



European Securities and  
Markets Authority

# Reply form for the ESMA MiFID II/MiFIR Discussion Paper



22 May 2014



European Securities and  
Markets Authority

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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](http://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](http://www.esma.europa.eu) under the heading ‘Disclaimer’.



## 1. Overview

## 2. Investor protection

### 2.1. Authorisation of investment firms

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

<ESMA\_QUESTION\_1>  
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 6 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>  
TYPE YOUR TEXT HERE  
<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>  
No, market makers and other liquidity providers should not be included since they are not execution venues themselves but are active on an execution venue.

ESMA should be aware that for professional clients, their requirements are of a much more bespoke and specific nature related to the investment firm in question than general requirements can fulfil, where the professional clients request TCA on their own transactions within a specific investment firm. Therefore, most of the ESMA proposal will not be of any value to these types of investors either (except for the requirement of the top five execution venues and transparency around what factors that decide how orders are routed). So who will the new requirement regarding execution venues benefit? Not the clients – neither retail nor professional. The details on the best execution policy, particularly related to the relevant information of best execution policies of the investment firm uses, as proposed by ESMA, will lead to substantial, additional administrative work, which will not bring the anticipated value to clients. The requirements will imply that current best execution policies or summaries will need to be reviewed and modified and subsequently distributed to clients. This may also lead to substantial, additional costs which may be hard to quantify in advance, as this depends on the means of distribution and possible local legal requirements which may be applicable.

<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>  
There should be a difference between multilateral and bilateral venues, where SI's only should report within the frames of the requirements connected to being an SI, meaning up to standard market size in liquid instruments for equity and equity-like instruments and up to size specific to the instrument in liquid non-equity instruments.

<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>

No, there should be a minimum trading activity to ensure a reasonable cost-benefit. It could be measured by taking all the mentioned factors into account, i.e. the frequency of trades, the number of trades and the turnover.

In addition, within an asset class there can be huge difference in liquidity and therefore differences in relevance for publication: E.g. Danish mortgage bonds – there are around 2700 ISINs and only a fraction of these can be considered as liquid.

<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>

Once a year as specified in MiFID II is sufficient. It would neither be reasonable or beneficial to require publication on a monthly basis. Please remember that the requirements will also apply to SIs, which will imply relatively larger burdens on smaller SI compared to larger SIs and result in uneven allocation of costs. At the end of the day, smaller countries with smaller SIs will face the largest burdens. Reporting more often than once a year will result in fewer SIs and the requirements will favor the biggest market players. In addition, it will harm the possibility for newcomers to enter the market.

<ESMA\_QUESTION\_11>

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

<ESMA\_QUESTION\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_12>

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

<ESMA\_QUESTION\_13>

Yes, however there will be differences in the reporting, e.g. "probability of execution" is dependent on the physical location of the investment firm vs the venue (NASDAQ OMX and BATS-Chi-X will have different values if the investment firm is placed in Stockholm or London). Since the trading venue does not have a best execution responsibility, presenting detail metrics of Best Execution make no sense. However, there is some useful information that a venue should/could present in order to illustrate whether the orders are genuine (orders that are long enough in the order book to be encountered as real trading interests):

1. % of orders divided into various resting times ( < x ms, < y ms, < z s etc)
2. OTR metrics.

<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>

Yes.

<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>

The Nordic Securities Association (NSA) believes that there should be a difference since the instruments and the way these are traded differs and so do the amount of data, i.e. equities are order-driven markets with considerable more retail interaction and better quality of data than non-equities market, which are price-driven market consisting of mostly professional counterparties and lesser data.

We understand most of the questions by ESMA mainly based on the way equities are traded and the derived amount of data available for these instruments.

<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>

Yes. There will be additional costs associated with these requirements – for SIs' these cost will e.g. consist of mapping the requirements, legal counselling, creating system development, controlling of data, compliance cost, audit cost of handling the amount of data, market data cost. It is very hard to provide exact figures based on our various member firms (it will vary from firm to firm) – however it is considerable cost and our best estimate is at least 4-5 additional people. For SIs the cost will be inversely proportional with the size of the SI –meaning smaller SI will fell the burden considerably more than larger SIs.

<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>

No, this will not add any value to split trades into ranges so that they are comparably since it will not reflect the markets as they work.

<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>

This can only be made meaningful in liquid instruments. In addition, to calculate the "quality" of execution in this way will lead us into a minefield, as the result also depends



upon how other participants in the market act. To analyse TCA is complex and is not suitable to be simplified by measures like this

<ESMA\_QUESTION\_18>

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

<ESMA\_QUESTION\_19>

The reported cost should only be cost that can be directly related to the transaction in question and which is affected by the transaction – e.g. transaction tax or transaction cost.

<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>

In this context, this is not relevant to measure for SIs in liquid instruments, since their hit rate is 100 within the SI requirements (up to Standard market size/size specific to the instrument for liquid instruments).

<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>

From order entry to order execution (irrelevant for SI-trades since these will be executed immediately).

<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>

TYPE YOUR TEXT HERE

<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>

Yes, one method is the order/trade ratio per day/week/month. This could be a relevant indicator in order for investors to spot the best execution ratio. However, another and also very important measure could be to measure the quality of execution on trading venues (RM, MTF, OTF) by requiring these to publish the order resting time on the venue in question. This could show how much true liquidity, which is available and at the same time reveal how much of the flow, which is generated by HFT firms by showing the HFT firms very short resting time and high order/trade ratios thereby illustrating whether the orders are genuine. In short, as also mentioned in Q13, two metrics are valuable:

1. % of orders divided into various resting times ( < x ms, < y ms, < zs etc.)
2. OTR metrics.



How to define true liquidity? Our views are that liquidity is "true" if there is a reasonable chance to react and trade based on a market data event. That is why it is important that venues present info on resting time.

<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>

Yes – there should be a difference in requirements between equities and non-equities, please see Q15.

<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>

No further requirements are needed.

<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>

Data should be provided free of charge. If publication of these kind of information also are associated with cost this would just make market data even more expensive, cf. our response on reasonable commercial costs and data disaggregation.

<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>

Yes. It is very hard to provide exact figures based on our various member firms (it will vary from firm to firm) – however it is considerable cost and our best estimate will approximately requires at least 4-5 persons (please see Q16). Increased frequency of venue execution quality data is of limited use (except for resting time and OTR).

<ESMA\_QUESTION\_27>

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

<ESMA\_QUESTION\_28>

Yes.

<ESMA\_QUESTION\_28>

## **2.4. Best execution - publication of data by investment firms**

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

<ESMA\_QUESTION\_29>

What is relevant to publish is the execution offering from the investment firm in question and this should include which venues and what sort of algorithms that are used for the execution of client orders.

<ESMA\_QUESTION\_29>

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

<ESMA\_QUESTION\_30>

Yes.

<ESMA\_QUESTION\_30>

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

<ESMA\_QUESTION\_31>

No. However, we are not sure on how members should do the reporting when third parties are used?

<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>

Investment Firms should be ready to present data on directed vs non-directed ratio to NCAs. This data has no relevance to the clients, and are not possible to compare between investment firms. A large investment firm with other investment firms as clients will have a higher non-directed ratio than those with only buy-side clients.

Directed orders are typically very diverse and cannot be summarized.

<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>

This is valuable information in specifying the Size Specific to the instrument, but it is however rather difficult to separate some clients, e.g. Asset managers trading in the capacity of the client, and therefore booked in the name of the client.

<ESMA\_QUESTION\_33>



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

<ESMA\_QUESTION\_34>

Yes.

<ESMA\_QUESTION\_34>

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

<ESMA\_QUESTION\_35>

Publication once a year, delay one month.

<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>

Please see Q9.

<ESMA\_QUESTION\_36>

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

<ESMA\_QUESTION\_37>

Yes - very difficult to argue otherwise even though it is hard to spot the usefulness of such information.

<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>

Please see Q32 – the NSA does not think directed orders should be a part of the information. These are typically very diverse and cannot be summarized.

<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>

No further factors.

<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>

Investor demand for this kind of information is zero, please see the general comment above Q8.

<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>

Yes. However, please be aware of the difference between various asset classes, please see Q10.

<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>

For non-equities, a starting point could be as illustrated the first column on page 133 in the DP.

<ESMA\_QUESTION\_42>

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

<ESMA\_QUESTION\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_43>

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

<ESMA\_QUESTION\_44>

TYPE YOUR TEXT HERE

<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>

To make the IOI actionable and to avoid misunderstanding and wrong trades, the content of information should be adequate meaning precise identification of the financial instrument in question, price, volume, buy/sell and include a binding expression to trade.

<ESMA\_QUESTION\_45>

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

<ESMA\_QUESTION\_46>

Yes, we believe that the list is still valid and works well in practice.

<ESMA\_QUESTION\_46>

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

<ESMA\_QUESTION\_47>

Yes, NSA agrees that the table is appropriate for equity-like products. We are not aware of other trading systems that should be taken into account. We believe that there should be good reasons to change workable routines / procedures – Changes without proper impact assessments may lead to additional costs that might be levied on investor and clients on investment firms.

<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>

Yes, ADT remains a valid measure. The rule function well and there is no need to change it.

<ESMA\_QUESTION\_48>

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

<ESMA\_QUESTION\_49>

Yes.

<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>

We prefer to maintain the existing classes since we believe that adding the new ADT class is not necessary. New classes would add additional complexity.

<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>

No, there are no clear reasons to introduce the proposed changes. See Q50.

<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>

No, see Q50 and Q51.

<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>

The proposal would increase complexity and administrative burden.

<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>

It is unfortunate that ETFs - that are market maker products and more similar to derivatives – are classified in same category as standard shares. The liquidity in ETFs is more depending on the underlying market conditions, the underlying asset class, number and type of market participants and the spread in the products that shares.

<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>

The whole ADT concept fits poorly to these instruments that are typically single-market maker driven markets with high number of instruments and where trading often concentrates around few instruments at a time. Certificates also have a leverage factor to deal with or may have basically any payout. Also the ADT does not reflect the instruments liquidity because liquidity is largely driven from the underlying instrument(s) and the specifics of the payout.

<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>

We do not see a need for differentiating.

<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>

TYPE YOUR TEXT HERE

<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>

No, as it would be too late. ESMA should be prepared to review thresholds earlier because:

- There is a need to consider what happens to financial instruments once they been deemed liquid and the effect it will have on the market place and its participants – “ready and willing buyers and seller” and liquidity providers. This then includes the LIS issue.
- There is a risk to get the LIS wrong from the start. Hence flexibility during the first year is extremely important. If the liquidity significantly deteriorates, ESMA should be able to adjust the regime. This is especially important for smaller markets as well as for countries with own currency area.

<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>

Every 12 month. However, there should be a list of events that trigger the recalculation.

Alternatively the competent authority could be allowed to request recalculations.

<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>

NSA would prefer alternative (i), and thus the stub would remain protected by the large in scale waiver. The reason is to ensure clear rules. To avoid unnecessary complexity is far more important than a very small additional value of transparency for the stubs.

In addition, we urge ESMA to ensure that block trades agreed as negotiated trades can continue to be executed as LIS, cf. ESMA's previous approval in [http://www.esma.europa.eu/system/files/2011-241\\_0.pdf](http://www.esma.europa.eu/system/files/2011-241_0.pdf).

In addition, we believe that when calculating the volume cap for the NTW, orders - which are subject to Large in Scale thresholds (block trades) - should be excluded from the calculation

of the volume cap. The reason is that it must be possible for investors to continue to be able to use their broker as an agent for large orders in liquid shares (at or above the LIS threshold) and report these trades within the NTW: There can often be investors who urgently need to trade a large amount of shares within a scheduled timeframe – but where the shares are not available at the RM or MTF. In those situations, the investor is dependent on the investment firm’s ability. This kind of trades should still be possible to execute via the NTW without being in the risk of being captured by the volume cap.

<ESMA\_QUESTION\_60>

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

<ESMA\_QUESTION\_61>

No, NSA believes the most relevant market in terms of liquidity should be the primary market, at least until we have Consolidated Tape for pre-trade data. With our solution it will be issuer that decides.

<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>

Firstly, we understand that usage of the NTW is not connected to a requirement for price improvement. This is correct, i.e. no change from today.

Secondly, we refer to our response in Q60 for the calculation of the volume cap, where NTW trades larger than LIS should not be included in the calculations of the cap.

As for the specific question, we agree with the proposed ways the member or participant of a trading venue can executed a negotiated trade, since these scenarios covers the relevant tasks.

<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>

At present yes. However, there might be other situations, which we have not thought of or are not familiar with at the moment. We propose ESMA to develop an evaluation procedure to estimate whether the list should supplemented in the future. Such evaluation could take place for example be once a year. We also propose that a competent authority should be able to approve (subject to ESMA approval) certain kind of transactions under this waiver. ESMA should collect all such national approvals in a Q&A document available for all.

<ESMA\_QUESTION\_63>

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

<ESMA\_QUESTION\_64>

Yes with the addition of “at-close”, “at-open” and “at call” orders.





<ESMA\_QUESTION\_64>

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

<ESMA\_QUESTION\_65>

Yes, since ESMA's generic approach is the most future proof.

<ESMA\_QUESTION\_65>

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

<ESMA\_QUESTION\_66>

No.

<ESMA\_QUESTION\_66>

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

<ESMA\_QUESTION\_67>

Yes – it is acceptable that this is the minimum requirement. However, stop orders for e.g. 1 share are not relevant since there is no true risk associated with such a size. Stop orders should be connected with a certain size, which could result in a considerable loss, if the order is not activated when surpassing a triggering reference. These kinds of orders are intended for risk adverse investors. However, we agree that the venue in question should be responsible for setting the relevant size. It could, however, be relevant with guidance for the venues in order not to create inappropriate competition on parameters like this (as has been the case for e.g. tick sizes).

<ESMA\_QUESTION\_67>

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

<ESMA\_QUESTION\_68>

No.

<ESMA\_QUESTION\_68>

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

<ESMA\_QUESTION\_69>

On NASDAQ OMX the minimum size is 1 share. If an ice order is executed, the next visible level gets at the back of the matching queue.

<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>

As in Q67 it should be left to the venues to decide. However, the regulatory framework should avoid inappropriate competition on parameters (such as competition on tick sizes). Such a development would not be beneficial for smooth functioning of capital markets.

Small, transparent sizes do not make sense for iceberg either. Iceberg order is meant for large orders, where a reasonable fraction is shown. A reasonable fraction is not 1 share or anything like that. We suggest further Guidelines in this item as well.

<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>

This should be left for the venues to decide.

<ESMA\_QUESTION\_72>

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

<ESMA\_QUESTION\_73>

No.

<ESMA\_QUESTION\_73>

### **3.2. Post-trade transparency - Equities**

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

<ESMA\_QUESTION\_74>

Yes, as it covers all relevant information that investors need to check the execution of their orders.

<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>

No.

<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>



We support the proposal to publish identities of systematic internalisers. This could help investors to identify liquidity pools and help the investment firm to promote their system.  
<ESMA\_QUESTION\_76>

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

<ESMA\_QUESTION\_77>

We understand the need to identify various types of trades. However, in case these identifiers will have to be implied manually it will increase the operational risk considerably. Then it should be considered to change the requirements to the transaction reporting and not the post trade transparency. If this flagging can be automated, it is an excellent idea except for the LIS flag, which is not appropriate since this would expose the counterparties to undue risks when unwinding large positions.

<ESMA\_QUESTION\_77>

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

<ESMA\_QUESTION\_78>

Please see answer on Q77.

<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>

In general the NSA support the introduction of a flag for trades that benefit from the large in scale deferral but we need to further consider the scope of trades to be affected by the flag.

<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>

Yes, it is a good idea to illustrate how orders are executed.

<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>

See Q77.

<ESMA\_QUESTION\_81>

**Q82: Do you agree with the definition of “normal trading hours” given above?**

<ESMA\_QUESTION\_82>

Yes.

<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>

Yes, provided that the requirement in Q77 is not manual. In case the requirement would be manual, it would not be possible to fulfill the requirement.

<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>

Ok.

<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>

Due to member feedback to the CESR consultation in 2010, we prefer option B, which is more flexible for firms executing large trades late in the trading day (particular in illiquid stocks).

<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>

No, see answers in Q48 and Q50.

<ESMA\_QUESTION\_86>

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

<ESMA\_QUESTION\_87>

No, see answer in Q86.

<ESMA\_QUESTION\_87>

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

<ESMA\_QUESTION\_88>

As proposed by ESMA – every 2<sup>nd</sup> year if thresholds are not changed. In case thresholds are changed please see our answer on Q58.

<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>

Yes, and therefore we prefer option B in Q85 – among other things to avoid such collision since this could inappropriately interfere with the auction.

<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>

Yes, it makes it more simple and operational.

<ESMA\_QUESTION\_90>

### **3.3. Systematic Internaliser Regime - Equities**

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

<ESMA\_QUESTION\_91>

Yes, this definition is self-explanatory and operational.

<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>

Yes, the present table (option C) can be handled by investment banks.

Option B would be too demanding and clearly unreasonable.

<ESMA\_QUESTION\_92>

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

<ESMA\_QUESTION\_93>

Yes.

<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>

The same Standard Market Size should apply for equities and equity-like products.

<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>

No, we strongly disagree.

The SI concept is basically a concept for retail trading. SI's aim or commercial motivation should be to provide liquidity at its best possible price to its clients under normal market practices. However, what is non-systematic, ad hoc, irregular and infrequent is not "normal market practices" and cannot be measured or obliged to certain rules as such.

To make the secondary market work properly, there must be a room for trades that do not fit into the "opposite of the SI thresholds". In summary, we do not agree with the link to the SI thresholds.

In addition, we do not understand why ESMA is investigating these questions since we have understood from the level 1 text that ESMA is not requested to submit draft regulatory technical standard on these topics.

<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>

No, actually, there are more types of activity, present and not certain on future where it is not defined, like options maturity and or option exercise. It is important to define clearly what a price formation process is to identify which trade does not impact the price discovery process and therefore could take place pure OTC.

However, the NSA requests ESMA **not** to create an exhaustive list, but instead make the list subject for evaluation. There are undoubtedly other types of transactions, which should be encountered for being included or types will evolve over time as it always happens. It would be highly inappropriate to create an exhaustive list for those reasons. Indeed, it could be considered to include a National process, where the NCA can recommend a certain type of transaction being eligible to be approved as a transaction not contributing to the price discovery process. This recommendation should be subject to ESMA approval on a quarterly basis.

<ESMA\_QUESTION\_96>

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

<ESMA\_QUESTION\_97>

Yes, absolutely.

<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>



Yes, we agree with the proposed definition of structured finance products.

<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>

Yes, if the instruments are divided into separate classes (COFIA), structured finance products should have their own asset class. If IBIA, there is no issue.

<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>

No. Securitised derivatives should be treated as bonds, for the same reasons as convertible bonds are treated as bonds (see item 16 on page 108 in DP).

<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>

No. It is only suitable for instruments traded on a trading venue that the operator of the venue in question should be responsible for determining in which MiFIR category an instrument should be categorized. For instruments which are listed on a venue but only traded by liquidity providers (SIs after MiFID 2), the latter should do the categorization. In both cases, the categorization should be made in reliance of the information provided by the issuer in the prospectus. In addition, a central product register for products traded on more than one venue could be developed in order to keep track on the various instruments and to avoid divergent classification of the same instrument.

We agree that RTS developed by ESMA could help to avoid discrepancies in categorization. In this connection we would also like to underline the importance that ESMA in developing such RTS takes due account of different market structures in the EU such as the fact that in many smaller non-equity markets all trading in listed instruments is carried out through liquidity providers/SI and not on venue.

<ESMA\_QUESTION\_101>

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

<ESMA\_QUESTION\_102>

In addition to the proposals by ESMA, the category sovereign bonds must include:

1. Explicitly government guaranteed bonds and
2. Municipality bonds providing government support for the sector (see Q 116). (By this we want ESMA to recognize that there are countries where the municipality sector is not allowed to default on bonds.)

In case the COFIA-model is used, each main category should also be divided into sub-categories taking into account important liquidity factors such as currency (see below e.g. Q 113 and Q 115).

<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>

As a starting point, NSA believes it's crucial that EBA and ESMA comply with the ESMA statement in the DP page 116, no. 3 "ESMA is aware that the general concept of liquidity of financial instruments also plays a role in other pieces of European legislation, notably in the Capital Requirements and UCITS frameworks. ESMA would like to emphasise that the concept of a liquid market as described in MiFIR and further specified by ESMA technical standard is relevant for transparency purposes in MiFIR only. Liquidity tests and assessments in other pieces of European legislation serve different regulatory purposes and are therefore independent of the liquidity assessments for MiFIR." (We note that ESMA confirmed the statement at the ESMA hearing in Paris on 7 July).

Moreover, NSA strongly supports ESMA's notion on p. 117 that the guiding principle for the calibration should be based on promotion of efficient functioning of markets. As rightly noted, if illiquid locally or regionally traded non-equity instruments (notably bonds) are artificially calibrated as liquid, this would have highly detrimental effects on liquidity and further to financing of real economy.

In our opinion, a clear differentiation between pan-European bond markets and local markets should be established in order not to compromise liquidity. Nordic bond markets can be characterised with following perimeters:

- Extremely limited number of liquidity providers (most will be SIs after MiFID 2)
- Limited number of end-clients ("ready and willing buyers and sellers" )
- Small Issue sizes
- Infrequent trading
- For DK, NO and SE, own currency.

Thus, with a few exceptions, the market as a whole can be described as illiquid.

The Nordic bond markets are fundamentally different for example compared to bonds issued under English law and EMTN documentation with a pan-European distribution. Specific feature is the existence of own currencies in DK, NO and SE which has an impact on market liquidity. Finland is the sole Nordic member of the Eurozone. However, it is incorrect to assume that the Euro denominated bond market is one single market. Whilst bonds in the domestic Finnish bond market are denominated in Euro the bonds are predominantly held by Finnish investors and prices are provided only by a handful of local liquidity providers. Based on our conversations with other relevant Associations, this case is similar to many other smaller Euro-area member states.

In calibrating the rules on transparency on level 2, it is also vital that ESMA takes into account that the regulation must allow for new non-Equity markets to emerge in EU in the future. New markets often share the features described for the Nordic markets above and are therefore dependent on liquidity providers.



As regards determination of “average frequency”, considering the given options, NSA takes the view that Option 3 is preferable. However, it is imperative that ESMA, when developing the new transparency regime for non-equities, takes into account that the new rules will have an ex post effect on the liquidity, e.g. on the frequency of trades (see statement in item 9, page 117). This is of particular importance for non-equities markets where almost all trades are executed against liquidity providers (most will be SIs after MiFID 2) own balance sheets (i.e. not on venue). If the SI-obligations or post trade transparency rules makes it more difficult for liquidity providers/SIs ability to hedge/unwind positions, they will no longer be willing to trade with the frequency or large sizes that they do today. Hence, as a result of the regulation, liquidity will deteriorate which will have a negative effect for both issuers and investors. Thus, just as in the case of the trading obligation for derivatives (art 32.3 second paragraph MiFIR), ESMA should have an Ex-post perspective in developing rules on how to look at liquidity ex-ante (See also replies to Q 111 and 112.).

Potential consequences of deteriorating liquidity in the Nordics:

- Investors will want a liquidity premium for less liquid assets, driving up the costs for issuers
- Costs and risks will increase for investors as it will be more difficult (the larger the trade size) to dispose of their assets in short timeframes
- Possible “polarization” of liquidity across markets, where bigger markets (become more liquid) and smaller markets (become less liquid)
- In our view, initiatives like “long-term financing of the real economy” need strong secondary markets to support liquidity (Supported by recent Swedish Government Official Report SOU 2014:8)
- The increasingly important role that high quality liquid assets (HQLA) play in addressing systemic risk in the financial system must be considered, e.g.: (i) The ability to liquidate assets in a short stress period (i.e. for LCR) would be tested if there aren’t willing and ready buyers at large volumes and (ii) An increase in the use of bonds as collateral to cover new CCP clearing and bilateral initial margin requirements.

Moreover, it should be noted that in many smaller non-euro markets in the EU, liquidity providers are particularly sensitive to increased transparency requirements, which is explained by the very large transactions, relatively small number of investors and the fact that own currency limits available hedging opportunities (see characteristics of Nordic markets above). For this reason the definition of liquid market in art 2.1.17 MiFIR text specifically states that the “market structure” where a financial instrument or class of financial instrument is traded, shall be taken into account when determining whether there is a liquid market for the instrument in question.

<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>

As a starting point, provided that ESMA gets the time period right, we believe Option 1 will bring a more correct and therefore a better picture of the “average size”. A rolling 6 month median would be an appropriate time period to use. If this is used together with the stdv (standard deviation) ESMA will get a good measure. In addition, there is a strong need to and good arguments for including the number of trading days in the calculations in order to compensate for the very likely situations with few, but large trades.



Therefore, although not proposed in the DP, we urge ESMA to include an “option 3” i.e. a combination of option 1 and option 2 which takes both the number of transactions and the number of trading days into account when determining average size.

Please also note that, as mentioned in reply to Q 103, it is imperative that ESMA’s analysis takes into account Ex ante vs. Ex post statistics. If not, the above decision will be based on distorted facts.

<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>

No. The NSA does not support any of the Options proposed by ESMA in the DP. The term “market participants” must be interpreted against the criterion “the number of ready and willing buyers and sellers on a continuous basis”, which in our opinion refers to the number of end-clients active on a market. The number of end-clients has a close correlation to the liquidity in so far as a high number of active buyers and sellers normally is a pre-requisite for order-driven trading. This is an important point considering that the same criteria is to be used for the trading obligation for derivatives (art 32 MiFIR) and we see no reason for different interpretations of the term “market participants” when deciding on liquidity under MiFIR.

As a consequence, those markets where there are only a limited number of end-buyers and sellers active and where all trading are executed through liquidity providers/SIs should not be considered as liquid for the purposes of MiFIR. Thus, in this connection, we agree with the statement that ESMA makes in item 19 on page 120 of the DP i.e. that the existence of liquidity providers is more indicative of the micro structure of a market than of its liquidity

Moreover, it should be noted that in order for a Non- Equity market to be considered as liquid in accordance with the above, one must take into account the number of both sellers and buyers. On some markets, such as the Danish mortgage bond market, there can be large number of end-sellers active (selling bonds to finance their house purchase) but no or few end-buyers. Such market would in our opinion not qualify as liquid, according to this MiFIR-criterion.

In summary, NSA proposes that ESMA, for the purposes of the determination of liquidity, should look at the number of end-clients active on the market for a particular (class of) instrument. Thus, a number of less than # end-sellers and # buyers active on a particular market would be an indication that the market is not liquid. From a practical perspective, it should be noted that this information on end-clients will be available in TRS reporting post MiFID II.

<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>

Yes.

<ESMA\_QUESTION\_106>

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



<ESMA\_QUESTION\_107>

Yes.

<ESMA\_QUESTION\_107>

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

<ESMA\_QUESTION\_108>

No.

<ESMA\_QUESTION\_108>

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

<ESMA\_QUESTION\_109>

The data could be obtained from vendors, given that they can certify live prices and volumes.

<ESMA\_QUESTION\_109>

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

<ESMA\_QUESTION\_110>

NSA supports Option 1. However, one just cannot look past the fact that if ESMA can't get hold of accurate spread data that fulfills its requirement it can disregard it. The reason for not being able to obtain the data is likely to be because the class/instrument is illiquid. If the other measures points to a possible ex-ante "liquid" class/instrument, but the one omitted clearly don't, then ESMA will classify Class/instrument on wrong assumptions.

<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>

Yes, building on the very important statement on page 117 item 9, i.e. that the rules shall be calibrated in order to avoid that the increase in transparency further deteriorates liquidity. This is crucial for smaller markets/non-euro currency areas where liquidity is dependent on ability and willingness of liquidity providers/SIs to trade against their own balance sheet. If rules are not properly calibrated and account is taken of ex post effects, liquidity providers may withdraw from markets. (See also replies to Q 103 and 112 and article art 32.3 second paragraph MiFIR.) This would have serious negative effects on real economy in those Member States.

In order to minimise this risk, ESMA should decide that every classification – liquid or illiquid – needs to be combined with a qualitative assessment with the local NCA involved. Possibly supported by a governing board of buy-side representatives. This should ensure that due account is taken of ex post effects on liquidity. This is especially important for smaller markets, like the Nordic domestic market where trading is dependent on liquidity providers

<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>

NSA does not find any of the proposed scenarios adequate.

However, we can support scenario 5 except that the number of trading days and the trading within the trading days should be much higher in order to qualify as liquid. Considering scenario 6 (or 3) which are more suitable from that point of view (scenario 6 has minimum 2400 trades during a year) are however much worse from e.g. the average volume point of view. Please also note that we have interpreted table 15 as per IBIA. If COFIA method is used, totally different numbers would need to apply.

As regards the question of decision mechanism for liquidity, the NSA firmly supports Option 1 alone, i.e. that experts should be involved. This is also the way to ensure that ex-post effects are taken into account. It would be unacceptable that the decision, even in part, should be based on policy. In particular we take the view that it is imperative that NCAs as well as the industry e.g. representatives from end-clients should be involved in the decision regarding determination of liquidity thresholds.

<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>

NSA agrees that for derivatives, COFIA should be used. For bonds we take the view that IBIA would be a more precise and better measurement if COFIA is not subject to adequate sub-classes. COFIA for bonds will only be acceptable provided that the sub-classes are created by taking relevant factors into account in order for the sub-classes to reflect true liquidity. It is important that ESMA consults the industry in this work to avoid unintended effects on liquidity to the detriment of issuers and investors.

We would like to draw ESMA's attention to that many problems that arise from COFIA stem from the fact that a class of securities has totally different liquidity and issuing patterns across EU's various currency areas. Thus, it is imperative that factors such as currency is taken into account and hence, that different sub-classes are created for bonds and derivatives denominated in euro and non-euro.

If adequate sub-classes which truly reflect liquidity cannot be defined, it is better to use IBIA for bonds.

<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>

Yes. The post trade system of asset classes proposed by AFME has a built-in solution for taking into account the "range of market conditions and life cycle". This is done by adjusting for size and frequency of transactions as well as issue size. Another benefit is that AFME's model would be "self-adjusting" and would not give rise to the same concerns as ESMA's ex-ante assessment-model which is built upon measuring liquidity once before the change of transparency regime.

<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>

Yes. The most important feature is the risk characteristics of the instruments involved. If the change of price of a sub-class of instruments has a high correlation then they probably can form a homogeneous sub-class, given that variation is based on a causal connection.

The following adjustments to Bonds under Annex 3.6.1 are necessary:

- Currency – should come before or after Bonds
- Some kind of Credit quality distinguisher is mandatory
- All different possible sub-categories listed under “Other potential liquidity sub-categories” shall be applied to all bonds (sovereign bonds, municipal bonds, corporate bonds and covered bonds) except underlying asset referring to Covered Pools which is only applicable to that particular bond category.

Please note that the above list is of course not exhaustive. It is important that any classification takes into account characteristics of the instruments and of local markets. For the Danish mortgage bond market it is for instance important to distinguish between bonds open for tap-issuing and bonds without any tap issuing

In its future work, NSA generally urges ESMA to take into account the characteristics and needs of non-euro markets as well as smaller markets within the Eurozone, please see Q 113.

<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>

Yes, we think that the classification in Annex 3.6.1 is relevant, but we want to emphasise the following:

We note that municipal bonds are treated as a separate class in this chapter which was not the case in 3.5. Municipal bonds with government backing should fall within category sovereign bonds (see reply to Q 102 & 115).

Again, we would like to emphasise that in the context of MIFID II the classification can be relevant given that currency is a very high level denominator in the categorisation of (classes of) securities.

See also comments in reply to Q113 and Q115 regarding factors to be taken into account when deciding on sub-classes.

<ESMA\_QUESTION\_116>

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

<ESMA\_QUESTION\_117>

Yes. (However, ESMA needs to look at effects of proposal in combination with approach chosen for “liquid markets”. If liquidity requirement is “once a day”, and ESMA can suspend if it falls below, then it can only fall to 0. Seems like a digital issue.)

<ESMA\_QUESTION\_117>

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

<ESMA\_QUESTION\_118>

In our view, recalibration every 2 years and then fixing a percentage as hard threshold will not work in practice. Markets traded on a venue should have open dialogue with ESMA and any percentage should be used as indications. We suggest that decisions are to be taken at Venue after consultation with ESMA. For SI dominated markets – SIs should contact NCA who will contact ESMA to propose suspension.

<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>

Yes.

<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>

No. Request for stream is used in markets where the liquidity is different. It is still a request but for a continuous price-service while RFQ is a service in instruments so illiquid that a new request have to be placed every time. Hence, from a regulatory perspective, it is insufficient to put them in the same group since markets that provide RFS are much more liquid. In other words, request for stream should be an own group of trading systems as it can only be used for trading liquid instruments whereas RFQ can be used for illiquid instruments.

<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>

No.

<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>

Yes.

<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>

No. It should be made more specific that voice trading systems are not supposed to make public the information on bids and offers for orders subject to waivers.



<ESMA\_QUESTION\_123>

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

<ESMA\_QUESTION\_124>

Yes, apart from

1. RFQ where info regarding volume is only available if the security is traded on a venue and this info comes from that venue
2. "Trading system not covered" – for those the definition of what should be revealed can wait
3. See comments made on the voice trading system – Q123.

<ESMA\_QUESTION\_124>

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

<ESMA\_QUESTION\_125>

No.

<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>

No more information.

<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>

Most systems are pure voice trading, sometimes connected with chat rooms. On NASDAQ OMX there is Electrobroker which is, a voice broking supplemented with transparent bid and offers for some instruments. In general, these systems have very limited pre-trade transparency which is not necessary for involved parties since they are all liquidity providers and not end-clients.

Currently, the answers provided in an RFQ system are known only to the entity which submitted the request. The entities answering to the RFQ do not see the process provided by the other responding entities and importantly, third parties - including their competitors - do not even know that an RFQ is being processed.

Imposing immediate and full transparency on the bids and offers responding to RFQs would make it more difficult for liquidity providers/market makers to find a counterpart to unwind their position, and therefore they will be forced into making imperfect hedges – leading to market makers not making full use of RFQ and spreads would widen – to the detriment of investors.

According to MiFIR Article 9(5), the pre trade transparency regime should be calibrated for different types of trading system. Thus, for example pre trade transparency should be delayed while the bids and offers are still actionable.

<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>

They make information public by using chat boxes or indicative screens. Please observe they are servicing sell-side liquidity providers and are there as a tool for liquidity providers to adjust their risk without revealing identity since that might affect counterparties (other liquidity providers' propensity to trade).

<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>

Yes to all but voice trading and RFQ. RFQ is more complex than described and Voice trading is not suitable at all. The amount of transaction patterns under RFQ (combination of securities, contingent requests, etc.) makes the suggested pre-trade requirements unrealistic in reality. Indicative bids and offers are the most important, with a margin the one requested by all participants. Volume will not give information since for above reasons it doesn't tell that much.

<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>

Yes.

<ESMA\_QUESTION\_130>

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

<ESMA\_QUESTION\_131>

No comments at this stage.

<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>

No, we do not support a requirement on Venue identification. Venue identification serves a purpose only when the venue is the clearing house (not the venue for trading). Thus, information on venue identification would be unnecessary burden. On identification of SI, please see reply to Q 133.

<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>

Information on SI id should not be published. The only reason to publish the identity is to reveal information on best execution, which is already made available via MiFID Article 27. To publish information on SI identity could also create undue risks.

<ESMA\_QUESTION\_133>

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

<ESMA\_QUESTION\_134>

No.

<ESMA\_QUESTION\_134>

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

<ESMA\_QUESTION\_135>

NSA can only agree to use the information in the transactions reporting, but this information must not be made public since it can be misused. This is especially the case for the Large in Scale Flag ("L") as it will expose investment firms to undue risks because it is easy to guess who has got the large transaction in smaller markets like the Nordic markets. In addition, these measures are most relevant for equity markets and much less useful for Non-Equities market. The only time one should flag is because a transactions price is determined by other factors than valuation and hence the price and transaction information can be distortive to price formation process and cause confusion.

Please also note that non-equity transactions are to a large extent spreads, basis trades (bonds versus futures) or other relative trades. Hence, if we are to flag all kind of different trades that forms the turnover in an instrument we will need a very large number of flags.

<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>

No – since they can be misused for the reasons mentioned in reply to Q135.

<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>

No.

<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>

No, please see reply to Q135.

<ESMA\_QUESTION\_138>

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

<ESMA\_QUESTION\_139>

Yes, we agree that all securities financing transactions should be exempted.

<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>

No, the regulator has to realize that 5 min for all Europe's smaller non-equity markets is very expensive to implement and totally unnecessary. 15 minutes will do equally well and would take better into account the manual nature of trades in many non-equities markets. In fact, we believe that this proposal is derived from equities markets where prices move much more dramatically than in non-equities markets where price volatility is much lower.

Close to real-time publication is suitable for electronic venue based non-equities trading only and not for trading which takes place through SIs. For SI trading it is necessary to have deferred publication in place to unwind market risk (see Q 141).

<ESMA\_QUESTION\_140>

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

<ESMA\_QUESTION\_141>

No, in our view ESMA's transparency proposals do not sufficiently balance with needs of investors, issuers and liquidity providers. These proposals fail to take different market structures into account. This is in contradiction with recital 16 of MiFIR.

A time deferral of 60-120 minutes is definitely not enough for liquidity providers in the smaller markets, such as Nordic markets, taking the size of the markets and transactions as well as currency area into account. To ensure smooth functioning of smaller bond markets after the MiFIR implementations there is an urgent need for longer deferral times.

For publication of transactions in liquid bonds and derivatives, EOD + 1 in aggregated form is minimum to avoid harm to liquidity providers on Nordic markets. The alternative to aggregation is even longer deferral periods taking into account factors such as ability to hedge, turnover etc.

For transactions in some illiquid instruments publication EOD + 1 in aggregated form could be sufficient. However, for many other illiquid instruments in the Nordic market this would not be sufficient. In particular this is the case for instruments that do not trade every day or instruments for which there exists no hedge. For the latter type of illiquid instruments, a longer (extended) dark deferral is therefore normally needed - up to preferably EOD + 10 or at least EOD + 4. See Q 145. Please also note that NSA does not agree that aggregation would be unsuitable for all instruments that would be classified as illiquid (See page 167 item 61). In fact, we believe that there will be a large amount of instrument classified as illiquid for MiFiD 2 –purposes for which aggregation EOD + 1 would be more suitable than a longer time deferral, taking into account the needs of investors and issuers. The local NCA is best suited to decide on the type and length of deferral which suits the local market.

ESMA also proposes that during the time of deferral all information except the volume should be published. We strongly disagree with this approach. For all small markets like the Danish, Finnish and Swedish markets such requirement would expose liquidity providers to extreme risks. In a small market it is easy for the market makers to guess who sit on which position. In our view the NCA must be able to allow for an initial deferral time and then an extended time during which transactions are published on aggregated level, just as level 1 states. During these periods there should be no obligation to publish any information at all, i.e. the periods should be what ESMA refers to as “dark”.

Moreover, extended (dark) deferral and aggregated publication are all “extra tools” for the NCAs which, according to level 1, may be granted in conjunction with an “ordinary” time deferral. The purpose of these extra tools is to avoid unintended and detrimental effects that increased transparency requirements could have on some markets. We question the mandate to limit the flexibility provided by level 1 in the proposed manner. We urge ESMA and the Commission to take into close consideration the damage which a badly calibrated regime may cause smaller non-equity markets in EU. In particular those markets that are totally dependent on liquidity providers/SIs for non-equity trading. Please note that flexibility is also important for new non-equity markets to develop in the EU in the future.

The NSA also has following general comments regarding ESMAS analysis on post-trade transparency. First, we consider the proposed regime as a “copy-paste” -exercise from the equities markets. We strongly question this approach taking into account the fundamental difference between equities and non-equities instruments and markets. Regulators should be aware of detrimental consequences on the liquidity and in a bigger picture to the real economy in some Member States. It is essential that any future proposal regarding deferral times for non-equities is based on the characteristics of the instruments and local market structures, taking into account the needs of investors, issuers and liquidity providers.

In addition, it is our impression that ESMA has not taken into proper consideration that the purpose of the “size specific” criterion is to help finding a balance transparency and liquidity and to avoid that the new requirements have unintended negative effects on in particular smaller non-equity markets in the EU which are dependent on liquidity providers/SIs (within or outside the Eurozone).

On many smaller Non-Equity markets it is often not possible to organize order-driven trading due to factors such as the very low number of end-clients, infrequent trading and large transactions. Therefore the market is highly dependent on liquidity providers’ ability and willingness to enter into transactions with clients against their own balance sheet. After the MiFID II implementation these will become Sis. Due to the small size of the markets and the large transactions, the liquidity providers are very sensitive to transparency requirements. In fact, on smaller markets each transaction typically “carries” more information than a transaction of the same size in a larger market. Also the hedging opportunities may be more limited, in particular if the market is situated in an own currency area. Please see also Q103.

Moreover, it should be noted that on some smaller markets it may not be possible for liquidity providers/SIs to use LIS to the extent necessary to unwind risk/hedge. The reason for this is that the LIS criterion relates to “normal market size” and on many smaller markets often all transactions are very large. Therefore a liquidity provider would not be able to get deferrals based on LIS for transactions which, despite being large, fall under “normal size”. These transactions are therefore dependent on the deferral period connected to the size specific to the instrument. This is a reason why this period must reflect a period that is long enough to enable liquidity providers to unwind their positions. If not, these

liquidity providers will be exposed to undue risk. As a consequence they will refrain from taking that risk and the market liquidity will dry out.

Furthermore, on the pre-trade side, the size specific threshold is also meant to be the threshold for the SI obligations. The SI obligations are, as for equities, aimed for retail order sizes. Therefore the size specific to the instrument should reflect retail order sizes to enable investment firms to comply with this obligation without exposing themselves to undue risk. The size specific to the instrument serves several purposes – it serves as a retail threshold for SI obligation, it serves as a tool to protecting the interests of larger investors and it serves as a tool to protecting liquidity providers from taking undue risks. Therefore we suggest that the pre-trade transparency would only apply to retail size orders (i.e. size specific to the instrument) but not above (please see MiFIR Article 9 (5) (ii)). The same reasoning exists for SIs on the equities side in respect of “standard market size” (please see below Q 163).

Finally, we question ESMA's comparisons with the US bond markets. Various locally oriented European markets do not function as the US, which is one homogenous market with a very large amount of end clients.

<ESMA\_QUESTION\_141>

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

<ESMA\_QUESTION\_142>

No, please see reply to Q 141. Proposed deferral times of 60-120 minutes are much too short for non-equities market and would expose liquidity providers to undue risks. With such short deferral periods there is a substantial risk that liquidity providers will withdraw from the market to detriment to issuers, investors and the whole real economy. Therefore ESMA should be very cautious not to limit the flexibility that was introduced in level 1 e.g. to protect smaller and/or emerging non-equities markets which are dependent on liquidity providers/SI.

<ESMA\_QUESTION\_142>

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

<ESMA\_QUESTION\_143>

No, please see reply to Q141. This deferral time is not long enough for large transactions regardless of whether they are based on LIS or size specific.

For publication on large transactions in liquid instruments EOD + 1 in aggregated form is minimum to avoid harm to liquidity providers in Nordic markets. The alternative to aggregation is even longer deferral periods taking into account factors such as ability to hedge, turnover etc.

For large transactions in some illiquid instruments publication EOD + 1 in aggregated form could be sufficient. However, for many other illiquid instruments in e.g. the Nordic markets this would not be near sufficient (in particular for instrument that do not trade every day or instruments for which there exists no hedge). For such instruments, a longer (extended) dark deferral is normally needed preferably EOD+10 or at least up to EOD + 4.

<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>

Provided that the deferral times are long enough (so that they enable liquidity providers to hedge), we prefer to have the same rules applicable to all (classes of) instruments. In fact, to have the same deferral times would facilitate e.g. for smaller markets/currency areas in EU where instruments from different classes are used for hedging, e.g. SEK covered bonds are used to hedge SEK sovereign bonds (and vice versa).

However, please note that if ESMA decides on too short deferral times (as is the case in present DP), we would support differentiation in (sub-) classes, provided this differentiation is made taking into account relevant factors (e.g. small number of end-investors, large transaction sizes, infrequent trading and own currency area) and after consulting with industry and NCAs.

<ESMA\_QUESTION\_144>

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

<ESMA\_QUESTION\_145>

No, the deferral is too short. See Q 141. For some instruments that will fall outside the liquid definition, EOD+1 might be sufficient given that decent hedge possibilities exist. But for e.g. corporate bond risk there are no hedges except for the absolutely largest ones and then there will be huge "basis-risk" for liquidity providers. A deferral time of maximum EOD+1 will simply close many corporate bond markets secondary trading and make even large markets in smaller countries/currency areas too risky to provide liquidity to. Furthermore, for the derivatives markets there would be quite dramatic effects, as firms today are willing to quote quite large sizes knowing they have time to work the position out without competitor's front running or otherwise taking advantage. Thus, for many illiquid instruments longer (extended) dark deferral normally needed, preferably EOD + 10 but at least up to EOD + 4.

Please note that NSA does not agree that aggregation is unsuitable for all instruments which will be classified as illiquid for MiFID 2 purposes (See page 167 item 61). In fact, we believe that there will be a large amount of illiquid instrument for which aggregation EOD + 1 would be more suitable than a longer time deferral, taking into account the needs of investors and issuers as well as market structure. The local NCA is best suited to decide on the type and length of deferral which suits the local market.

<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>

Yes – one universal period is adequate, providing it is long enough to cater for all needs (see replies to Q 144 and Q 145). If not, a differentiation in asset classes is required. Please also note that if such is made, it should commence on currency level and then asset class, sub-class etc.

<ESMA\_QUESTION\_146>

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

<ESMA\_QUESTION\_147>

No, see above reply to Q141. The NSA strongly disagrees with a requirement to publish any information during the deferral period at all since it would expose the liquidity providers to undue risks. By publishing all information but volume, the public can still see the transaction and will know it is large. This is an essential point for all markets dependent on liquidity providers, such as the Nordic markets. It is totally unreasonable that liquidity providers should take more undue risk in the bond market than in the equity market.

Furthermore, we read this requirement in the level 1 text as optional for NCAs rather than a requirement that automatically should apply to all deferral periods for liquid or illiquid non-equities (MiFIR Article 11 (3)(a)).

<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>

No. Indefinite deferrals for sovereign debt follow from level 1 and should not be restricted by ESMA on level 2 to "exceptional circumstances". Extended time of deferral should be according to level 1 available for other instruments than sovereign bonds (MiFIR Article 11(3)(c)) e.g. where aggregation EOD + 1 would not provide sufficient protection for liquidity providers. In all such cases the deferral period must be dark. Please see also reply to Q141.

Please note that the reason for this exemption for sovereign bonds is that National debt offices of many smaller countries in EU realize that the transparency regime suggested will mean they lose liquidity providers and that is the same as non-domestic investors. ESMA should take this into consideration when looking at effects of suggested regulation on smaller Eurozone countries or countries with own currency areas. Future existence of liquidity providers is essential for the real economy and the regulation must work for both euro and non-euro member states and for both smaller and larger markets in EU.

<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>

In case of limited liquidity and, for bonds in general, for small markets or currency areas dependent on liquidity providers.

Please note that according to level 1 aggregation as well as extended period of deferral can be allowed for other financial instruments than sovereign debt (MiFIR Article 11 (3)). In such cases, however, all information shall be published at end of deferral. When deciding on appropriate type of deferral, NCAs should take the needs of investors, issuers and liquidity providers into account (recital 16).

<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>

Please see answer regarding flagging on Q135. Transactions that don't contribute to price formation due to that other issues than valuation of instrument has determined the price should be flagged. Whether they should be deferred or not is less interesting as long as it is done consistently so users of information understand that this price information is different.

<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>

Option 2 implies very high requirements on calibrated sub-classes. If Option 2 is chosen, it is imperative that experts from the industry are very closely involved in determining sub-classes. (Please see also reply to Q113.) If the industry is not closely involved in determining the sub-classes we would prefer Option 1.

<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>

No, the solution must be simple and operational.

<ESMA\_QUESTION\_152>

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

<ESMA\_QUESTION\_153>

Yes.

<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>

In consistence with our view on average size (Q 104), both the number of transactions and the number of trading days should be taken into account. ADT (Option 1) alone would never give a decent view on what the actual average size is but only the average turnover per day over a period of time. And LIS is a reference to a single transaction size above which liquidity providers need protection through deferrals.

It is important that ESMA is aware of that LIS is a term that varies over time due to market volatility. It is also important to understand that for LIS to work as defined here it has to be delinked with "size specific". If ESMA choses COFIA there are classes where LIS vary dramatically.



<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>

Yes, a proxy makes the LIS simpler to apply. However, this reply depends on whether ESMA agrees to our technique for definition of "liquid market". This in turn is dependent on the determination of "average size". Furthermore please note that in this case we interpret "proxy" as the base for calculation.

<ESMA\_QUESTION\_155>

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

<ESMA\_QUESTION\_156>

We prefer Option 1. Option 2 closes markets where liquidity providers are necessary (unless ALL markets in need of liquidity providers are determined to be illiquid).

<ESMA\_QUESTION\_156>

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

<ESMA\_QUESTION\_157>

We have currently no proposals for an alternative method.

<ESMA\_QUESTION\_157>

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

<ESMA\_QUESTION\_158>

No, we support the same thresholds since it will be more simple solution. Simplicity is a crucial feature and especially important for small and medium sized market participants.

<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>

Yes, for instruments which are traded on venues.

<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>

No. LIS transactions should always be deferred.

<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>

No, we do not agree for the following reasons:

1. There is need to take into consideration what happens to (classes of) financial instruments once they have been deemed liquid and what effect this will have on the market place and its participants – “ready and willing buyers and seller” - and the liquidity providers. This then includes the LIS issue.

2. Getting the LIS wrong from the start is likely to happen, because the ex-ante anticipation effect on regulatory changes is extremely hard to get right. Hence flexibility during the first year is extremely important. We need to be able to adjust the regime not to deteriorate liquidity.

<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>

We agree with the points made in items 5-7. Please note that size specific is intended as calibration tool to avoid negative effects that transparency may have on smaller markets and / or own currency areas where the “normal market size” is very large and liquidity is dependent on liquidity providers (market makers/SIs). ESMA should be aware that if such liquidity providers, due to level 2 rules are no longer willing to provide liquidity to the extent they do today, many smaller non-equity markets in EU will deteriorate and some even close, to the detriment of both investors and issuers and the real economy at large (see replies to Q 103 and Q 141).

Therefore, NSA urges ESMA not to restrict the flexibility introduced on level 1 to avoid negative effects which the new transparency rules may have on smaller non-equity markets in the EU, within or outside the euro area. Flexibility is also needed to allow development of new non-equities markets in the EU in the future. Especially new markets often are dependent on market making/SI).

Moreover, on the pre-trade side, please note that the size specific threshold was intended to ensure that the information is provided where it is most meaningful, i.e. to smaller (retail in size) investors. For larger investors price comparability is less meaningful as trade sizes are larger (and likely to have tighter spreads), can be less frequent (so markets move in between) and in the case of derivatives price is a function of the counterparty risk (so not comparable form one counterparty to the next).

<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>

No. LIS and size specific are not two percentage measurements of one average liquidity measure and have different aims.

Size specific was inserted in level 1 to adjust (calibrate) the pre- and post-trade transparency regime to the structure of particular markets taking into account the liquidity providers ability to hedge and the type of market participants. In addition the size specific must work as a reasonable threshold for the SI obligation, which is aimed for the retail size segment and which must reflect retail order sizes. These two aims must both be taken into consideration when determining the threshold for size. It is crucial to underline that the Size Specific to the Instrument used for the SI obligation must reflect retail orders sizes meaning low thresholds. If not, SIs' face undue risks since they are obliged to provide firm quotes up to Size Specific to the Instrument. As e.g. the Danish mortgage bond market works, i.e. retail clients uses this market to finance their houses. They sell mortgage bonds to investors and the revenue funds the loans to pay for the houses. Liquidity providers (SIs when MiFID II enters into force), will provide a quote to a client in order for the client to sell the mortgage bonds. The quote must be made public and be made available to other clients up to the Size Specific to the Instrument. These requirements will imply undue risk for the SI, if the threshold is higher than the retail orders sizes. Since the firm SI quotes are meant for the retail clients (as firm SI quotes for equities), the threshold should reflect the retail client demand. And even the cumulative effect of many clients that want to use the quote can be large in itself. If the size specific to the instrument in addition is higher than retail sizes, it can imply that the SI get very large positions when complying with the requirement and thereby exposing himself to undue risk. That is not and must not be the intention with the SI quotes.

Thus, size specific is not at all the same concept as LIS, which is applicable to all types of (classes of) financial instruments and their markets. Thus, we strongly disagree with the assumptions made by ESMA on page 105 item 6 iii.  
<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>

We believe that average order sizes of retail investors could be used as a proxy to set the size specific threshold.

Another or complementary solution would be to determine the retail size by looking at the prospectus requirements e.g. nominal amount of 100 000 EUR. (It should be noted that a threshold of 100 000 EUR was also the proposal by the European Parliament). This solution has the benefit of working also for those non-equity markets where no retail investors are active.

As regards the issue of measurement of undue risk, we recommend ESMA to take into account that the risk/hedging opportunities of liquidity providers are closely linked to factors such as currency area and liquidity of market etc. Thus, the "threshold" where liquidity providers typically are exposed to undue risk is not identical for markets outside the euro area as in euroland. See also reply to Q 165.  
<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>

No. Hedging is a model-dependent expression where one liquidity provider might believe they are hedged with a certain position while another doesn't. ESMA cannot define whether an exposure is adequately hedged.

In practice, the NCA will probably have to rely on the fact that the size specific threshold is set at a level where liquidity providers typically will not have trouble hedging taking into account e.g. characteristics of national markets. Here it is important to note that circumstances such as own currency has an impact on which instrument are available for hedging.

<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>

No, we do not agree. Size specific and LIS should not interact when it comes to definition of the sizes. Please see response to Q163.

On the post-trade transparency side, ESMA indicates in item 14 on page 184 of the DP that where size specific and LIS apply, the main difference could be the deferral time. We strongly disagree against this approach since trying to fix the size specific size by adjusting the deferral time is a kind of negotiating that doesn't rhyme well with what we should try to achieve. A system which increases transparency where it is suitable but avoids decreasing liquidity in markets which are dependent on liquidity providers' ability to provide prices.

In our opinion, the main difference between size specific and LIS on the post trade side is instead that size specific aims to protect liquidity providers and should therefore be limited in its application to liquidity providers. LIS on the contrary is of use to all market participants. As a consequence, LIS but not size specific can be used when trading on venues where no liquidity providers exist.

Moreover, as mentioned in our reply to Q141, one important feature of LIS which the DP fails to recognize is that on some markets where all transactions are large, it may be difficult to use LIS (as "normal market size" is "so large"). It was inter alia for this reason size specific was inserted on level 1, i.e. to protect liquidity providers in professional markets where all transactions are very large. Another difference is of course that for the purposes of pre-trade/SI-obligations, size specific should be set at retail market size (cf standard market size).

<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>

No. Size Specific is related to specific (classes of) instruments and determined and based on assessment of hedgability whereas LIS is a statistical measure based on turn over data. Therefore the two should NOT share volume thresholds and contingent deferral periods.

Moreover, as described in reply to Q 141 and Q 166, size specific fulfills a very important function for those professional non-equity markets where LIS cannot be used because all transactions are large in scale e.g. Swedish bond market.



As mentioned in our reply to Q 166 there are also situations where LIS apply but not size specific (e.g. no liquidity provider) and where size specific applies but not LIS (e.g. size of "normal market" very high and large transactions but not above LIS).

Although ESMA's proposal implies that LIS is based on turnover data and size specific on liquidity providers' hedgability, they both have the effect of protecting liquidity providers in SI-markets. Thus, the available deferral periods should be the same and be sufficiently long to protect liquidity providers.

<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>

This is extremely important to ensure consistency and to make the categories operational as well. Consistent and simple approach will be of great benefit especially to small and medium sized entities too as it will ease their operational burden in following these categories.

<ESMA\_QUESTION\_168>

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

<ESMA\_QUESTION\_169>

No comments at this stage.

<ESMA\_QUESTION\_169>

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

<ESMA\_QUESTION\_170>

Yes, we agree with the criteria.

<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>

No, there would be too much conflict of interests if venues were to undertake this task. ESMA needs to make its own judgment based on a wider reference group. Primarily at least price providers and NCAs need to be consulted.

<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>

i. Trades over a given time period (should be trades per day - in maturity buckets with close correlation) and the number of trading days, per currency. See Q 103.

ii. In principle the concept of liquidity should follow much of the same reasoning as we have used in answering questions under 3.6. Unless there are enough “ready and willing” end-clients you need liquidity providers and if they can’t cope under Trading Obligation you should not consider it.

iii. “Average size” is defined as “notional and number of trades” over a given time period (rolling averages will probably make the measure more adequate e.g. 6 months) as well as “the notional and number of trading days”. See Q 104.

iv. Venue based – no problem – make the venue provide you with live prices and volumes on “close”.

Spread measurements on no venue based trading: interviews with voice brokers or traders commitments towards each other. Simple: forget it if it isn’t venue traded – to unstable data.

<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>

See reply to Q 172.

<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>

The effects of the trading obligation should be discussed in cross-regulatory (CRD IV, MIFID II and MIFIR, Solvency II) effect sessions with all three supervisory authorities (ESMA, EBA and EIOPA and with several user groups present.

At least the following user groups will need to be interviewed and brought into the discussions with ESMA:

1. Hedge funds
2. Pension funds (large and small – Solvency II)
3. Financial issuers
4. Very active non-financials
5. Development banks and sovereign issuers
6. Banks
7. Insurance companies

The trading obligation will have a huge effect on the market for two reasons:

1. Access to provide prices is very costly. All current derivative price providers cannot provide prices going forward
2. Venues tend to drive transparency to a level where liquidity is dramatically decreased (compare Tradeweb for covered bonds in Euro).

Both these effects decrease liquidity.

Moreover, we see two other major issues with the trading obligation. These are related to the fact that the trading obligation is linked to clearing obligation.



1. Very large users of swaps are exempt from the obligation - sovereign users and central banks
2. Many obliged users can't get access to clearing venues because the bank providing the services can't on board them due to CRD IV and leverage ratio.

This will mean that financial counterparties, especially banks will end up in dire straits when the largest swap counterparties are exempted from the obligations. Development banks, National Debt Offices, Central Banks require prices from banks which in turn need to hedge these huge flows with other banks on the cleared market due to the clearing obligation. Especially when #3 and #4 often use fixed to float cross currency swaps which will never either clear nor be covered by Trading Obligation.

<ESMA\_QUESTION\_174>

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

<ESMA\_QUESTION\_175>

No comments at this stage.

<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>

Yes – depending what is included in the practical definition of DEA.

Internet banking and online brokerage has been an integral part of services offered to professional and non-professional (retail) clients more than 15 years in all Nordic countries. It is our firm view that current regulatory debate on HFT- and complex algorithmic trading should not be mixed with established online services. Internet is important if not the most important service and distribution channel further to physical bank branches and telephone services. It is extremely important for the entire European securities markets that the MiFID review does not hinder development of these services.

It is crucial that ordinary clients (private and institutional) are not subject to the DEA definition and therefore obliged to comply with MiFID, cf. art. 2 (1) (d). This would harm the well-functioning DMA for those types of clients we have in the Nordics. It is, as we have understood it, also not the intention of the rules, cf. ESMA DP page 236 (draft technical advice). The intention of the rules is to capture firms and persons typically HFT firms, who try to circumvent the rules by becoming a DEA member instead of a direct member of a trading venue.

However, we are concerned with the way the exemption is formulated. See Q215-Q220 in DP and Q172-Q175 in CP for further elaboration.

We believe the ESMA guidelines ("*Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities*") could be kept for online trading. However these guidelines must be in adapted version to fit to retail clients. These rules are in reality covered elsewhere.

<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>  
Yes.  
<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>  
Yes.  
<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>  
Yes – this short timeframe is necessary in order to enable proper monitoring.  
<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>  
Yes.  
<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>  
Yes.  
<ESMA\_QUESTION\_193>

**Q194: Do you agree with the above approach?**

<ESMA\_QUESTION\_194>  
Yes.  
<ESMA\_QUESTION\_194>

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

<ESMA\_QUESTION\_195>  
Yes, order resting time since it would be a valid parameter in monitoring of the execution level and show the actual provision of liquidity. In addition, it would be a helpful tool for the CA monitoring. The metrics are suggested in Q8.  
<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>

We assume that requirements demand a certain size of the investment firm to comply.

<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>

Yes.

<ESMA\_QUESTION\_197>

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

<ESMA\_QUESTION\_198>

No.

<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>

Yes, due to the risk associated with this.

<ESMA\_QUESTION\_199>

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

<ESMA\_QUESTION\_200>

Yes.

<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>

Yes.

<ESMA\_QUESTION\_202>

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

<ESMA\_QUESTION\_203>

No.

<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>

Yes.

<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>

Yes.

<ESMA\_QUESTION\_205>

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

<ESMA\_QUESTION\_206>

We do not agree on the approach for all types of system setups:

1. Some systems can be used both as trading system and risk management system but still uphold the independence of the risk management unit. Drop copy might not be needed for that purpose (Q 32 seems to indicate that a system cannot have more than one role. i.e. trading and risk management in the same system).

2. Other system setups might be dependent on a drop copy structure to keep intraday risk systems updated.

ESMA needs to consider that there are different types of setups and systems used, and all firms might not solve the problem the same way.

<ESMA\_QUESTION\_206>

**Q207: Do you agree with the proposed approach?**

<ESMA\_QUESTION\_207>

Yes.

<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>

Yes.

<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>



This is a good thing since this will decrease the risks considerably.

<ESMA\_QUESTION\_209>

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

<ESMA\_QUESTION\_210>

Yes.

<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>

Yes.

<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>

This depends on the algo in question. Trading algos (speculative algos) should be subject to more frequent reviews than the more "peaceful execution" algos.

<ESMA\_QUESTION\_214>

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

<ESMA\_QUESTION\_215>

Yes, at least in some of the jurisdiction in the Nordics there is a need to clarify for which kind of access the guidelines apply. Clearly the requirement for due diligence do not work for retail clients trading over a tradition "internet banking account". As already noted, these services have been available for more than 15 years in all Nordic Countries. Please also see response to Q185.

<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>



Please note that we are of the view that DEA is just provided for HFT-trading. And thus DEA-users can only be HFT-traders. For that user category we believe the proposed due diligence requirements are adequate. But these requirements would not work for other clients/investors using an electronic/internet method to provide order to an investment firm for execution. In short, for DEA, the MiFID compliance should only be applicable for HFT firms. However, other kinds of direct access to venues must of course be subject to adequate control and monitoring like the existing guidelines (in adapted form) from ESMA on Systems and controls in an automated trading environment. See also Q185.

<ESMA\_QUESTION\_216>

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

<ESMA\_QUESTION\_217>

We believe that proposals above are sufficient.

<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>

No, only to the extent the requirement information is already provided by the DEA user.

<ESMA\_QUESTION\_218>

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

<ESMA\_QUESTION\_219>

Adequate control is required to minimize risk and to avoid market crashes.

<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>

Yes to granular identification.

<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>  
Yes.  
<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>

The goal should be to capture HFT-firms or firms using High Frequency techniques, that do not provide two-ways quotes continuously and withdraw from the market without proper reason. This is in line with ESMA's view on item 52 on page 272. That means firms doing proprietary trading, with a large order/trade ratio and with low order resting time. However, will these kinds of firms be captured by MiFID 17 (4) or will it mainly be ordinary investment firms? The goal should not be to capture ordinary investment firms that fulfill their market making obligations either via Liquidity Provider agreement with the trading venue or via market making agreements directly with various companies/issuers (without the trading venue as a "middleman").

If the requirements set out from ESMA capture those ordinary investment firms, there is a **serious risk** that those firms will refrain from taking any on-venue market making obligations whatsoever. This would imply that ESMA's requirements could considerably decrease the on-venue trading and in turn considerably increase in SI-trading.

We believe that market making strategy should be understood narrowly as "market making" provided by HFT firms or by firms using High Frequency techniques.

<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>

3 months.

<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>

80 %.

<ESMA\_QUESTION\_261>

**Q262: Do you agree with the above assessment?**

<ESMA\_QUESTION\_262>

It depends on the definition of DEA. We believe that the definition of DEA should capture HFT firms only and thereby these should also be obliged to be subject to 17 (4). Else these kinds of firms can use DEA to circumvent the obligation.

<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>

Yes, we agree. However, please see also Q259.

<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>

When venues decide the spread for market makers, a number of these will refrain from trading on the venue and become SI's instead.

<ESMA\_QUESTION\_267>

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

<ESMA\_QUESTION\_268>

Yes, it provides more flexibility.

<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>

Yes.

<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>

80 % of the overall trading time as for the short selling regulation. In addition, there should be a minimum resting time of orders for HFT to ensure that these are genuine.

<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>

Yes, but it is important to understand that some products sometimes only have a bid side, i.e. the market maker has sold all units issued to the market and only offers a price to buy them back. In short, there are situations when it is not possible to provide two-way quotes.

<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>

We are not sure what is meant with “other obligations”.

<ESMA\_QUESTION\_274>

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

<ESMA\_QUESTION\_275>

No – but the list should not be considered as exhaustive.

<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>

Yes, intraday releases of annual or quarterly reports in companies or other scheduled releases that might change the underlying supply/demand and pricing.

<ESMA\_QUESTION\_276>

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

<ESMA\_QUESTION\_277>

Whatever triggers a “fast market” (when the financial markets are experiencing unusually high levels of volatility, combined with unusually heavy trading).

<ESMA\_QUESTION\_277>

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

<ESMA\_QUESTION\_278>

When the market has stabilized market making can be resumed again.

The decision when exceptional circumstances no longer apply should be taken by the venue in close cooperation with the market makers with whom the venue has agreements.

In case of company news or other important events intraday, there can be an increased volatility in the market at the time of the release of the information. The market makers might choose to not continue to make the market due to their internal risk management policies.

<ESMA\_QUESTION\_278>

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

<ESMA\_QUESTION\_279>

The procedure needs to be decided on a case-by-case basis depending on the situation that caused the disruption and in regards to market makers possibility to resume their obligation to quote. See also Q278.

<ESMA\_QUESTION\_279>

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

<ESMA\_QUESTION\_280>

Yes.

<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>

There is a rationale to let venues provide different levels of services, as soon as the services are “fair, non-discriminatory and transparent”. If this is not allowed, there is a risk that all investment firms will have to pay more instead of the ones that want to pay more for “platinum service/product”.

<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>

No, absolutely not.

<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>

Yes. Firms with low liquidity due to strategic holdings, long term investors, low free float etc. are in general not suitable for such agreements.

<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>

Yes, however it is crucial that only truly liquid shares are deemed as liquid, please refer to our response in Q109 in the CP.

<ESMA\_QUESTION\_285>

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

<ESMA\_QUESTION\_286>

Requirement like these will have the opposite effect on on-venue trading. Please see our answer in Q259. Indeed, in small markets with few members, it is not appropriate to require a certain number of participating firms.

<ESMA\_QUESTION\_286>

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

<ESMA\_QUESTION\_287>

This depends on the liquidity in the share in question.

<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>

We do not see a need for market making scheme at all. In addition, not all companies fulfill the market related requirements to be offered a market making agreement.

<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>

Yes, since you will catch all types and these are relevant – not at least due to the HFT firms' behavior.

However, it could be considered to exclude genuine orders from the calculations, where the definition of "genuine order" needs to be discussed further.

<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>

We do not understand why this is necessary. It seems quite complicated to include other parameters than the total number of orders divided with the total number of executed orders (transactions). From an academic point of view it could be more precise to include the suggested value and/or the volume. However, from a practical point of view what is interesting is the number of orders used to execute a transaction. In addition, it is more operational with a "straight order/trade" ratio.

The value must be a factor to prevent HFTs' from trading one share per 100 orders to fulfill the requirement for OTR. The trade should have a minimum value and maybe a minimum resting time to be eligible for the OTR.

It could be considered to include different penalties depending on if the orders are on best level or further down in the order book (higher penalty for orders that are not at best bid/offer).

<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>

No.

<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>

Yes.

<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>

Yes.

<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>

No.

<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>

Yes.

<ESMA\_QUESTION\_296>

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

<ESMA\_QUESTION\_297>

Two years.

<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>

To create a level playing field the OTR regime should always apply.

<ESMA\_QUESTION\_298>

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

<ESMA\_QUESTION\_299>

No. The OTR should be set as a fixed value instead of an OTR based on average value, since an average value could imply an increasing OTR over time as the number of orders increases, which is in contrast to what is the goal: As ESMA writes in item 16: "...does not result in the new OTR threshold being greater than the highest market members' OTR observed for the preceding observation period...". By doing so, there can – for some firms with a high OTR - be an incentive to increase the number of orders over time thereby getting a larger OTR and thereby a lower penalty.

<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>

No, please see Q299.

<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>

No, please see Q299.

<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>  
No, please see Q299.  
<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>  
Once a year.  
<ESMA\_QUESTION\_303>

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

<ESMA\_QUESTION\_304>  
Number (i): (maintain current practice by requiring market makers and other liquidity providers to be subject to OTR) in order to minimize noise from too many orders. It could be discussed to exempt market makers etc. if orders are at best bid and offer.  
<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>  
The venues offering these services must guarantee level-playing-field when providing these services. Venues should be able to prove this. Furthermore co-location agreements should be monitored by the NCA.  
<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>  
Yes.  
<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>  
It should not be allowed with cheaper low latency entrance for HFT to the venues than for firms supporting retail flow.  
<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>

At the present fee structures in some venues are quite complicated. There is clearly a need for simpler fee structures in the future and regulatory oversight would be welcome in this respect.

<ESMA\_QUESTION\_308>

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

<ESMA\_QUESTION\_309>

Yes, please see our answer in Q307.

<ESMA\_QUESTION\_309>

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

<ESMA\_QUESTION\_310>

Yes, please see our answer In Q307.

<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>

Yes – the specified problems can lead to disorderly trading and unfair competition.

<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>

Fee structures which do not support genuine orders, please see Q13.

<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>

Volume rebates that are based on turnover are not problematic.

Rebates that are based on number of trades or fee structures in which the venue pays for flow are clearly problematic.

<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>

It is ok with different fees for the various trading phases. The problem is differentiated fees depending of the technology used by the firms.

<ESMA\_QUESTION\_314>

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

<ESMA\_QUESTION\_315>  
Please see Q312.  
<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>  
Please see Q314. Ok with differentiated fees for orders in different trading phases.  
<ESMA\_QUESTION\_317>

**Q318: Should conformance testing be charged?**

<ESMA\_QUESTION\_318>  
No, it is inappropriate to require fees for allowing testing. Testing should be free of charge. It is in the best interest of the market to ensure adequate testing. The alternative could be catastrophic.  
<ESMA\_QUESTION\_318>

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

<ESMA\_QUESTION\_319>  
Please see Q318.  
<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>  
Please see Q318.  
<ESMA\_QUESTION\_320>

**Q321: Do you agree with the approach described above?**

<ESMA\_QUESTION\_321>  
We do not necessarily agree. Please see Q259.  
<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>  
Yes.  
<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>  
Option B would ensure a uniform methodology which could avoid regulatory arbitrage.  
<ESMA\_QUESTION\_324>

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

<ESMA\_QUESTION\_325>  
Yes.  
<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>  
No. Economic penalties should apply whenever the OTR is breached. Otherwise the regime would not be credible  
<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>  
No. Please note that in our view this question should have been asked before iQ304.  
<ESMA\_QUESTION\_327>

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

<ESMA\_QUESTION\_328>  
Also a question quite similar asked before (Q315 – Q317).  
<ESMA\_QUESTION\_328>

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

<ESMA\_QUESTION\_329>  
As for Q328.  
<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>

Yes, however we prefer option 2 (the FESE table) with a very conservative spread adjustment factor not to provide aggressive shifts in the tick size band resulting in lower tick sizes, which would discourage volume in the order book. This would also provide a more simple and operational approach. If option 1 is chosen, it is crucial that the liquidity parameter is based on turnover in the primary market order book and NOT on the number of trades. The latter has nothing to do with liquidity.

For both options, the tick sizes are overall too low and this will discourage volume in the order book.

Right tick sizes are crucial for liquidity and volume. Therefore we urge for recalibration of levels in the table, since the tick sizes would decrease for a number of shares. As a result incentive for traders to quote would reduce and the depth of the order book decrease. While changes in tick size might improve the liquidity for small size orders, institutional traders would be worse off. They have to bear increased trading costs following the decline in depth throughout the entire order book (market impact).

We believe that tick size regime should encourage transparency by implying that as many orders as possible are sent to the "lit order book". This would promote the price formation process and create depth in order books as well as make the book more robust in times of distress. This is also described in Q341.

However, we fear that these positive effects will not happen for the Nordic Markets with the presently suggested levels by ESMA, which is why we urge for recalibration, so the table reflects the levels in the present FESE table 2 for liquid shares.

Other markets might have different experiences since their markets might be more liquid. This is why we propose that since larger and more liquid markets might prefer to be able to choose between more tables, ESMA could create an additional table suitable for ultra-liquid shares with smaller tick sizes and adapt the present FESE table 2 for liquid shares.

So ESMA should aim for two tables for the liquid market: One for ultra-liquid shares and one for liquid shares (as the proposed table with higher tick sizes = which reflect the levels in the present FESE table 2). And in addition there is most likely a need to create two tables for the illiquid markets as well; One using the presently suggested model and one with higher tick sizes.

The primary market should be in charge to select the right table for the shares in question and tables should, of course, apply to all venues.

<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>

No. If true liquidity is to be measured, the depth at best bid/offer should be included since a liquid market is characterized by the ability to execute larger order without or with minimal market impact. The number of trades alone cannot be used as a proxy for the likelihood of execution (without or with minimal market impact). However, such "true liquidity" approach

would most likely be too complicated to implement. To ensure an operational and workable tick size approach, we recommend option 2, which is quite similar to the existing FESE approach.

<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>

Please see Q330 and Q331. Only trades executed in the order book should be part of calculation of ADT.

<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>

Please see Q330 and Q331.

<ESMA\_QUESTION\_333>

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

<ESMA\_QUESTION\_334>

Too low for shares with a value from 100 and up. Too low tick sizes would reduce the incentive for traders to quote causing decreasing depth in the order book.

<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>

Please see Q330 and Q331.

<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>

The intention to include liquidity is good. However, as written in Q331, the depth is missing and thereby it does not include "true liquidity". In addition, we believe option 1 is not as operational as model 2 and the potential benefit of model 1 do not outweigh the cost of using the model.

<ESMA\_QUESTION\_336>

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

<ESMA\_QUESTION\_337>

Please see Q336.

<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>

No, we support that the tick size tables should be evaluated once a year by the NCA and ESMA to ensure that the tables are working properly and support liquidity and volume in the lit markets.

<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>

See comments to Q331, Q334 and Q338. In addition, please note, that in item 28 on page 295 it is specified that a 4 week period is used for calculation the average number of transaction for a financial instrument first admitted to trading. We suggest 8 weeks instead due to the considerable interest in the beginning of the trading period.

<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>

Yes. Yearly. However, we prefer option 2.

<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>

As explained in Q 336, tick sizes would lower for some shares, which could result in less depth as the most literature and market experience supports. When tick sizes are reduced below a certain level, the incentive for traders to quote is reduced causing decreasing depth in the order book. While the change in tick size might improve the liquidity for small size orders, institutional traders are worse off. They have to bear an increase in trading costs following the decline in depth throughout the entire order book (market impact). We believe that tick size regimes should encourage transparency by implying that as many orders as possible are send to the "lit order book". This will promote the price formation process and creating depth in the order books, making the book more robust in times of distress. An appropriate tick size regime must be protected against leakage of standard market size orders to venues with less transparency as the price formation occurs in the lit venues. In short, we suggest that tick sizes are left unchanged compared to the present regime.

<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>

Yes.

<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<sup>1</sup> 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 regime<sup>2</sup> 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>

We prefer option 2. The specifications are described in option 2.

Since option 2 is in function for liquid shares today and going forward it will be a central model, we do not see changes in market structures as such compared to today expect for illiquid shares which will be subject to one model going forward.

The liquid shares should be the blue chip in each country and be subject to the "liquid table" and the rest should belong to the "illiquid table" (should be called "less liquid").

The tables must be monitored by NCAs (and ESMA) which on a yearly basis should discuss the table and whether any challenges has risen and how these could be solved.

Newly issued shares should start in the illiquid table until they may qualify to the blue-chip index.

On page 301 items 55 and 56 ESMA is arguing for the existing liquidity definition in regulation 1287/2006 (which will be changed cf. Q109 in CP), whereby the scope for liquid shares could be extended.

<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>

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<sup>1</sup> Please see the description of Option 2 regarding tick sizes below.

<sup>2</sup> Please see the description of Option 2 regarding tick sizes below.

We prefer option 2. For further explanation, please see Q330, Q331 and 341. This model is more simple and operational.

<ESMA\_QUESTION\_347>

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

<ESMA\_QUESTION\_348>

No.

<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>

No. Due to the proposal to change the liquidity definition (cf. Q109 in CP), which we do not support, there could be more shares to be considered as liquid even if they are not liquid in reality at all. We believe liquidity should be linked to the blue-chip shares. Non-blue-chip shares should be considered as less liquid.

<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>

Yes, cf. Q331 since high value shares needs higher tick sizes to encourage traders to quote.

<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>

No.

<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>

We partly agree. The share should be treated as illiquid initially. If it later on qualifies to be a blue-chip share it could be considered as liquid.

<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>

Please see Q352.

<ESMA\_QUESTION\_353>

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

<ESMA\_QUESTION\_354>

No, the model must be simple, please refer to Q330.

<ESMA\_QUESTION\_354>

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

<ESMA\_QUESTION\_355>

Yes.

<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>

Yes.

<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>

No.

<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>

Yes.

<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>

Yes.

<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>

Periodic basis with the primary market and NCA as responsible. However, ESMA should also discuss e.g. yearly whether the regime causes any challenges.

<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>

On an individual instrument-by-instrument basis. The venues and information providers have already the information on individual instrument level anyway, so the marginal cost of provide access to this information would be zero or close to zero. So we do not understand the cost issues and kindly ask ESMA to elaborate on this.

The transparency information should of course be available without the need to buy value-added products alongside.

<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>

No.

<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>

We agree that CTPs can serve a valuable purpose by offering consolidated post-trade information in a standardised data format.

We also agree that CTPs – or other similar constructions – should be made eligible to offer other services, especially the provision of pre trade real time data. This should be seen in context with regulation of market data prices (see Q159-forward in the consultation paper), in which we recommend that pre-trade market data should be made available to the market in a raw data format at a regulated price. In this setting, CTPs can compete with each other (or other market participants) at commercial terms to offer the best products to consumers.

It remains to be seen whether the envisaged model for CTPs delivering consolidated post-trade data will be commercially viable. By allowing CTPs to broaden their scope to consolidated pre-trade data (based on price regulated raw data from trading venues), the business foundation of CTPs will be strengthened which will increase their likelihood to succeed on commercial terms.

<ESMA\_QUESTION\_369>

## 5.5. Data disaggregation

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

<ESMA\_QUESTION\_370>

As a general rule, venues should offer as disaggregated data as possible. Bundling of products so consumers are required to purchase 'more than they need' is typically applied in markets where firms have market power.

Offering products at a more unbundled level – for instance Danish and Swedish equity separately instead of Nordic equity – is unlikely to be associated with many costs for trading venues. The data is already produced and reprocessed.

The ultimate form of unbundling is to offer all individual securities individually, and thereby allow tailored products to each consumer consisting only of the instruments and securities chosen by the consumer. Such a model is likely to be associated with extra costs (probably not by much though) as the amount of data products offered can be very large and it requires a system capable of handling this. Such a system is however mainly a piece of software which can select individual data into a data file, and some changes to the overall system.

A direct implication of the LRIC based price regulation model (Option C on page 224 in Consultation paper) would be that trading venues are required to provide all data in a format as close to 'raw data' as possible. We support this model. This would consequently allow third parties (e.g. consolidated tape providers or data vendors (new or existing) to process this data and resell it in a competitive environment as products that are demanded by the consumers. If the value to consumers of 'ultimate disaggregation' into individually tailored products exceeds the cost of providing this service, the third parties will offer such as product. Trading venues could also participate in this market under an LRIC price regulation model. For documentation of this argument, see report from Copenhagen Economics (July 2014).

<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>

We would like to point out, that if the LRIC price regulation model is adopted (Option C on page 224 in Consultation paper), there is much less need to ensure mandatory disaggregation. For example consolidated tape providers or data vendors could offer such disaggregated products based on the price regulated raw data from trading venues (please see Q370 and report from Copenhagen Economics (July 2014)).

<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>

Please see Q371.

<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>

Again, this discussion is superfluous if LRIC price regulation is chosen.

If this is not chosen, we agree that an obligation to disaggregate according to the listed criteria is desirable. However, we are skeptical about the 'demonstration of insufficient customer interest', as such demonstration can be prone to manipulation.

<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>

We believe that these costs would be insignificant given that data is already produced and processed for distribution. Hence, the extra costs of providing disaggregated products are likely to be low. In addition, these extra costs will be divided on a very large amount of data sales, consequently leading to very small increases in average costs.

<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 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 in 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 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 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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_465>

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

<ESMA\_QUESTION\_466>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE



<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_533>

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

<ESMA\_QUESTION\_534>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_534>

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

<ESMA\_QUESTION\_535>  
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>

NSA is in favor of the introduction of the Legal Entity Identifier and the extension of the usability of this identifier. Many financial counterparties and their clients have already made necessary IT changes and obtained their LEIs and therefore the use of LEIs will reduce the reporting burden for these entities. Any new identifiers should not be proposed.

At the same time, it needs to be recognized that the cost for LEIs might be detrimental to some, small end-client entities and companies. Therefore we support the approach that in case an entity does not already have a LEI and would need to obtain one for MIFID II transaction reporting only, would be allowed to choose between obtaining a LEI or continuing to report with existing client codes. In our opinion this possibility needs to be further stressed in the draft RTS as the current wording “not eligible” will not help these small reporting entities and save the costs for obtaining a LEI.

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>

It should be made clear that the following transactions are not "transactions" and should not be subject to reporting requirements:

- 1) clients' requests for an exchange of securities or positions against payments;
- 2) clients' requests for transfer of securities or positions between accounts;
- 3) transfers of gifts and
- 4) transfers of bonuses in the form of securities.

<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>

ESMA should take into consideration that there are various types of give-ups: in some cases the risk is immediately held completely by the taker (FX give-up) while in other cases the risk is partly held by the original parties.

It should be reflected that some operations will likely be considered as part of corporate events and not to be reported.

<ESMA\_QUESTION\_548>

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

<ESMA\_QUESTION\_549>

Various local banking secrecy rules among the member states may cause problems if the reporting rules are not exactly the same in the member states concerned. The reporting firm may face problems if for example a member state to which it reports a transmitted order requires some specific client information which cannot be offered by the transmitting firm because of its national banking secrecy rules. However in the paragraph 27 (p. 444) of the Discussion Paper it is stated that transaction reporting obligations of MiFIR are subject to maximum harmonisation prohibiting NCAs from requiring additional reporting fields.

<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>

ESMA should take use and confirm the use of existing reporting channels and standards as far as possible. ESMA should engage in continuous co-operation with the ECB to ensure that data which is collected under the ECB reporting rules can be derived to fulfill these single rulebook reporting obligations and vice versa. These efforts will best ensure that the administrative burden for all EU entities is kept at a minimum.

Field 3: the identification of the branch holding the client relationship may cause difficulties if a client registers an order electronically and the client has connections with several branches. Should the reported branch then be the central unit, perhaps in another country, receiving the order?

Regarding fields 3, 4 and 5 the NSA assumes that the fields are only filled if they apply to the transaction in question (e.g. a trader of a branch has executed the transaction) and otherwise these fields can be left empty. The field for flagging the most liquid market of the instrument (paragraph 132, point i) is missing from the table.

Field 17: the meaning of this field is unclear. What is the purpose of excluding commission and accrued interest?

Fields 19, 28, 37, 47, 69 and 74: a passport number is not a unique number through life in all countries, e.g. when a passport is renewed in Denmark and Finland, a new passport number will be given. Thus it would be a huge operational risk to use this number. The NSA proposes that in case a unique national number is not available the reporting firm should be able to use the firm level unique client identifier. ESMA should trust that the reporting firms KYC processes works well.

Fields like place of birth including country and city, as an alternative, should also be avoided as this information is not available for the investment firms in most countries.

Fields 21 to 27 are only applicable where the client is the reporting firm's counterparty and is a natural person. In these cases the same information concerning clients has to be provided also in the fields 40-46. It should be enough to inform that client is also a counterparty (cross a box) and to fill in the natural person client's details only in fields concerning client 40-46. The same concerns also the fields 30 to 36 (there have to be a misspelling in the numbers of the explanation) as the information on the decision maker for the client is also required fields 47 to 55. The report should not require the same information to be filled in twice.

Fields 28 to 36 are only applicable where the client is the reporting firm's counterparty.

Fields 30 to 38 are only applicable where the client is the reporting firms counterparty and the decision maker is a natural person.

Field 39 is missing.

Fields 40 to 46 are only applicable where the client is a natural person.

The fields 27, 36, 46 and 55 concerning natural persons are requiring natural persons' addresses. The addresses are however rapidly changing information and are not available equally reliably from all data systems. Regarding fields 36 and 55 it is also unclear which address should be given in relation to a natural person as a decision maker; working address or home address.

Fields 47-55 will be used to indicate who the decision maker is. Fields 49 to 55 are only applicable where the decision maker is a natural person. As already noted in relation to the fields 30-36, in the cases where client is reporting firm's counterparty the information on decision maker (natural person) has already been filled in to those fields. To specify who the decision maker is only one field is necessary regardless of whether the decision maker is the same person as the client or another person, as for example in the case of joint accounts, powers of attorney and accounts held on behalf of minors. The requirement to identify decision maker is new and not discussed and explained properly in the Discussion Paper. ESMA should elaborate the situations in which the decision maker should be reported.

Fields 57-59: if ISIN is specified in the field 57, this should be enough information on the instrument. Additional information should thus not have to be delivered in the fields 58 and 59. ESMA should not develop its own taxonomy but use the already established CFI code as the ESMA proposes in the section 8.2 (paragraph 29, p. 484 ).

Field 88: ESMA should clarify which transactions are repo transactions and which of those have to be flagged.

Field 91: the Report Matching Number is not always available, for example in manual trades or trades at trading venues outside of the EEA. If we have understood the requirement correctly, implementing Report Matching Number for reporting as required may be challenging. Consider the following example: Discretionary asset manager sends an order to buy 100.000 shares. The shares will end up in portfolios of 99 separate individuals, on average price. A broker executes the order. The order is filled as 2999 different transactions at several trading venues, at different prices. The transactions will receive 2999 separate trade\_ids from the trading venues. However, those 2999 trade\_ids cannot be tracked to "report matching numbers" when the trades are finally allocated to 99 individual client portfolios on average price. A client will not get any particular trade from a trading venue; instead each client gets a certain proportion of the total lot using an average price from the order.

It should be noted also that the report matching number is similar to UTI (unique trade identifier) under EMIR. From our experience with EMIR this requirement has proven to be very burdensome for transactions concluded as OTC between two reporting parties.  
<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>

NSA supports ESMA's proposal to rely on existing national identification system already in use for individuals. The systems already at place are easy to use and cost effective. The same should also apply for legal entities which have not applied for LEI.

We want to emphasize the benefits of the use of the unique national number which is usually numeric and therefore accepted by most countries. Our experience is that the exchange of alphanumeric information, such as names or addresses, consisting of characters which are often only used in the Nordic countries tend to encounter problems and may be even rejected by other countries. The problem is unfortunately common today. Also addresses which are always specified in different ways in different countries do involve problems. Thus it is more practical to use only the unique national number.

In addition, if an order to buy or sell a financial instrument goes through for example a broker, it becomes unduly burdensome to convey complete client information including addresses.

We assume that an investment firm does not have to claim a client to state who is its decision maker in any situation; except when the investment firm is aware of the decision maker because he/she is for example an investment manager who gave the order instruction.

Some countries allow dual nationality and therefore it have to be stated explicitly how to solve dual nationality situations within the EU, across the EU border and outside EU border.

The problem for populating the client identification code with a passport number is that the passport numbers can change when a new passport is issued. Is it the current passport number or just any passport number the individual have had which is reported in these cases?

Also as a comment to the paragraph 40 (point i, p. 447) relating to an individual that have residence in more than one EEA country. Does the investment firm have to know all unique ID numbers of the countries in which the client resides even though it has no business in relation to the client residing in one or more countries? This seems unduly burdensome. The information asked to identify natural persons should not exceed what is required in the KYC rules and anti-money laundering legislation (Directive 2005/60/EY).

LEI and BIC should be alternatives and equally usable; LEI should not be prioritised over BIC. At the same time, it needs to be recognized that the costs for LEIs might be detrimental to some, small end-client entities and companies. Therefore we support the approach that in case an entity does not already have a LEI and would need to obtain one for MIFID II transaction reporting only would be allowed to choose between obtaining a LEI or continue to report with existing client codes. In our opinion this possibility needs to be further stressed in the draft RTS as the current wording "not eligible" will not help these small reporting entities and save the cost for obtaining a LEI.

Concerning additional information regarding the identity of the client and the table fields 40-46 it should be enough to report the clients' unique national number (fields 37-38), the name (fields 40-42) and date of birth (field 43). Instead the information regarding post/Zip code and addresses should not be supplied because the reporting firms can not confirm about the accuracy and the validity of the information as addresses are not available equally reliable from all data systems and because addresses are rapidly changing information. It should be noted that clients' unique national number is more lasting than addresses. ESMA's aim to help NCA to identify connections between persons is understandable but addresses are easily manipulated/changeable. In addition even the anti-money laundering legislation does not require addresses to be stored.

<ESMA\_QUESTION\_551>

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

<ESMA\_QUESTION\_552>

There is no problem to identify the trader. It has to be clarified in more detail who would be the person identified under "Trader ID". Is it the trader executing the trade, the matching machine, the machine that received the order or the person from the investment firm's branch who received the initial order from the client?

<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>  
Regarding the DMA clients there should be a person who is entirely responsible for the DMA client's activities. A DMA client can have multiple responsible persons but each order typically have only one responsible person. Similarly the orders placed by machines should have only one responsible person who is in charge of the whole action. Does ESMA mean this responsible person with the relevant trader?  
<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>  
The outlined approach applies similarly to the venues providing Algo trading as those can also provide algorithms. Thus also the venues should have an obligation to provide a version of an algorithm and an Algo ID for reporting purposes.  
<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>  
No, this should be provided by the Stock Exchange.  
<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>  
Yes, NSA agrees that ESMA should adopt simple short sale flagging approach. However, ESMA should take into account that whether a sale is a short sell or not can vary from one moment to the next. The reporting rules must therefore be simple and clear and they should reflect the clients’ best efforts at the moment the order was placed.

ESMA should also consider the ability of a reporting firm to receive the information about the nature of the sale and the quality and the timeline of the received information.

An example of situations where the short sale information has a questionable value is basically all normal order situations which have any kind of limit (which a majority of all orders have). Once these orders are matched, which can take hours, the client's position might have changed radically compared to the placing moment.

We foresee especially two kinds of problems in the short sale reporting: 1) the overview on the short sales which ESMA is seeking is probably not gained through the proposed reporting rules. 2) Secondly building a real-time position calculation mechanism which could be used for proposed reporting requires significant investments. These investments might be too much for many smaller market participants.

<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>

NSA prefers the first option.

Nevertheless both proposed alternatives share the same problem; a reporting investment firm cannot know whether a client is actually shorting or not (when acting as a broker). Therefore, potentially incorrect information would be reported to the regulator, which will undermine the usefulness of the reported data. The regulator will not be able to check the information either, since there are no global client position reporting requirements (based on custody data).

1) The first option, though being more preferable from the second option, possess the problem that the short sale position information received from clients is not certainly correct information. The regulation will not extend to the clients i.e. there will likely be no sanctions to the client for giving potentially false information on the positions.

2) Custody systems do not know the positions T+0 or not necessarily even T+1. A client might have made a trade through another broker, but the settlement instructions have not reached the custody early enough, making it impossible to accurately use custody information in reporting. This option would also require investment firms to build up a firm-wide position calculation engine which could know the positions in every relevant instrument at every microsecond so that they could be able to recognize on transaction level short sell transactions. This could become a very expensive exercise, and might be too much for smaller market participants. Additionally a client may have holdings at different custodians and have other pending orders etc. which makes it impossible to the broker to know the position of the client.

In addition, custody and brokerage businesses are currently separated, so that front-office employees are not aware of the client's custody position. The regulation would seem to propose conceptual changes in this split, due to the fact that front-office might e.g. need to ask the client about information on its position. This could lead to potential conflicts of interest.

In conclusion, the clients should have the responsibility to deliver the short sale information.

<ESMA\_QUESTION\_558>

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

<ESMA\_QUESTION\_559>

NSA prefers option 1. The first option makes more sense in connection with Q558 because it means that when reporting as a principal the short flag would be from the firms' perspective and when reporting as an agent the flag would be from the clients' perspective (as the investment firm can't be short).

<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>

Yes, NSA agrees that these transactions should be regarded as agent transactions.

However general problem with reporting aggregated client trades as an agent is to avoid duplicate reporting.

ESMA should give examples and scenarios about how to report agent trades when the agent has one client order and many broker/market trades, many client orders and one broker/market trade and many client orders to many broker trades.

ESMA should also clarify how to report trade capacity, client and counterparty, buy/sell, short selling flag and report matching number fields in these cases and how many reports should be sent to avoid duplicate reporting.

<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>

It is only the investors who possess short sale information and therefore it must be them who inform the investment firms about their position and are responsible for the information's validity.

<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>

As an overall comment to the relevant financial instrument reported concerning "golden source" of reportable instruments we emphasise that ESMA is currently publishing a list of equities admitted to trading in the EEA. The responsibility of the accuracy and validity of the instrument reporting, however, still lies upon the investment firms themselves and ESMA or the NCAs are not responsible for any errors in the list. This does not diminish the value of the list as it is highly appropriate for reference purposes. The proposed approach in paragraph 114 possesses a potential risk that reportable transactions are not being reported. That is to say as the information of a request for admission to trading might not be effectively available across the all EEA regulated markets. The "golden source" of reportable instruments with instruments requested to be admitted to trading would greatly help investment firms to reconcile their databases and gain information of instruments with pending listing requests. ESMA or the NCAs would not assume the responsibility of the possible errors in the list.

Concerning reporting of baskets we consider that all proposed approaches include shortcomings. We agree with ESMA's statement in the paragraph 125 that requiring firms to populate all the components of indices in the transaction reports would be extremely onerous for investment firms. As an example we could refer to the STOXX 600 index or other indices with hundreds of instruments traded on a trading venue.

Also the second approach (paragraph 126) which proposes that reportable baskets or indices would be based on a threshold would be burdensome. That would require constant evaluation of baskets or indices in which the weightings are not fixed.

Defining the reportable baskets and indices should be based on fixed static data. Where market data of indices is available, it should be stored in a database by ESMA or the NCAs as opposed to the index components being included in the transactions reports.

<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>

We prefer option (i) or (iii). All options have their shortcomings but these two seem easier than option (ii).

<ESMA\_QUESTION\_563>

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

<ESMA\_QUESTION\_564>

No, the current approach is unclear and burdensome. NSA supports the suggested method for harmonization regarding branch reporting. Harmonization is the key as it will create efficiency, save money and increase the quality.

<ESMA\_QUESTION\_564>

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

<ESMA\_QUESTION\_565>

It can sometimes be difficult to specify the country for a trade if the infrastructure, for example, has centralized desks. Also, it is not always clear which country got membership at a trading venue as several trading venues consider affiliates and parent companies as one member if they are the same legal entity.

There is as well a need for further clarification where a change of clients' positions take place. It can be interpreted as meaning the client's location. (Where a client is located if a transaction is reported on an agent basis? If reporting is done on a principal basis the execution on the marketplace and the allocation to client could be reported to different FSAs.) It could also be interpreted as meaning where the head office of the bank is located.

For example if a client has its account at a branch office in Finland but trades via Sweden, where the head office has all systems handling orders and executions on marketplaces. Would the execution happen in Finland or in Sweden?

Both individuals and companies are geographically mobile. Information on the branch of a transaction may not be taken to imply that the client is established at the branch. The information can also not be interpreted to imply that the NCA of the branch is the most relevant for the client (field 3 of the Table of fields, in conjunction with paragraph 132, criteria (ii), implies that the named branch indicates most relevant NCA for the client. This gives an overly simple description of reality).

The investment firms use new global trading processes and structures. In these it is difficult to define the specific country in which the activity took place. For example clients, situated in various countries, can use an internet solution to register orders. That application could

have direct connection to Bloomberg and Reuters etc where sell & buy orders meet without any trader's manual input. In these cases we suggest same country/branch is reported for (i) having received the order in field 3 and (ii) trader executed the transaction in field 4. We find that the most suitable solution would be to report the country/branch where the centralized desk is located.

Another example is when clients use two or more trading desks within the same firm for their orders and the traders then register the orders in centralized trading books for execution. The same solution should be chosen as above.

<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>

NSA prefers XML format.

<ESMA\_QUESTION\_567>

## **8.2. Obligation to supply financial instrument reference data**

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

<ESMA\_QUESTION\_568>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_568>

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

<ESMA\_QUESTION\_569>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_569>

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

<ESMA\_QUESTION\_570>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_570>

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

<ESMA\_QUESTION\_571>

TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_571>

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

<ESMA\_QUESTION\_572>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_572>

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

<ESMA\_QUESTION\_573>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_573>

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

<ESMA\_QUESTION\_574>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_574>

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

<ESMA\_QUESTION\_575>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_575>

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

<ESMA\_QUESTION\_576>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_576>

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

<ESMA\_QUESTION\_577>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_577>

<ESMA\_QUESTION\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_1>

### **8.3. Obligation to maintain records of orders**



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

<ESMA\_QUESTION\_578>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_578>

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

<ESMA\_QUESTION\_579>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_579>

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

<ESMA\_QUESTION\_580>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_580>

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

<ESMA\_QUESTION\_581>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_581>

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

<ESMA\_QUESTION\_582>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_582>

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

<ESMA\_QUESTION\_583>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_583>

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

<ESMA\_QUESTION\_584>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_584>

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

<ESMA\_QUESTION\_585>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_585>



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

<ESMA\_QUESTION\_586>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_586>

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

<ESMA\_QUESTION\_587>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_587>

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

<ESMA\_QUESTION\_588>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_588>

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

<ESMA\_QUESTION\_589>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_589>

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

<ESMA\_QUESTION\_590>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_590>

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

<ESMA\_QUESTION\_591>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_591>

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

<ESMA\_QUESTION\_592>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_592>

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

<ESMA\_QUESTION\_593>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_593>

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

<ESMA\_QUESTION\_594>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_594>

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

<ESMA\_QUESTION\_595>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_595>

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

<ESMA\_QUESTION\_596>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_596>

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

<ESMA\_QUESTION\_597>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_597>

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

<ESMA\_QUESTION\_598>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_598>

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

<ESMA\_QUESTION\_599>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_599>

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

**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>

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<sup>3</sup> 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.

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

<ESMA\_QUESTION\_601>  
TYPE YOUR TEXT HERE  
<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  
<ESMA\_QUESTION\_602>

**Q603: Do you agree with the requirement to synchronise clocks to the microsecond level?**

<ESMA\_QUESTION\_603>

NSA questions the meaningfulness of this. The introduction of synchronization down to microseconds will be expensive. Before this can be proposed, its benefits and consequences should be properly investigated and suggestions for introduction duly justified.

It should be beared in mind that light and other electronic informationtravels 300 meter in a microsecond. That is to say, the information disseminated will reach recipients at different times, even if they are sent simultaneously. Even while dispatch information from one marketplace to several exchange members will reach these at different times. How will this information over, at great expense, used and for what purpose?

<ESMA\_QUESTION\_603>

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

<ESMA\_QUESTION\_604>  
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>  
TYPE YOUR TEXT HERE  
<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 CCP?**

<ESMA\_QUESTION\_606>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_606>

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

<ESMA\_QUESTION\_607>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_607>

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

<ESMA\_QUESTION\_608>  
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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_611>

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

<ESMA\_QUESTION\_612>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_612>

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

<ESMA\_QUESTION\_613>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_613>

## **9.2. Indirect Clearing Arrangements**

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

<ESMA\_QUESTION\_614>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_614>

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

<ESMA\_QUESTION\_615>  
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<ESMA\_QUESTION\_615>