

EACB response to the ESMA Discussion Paper on MiFID II/MiFIR

The European Association of Co-operative Banks (EACB) welcomes the opportunity to respond to the ESMA Discussion Paper on MiFID II/MiFIR.

The EACB has followed with great interest the MiFID review and has engaged with the EU-legislators throughout the legislative procedure. With MiFIDII/MiFIR now in the Level-2 phase, European co-operative banks are looking forward to further engage with ESMA in order to ensure strengthened investor protection; transparent and efficient financial markets; as well as a legislation which properly addresses the diversity of the banking industry.

With regard to the consultation timeframe, we understand that ESMA has deadlines to comply with. At the same time, we do have to make the point that, stakeholders should be given sufficient time to build up comprehensive and consistent responses. This will contribute to the work of ESMA and to the quality of the regulation.

Indeed, ESMA's consultation papers have been a considerable challenge for the EACB and its members in terms of complexity, number of questions and time frame. Market participants are still currently assessing how they will be affected, based upon the nature, size and coverage of their business activities. This is the reason why the EACB has prioritised and focused on a number questions of the Discussion Paper. However, this prioritisation exercise does not mean that questions not responded to are not important to the EACB and its members nor should it be regarded as an unconditional consent on ESMA's approach on such topics.

Of course, we are at your disposal to further discuss in detail our responses and to provide any additional information necessary in that regard.

Contact:

The EACB trusts that its comments will be taken into account.

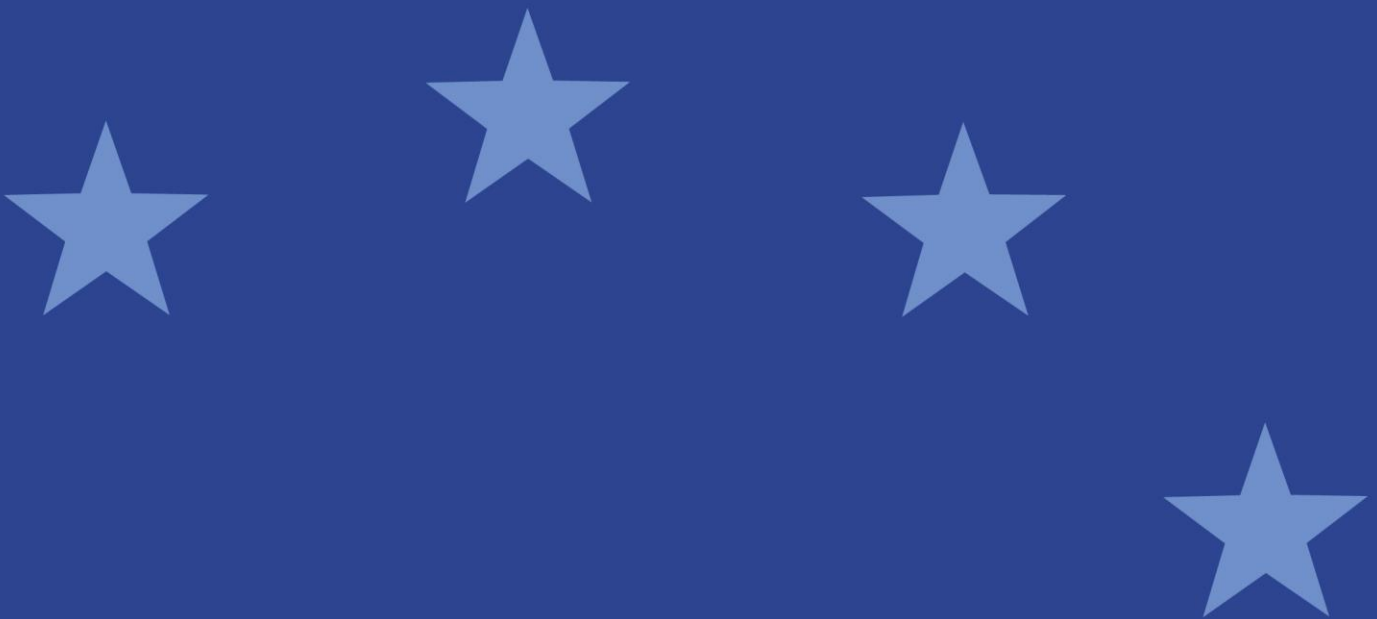
For further information or questions on this paper, please contact:

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- Ms Ilektra Zarzoura, Adviser, Financial markets (i.zarzoura@eacb.coop)



European Securities and
Markets Authority

Reply form for the ESMA MiFID II/MiFIR Discussion Paper





European Securities and
Markets Authority

Date: 22 May 2014



Responding to this paper

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

Instructions

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

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

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

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

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

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

Publication of responses

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

Data protection

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



1. Overview

2. Investor protection

2.1. Authorisation of investment firms

Q1: Do you agree that the existing work/standards set out in points Error! Reference source not found. and Error! Reference source not found. Error! Reference source not found. provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?

<ESMA_QUESTION_1>
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<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>
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<ESMA_QUESTION_2>

Q3: Do you consider that the list of information set out in point Error! Reference source not found. 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>
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<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>
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<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>
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<ESMA_QUESTION_6>



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

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

<ESMA_QUESTION_7>
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<ESMA_QUESTION_7>

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

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

<ESMA_QUESTION_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_8>

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

<ESMA_QUESTION_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_9>

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

<ESMA_QUESTION_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_10>

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

<ESMA_QUESTION_11>
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<ESMA_QUESTION_11>



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

<ESMA_QUESTION_12>
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<ESMA_QUESTION_12>

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

<ESMA_QUESTION_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_13>

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

<ESMA_QUESTION_14>
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<ESMA_QUESTION_14>

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

<ESMA_QUESTION_15>
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<ESMA_QUESTION_15>

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

<ESMA_QUESTION_16>
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<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>
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<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>
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<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>
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<ESMA_QUESTION_19>

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

<ESMA_QUESTION_20>
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<ESMA_QUESTION_20>

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

<ESMA_QUESTION_21>
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<ESMA_QUESTION_21>

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

<ESMA_QUESTION_22>
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<ESMA_QUESTION_22>

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

<ESMA_QUESTION_23>
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<ESMA_QUESTION_23>

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

<ESMA_QUESTION_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_24>

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

<ESMA_QUESTION_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_25>



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

<ESMA_QUESTION_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_26>

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

<ESMA_QUESTION_27>
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<ESMA_QUESTION_27>

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

<ESMA_QUESTION_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_28>

2.4. Best execution - publication of data by investment firms

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

<ESMA_QUESTION_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_29>

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

<ESMA_QUESTION_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_30>

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

<ESMA_QUESTION_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_31>

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

<ESMA_QUESTION_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_32>

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

<ESMA_QUESTION_33>
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<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>
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<ESMA_QUESTION_34>

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

<ESMA_QUESTION_35>
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<ESMA_QUESTION_35>

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

<ESMA_QUESTION_36>
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<ESMA_QUESTION_36>

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

<ESMA_QUESTION_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_37>

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

<ESMA_QUESTION_38>
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<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>
TYPE YOUR TEXT HERE
<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>
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<ESMA_QUESTION_40>

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

<ESMA_QUESTION_41>
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<ESMA_QUESTION_41>

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

<ESMA_QUESTION_42>
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<ESMA_QUESTION_42>

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

<ESMA_QUESTION_43>
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<ESMA_QUESTION_43>

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

<ESMA_QUESTION_44>
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<ESMA_QUESTION_44>



3. Transparency

3.1. Pre-trade transparency - Equities

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

<ESMA_QUESTION_45>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_45>

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

<ESMA_QUESTION_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_46>

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

<ESMA_QUESTION_47>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_47>

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

<ESMA_QUESTION_48>
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<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_49>

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

<ESMA_QUESTION_50>
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<ESMA_QUESTION_50>



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

<ESMA_QUESTION_51>
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<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>
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<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>
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<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>
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<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>
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<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>
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<ESMA_QUESTION_56>

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

<ESMA_QUESTION_57>
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<ESMA_QUESTION_57>

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



<ESMA_QUESTION_58>
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<ESMA_QUESTION_58>

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

<ESMA_QUESTION_59>
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<ESMA_QUESTION_59>

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

<ESMA_QUESTION_60>
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<ESMA_QUESTION_60>

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

<ESMA_QUESTION_61>
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<ESMA_QUESTION_61>

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

<ESMA_QUESTION_62>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_62>

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

<ESMA_QUESTION_63>
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<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>
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<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>
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<ESMA_QUESTION_65>

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

<ESMA_QUESTION_66>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_66>

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

<ESMA_QUESTION_67>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_67>

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

<ESMA_QUESTION_68>
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<ESMA_QUESTION_68>

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

<ESMA_QUESTION_69>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_69>

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

<ESMA_QUESTION_70>
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<ESMA_QUESTION_70>

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

<ESMA_QUESTION_71>
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<ESMA_QUESTION_71>

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

<ESMA_QUESTION_72>
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<ESMA_QUESTION_72>

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

<ESMA_QUESTION_73>

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<ESMA_QUESTION_73>

3.2. Post-trade transparency - Equities

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

<ESMA_QUESTION_74>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_74>

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

<ESMA_QUESTION_75>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_75>

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

<ESMA_QUESTION_76>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_76>

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

<ESMA_QUESTION_77>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_77>

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

<ESMA_QUESTION_78>

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<ESMA_QUESTION_78>

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

<ESMA_QUESTION_79>

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<ESMA_QUESTION_79>



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

<ESMA_QUESTION_80>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_80>

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

<ESMA_QUESTION_81>
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<ESMA_QUESTION_81>

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

<ESMA_QUESTION_82>
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<ESMA_QUESTION_82>

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

<ESMA_QUESTION_83>
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<ESMA_QUESTION_83>

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

<ESMA_QUESTION_84>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_84>

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

<ESMA_QUESTION_85>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_85>

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

<ESMA_QUESTION_86>
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<ESMA_QUESTION_86>

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

<ESMA_QUESTION_87>
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<ESMA_QUESTION_87>



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

<ESMA_QUESTION_88>
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<ESMA_QUESTION_88>

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

<ESMA_QUESTION_89>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_89>

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

<ESMA_QUESTION_90>
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<ESMA_QUESTION_90>

3.3. Systematic Internaliser Regime - Equities

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

<ESMA_QUESTION_91>

Yes, the European Association of Co-operative Banks (EACB)¹ agrees with the proposal of ESMA. The existing definition envisaged in the Implementing Regulation (EC) No 1287/2006⁵⁴ is adequate. Indeed, a rigid definition of a quote reflecting prevailing market conditions and the setting of quantitative criteria for the maximum allowable deviation from quoted price would not be appropriate. As noted by ESMA the term "prevailing market conditions" depends on a variety of factors, which may vary from instrument to instrument.

<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>

¹ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%. For further details, please visit www.eacb.coop

The EACB would reject Option B as inappropriate. As Table 14 on page 97 of the DP shows around 95% of all trades have a volume of up to EUR 10,000. The introduction of a class with an AVT of up to EUR 20,000 and a Standard Market Size (SMS) of EUR 10,000 would have the result that almost every business would still be below the SMS. This would lead to increased transparency. However, as ESMA itself rightly points out the goal of increased transparency through the SI regime must be weighed against unreasonable risks. The right balance could not be achieved when nearly all trades are below the SMS. Therefore, either Option A or C is preferable.

<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, the EACB agrees with this proposal given that depositary receipts are closely linked to the underlying shares.

<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>

Certificates achieve in corporate finance a quasi-equity function. However, trading in these instruments rather resembles trading in bonds. Therefore, the definition of an SMS should follow the methods for establishing the size specific to the instrument, which is the equivalent of SMS in non-equity securities. The fact that certificates in MiFID 2 and MIFIR are categorised as equity-like instruments does not mean that the methods in determining the SMS cannot be similar to the ones used in non-equity instruments.

<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>

The European Association of Co-operative Banks (EACB)² agrees with the approach taken by ESMA that an investment firm that is not SI by definition trades in a "non-systematic, ad hoc, irregular and infrequent" way. This approach is also in line with recital 19 MIFIR which suggests that an investment firm executing client orders against own proprietary capital is either SI or trades in a "non-systematic, ad hoc, irregular and infrequent" manner. Therefore, in this context the term "frequency" should not be construed more restrictive in the definition of systematic internalisation. This would have the consequence that the

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definition of "frequent" trade in shares would be interpreted differently within the MIFIR. The use of the terms "frequent" "ad hoc" and "irregular" as used in Article 23 MIFIR are put together to describe a trading behaviour that does not meet the criteria of a systematic internalisation. Therefore, we agree that OTC trades which do not fall under the definition of systematic internaliser, fall under the exemption of article 23, paragraph 1a of MIFIR.

<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>

The EACB considers that all examples are correct, as the list includes transactions that do not contribute to price formation/ discovery - process, because their price is not based on the current market valuation. However, we would not favour an exhaustive list, as it would be very difficult, if possible, to capture all kinds of trades whose price is not based on the current market valuation.

<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, the EACB considers the inclusion of these two types of transactions is appropriate: In a benchmark trade, the price will be based on the development of the market price over a specified period. In the case of a portfolio trade, the evaluation is based on the entire portfolio and not the individual components of the portfolio. Therefore, the value of the portfolio may differ from the sum of the value of the individual components. In both these cases, the publication of the price would not be useful.

<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, the European Association of Co-operative Banks (EACB)³ agrees with the description. It is identical to the definition in Article 2 (1) (28), and the description of structured finance products in Recital 15 MIFIR, which mentions "in particular ... asset-backed securities".

<ESMA_QUESTION_98>

³ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

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>

Whether a distinction between structured finance products and other non-equity is necessary should be examined on a individual basis depending on the specific regulatory point at hand (definition of liquid market, trade volumes, etc.). When for example it comes to the liquidity of the market in a particular asset class, it is necessary to consider whether the criteria used to assess the market liquidity should differentiate between structured finance products and other asset classes. If, for example, it comes to the trade volumes, it should be checked whether the trading volume in structured finance products differentiate considerably from trading volumes in unstructured bonds for example. For the classification of an instrument into the category of "structured finance product" or "bond" news services, such as Bloomberg, could also be used.

<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>

The EACB agrees with ESMA that securitised derivatives such as structured bonds are considered derivatives according to MiFIR, since the definition of the term "derivative" in Article 2 (1) (29) MIFIR refers to Article 2 (1) (44) (c) MIFID points. However, in the application of liquidity requirements, there should be a distinction due to the different markets for structured bonds on the one hand and non-securitized derivatives on the other. This is particularly true for the definition of the liquid market and for the "size specific to the instrument" as well as for the definition of the SI.

Although structured finance products cover also structured bonds within the meaning of Article 2 (1) (44) (c) MIFID, they are treated as a separate asset class in MIFIR. Therefore, we agree with ESMA, that they should not be treated as "derivatives" within the meaning of Article 2 (1) (29) MIFIR.

<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>

The problem of double or multiple references could be addressed as follows: Taking the example of a corporate bond that is traded on a regulated market, and another trading venue or a systematic internaliser trades in the same instrument, the competent authority would have to obtain data from more trading venues and / or systematic internalisers. Here there must be an exception, in case the reference data of the instrument are already reported through the trading venue (preferably the most regulated market) - this should be verified on the ESMA website as a central information hub.

Alternatively, it could also be the relevant issuer of the instrument that carries out the classification of the financial instrument. This way double or multiple reference data would be avoided. This would also prevent the risk of instruments to be classified differently by different venues. In any case, the ESMA website is needed as a central source of information.

<ESMA_QUESTION_101>

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

<ESMA_QUESTION_102>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_102>

3.6. Liquid market definition for non-equity financial instruments

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

<ESMA_QUESTION_103>

Yes. The European Association of Co-operative Banks (EACB)⁴ considers that the proposed approach seems appropriate since a liquid market exists when there are both a certain number of transactions completed and a certain number of trading days during which transactions have taken place.

The EACB supports ESMA's approach on p. 117 of the DP that the guiding principle in the calibration should be the promotion of efficient functioning of markets. Indeed, if illiquid, locally or regionally traded, non-equity instruments (notably bonds) are artificially calibrated as liquid, this would have detrimental effects on liquidity, especially in smaller regional markets, and consequently to financing of real economy.

In that regard, it is important to consider the differences between pan-European bond markets and local markets. Many local bond markets are characterised by (1) a very limited number of liquidity providers, (2) limited number of end-clients, (3) small issue sizes and (4) infrequent trading. Therefore, the market as a whole can be considered, with a few exceptions, rather illiquid.

When designing the respective rules, ESMA should adequately take into account that if the SI-obligations and/or post trade transparency rules make it more difficult for liquidity providers/SIs to hedge/unwind positions, they will no longer be willing to trade with the frequency or in large sizes as they do today. Consequently and as a result of the regulation, liquidity will deteriorate affecting both issuers and investors. Costs and risks will increase for investors as it will be more difficult to dispose of their assets in short timeframes. At the same time, it is possible that bigger markets will become more liquid while smaller markets will become less liquid.

In addition, it is important to consider the increasing role of high quality liquid assets (HQLA) in addressing systemic risk in the financial market. Indicatively, we note that the ability to liquidate assets in a short stress period (i.e. for LCR purposes) would be tested if there are not willing and ready buyers at large volumes. Another example would be the increased use of bonds as collateral to fulfil new CCP clearing and bilateral margin requirements.

Concerning the determination of "average frequency", considering the given options, the EACB considers that Option 3 is preferable. If one would rely solely on the number of transactions, the market for a financial instrument could be considered as liquid, even if a high number of trades was completed within one or few trading days. Conversely, a definition based on the number of trading days on which the financial instrument is traded, would lead to a financial instrument traded at low volumes to be considered liquid.

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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 also ESMA statement in par 9, page 117). This is of particular importance for non-equities markets where most of the trades are executed on liquidity provider's (most will be registered as SIs under MiFID II) own books.

In addition, we would propose that when defining the average frequency of transactions ESMA already takes into account the volume of the transactions. Indeed, a large number of small transactions may not always create real liquidity. As an alternative the average frequency could in addition be measured in connection to a minimum volume of transactions (e.g. X % of the bond size) in a certain time.

<ESMA_QUESTION_103>

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

<ESMA_QUESTION_104>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_104>

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

<ESMA_QUESTION_105>

No, the EACB does not agree. The criterion of the number of trading participants proposed by ESMA says little about the liquidity of the financial instrument. Liquidity is not necessarily collated with the number of participants. Such an approach will have the consequence that market participants who only have a few small-volume transactions completed are taken into account in assessing liquidity. To the contrary it seems appropriate to base such an assessment on the basis of the number of "liquidity providers" for the financial instrument, since it is logical that a financial instrument for which a number of "liquidity providers" exist is more liquid than a financial instrument the "liquidity providers" are few(er).

<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. The EACB considers the proposed by ESMA approach appropriate. In particular, it is crucial that spreads are observed over a sufficiently long period to ensure that a short-term increase in the spreads would not lead to instrument being considered as liquid.

However, the EACB would like to note that the size of spreads should not be the only element in assessing liquidity. It should be kept in mind that other factors such as market conditions, political situation, international crisis etc. affect spreads too much. Spreads tell more about such things than they tell about liquidity.

<ESMA_QUESTION_106>

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

<ESMA_QUESTION_107>

Yes, the EACB considers that the different thresholds should be applied for different classes of financial instruments, because spreads differ from class to class. In applying the spread ratio it should be ensured that the Bid / Ask Spread does not solely depend on the liquidity. For bonds and derivatives, the maturity period has a decisive influence (the shorter the maturity period, the lower the hedging costs for liquidity providers, the lower the spread). For bonds and derivatives in which the issuer risk and the credit risk of the underlying asset have a significant influence on the rate, the spreads are so low, the lower the respective issuer risk and credit risk.



<ESMA_QUESTION_107>

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

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>

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

<ESMA_QUESTION_109>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_109>

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

<ESMA_QUESTION_110>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_110>

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

<ESMA_QUESTION_111>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_111>

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

<ESMA_QUESTION_112>

The EACB would like to note that the scenario analysis shows that bonds as a whole are an illiquid asset class. Daily trading, as also assumed in scenarios 2 and 3, is an essential prerequisite for the assessment of a bond as liquid. Even if one assumes a daily trade, it should be taken into account that already days with very low trading volume fulfil this criterion. Therefore, it is even more important to set the second threshold i.e. the daily trading volume sufficiently high. In this respect, the average daily volume of at least EUR 10 million, as used in Scenario 5, appears quite low. If ESMA keeps this value, this threshold would at least be combined with a trading on all 240 trading days, which is unfortunately not foreseen in the proposed scenarios by ESMA.

Basically, it would be advisable to choose the scenario in which most liquid of the bonds are considered liquid. Likewise, it would be wrong, to set the thresholds in such way that at least a certain percentage of bonds is deemed to be liquid. The definition of the liquid market should also take into account the consequences associated with the classification of a financial instrument as liquid. This includes in particular the obligation of Systematic internalisers to provide binding quotes (Art. 18 (1) MiFIR). Here, the interest of the market transparency must be balanced with the risks that such requirements pose for systematic internalisers and their clients. If these risks outweigh the benefits of transparency, such instruments should be classified as illiquid. This is true even if this means that no or very few liquid financial instruments exist in a particular asset class. By no means should thresholds be set unreasonably low, in order to support the classification of a certain percentage of financial instruments for each asset class as liquid if this entails unacceptable risks for systematic internalisers, their clients and ultimately to the entire market.

<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>

It would be appropriate to apply IBIA for certain asset classes (bonds, securitised derivatives etc.) and COFIA to other asset classes (derivatives contracts).

<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>

The requirement to consider the "life-cycle" of the instrument should provide that the first few weeks following the issue of a bond should not be taken into account in the calculation of the thresholds. This applies both to the criterion of the number of trading days on which the bond is traded as well as for the criterion of the average trading volume. Experience shows that in the first weeks after the issuance the trade volumes are higher than at a later date. However, the decision whether an individual financial instrument (using the IBIA approach) or an asset class (using the COFIA approach) is liquid has implications that are not limited to the first weeks after the issue. Having said that, in order to enable a proper classification, we would propose that the first four weeks following the issuance should be not be taken into account. This applies both to the IBIA approach as well as to the COFIA approach.

<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>

The formulation of homogenous classes presupposes that individual financial instruments that belong to a class have similar characteristics with regard to the liquidity criteria. This can only be achieved after a comprehensive market analysis on the basis of the proposed criteria.

<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>

The EACB considers that the classification in Annex 3.6.1 is a good basis for the formulation of the relevant asset classes.

<ESMA_QUESTION_116>

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

<ESMA_QUESTION_117>

In principle the EACB agrees with the proposed approach. In particular, we support the introduction of qualitative criteria in addition to the definition of a threshold for the decline of the average daily turnover (ADT). However, it should be made clear that these qualitative criteria are only relevant when the thresholds are not reached, but nevertheless the national competent authority (NCA) would like to suspend the transparency obligations. In this sense the qualitative criteria constitute an additional reason for the suspension of the transparency obligations. In any case, we consider that the thresholds are set too high in the proposal (see also our response to Q118).



<ESMA_QUESTION_117>

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

<ESMA_QUESTION_118>

The EACB considers that the proposed thresholds are clearly too high, especially since, as proposed by ESMA, these should be observed over a period of 20 trading days. A decline in liquidity, as measured by the daily turnover and amounting to 80% for liquid instruments and 60% for illiquid instruments would have a dramatic impact on the risks associated with the requirement for pre-and post-trade transparency for trading venues (Art. 9 and Art. 10 MiFIR), the duty of systematic internalisers to post firm quotes (Art. 18 (1) MIFIR) and post-trade transparency for investment firms and systematic internalisers (Art. 21 MIFIR). Having said that, we consider that the powers of the national regulatory authorities to grant a temporary exemption from these obligations (Article 9 (4), Article 11 (2), Article 18 (6) and Article 21 (4) MIFIR) should come well before these thresholds are reached.

Moreover, calculating the liquidity decline on the basis of the latest official liquidity assessment is not a suitable criterion especially for liquid instruments. This would have the consequence that a very liquid instrument which, even after a decline in ADT of 80%, still meets the liquidity criteria, would be captured by the exemption. At the same time, instruments that potentially are just above the threshold of liquidity, even with a decline of ADT of almost 80%, would not be covered by the exemption. This in turn would be associated with significant risks, especially with regard to the firm-quote obligation of systematic internaliser for non-equity securities (Article 18 MIFIR) and post-trade transparency requirements systematic internalisers and other investment firms (Article 21 MIFIR), since both rules apply only to liquid instruments.

Therefore, it would be rather useful in liquid instruments to lower the thresholds that are used for determining the liquidity. If such lower thresholds are used it would be justified to suspend the transparency obligations already when the ADT falls more than 30% below the respective liquidity threshold (instead of a fall of 80% below the latest ADT as calculated at the latest official liquidity assessment of the respective instrument). It should be kept in mind that, that every decrease in the trading volume, which is used for the determination of the liquidity threshold, has the consequence that obligations which would normally only apply to liquid instruments continue to exist, even though the instrument may have become illiquid. Also for the already classified illiquid instruments, the threshold should be set significantly lower than the 60% proposed by ESMA.

In addition, the proposed period of 20 trading days, during which the decline in liquidity is measured, is too long. A suspension of pre-and post would only apply after the expiry of this period, as well as after obtaining the necessary opinion of ESMA (Art. 9 (4), Article 11 (2), Article 21 (4) MIFIR). This would mean that obligations that apply to liquid instruments may still apply over a period of several weeks, even though these obligations may entail substantial risks for market participants due to the low liquidity. Therefore, it would be appropriate to set a maximum period of 10 trading days. In addition, the required for a temporary suspension procedure should be designed in a way that ESMA is capable to give its position in one trading day.

Moreover, a temporary suspension of the transparency obligations should be possible immediately after the occurrence of an event that is expected to lead to a significant drop in liquidity. Only in this way it can be prevented that market participants will not have to abide for a longer period with obligations whose fulfilment is no longer reasonable in view of the sudden decline in liquidity.

<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, the EACB considers that the description is appropriate.

<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>

Yes, request-for-stream systems should to be included in the definition, since they perform similar functions such as request-for-quote systems. Therefore, the measures and exemptions provided for request-for-quote systems should apply equally for request-for-stream systems.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_122>

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

<ESMA_QUESTION_123>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_123>

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

<ESMA_QUESTION_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_124>

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

<ESMA_QUESTION_125>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_125>

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

<ESMA_QUESTION_126>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_126>

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

<ESMA_QUESTION_127>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_127>

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

<ESMA_QUESTION_128>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_128>

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

<ESMA_QUESTION_129>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_129>

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

<ESMA_QUESTION_130>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_130>

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

<ESMA_QUESTION_131>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_131>

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

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

<ESMA_QUESTION_132>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_132>

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

<ESMA_QUESTION_133>



No. The European Association of Co-operative Banks (EACB)⁵ considers that Systematic internalisers should not be obliged to disclose their identity. Such disclosure would entail significant risks for the systematic internalisers. In particular, this would mean that other market participants would be informed of the positions held by an SI. This information could be used by other market participants, especially hedge funds against the SI, as they would know which instruments a systematic internaliser needs to buy or sell. If, for example, it is known that a certain SI has short- sold a large position other market participants could increase the price in this instrument. Conversely, if it is public information that an SI holds a larger position in an instrument other market participants would press the selling price. The consequence of such manipulative strategies would not only increase risks for the SI itself, but would also lead to higher costs for the client.

It is also not clear what would be the benefit for bona fide market participants from knowing the identity of the SI. The argument of ESMA on market transparency is not convincing. This transparency is already fulfilled in that each transaction must be reported. An additional disclosure of the identity of the SI is not required nor does it have any added- value. Also we are not convinced of the argument of ESMA on the quotation obligation under Article 18 MIFIR, since it is only known which quotes an SI has provided, but not which transactions the respective SI has completed.

In addition, ESMA overlooks that the quotation obligation only applies under Article 18 MIFIR for liquid instruments. Especially with illiquid instruments, however, a publication of the identity of the SI would be particularly dangerous as other market participants can exploit the information about which instruments a SI needs to buy and sell.

<ESMA_QUESTION_133>

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

<ESMA_QUESTION_134>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_134>

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

<ESMA_QUESTION_135>

Yes, the EACB considers the proposed table of identifiers useful.

<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>

Yes.

<ESMA_QUESTION_136>

⁵ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

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>

Yes, because for the price of bonds it is important whether they are traded before or after the interest payment date.

<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>

Yes, in such transactions, the price depends on factors other than the current market valuation. Therefore, the publication of the price would be misleading without a flag.

<ESMA_QUESTION_138>

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

<ESMA_QUESTION_139>

Yes, the EACB agrees that such transactions should be exempted from the post-trade transparency regime. Repos and securities lending are not primarily based on the market price of the instrument, but on the rates applicable on the relevant market for repurchase agreements or securities lending agreement. Therefore, there are transactions within the meaning of Article 21 (5) (b) MIFIR whose price is based on factors other than the current market valuation of the respective instrument.

<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. Given the novelty of the post-trade transparency for non-equity securities the information should be made public within a longer period set at least 15 minutes. It should be kept in mind that in bonds electronic trading is less common than in the stock market. Many entries, including the flags that may be necessary, therefore, need to be made and checked manually. The proposed time period could be reduced at a later date, if necessary, if the technical parameters are adequate for this purpose. However, it is important that with the entry into force of the new regulations there are no requirements imposed that market participants cannot meet.

<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. The EACB considers the proposed period for the deferred publication of large-volume transactions is very short. Large-volume transactions often need to be processed by the SI for several days. If, however, the market, as proposed by ESMA, already at the end of each trading day (EOD), or at the latest at the beginning of the next trading day, gained knowledge of the executed trades the SI could incur significant risks. Also, the clients could face disadvantages. In particular, other market participants could use the information that large-volume transactions are executed against the SI. The consequence would be that the SI could not adequately hedge its positions and would offer client worse prices. The deferral period currently applied to shares (up to 3 trading days) should therefore not be applied to the generally less liquid market for non-equity securities. The deferral period for non-equity should be extended significantly; so for example in cases of very illiquid securities it takes weeks to get the deal done.

<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. The EACB considers that an intra-day delay of 60 to 120 minutes for transactions above a size specific to the instrument seems too short and does not provide firms with enough time in order to hedge and unwind their risks. This is especially true when, according to the proposal of the ESMA (with which however, we do not agree- see our response to Q147) only the volume, but not the price is to be published with a delay.

<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, the proposed deferral period for the larger transactions is too short. There should not be a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behaviour if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET.

Also liquid trades above large-in-scale threshold should be treated similarly to illiquid trades in terms of deferral period. Please also refer to our response to Q141.

<ESMA_QUESTION_143>

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

<ESMA_QUESTION_144>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_144>

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

<ESMA_QUESTION_145>

No, also this period is far too short. Especially in illiquid instruments, it often takes several trading days for the execution of a larger client order. Would the market know the exact volume and possibly even the identity of the SI, the SI could execute client orders only in significantly worse prices or would have significant risks in terms of hedging its positions. The period should therefore be significantly longer (see Q 141).

<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>

A differentiation based on the individual asset classes is appropriate, since even in illiquid instruments there can be considerable differences in liquidity. Therefore, a longer deferral period should be allowed for the least liquid instruments.

<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, the EACB does not agree. It should not only be the volume, but basically all the details of the transactions should be published with a delay. The purpose of the delayed publication is to protect systematic internalisers and other investment firms from the dangers that are associated with the fact that the market is informed that they have taken a large position in a financial instrument. Therefore, the delay should relate to the total information on the transaction. If only the volume was to be omitted but all other details were to be published without delay, the SI or another investment firm would still face significant risk, since the publication of this information allows conclusions about the positions held by an SI or another investment firm. This is about to be prevented by the delayed publication.

A requirement for the immediate publication of all details except the volume would not be in line with the wording of Article 11 (3) MIFIR, which also applies to the post-trade transparency for SI and investment firms (Article 21 (4) MIFIR). In Article 11 (3) (a) MIFIR merely provides that the supervisory authorities may request the subsequent publication of "limited details". Only in the event of an extended deferral period it is possible to further delay the publication of the volume according to Article 11 (3) (b) MIFIR. The proposal of the ESMA to publish at each referral all information of the transaction except the volume immediately, contradicts not only the *rationale* of the provision but also the very wording and structure of Article 11 (3) MIFIR.

<ESMA_QUESTION_147>

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

<ESMA_QUESTION_148>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_148>

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

<ESMA_QUESTION_149>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_149>

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

<ESMA_QUESTION_150>

ESMA rightly notes, that in transactions determined by other factors than the valuation of the instrument, a publication in real-time is not required, since such information to the market would be irrelevant (Discussion Paper, Section 3.8, para. 73). From this perspective, it also seems reasonable, to provide a longer delay until the end of the trading day.

<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>

The European Association of Co-operative Banks (EACB)⁶ considers that the preferred option of ESMA has the advantage that each instrument can be easily assigned to a specific threshold. In particular, no measurements of trade volume in the respective instrument etc. are needed. An individual calibration of the thresholds within an asset class combined with option 1 would be preferable because this way the characteristics of each instrument (e.g. per ISIN) would be considered.

<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>

If the procedure for individual instruments classes under Option 2 is not feasible, possibly because the instruments allocated for each class are different, the procedure described in option 1 should be followed.

<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>

No, the EACB does not consider that these methods should necessarily be matched. For example, if in determining the liquid market the COFIA approach is chosen, the determination of the large scale thresholds could nevertheless take place in different classes liquidity, measured on current average trading volume of the respective instrument. It is not clear why ESMA considers that if for the definition of the liquid market the COFIA approach is followed, the determination of the large scale threshold should follow the procedure described in option 2 .

<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>

No. ESMA rightfully notes in the discussion paper (page 177 point 18 i)) (1)"... that trading in non-equity financial instruments could be episodic" and (2) that the size of orders / transactions is often distributed unevenly. These characteristics of the volume figures lead to the conclusion that using an average value is not a suitable estimate for the normal trading size in the form of a statistical mean and consequently not appropriate to derive a large in scale threshold. Average values are distorted upwards by the outliers (in this case large transactions). We do not consider this approach appropriate. Averaging over a period of time can not tell if an instrument has been traded continuously in that period.

ESMA lists several reasons why these concerns would not be relevant for the use of an average value for the determination of a large in scale thresholds.

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In particular, with regard to the first concern, ESMA notes that the large in scale-threshold will be used to identify a size above which the order/transaction is large enough to merit an exception from the transparency regime regardless of the (temporal) underlying structure of trading for each class (i.e. the distribution of trade sizes for a given level of liquidity).

However, there is a correlation between the temporal underlying structure of trading and large in scale transactions. In periods without trades or with very low turnover, transactions executed already in significantly lower volumes negatively impact the price formation which in periods of continuous trading is build upon higher volumes and now, with the application of the threshold this would be avoided. Therefore, the large in scale threshold would need to be set lower in periods with little or no revenue.

Moreover, ESMA argues that the Large Scale criterion is applied in only to liquid financial instruments and such instruments "should be, inter alia, frequently traded". That would mean that the criteria used to determine the liquidity of a financial instrument should ensure that an instrument with "episodic trading" and for which no transactions take place for longer periods is not classified as liquid. However, some of the proposals for measuring the liquidity ratio of financial instruments (Discussion Paper, Section 3.6, page 116& following.) could not ensure this (Please refer to our response in Q112). The consistent application of this proposed approach would have almost all bonds that are not government bonds deemed as illiquid.

With regard to the second effect, ESMA points out that MIFIR provides ad hoc exceptions including, inter alia, for "size specific to the instrument". It is not clear how an exemption removes the problem of an asymmetric distribution. The reference to the "size specific to the instrument" creates a vicious circle, as the threshold for "size specific to the instrument" according to the ESMA proposal is to be defined as a percentage of the large in scale threshold.

Having said that we believe that is reasonable to define the large in scale threshold either a) through a simplified procedure on the basis of the "size specific to the instrument" threshold: The "size specific to the instrument" threshold could be multiplied by a specific factor, or b) by establishing a value for a quantile of the volume between 60 % and 90% of the number of transactions- depending on the distribution of the transactions in the relevant subcategory. In the relevant analysis it should be determined which quantiles should be used for each subcategory of products and whether, in the simplified methods, similar values. The threshold for size specific to the instrument would also be derived from quantiles.

If ESMA insists on the use of a statistical average value, we would recommend that instead of an arithmetic mean, to use the modus, or if this does not lead to clear results, to use the median.

<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>

No, the EACB does not agree. Please refer to our response in Q154

<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>

The definition of the thresholds for large in scale and size specific to the instrument should follow statistical measures. These need not be measures of "central tendency". Quantiles above the 50% quantile (median) are probably more appropriate. (See our response in Q154).

The thresholds should be set in a way that a strong negative influence on the price formation by large orders- which is also possible in liquid markets- can be largely avoided. Therefore, to capture the minimum percentage of the transactions volume can not be a target.

<ESMA_QUESTION_156>

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

<ESMA_QUESTION_157>

As already stated in our response to Q154 we consider that the large in scale threshold should be defined in one of the following ways:

a) through a simplified procedure on the basis of the “size specific to the instrument” threshold: The “size specific to the instrument” threshold could be multiplied by a specific factor, or

b) by establishing a value for a quantile of the volume between 60 % and 90% of the number of transactions- depending on the distribution of the transactions in the relevant subcategory. In the relevant analysis it should be determined which quantiles should be used for each subcategory of products and whether, in the simplified methods, similar values. The threshold for size specific to the instrument would also be derived from quantiles.

<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. The EACB sees no reason for such a distinction.

<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, the EACB agrees that the large in scale thresholds should be computed only on the basis of transactions carried out on trading venues for the reasons stated by ESMA. We also recommend to compute the threshold for size specific to the instrument on the basis of data obtained from trading venues. The quotes provided by liquidity providers on trading venues apply to certain volumes which are published together with the quote. From the volumes referred to in connection with the quote, typical rates and order sizes should be derived.

<ESMA_QUESTION_159>

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

<ESMA_QUESTION_160>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_160>

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

<ESMA_QUESTION_161>

No. ESMA should not set out a priority to examine the RTS at the earliest after two years. Given the novelty of the transparency requirements for non-equity securities the consequences of the defined thresholds are uncertain. It therefore seems sensible not to categorically exclude the possibility of an earlier revision.

<ESMA_QUESTION_161>



3.10. Size specific to the instrument

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

<ESMA_QUESTION_162>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_162>

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

<ESMA_QUESTION_163>

Yes, and should be set at the lowest possible percentage of the large in scale waiver.

We wonder why a different approach than the one followed for shares should be followed. As stated on page 183 in paragraph 11 for shares "the SMS is a size representative of the arithmetic average of all the orders executed in the market excluding transactions are large in scale".

However, if ESMA wishes to maintain the different approach to non-equities, should set the lowest possible percentage of the size "large in scale". A low percentage as possible could help in properly taking into account the differences between wholesale and retail orders sufficient. In our view, ESMA has not so far taken into account this required (by Level I) distinction in the proposed calculation of the "size specific to the instrument" to a sufficient degree.

In addition, the percentage should not be uniformly enforced, but should be adopted accordingly to the different groups of financial instruments. We are currently not in position to make an exact proposal because the calculation of the large in scale sizes is not possible for us.

<ESMA_QUESTION_163>

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

<ESMA_QUESTION_164>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_164>

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

<ESMA_QUESTION_165>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_165>

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

<ESMA_QUESTION_166>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_166>



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

<ESMA_QUESTION_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_167>

3.11. The Trading Obligation for Derivatives

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

<ESMA_QUESTION_168>
The European Association of Co-operative Banks (EACB)⁷ considers that it is important to apply the same categorisation used for the determination of the clearing obligation when deciding on the trading obligation. This is clearly provided for in Article 32 MiFIR according to which once a class of derivatives (or relevant subset) is declared subject to the clearing obligation, ESMA will have to decide if these derivatives should also be made subject to the trading obligation. If there are objective reasons, not to declare the entire category, but only part of it, to the trading obligation, ESMA should decide to apply the trading obligation only for part of the asset class.
<ESMA_QUESTION_168>

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

<ESMA_QUESTION_169>
In both cases mentioned by ESMA, the criterion of "direct, substantial and foreseeable effect within the Union" should be fulfilled so that the application of the trading obligation is appropriate. It is important that these procedures in the framework of EMIR and MiFID II are aligned and that equivalence is also possible for the same situations.
<ESMA_QUESTION_169>

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

<ESMA_QUESTION_170>
Yes, the ECB agrees with this approach. In particular, we agree that this procedure should be based on the equivalent procedure under EMIR and that ESMA should publish (non- exhaustive) criteria on the basis of which according to which the decision of whether there is a bypass to be made. In applying these criteria it must be ensured that legitimate business decisions that do not serve the purpose of circumventing the trading obligation are respected by ESMA. It is especially important to note that the territorial scope of the MiFIR is limited to the EU / EEA area. This territorial restriction shall not be undermined under the pretext of preventing circumvention of the trading obligation.

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<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>

Basically, nothing prevents ESMA from consulting trading venues in the preparation of the RTS. It should, however, be borne in mind that trading venues have a vested interest in expanding the commercial space requirement for as many products. The EACB notes that this obligation should only be imposed when there is enough competition between trading venues and that this trading obligation will not result in a substantial increase of execution costs of the clients. We would therefore advise to consult more involved parties for example organizations of relevant clients (buy side) and investment firms (selling side).

<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>

The application of these criteria in the context of the decision on the trading obligation should be based on the determination of the liquid market for derivatives. However, the thresholds should be set higher than in the determination of the liquid market for the purposes of the transparency rules. This is so because, while the transparency requirements merely presume that a liquid market will exist, for the trading obligation it is necessary that a derivative can be considered “sufficiently liquid” (Art. 28 (2) MIFIR).

The EACB agree with ESMA that the determination of liquidity cannot be based on averages as illiquid phases can by no means be offset by periods of particularly high liquidity. This would mean that a derivative that is illiquid for a long time, would be subject to the trading obligation. The criterion of "average frequency and size of trades over a range of market conditions" should therefore be assessed in terms of a median. The very same stands for the determination of the liquid market as well.

<ESMA_QUESTION_172>

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

<ESMA_QUESTION_173>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_173>

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

<ESMA_QUESTION_174>

The EACB notes that the interests of the end users should be protected by ensuring liquidity, small spreads and no material increase of costs because of the trading obligation.

<ESMA_QUESTION_174>

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

<ESMA_QUESTION_175>

The introduction of the trading obligation for certain derivatives in February 2014 (de facto already from October 2013 for broker transactions) has led to a segmentation of the markets and especially for USD markets. Since transactions with U.S. persons must now be completed via swap Executions Facilities (SEF) and the connection to American SEFs for European market participants is associated with high operational complexity, there is a split in an "on-SEF" -with the participation of U.S. persons- and an "off -SEF" market -without the participation of U.S. persons. The liquidity in both markets is lower than in OTC trading prior to the introduction of the trading obligation by the Dodd Frank Act. Against this background, we argue for a close coordination between the relevant European and U.S. institutions with respect to determining for which products the trading obligation should apply. If a product is traded both in the U.S. and in the EU, the trading obligation should be uniformly applied in the USA and in the EU.

For the introduction of the trading obligation an adequate transitional period should be provided for, since the examination of the rule books of a trading platform and the technical connection entail a significant increase in time and resources. The transition period should be one year. Otherwise, it cannot be ensured that all market participants can trade necessary hedging instruments as prescribed on a platform for their business.

The procedure provided for in Article 32 (4) MIFIR whereby a trading obligation can also be defined for products that can not even be traded on a trading venue should only occur in exceptional cases. There is every reason to believe that trading venues have a vested interest have to admit as many products, so as to lay the foundation of introducing the trading obligation under Article 32 (2) MIFIR. If no trading venue shows interest in the authorization of a particular product, this should be considered a strong indication that the product is not liquid. Consequently, the introduction of a trading obligation under Article 32 (4) MIFIR would be counterproductive.

The statement of the ESMA concerning market changes (para. 27-29 on page 192) is to be endorsed. This applies in particular to the risk identified by ESMA that derivatives for which a trading obligation applies, in fact can not be sold anymore if the trading on the trading platform is very illiquid. In this case, market participants would have not been in a position to complete the required for its business hedging transactions. Given the period of time required for the removal of RTS, it would usually take several months to remove trade space duty again. Since a projection of future liquidity is associated with considerable uncertainty, a trading obligation should therefore only be considered if, on the basis of previous experience, it can be excluded with high degree of probability (bordering with certainty), that the product will not become illiquid in the next 6 months. In general, this should only be the case, if a product is already traded for a long time on a trading venue.

<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>

The European Association of Co-operative Banks (EACB)⁸ notes that it should be made clear that algorithms which merely serve for the fulfilment of the requirements for best execution, and which forward orders/requests to one or several trading venues are not algorithms in the sense of Article 17 MiFID II.

<ESMA_QUESTION_185>

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

<ESMA_QUESTION_186>

We agree with the definition. ESMA should explicitly make clear that the rules for algorithmic trading shall not apply on pure OTC trading.

<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>

⁸ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks’ business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop



No, the EACB does not agree. The definition in ref. 8 iii goes much too far, to the extent the trading systems of investment firms are captured. A reasonable limitation on the automatic trading activity is required. Recital 61 MiFID II specifically refers to a specific subset of algorithmic trading with regard to the definition of the trading system. ESMA has missed this narrowing of the definition.

<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>

The EACB would propose to refrain from rigid determination of a maximum of 5 seconds. It is the responsibility of each institution to determine what is meant by real time in any particular case following a risk-based approach and respecting the principle of proportionality. The real time monitoring which should take place with a time delay of no more than 5 seconds is namely required for "any trading behavior that may pose a threat to the firm's own risk management or to the orderly functioning of the markets, and should be able to correct such trading behavior while it is still occurring, minimising the damage to either the firm itself or to the markets to which the firm is submitting its orders ". This may involve a variety of processes, and it is by no means certain that it is possible according to the state of the art to complete all these processes within 5 seconds, contrary to ESMA's assertions(para. 18). Even if this were technically possible, the technical effort should be weighed -in accordance with the principle of proportionality- against the level of the possible damages and the probability of a loss occurring. Therefore, a rigid maximum delay time should be rejected.

<ESMA_QUESTION_190>

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

<ESMA_QUESTION_191>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_191>

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

<ESMA_QUESTION_192>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_192>

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

<ESMA_QUESTION_193>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_193>

Q194: Do you agree with the above approach?

<ESMA_QUESTION_194>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_194>

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

<ESMA_QUESTION_195>

TYPE YOUR TEXT HERE



<ESMA_QUESTION_195>

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

<ESMA_QUESTION_196>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_196>

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

<ESMA_QUESTION_197>
The EACB agrees with ESMA, that examination of the adequacy of the institution's systems and controls based on an own risk assessment (self-assessment) by the investment firm and respecting the proportionality principle should take place. This means that also the frequency of the testing should be proportionate. The test must be performed regularly and be risk-oriented. A rigid minimum of two tests per year would not make sense since it is not clear why risk-based testing methods always require two tests a year.
<ESMA_QUESTION_197>

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

<ESMA_QUESTION_198>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_198>

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

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

<ESMA_QUESTION_199>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_199>

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

<ESMA_QUESTION_200>
The European Association of Co-operative Banks (EACB)⁹ considers that the requirement of a strict segregation of the production and testing environments of the algorithms as proposed by ESMA (para. 22) should be clarified. A strict separation is neither reasonable nor feasible in practice. Especially those persons who are involved in the development of an algorithm should be involved in the test phase. To

⁹ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%. For further details, please visit www.eacb.coop



avoid potential conflicts of interest the approval of the algorithm should be performed by an independent body (e.g. risk control).

<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>

The requirement that the test should – inter alia- consist of initiating, running and stopping a large number of algorithms in parallel, and at least as many algorithms as the firm used on its most active day of trading over the previous 6 month period, should be clarified. In the implementation of a stress test the decisive factor is not the number of algorithms that are used at the same time but on the number of orders generated by them. A stress test whereby a smaller number of algorithms produces a higher number of orders is more useful than a stress test whereby a plurality of algorithms produce a relatively small number of orders.

<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>

The EACB considers that it is useful to test algorithms in a non-live environment. However, investment firms should not be required to use the test environment of each trading venue on which they operate algorithmic trading. This would require that investment firms apply for access to a variety of different test environments, requirement which is associated with considerable costs. This is not in a balanced, proportional relation to the benefits of such a scheme, since the use of the individual test environment of each trading venue brings no additional benefit. Investment firms should be able to decide in the context of a risk assessment, for example if this is deemed necessary due to the peculiarities of a particular algorithm or a particular trading venue, to test an algorithm in the test environment provided by the relevant trading venue. If an investment firm as part of its risk assessment comes to the conclusion that the test results that have been achieved in a given test environment are applicable to other trading venues, they should be able to refrain from additional tests in the test environment of these trading venues.

In addition, it is also noted that not all trading venues dispose of a separate test environment.

<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>

In general the EACB agrees with the proposed monitoring procedures. An intra-day monitoring of the exposure in derivatives trading is necessary and appropriate in particular in the context of algorithmic trading in derivatives. It also makes sense that the review and evaluation process should be independent from the production process (upstream, matching engine and downstream) in order to avoid conflicts of interest.

We also agree with the requirement for periodic review of the monitoring procedure. However, a rigid minimum requirement of a twice yearly review is inappropriate. The number of inspections should rather be determined by the firm as part of the risk assessment of its systems/ algorithms in accordance with the proportionality principle. Depending on the scale of the algorithmic trading undertaken by the investment firm and the past experience and results of the monitoring it is quite conceivable that an investment firm comes to the conclusion that only one review per year is adequate. This same stands for the validation report.

<ESMA_QUESTION_203>



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

<ESMA_QUESTION_204>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_204>

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

<ESMA_QUESTION_205>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_205>

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

<ESMA_QUESTION_206>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_206>

Q207: Do you agree with the proposed approach?

<ESMA_QUESTION_207>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_207>

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

<ESMA_QUESTION_208>
The EACB does not consider the approach of a fixed list of pre-trade controls appropriate. The selection of controls should rather be left with the investment firm. The firm should have the opportunity to decide- in the context of its risk- assessment - which controls are necessary, in relation to a specific algorithm and the individual circumstances. The controls proposed by ESMA may be useful in many cases. However, it is by no means certain that the use of all controls specified by ESMA are appropriate for each firm.
<ESMA_QUESTION_208>

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

<ESMA_QUESTION_209>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_209>

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

<ESMA_QUESTION_210>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_210>

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

<ESMA_QUESTION_211>



The EACB considers that a retention period of 5 years is appropriate. ESMA should, however, clarify that it will not be necessary to retain the data longer, unless there is a specific reason for this (such as an ongoing investigation by a regulatory authority). In this context the phrase "at least five" should be deleted. We do not consider an additional storage of market data necessary. Such storage would entail considerable efforts due to the volume of data without any added- value, since if necessary (for example in an investigation by a regulatory body) market data can also be procured from external data providers.
<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>
In principle the EACB agrees with the proposals of ESMA. With regard to the requirement that the monitoring system should be able to generate operable alerts on a t+1 basis, especially in the case of a suspected market manipulation, ESMA should clarify that that the period until the beginning of the next trading day (T+1) only applies for the automated systems. This means that any required manual handling of the suspicious activity report can also be done later.

With regard to the question raised by ESMA question of recording and storing of market data (para. 82), we are of the opinion that such a recording and storing is not required. We note again that such a requirement would entail considerable efforts due to the volume of data without any added- value, since if necessary (for example in an investigation by a regulatory body) market data can also be procured from external data providers.
<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>
It is useful to periodically review the existing monitoring system to prevent market manipulation. A review is particularly important in case there is a change in the firms regulatory obligations and its trading behaviour, including its trading strategy, the type and volume of instruments traded, and the markets accessed as ESMA rightfully notes (point 79). However, we can not identify the reasons why a rigid minimum requirement of undertaking reviews on a half-yearly basis should be set. Rather, it should be the task of the investment firm to continuously assess whether the above mentioned parameters have changed and therefore a review is necessary. If, for example, neither the legal framework nor the algorithms, types and volumes of traded instruments or trading venues have changed, it is not appropriate in terms of proportionality to require a formalised testing every six months.
<ESMA_QUESTION_214>

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

<ESMA_QUESTION_215>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_215>



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

<ESMA_QUESTION_216>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_216>

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

<ESMA_QUESTION_217>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_217>

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

<ESMA_QUESTION_218>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_218>

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

<ESMA_QUESTION_219>
In principle, the EACB agrees with the proposal of ESMA. However, investment firms should not be obliged, when calculating the exposure, to distinguish between the different trading desks or traders of a respective client.
<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>
The EACB agrees with the proposal that the individual users of the DEA clients should obtain individual identifiers. In this way, the DEA provider can see which user has granted a certain order, which would be useful for example in regulatory investigations. However, we do not deem it necessary to require that the DEA provider is in a position, if necessary, to block only individual users of the DEA clients. This would have the advantage that not all of the DEA clients (i.e. the entire company) would be temporarily excluded from the DEA service. However, setting up such a system is not customary and would involve considerable expense. Imposing on the DEA provider with the associated costs would not be justified. Basically, the DEA client is in fact responsible for the actions of its employees. It is therefore appropriate that the DEA client has to bear the consequences of misconduct of its employees. Therefore, it should be sufficient if the DEA provider is in a position to temporarily exclude a certain DEA client from the DEA service. It is for the DEA clients to withdraw the admission of the respective employees and notify the DEA provider so that the DEA service to be resumed.
<ESMA_QUESTION_220>

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



<ESMA_QUESTION_221>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_221>

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

<ESMA_QUESTION_222>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_222>

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

<ESMA_QUESTION_223>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_223>

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

<ESMA_QUESTION_224>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_224>

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

<ESMA_QUESTION_225>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_225>

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

<ESMA_QUESTION_226>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_226>

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

<ESMA_QUESTION_227>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_227>

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



<ESMA_QUESTION_228>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_228>

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

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

<ESMA_QUESTION_229>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_229>

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

<ESMA_QUESTION_230>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_230>

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

<ESMA_QUESTION_231>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_231>

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

<ESMA_QUESTION_232>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_232>

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

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

Q234: Do you agree with the above approach?

<ESMA_QUESTION_234>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_234>



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

<ESMA_QUESTION_235>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_235>

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

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_236>

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

<ESMA_QUESTION_237>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_237>

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

<ESMA_QUESTION_238>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_238>

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

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_239>

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

<ESMA_QUESTION_240>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_240>

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

<ESMA_QUESTION_241>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_241>

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

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>



Q243: Do you agree with the proposal above?

<ESMA_QUESTION_243>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_243>

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

<ESMA_QUESTION_244>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_244>

Q245: Should alternative means of conformance testing be permitted?

<ESMA_QUESTION_245>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_245>

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

<ESMA_QUESTION_246>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_246>

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

<ESMA_QUESTION_247>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_247>

Q248: Do you agree with the proposed approach?

<ESMA_QUESTION_248>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_248>

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

<ESMA_QUESTION_249>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_249>

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

<ESMA_QUESTION_250>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_250>

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



<ESMA_QUESTION_251>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_251>

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

<ESMA_QUESTION_252>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_252>

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

<ESMA_QUESTION_253>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_253>

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

<ESMA_QUESTION_254>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_254>

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

<ESMA_QUESTION_255>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_255>

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

<ESMA_QUESTION_256>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_256>

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

<ESMA_QUESTION_257>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_257>

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

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

<ESMA_QUESTION_258>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_258>

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

<ESMA_QUESTION_259>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_259>

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

<ESMA_QUESTION_260>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_260>

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

<ESMA_QUESTION_261>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_261>

Q262: Do you agree with the above assessment?

<ESMA_QUESTION_262>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_262>

Q263: Do you agree with this interpretation?

<ESMA_QUESTION_263>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_263>

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

<ESMA_QUESTION_264>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_264>

Q265: Do you agree with the above interpretation?

<ESMA_QUESTION_265>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_265>

Q266: Do you agree with the above proposal?

<ESMA_QUESTION_266>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_266>

Q267: Do you agree with the above proposal?



<ESMA_QUESTION_267>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_267>

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

<ESMA_QUESTION_268>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_268>

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

<ESMA_QUESTION_269>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_269>

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

<ESMA_QUESTION_270>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_270>

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

<ESMA_QUESTION_271>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_271>

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

<ESMA_QUESTION_272>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_272>

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

<ESMA_QUESTION_273>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_273>

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

<ESMA_QUESTION_274>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_274>



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

<ESMA_QUESTION_275>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_275>

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

<ESMA_QUESTION_276>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_276>

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

<ESMA_QUESTION_277>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_277>

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

<ESMA_QUESTION_278>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_278>

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

<ESMA_QUESTION_279>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_279>

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

<ESMA_QUESTION_280>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_280>

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

<ESMA_QUESTION_281>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_281>

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

<ESMA_QUESTION_282>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_282>



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

<ESMA_QUESTION_283>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_283>

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

<ESMA_QUESTION_284>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_284>

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

<ESMA_QUESTION_285>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_285>

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

<ESMA_QUESTION_286>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_286>

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

<ESMA_QUESTION_287>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_287>

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

<ESMA_QUESTION_288>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_288>

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

<ESMA_QUESTION_289>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_289>

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

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

<ESMA_QUESTION_290>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_290>

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

<ESMA_QUESTION_291>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_291>

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

<ESMA_QUESTION_292>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_292>

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

<ESMA_QUESTION_293>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_293>

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

<ESMA_QUESTION_294>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_294>

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

<ESMA_QUESTION_295>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_295>

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

<ESMA_QUESTION_296>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_296>

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

<ESMA_QUESTION_297>
TYPE YOUR TEXT HERE



<ESMA_QUESTION_297>

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

<ESMA_QUESTION_298>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_298>

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

<ESMA_QUESTION_299>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_299>

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

<ESMA_QUESTION_300>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_300>

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

<ESMA_QUESTION_301>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_301>

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

<ESMA_QUESTION_302>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_302>

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

<ESMA_QUESTION_303>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_303>

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

<ESMA_QUESTION_304>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_304>

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



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

<ESMA_QUESTION_305>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_305>

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

Q306: Do you agree with the approach described above?

<ESMA_QUESTION_306>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_306>

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

<ESMA_QUESTION_307>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_307>

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

<ESMA_QUESTION_308>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_308>

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

<ESMA_QUESTION_309>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_309>

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

<ESMA_QUESTION_310>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_310>

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

<ESMA_QUESTION_311>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_311>

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

<ESMA_QUESTION_312>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_312>



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

<ESMA_QUESTION_313>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_313>

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

<ESMA_QUESTION_314>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_314>

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

<ESMA_QUESTION_315>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_315>

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

<ESMA_QUESTION_316>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_316>

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

<ESMA_QUESTION_317>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_317>

Q318: Should conformance testing be charged?

<ESMA_QUESTION_318>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_318>

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

<ESMA_QUESTION_319>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_319>



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

<ESMA_QUESTION_320>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_320>

Q321: Do you agree with the approach described above?

<ESMA_QUESTION_321>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_321>

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

<ESMA_QUESTION_322>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_322>

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

<ESMA_QUESTION_323>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_323>

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

<ESMA_QUESTION_324>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_324>

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

<ESMA_QUESTION_325>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_325>

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

<ESMA_QUESTION_326>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_326>

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

<ESMA_QUESTION_327>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_327>

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

<ESMA_QUESTION_328>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_328>

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

<ESMA_QUESTION_329>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_329>

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

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

<ESMA_QUESTION_330>

The European Association of Co-operative Banks (EACB)¹⁰ is rather critical towards the very technical approach on tick size that ESMA is following in the Discussion Paper, since it does not take into account that one of the key objective of co-legislators when focusing on this subject is to restrict HFT which goes against the real mission of financial markets.

A clear distinction should be made between general algorithmic trading and HFT. HFT needs algorithms but not all algorithmic trading is necessarily HFT. Most algorithms are very helpful for the whole industry, whereas there are doubts about the usefulness of HFT: it only provides additional liquidity to securities which are already liquid. Some typical HFT behaviours are also very questionable and tend to turn investors away from “lit” markets (regulated markets or Multilateral Trading Facilities without transparency waivers) or even from equities and may dissuade potential corporate issuers from getting listed. In addition, such practices make market abuse control difficult and costly for regulators, and the heavy cost of these controls is supported by all market actors (even those which do not engage in HFT). Moreover, due to the huge volumes of orders generated by HFT it has become very difficult and expensive for regulators to control manipulative and abusive market practices. The additional cost of these controls is borne by all market participants, including the buy side while investors are facing clear deterioration of transaction prices. We fear that, if regulators do not address these concerns of with regard to HFT players, an increasing number of issuers and investors will move away from financial markets. HFT has the following characteristics (see also Articles 4(1)(39) and (40) of MiFID II) :

- proprietary trading
- system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders
- co-location, proximity hosting or high-speed direct electronic access
- high frequency of orders treated in a very short time with high cancellation rates.
-

On the basis of this definition the following steps should be taken in order to allow the legislation to fulfil its purpose:

1. Clearly distinguish between high frequency traders and market makers
2. Require trading venues which admit high frequency traders to disclose this to the public.

¹⁰ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks’ business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%. For further details, please visit www.eacb.coop



3. Regulate cancellation ratio and tick sizes.

<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>

Please refer to our response in Q330.

<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 refer to our response in Q330.

<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 refer to our response in Q330.

<ESMA_QUESTION_333>

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

<ESMA_QUESTION_334>

Please refer to our response in Q330.

<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 refer to our response in Q330.

<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>

Please refer to our response in Q330.

<ESMA_QUESTION_336>

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

<ESMA_QUESTION_337>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_337>



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

<ESMA_QUESTION_338>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_338>

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

<ESMA_QUESTION_339>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_339>

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

<ESMA_QUESTION_340>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_340>

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

<ESMA_QUESTION_341>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_341>

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

<ESMA_QUESTION_342>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_342>

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

<ESMA_QUESTION_343>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_343>

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

<ESMA_QUESTION_344>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_344>

Q345: If you think that for certain equity-like instruments (e.g. ETFs) the spread-based tick size regime¹¹ 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 regime¹² vis-à-vis the regime as proposed under Option 1 and tested by ESMA, please specify the reasons and provide the following information:

<ESMA_QUESTION_346>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_346>

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

<ESMA_QUESTION_347>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_347>

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

<ESMA_QUESTION_348>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_348>

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

<ESMA_QUESTION_349>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_349>

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

<ESMA_QUESTION_350>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_350>

¹¹ Please see the description of Option 2 regarding tick sizes below.

¹² Please see the description of Option 2 regarding tick sizes below.



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

<ESMA_QUESTION_351>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_351>

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

<ESMA_QUESTION_352>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_352>

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

<ESMA_QUESTION_353>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_353>

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

<ESMA_QUESTION_354>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_354>

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

<ESMA_QUESTION_355>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_355>

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

<ESMA_QUESTION_356>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_356>

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

<ESMA_QUESTION_357>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_357>

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

<ESMA_QUESTION_358>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_358>

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

<ESMA_QUESTION_359>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_359>

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

<ESMA_QUESTION_360>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_360>

5. Data publication and access

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

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

<ESMA_QUESTION_361>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_361>

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

<ESMA_QUESTION_362>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_362>

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

<ESMA_QUESTION_363>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_363>

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

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

<ESMA_QUESTION_364>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_364>

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

<ESMA_QUESTION_365>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_365>

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



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

<ESMA_QUESTION_366>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_366>

5.4. Consolidated tape providers

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

<ESMA_QUESTION_367>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_367>

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

<ESMA_QUESTION_368>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_368>

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

<ESMA_QUESTION_369>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_369>

5.5. Data disaggregation

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

<ESMA_QUESTION_370>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_370>

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

<ESMA_QUESTION_371>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_371>

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



<ESMA_QUESTION_372>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_372>

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

<ESMA_QUESTION_373>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_373>

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

<ESMA_QUESTION_374>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_374>

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

<ESMA_QUESTION_375>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_375>

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

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

<ESMA_QUESTION_376>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_376>

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

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

<ESMA_QUESTION_377>

Yes. From the perspective of the European Association of Co-operative Banks (EACB)¹³ it seems reasonable, assuming that the conditions laid down by ESMA for denial of access represent exceptional situations

¹³ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-



which have not already been tested by ESMA on the first registration. In this case, the RTS should also provide for the necessary arrangements for the temporary suspension of the clearing obligation and the trading obligation when market participants are no longer able to gain access to a CCP or trading venue.

<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?

operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop



<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_536>

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

<ESMA_QUESTION_537>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_537>

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

<ESMA_QUESTION_538>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_538>

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

<ESMA_QUESTION_539>
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>

As a preliminary remark the European Association of Co-operative Banks (EACB)¹⁴ would like to note that in its view many ESMA proposals concerning transaction reporting go beyond Level 1 of MiFIR and/or are disproportionate. A final assessment is, moreover, difficult because many points are unclear. For details, please refer to our responses to the specific questions below.

Moreover, experience has shown (take for example the issues with the implementation of EMIR) that proper implementation requires significant time and efforts. Therefore, it is vital that the specifications required are available in good time before investment firms have to implement such requirements so as to allow proper and timely implementation.

Response to Q546:

The definition of the term “transaction” proposed by ESMA goes well beyond Level 1. According to Art. 26(1) of MiFIR, investment firms are required to report “transactions”. This does not cover the determination of positions/changes in positions in all financial instruments, including the exercise of existing options or the maturity of investments.

Despite the wording of Art. 26(9)(h) of MiFIR, we do not believe that a distinction between “transaction” and “execution of a transaction” is appropriate. Only an order can in fact be executed, but not a transaction. A transaction is an executed order. We consider that this editorial oversight at Level 1 should not be carried over into Level 2. Only “transactions” can be subject to a reporting requirement. Having said that we consider that paras. 8, 11 and 12 should be amended accordingly.

In addition, the terms used in paras. 11, 12 and 15 need to be defined. Because of the absence of any definitions (see, for example, “compression”, “assignment”, “novation”, “termination” and “redemption”), it is currently unclear what would actually have to be reported. As a result, a final assessment of the ESMA proposals is not possible at present.

<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>

Please refer to our response to Q546.

¹⁴ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks’ business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%. For further details, please visit www.eacb.coop



<ESMA_QUESTION_547>

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

<ESMA_QUESTION_548>

Please refer to our response to Q546.

<ESMA_QUESTION_548>

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

<ESMA_QUESTION_549>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_549>

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

<ESMA_QUESTION_550>

The EACB would like to make the following comments:

The fields 21 to 27, 30 to 36, 40 to 47, 49 to 55, 71 to 73 and 76 to 78 (additional information on counterparty, decision maker, client, trader) should be deleted, because there is neither a legal basis nor any need for them (for details, please see our reply to Q551).

With regard to fields 28 to 36: Decision maker for the counterparty, we consider that reporting the “decision maker for the counterparty” goes beyond Level 1. Moreover, there is no need for these fields, because the counterparty is required in any case to indicate its decision maker in its report (cf. Art. 26(3) of MiFIR). Fields 28 to 36 should therefore be deleted.

With regard to field 81: Short selling flag and field 82: SSR exemption flag, we would favour deletion of these fields (please see our reply to Q557 et seq., particularly to Q558). In any case, the introduction of two fields for the short selling flag cannot be accepted. Under Art. 26(3) of MiFIR, only one designation can be required (“a designation to identify a short selling as defined in Article 2(1)(b) of Regulation (EU) No 236/2012”; likewise, Art. 26(9)(d) of MiFIR: “the designation to identify short selling of shares and sovereign debt as referred to in paragraph 3”). Therefore, in any case, field 82 should be deleted.

With regard to field 87: Option exercise, the EACB considers that the exercise of an option is not a reportable transaction (see our reply to Q546). This field should, therefore, be deleted.

With regard to field 91: Report Matching Number, the EACB considers that this requirement is not covered by the Level 1 text. Moreover, we wonder whether such a report matching number can be implemented. Such a unique matching number does not exist at present. An additional field allowing unique matching as far as the final counterparty of the transaction would have to be created for every single system. The introduction of such a matching number would pose a huge challenge to the industry and would require close cooperation between exchanges, IT service providers for various kinds of systems utilised in the market and investment firms, notwithstanding significant costs. This field should therefore be deleted.

To populate the other fields, investment firms need clear-cut examples of how any given transaction is to be reported.

<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>

Given the extremely small number of natural persons that have securities accounts in different EU Member States, the EACB believes that EU-wide harmonisation would be too burdensome, complicated and



disproportionate. With respect of natural persons, a unique identifier at national level, therefore, would be more appropriate.

When identifying natural persons, it must be ensured that reporting is based only on client identifiers that investment firms are already legally required to collect and store in systems today. Subsequent collection of client identifiers solely for reporting purposes would be disproportionate, not the least in the light of probably three-digit million securities accounts in the EU Member States at present.

In the case of identifiers that still would have to be collected, an additional factor to be considered is that clients are not obligated to cooperate. Collecting identifiers from existing clients *ex-post* would not only impose a considerable and ultimately disproportionate burden but would also raise legal issues. Due to the absence of any obligation for clients to cooperate, an investment firm could not, for example, refuse to accept and execute a selling order, because the client had failed to provide it with the legally required identification.

Where, on top of the “client designation”, ESMA calls for “additional information regarding the identity of the client”, this is not covered by Level 1. Art. 26(3) of MiFIR only requires “a designation to identify the clients ...”, but not additional information regarding the identity of the client. Moreover, this raises data protection issues that should be duly considered. Furthermore, a requirement to provide such additional information on top of a client ID would not be necessary, as it does not deliver any added value for automated transaction matching by national competent authorities (NCAs). It would, in addition, also be completely disproportionate, since suspicious transactions are an absolute exception. Consequently, the NCA should continue to request additional details of the client or the transaction from investment firms only in suspicious cases. Thus, the EACB urges to delete the requirement to provide additional details of the client. The same applies to all other cases in which identification is proposed (counterparty, decision maker, trader).

<ESMA_QUESTION_551>

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

<ESMA_QUESTION_552>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_552>

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

<ESMA_QUESTION_553>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_553>

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

<ESMA_QUESTION_554>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_554>

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

<ESMA_QUESTION_555>

TYPE YOUR TEXT HERE



<ESMA_QUESTION_555>

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

<ESMA_QUESTION_556>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_556>

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

<ESMA_QUESTION_557>

The EACB notes that there is no simple way of calculating a prohibited short selling activity. It always depends on various factors which have to be looked at individually. We consider that this cannot be dealt with in mass data reporting like transaction reporting.

When it comes to option 1 (par. 99-101) retail clients are out of scope because both online brokerage and manual executions prevent them from short selling. Any selling transaction must be on a covered basis. Short selling is technically not possible and therefore is a non-issue.

Professional clients typically execute through DMA where there is no dialogue with the broker. It is not possible to ask every client for every sale of sovereign bonds or equities whether the transaction is a short selling or will result in a short position.

Where there is still voice execution, it is highly unlikely that a client will voluntarily disclose the fact that he is about to breach Regulation (EU) 236/2012 on short selling (SSR).

When it comes to option 2 (par. 99-101) ESMA already describes some of the huge practical problems that will be encountered. Further problems would arise, especially since it is not possible to identify as short selling within t+1, which is time, within the investment firms have to report to their NCA. The only time reliable information to indicate that a short selling prohibited under the SSR has occurred is when the investment firm or broker starts the buy-in process. This date is typically 5-10 days after the transaction was concluded. Therefore, it is not possible that investment firms report to their NCA in t+1, including a short selling flag.

Therefore, none of the two options is able to produce reliable information allowing the investment firm to determine (within the reporting time) if a short selling that is prohibited under the SSR has taken place.

This idea presented in par. 102 implies that, from an NCA point of view, it might be acceptable to factor in the possibility for the investment firm to produce inaccurate transaction reports. However, from an investment firm perspective, this is clearly not acceptable and would expose the investment firm to considerable legal risks. If transaction reporting would be based on vague assumptions, every "yes" in field 81 would potentially lead to further investigations and allegations up to the risk of possible administrative fines.

Having said that ESMA should not request reporting firms to produce a short selling flag and should continue to rely on existing mechanisms. Please see our response to Q 558.

<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>

Please refer to our response in Q557. Based on our argumentation above, ESMA should not request reporting firms to produce a short selling flag and should continue to rely on existing mechanisms. It should be

acknowledged that the Level 1 requirement concerning short selling flag cannot be implemented. In addition, we consider that a short selling flag is not necessary. Investment firms and brokers are today already required to monitor client activity in this regard and to file suspicious transactions in case they detect short sellings prohibited by SSR. This is the only method of producing reports that can then be used for further investigations by the NCAs.

With regard to para. 93 (two fields for a designation to identify short selling), please refer to our response to Q550.
<ESMA_QUESTION_558>

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

<ESMA_QUESTION_559>

None of both options is appropriate and/or will work in practice. The investment firm should not report any potential short selling if it is buying from a client and selling to the market in a principal capacity. Also the timing problem remains: in t+1, the investment firm does not know whether the transaction is a short selling because it will only know at t+2 if what it has bought from a client will be settled as planned. And it will only know after a few days later if the delay will result in a buy-in.

<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>

In line with our replies to Q557 to Q559, in the case of aggregated transactions it is even more difficult to determine if a transaction was a prohibited short selling. Therefore, investment firms should not be required to report such but use the existing reporting in the form of suspicious transactions as soon as there is reliable evidence as to whether and which of the aggregated selling transactions was a prohibited short selling.

<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>

Please refer to responses to Q557 to 560.

<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>

In the view of the EACB, a golden source of reportable financial instruments is necessary. We acknowledge the difficulties this might create for ESMA and understand that ESMA wishes to ensure that no reporting gap is created by publishing a golden source. However, we believe that each individual investment firm will come up against the same issue as described by ESMA in the Discussion Paper. Also, such data on baskets might not be available in the market for determining instruments over baskets.

<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>



The EACB would be in favour of the first option (see para.124 i) because it offers a clear-cut and uniform approach.

<ESMA_QUESTION_563>

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

<ESMA_QUESTION_564>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_564>

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

<ESMA_QUESTION_565>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_565>

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

<ESMA_QUESTION_566>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_566>

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

<ESMA_QUESTION_567>

We believe that making use of already established reporting formats such as those implemented under EMIR might be a sensible approach. The formats in use today, e.g. CSV and SML would be also appropriate.

<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>

The formulation of Article 27 suggests that SI reference data need to be provided to the respective NCA only for financial instruments not traded on a trading venue. This should again be made clear in the RTS. The supply of reference data by SI for financial instruments that are traded on trading venues would mean a double reporting, since this information is already provided by the trading venues.

For OTC derivatives, already under EMIR there is an extensive reporting obligation to trade repositories. Therefore, we consider another notification procedure for SI for OTC derivatives unnecessary and superfluous.

For financial instruments not traded on a trading venue which are not issued from the SI itself, we believe that the reporting of reference data to the NCA is problematic for the following reasons:

1. The SI is not the original source of information in these cases. The SI can only receive information directly from the issuer or from intelligence services (e.g. Bloomberg, etc.) here.
2. Issuers are not obliged to provide the SI with the required information in timely manner.

3. The SI would not be able to verify the information of an intelligence service within a reasonable time and with reasonable effort. Should the publication not be verified, false information would lead to uncontrollable liability risks for issuers and market participants.
4. To the extent that SI are denoted for sub-categories of financial instruments, it would be unreasonable that the SI should also monitor information changes of financial instruments for which, although included in the respective subcategory, it currently does not provide quotes and possibly does not intend to.

Based on the above, we consider that the information requirement for financial instruments not traded in a trading venue should only be applied on SI for financial instruments issued by the SI itself. Moreover, ESMA should consider the extent to which the information requirements are already covered by existing data providers (eg WM-data service).

<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>

Please refer to our response in Q568.

<ESMA_QUESTION_569>

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

<ESMA_QUESTION_570>

Please refer to our response in Q568.

<ESMA_QUESTION_570>

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

<ESMA_QUESTION_571>

Please refer to our response in Q568.

<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>

Please refer to our response in Q568.

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

<ESMA_QUESTION_593>
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<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>
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<ESMA_QUESTION_595>

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

<ESMA_QUESTION_596>
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<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>
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<ESMA_QUESTION_597>

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

<ESMA_QUESTION_598>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_598>

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

<ESMA_QUESTION_599>
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<ESMA_QUESTION_599>

8.4. Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)¹⁵

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>
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<ESMA_QUESTION_600>

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

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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>
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<ESMA_QUESTION_602>

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

<ESMA_QUESTION_603>
The European Association of Co-operative Banks (EACB)¹⁶ totally disagrees with ESMA proposal concerning the "synchronisation of clocks". The requirement to synchronize the clocks of all markets, trading

¹⁵ 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.

¹⁶ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form

venues, systems etc. exactly to the microsecond is, in our opinion, technically (almost) impossible and, in any case, so costly that especially small and medium-sized market participants would unreasonably disadvantaged. This requirement is likely to lead to a concentration of trading on the largest firms, while it possibly provides for an advantage for high-frequency traders which may already possess such technologies. Furthermore, the requirement seems completely unreasonable for institutions with "not high-frequency" trading, because such firms have neither the interest nor the technology to carry out trading activities with a microsecond precision. We see an additional problem with respect to "voice-trading" transactions that are completed through the telephone. This raises the question, how it would even be possible to achieve a microsecond accuracy on the time of the execution of the transaction.

Even though the synchronization of the "business clocks to the microsecond level" would be useful for a number of issues, it does not appear as an appropriate requirement to be implemented by all investment firms. The synchronization of business clocks has already been discussed at an earlier stage in connection with trading on trading venues. To this end, there are comments from various institutions and experts that the synchronization in micro-second degree is on the current state of the art a very big challenge that can only be realized with high technical complexity. These opinions are cited in the relevant part of the Discussion Paper. Against this background, we would ask the ESMA to specify the purposes of such requirement, the market participants and the types of systems for which such a synchronization would be necessary and to present a cost-benefit analysis. By way of example we refer to OTC trading where it is not clear what the purpose of a synchronisation in microseconds could serve. To the contrary, it could possibly make sense to apply such a synchronisation requirement only between the systems of a trading venue or for high frequency trading.

<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?

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decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

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?

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

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

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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>
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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?

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

<ESMA_QUESTION_611>
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Q612: What should be the degree of flexibility for CM, its timeframe, and the characteristics of the systems, procedures and arrangements required to supporting that flexibility? How should it compare to the current practices and timeframe?

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

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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>
The European Association of Co-operative Banks (EACB)¹⁷ wonders whether these indirect clearing arrangements exist in the market at all.
<ESMA_QUESTION_614>

¹⁷ The European Association of Co-operative Banks (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 3,700 locally operating banks and 71,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 215 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 56 million members and 850,000 employees and have a total average market share of about 20%. For further details, please visit www.eacb.coop



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

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