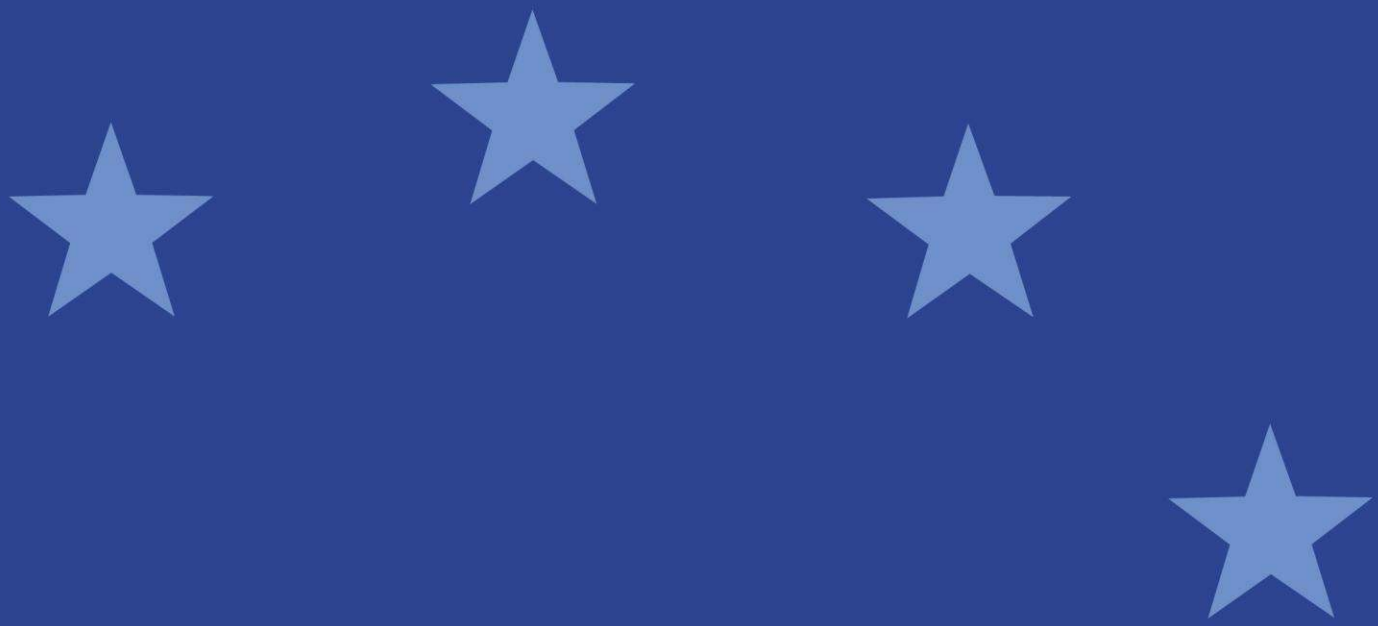
esma European Securities and Markets Authority

Reply form for the ESMA MiFID II/MiFIR Discussion Paper



22 May 2014

European Securities and Markets Authority

Date: 22 May 2014

Responding to this paper

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

Instructions

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

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

ii. do not remove the tags of type <ESMA_QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and

iii. if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

i. if they respond to the question stated;

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

iii. describe any alternatives that ESMA should consider

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

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

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

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

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Disclaimer'.

1. Overview

2. Investor protection

2.1. Authorisation of investment firms

Q1: Do you agree that the existing work/standards set out in points Fehler! Verweisquelle konnte nicht gefunden werden. **and** Fehler! Verweisquelle konnte nicht gefunden werden. Fehler! Verweisquelle konnte nicht gefunden werden. **provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?**

<ESMA_QUESTION_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_1>

Q2: What areas of these existing standards do you consider require adjustment, and in what way should they be adjusted?

<ESMA_QUESTION_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_2>

Q3: Do you consider that the list of information set out in point Fehler! Verweisquelle konnte nicht gefunden werden. **should be provided to Home State NCAs? If not, what other information should ESMA consider?**

<ESMA_QUESTION_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_3>

Q4: Are there any other elements which may help to assess whether the main activities of an applicant investment firm is not in the territory where the application is made?

<ESMA_QUESTION_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_4>

Q5: How much would one-off costs incurred during the authorisation process increase, compared to current practices, in order to meet the requirements suggested in this section?

<ESMA_QUESTION_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_5>

Q6: Are there any particular items of information suggested above that would take significant time or cost to produce and if so, do you have alternative suggestions that would reduce the time/cost for firms yet provide the same assurance to NCAs?

<ESMA_QUESTION_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_6>

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

Q7: Do you agree that development of technical standards required under Articles 34 and 35 of MiFID II should be based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications (CESR/07-317c)? If not, what are the specific areas in the existing CESR standards requiring review and adjustment?

<ESMA_QUESTION_7>
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<ESMA_QUESTION_7>

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

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

<ESMA_QUESTION_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_8>

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

<ESMA_QUESTION_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_9>

Q10: Should the data publication obligation apply to every financial instrument traded on the execution venue? Alternatively, should there be a minimum threshold of activity and, if so, how should it be defined (for example, frequency of trades, number of trades, turnover etc.)?

<ESMA_QUESTION_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_10>

Q11: How often should all execution data be published by trading venues? Is the minimum requirement specified in MiFID II sufficient, or should this frequency be increased? Is it reasonable or beneficial to require publication on a monthly basis and is it possible to reliably estimate the marginal cost of increased frequency?

<ESMA_QUESTION_11>
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<ESMA_QUESTION_11>

Q12: Please provide an estimate of the cost of the necessary IT development for the production and the publication of such reporting.

<ESMA_QUESTION_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_12>

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

<ESMA_QUESTION_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_13>

Q14: Is the volume of orders received and executed a good indicator for investment firms to compare execution venues? Would the VBBO in a single stock published at the same time also be a good indicator by facilitating the creation of a periodic European price benchmark? Are there other indicators to be considered?

<ESMA_QUESTION_14>
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<ESMA_QUESTION_14>

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

<ESMA_QUESTION_15>
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<ESMA_QUESTION_15>

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

<ESMA_QUESTION_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_16>

Q17: If available liquidity and execution quality are a function of order size, is it appropriate to split trades into ranges so that they are comparable? How should they be defined (for example, as a percentage of the average trading size of the financial instrument on the execution venue; fixed ranges by volume or value; or in another manner)?

<ESMA_QUESTION_17>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_17>

Q18: Do you agree that a benchmark price is needed to evaluate execution quality? Would a depth-weighted benchmark that relates in size to the executed order be appropriate or, if not, could you provide alternative suggestions together with justification?

<ESMA_QUESTION_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_18>

Q19: What kind of cost should be reported (e.g. regulatory levies, taxes, mandatory clearing fees) and how should this data be presented to enable recipients to assess the total consideration of transactions?

<ESMA_QUESTION_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_19>

Q20: What would be the most appropriate way to measure the likelihood of execution in order to get useful data? Would it be a good indicator for likelihood of execution to measure the percentage of orders not executed at the end of the applicable trading period (for example the end of each trading day)? Should the modification of an order be taken into consideration?

<ESMA_QUESTION_20>
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<ESMA_QUESTION_20>

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

<ESMA_QUESTION_21>
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<ESMA_QUESTION_21>

Q22: Are there other criteria (qualitative or quantitative) that are particularly relevant (e.g. market structures providing for a guarantee of settlement of the trades vs OTC deals; robustness of the market infrastructure due to the existence of circuit breakers)?

<ESMA_QUESTION_22>
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<ESMA_QUESTION_22>

Q23: Is data on orders cancelled useful and if so, on what time basis should it be computed (e.g. within a single trading day)?

<ESMA_QUESTION_23>
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<ESMA_QUESTION_23>

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

<ESMA_QUESTION_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_24>

Q25: What additional measures are required to define or capture the above data and relevant additional information (e.g. depth weighted spreads, book depths, or others) How should the data be presented: on an average basis such as daily, weekly or monthly for each financial instrument (or on more than one basis)? Do you think that the metrics captured in the Annex to this chapter are relevant to European markets trading in the full range of MiFID instruments? What alternative could you propose?

<ESMA_QUESTION_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_25>

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

<ESMA_QUESTION_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_26>

Q27: Would increasing the frequency of venue execution quality data generate additional costs for you? Would these costs arise as a result of an increase of the frequency of the review, or because this review will require additional training for your staff in order to be able to analyse and take into account these data? Please provide an estimate of these costs.

<ESMA_QUESTION_27>
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<ESMA_QUESTION_27>

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

<ESMA_QUESTION_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_28>

2.4. Best execution - publication of data by investment firms

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

<ESMA_QUESTION_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_29>

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

<ESMA_QUESTION_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_30>

Q31: Do you think that the data provided should be different in cases when the firm directly executes the orders to when the firm transmits the orders to a third-party for execution? If yes, please indicate what the differences should be, and explain why.

<ESMA_QUESTION_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_31>

Q32: Do you consider that information on both directed and non-directed orders is useful? Should the data be aggregated so that both types of order are shown together or separated? Should there be a similar approach to disclosure of information on market orders versus limit orders? Do you think that another categorisation of client orders could be useful?

<ESMA_QUESTION_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_32>

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

<ESMA_QUESTION_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_33>

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

<ESMA_QUESTION_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_34>

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

<ESMA_QUESTION_35>
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<ESMA_QUESTION_35>

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

<ESMA_QUESTION_36>
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<ESMA_QUESTION_36>

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

<ESMA_QUESTION_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_37>

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

<ESMA_QUESTION_38>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_38>

Q39: Minimum standards to ensure that the summary of the firm's internal execution quality monitoring of their top five execution venues (in terms of trading volumes) is comprehensive and contains sufficient analysis or context to allow it to be understood by market participants shall include the factors set out at paragraph 29. Do you agree with this analysis or are there any other relevant factors that should be considered as minimum standards for reporting?

<ESMA_QUESTION_39>
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<ESMA_QUESTION_39>

Q40: Can you recommend an alternative approach to the provision of information on execution quality obtained by investment firms, which is consistent with Article 27(6) of MiFID II and with ESMA's overall objective to ensure proportionate implementation?

<ESMA_QUESTION_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_40>

Q41: Do you agree that ESMA should try to limit the number of definitions of classes of instruments and provide a classification that can be used for the different reports established by MiFID and MiFIR?

<ESMA_QUESTION_41>
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<ESMA_QUESTION_41>

Q42: If this approach is not viable how should these classes be defined? What elements should be taken into consideration for that classification? Please explain the rationale of your classification. Is there a need to delay the publication of the reporting for particular class of financial instruments? If the schedule has to be defined, what timeframe would be the most relevant?

<ESMA_QUESTION_42>
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<ESMA_QUESTION_42>

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

<ESMA_QUESTION_43>
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<ESMA_QUESTION_43>

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

<ESMA_QUESTION_44>
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<ESMA_QUESTION_44>

3. Transparency

3.1. Pre-trade transparency - Equities

Q45: What in your view would be the minimum content of information that would make an indication of interest actionable? Please provide arguments with your answer.

<ESMA_QUESTION_45>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_45>

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

<ESMA_QUESTION_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_46>

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

<ESMA_QUESTION_47>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_47>

Q48: Do you agree with ESMA's view that ADT remains a valid measure for determining when an order is large in scale compared to normal market size? If not, what other measure would you suggest as a substitute or complement to the ADT? Please provide reasons for your answer.

<ESMA_QUESTION_48>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_48>

Q49: Do you agree that ADT should be used as an indicator also for the MiFIR equity-like products (depositary receipts, ETFs and certificates)? Please provide reasons for your answers.

<ESMA_QUESTION_49>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_49>

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

<ESMA_QUESTION_50>
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<ESMA_QUESTION_50>

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

<ESMA_QUESTION_51>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_51>

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

<ESMA_QUESTION_52>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_52>

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

<ESMA_QUESTION_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_53>

Q54: Do you agree with the ADT ranges selected? Do you agree with the large in scale thresholds set for each ADT class? Which is your preferred option? Would you calibrate the ADT classes and related large in scale thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA_QUESTION_54>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_54>

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

<ESMA_QUESTION_55>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_55>

Q56: Do you agree that the same ADT classes should be used for both pre-trade and post-trade transparency? Please provide reasons for your answers.

<ESMA_QUESTION_56>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_56>

Q57: How would you calibrate the large in scale thresholds for each ADT class for pre- and post-trade transparency? Please provide reasons for your answers.

<ESMA_QUESTION_57>
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<ESMA_QUESTION_57>

Q58: Do you agree with ESMA's view that the large in scale thresholds (i.e. the minimum size of orders qualifying as large in scale and the ADT classes) should be subject to a review no earlier than two years after MiFIR and Level 2 apply in practice?

<ESMA_QUESTION_58>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_58>

Q59: How frequently do you think the calculation per financial instrument should be performed to determine within which large in scale class it falls? Which combination of frequency and period would you recommend?

<ESMA_QUESTION_59>
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<ESMA_QUESTION_59>

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

<ESMA_QUESTION_60>
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<ESMA_QUESTION_60>

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

<ESMA_QUESTION_61>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_61>

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

<ESMA_QUESTION_62>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_62>

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

<ESMA_QUESTION_63>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_63>

Q64: Do you agree that these are the two main groups of order management facilities ESMA should focus on or are there others?

<ESMA_QUESTION_64>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_64>

Q65: Do you agree with ESMA's general assessment on how to design future implementing measures for the order management facility waiver? Please provide reasons for your answer.

<ESMA_QUESTION_65>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_65>

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

<ESMA_QUESTION_66>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_66>

Q67: Do you agree that the minimum size for a stop order should be set at the minimum tradable quantity of shares in the relevant trading venue? Please provide reasons for your answer.

<ESMA_QUESTION_67>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_67>

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

<ESMA_QUESTION_68>
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<ESMA_QUESTION_68>

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

<ESMA_QUESTION_69>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_69>

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

<ESMA_QUESTION_70>
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<ESMA_QUESTION_70>

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

<ESMA_QUESTION_71>
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<ESMA_QUESTION_71>

Q72: Which methods for determining peaks should be prescribed by implementing measures, for example, should these be purely abstract criteria or a measure expressed in percentages against the overall size of the iceberg order? To what level of details should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?

<ESMA_QUESTION_72>
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<ESMA_QUESTION_72>

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

<ESMA_QUESTION_73>
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<ESMA_QUESTION_73>

3.2. Post-trade transparency - Equities

Q74: Do you agree that the content of the information currently required under existing MiFID is still valid for shares and applicable to equity-like instruments? Please provide reasons for your answer.

<ESMA_QUESTION_74>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_74>

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

<ESMA_QUESTION_75>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_75>

Q76: Do you think that the current post-trade regime should be retained or that the identity of the systematic internaliser is relevant information which should be published? Please provide reasons for your response, distinguishing between liquid shares and illiquid shares.

<ESMA_QUESTION_76>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_76>

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

<ESMA_QUESTION_77>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_77>

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

<ESMA_QUESTION_78>
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<ESMA_QUESTION_78>

Q79: Do you support the proposal to introduce a flag for trades that benefit from the large in scale deferral? Please provide reasons for your response.

<ESMA_QUESTION_79>
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<ESMA_QUESTION_79>

Q80: What is your view on requiring post-trade reports to identify the market mechanism, the trading mode and the publication mode in addition to the flags for the different types of transactions proposed in the table above? Please provide reasons for your answer.

<ESMA_QUESTION_80>
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<ESMA_QUESTION_80>

Q81: For which transactions captured by Article 20(1) would you consider specifying additional flags as foreseen by Article 20(3)(b) as useful?

<ESMA_QUESTION_81>
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<ESMA_QUESTION_81>

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

<ESMA_QUESTION_82>
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<ESMA_QUESTION_82>

Q83: Do you agree with the proposed shortening of the maximum permissible delay to 1 minute? Do you see any reason to have a different maximum permissible deferral of publication for any equity-like instrument? Please provide reasons for your answer

<ESMA_QUESTION_83>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_83>

Q84: Should the deferred publication regime be subject to the condition that the transaction is between an investment firm dealing on own account and a client of the firm? Please provide reasons for your answer.

<ESMA_QUESTION_84>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_84>

Q85: Which of the two options do you prefer in relation to the deferral periods for large in scale transactions (or do you prefer another option that has not been proposed)? Please provide reasons for your answer

<ESMA_QUESTION_85>
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<ESMA_QUESTION_85>

Q86: Do you see merit in adding more ADT classes and adjusting the large in scale thresholds as proposed? Please provide alternatives if you disagree with ESMA's proposal

<ESMA_QUESTION_86>
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<ESMA_QUESTION_86>

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

<ESMA_QUESTION_87>
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<ESMA_QUESTION_87>

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

<ESMA_QUESTION_88>
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<ESMA_QUESTION_88>

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

<ESMA_QUESTION_89>
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<ESMA_QUESTION_89>

Q90: Do you agree with ESMA's preliminary view of applying the same ADT classes to the pre-trade and post-trade transparency regimes for ETFs? Please provide reasons for your answer.

<ESMA_QUESTION_90>
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<ESMA_QUESTION_90>

3.3. Systematic Internaliser Regime - Equities

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

<ESMA_QUESTION_91>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_91>

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

<ESMA_QUESTION_92>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_92>

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

<ESMA_QUESTION_93>
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<ESMA_QUESTION_93>

Q94: What are your views regarding how financial instruments should be grouped into classes and/or how the standard market size for each class should be established for certificates and exchange traded funds?

<ESMA_QUESTION_94>
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<ESMA_QUESTION_94>

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

Q95: Do you consider that the determination of what is non-systematic, ad-hoc, irregular and infrequent should be defined within the same parameters applicable for the systematic internaliser definition? In the case of the exemption to the trading obligation for shares, should the frequency concept be more restrictive taking into consideration the other factors, i.e. 'ad-hoc' and 'irregular'?

<ESMA_QUESTION_95>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_95>

Q96: Do you agree with the list of examples of trades that do not contribute to the price discovery process? In case of an exhaustive list_would you add any other type of transaction? Would you exclude any of them? Please, provide reasons for your response.

<ESMA_QUESTION_96>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_96>

Q97: Do you consider it appropriate to include benchmark and/or portfolio trades in the list of those transactions determined by factors other than the current valuation of the share? If not, please provide an explanation with your response.

<ESMA_QUESTION_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_97>

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

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

<ESMA_QUESTION_98>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_98>

Q99: For the purposes of transparency, should structured finance products be identified in order to distinguish them from other non-equity transferable securities? If so, how should this be done?

<ESMA_QUESTION_99>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_99>

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

<ESMA_QUESTION_100>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_100>

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

<ESMA_QUESTION_101>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_101>

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

<ESMA_QUESTION_102>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_102>

3.6. Liquid market definition for non-equity financial instruments

Q103: Do you agree with the proposed approach? If you do not agree please provide reasons for your answers. Could you provide for an alternative approach?

<ESMA_QUESTION_103>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_103>

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

<ESMA_QUESTION_104>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_104>

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

<ESMA_QUESTION_105>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_105>

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

<ESMA_QUESTION_106>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_106>

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

<ESMA_QUESTION_107>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_107>

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

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>

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

<ESMA_QUESTION_109>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_109>

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

<ESMA_QUESTION_110>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_110>

Q111: Overall, could you think of an alternative approach on how to assess whether a market is liquid bearing in mind the various elements of the liquid market definition in MiFIR?

<ESMA_QUESTION_111>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_111>

Q112: Which is your preferred scenario or which combination of thresholds would you propose for defining a liquid market for bonds or for a sub-category of bonds (sovereign, corporate, covered, convertible, etc.)? Please provide reasons for your answer.

<ESMA_QUESTION_112>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_112>

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

<ESMA_QUESTION_113>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_113>

Q114: Do you have any (alternative) proposals how to take the 'range of market conditions and the life-cycle' of (classes of) financial instruments into account - other than the periodic reviews described in the sections periodic review of the liquidity threshold and periodic assessment of the liquidity of the instrument class, above?

<ESMA_QUESTION_114>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_114>

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

<ESMA_QUESTION_115>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_115>

Q116: Do you think that, in the context of the liquidity thresholds to be calculated under MiFID II, the classification in Annex 3.6.1 is relevant? Which product types or sub-product types would you be inclined to create or merge? Please provide reasons for your answers

<ESMA_QUESTION_116>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_116>

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

<ESMA_QUESTION_117>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_117>

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

<ESMA_QUESTION_118>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_118>

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

Q119: Do you agree with the description of request-for-quote system? If not, how would you describe a request-for-quote system? Please give reasons to support your answer.

<ESMA_QUESTION_119>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_119>

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

<ESMA_QUESTION_120>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_120>

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

<ESMA_QUESTION_121>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_121>

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

<ESMA_QUESTION_122>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_122>

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

<ESMA_QUESTION_123>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_123>

Q124: Do you think that the information to be made public for each type of trading system provides adequate transparency for each trading system?

<ESMA_QUESTION_124>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_124>

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

<ESMA_QUESTION_125>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_125>

Q126: If you think that additional trading systems should be considered, what information do you think should be made public for each additional type of trading model?

<ESMA_QUESTION_126>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_126>

Q127: Based on your experience, what are the different types of voice trading systems in the market currently? What specific characteristics do these systems have?

<ESMA_QUESTION_127>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_127>

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

<ESMA_QUESTION_128>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_128>

Q129: Do you agree with ESMA's approach in relation to the content, method and timing of pre-trade information being made available to the wider public?

<ESMA_QUESTION_129>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_129>

Q130: Do you agree with the above mentioned approach with regard to indicative pre-trade bid and offer prices which are close to the price of the trading interests? Please give reasons to support your answer

<ESMA_QUESTION_130>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_130>

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

<ESMA_QUESTION_131>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_131>

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

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

<ESMA_QUESTION_132>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_132>

Q133: Do you think that the current post-trade regime for shares on the systematic internaliser's identity should be extended to non-equity instruments or that the systematic internaliser's identity is relevant information which should be published without exception?

<ESMA_QUESTION_133>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_133>

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

<ESMA_QUESTION_134>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_134>

Q135: Do you agree with the proposed table of identifiers for transactions executed on non-equity instruments? Please provide reasons for your answer.

<ESMA_QUESTION_135>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_135>

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

<ESMA_QUESTION_136>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_136>

Q137: Do you think a flag related to coupon payments (ex/cum) should be introduced? If yes, please describe the cases where such flags would be warranted and which information should be captured.

<ESMA_QUESTION_137>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_137>

Q138: Do you think that give-up/give-in trades (identified with a flag) should be included in post-trade reports or not made public? Please provide reasons for your answers.

<ESMA_QUESTION_138>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_138>

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

<ESMA_QUESTION_139>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_139>

Q140: Do you agree that for the initial application of the new transparency regime the information should be made public within five minutes after the relevant non-equity transaction? Please provide reasons for your answer.

<ESMA_QUESTION_140>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_140>

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

<ESMA_QUESTION_141>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_141>

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

<ESMA_QUESTION_142>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_142>

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

<ESMA_QUESTION_143>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_143>

Q144: Do you consider there are reasons for applying different deferral periods to different asset classes, e.g. fixing specific deferral periods for sovereign bonds? Please provide arguments to support your answer.

<ESMA_QUESTION_144>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_144>

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

<ESMA_QUESTION_145>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_145>

Q146: Do you think that one universal deferral period is appropriate for all non-equity instruments which do not have a liquid market or that the deferrals should be set at a more granular level, depending on asset class and even sub asset class. Please provide reasons for your answer.

<ESMA_QUESTION_146>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_146>

Q147: Do you agree with the proposal that during the deferred period for non-equity instruments which do not have a liquid market, the volume of the transaction should be omitted but all the other details of individual transactions must be published? Please provide reasons for your answer.

<ESMA_QUESTION_147>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_147>

Q148: Do you agree that publication in an aggregated form with respect to sovereign debt should be authorised for an indefinite period only in limited circumstances? Please give reasons for your answers. If you disagree, what alternative approaches would you propose?

<ESMA_QUESTION_148>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_148>

Q149: In your view, which criteria and/or conditions would it be appropriate to specify as indicating there is a need to authorise extended/indefinite deferrals for sovereign debt??

<ESMA_QUESTION_149>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_149>

Q150: In your view, could those transactions determined by other factors than the valuation of the instrument be authorised for deferred publication to the end of day? Please provide reasons for your answer.

<ESMA_QUESTION_150>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_150>

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

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

<ESMA_QUESTION_151>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_151>

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

<ESMA_QUESTION_152>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_152>

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

<ESMA_QUESTION_153>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_153>

Q154: Do you agree with the proposed approach? If no, which indicator would you consider more appropriate for the determination of large in scale thresholds for orders and transactions?

<ESMA_QUESTION_154>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_154>

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

<ESMA_QUESTION_155>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_155>

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

<ESMA_QUESTION_156>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_156>

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

<ESMA_QUESTION_157>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_157>

Q158: In your view, should large in scale thresholds for orders differ from the large in scale thresholds for transactions? If yes, which thresholds should be higher: pre-trade or post-trade? Please provide reasons to support your answer.

<ESMA_QUESTION_158>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_158>

Q159: Do you agree that the large in scale thresholds should be computed only on the basis of transactions carried out on trading venues following the implementation of MiFID II? Please, provide reasons for the answer.

<ESMA_QUESTION_159>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_159>

Q160: Do you think that the condition for deferred publication of large in scale transactions currently applying to shares (transaction is between an investment firm that deals on own account and a client of the investment firm) is applicable to non-equity instruments? Please provide reasons for your answer.

<ESMA_QUESTION_160>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_160>

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

<ESMA_QUESTION_161>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_161>

3.10. Size specific to the instrument

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

<ESMA_QUESTION_162>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_162>

Q163: Do you agree with the proposal that the size specific to the instrument should be set as a percentage of the large in scale size? Please provide reasons for you answer.

<ESMA_QUESTION_163>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_163>

Q164: In your view, what methodologies would be most appropriate for measuring the undue risk in order to set the size specific threshold?

<ESMA_QUESTION_164>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_164>

Q165: Would you suggest any other practical ways in which ESMA could take into account whether, at such sizes, liquidity providers would be able to hedge their risks?

<ESMA_QUESTION_165>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_165>

Q166: Do you agree with ESMA's description of how the size specific to the instrument waiver would interact with the large in scale waiver? Please provide reasons for your answer.

<ESMA_QUESTION_166>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_166>

Q167: Do you agree with ESMA's description of how the size specific to the instrument deferrals would interact with the large in scale deferrals? In particular, do you agree that the deferral periods for the size specific to the instrument and the large in scale should differ and have any specific proposals on how the deferral periods should be calibrated? Please provide reasons for your answer.

<ESMA_QUESTION_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_167>

3.11. The Trading Obligation for Derivatives

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

<ESMA_QUESTION_168>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_168>

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

<ESMA_QUESTION_169>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_169>

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

<ESMA_QUESTION_170>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_170>

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

<ESMA_QUESTION_171>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_171>

Q172: The discussion in section 3.6 on the liquid market for non-equity instruments around 'average frequency', 'average size', 'number and type of active market participants' and average size of spreads is also relevant to this chapter and we would welcome respondent's views on any differences in how the trading obligation procedure should approach the following:

<ESMA_QUESTION_172>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_172>

Q173: Do you have a view on how ESMA should approach data gathering about a product's life cycle, and how a dynamic calibration across that life cycle might work? How frequently should ESMA revisit its assumptions? What factors might lead the reduction of the liquidity of a contract currently traded on venue? Are you able to share with ESMA any analysis related to product lifecycles?

<ESMA_QUESTION_173>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_173>

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

<ESMA_QUESTION_174>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_174>

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

<ESMA_QUESTION_175>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_175>

3.12. Transparency Requirements for the Members of ESCB

Q176: Do you agree that the above identifies the types of operations that can be undertaken by a member of the ESCB for the purpose of monetary, foreign exchange and financial stability policy and that are within the MiFID scope? Please give reasons to support your answer.

<ESMA_QUESTION_176>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_176>

Q177: What is your view about the types of transactions for which the member of the ESCB would be able to provide prior notification that the transaction is exempt?

<ESMA_QUESTION_177>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_177>

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

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

<ESMA_QUESTION_178>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_178>

Q179: Do you have proposals on how NCAs could collect specific information on the number and type of market participants in a product?

<ESMA_QUESTION_179>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_179>

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

<ESMA_QUESTION_180>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_180>

Q181: How often should data be requested in respect of newly issued instruments in order to classify them correctly based on their actual liquidity?

<ESMA_QUESTION_181>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_181>

Q182: What is your view of ESMA's initial assessment of the format of data requests and do you have any proposals for making requests cost-efficient and useful for all parties involved?

<ESMA_QUESTION_182>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_182>

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

<ESMA_QUESTION_183>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_183>

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

<ESMA_QUESTION_184>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_184>

4. Microstructural issues

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

Q185: Is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be addressed in the RTS relating to Articles 17, 48 and 49 of MiFID II?

<ESMA_QUESTION_185>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_185>

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

<ESMA_QUESTION_186>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_186>

Q187: Do you agree that the requirements under Articles 48 and 49 of MiFID II are only relevant for continuous auction order book systems and quote-driven trading systems and not for the other systems mentioned above?

<ESMA_QUESTION_187>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_187>

Q188: Which hybrid systems, if any, should be considered within the scope of Articles 48 and 49, and why?

<ESMA_QUESTION_188>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_188>

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

<ESMA_QUESTION_189>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_189>

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

<ESMA_QUESTION_190>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_190>

Q191: Is the requirement that real time monitoring should take place with a delay of maximum 5 seconds appropriate for the risks inherent to algorithmic trading and from an operational perspective? Should the time frame be longer or shorter? Please state your reasons.

<ESMA_QUESTION_191>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_191>

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

<ESMA_QUESTION_192>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_192>

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

<ESMA_QUESTION_193>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_193>

Q194: Do you agree with the aboveapproach?

<ESMA_QUESTION_194>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_194>

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

<ESMA_QUESTION_195>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_195>

Q196: Would the MiFID II organisational requirements for investment firms undertaking algorithmic trading fit all the types of investment firms you are aware of? Please elaborate.

<ESMA_QUESTION_196>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_196>

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

<ESMA_QUESTION_197>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_197>

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

<ESMA_QUESTION_198>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_198>

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

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

<ESMA_QUESTION_199>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_199>

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

<ESMA_QUESTION_200>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_200>

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

<ESMA_QUESTION_201>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_201>

Q202: Do you agree with ESMA's approach regarding the conditions under which investment firms should make use of non-live trading venue testing environments? Please elaborate.

<ESMA_QUESTION_202>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_202>

Q203: Do you consider that ESMA should specify more in detail what should be the minimum functionality or the types of testing that should be carried out in non-live trading venue testing environments, and if so, which?

<ESMA_QUESTION_203>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_203>

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

<ESMA_QUESTION_204>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_204>

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

<ESMA_QUESTION_205>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_205>

Q206: To what extent do you agree with the usage of drop copies in the context of monitoring? Which sources of drop copies would be most important?

<ESMA_QUESTION_206>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_206>

Q207: Do you agree with the proposed approach?

<ESMA_QUESTION_207>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_207>

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

<ESMA_QUESTION_208>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_208>

Q209: To what extent do you consider it appropriate to request having all the pre-trade controls in place? In which cases would it not be appropriate? Please elaborate.

<ESMA_QUESTION_209>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_209>

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

<ESMA_QUESTION_210>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_210>

Q211: In particular, what are your views regarding the storage of the parameters used to calibrate the trading algorithms and the market data messages on which the algorithm's decision is based?

<ESMA_QUESTION_211>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_211>

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

<ESMA_QUESTION_212>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_212>

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

<ESMA_QUESTION_213>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_213>

Q214: Periodic reviews – would a minimum requirement of undertaking reviews on a half-yearly basis seem reasonable for investment firms engaged in algorithmic trading activity, and if not, what would be an appropriate minimum interval for undertaking such reviews? Should a more prescriptive rule be set as to when more frequent reviews need be taken?

<ESMA_QUESTION_214>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_214>

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

<ESMA_QUESTION_215>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_215>

Q216: What is your opinion of the elements that the DEA provider should take into account when performing the due diligence assessment? In your opinion, should any elements be added or removed? If so, which?

<ESMA_QUESTION_216>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_216>

Q217: Do you agree that for assessing the adequacy of the systems and controls of a prospective DEA user, the DEA provider should use the systems and controls requirements applied by trading venues for members as a benchmark?

<ESMA_QUESTION_217>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_217>

Q218: Do you agree that a long term prior relationship (in other areas of service than DEA) between the investment firm and a client facilitates the due diligence process for providing DEA and, thus, additional precautions and diligence are needed when allowing a new client (to whom the investment firm has never provided any other services previously) to use DEA? If yes, to what extent does a long term relationship between the investment firm and a client facilitate the due diligence process of the DEA provider? Please elaborate.

<ESMA_QUESTION_218>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_218>

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

<ESMA_QUESTION_219>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_219>

Q220: Do you agree with the above approach, specifically with regard to the granular identification of DEA user order flow as separate from the firm's other order flow? Please elaborate.

<ESMA_QUESTION_220>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_220>

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

<ESMA_QUESTION_221>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_221>

Q222: Should clearing firms disclose their criteria (some or all of them) in order to help potential clients to assess their ability to become clients of clearing firms (either publicly or on request from prospective clients)?

<ESMA_QUESTION_222>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_222>

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

<ESMA_QUESTION_223>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_223>

Q224: Should clearing firms have any arrangement(s) other than position limits and margins to limit their risk exposure to clients (counterparty, liquidity, operational and any other risks)? For example, should clearing firms stress-test clients' positions that could pose material risk to the clearing firms, test their own ability to meet initial margin and variation margin requirements, test their own ability to liquidate their clients' positions in an orderly manner and estimate the cost of the liquidation, test their own credit lines?

<ESMA_QUESTION_224>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_224>

Q225: How regularly should clearing firms monitor their clients' compliance with such limits and margin requirements (e.g. intra-day, overnight) and any other tests, as applicable?

<ESMA_QUESTION_225>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_225>

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

<ESMA_QUESTION_226>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_226>

Q227: How should clearing firms manage their risks in relation to orders from managers on behalf of multiple clients for execution as a block and post-trade allocation to individual accounts for clearing?

<ESMA_QUESTION_227>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_227>

Q228: Which type(s) of automated systems would enable clearing members to monitor their risks (including clients' compliance with limits)? Which criteria should apply to any such automated systems (e.g. should they enable clearing firms to screen clients' orders for compliance with the relevant limits etc.)?

<ESMA_QUESTION_228>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_228>

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

Q229: Do you agree with requiring trading venues to perform due diligence on all types of entities willing to become members/participants of a trading venue which permits algorithmic trading through its systems?

<ESMA_QUESTION_229>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_229>

Q230: Do you agree with the list of minimum requirements that in all cases trading venues should assess prior to granting and while maintaining membership? Should the requirements for entities not authorised as credit institutions or not registered as investment firms be more stringent than for those who are qualified as such?

<ESMA_QUESTION_230>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_230>

Q231: If you agree that non-investment firms and non-credit institutions should be subject to more stringent requirements to become member or participants, which type of additional information should they provide to trading venues?

<ESMA_QUESTION_231>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_231>

Q232: Do you agree with the list of parameters to be monitored in real time by trading venues? Would you add/delete/redefine any of them? In particular, are there any trading models permitting algorithmic trading through their systems for which that list would be inadequate? Please elaborate.

<ESMA_QUESTION_232>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_232>

Q233: Regarding the periodic review of the systems, is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be included?

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

Q234: Do you agree with the above approach?

<ESMA_QUESTION_234>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_234>

Q235: Do you think ESMA should determine minimum standards in terms of latency or is it preferable to consider as a benchmark of performance the principle "no order lost, no transaction lost"?

<ESMA_QUESTION_235>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_235>

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

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_236>

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

<ESMA_QUESTION_237>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_237>

Q238: Do you agree with the publication of the general framework by the trading venues? Where would it be necessary to have more/less granularity?

<ESMA_QUESTION_238>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_238>

Q239: Which in your opinion is the degree of discretion that trading venues should have when deciding to cancel, vary or correct orders and transactions?

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_239>

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

<ESMA_QUESTION_240>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_240>

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

<ESMA_QUESTION_241>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_241>

Q242: Should trading venues also make the actual thresholds in place public? In your view, would this publication offer market participants the necessary predictability and certainty, or would it entail risks? Please elaborate.

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>

Q243: Do you agree with the proposal above?

<ESMA_QUESTION_243>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_243>

Q244: Should trading venues have the ability to impose the process, content and timing of conformance tests? If yes, should they charge for this service separately?

<ESMA_QUESTION_244>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_244>

Q245: Should alternative means of conformance testing be permitted?

<ESMA_QUESTION_245>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_245>

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

<ESMA_QUESTION_246>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_246>

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

<ESMA_QUESTION_247>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_247>

Q248: Do you agree with the proposed approach?

<ESMA_QUESTION_248>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_248>

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

<ESMA_QUESTION_249>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_249>

Q250: Do you agree that for the purposes of Article 48(5) the relevant market in terms of liquidity should be determined according to the approach described above? If, not, please state your reasons.

<ESMA_QUESTION_250>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_250>

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

<ESMA_QUESTION_251>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_251>

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

<ESMA_QUESTION_252>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_252>

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

<ESMA_QUESTION_253>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_253>

Q254: Do you agree with the list of elements that should be published by trading venues to permit the provision of DEA to its members or participants?

<ESMA_QUESTION_254>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_254>

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

<ESMA_QUESTION_255>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_255>

Q256: Do you consider it is necessary to clarify anything in relation to the description of the responsibility regime?

<ESMA_QUESTION_256>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_256>

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

<ESMA_QUESTION_257>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_257>

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

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

<ESMA_QUESTION_258>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_258>

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

<ESMA_QUESTION_259>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_259>

Q260: For how long should the performance of a certain strategy be monitored to determine whether it meets the requirements of Article 17(4) of MiFID II?

<ESMA_QUESTION_260>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_260>

Q261: What percentage of the observation period should a strategy meet with regard to the requirements of Article 17(4) of MiFID II so as to consider that it should be captured by the obligation to enter into a market making agreement?

<ESMA_QUESTION_261>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_261>

Q262: Do you agree with the above assessment?

<ESMA_QUESTION_262>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_262>

Q263: Do you agree with this interpretation?

<ESMA_QUESTION_263>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_263>

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

<ESMA_QUESTION_264>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_264>

Q265: Do you agree with the above interpretation?

<ESMA_QUESTION_265>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_265>

Q266: Do you agree with the above proposal?

<ESMA_QUESTION_266>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_266>

Q267: Do you agree with the above proposal?

<ESMA_QUESTION_267>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_267>

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

<ESMA_QUESTION_268>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_268>

Q269: What should be the parameters to assess whether the market making schemes under Article 48 of MiFID II have effectively contributed to more orderly markets?

<ESMA_QUESTION_269>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_269>

Q270: Do you agree with the list of requirements set out above? Is there any requirement that should be added / removed and if so why?

<ESMA_QUESTION_270>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_270>

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

<ESMA_QUESTION_271>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_271>

Q272: Do you consider that the average presence time under a market making strategy should be the same as the presence time required under a market making agreement ?

<ESMA_QUESTION_272>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_272>

Q273: Should the presence of market making strategies during trading hours be the same across instruments and trading models? If you think it should not, please indicate how this requirement should be specified by different products or market models?

<ESMA_QUESTION_273>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_273>

Q274: Article 48(3) of MiFID II states that the market making agreement should reflect "where applicable any other obligation arising from participation in the scheme". What in your opinion are the additional areas that that agreement should cover?

<ESMA_QUESTION_274>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_274>

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

<ESMA_QUESTION_275>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_275>

Q276: Are there any additional 'exceptional circumstances' (e.g. reporting events or new fundamental information becoming available) that should be considered by ESMA? Please elaborate.

<ESMA_QUESTION_276>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_276>

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

<ESMA_QUESTION_277>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_277>

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

<ESMA_QUESTION_278>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_278>

Q279: What would be an appropriate procedure to restart normal trading activities (e.g. auction periods, notifications, timeframe)?

<ESMA_QUESTION_279>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_279>

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

<ESMA_QUESTION_280>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_280>

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

<ESMA_QUESTION_281>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_281>

Q282: Would it be acceptable setting out any type of technological or informational advantages for participants in market making schemes for liquid instruments? If yes, please elaborate.

<ESMA_QUESTION_282>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_282>

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

<ESMA_QUESTION_283>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_283>

Q284: Do you agree that the market making requirements in Articles 17 and 48 of MiFID II are mostly relevant for liquid instruments? If not, please elaborate how you would apply the requirements in Articles 17 and 48 of MiFID II on market making schemes/agreements/strategies to illiquid instruments.

<ESMA_QUESTION_284>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_284>

Q285: Would you support any other assessment of liquidity different to the one under Article 2(1)(17) of MiFIR? Please elaborate.

<ESMA_QUESTION_285>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_285>

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

<ESMA_QUESTION_286>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_286>

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

<ESMA_QUESTION_287>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_287>

Q288: Do you agree that market making schemes are not required when trading in the market via a market making agreement exceeds this market share?

<ESMA_QUESTION_288>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_288>

Q289: In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?

<ESMA_QUESTION_289>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_289>

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

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

<ESMA_QUESTION_290>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_290>

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

<ESMA_QUESTION_291>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_291>

Q292: Should any other additional elements be taken into account to calibrate OTRs? If yes, please provide an explanation of why these variables are important.

<ESMA_QUESTION_292>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_292>

Q293: Do you agree with the proposed scope of the OTR regime under MiFID II (liquid cash instruments traded on electronic trading systems)?

<ESMA_QUESTION_293>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_293>

Q294: Do you consider that financial instruments which reference a cash instrument(s) as underlying could be excluded from the scope of the OTR regime?

<ESMA_QUESTION_294>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_294>

Q295: Would you make any distinction between instruments which have a single instrument as underlying and those that have as underlying a basket of instruments? Please elaborate.

<ESMA_QUESTION_295>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_295>

Q296: Do you agree with considering within the scope of a future OTR regime only trading venues which have been operational for a sufficient period in the market?

<ESMA_QUESTION_296>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_296>

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

<ESMA_QUESTION_297>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_297>

Q298: What is your view regarding an activity floor under which the OTR regime would not apply and where could this floor be established?

<ESMA_QUESTION_298>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_298>

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

<ESMA_QUESTION_299>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_299>

Q300: In particular, do you consider the approach to base the OTR regime on the 'average observed OTR of a venue' appropriate in all circumstances? If not, please elaborate.

<ESMA_QUESTION_300>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_300>

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

<ESMA_QUESTION_301>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_301>

Q302: In particular, what would be in your opinion an adequate multiplier x? Does this multiplier have to be adapted according to the (group of) instrument(s) traded? If yes, please specify in your response the financial instruments/market segments you refer to.

<ESMA_QUESTION_302>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_302>

Q303: What is your view with respect to the time intervals/frequency for the assessment and review of the OTR threshold (annually, twice a year, other)?

<ESMA_QUESTION_303>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_303>

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

<ESMA_QUESTION_304>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_304>

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

Q305: What factors should ESMA be considering in ensuring that co-location services are provided in a 'transparent', 'fair' and 'non-discriminatory' manner?

<ESMA_QUESTION_305>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_305>

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

Q306: Do you agree with the approach described above?

<ESMA_QUESTION_306>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_306>

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

<ESMA_QUESTION_307>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_307>

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

<ESMA_QUESTION_308>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_308>

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

<ESMA_QUESTION_309>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_309>

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

<ESMA_QUESTION_310>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_310>

Q311: Do any of the parameters referred to above contribute to increasing the probability of trading behaviour that may lead to disorderly and unfair trading conditions?

<ESMA_QUESTION_311>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_311>

Q312: When designing a fee structure, is there any structure that would foster a trading behaviour leading to disorderly trading conditions? Please elaborate.

<ESMA_QUESTION_312>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_312>

Q313: Do you agree that any fee structure where, upon reaching a certain threshold of trading by a trader, a discount is applied on all his trades (including those already done) as opposed to just the marginal trade executed subsequent to reaching the threshold should be banned?

<ESMA_QUESTION_313>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_313>

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

<ESMA_QUESTION_314>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_314>

Q315: Are there any other types of fee structures, including execution fees, ancillary fees and any rebates, that may distort competition by providing certain market participants with more favourable trading conditions than their competitors or pose a risk to orderly trading and that should be considered here?

<ESMA_QUESTION_315>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_315>

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

<ESMA_QUESTION_316>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_316>

Q317: For trading venues charging different trading fees for participation in different trading phases (i.e. different fees for opening and closing auctions versus continuous trading period), might this lead to disorderly trading and if so, under which circumstances would such conditions occur?

<ESMA_QUESTION_317>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_317>

Q318: Should conformance testing be charged?

<ESMA_QUESTION_318>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_318>

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

<ESMA_QUESTION_319>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_319>

Q320: Do you envisage any scenario where charging for conformance testing and/or testing in relation to disorderly trading conditions might discourage firms from investing sufficiently in testing their algorithms?

<ESMA_QUESTION_320>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_320>

Q321: Do you agree with the approach described above?

<ESMA_QUESTION_321>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_321>

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

<ESMA_QUESTION_322>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_322>

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

<ESMA_QUESTION_323>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_323>

Q324: In terms of the approach to determine the penalty fee for breaching the OTR, which approach would you prefer? If neither of them are satisfactory for you, please elaborate what alternative you would envisage.

<ESMA_QUESTION_324>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_324>

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

<ESMA_QUESTION_325>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_325>

Q326: Would you apply economic penalties only when the OTR is systematically breached? If yes, how would you define "systematic breaches of the OTR"?

<ESMA_QUESTION_326>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_326>

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

<ESMA_QUESTION_327>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_327>

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

<ESMA_QUESTION_328>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_328>

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

<ESMA_QUESTION_329>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_329>

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

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

<ESMA_QUESTION_330>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_330>

Q331: Do you agree with adopting the average number of daily trades as an indicator for liquidity to satisfy the liquidity requirement of Article 49 of MiFID II? Are there any other methods/liquidity proxies that allow comparable granularity and that should be considered?

<ESMA_QUESTION_331>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_331>

Q332: In your view, what granularity should be used to determine the liquidity profile of financial instruments? As a result, what would be a proper number of liquidity bands?

<ESMA_QUESTION_332>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_332>

Q333: What is your view on defining the trade-off between constraining the spread without increasing viscosity too much on the basis of a floor-ceiling mechanism?

<ESMA_QUESTION_333>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_333>

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

<ESMA_QUESTION_334>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_334>

Q335: In your view, for the tick size regime to be efficient and appropriate, should it rely on the spread to tick ratio range, the evolution of liquidity bands, a combination of the two or none of the above?

<ESMA_QUESTION_335>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_335>

Q336: What is your view regarding the common tick size table proposed under Option 1? Do you consider it easy to read, implement and monitor? Does the proposed two dimensional tick size table (based on both the liquidity profile and price) allow applying a tick size to a homogeneous class of stocks given its clear-cut price and liquidity classes?

<ESMA_QUESTION_336>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_336>

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

<ESMA_QUESTION_337>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_337>

Q338: Considering that market microstructure may evolve, would you favour a regime that allows further calibration of the tick size on the basis of the observed market microstructure?

<ESMA_QUESTION_338>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_338>

Q339: In your view, does the tick size regime proposed under Option 1 offer sufficient predictability and certainty to market participants in a context where markets are constantly evolving (notably given its calibration and monitoring mechanisms)?

<ESMA_QUESTION_339>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_339>

Q340: The common tick size table proposed under Option 1 provides for re-calibration while constantly maintaining a control sample. In your view, what frequency would be appropriate for the revision of the figures (e.g., yearly)?

<ESMA_QUESTION_340>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_340>

Q341: In your view, what is the impact of Option 1 on the activity of market participants, including trading venue operators? To what extent, would it require adjustments?

<ESMA_QUESTION_341>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_341>

Q342: Do you agree that some equity-like instruments require an equivalent regulation of tick sizes as equities so as to ensure the orderly functioning of markets and to avoid the migration of trading across instrument types based on tick size? If not, please outline why this would not be the case.

<ESMA_QUESTION_342>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_342>

Q343: Are there any other similar equity-like instruments that should be added / removed from the scope of tick size regulation? Please outline the reasons why such instruments should be added / removed?

<ESMA_QUESTION_343>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_343>

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

<ESMA_QUESTION_344>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_344>

Q345: If you think that for certain equity-like instruments (e.g. ETFs) the spread-based tick size regime[1] would be more appropriate, please specify your reasons and provide a detailed description of the methodology and technical specifications of this alternative concept.

<ESMA_QUESTION_345>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_345>

Q346: If you generally (also for liquid and illiquid shares as well as other equity-like financial instruments) prefer a spread-based tick size regime2 vis-à-vis the regime as proposed under Option 1 and tested by ESMA, please specify the reasons and provide the following information:

<ESMA_QUESTION_346>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_346>

Q347: Given the different tick sizes currently in operation, please explain what your preferred type of tick size regulation would be, giving reasons why this is the case.

<ESMA_QUESTION_347>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_347>

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

<ESMA_QUESTION_348>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_348>

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

<ESMA_QUESTION_349>

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[1] Please see the description of Option 2 regarding tick sizes below.
[2] Please see the description of Option 2 regarding tick sizes below.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_349>

Q350: Do you agree with the tick sizes proposed under Option 2? In particular, should a different tick size be used for the largest band, taking into account the size of the tick relative to the price? Please elaborate.

<ESMA_QUESTION_350>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_350>

Q351: Should the tick size be calibrated in a more granular manner to that proposed above, namely by shifting a band which results in a large step-wise change?

<ESMA_QUESTION_351>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_351>

Q352: Do you agree with the above treatment for a newly admitted instrument? Would this affect the subsequent trading in a negative way?

<ESMA_QUESTION_352>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_352>

Q353: Do you agree that a period of six weeks is appropriate for the purpose of initial calibration for all instruments admitted to the pan-European tick size regime under Option 2? If not, what would be the appropriate period for the initial calibration?

<ESMA_QUESTION_353>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_353>

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

<ESMA_QUESTION_354>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_354>

Q355: Do you agree with the proposal to take an average bid-ask spread of less than two ticks as being too narrow? If not, what level of spread to ticks would you consider to be too narrow?

<ESMA_QUESTION_355>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_355>

Q356: Under the current proposal, it is not considered necessary to set an upper ceiling to the bid-ask spread, as the preliminary view under Option 2 is that under normal conditions the risk of the spread widening indefinitely is limited (and in any event a regulator may amend SAF manually if required). Do you agree with this view? If not, how would you propose to set an upper ceiling applicable across markets in the EU?

<ESMA_QUESTION_356>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_356>

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

<ESMA_QUESTION_357>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_357>

Q358: Do you agree that illiquid instruments, excluding illiquid cash equities, should be excluded from the scope of a pan-European tick size regime under Option 2 until such time that definitions for these instruments become available? If not, please explain why. If there are any equity-like instruments per Article 49(3) of MiFID II that you feel should be included in the pan-European tick size regime at the same time as for cash equities, please list these instruments together with a brief reason for doing so.

<ESMA_QUESTION_358>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_358>

Q359: Do you agree that financial instruments, other than those listed in Article 49(3) of MiFID II should be excluded from the scope of the pan-European tick size regime under Option 2 at least for the time being? If not, please explain why and which specific instruments do you consider necessary to be included in the regime.

<ESMA_QUESTION_359>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_359>

Q360: What views do you have on whether tick sizes should be revised on a dynamic or periodic basis? What role do you perceive for an automated mechanism for doing this versus review by the NCA responsible for the instrument in question? If you prefer periodic review, how frequently should reviews be undertaken (e.g. quarterly, annually)?

<ESMA_QUESTION_360>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_360>

5. Data publication and access

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

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

<ESMA_QUESTION_361>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_361>

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

<ESMA_QUESTION_362>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_362>

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

<ESMA_QUESTION_363>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_363>

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

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

<ESMA_QUESTION_364>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_364>

Q365: What other significant differences will there have to be in the standards for APAs, CTPs and ARMs?

<ESMA_QUESTION_365>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_365>

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

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

<ESMA_QUESTION_366>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_366>

5.4. Consolidated tape providers

Q367: Should the tapes be offered to users on an instrument-by-instrument basis, or as a single comprehensive tape, or at some intermediate level of disaggregation? Do you think that transparency information should be available without the need for value-added products to be purchased alongside?

<ESMA_QUESTION_367>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_367>

Q368: Are there other factors or considerations regarding data publication by the CTP that are not covered in the standards for data publication by APAs and trading venues and that should be taken into account by ESMA?

<ESMA_QUESTION_368>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_368>

Q369: Do you agree that CTPs should be able to provide the services listed above? Are there any others that you think should be specified?

<ESMA_QUESTION_369>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_369>

5.5. Data disaggregation

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

<ESMA_QUESTION_370>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_370>

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

<ESMA_QUESTION_371>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_371>

Q372: Do you believe the list of asset classes proposed in the previous paragraph is appropriate for this purpose? If not, what would you propose?

<ESMA_QUESTION_372>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_372>

Q373: Do you agree that venues should be under an obligation to disaggregate according to the listed criteria unless they can demonstrate that there is insufficient customer interest?

<ESMA_QUESTION_373>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_373>

Q374: Are there any other criteria according to which it would be useful for venues to disaggregate their data, and if so do you think there should be a mandatory or comply-or-explain requirement for them to do so?

<ESMA_QUESTION_374>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_374>

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

<ESMA_QUESTION_375>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_375>

5.6. Identification of the investment firm responsible for making public the volume and price transparency of a transaction (Articles 20(3) (c) and 21(5)(c), MiFIR)

Q376: Please describe your views about how to improve the current trade reporting system under Article 27(4) of MiFID Implementing Regulation.

<ESMA_QUESTION_376>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_376>

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

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

<ESMA_QUESTION_377>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_377>

Q378: How would a CCP assess that the anticipated volume of transactions would exceed its capacity planning?

<ESMA_QUESTION_378>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_378>

Q379: Are there other risks related to the anticipated volume of transactions that should be considered? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_379>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_379>

Q380: Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?

<ESMA_QUESTION_380>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_380>

Q381: How would a CCP assess that the number of users expected to access its systems would exceed its capacity planning?

<ESMA_QUESTION_381>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_381>

Q382: Are there other risks related to number of users that should be considered? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_382>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_382>

Q383: In what way could granting access to a trading venue expose a CCP to risks associated with a change in the type of users accessing the CCP? Are there any additional risks that could be relevant in this situation?

<ESMA_QUESTION_383>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_383>

Q384: How would a CCP establish that the anticipated operational risk would exceed its operational risk management design?

<ESMA_QUESTION_384>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_384>

Q385: Are there other risks related to arrangements for managing operational risk that should be considered? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_385>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_385>

Q386: Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?

<ESMA_QUESTION_386>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_386>

Q387: To what extent could a lack of harmonization in certain areas of law constitute a relevant risk in the context of granting or denying access?

<ESMA_QUESTION_387>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_387>

Q388: Do you agree with the risks identified above in relation to complexity and other factors creating significant undue risks?

<ESMA_QUESTION_388>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_388>

Q389: Q: Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_389>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_389>

Q390: Do you agree with the analysis above and the conclusion specified in the previous paragraph?

<ESMA_QUESTION_390>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_390>

Q391: To what extent would a trading venue granting access give rise to material risks because of anticipated volume of transactions and the number of users? Can you evidence that access will materially change volumes and the number of users?

<ESMA_QUESTION_391>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_391>

Q392: To what extent would a trading venue granting access give rise to material risks because of arrangements for managing operational risk?

<ESMA_QUESTION_392>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_392>

Q393: Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?

<ESMA_QUESTION_393>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_393>

Q394: Do you believe a CCP's model regarding the acceptance of trades may create risks to a trading venue if access is provided? If so, please explain in which cases and how.

<ESMA_QUESTION_394>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_394>

Q395: Could granting access create unmanageable risks for trading venues due to conflicts of law arising from the involvement of different legal regimes?

<ESMA_QUESTION_395>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_395>

Q396: Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_396>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_396>

Q397: Do you agree with the conditions set out above? If you do not, please state why not.

<ESMA_QUESTION_397>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_397>

Q398: Are there any are other conditions CCPs and trading venues should include in their terms for agreeing access?

<ESMA_QUESTION_398>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_398>

Q399: Are there any other fees that are relevant in the context of Articles 35 and 36 of MiFIR that should be analysed?

<ESMA_QUESTION_399>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_399>

Q400: Are there other considerations that need to be made in respect of transparent and non-discriminatory fees?

<ESMA_QUESTION_400>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_400>

Q401: Do you consider that the proposed approach adequately reflects the need to ensure that the CCP does not apply discriminatory collateral requirements? What alternative approach would you consider?

<ESMA_QUESTION_401>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_401>

Q402: Do you see other conditions under which netting of economically equivalent contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue in line with all the conditions of Article 35(1)(a)?

<ESMA_QUESTION_402>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_402>

Q403: The approach above relies on the CCP's model compliance with Article 27 of Regulation (EU) No 153/2013, do you see any other circumstances for a CCP to cross margin correlated contracts? Do you see other conditions under which cross margining of correlated contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue?

<ESMA_QUESTION_403>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_403>

Q404: Do you agree with ESMA that the two considerations that could justify a national competent authority in denying access are (a) knowledge it has about the trading venue or CCP being at risk of not meeting its legal obligations, and (b) liquidity fragmentation? If not, please explain why.

<ESMA_QUESTION_404>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_404>

Q405: How could the above mentioned considerations be further specified?

<ESMA_QUESTION_405>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_405>

Q406: Are there other conditions that may threaten the smooth and orderly functioning of the markets or adversely affect systemic risk? If so, how would such risks arise from the provision of access?

<ESMA_QUESTION_406>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_406>

Q407: Do you agree with ESMA's proposed approach that where there are equally accepted alternative approaches to calculating notional amount, but there are notable differences in the value to which these calculation methods give rise, ESMA should specify the method that should be used?

<ESMA_QUESTION_407>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_407>

Q408: Do you agree that the examples provided above are appropriate for ESMA to adopt given the purpose for which the opt-out mechanism was introduced? If not, why, and what alternative(s) would you propose?

<ESMA_QUESTION_408>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_408>

Q409: For which types of exchange traded derivative instruments do you consider there to be notable differences in the way the notional amount is calculated? How should the notional amount for these particular instruments be calculated?

<ESMA_QUESTION_409>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_409>

Q410: Are there any other considerations ESMA should take into account when further specifying how notional amount should be calculated? In particular, how should technical transactions be treated for the purposes of Article 36(5), MiFIR?

<ESMA_QUESTION_410>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_410>

5.8. Non- discriminatory access to and obligation to license benchmarks

Q411: Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_411>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_411>

Q412: Is there any other additional information in respect of price and data feeds that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_412>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_412>

Q413: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_413>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_413>

Q414: Is there any other additional information in respect of price and data feeds that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_414>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_414>

Q415: Do you agree that trading venues should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA_QUESTION_415>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_415>

Q416: Do you agree that CCPs should have access to benchmark values as soon as they are calculated? If not, why?

<ESMA_QUESTION_416>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_416>

Q417: Do you agree that trading venues require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_417>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_417>

Q418: Is there any other additional information in respect of composition that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_418>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_418>

Q419: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_419>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_419>

Q420: Is there any other additional information in respect of composition that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_420>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_420>

Q421: Do you agree that trading venues and CCPs should be notified of any planned changes to the composition of the benchmark in advance? And that where this is not possible, notification should be given as soon as the change is made? If not, why?

<ESMA_QUESTION_421>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_421>

Q422: Do you agree that trading venues need the relevant information mentioned above? If not, why?

<ESMA_QUESTION_422>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_422>

Q423: Is there any other additional information in respect of methodology that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_423>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_423>

Q424: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_424>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_424>

Q425: Is there any other additional information in respect of methodology that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_425>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_425>

Q426: Is there any information is respect of the methodology of a benchmark that a person with proprietary rights to a benchmark should not be required to provide to a trading venue or a CCP?

<ESMA_QUESTION_426>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_426>

Q427: Do you agree that trading venues require the relevant information mentioned above (values, types and sources of inputs, used to develop benchmark values)? If not, why?

<ESMA_QUESTION_427>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_427>

Q428: Is there any other additional information in respect of pricing that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_428>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_428>

Q429: In what other circumstances should a trading venue not be able to require the values of the constituents of a benchmark?

<ESMA_QUESTION_429>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_429>

Q430: Do you agree that CCPs require the relevant information mentioned above? If not, why?

<ESMA_QUESTION_430>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_430>

Q431: Is there any other additional information in respect of pricing that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_431>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_431>

Q432: In what other circumstances should a CCP not be able to require the values of the constituents of a benchmark?

<ESMA_QUESTION_432>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_432>

Q433: Do you agree that trading venues require the additional information mentioned above? If not, why?

<ESMA_QUESTION_433>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_433>

Q434: Do you agree that CCPs require the additional information mentioned above? If not, why?

<ESMA_QUESTION_434>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_434>

Q435: Is there any other information that a trading venue would need for the purposes of trading?

<ESMA_QUESTION_435>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_435>

Q436: Is there any other information that a CCP would need for the purposes of clearing?

<ESMA_QUESTION_436>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_436>

Q437: Do you agree with the principles described above? If not, why?

<ESMA_QUESTION_437>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_437>

Q438: Do users of trading venues need non-publicly disclosed information on benchmarks?

<ESMA_QUESTION_438>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_438>

Q439: Do users of CCPs need non-publicly disclosed information on benchmarks?

<ESMA_QUESTION_439>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_439>

Q440: Where information is not available publicly should users be provided with the relevant information through agreements with the person with proprietary rights to the benchmark or with its trading venue / CCP?

<ESMA_QUESTION_440>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_440>

Q441: Do you agree with the conditions set out above? If not, please state why not.

<ESMA_QUESTION_441>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_441>

Q442: Are there any are other conditions persons with proprietary rights to a benchmark and trading venues should include in their terms for agreeing access?

<ESMA_QUESTION_442>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_442>

Q443: Are there any are other conditions persons with proprietary rights to a benchmark and CCPs should include in their terms for agreeing access?

<ESMA_QUESTION_443>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_443>

Q444: Which specific terms/conditions currently included in licensing agreements might be discriminatory/give rise to preventing access?

<ESMA_QUESTION_444>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_444>

Q445: Do you have views on how termination should be handled in relation to outstanding/significant cases of breach?

<ESMA_QUESTION_445>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_445>

Q446: Do you agree with the approach ESMA has taken regarding the assessment of a benchmark's novelty, i.e., to balance/weight certain factors against one another? If not, how do you think the assessment should be carried out?

<ESMA_QUESTION_446>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_446>

Q447: Do you agree that each newly released series of a benchmark should not be considered a new benchmark?

<ESMA_QUESTION_447>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_447>

Q448: Do you agree that the factors mentioned above could be considered when assessing whether a benchmark is new? If not, why?

<ESMA_QUESTION_448>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_448>

Q449: Are there any factors that would determine that a benchmark is not new?

<ESMA_QUESTION_449>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_449>

6. Requirements applying on and to trading venues

6.1. Admission to Trading

Q450: What are your views regarding the conditions that have to be satisfied in order for a financial instrument to be admitted to trading?

<ESMA_QUESTION_450>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_450>

Q451: In your experience, do you consider that the requirements being in place since 2007 have worked satisfactorily or do they require updating? If the latter, which additional requirements should be imposed?

<ESMA_QUESTION_451>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_451>

Q452: More specifically, do you think that the requirements for transferable securities, units in collective investment undertakings and/or derivatives need to be amended or updated? What is your proposal?

<ESMA_QUESTION_452>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_452>

Q453: How do you assess the proposal in respect of requiring ETFs to offer market making arrangements and direct redemption facilities at least in cases where the regulated market value of units or shares significantly varies from the net asset value?

<ESMA_QUESTION_453>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_453>

Q454: Which arrangements are currently in place at European markets to verify compliance of issuers with initial, on-going and ad hoc disclosure obligations?

<ESMA_QUESTION_454>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_454>

Q455: What are your experiences in respect of such arrangements?

<ESMA_QUESTION_455>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_455>

Q456: What is your view on how effective these arrangements are in performing verification checks?

<ESMA_QUESTION_456>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_456>

Q457: What arrangements are currently in place on European regulated markets to facilitate access of members or participants to information being made public under Union law?

<ESMA_QUESTION_457>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_457>

Q458: What are your experiences in respect of such arrangements?

<ESMA_QUESTION_458>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_458>

Q459: How do you assess the effectiveness of these arrangements in achieving their goals?

<ESMA_QUESTION_459>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_459>

Q460: Do you agree with that, for the purpose of Article 51 (3) (2) of MiFID II, the arrangements for facilitating access to information shall encompass the Prospectus, Transparency and Market Abuse Directives (in the future the Market Abuse Regulation)? Do you consider that this should also include MiFIR trade transparency obligations?

<ESMA_QUESTION_460>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_460>

6.2. Suspension and Removal of Financial Instruments from Trading - connection between a derivative and the underlying financial instrument and standards for determining formats and timings of communications and publications

Q461: Do you agree with the specifications outlined above for the suspension or removal from trading of derivatives which are related to financial instruments that are suspended or removed?

<ESMA_QUESTION_461>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_461>

Q462: Do you think that any derivatives with indices or a basket of financial instruments as an underlying the pricing of which depends on multiple price inputs should be suspended if one or more of the instruments composing the index or the basket are suspended on the basis that they are sufficiently related? If so, what methodology would you propose for determining whether they are "sufficiently related"? Please explain.

<ESMA_QUESTION_462>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_462>

Q463: Do you agree with the principles outlined above for the timing and format of communications and publications to be effected by trading venue operators?

<ESMA_QUESTION_463>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_463>

7. Commodity derivatives

7.1. Ancillary Activity

Q464: Do you see any difficulties in defining the term 'group' as proposed above?

<ESMA_QUESTION_464>
In our opinion, the best and most practical approach is to take the international accounting standards as the basis for the definition of a 'group' as this is anyway assessed in the annual reports.
<ESMA_QUESTION_464>

Q465: What are the advantages and disadvantages of the two alternative approaches mentioned above (taking into account non-EU activities versus taking into account only EU activities of a group)? Please provide reasons for your answer.

<ESMA_QUESTION_465>
We agree with ESMA's view that the first approach including non-EU activities of a group in the assessment of the first criterion on the determination of the main activity of that group is preferable. However, as Article 1 of MiFID II refers to "providing investment services or performing investment activities [...] in the Union", it is clear that for the ancillary activity, only such activities of a group might fall into the scope of MiFID II. Thus, due to consistency reasons with regard to the second criterion, the assessment of the overall market trading activity has to be based on a global perspective as well, whereas only the trading activity in the EU may be compared to the overall market trading activity. With this in mind, if a group is not involved in investment services or investment activities in the EU with any of its undertakings but carries out such activities outside the EU, none of its undertakings/activities inside the EU would fall into the scope of MiFID II.

Most commodities are traded globally on various trading venues inside and outside the EU, whereby they are often based on assets located outside the EU (e.g. fuel oil and coal are produced worldwide but also traded within the EU). Therefore, one advantage of the first approach is the mitigation of the risk of the migration of trading activities of groups/undertakings from EU member states to non-EU countries, withdrawing such activities from the supervision of EU authorities.

Of course, the challenge remains to include the worldwide activities of any group under EU supervision. This could be met by means of group accounts (consolidated accounts), providing companies/groups that fall into the scope of Article 1 of MiFID II with the possibility to eventually benefit from the exemption of Article 2.1(j).
<ESMA_QUESTION_465>

Q466: What are the main challenges in relation to both approaches and how could they be addressed?

<ESMA_QUESTION_466>
The main challenge is to include the worldwide activities of any group under EU supervision. This could be met by means of group accounts (consolidated accounts), providing companies/groups that fall into the scope of Article 1 of MiFID II with the possibility to eventually benefit from the exemption of Article 2.1(j).
<ESMA_QUESTION_466>

Q467: Do you consider there are any difficulties concerning the suggested approach for assessing whether the ancillary activities constitute a minority of activities at group level? Do you consider that the proposed calculations appropriately factor in activity which is subject to the permitted exemptions under Article 2(4) MiFID II? If no, please explain why and provide an alternative proposal.

<ESMA_QUESTION_467>
We agree with the suggested methodology. We understand that factors f and g as defined in the present discussion paper are corrected for capital that is employed as capital for intra-group transactions, transactions in derivatives reducing commercial/treasury financing risks and for transactions in commodity derivatives and emission allowances to fulfil liquidity obligations, meaning that capital for such activities is not considered when calculating f and g. This follows from the observation 28 on page 396. However, this interpretation depends on the definition/understanding of the term 'capital employed' and needs thus to be further clarified.
<ESMA_QUESTION_467>

Q468: Are there other approaches for assessing whether the ancillary activities constitute a minority of activities at group level that you would like to suggest? Please provide details and reasons.

<ESMA_QUESTION_468>
Many asset based entities run their businesses around the world, and the EU only serves as one of many markets where their products are retailed and/or consumed. Hence, the definition of the main activity must be assessed globally.

In this context, it is very important that only those activities are taken into account which could cause the requirement to obtain a financial services license, meaning trading in financial instruments in the EU only.
<ESMA_QUESTION_468>

Q469: How should "minority of activities" be defined? Should minority be less than 50% or less (50 - x)%? Please provide reasons.

<ESMA_QUESTION_469>
Clearly, the 'minority of activities' must be smaller than the 'main activity'. However, the suggested calculation method in 25.1 is somehow misleading and it is preferable to refer to the 'amount of main activity' instead of the 'overall activity'.

In our understanding, the inequalities a), b) and c) on page 396 are not a necessary condition for ancillary activities to constitute a minority activity at group level. For instance, inequality c) implies that the capital employed for ancillary activities can at maximum amount to half of the capital employed for the main activity. In order to constitute a minority activity at group level, however, it would be sufficient for the capital employed for ancillary activities to be smaller than the capital employed for the main business. This means that in equation c) the term 50% would have to be replaced by 100%. Then, equation c) would state that the capital employed for ancillary activities is smaller than the capital employed for the main business.
<ESMA_QUESTION_469>

Q470: Do you have a view on whether economic or accounting capital should be used in order to define the elements triggering the exemption from authorisation under MiFID II, available under Article 2(1)(j)? Please provide reasons.

<ESMA_QUESTION_470>
First of all, ESMA's current proposal does not provide a definition of the term 'economic capital'. However, the term 'economic capital' seems to be more appropriate than the term 'accounting capital' since the 'economic capital' adequately en-compasses the amount of risk of the activities concerned. However, given that there is no clear definition of 'economic capital' so far, we consider the use of 'accounting capital' to be easier to apply.

Nonetheless, positions that are cleared by a CCP should not be considered for the calculation of the capital used for ancillary services due to the important role clearing plays with regard to the mitigation of credit risks.
<ESMA_QUESTION_470>

Q471: If economic capital were to be used as a measure, what do you understand to be encompassed by this term?

<ESMA_QUESTION_471>
'Economic capital' should adequately en-compass the amount of risk of the activities concerned.

However, positions that are cleared by a CCP should not be considered for the calculation of the capital used for ancillary services due to the important role clearing plays with regard to the mitigation of credit risks.
<ESMA_QUESTION_471>

Q472: Do you agree with the above assessment that the data available in the TRs will enable entities to perform the necessary calculations?

<ESMA_QUESTION_472>
No, we do not agree because in the case of gas and power TR data would be insufficient in order to calculate the 'overall market trading activity', even if only the EU was concerned:

1. It would be insufficient to solely consider the market for financial instruments in gas or power to counter market manipulation attempts given that the overall market that could be targeted by any such abusive practices is much bigger.

2. Depending on where they are traded, derivatives in gas and power can constitute financial instruments or non-financial instruments. Given that they are equivalent in nature and perfectly substitutable; however, they have to be assessed jointly in any market examination. Otherwise there is a risk of pushing companies that have chosen RM/MTF transactions for risk mitigation purposes to disadvantageous commercial relationships. We therefore recommend including REMIT data into any gas and/or power market assessment.

3. Recital 20 clearly states that the criteria applied to determine whether a firm can benefit from the ancillary service exemption should take into account its "trading activity compared to the overall market trading activity in that asset class".

4. To exclusively rely on TR data for the calculation of the "market trading activity in that asset class" will not be possible because TR data only covers financial instruments. Rather, this procedure will merely determine the overall market trading activity in financial instruments in that asset class.

5. In case of gas and power, there is a high risk that a significant part of trading activities will be shifted to OTFs, especially in light of the proposal of the definition of the term 'must be physically settled' as provided in ESMA's consultation paper. Therefore, the market share of gas and power contracts in that are classified as financial instruments may be significantly lower under MiFID II.

6. Any analysis of the 'market trading activity' in an asset classes done on the basis of TR data will therefore remain arbitrary and distorted.

7. In combination with a threshold set at a 'relatively low level', the incentive to shift trading activities in gas and power from regulated markets to OTFs might further increase. In addition, this effect may lead to a vicious circle and become self-enforcing: Little volumes in financial instruments in gas and power decrease the measure of 'market trading activity in that asset class' because the calculation is based on TR data. Therefore, the relative market share of any company trading in financial instruments increases, which, in turn, creates an incentive to leave the regulated markets and to shift trading activities to an OTF.

Consequently, the relative market share of those firms dealing in financial instruments in gas and power increases again, etc..
<ESMA_QUESTION_472>

Q473: What difficulties do you consider entities may encounter in obtaining the information that is necessary to define the size of their own trading activity and the size of the overall market trading activity from TRs? How could the identified difficulties be addressed?

<ESMA_QUESTION_473>
As far as gas and power are concerned, both reporting channels - REMIT and MiFID - need to be taken into account jointly. Any analysis of the market size would be completely erroneous and misleading, if only instruments from TRs are measured.
<ESMA_QUESTION_473>

Q474: What do you consider to be the difficulties in defining the volume of the transactions entered into to fulfil liquidity obligations?

<ESMA_QUESTION_474>
In general it is not complicated to identify trades that are executed to fulfil liquidity obligations as the compensation market makers receive for their activity is based on their related trades and quotes. Therefore, each trading venue and each market maker is able to provide this information easily and regularly on a monthly basis.
<ESMA_QUESTION_474>

Q475: How should the volume of the overall trading activity of the firm at group level and the volume of the transactions entered into in order to hedge physical activities be measured? (Number of contracts or nominal value? Period of time to be considered?)

<ESMA_QUESTION_475>
The same measures shall apply as those already existing under EMIR.
<ESMA_QUESTION_475>

Q476: Do you agree with the level of granularity of asset classes suggested in order to provide for relative comparison between market participants?

<ESMA_QUESTION_476>
We agree with the suggested level of granularity of asset classes.
<ESMA_QUESTION_476>

Q477: What difficulties could there be regarding the aggregation of TR data in order to obtain information on the size of the overall market trading activity? How could these difficulties be addressed?

<ESMA_QUESTION_477>
In the case of gas and power TR data would be insufficient in order to calculate the 'overall market trading activity', even if only the EU was concerned:

1. It would be insufficient to solely consider the market for financial instruments in gas or power to counter market manipulation attempts given that the overall market that could be targeted by any such abusive practices is much bigger.

2. Depending on where they are traded, derivatives in gas and power can constitute financial instruments or non-financial instruments. Given that they are equivalent in nature and perfectly substitutable, however, they have to be assessed jointly in any market examination. Otherwise there is a risk of pushing companies that have chosen RM/MTF transactions for risk mitigation purposes to disadvantageous commer-

cial relationships. We therefore recommend including REMIT data into any gas and/or power market assessment.

3. Recital 20 clearly states that the criteria applied to determine whether a firm can benefit from the ancillary service exemption should take into account its "trading activity compared to the overall market trading activity in that asset class".

4. To exclusively rely on TR data for the calculation of the "market trading activity in that asset class" will not be possible because TR data only covers financial instruments. Rather, this procedure will merely determine the overall market trading activity in financial instruments in that asset class.

5. In case of gas and power, there is a high risk that a significant part of trading activities will be shifted to OTFs, especially in light of the proposal of the definition of the term 'must be physically settled' as provided in ESMA's consultation paper. Therefore, the market share of gas and power contracts in that are classified as financial instruments may be significantly lower under MiFID II.

6. Any analysis of the 'market trading activity' in an asset classes done on the basis of TR data will therefore remain arbitrary and distorted.

7. In combination with a threshold set at a 'relatively low level', the incentive to shift trading activities in gas and power from regulated markets to OTFs might further increase. In addition, this effect may lead to a vicious circle and become self-enforcing: Little volumes in financial instruments in gas and power decrease the measure of 'market trading activity in that asset class' because the calculation is based on TR data. Therefore, the relative market share of any company trading in financial instruments increases, which, in turn, creates an incentive to leave the regulated markets and to shift trading activities to an OTF. Consequently, the relative market share of those firms dealing in financial instruments in gas and power increases again, etc..
<ESMA_QUESTION_477>

Q478: How should ESMA set the threshold above which persons fall within MiFID II's scope? At what percentage should the threshold be set? Please provide reasons for your response.

<ESMA_QUESTION_478>
Regarding gas and power in the light of question 472, there is no reasonable threshold as long as the measure 'market trading activity in that asset class' is only calculated by taking into account financial instruments and excluding contracts that are concluded bilaterally. Essentially, a low threshold would penalise firms trading in financial instruments in gas and power and would create incentives to shift trading activities to an OTF.

As an example: There are two categories A and B of firms trading power derivatives on a regulated market. Firms of category A are dealing in financial instruments in a disproportionate manner compared to the level of investment in their main business, whereas members of category B benefit from the ancillary service exemption. As a consequence, members of category A will shift their trading activities to an OTF. This will decrease the 'market trading activity in that asset class'. In turn, the trading activity of members of category B will be higher in relation to the 'overall market'. Thus, members of category B might be captured by MiFID II and will, in turn, also shift their quantities to an OTF in order to prevent to be captured by MiFID II.
<ESMA_QUESTION_478>

Q479: Are there other approaches for determining the size of the trading activity that you would like to suggest?

<ESMA_QUESTION_479>
For gas and power contracts, the size of the overall trading activity shall be based on what is reported via TRs and what is reported via REMIT.
<ESMA_QUESTION_479>

Q480: Are there other elements apart from the need for ancillary activities to constitute a minority of activities and the comparison between the size of the trading activity and size of the overall market trading activity that ESMA should take into account when defining whether an activity is ancillary to the main business?

<ESMA_QUESTION_480>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_480>

Q481: Do you see any difficulties with the interpretation of the hedging exemptions mentioned above under Article 2(4)(a) and (c) of MiFID II? How could potential difficulties be addressed?

<ESMA_QUESTION_481>
We support the proposal on hedging exemptions.
<ESMA_QUESTION_481>

Q482: Do you agree with ESMA's proposal to take into account Article 10 of the Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR in specifying the application of the hedging exemption under Article 2(4)(b) of MiFID II? How could any potential difficulties be addressed?

<ESMA_QUESTION_482>
We agree.
<ESMA_QUESTION_482>

Q483: Do you agree that the obligations to provide liquidity under Article 17(3) and Article 57(8)(d) of MiFID II should not be taken into account as an obligation triggering the hedging exemption mentioned above under Article 2(4)(c)?

<ESMA_QUESTION_483>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_483>

Q484: Could you provide any other specific examples of obligations of "transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue" which ESMA should take into account?

<ESMA_QUESTION_484>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_484>

Q485: Should the (timeframe for) assessment be linked to audit processes?

<ESMA_QUESTION_485>
We consider that linking the assessment to the audit process is a feasible approach.
<ESMA_QUESTION_485>

Q486: How should seasonal variations be taken into account (for instance, if a firm puts on a maximum position at one point in the year and sells that down through the following twelve months should the calculation be taken at the maximum point or on average)?

<ESMA_QUESTION_486>
The calculation should be based on the average position over the given reporting period.
<ESMA_QUESTION_486>

Q487: Which approach would be practical in relation to firms that may fall within the scope of MiFID in one year but qualify for exemption in another year?

<ESMA_QUESTION_487>
We support a rolling average of three years in order to create more certainty for firms.
<ESMA_QUESTION_487>

Q488: Do you see difficulties with regard to the two approaches suggested above?

<ESMA_QUESTION_488>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_488>

Q489: How could a possible interim approach be defined with regard to the suggestion mentioned above (i.e. annual notification but calculation on a three years rolling basis)?

<ESMA_QUESTION_489>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_489>

Q490: Do you agree that the competent authority to which the notification has to be made should be the one of the place of incorporation?

<ESMA_QUESTION_490>
Yes, we agree.
<ESMA_QUESTION_490>

7.2. Position Limits

Q491: Do you agree with ESMA's proposal to link the definition of a risk-reducing trade under MiFID II to the definition applicable under EMIR? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA_QUESTION_491>
Yes, we agree with the suggested approach. In both EMIR and MiFID II the definition of hedging activities is used for a similar purpose. Positions held by a non-financial company "objectively measurable as reducing risks related to that entity's commercial activity" are to be excluded from the calculation of the clearing threshold (EMIR) or the calculation of position limits (MiFID II). We therefore support that the MiFID II Level 2 definition should be consistent with the EMIR standard.
<ESMA_QUESTION_491>

Q492: Do you agree with ESMA's proposed definition of a non-financial entity? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA_QUESTION_492>
We generally agree with the proposed definition. However, as the EMIR definition only covers non-financial counterparties established in the EU, a strict application of the proposed definition could result in a situation where entities which are clearly financial but are located in third countries are treated as non-financial entities under MiFID II. Hence, there is a need to clearly specify that all financial entities in and outside the EU are covered by the definition.
<ESMA_QUESTION_492>

Q493: Should the regime for subsidiaries of a person other than entities that are wholly owned look to aggregate on the basis of a discrete percentage threshold or on a more subjective basis? What are the advantages and risks of either approach? Do you agree with the proposal that where the positions of an entity that is subject to substantial control by a person are aggregated, they are included in their entirety?

<ESMA_QUESTION_493>
Positions of a subsidiary should be fully aggregated with the positions of the controlling entity for the purpose of the calculation of the overall net position, if the controlling entity has a majority stake enabling it to out-rightly control the subsidiary company's operations. Nevertheless, it needs to be further specified that this rule should only apply to cases where there is a clear and outright control relationship.
<ESMA_QUESTION_493>

Q494: Should the regime apply to the positions held by unconnected persons where they are acting together with a common purpose (for example, "concert party" arrangements where different market participants collude to act for common purpose)?

<ESMA_QUESTION_494>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_494>

Q495: Do you agree with the approach to link the definition of economically equivalent OTC contract, for the purpose of position limits, with the definitions used in other parts of MiFID II? If you do not agree, what alternative definition do you believe is appropriate?

<ESMA_QUESTION_495>
The concept of 'economic equivalence' needs to be tailored to the specificities of MIFID II / MiFIR. When 'economic equivalence' is considered in relation to setting position limits, a broad definition is required as it aims to identify contracts that are similar in economic terms, although they may be legally different. We therefore advocate adopting the second approach for determining economic equivalence as detailed in Paragraph 31.

Concerning the first approach and Paragraph 29, please consider the following remarks:

Regarding i., not the 'risk profile' but rather the 'market price risk profile' is of relevance. This also excludes the credit risk since it is based on individual assessments and constitutes rather a transaction specific characteristic than a contract specific one. The crucial difference between OTC contracts and cleared contracts is the re-allocation of the risks that are different from market price risks. Given that i. and ii. are reasonable requirements for a contract to be economically equivalent to a commodity derivative traded on a venue, we are convinced that iii. constitutes a too strong condition. Requiring 'equivalent margining' would leave room for circumventing the criterion of 'economically equivalence'. If only cleared contracts were to be equivalent to contracts traded on platforms, market participants would be deterred to clear their transactions. Factor iii. should therefore be deleted without substitution, especially since margining and netting constitute important instruments of credit risk management that should not be used as indicators of certain control characteristics.

In any case, factor iii. should not be a criterion for whether an OTC contract is a financial instrument or not when assessing the equivalence. This also means that nonfinancial instruments might fall into the scope of position limits if the contracts are 'economically equivalent'.

Moreover, the definition of OTC contracts is ambiguous as there is no clear definition in MiFID II. However, MiFIR defines exchange traded derivatives by exclusion of 'OTC derivatives' as defined in EMIR. The definition of OTC derivatives en-compasses MTF and OTF derivatives. In the context of position limits, MiFID II refers to OTC contracts and not OTC derivatives. It seems therefore logical to deduct that OTC contracts are contracts traded outside regulated markets. In gas and power, contracts traded on OTFs that 'must be physically settled' would not be financial instruments but could still be economically equivalent compared to contracts traded on regulated markets or on MTFs. These OTF traded 'nonfinancial instru-

ment' gas and power contracts should clearly be considered as 'economically equivalent OTC contracts' for the purpose of position limits.
<ESMA_QUESTION_495>

Q496: Do you agree that even where a contract is, or may be, cash-settled it is appropriate to base its equivalence on the substitutability of the underlying physical commodity that it is referenced to? If you do not agree, what alternative measures of equivalence could be used?

<ESMA_QUESTION_496>
As already stated in our response to Question 495, we prefer the proposed 'second approach' as adopted by the CFTC. <ESMA_QUESTION_496>

Q497: Do you believe that the definition of "economically equivalent" that is used by the CFTC is appropriate for the purpose of defining the contracts that are not traded on a trading venue for the position limits regime of MiFID II? Give reasons to support your views as well as any suggested amendments or additions to this definition.

<ESMA_QUESTION_497>
Firstly, we would like to again stress the fact that 'economically equivalent OTC contracts' do not necessarily mean 'contracts that are not traded on a trading venue'. Indeed, as explained in detail in our response to Question 495, 'OTC contracts' can be understood as contracts traded outside regulated markets and do therefore include contracts traded at 'other' trading venues, meaning MTFs and OTFs. This would also be in line with the definitions provided by EMIR and MiFIR.

Secondly, concerning the position limits regime in MiFID II, we consider the definition used by the CFTC to be most appropriated for the purpose of defining 'economically equivalent OTC contracts'. This is because the CFTC definition allows for the identification of an entity's overall market impact on the demand and supply conditions in a particular commodity sector, whilst recognising that individual contracts of the entity's position are not necessarily legally identical.

Against this background, it needs to be ensured that the set of venue trades/contracts is both comprehensive and dynamic in order to capture new contracts and/or new trading platforms. Given the limitation that the CFTC rules only apply to 28 'Core Referenced Futures Contracts', they may only serve as the basis for a genuine EU definition and obviously need to be adapted to the EU regulatory environment.
<ESMA_QUESTION_497>

Q498: What arrangements could be put in place to support competent authorities identifying what OTC contracts are considered to be economically equivalent to listed contracts traded on a trading venue? ?

<ESMA_QUESTION_498>
Given that the EU position limits regime aims to be comprehensive, it would be preferable to adopt a gradual implementation approach where the position limit regime is applied initially to a set of core contracts only. This would give national competent authorities more time to implement the position limits regime as well as to identify which OTC contracts are economically equivalent. However, in any step-by-step introduction, it is crucial to keep a level playing field between contracts traded on regulated markets and economically equivalent OTC contracts and to apply position limits to both at the same time in order to avoid regulatory arbitrage and a potential shift of trading.
<ESMA_QUESTION_498>

Q499: Do you agree with ESMA's proposal that the "same" derivative contract occurs where an identical contract is listed independently on two or more different trading venues? What other alternative definitions of "same" could be applied to commodity derivatives?

<ESMA_QUESTION_499>

We generally agree with ESMA's proposal. However, the term 'same' must not be interpreted to narrowly and needs very careful regulatory and economic consideration before limits are being set. Otherwise there is a risk that they become overly tight, leading to an additional separation of liquidity as well as to an incentive for off-venue trading. Since already a tiny change may lead to a different contract with a different limit, there is an additional risk of market foreclosure and/or the prevention of innovation.. Against this background, we consider the CFTC approach (the 'second approach') to fit best for an appropriate identification of the 'same' derivative contracts.
<ESMA_QUESTION_499>

Q500: Do you agree with ESMA's proposals on aggregation and netting? How should ESMA address the practical obstacles to including within the assessment positions entered into OTC or on third country venues? Should ESMA adopt a model for pooling related contracts and should this extend to closely correlated contracts? How should equivalent contracts be converted into a similar metric to the exchange traded contract they are deemed equivalent to?

<ESMA_QUESTION_500>
In order to maximise the efficiency of the future position limits regime, the framework to be established by ESMA should be designed in such a way that an entity's overall influence on the demand and supply conditions in a particular commodity can be identified and that it prevents any level of interference which causes either pricing distortions or negative effects for the settlement process. In this context, we consider it to be important that NCAs take all related positions into account.
<ESMA_QUESTION_500>

Q501: Do you agree with ESMA's approach to defining market size for physically settled contracts? Is it appropriate for cash settled contracts to set position limits without taking into account the underlying physical market?

<ESMA_QUESTION_501>
We generally agree with the proposed approach.

We consider it to be more appropriate to base position limits on deliverable supply than on open interest. This is because the undue influence and control over deliverable supply, coupled with holding a significant futures position, can potentially cause a disorderly market. In contrast, holding a significant proportion of open interest in the futures contract in isolation does not have the same negative consequences, unless the position becomes 'significant' compared with the deliverable supply of the underlying commodity.

In terms of market abuse prevention (e.g. to counter market squeezing, etc.), position limits (e.g. market squeezing) become most relevant close to maturity and are anyway only pertinent for physically settled contracts. However, when calculating position limits per contract it has to be considered that there are overlapping maturities and substitution possibilities among the different types of traded contracts.

In order to effectively prevent market squeezing, the physical market as a whole must be subject to position limits. Excluding certain products from the regime would make position limits ineffective and may lead to regulatory arbitrage.

Regarding the market size of physically settled contracts, we suggest that:

• The overall market size and structure needs to be taken into account (global vs. local markets, small vs. large number of participants, maturity of market or product, liquidity of market or product).

• When estimating the size of the overall market, both the common practice of cross-hedging and the existence of global commodity markets have to be taken into account. Some examples illustrating this level of complexity are the following:

- Hedging of an Italian natural gas position with derivative contracts at the TTF Hub;
- Hedging of natural gas production outside the EU via trading entities operating in the EU;

Most commodity markets are global markets (even the traditionally grid-bound gas market is about to be transformed into a global market due to the steadily growing LNG business).

As a result, the size of the deliverable supply needs to be calculated at global level and should be based on clear and objective figures that are publicly available.

If open interest was to become a factor in the future position limits calculation method, it would be absolutely key to also take all equivalent contracts, irrespective of whether they are financial instruments or not, into account. This is especially true when it comes to OTF-traded contracts that 'must be physically settled' and that are economically equivalent. Depending on the final interpretation of Annex I Section C (6) and (7) of MiFID II, a substantial part of trading activities in gas and power could take place outside the scope of MiFID II (cf. OTC contracts, including OTF-traded contracts 'that must be physically settled'). This would then also limit the importance of position limits and be indeed harmful for venues on which financial instruments are traded.. However, from an economic perspective, contracts that must be physically settled and that are traded on an OTF are similar to contracts that are traded on a regulated market or a MTF. Both are easily substitutable and can be used interchangeably by market participants.
<ESMA_QUESTION_501>

Q502: Do you agree that it is preferable to set the position limit on a contract for a fixed (excluding exceptional circumstances) period rather than amending it on a real-time basis? What period do you believe is appropriate, considering in particular the factors of market evolution and operational efficiency?

<ESMA_QUESTION_502>
We consider a quarterly assessment of the respective position limit to be generally appropriate. The re-calculation of position limits will, however, depend on the periodicity of the publication of the necessary deliverable supply statistics. In practice, statistics in relation to deliverable supply are likely to be produced on a quarterly, annual or seasonal basis, depending on the commodity concerned.
<ESMA_QUESTION_502>

Q503: Once the position limits regime is implemented, what period do you feel is appropriate to give sufficient notice to persons of the subsequent adjustment of position limits?

<ESMA_QUESTION_503>
Market participants will need a reasonable amount of time to decrease their positions. In order to safeguard orderly trading conditions and to avoid that a large number of market participants close their positions at the same time and on short notice, the trading venue should be responsible for actively managing the reduction of positions over an appropriate period of time. The length of the time period required will depend on the extent to which significant reductions in existing positions have to be made.
<ESMA_QUESTION_503>

Q504: Should positions based on contracts entered into before the revision of position limits be grandfathered and if so how?

<ESMA_QUESTION_504>
Existing positions will need to be brought in line with the re-calculated position limit, albeit the trading venue should be responsible for actively managing any reduction of positions over an appropriate period of time in order to avoid the process causing disorderly trading conditions. However, appropriate notification periods have to be put in place in order to avoid substantial market price impacts from position adjustments.
<ESMA_QUESTION_504>

Q505: Do you agree with ESMA's proposals for the determination of a central or primary trading venue for the purpose of establishing position limits in the same derivative contracts? If you do not agree, what practical alternative method should be used?

<ESMA_QUESTION_505>
We generally agree with ESMA's approach for the determination of a central or primary trading venue. As far as derivative contracts based on grid bound energy products are concerned (e.g. gas and power), we suggest the central or primary trading venue being determined by the competent national authority from the respective place of delivery. We consider this to be the best solution as the respective national financial conduct authority needs to closely cooperate with the national energy regulator in the delivery country. In any case, only regulated markets should be taken into account for the determination of a central or primary trading venue, since neither MTFs nor OTFs are as transparent as RMs. Furthermore, any deviation from the highest open interest as basis for the determination needs to be justified.
<ESMA_QUESTION_505>

Q506: Should the level of "significant volume" be set at a different level to that proposed above? If yes, please explain what level should be applied, and how it may be determined on an ongoing basis?

<ESMA_QUESTION_506>
In our opinion, the same level should apply.
<ESMA_QUESTION_506>

Q507: In using the maturity of commodity contracts as a factor, do you agree that competent authorities apply the methodology in a different way for the spot month and for the aggregate of all other months along the curve?

<ESMA_QUESTION_507>
We agree that competent authorities apply the methodology in a different way for the spot month and for the aggregate of all other months along the curve.
<ESMA_QUESTION_507>

Q508: What factors do you believe should be applied to reflect the differences in the nature of trading activity between the spot month and the forward months?

<ESMA_QUESTION_508>
The highest relevance of position limits with regard to market abuse (e.g. market squeezing) occurs close to maturity and is limited to physically settled contracts only. However, when calculating position limits per contract it has to be considered that there are overlapping maturities and substitution possibilities among the different types of contracts traded (base against peak and off-peak; quarter against month).
<ESMA_QUESTION_508>

Q509: Do you agree with ESMA's proposal for trading venues to provide data on the deliverable supply underlying their contracts? If you do not agree, what considerations should be given to determining the deliverable supply for a contract?

<ESMA_QUESTION_509>
Where possible, trading venues should provide data on the deliverable supply underlying their contracts and should calculate position limits on the basis of such data. Those limits should be subject to verification by the respective national competent authority. For gas and power, the deliverable supply should be calculated at EU level as hedging, supply and arbitrage strategies of the trading companies are European as well. The gas and power markets are already strongly interconnected and the European Commission along with the Parliament and the Council intend to integrate the markets even further in the years to come. It is hence important to calculate the deliverable supply at a European level. The overall gas/power supply in Europe could be calculated with existing data from reliable sources.
<ESMA_QUESTION_509>

Q510: In the light of the fact that some commodity markets are truly global, do you consider that open interest in similar or identical contracts in non-EEA jurisdictions should be taken into account? If so, how do you propose doing this, given that data from some trading venues may not be available on the same basis or in the same timeframe as that from other trading venues?

<ESMA_QUESTION_510>
In general, when considering markets on a global basis, the position limits regime should take an entity's overall influence on the supply and demand conditions in a particular commodity into account. This suggests that NCAs should consider all related positions; regardless of if they are held in exchange-traded futures or options, similar OTC contracts or in the actual physical commodity underlying such contracts.
<ESMA_QUESTION_510>

Q511: In the absence of published or easily obtained information on volatility in derivative and physical commodity markets, in what ways should ESMA reflect this factor in its methodology? Are there any alternative measures that may be obtained by ESMA for use in the methodology?

<ESMA_QUESTION_511>
The implementation and subsequent application of the position limit regime needs to be done comprehensively and with great care. If position limits are set at an inappropriate level, they will rather cause more volatility than help to reduce it. Any artificial constraints that are put upon the natural interaction of supply and demand (such as position limits) in a market may trigger a 'liquidity rationing' and thereby significantly increase volatility.
<ESMA_QUESTION_511>

Q512: Are there any other considerations related to the number and size of market participants that ESMA should consider in its methodology?

<ESMA_QUESTION_512>
Information about the number and size of market participants is important for the right calibration of position limits. Trading venues and NCAs should therefore examine these factors together with the deliverable supply in the underlying commodity and the amount of open interest in the relevant products when determining the 'anatomy' of the market. The open interest as such should never be viewed in isolation. Instead, the open interest in a contract should be compared with the deliverable supply of the physical commodity in order to assess whether a market participant would be able to hold a significant proportion of each.
ESMA argues that the concentration of positions will particularly be a factor in national gas and power markets. We in general agree with this statement. As a consequence, it is very important that the position limits leave enough room for a smooth and orderly functioning of the gas and power markets.

Moreover, due to the IC6-exemption in MiFID II gas and power derivative markets could potentially split up, which may lead to an even more problematic case for position limits:

- Depending on the outcome of the definition of gas and power contracts that 'must be physically settled' and are traded on OTFs, a substantial part of trading activities could take place outside the scope of MiFID II (OTC contracts and OTF contracts that must be physically settled).

- The position limits imposed may potentially not cover contracts traded on an OTF that must be physically settled and similar transactions that might be deemed to be nonfinancial instruments.

- However, contracts that must be physically settled and are traded on an OTF and contracts that are traded at an exchange are economically equivalent, meaning that their prices are strongly interrelated and they are easily substitutable by each other.

- Therefore, if a firm has a large position in exchange traded contracts compared to the open interest in that exchange traded contract, this does not imply that the firm has market power or the power to carry out any other abusive actions.

- Given that the substantial part of trading activities could take place outside the scope of MiFID II, we doubt that the number and size of market participants that trade financial instruments in power and gas are of substantial relevance.

- It appears very questionable to us whether position limits can be defined in a reasonable way in the given setting.

- We therefore argue that it is of great importance to at least include transactions at OTFs that 'must be physically settled' in the assessment and calculation of appropriate position limits.

- In this context, it is important to note that REMIT does not include specific position limit rules.

- Energy regulators are best placed to assess the risks for gas and power markets in their entirety due to their capability to overview the entire market based on several data sources available to them (e.g. REMIT). Inappropriate limits could lead to extensive negative consequences for the orderly functioning of the underlying physical markets (possibility to hedge).

- Due to the possibility to move trading to trading venues enabling less regulation (e.g. trading in nonfinancial instruments on OTFs), position limits that are set too restrictively would be futile and encourage regulatory arbitrage.
<ESMA_QUESTION_512>

Q513: Are there any other considerations related to the characteristics of the underlying commodity market that ESMA should consider in its methodology?

<ESMA_QUESTION_513>
As for gas and power, if factors like patterns of production and consumption are considered, it has to be taken into account that only a part of the derivatives in these markets is traded in financial instruments (cf. our response to Question 512).
<ESMA_QUESTION_513>

Q514: For new contracts, what approach should ESMA take in establishing a regime that facilitates continued market evolution within the framework of Article 57?

<ESMA_QUESTION_514>
We agree with the first approach (i). However, new products have to be granted an initial starting period of at least one year before applying Article 57 of MiFID II and/or before exceeding a defined minimum size. Furthermore, we would like to emphasise that the term 'same' should not be defined to narrowly.
<ESMA_QUESTION_514>

Q515: The interpretation of the factors in the paragraphs above will be significant in applying ESMA's methodology; do you agree with ESMA's interpretation? If you do not agree with ESMA's interpretation, what aspects require amendment?

<ESMA_QUESTION_515>
Europex considers the two key factors to be the deliverable supply and the time period to contract maturity. In its proposal, ESMA, however, does not sufficiently take into account the special situation of gas and power markets. As stated earlier, these markets could eventually split up and only a part of the traded derivatives will be classified as financial instruments, i.e. captured by MiFID II. Any position limits for financial instruments in gas and power that do not take this circumstance into account, will be misleading and may provoke the inability of market participants to trade on regulated markets because of an overly restrictive and erroneous limit regime. This could then again trigger an additional shift of trading activities away from exchanges to OTFs and increase the level of regulatory arbitrage.

<ESMA_QUESTION_515>

Q516: Are there any other factors which should be included in the methodology for determining position limits? If so, state in which way (with reference to the proposed methodology explained below) they should be incorporated.

<ESMA_QUESTION_516>
We suggest additionally including "the share of derivatives traded in that asset class that are classified as financial instruments compared to the overall trading activity in the market".
<ESMA_QUESTION_516>

Q517: What do you consider to be the risks and/or the advantages of applying a different methodology for determining position limits for prompt reference contracts compared to the methodology used for the position limit on forward maturities?

<ESMA_QUESTION_517>
Position limits are most relevant for contracts that are close to maturity, i.e. prompt contracts, whereas they are of little relevance for other contracts. It is therefore reasonable to apply different methodologies for prompt reference contracts and forward maturities. Furthermore, differences have to be considered between derivatives that are solely financially settled and derivatives that are connected to physical fulfilment at a spot market.
<ESMA_QUESTION_517>

Q518: How should the position limits regime reflect the specific risks present in the run up to contract expiry?

<ESMA_QUESTION_518>
Generally, the limit should take effect before the beginning of the delivery month/the delivery and be announced at least four weeks in advance before application.

With the delivery obligations crystallising (i.e. as the spot month approaches maturity), the term 'deliverable supply' should be construed as the amount of stock which is available to satisfy the delivery obligations in the maturing contract month. Europex suggests that 'deliverable supply' in relation to a contract that has a longer maturity should be construed as the respective production or consumption of this commodity (based on statistics for the most recent year's production/consumption). This is because such a figure measures the amount of the physical commodity which is produced prior to the maturity of the derivative contract concerned (and therefore would be potentially available to satisfy future delivery needs). In this context, we would like to emphasize that it should be sufficient to define limits for contracts that have four weeks or less until maturity. We consider that such limits will discipline market participants not to build up large positions in contracts that have a longer time until maturity.
<ESMA_QUESTION_518>

Q519: If a different methodology is set for the prompt reference contract, would it be appropriate to make an exception where a contract other than the prompt is the key benchmark used by the market?

<ESMA_QUESTION_519>
We do not see the need for a different methodology as long as the one in place that is setting the size of the underlying physical supply capacity can cope with prompt reference contracts. An exception to this should only be made if such a benchmark were: (a) subject to a significant risk of pricing distortions; and (b) if price limits were the most appropriate tool for addressing such a risk.
<ESMA_QUESTION_519>

Q520: Do you agree that the baseline for the methodology of setting a position limit should be the deliverable supply? What concrete examples of issues do you foresee in obtaining or using the measure?

<ESMA_QUESTION_520>
We agree that the deliverable supply should be the baseline. This is especially true for markets where only a share of derivatives qualify as financial instruments, e.g. gas and power markets. Trading venues will need to utilise the most relevant source of data with regard to information on deliverable supply. This source may vary from commodity to commodity. In some cases it may be a public statistics authority or another public body, while in other cases it may well be a physical market association or another competent private sector entity. In addition, judgement and experience will need to be applied by the trading venue in determining whether production, consumption or some other measure is the best proxy for deliverable supply. The trading venue will also need to assess whether it is more appropriate to base position limits on the regional deliverable supply or on the global deliverable supply for each commodity concerned.

In practice, when considering the grid-bound commodities gas and electricity, it should be additionally taken into account that the European energy market is getting increasingly interlinked. This is mainly due to initiatives following the European Energy Market Model like market coupling and mergers of market areas. As a consequence, the deliverable supply increases across market borders. Hence, the market size should be determined on an aggregated level (e.g. the European power supply volumes rather than the German power supply on a standalone basis. In addition, traders in neighbouring countries trade derivatives relating to the German spot index to partially hedge their local production.). Furthermore, for EU emission allowances the yearly compliance demand is suitable to only a limited extent since the deliverable supply has to additionally consider banking possibilities, fluctuation in demand and the different allocation regimes.
<ESMA_QUESTION_520>

Q521: If you consider that a more appropriate measure exists to form the baseline of the methodology, please explain the measure and why it is more appropriate. Consideration should be given to the reliability and availability of such a measure in order to provide certainty to market participants.

<ESMA_QUESTION_521>
The methodology should be flexibly effective on the number of participants along the maturity curve, if necessary at all. The methodology should further consider that certain contracts are used as proxy hedge, thereby possibly increasing the underlying market significantly.
<ESMA_QUESTION_521>

Q522: Do you agree with this approach for the proposed methodology? If you do not agree, what alternative methodology do you propose, considering the full scope of the requirements of Article 57 MiFID II?

<ESMA_QUESTION_522>
As noted earlier, Europex considers the two factors 'deliverable supply' and 'maturity' to be key for the design of position limits and the support of orderly pricing and settlement conditions as well as for the prevention of market abuse. Less weight should be given to the other factors mentioned.

When considering the specificities of the underlying market, it is important to bear in mind the historical landscape of gas and power markets (cf. our response to Question 512) in order to avoid disturbing the security of supply in those products.
<ESMA_QUESTION_522>

Q523: Do you have any views on the level at which the baseline (if relevant, for each different asset class) should be set, and the size of the adjustment numbers for each separate factor that ESMA must consider in the methodology defined by Article 57 MiFID II?

<ESMA_QUESTION_523>
The level of the baseline and the size of the adjustment factors will need to be defined on a market by market basis. The starting point should be the experience of trading venues in managing the markets in question.

<ESMA_QUESTION_523>

Q524: Does the approach to asset classes have the right level of granularity to take into account market characteristics? Are the key characteristics the right ones to take into account? Are the conclusions by asset class appropriate?

<ESMA_QUESTION_524>
We generally agree with the proposed level of granularity. However, the possibility of cross-hedging needs to be considered as well given that it is quite common that financially settled contracts in power are partially settled physically through the spot market.

As for the ESMA conclusions and as far as gas and power are concerned, the specific treatment of contracts that 'must be physically settled' and that are traded on an OTF must be taken into account (cf. our response to Question 512). A position limit on financial instruments would incentivise market participants to shift quantities exceeding the limit to OTFs. Therefore, when defining position limits, it should be assessed whether such limits support or harm the objectives of MiFID II.
<ESMA_QUESTION_524>

Q525: What trading venues or jurisdictions should ESMA take into consideration in defining its position limits methodology? What particular aspects of these experiences should be included within ESMA's work?

<ESMA_QUESTION_525>
Given the global nature of commodity trading, the methodologies for setting and applying position limits should be harmonised worldwide. Therefore, all major commodity markets are relevant, especially in the United States (CFTC) and in Asia (Singapore, China, Malaysia, Indonesia and India).
<ESMA_QUESTION_525>

Q526: Do you agree that the RTS should accommodate the flexibility to express position limits in the units appropriate to the individual market? Are there any other alternative measures or mechanisms by which position limits could be expressed?

<ESMA_QUESTION_526>
Yes, we agree.
<ESMA_QUESTION_526>

Q527: How should the methodology for setting limits take account of a daily contract structure, where this exists?

<ESMA_QUESTION_527>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_527>

Q528: Do you agree that limits for option positions should be set on the basis of delta equivalent values? What processes should be put in place to avoid manipulation of the process?

<ESMA_QUESTION_528>
Yes, we agree that limits for option positions should be set on the basis of delta equivalent values. Trading venues should publish their option deltas. Where reasonable, venue data should be used in order to avoid a manipulation of the process. However, since in certain markets only small open interests exist, due to little trading activity, the quality of the implied volatility strips and other information might be low.
<ESMA_QUESTION_528>

Q529: Do you agree that the preferred methodology for the calculation of delta-equivalent futures positions is the use of the delta value that is published by trading venues? If you do not, please explain what methodology you prefer, and the reasons in favour of it?

<ESMA_QUESTION_529>
Yes, we agree that limits for futures positions should be set on the basis of delta equivalent values that are published by trading venues. However, since in certain markets only small open interests exist, due to little trading activity, the quality of the implied volatility strips and other information might be low.
<ESMA_QUESTION_529>

Q530: Do you agree that the description of the approach outlined above, combined with the publication of limits under Article 57(9), would fulfil the requirement to be transparent and non-discriminatory?

<ESMA_QUESTION_530>
Whether or not the position limits and position management controls can be considered transparent and non-discriminatory depends on the applied methodology. For instance, assuming that OTF traded gas and power contracts 'that must be physically settled' are economically equivalent to gas and power contracts traded on regulated markets, it would be highly discriminatory and non-transparent, if those contracts were not taken into account by the applied methodology.
<ESMA_QUESTION_530>

Q531: What challenges are posed by transition and what areas of guidance should be provided on implementation? What transitional arrangements would be considered to be appropriate?

<ESMA_QUESTION_531>
In the context of MiFID II, position limits on trading venues are of little importance as they are determined comprehensively for all venues, including trading in equivalent OTC contracts. The position management controls of a venue are of greater significance in this context.. Therefore, the markets should be given enough time to deal with the newly defined limits in order to allow for a smooth and orderly transition to the new regime.
<ESMA_QUESTION_531>

7.3. Position Reporting

Q532: Do you agree that, in the interest of efficient reporting, the data requirements for position reporting required by Article 58 should contain elements to enable competent authorities and ESMA to monitor effectively position limits? If you do not agree, what alternative approach do you propose for the collection of information in order to efficiently and with the minimum of duplication meet the requirements of Article 57?

<ESMA_QUESTION_532>
Yes, we generally agree. However, it should be noted that the data the trading venues will have to publish must not undermine the trading participants' right of anonymity of their trading activities on these venues.

Concerning the link between position limits and position reporting, Articles 57 and 58 seem to be inconsistent. The obligations for position limits, including positions in economically equivalent OTC contracts, in Article 57 para 1. refer generally to persons, whereas the obligations for a complete position reporting, again including economically equivalent OTC contracts, in Article 58 para 2., refer to investment firms only. Therefore, Articles 57 and 58 foresee different obligations for persons that are non-investment firms, i.e. for persons exempted under Article 2, than for investment firms. As a consequence, persons exempted under Article 2 are subject to limits regarding their positions in economically equivalent OTC contracts as defined in Article 57 but do not have to report these positions in economically equivalent OTC contracts

according to Article 58. Thus, we do not see how the goals defined in Article 57 (1) can be reached appropriately. We therefore suggest including all persons regardless if they are investment firms or not into the reporting obligations defined in Article 58 (2) of MiFID II.
<ESMA_QUESTION_532>

Q533: Do you agree with ESMA's definition of a "position" for the purpose of Article 58? Do you agree that the same definition of position should be used for the purpose of Article 57? If you do not agree with either proposition, please provide details of a viable alternative definition.

<ESMA_QUESTION_533>
Yes, the definition should be the same for Article 57 and Article 58. Moreover, the gross positions are appropriate for position reporting as there are different contracts and different venues.
<ESMA_QUESTION_533>

Q534: Do you agree with ESMA's approach to the reporting of spread and other strategy trades? If you do not agree, what approach can be practically implemented for the definition and reporting of these trades?

<ESMA_QUESTION_534>
Yes, spreads are at least synthetic or a special combined order type which results in at least buying and selling of two different products/maturities etc..
<ESMA_QUESTION_534>

Q535: Do you agree with ESMA's proposed approach to use reporting protocols used by other market and regulatory initiatives, in particular, those being considered for transaction reporting under MiFID II?

<ESMA_QUESTION_535>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_535>

Q536: Do you have any specific comments on the proposed identification of legal persons and/or natural persons? Do you consider there are any practical challenges to ESMA's proposals? If yes, please explain them and propose solutions to resolve them.

<ESMA_QUESTION_536>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_536>

Q537: What are your views on these three alternative approaches for reporting the positions of an end client where there are multiple parties involved in the transaction chain? Do you have a preferred solution from the three alternatives that are described?

<ESMA_QUESTION_537>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_537>

Q538: What alternative structures or solutions are possible to meet the obligations under Article 58 to identify the positions of end clients? What are the advantages or disadvantages of these structures?

<ESMA_QUESTION_538>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_538>

Q539: Do you agree with ESMA's proposal that only volumes traded on-exchange should be used to determine the central competent authority to which reports are made? If you do not agree, what alternative structure may be used to determine the destination of position reports?

<ESMA_QUESTION_539>
For the grid-bound commodities gas and power a central competent authority has already been established under REMIT to which all traded volumes have to be reported – on- and off-exchange. The competent authority should be the one responsible for the country of delivery of the contract.
<ESMA_QUESTION_539>

Q540: Do you agree that position reporting requirements should seek to use reporting formats from other market or regulatory initiatives? If not mentioned above, what formats and initiatives should ESMA consider?

<ESMA_QUESTION_540>
Yes, we agree.
<ESMA_QUESTION_540>

Q541: Do you agree that ESMA should require reference data from trading venues and investment firms on commodity derivatives, emission allowances, and derivatives thereof in order to increase the efficiency of trade reporting?

<ESMA_QUESTION_541>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_541>

Q542: What is your view on the use of existing elements of the market infrastructure for position reporting of both on-venue and economically equivalent OTC contracts? If you have any comments on how firms and trading venues may efficiently create a reporting infrastructure, please give details in your explanation.

<ESMA_QUESTION_542>
Concerning gas and power trading, we deem it to be useful to refer to the reporting infrastructure established under REMIT in order to gain a general overview. Otherwise, we agree with ESMA's proposal.
<ESMA_QUESTION_542>

Q543: For what reasons may it be appropriate to require the reporting of option positions on a delta-equivalent basis? If an additional requirement to report delta-equivalent positions is established, how should the relevant delta value be determined?

<ESMA_QUESTION_543>
We agree with ESMA's proposal. However, the conversion of the data should be done by the competent authority.
<ESMA_QUESTION_543>

Q544: Does the proposed set of data fields capture all necessary information to meet the requirements of Article 58(1)(b) MiFID II? If not, do you have any proposals for amendments, deletions or additional data fields to add the list above?

<ESMA_QUESTION_544>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_544>

Q545: Are there any other fields that should be included in the Commitment of Traders Report published each week by trading venues other than those shown above?

<ESMA_QUESTION_545>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_545>

8. Market data reporting

8.1. Obligation to report transactions

Q546: Do you agree with ESMA's proposal for what constitutes a 'transaction' and 'execution of a transaction' for the purposes of Article 26 of MiFIR? If not, please provide reasons.

<ESMA_QUESTION_546>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_546>

Q547: Do you anticipate any difficulties in identifying when your investment firm has executed a transaction in accordance with the above principles?

<ESMA_QUESTION_547>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_547>

Q548: Is there any other activity that should not be reportable under Article 26 of MiFIR?

<ESMA_QUESTION_548>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_548>

Q549: Do you foresee any difficulties with the suggested approach? Please elaborate.

<ESMA_QUESTION_549>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_549>

Q550: We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

<ESMA_QUESTION_550>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_550>

Q551: Do you have any comments on the designation to identify the client and the client information and details that are to be included in transaction reports?

<ESMA_QUESTION_551>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_551>

Q552: What are your views on the general approach to determining the relevant trader to be identified?

<ESMA_QUESTION_552>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_552>

Q553: In particular, do you agree with ESMA's proposed approach to assigning a trader ID designation for committee decisions? If not, what do you think is the best way for NCAs to obtain accurate information about committee decisions?

<ESMA_QUESTION_553>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_553>

Q554: Do you have any views on how to identify the relevant trader in the cases of Direct Market Access and Sponsored Access?

<ESMA_QUESTION_554>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_554>

Q555: Do you believe that the approach outlined above is appropriate for identifying the 'computer algorithm within the investment firm responsible for the investment decision and the execution of the transaction'? If not, what difficulties do you see with the approach and what do you believe should be an alternative approach?

<ESMA_QUESTION_555>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_555>

Q556: Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details.

<ESMA_QUESTION_556>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_556>

Q557: Do you agree with ESMA's proposed approach to adopt a simple short sale flagging approach for transaction reports? If not, what other approaches do you believe ESMA should consider and why?

<ESMA_QUESTION_557>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_557>

Q558: Which option do you believe is most appropriate for flagging short sales? Alternatively, what other approaches do you think ESMA should consider and why?

<ESMA_QUESTION_558>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_558>

Q559: What are your views regarding the two options above?

<ESMA_QUESTION_559>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_559>

Q560: Do you agree with ESMA's proposed approach in relation to reporting aggregated transactions? If not, what other alternative approaches do you think ESMA should consider and why?

<ESMA_QUESTION_560>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_560>

Q561: Are there any other particular issues or trading scenarios that ESMA should consider in light of the short selling flag?

<ESMA_QUESTION_561>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_561>

Q562: Do you agree with ESMA's proposed approach for reporting financial instruments over baskets? If not, what other approaches do you believe ESMA should consider and why?

<ESMA_QUESTION_562>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_562>

Q563: Which option is preferable for reporting financial instruments over indices? Would you have any difficulty in applying any of the three approaches, such as determining the weighting of the index or determining whether the index is the underlying in another financial instrument? Alternatively, are there any other approaches which you believe ESMA should consider?

<ESMA_QUESTION_563>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_563>

Q564: Do you think the current MiFID approach to branch reporting should be maintained?

<ESMA_QUESTION_564>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_564>

Q565: Do you anticipate any difficulties in implementing the branch reporting requirement proposed above?

<ESMA_QUESTION_565>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_565>

Q566: Is the proposed list of criteria sufficient, or should ESMA consider other/extra criteria?

<ESMA_QUESTION_566>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_566>

Q567: Which format, not limited to the ones above, do you think is most suitable for the purposes of transaction reporting under Article 26 of MiFIR? Please provide a detailed explanation including cost-benefit considerations.

<ESMA_QUESTION_567>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_567>

8.2. Obligation to supply financial instrument reference data

Q568: Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?

<ESMA_QUESTION_568>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_568>

Q569: Do you anticipate any difficulties in providing, at least daily, a full file containing all the financial instruments?

<ESMA_QUESTION_569>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_569>

Q570: Do you anticipate any difficulties in providing a combination of delta files and full files?

<ESMA_QUESTION_570>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_570>

Q571: Do you anticipate any difficulties in providing details of financial instruments twice per day?

<ESMA_QUESTION_571>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_571>

Q572: What other aspects should ESMA consider when determining a suitable solution for the timeframes of the notifications? Please include in your response any foreseen technical limitations.

<ESMA_QUESTION_572>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_572>

Q573: Do you agree with the proposed fields? Do trading venues and investment firms have access to the specified reference data elements in order to populate the proposed fields?

<ESMA_QUESTION_573>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_573>

Q574: Are you aware of any available industry classification standards you would consider appropriate?

<ESMA_QUESTION_574>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_574>

Q575: For both MiFID and MAR (OTC) derivatives based on indexes are in scope. Therefore it could be helpful to publish a list of relevant indexes. Do you foresee any difficulties in providing reference data for indexes listed on your trading venue? Furthermore, what reference data could you provide on indexes?

<ESMA_QUESTION_575>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_575>

Q576: Do you agree with ESMA's intention to maintain the current RCA determination rules?

<ESMA_QUESTION_576>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_576>

Q577: What criteria would you consider appropriate to establish the RCA for instruments that are currently not covered by the RCA rule?

<ESMA_QUESTION_577>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_577>

<ESMA_QUESTION_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_1>

8.3. Obligation to maintain records of orders

Q578: In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.

<ESMA_QUESTION_578>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_578>

Q579: In your view, what are the data elements that cannot be harmonised? Please elaborate.

<ESMA_QUESTION_579>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_579>

Q580: For those elements that would have to be harmonised under Option 2 or under Option 3, do you think industry standards/protocols could be utilised? Please elaborate.

<ESMA_QUESTION_580>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_580>

Q581: Do you foresee any difficulties with the proposed approach for the use of LEI?

<ESMA_QUESTION_581>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_581>

Q582: Do you foresee any difficulties maintaining records of the Client IDs related with the orders submitted by their members/participants? If so, please elaborate.

<ESMA_QUESTION_582>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_582>

Q583: Are there any other solutions you would consider as appropriate to track clients' order flows through member firms/participants of trading venues and to link orders and transactions coming from the same member firm/participant?

<ESMA_QUESTION_583>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_583>

Q584: Do you believe that this approach allows the order to be uniquely identified If not, please elaborate

<ESMA_QUESTION_584>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_584>

Q585: Do you foresee any difficulties with the implementation of this approach? Please elaborate

<ESMA_QUESTION_585>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_585>

Q586: Do you foresee any difficulties with the proposed approach? Please elaborate

<ESMA_QUESTION_586>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_586>

Q587: Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA_QUESTION_587>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_587>

Q588: Would the breakdown in the two categories of order types create major issues in terms of mapping of the orders by the Trading Venues and IT developments? Please elaborate

<ESMA_QUESTION_588>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_588>

Q589: Do you foresee any problems with the proposed approach?

<ESMA_QUESTION_589>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_589>

Q590: Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.

<ESMA_QUESTION_590>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_590>

Q591: Do you agree that standardised default time stamps regarding the date and time at which the order shall automatically and ultimately be removed from the order book relevantly supplements the validity period flags?

<ESMA_QUESTION_591>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_591>

Q592: Do venues use a priority number to determine execution priority or a combination of priority time stamp and sequence number?

<ESMA_QUESTION_592>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_592>

Q593: Do you foresee any difficulties with the three options described above? Please elaborate.

<ESMA_QUESTION_593>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_593>

Q594: Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.

<ESMA_QUESTION_594>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_594>

Q595: Are there any other type of events that should be considered?

<ESMA_QUESTION_595>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_595>

Q596: Do you foresee any difficulties with the proposed approach? Please elaborate.

<ESMA_QUESTION_596>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_596>

Q597: Do you foresee any problems with the proposed approach? Do you consider any other alternative in order to inform about orders placed by market makers and other liquidity providers?

<ESMA_QUESTION_597>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_597>

Q598: Do you foresee any difficulties in generating a transaction ID code that links the order with the executed transaction that stems from that order in the information that has to be kept at the disposal of the CAs? Please elaborate.

<ESMA_QUESTION_598>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_598>

Q599: Do you foresee any difficulties with maintaining this information? Please elaborate.

<ESMA_QUESTION_599>
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<ESMA_QUESTION_599>

8.4. Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)3

Q600: Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.

<ESMA_QUESTION_600>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_600>

Q601: Do you foresee any difficulties in complying with the proposed timeframe?

<ESMA_QUESTION_601>
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<ESMA_QUESTION_601>

8.5. Synchronisation of business clocks

Q602: Would you prefer a synchronisation at a national or at a pan-European level? Please elaborate. If you would prefer synchronisation to a single source, please indicate which would be the reference clock for those purposes.

<ESMA_QUESTION_602>
TYPE YOUR TEXT HERE
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Q603: Do you agree with the requirement to synchronise clocks to the microsecond level?

<ESMA_QUESTION_603>
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<ESMA_QUESTION_603>

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3 Please note that this section has to be read in conjunction with the section on the "Record keeping and co-operation with national competent authorities" in this DP.

Q604: Which would be the maximum divergence that should be permitted with respect to the reference clock? How often should any divergence be corrected?

<ESMA_QUESTION_604>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_604>

9. Post-trading issues

9.1. Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

Q605: What are your views generally on (1) the systems, procedures, arrangements supporting the flow of information to the CCP, (2) the operational process that should be in place to perform the transfer of margins, (3) the relevant parties involved these processes and the time required for each of the steps?

<ESMA_QUESTION_605>
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<ESMA_QUESTION_605>

Q606: In particular, who are currently responsible, in the ETD and OTC context, for obtaining the information required for clearing and for submitting the transaction to a CCP for clearing? Do you consider that anything should be changed in this respect? What are the current timeframes, in the ETD and OTC context, between the conclusion of the contract and the exchange of information required for clearing on one hand and on the other hand between the exchange of information and the submission of the transaction to the CPP?

<ESMA_QUESTION_606>
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<ESMA_QUESTION_606>

Q607: What are your views on the balance of these risks against the benefits of STP for the derivatives market and on the manner to mitigate such risks at the different levels of the clearing chain?

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<ESMA_QUESTION_607>

Q608: When does the CM assume the responsibility of the transactions? At the time when the CCP accepts the transaction or at a different moment in time?

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TYPE YOUR TEXT HERE
<ESMA_QUESTION_608>

Q609: What are your views on how practicable it would be for CM to validate the transaction before their submission to the CCP? What would the CM require for this purpose and the timeframe required? How would this validation process fit with STP?

<ESMA_QUESTION_609>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_609>

Q610: What are your views on the manner to determine the timeframe for (1) the exchange of information required for clearing, (2) the submission of a transaction to the CCP, and the constraints and requirements to consider for parties involved in both the ETD and OTC contexts?

<ESMA_QUESTION_610>
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<ESMA_QUESTION_610>

Q611: What are your views on the systems, procedures, arrangements and timeframe for (1) the submission of a transaction to the CCP and (2) the acceptance or rejection of a transaction by the CCP in view of the operational process required for a strong product validation in the context of ETD and OTC? How should it compare with the current process and timeframe? Does the current practice envisage a product validation?

<ESMA_QUESTION_611>
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<ESMA_QUESTION_611>

Q612: What should be the degree of flexibility for CM, its timeframe, and the characteristics of the systems, procedures and arrangements required to supporting that flexibility? How should it compare to the current practices and timeframe?

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<ESMA_QUESTION_612>

Q613: What are your views on the treatment of rejected transactions for transactions subject to the clearing requirement and those cleared on a voluntary basis? Do you agree that the framework should be set in advance?

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<ESMA_QUESTION_613>

9.2. Indirect Clearing Arrangements

Q614: Is there any reason for ESMA to adopt a different approach (1) from the one under EMIR, (2) for OTC and ETD? If so, please explain your reasons.

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TYPE YOUR TEXT HERE
<ESMA_QUESTION_614>

Q615: In your view, how should it compare with current practice?

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