30 March 2010.

- Regarding Articles 20.3-6 RTS, any provisions prescribing timing and content of delivery of index data and information to trading venues and CCPs would need to be deleted. The timing for disclosures of data and information provided to the market is not within the purview of MiFID II/MiFIR and goes well beyond the powers vested in ESMA under Article 37 MiFIR. Disclosures of information to the market are already governed by laws and regulations relating to selective disclosure and the misuse of material non-public information, globally, and MiFID II/MiFIR should not act to interfere with those laws and regulations. We are not permitted to make any selective disclosures to trading venues or CCPs. Trading venues and CCPs receive information when it's released to the market, not beforehand.
- Article 21.1(c) RTS would also need to be deleted. Many indexes, including many equity indexes, have been calculated for many years, some for over 40 years. To price a futures or options contract at the end of a trading day, 40+ years of historical data is not necessary. What is necessary is the end of day index level. Subjecting historical data to Article 37's compulsory licensing regime goes well beyond the powers vested in ESMA under Article 37 MiFIR because historical data is not necessary for trading and clearing as specifically evidenced by the fact that trading and clearing has been taking place globally for decades without historical data. As such, an obligation to license all historical data, irrespective of its relevance to trading and clearing, would be in breach of the general EU law principle of proportionality, established by the EU jurisprudence and expressed in Article 37 MiFIR, and would violate the data owner's property rights, which are protected under Article 17 of the EU Charter of Fundamental Rights as well as under the EU WTO GATS and TRIPS agreements. Further, given that trading venues and clearing houses have not needed this data and don't receive it currently, index providers would not be able to provide it to other trading venues and clearing houses because that would contravene the requirement in Article 37 MiFIR to operate on a "fair, reasonable, non-discriminatory basis" in Europe. Finally, licensing historical data will give stock exchanges (that are competitors to independent index providers) unnecessary access to valuable data, creating a regulatory advantage in the index industry for stock exchanges that own indexes and index providers and a regulatory disadvantage for independent index providers that are not part of the stock exchange vertical silos. This will distort, rather than promote, competition and as such violates Article 3 b), **Protocol 27 on the internal market and competition and Articles 101 and 102 TFEU.**
- Article 21.2 RTS should not dictate what information should be included in index methodologies. Instead, ESMA should refer to the EU benchmark proposal. Setting forth a different set of inconsistent requirements for index methodologies in Article 37 MiFIR will conflict with the EU benchmark regulation.

<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.

Introduction

Recital 40 of MiFIR and Consistency of any Level 2 Measures With Articles 101 and 102 TFEU

MSCI remains deeply concerned that ESMA's broad and expansive interpretation of Article 37 MiFIR could lead to an imposition of universal access and licensing obligations for all indexes, irrespective of their relevance, and the nature and availability of the underlying data. In that connection, MSCI would like to point to recital 40 of MiFIR and the principles following from Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") that those provisions refer to.

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Potential Violation of the Right to Property, the Principle of Proportionality, and the EU's International Legal Commitments under the WTO

An additional and related concern with respect to Article 37 MiFIR and potential level 2 measures is that overly broad and indiscriminate licensing obligations would be irreconcilable with the principles of proportionality and respect for property, as enshrined in EU law, as well as the EU's international obligations, as reflected in the WTO's General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS), in particular.

⁵ Case T-201/04 Microsoft v Commission, judgment of the General Court of 17 September 2007, paras 332-333.

Article 17 of the Charter, stipulates that “the use of property may be regulated by law in so far as necessary for the general interest.”⁶ (Emphasis added). This requirement also applies to indexes and certain specific data enshrined in such indexes which are or contain the intellectual property rights of the index or data owners. In the same vein, the lack of a case-by-case assessment of indispensability of an input, where access to such input is mandated by Article 37 MiFIR, would be disproportionate and incompatible with Article 5(4) of the Treaty on the European Union (TEU).⁷ This provision binds both the EU Institutions and specialized agencies, such as ESMA. For similar reasons, the onerous access and licensing obligations under Article 37 MiFIR raise doubts as to their compatibility with certain binding international agreements, such as the WTO GATS and TRIPS Agreements in particular, which contain specific safeguards for providers of certain financial services into the EU market and their intellectual property rights in particular.

MSCI, for these and other reasons, believes that the principle of proportionality and the respect for property rights as referred to above, as well as the international legal obligations to which EU legislation is subject, command a more narrow interpretation of access and licensing obligations under Article 37 MiFIR. Thus, and for the same reasons, any implementing measures elaborated by ESMA should also be based on such a narrow construction of access obligations, rather than a broad and reading of Article 37 which would be inconsistent with both general principles of EU and WTO law.

Specific Issues

MSCI very strongly disagrees with the proposed Article 22 RTS.

While it is reasonable to ask index providers to provide to the trading venues and CCPs, the standard license agreement/model for trading venues and CCPs to use index level data for trading and clearing purposes, requiring an artificial laundry list of provisions to be included in agreements that goes well beyond license rights, goes well beyond the powers vested in ESMA under Article 37 MiFIR. There is no justification to intervene in the free negotiation between parties regarding general terms and conditions of license agreements or to dictate the index provider’s policies and procedures. Further, there is no justification to dictate the licensing models or the basis of those licensing models for licensees other than trading venues and clearing houses or to dictate global policies that impact entire client bases, not just trading venues and clearing houses. The beneficiaries of Article 37 MiFIR are trading venues and clearing houses only. It does not extend to other types of licensees of the index provider. Finally, the provisions regarding the benchmark determination process should be left to the EU benchmark proposal. Setting forth standards for benchmark determination process in Article 37 MiFIR appears to be unnecessary and can lead to inconsistent and conflicting regulation.

As such, we believe that all of Article 22 RTS must be deleted.

Recital 10 to the draft RTS notes that the “terms under which access must be permitted should be reasonable and non-discriminatory”. ESMA could achieve this objective by simply providing that owners and administrators should license benchmarks under fair, reasonable,

⁶ OJ C 364/1, 18 December 2000.

⁷ OJ C 83/13, 30 March 2010.

and non-discriminatory conditions (so called FRAND conditions). This approach has been successfully adopted in the field of the EU competition law, and, in view of the objectives of Articles 35 and 36 MiFIR, it would be consistent for ESMA to follow the same principles. Further, we believe that regulators at any time can ask for copies of prices lists and contracts, if there are any concerns. Competition authorities already have the power to pursue investigations if there are competition concerns, which has not been the case to-date in the index industry as far as we are aware.

Specifically,

- Article 22.3 RTS requiring index providers to make their licensing model framework public (including to their competitors) is completely unjustified. It would create competition distortions incompatible with Article 3 b), Protocol 27 and Articles 101 and 102 of the TFEU.
- Articles 22.2 RTS, 22.3 RTS and 22.6 RTS dictate the licensing models and license agreements not only for trading venues and CCPs, but also for all other licensees of index providers. Additionally, Articles 22.5 RTS and 22.7 RTS dictate policies and procedures that would apply not only to trading venues and CCPs, but also to the rest of the index provider's client base. It is absolutely clear in Article 37 MiFIR that CCPs and trading venues are the only intended beneficiaries. Other clients of the index providers are not, and there is no justification for dictating, or interfering with, the contractual relationships and negotiations between index providers and the rest of their client base or the policies and procedures that apply across the index providers' client base. As discussed above, such obligation would go beyond the intended goal of MiFIR to create a competitive trading and clearing environment. EU competition law does not prohibit discrimination, save for dominant undertakings and in the absence of any objective justifications. These considerations should be taken into account when contemplating imposition of a licensing obligation.
- There is simply no justification for dictating whether and how contracts deal with matters such as definitions of confidential information, termination, governing law, dispute resolution, and general communication in Articles 22.5 RTS and 22.7 RTS. It is also impractical and unworkable to embed policies and procedures from Article 22.5 RTS and 22.7 RTS that will change over time, into contracts, including technical requirements in contingency measures consultations, communications, cessation of indexes, technical standards. Again, these policies are the same across a client base and cannot be individually negotiated or embedded into contracts, giving any individual client control of and veto power over any changes to policies and procedures impacting an entire client base.
- Articles 22.7(a), (b), (d), (f), (g) and (h) RTS attempting to prescribe the timing of notifications to the stock exchanges and CCPs on a different basis than other clients of the data interferes with laws and regulations around the world regarding selective disclosure and the misuse of material non-public information. Selective disclosures are not permitted and trading venues and CCPs can only receive information when it's released to the market, not beforehand. Likewise, Sections 22.7(b), (d), (f), and (g) RTS, attempting to prescribe notifications to the stock exchanges and CCPs about material changes to a public company on a different basis than to the public suffers the same problem and interferes with laws and regulations around the world regarding selective disclosure and the misuse of material non-public information.

- Articles 22.5 and 22.7 RTS addressing benchmark determination processes conflict with the EU benchmark proposal as well as the IOSCO Principles for Financial Benchmarks. Another set of rules around the benchmark determination process is unnecessary, confusing and inconsistent with both the EU benchmark proposal and the IOSCO Principles for Financial Benchmarks.

<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>

The factors in Article 23.2 RTS applied individually do not indicate whether an index is a new or different benchmark. For example, you can have sector indexes for different countries or you different sectors for the same countries. You can have ESG and non-ESG indexes. You can have small cap, mid-cap, large cap for the same countries and sectors. You apply faith based screens to all of those combinations. Those are each different and new indexes. As such, there cannot be single determinants applied individually.

<ESMA_QUESTION_CP_MIFID_159>

6. Requirements applying on and to trading venues

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

<ESMA_QUESTION_CP_MIFID_160>

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>

7. Commodity derivatives

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

<ESMA_QUESTION_CP_MIFID_168>

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_173>

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



<ESMA_QUESTION_CP_MIFID_174>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_212>

8. Market data reporting

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

<ESMA_QUESTION_CP_MIFID_213>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_213>

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

<ESMA_QUESTION_CP_MIFID_214>

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<ESMA_QUESTION_CP_MIFID_214>

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

<ESMA_QUESTION_CP_MIFID_215>

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<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

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<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>

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<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>

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<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>

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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>

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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>

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

<ESMA_QUESTION_CP_MIFID_222>

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<ESMA_QUESTION_CP_MIFID_222>

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

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

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<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

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<ESMA_QUESTION_CP_MIFID_225>

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

<ESMA_QUESTION_CP_MIFID_226>

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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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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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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>

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

<ESMA_QUESTION_CP_MIFID_232>

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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>

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<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>

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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.



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

<ESMA_QUESTION_CP_MIFID_236>

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

<ESMA_QUESTION_CP_MIFID_237>

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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>

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<ESMA_QUESTION_CP_MIFID_238>

9. Post-trading issues

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

<ESMA_QUESTION_CP_MIFID_239>

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

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

<ESMA_QUESTION_CP_MIFID_241>

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

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

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

<ESMA_QUESTION_CP_MIFID_244>

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



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