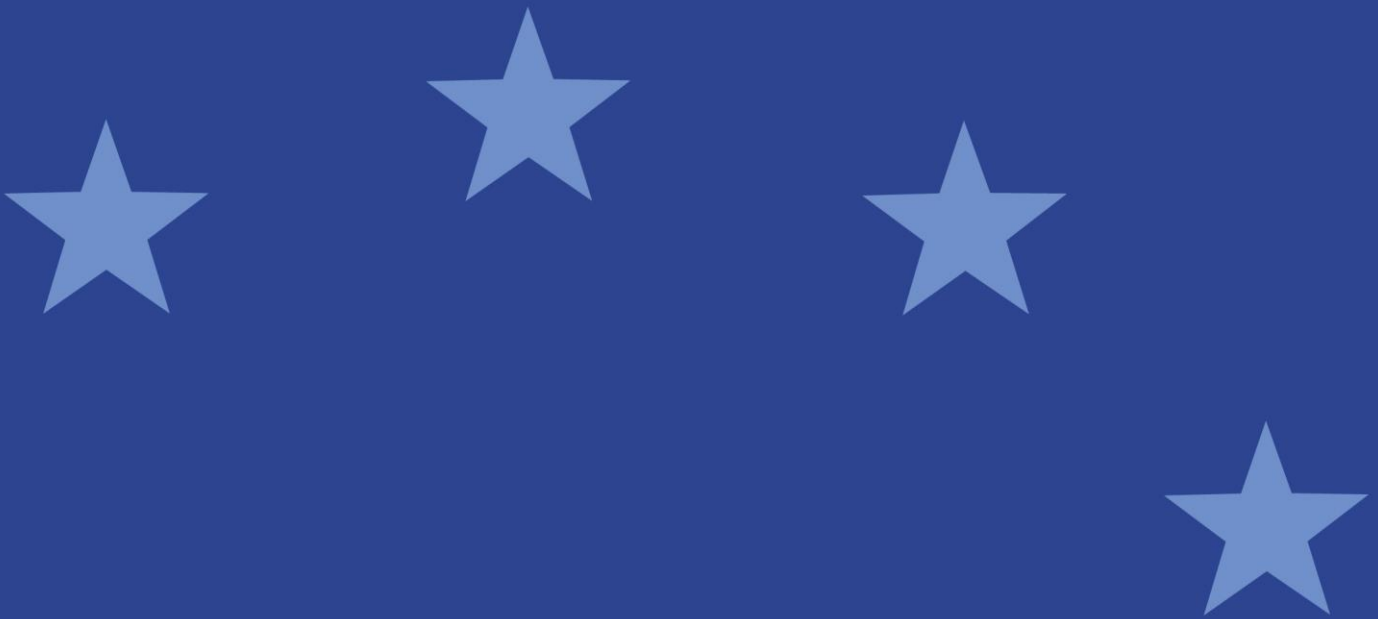




European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II / MiFIR



19 December 2014

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses



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

Data protection

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

General information about respondent

Name of the company / organisation	European Association of Co-operative Banks
Confidential ¹	<input type="checkbox"/>
Activity:	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1 >

The European Association of Co-operative Banks (EACB)² represents, promotes and defends the common interests of its 31 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation.

Co-operative banks play a major role in the financial and economic system. Their resilience during the crisis made co-operative banks a key driving force in the economic recovery. With 4,200 locally operating banks and 68,000 outlets, they serve 205 million customers, mainly consumers, SMEs and communities.

Europe's co-operative banks represent 78 million members and 860,000 employees and have an average market share of about 20%.

The EACB welcomes the opportunity to respond to the ESMA Consultation 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. Moreover, the EACB has already responded to the previous Consultation and Discussion Paper on MiFID II/MiFIR and is looking forward to further exchange 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.

Again, 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 assessing how they will be affected, based upon the nature, size and coverage of

¹ The field will be used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account.

² 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



their business activities. This is the reason why the EACB has prioritised and focused on a number questions of the Consultation 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.

< ESMA_COMMENT_CP_MIFID_1 >

2. Investor protection

Q1. Do you agree with the list of information set out in draft RTS to be provided to the competent authority of the home Member State? If not, what other information should ESMA consider?

<ESMA_QUESTION_CP_MIFID_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_1>

Q2. Do you agree with the conditions, set out in this CP, under which a firm that is a natural person or a legal person managed by a single natural person can be authorised? If no, which criteria should be added or deleted?

<ESMA_QUESTION_CP_MIFID_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_2>

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

<ESMA_QUESTION_CP_MIFID_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_3>

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

<ESMA_QUESTION_CP_MIFID_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_4>

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

<ESMA_QUESTION_CP_MIFID_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_5>

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

<ESMA_QUESTION_CP_MIFID_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_6>

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



<ESMA_QUESTION_CP_MIFID_7>

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<ESMA_QUESTION_CP_MIFID_7>

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

<ESMA_QUESTION_CP_MIFID_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_8>

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

<ESMA_QUESTION_CP_MIFID_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_9>

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

<ESMA_QUESTION_CP_MIFID_10>

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<ESMA_QUESTION_CP_MIFID_10>

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

<ESMA_QUESTION_CP_MIFID_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_11>

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

<ESMA_QUESTION_CP_MIFID_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_12>

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

<ESMA_QUESTION_CP_MIFID_13>

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<ESMA_QUESTION_CP_MIFID_13>

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



<ESMA_QUESTION_CP_MIFID_14>

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<ESMA_QUESTION_CP_MIFID_14>

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

<ESMA_QUESTION_CP_MIFID_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_15>

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

<ESMA_QUESTION_CP_MIFID_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_16>

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

<ESMA_QUESTION_CP_MIFID_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_17>

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

<ESMA_QUESTION_CP_MIFID_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_18>

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

<ESMA_QUESTION_CP_MIFID_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_20>

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



<ESMA_QUESTION_CP_MIFID_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_21>

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

<ESMA_QUESTION_CP_MIFID_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_22>

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

<ESMA_QUESTION_CP_MIFID_23>

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<ESMA_QUESTION_CP_MIFID_23>

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

<ESMA_QUESTION_CP_MIFID_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_24>

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

<ESMA_QUESTION_CP_MIFID_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_25>

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

<ESMA_QUESTION_CP_MIFID_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_26>

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

<ESMA_QUESTION_CP_MIFID_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_27>

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



<ESMA_QUESTION_CP_MIFID_28>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_28>

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

<ESMA_QUESTION_CP_MIFID_29>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_29>

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

<ESMA_QUESTION_CP_MIFID_30>

The members of the European Association of Co-operative Banks (EACB)³ would like to make the following observations:

- Obligations related to breakdown of orders, existence and monthly value of any payments, discounts or rebates received and summary of internal monitoring processes on execution quality seem to go beyond the provisions of Article 27 MiFID II.
- The data to be published are not limited to the number and volume of orders executed on the best five execution venues but go far beyond: the percentage of passive and aggressive orders executed on that execution venue, monthly value of fees and charges paid to that execution venue expressed as a percentage of the firm's total costs, existence and nature of any conflicts of interest, whether they operate an electronic, voice or an open outcry trading platform, existence and monthly value of any payments e.t.c. (See Article 5 points 5-6-9-11-12 of RTS 7). We would propose a simplification.
- It should be clarified if bonds in scope are only the types defined under Article 4 of RTS 7: Corporate Bond & Covered Bonds, Sovereign Bond and Convertible Bonds.
- Furthermore, it seems too burdensome to impose an aggregation of data for each month of the financial year (See Article 8 RTS 7).

<ESMA_QUESTION_CP_MIFID_30>

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

<ESMA_QUESTION_CP_MIFID_31>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_31>

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

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



<ESMA_QUESTION_CP_MIFID_32>

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<ESMA_QUESTION_CP_MIFID_32>

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

<ESMA_QUESTION_CP_MIFID_33>

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<ESMA_QUESTION_CP_MIFID_33>

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

<ESMA_QUESTION_CP_MIFID_34>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_34>

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

<ESMA_QUESTION_CP_MIFID_35>

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<ESMA_QUESTION_CP_MIFID_35>

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

<ESMA_QUESTION_CP_MIFID_36>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_36>

3. Transparency

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

<ESMA_QUESTION_CP_MIFID_37>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_37>

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

<ESMA_QUESTION_CP_MIFID_38>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_38>

Q39. Do you agree with the proposed exhaustive list of negotiated transactions not contributing to the price formation process? What is your view on including non-standard or special settlement trades in the list? Would you support including non-standard settlement transactions only for managing settlement failures? Please provide reasons for your answers.



<ESMA_QUESTION_CP_MIFID_39>

The members of the European Association of Co-operative Banks (EACB)⁴ understand that price conditions for negotiated transactions in liquid instruments should be understood as **at or within the Volume Weighted Average Spread (VWAS)**.

In addition, the members of EACB assume that a transaction in a liquid share at or above Large-in-Scale which is concluded under the Negotiated Trade Waiver (NTW) and thereby within the rules of the relevant trading venue in question, **will not be included in the calculation of the volume cap for NTW**.

Thirdly, the list of negotiated transactions not contributing to the price formation process should not be exhaustive as market evolves. However, if the list is deemed exhaustive, it must be subject to e.g. annual review since we do not share ESMA's view that the list is sufficient flexible as it stands now. It is important that the list can be reviewed on a continuously basis as markets evolve.

Finally, the members of EACB agree to include non-standard or special settlement trades in the list.

<ESMA_QUESTION_CP_MIFID_39>

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

<ESMA_QUESTION_CP_MIFID_40>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_40>

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

<ESMA_QUESTION_CP_MIFID_41>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_41>

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

<ESMA_QUESTION_CP_MIFID_42>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_42>

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

⁴The 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%.

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<ESMA_QUESTION_CP_MIFID_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_43>

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

<ESMA_QUESTION_CP_MIFID_44>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_44>

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

<ESMA_QUESTION_CP_MIFID_45>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_45>

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

<ESMA_QUESTION_CP_MIFID_46>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_46>

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

<ESMA_QUESTION_CP_MIFID_47>

The European Association of Co-operative Banks (EACB)⁵ rejects Option 2 as inappropriate. We refer to table 14 (page 97) of the Discussion Paper which shows that around 95% of all trades have a volume of up to EUR 10,000. The introduction of a class with an Average Value Of Transactions (AVT) of up to EUR 20,000 and a Standard Market Size (SMS) of EUR 10,000 would have the result that almost every trade would fall within the SMS. This would indeed lead to increased transparency but, as ESMA rightfully points out, the goal of increased transparency through the Systematic Internaliser (SI) regime must be weighed against the protection of SIs against unreasonable risks. The right equilibrium cannot be achieved if nearly all trades are below the SMS. Therefore, either Option 1 or 3 is preferable.

<ESMA_QUESTION_CP_MIFID_47>

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

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%.

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<ESMA_QUESTION_CP_MIFID_48>

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<ESMA_QUESTION_CP_MIFID_48>

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

<ESMA_QUESTION_CP_MIFID_49>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_49>

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

<ESMA_QUESTION_CP_MIFID_50>

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<ESMA_QUESTION_CP_MIFID_50>

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

<ESMA_QUESTION_CP_MIFID_51>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_51>

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

<ESMA_QUESTION_CP_MIFID_52>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_52>

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

<ESMA_QUESTION_CP_MIFID_53>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_53>

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

<ESMA_QUESTION_CP_MIFID_54>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_54>

Q55. Do you agree with the proposed classes and thresholds for large in scale transactions in ETFs? Should instead a single large in scale threshold and deferral period apply to all ETFs regardless of the liquidity of the financial instrument as



described in the alternative approach above? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_55>

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

<ESMA_QUESTION_CP_MIFID_56>

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<ESMA_QUESTION_CP_MIFID_56>

Q57. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer for SFPs and for each of type of bonds identified (European Sovereign Bonds, Non-European Sovereign Bonds, Other European Public Bonds, Financial Convertible Bonds, Non-Financial Convertible Bonds, Covered Bonds, Senior Corporate Bonds-Financial, Senior Corporate Bonds Non-Financial, Subordinated Corporate Bonds-Financial, Subordinated Corporate Bonds Non-Financial) addressing the following points:

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

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

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

<ESMA_QUESTION_CP_MIFID_57>

The European Association of Co-operative Banks (EACB)⁶ strongly disagrees with the proposal of ESMA. As a general remark, the EACB would urge ESMA to take adequate account of market realities when setting the respective thresholds. It would be wrong to set the thresholds at a level with the sole aim to have a certain coverage ratio (i.e. to set the threshold with the aim of having a certain percentage of bonds above the threshold). It is true that MiFIR aims at increasing market transparency in the non-equity market. However, it is equally true that MiFIR does not intend to create such transparency by creating unreasonable risks, in particular for Systematic Internalisers (SI). Defining a liquid market in a wrong way would result in risks for systematic internalisers in such instruments becoming prohibitive. Liquidity would then dry up completely. This is not in the interest of issuers nor clients.

⁶ 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%.

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We understand that ESMA decided to consider a bond or Structured Finance Product (SFP) as liquid if it trades at least on 200 days a year, it records at least 400 trades a year and €100,000 of nominal traded per day. These thresholds are clearly too low. **In particular, a bond that is not traded (at least almost) on a daily basis on at least one venue in the EU cannot be regarded as “liquid”.**

We urge ESMA to take into consideration that a key feature of the life cycle of bonds is that trading takes place – if at all – in the first four weeks after issuance. To reflect this in the liquidity criteria, these first four weeks should be excluded when calculating the thresholds. The same goes with the “number of trading days” and the “average daily volume” criterion. This will ensure that only permanently liquid bonds are deemed liquid. We note that with respect to the liquidity criteria for derivatives, ESMA has also taken into account the life-cycle by referring to the time to maturity.

The graphics on pages 105 et seq. of the Consultation Paper have the fundamental flaw that they do not take into account the life cycle. If, as explained above, the first four weeks after the issuance had been disregarded, these graphics would show a completely different picture.

Furthermore, there should be a more granular approach for non-EU sovereigns and corporate bonds. Under the current approach, US treasuries and Argentina sovereigns would both fall under a non-EU sovereign although the liquidity of both financial instruments is completely different. Corporate bonds issued in FX show a very different degree of liquidity from those issued in Euro, too.

<ESMA_QUESTION_CP_MIFID_57>

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

<ESMA_QUESTION_CP_MIFID_58>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_58>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_59>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_59>

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



<ESMA_QUESTION_CP_MIFID_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_60>

Q61. Do you agree with ESMA's proposal for the definition of a liquid market? Please provide an answer for each of the asset classes identified (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to-Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) addressing the following points:

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

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

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

<ESMA_QUESTION_CP_MIFID_61>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_61>

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

<ESMA_QUESTION_CP_MIFID_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_62>

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

<ESMA_QUESTION_CP_MIFID_63>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_63>

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

(1) your alternative proposal

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

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

<ESMA_QUESTION_CP_MIFID_64>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_64>

Q65. Do you agree with the definitions of the equity derivatives classes provided in ESMA's proposal (please refer to Annex III of draft RTS 9)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_65>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_65>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_66>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_66>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_67>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_67>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_68>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_68>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_69>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_69>

Q70. Do you agree with ESMA's proposal with regard to the content of pre-trade transparency? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_70>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_70>

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

<ESMA_QUESTION_CP_MIFID_71>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_71>

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

<ESMA_QUESTION_CP_MIFID_72>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_72>

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

<ESMA_QUESTION_CP_MIFID_73>

The members of European Association of Co-operative Banks (EACB)⁷ do not believe that it is necessary to include the date and time of publication among the fields included in Annex II, Table 1 of RTS 9. It is not clear what additional benefit market participants would gain with this information. In fact, it derives from ESMA's summary of responses received on the relevant Discussion Paper that the publication of time and date was not proposed by market participants.

The EACB considers that all relevant information is already included in Annex II table 1 and no more fields should be added.

In addition, we strongly support ESMA's proposal not to require an SI to disclose its identity. Such disclosure would indeed, as ESMA concludes, expose the SI to unacceptable risks. In addition, such disclosure is not necessary to achieve market transparency.

<ESMA_QUESTION_CP_MIFID_73>

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

<ESMA_QUESTION_CP_MIFID_74>

No, the proposed table is superfluous to a great extent and too detailed. Identifiers should be restricted to the essential information, i.e. identifiers for transactions which were subject to waivers or which benefitted from the use of deferrals. In our view, the flags for benchmark trades ("B"), agency cross trades ("X") and technical trade ("T") could be included in the category of non-price forming trades ("G"), because a distinction between those categories is not relevant for the market. Likewise, a single category of deferred publication could replace the flags for post-trade LIS ("L"), illiquid instrument trade ("I") and post-trade size specific ("S"). In addition, we think that the flag for algorithmic trades is not necessary, as it is not relevant for other market participants whether or not a trade is based on an algorithm. The update flag ("U") is also not necessary, because, as stated in our introductory remarks, a transactions should only be published when all detailed of the transaction have been determined. ESMA's more detailed table simply means more time and effort needed to assign identifiers correctly, although the market would not be interested in these additional identifiers.

<ESMA_QUESTION_CP_MIFID_74>

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

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

⁷ 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_CP_MIFID_75>

We welcome ESMA's intention not to impose a maximum delay of only 5 minutes, at least for the first three years. It should be borne in mind that in the bond market fully electronic trading is less widespread than in the equity market. For this reason many message fields, including the flags that may be necessary, have to be filled in and checked manually.

A maximum delay of 15 minutes would be in line with the requirements under the TRACE regime in the US.

We appreciate ESMA's intention to shorten the maximum period at a later point in time. However, we do not think that ESMA should as of today determine to shorten the maximum period of 15 min after 3 years. We propose a new consultation about this taking into account the changes of trading and technology in the meantime. However, we do not think that in the next 3-5 years there will be changes in trading practices that would allow to shorten the maximum delay to five minutes because the need for manual processing for complex trades and financial instruments will still exist in future. Therefore, we suggest that ESMA should observe how the market will develop under the new transparency regime and, based on the information gained from such observance, take a decision after the above mentioned new consultation after 3 years.

<ESMA_QUESTION_CP_MIFID_75>

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

<ESMA_QUESTION_CP_MIFID_76>

Yes, we agree that such transactions should be exempted. SFT are not primarily based on the market price of the respective instrument, but on the rates that apply in the respective repo or securities lending market. These are therefore transactions within the meaning of Article 21(5)(b) of MiFIR whose price is determined by factors other than the current market valuation of the instrument.

Furthermore, portfolio compression trades should also be included in the list of the exempted trades because their price is not determined by current market valuation either.

In our view, the RTS should provide that competent authorities may grant a waiver with respect to any type of transaction, if the price is determined by factors other than the current market valuation of the instrument. In particular, the RTS should not provide for an exhaustive list of such types of transactions. Even if it were possible to include all relevant types of transactions where the price is determined by factors other than the current market valuation and which are market practice today, an exhaustive list of transaction types would not take into account future market developments. Thus, transactions types which may be developed in the future would still be covered by the transparency requirement, even though their price would not be determined by market valuation.

With regard to all types of financial instruments a general problem arises by the fact that there are certain types of transactions where the volume, but not the price (or vice versa), is fixed upon the execution of the transaction (for example, counterparties may execute a transaction in the morning under which the number of financial instruments to be delivered is determined according to the closing price of the relevant financial instrument). A publication of these trades with incomplete message fields would invite to market abuse of other market

participants. Only when all details to be published have been determined, the trade should be published. A special regulation for this is needed in RTS 9 Article 7 para 5.

<ESMA_QUESTION_CP_MIFID_76>

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

(1) deferral period set to 48 hours

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

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

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

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

<ESMA_QUESTION_CP_MIFID_77>

(1) Regarding the deferral period set to 48 hours, the EACB welcomes ESMA's intention to provide for a longer deferral period compared to the proposal in the Discussion Paper. However, we still think that a 48 hours period is too short. The SI often has to unwind large-volume transactions over a period of several days, esp. in illiquid bonds. If the market gains knowledge of the transaction after two trading days (or even less, if the 48 hours period covers a weekend or bank holiday), the SI would face unacceptable risks that it would not be able to hedge adequately. Other market participants could use the information against the SI. There would also be disadvantages for the client, as the SI would have to pass on the risks in the form of less favorable prices. The less liquid an instrument is, the greater are these risks. More granular deferral periods are necessary, in particular given that the post trade transparency regime also applies to illiquid instruments. For some instruments, deferral periods of several weeks would be appropriate. In addition, the deferral period should refer to the normal trading hours on the most significant market. Otherwise, a 48 hours deferral period which would commence on Friday evening would expire on Sunday evening. This would obviously not provide sufficient time for the SI to unwind large-volume transactions, in particular in less liquid instruments. We suggest a minimum deferral period of t+2 (resp. more for illiquid instruments) in TARGET days to have a practicable solution.

(2) With regard to the determination of the SSTI threshold, we disagree with ESMA's approach under which ESMA would determine the LIS threshold and subsequently set the SSTI at 50% of the LIS. This approach disregards the wording of the level 1 text. In particular, when determining the SSTI pursuant to Art. 9(1)(b) MiFIR, Art. 9 para 5 lit. d (ii) MiFIR requires ESMA to take into account, where "a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors" (a similar wording is contained in Art. 11(1)(c) MiFIR). We do not think that setting the SSTI at 50% of the LIS takes this into account. For

example, in Table 1 of Annex 3 of RTS 9, ESMA suggests to set the SSTI for European Sovereign Bonds at 5 million. However, European Sovereign Bonds are a class of financial instrument, which “consists in part of retail investors”. ESMA is therefore required to take into account the average value of transactions undertaken by those investors. Even though under the level 1 text, ESMA may also take into account other criteria, an SSTI of EUR 5 million clearly disregards the level 1 requirement of taking into account the average size of transactions entered into by retail investors. Therefore we argue in favor of an independent regulation of the SSTI. In its deliberations on Art. 18 (2), the European Parliament once took EUR 100,000 as a typical volume for this kind of trades (draft version of 27 September 2012). Additionally (and this also applies to the determination of the LIS), it would be wrong to set the thresholds at a level aiming at a certain coverage ratio (i.e. to set the threshold with the aim of having a certain percentage of bonds covered above the threshold). This approach would disregard the level 1 requirement that the aim of providing transparency in non-equities has to be balanced with the risks arising from such transparency for investment firms and does not reflect ESMA’s mandate to set the SSTI in accordance with Art. 9 para 5 lit. d (i) (ii).

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

(4) Regarding pre-trade and post-trade thresholds, we agree that these thresholds should be set at the same size.

(5) Regarding the determination of the large in scale thresholds, we prefer option 2 proposed by ESMA as it would take into account market development without requiring amendments to the RTS. With respect to the thresholds proposed for 2017, we think that the EUR 5 million large in scale threshold for subordinated non-financial corporate bonds (i.e. the last row of table 1 in Annex III of RTS 9) is far too high. Such threshold should be set at no more than EUR 1 million.

In addition, the large in scale and size specific to the instrument should depend on the period of time which has expired since the date of issuance. The trading volume for bonds significantly decreases after a certain period of time following the issuance. While, subject to our comments above regarding for subordinated non-financial corporate bond, we agree with the thresholds proposed by ESMA for the period immediately following issuance, the thresholds should be set much lower after the initial trading period.

The same goes with all non-equities.

<ESMA_QUESTION_CP_MIFID_77>

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

(1) deferral period set to 48 hours

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

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

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

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

<ESMA_QUESTION_CP_MIFID_78>

Our response to Q77, items (1) to (5) applies *mutatis mutandis*. Regarding the LIS thresholds, we agree with ESMA's proposal except that the thresholds for swaptions (Tables 13 and 14) should also take into account the time to maturity or tenor (as ESMA proposes with respect to the other interest derivative products).

<ESMA_QUESTION_CP_MIFID_78>

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

(1) deferral period set to 48 hours

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

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

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

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

<ESMA_QUESTION_CP_MIFID_79>

Our response to Q77 applies *mutatis mutandis*.

<ESMA_QUESTION_CP_MIFID_79>

Q80. Do you agree with ESMA's proposal for equity derivatives? Please specify, for each type of equity derivatives [stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs),

futures on other underlying values (i.e. volatility index or ETFs)], if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

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

<ESMA_QUESTION_CP_MIFID_80>

Our response to Q77 applies *mutatis mutandis*.

<ESMA_QUESTION_CP_MIFID_80>

Q81. Do you agree with ESMA's proposal for securitised derivatives? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

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

<ESMA_QUESTION_CP_MIFID_81>

Our response to Q77 applies *mutatis mutandis*.

<ESMA_QUESTION_CP_MIFID_81>

Q82. Do you agree with ESMA's proposal for emission allowances? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

- (1) deferral period set to 48 hours

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

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

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

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

<ESMA_QUESTION_CP_MIFID_82>

Our response to Q77 applies *mutatis mutandis*.

<ESMA_QUESTION_CP_MIFID_82>

Q83. Do you agree with ESMA's proposal in relation to the supplementary deferral regime at the discretion of the NCA? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_83>

The members of EACB support ESMA's proposal regarding the supplementary deferral regime. In particular for smaller markets where liquidity is dependent on market makers it is absolutely essential that local NCAs have access to efficient calibration tools such as sufficiently long deferral periods (possibility of 4 weeks extended time) as well as aggregated publication.

Allowing these flexible rules enables NCAs that have detailed knowledge about the local non-equity market, to set the appropriate level of deferral taking into account the needs of investors, issuers and trading systems on local markets (recital 16 MiFIR). To keep this flexible regime intact is also important considering that no phase-in approach is proposed for the EU-wide transparency regime. A flexible regime allows NCAs to avoid unintended and detrimental effects that a uniform level of transparency could have on some markets.

However, the members of EACB strongly disagree with ESMA's proposal as set out in Art. 10(1)(a)(i) of the draft RTS, i.e. that if exercising the right pursuant to Article 11(3)(a) of MiFIR, all the details of a transaction except for those relating to volume, namely quantity and quantity notation should be published. In our view, not just the volume of a transaction but in principle the entire transaction should be subject to deferred publication. The point of deferred publication is to protect SIs and other investment firms against the risks associated with the market knowing that they have taken on a large position in financial instruments. For this reason, the deferral should cover all the transaction details.

A requirement to immediately publish all the details of a transaction except its volume would not be in line with the wording of Article 11(3) of MiFIR, which merely stipulates that competent authorities may request deferred publication of "limited details of a transaction". Only where an extended deferral period is granted does Article 11(3)(b) of MiFIR allow (only) the deferred publication of the volume of a transaction. ESMA's proposal that in every case of deferred publication all the details of a transaction except its volume should be published thus not only contradicts the regulatory purpose but also the wording and systematic

approach of Article 11(3) of MiFIR. ESMA's proposal would thus be generally incompatible with Article 11(3) of MiFIR.

Moreover, it would be useful that ESMA provides some clarifications regarding the waivers from the transparency requirements. We understand that details on the procedure and scope of such waivers will not be provided for in any RTS. Nevertheless, due to the importance of such waivers, it would be very helpful to obtain ESMA's views on how the waivers will be granted, who will benefit from such waivers and what the scope of such waivers will be. For example, under Art. 21(4) and Art. 11 MiFIR, competent authorities may grant waivers from post trade transparency for investment firms. However, the following questions arise: Does each investment firm which intends to rely on Art. 21(4) MiFIR have to apply separately for such waiver? If so, does a waiver only apply, for example, to a specific large in scale transaction (which would make the waiver useless, as there would be no time for investment firms to apply for separate waivers for each LIS-transaction)? Does the waiver only apply to the investment firm to which it was granted? Or may a competent authority grant a waiver to all investment firms under its supervision? Likewise, it is not clear whether the waiver applies for an indefinite period or whether it has to be extended / renewed from time to time.

<ESMA_QUESTION_CP_MIFID_83>

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

- (1) the measure used to calculate the volume as specified in Annex II, Table 3**
- (2) the methodology as to assess a drop in liquidity**
- (3) the percentages determined for liquid and illiquid instruments to assess the drop in liquidity. Please provide reasons for your answer.**

<ESMA_QUESTION_CP_MIFID_84>

(1) We agree with the measure used to calculate the volume as specified in Annex II, Table 3 of draft RTS9.

(2) We agree with using the reduction of the volume traded as the methodology to assess a drop in liquidity.

(3) We strongly disagree with the percentages determined for liquid and illiquid instruments to assess the drop in liquidity. We note that these percentages have been reduced as compared to the proposal in the Discussion Paper, while the observation period has been extended from 20 to 30 days.

A decline in liquidity, as measured by the daily turnover and amounting to 40% for liquid instruments and 20% for illiquid instruments would have a dramatic impact on the risks associated with the obligations of systematic internalisers.

In addition, the proposed period of 30 trading days, during which the decline in liquidity is measured, is too long. A suspension of pre-and post-trade transparency 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 applying 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.

We welcome ESMA's proposal that the suspension of transparency requirements can also be based on qualitative criteria. We would like to ask ESMA for clarification that under such quantitative criteria, 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 by obligations whose fulfilment is no longer reasonable in view of the sudden decline in liquidity.

<ESMA_QUESTION_CP_MIFID_84>

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

<ESMA_QUESTION_CP_MIFID_85>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_85>

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

<ESMA_QUESTION_CP_MIFID_86>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_86>

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

<ESMA_QUESTION_CP_MIFID_87>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_87>

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

<ESMA_QUESTION_CP_MIFID_88>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_89>

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

<ESMA_QUESTION_CP_MIFID_90>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_90>

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

<ESMA_QUESTION_CP_MIFID_91>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_91>

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



<ESMA_QUESTION_CP_MIFID_92>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_92>

4. Microstructural issues

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

<ESMA_QUESTION_CP_MIFID_93>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_93>

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

<ESMA_QUESTION_CP_MIFID_94>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_94>

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

<ESMA_QUESTION_CP_MIFID_95>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_95>

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

<ESMA_QUESTION_CP_MIFID_96>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_96>

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

<ESMA_QUESTION_CP_MIFID_97>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_97>

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

<ESMA_QUESTION_CP_MIFID_98>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_98>

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

<ESMA_QUESTION_CP_MIFID_99>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_99>

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

<ESMA_QUESTION_CP_MIFID_100>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_100>

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

<ESMA_QUESTION_CP_MIFID_101>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_101>

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

<ESMA_QUESTION_CP_MIFID_102>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_102>

Q103. In particular, do you agree with the proposals regarding the conditions to provide DEA?

<ESMA_QUESTION_CP_MIFID_103>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_103>

Q104. Do you agree with the proposed draft RTS? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_104>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_104>

Q105. Should an investment firm pursuing a market making strategy for 30% of the daily trading hours during one trading day be subject to the obligation to sign a market making agreement? Please give reasons for your answer.

<ESMA_QUESTION_CP_MIFID_105>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_105>

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

<ESMA_QUESTION_CP_MIFID_106>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_106>

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

<ESMA_QUESTION_CP_MIFID_107>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_107>

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

<ESMA_QUESTION_CP_MIFID_108>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_108>

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

<ESMA_QUESTION_CP_MIFID_109>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_109>

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

<ESMA_QUESTION_CP_MIFID_110>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_110>

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

<ESMA_QUESTION_CP_MIFID_111>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_111>

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

<ESMA_QUESTION_CP_MIFID_112>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_112>

Q113. Do you agree that the determination of the maximum OTR should be made at least once a year? Please specify the arguments for your view.

<ESMA_QUESTION_CP_MIFID_113>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_113>

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

<ESMA_QUESTION_CP_MIFID_114>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_114>

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

<ESMA_QUESTION_CP_MIFID_115>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_115>

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



<ESMA_QUESTION_CP_MIFID_116>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_116>

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

<ESMA_QUESTION_CP_MIFID_117>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_117>

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

<ESMA_QUESTION_CP_MIFID_118>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_118>

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

<ESMA_QUESTION_CP_MIFID_119>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_119>

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

<ESMA_QUESTION_CP_MIFID_120>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_120>

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

<ESMA_QUESTION_CP_MIFID_121>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_121>

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

<ESMA_QUESTION_CP_MIFID_122>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_122>

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

<ESMA_QUESTION_CP_MIFID_123>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_123>

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

<ESMA_QUESTION_CP_MIFID_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_124>

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

<ESMA_QUESTION_CP_MIFID_125>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_125>

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

<ESMA_QUESTION_CP_MIFID_126>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_126>

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

<ESMA_QUESTION_CP_MIFID_127>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_127>

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

<ESMA_QUESTION_CP_MIFID_128>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_128>

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

<ESMA_QUESTION_CP_MIFID_129>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_129>

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



<ESMA_QUESTION_CP_MIFID_130>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_130>

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

<ESMA_QUESTION_CP_MIFID_131>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_131>

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

<ESMA_QUESTION_CP_MIFID_132>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_132>

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

<ESMA_QUESTION_CP_MIFID_133>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_133>

5. Data publication and access

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

<ESMA_QUESTION_CP_MIFID_134>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_134>

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

<ESMA_QUESTION_CP_MIFID_135>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_135>

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

<ESMA_QUESTION_CP_MIFID_136>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_136>

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

<ESMA_QUESTION_CP_MIFID_137>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_137>

Q138. Do you agree with ESMA's proposal?

<ESMA_QUESTION_CP_MIFID_138>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_138>

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

<ESMA_QUESTION_CP_MIFID_139>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_140>

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



<ESMA_QUESTION_CP_MIFID_141>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_141>

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

<ESMA_QUESTION_CP_MIFID_142>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_142>

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

<ESMA_QUESTION_CP_MIFID_143>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_143>

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

<ESMA_QUESTION_CP_MIFID_144>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_144>

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

<ESMA_QUESTION_CP_MIFID_145>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_145>

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

<ESMA_QUESTION_CP_MIFID_146>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_146>

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

<ESMA_QUESTION_CP_MIFID_147>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_147>

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

<ESMA_QUESTION_CP_MIFID_148>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_148>

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

<ESMA_QUESTION_CP_MIFID_149>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_149>

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

<ESMA_QUESTION_CP_MIFID_150>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_150>

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

<ESMA_QUESTION_CP_MIFID_151>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_151>

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

<ESMA_QUESTION_CP_MIFID_152>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_152>

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

<ESMA_QUESTION_CP_MIFID_153>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_153>

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

<ESMA_QUESTION_CP_MIFID_154>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_154>

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

<ESMA_QUESTION_CP_MIFID_155>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_155>

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

<ESMA_QUESTION_CP_MIFID_156>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_156>

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

<ESMA_QUESTION_CP_MIFID_157>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_157>

Q158. Do you agree with the elements of the draft RTS that cover licensing conditions? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_158>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_158>

Q159. Do you agree with the elements of the draft RTS that cover new benchmarks? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_159>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_159>

6. Requirements applying on and to trading venues

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

<ESMA_QUESTION_CP_MIFID_160>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_160>

Q161. In particular, do you agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law?

<ESMA_QUESTION_CP_MIFID_161>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_161>

Q162. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA_QUESTION_CP_MIFID_162>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_162>

Q163. Do you agree with the proposed RTS? What and how should it be changed?

<ESMA_QUESTION_CP_MIFID_163>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_163>

Q164. Do you agree with the approach of providing an exhaustive list of details that the MTF/OTF should fulfil?

<ESMA_QUESTION_CP_MIFID_164>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_164>

Q165. Do you agree with the proposed list? Are there any other factors that should be considered?

<ESMA_QUESTION_CP_MIFID_165>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_165>

Q166. Do you think that there should be one standard format to provide the information to the competent authority? Do you agree with the proposed format?

<ESMA_QUESTION_CP_MIFID_166>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_166>

Q167. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?



<ESMA_QUESTION_CP_MIFID_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_167>

7. Commodity derivatives

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

<ESMA_QUESTION_CP_MIFID_168>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_168>

Q169. Do you agree with ESMA's approach to include non-EU activities with regard to the scope of the main business?

<ESMA_QUESTION_CP_MIFID_169>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_169>

Q170. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA_QUESTION_CP_MIFID_170>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_170>

Q171. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA_QUESTION_CP_MIFID_171>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_171>

Q172. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA_QUESTION_CP_MIFID_172>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_172>

Q173. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA_QUESTION_CP_MIFID_173>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_173>

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



<ESMA_QUESTION_CP_MIFID_174>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_174>

Q175. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA_QUESTION_CP_MIFID_175>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_175>

Q176. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA_QUESTION_CP_MIFID_176>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_176>

Q177. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA_QUESTION_CP_MIFID_177>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_177>

Q178. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA_QUESTION_CP_MIFID_178>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_178>

Q179. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_179>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_179>

Q180. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA_QUESTION_CP_MIFID_180>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_180>

Q181. Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?



<ESMA_QUESTION_CP_MIFID_181>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_181>

Q182. Do you agree with ESMA's conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_182>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_182>

Q183. Do you have any comments on the proposed framework of the methodology for calculating position limits?

<ESMA_QUESTION_CP_MIFID_183>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_183>

Q184. Would a baseline of 25% of deliverable supply be suitable for all commodity derivatives to meet position limit objectives? For which commodity derivatives would 25% not be suitable and why? What baseline would be suitable and why?

<ESMA_QUESTION_CP_MIFID_184>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_184>

Q185. Would a maximum of 40% position limit be suitable for all commodity derivatives to meet position limit objectives. For which commodity derivatives would 40% not be suitable and why? What maximum position limit would be suitable and why?

<ESMA_QUESTION_CP_MIFID_185>

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<ESMA_QUESTION_CP_MIFID_185>

Q186. Are +/- 15% parameters for altering the baseline position limit suitable for all commodity derivatives? For which commodity derivatives would such parameters not be suitable and why? What parameters would be suitable and why?

<ESMA_QUESTION_CP_MIFID_186>

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<ESMA_QUESTION_CP_MIFID_186>

Q187. Are +/- 15% parameters suitable for all the factors being considered? For which factors should such parameters be changed, what to, and why?

<ESMA_QUESTION_CP_MIFID_187>

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<ESMA_QUESTION_CP_MIFID_187>

Q188. Do you consider the methodology for setting the spot month position limit should differ in any way from the methodology for setting the other months position limit? If so, in what way?

<ESMA_QUESTION_CP_MIFID_188>

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<ESMA_QUESTION_CP_MIFID_188>

Q189. How do you suggest establishing a methodology that balances providing greater flexibility for new and illiquid contracts whilst still providing a level of constraint in a clear and quantifiable way? What limit would you consider as appropriate per product class? Could the assessment of whether a contract is illiquid, triggering a potential wider limit, be based on the technical standard ESMA is proposing for non-equity transparency?

<ESMA_QUESTION_CP_MIFID_189>

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<ESMA_QUESTION_CP_MIFID_189>

Q190. What wider factors should competent authorities consider for specific commodity markets for adjusting the level of deliverable supply calculated by trading venues?

<ESMA_QUESTION_CP_MIFID_190>

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<ESMA_QUESTION_CP_MIFID_190>

Q191. What are the specific features of certain commodity derivatives which might impact on deliverable supply?

<ESMA_QUESTION_CP_MIFID_191>

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<ESMA_QUESTION_CP_MIFID_191>

Q192. How should 'less-liquid' be considered and defined in the context of position limits and meeting the position limit objectives?

<ESMA_QUESTION_CP_MIFID_192>

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<ESMA_QUESTION_CP_MIFID_192>

Q193. What participation features in specific commodity markets around the organisation, structure, or behaviour should competent authorities take into account?

<ESMA_QUESTION_CP_MIFID_193>

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<ESMA_QUESTION_CP_MIFID_193>

Q194. How could the calculation methodology enable competent authorities to more accurately take into account specific factors or characteristics of commodity derivatives, their underlying markets and commodities?

<ESMA_QUESTION_CP_MIFID_194>

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<ESMA_QUESTION_CP_MIFID_194>

Q195. For what time period can a contract be considered as "new" and therefore benefit from higher position limits?



<ESMA_QUESTION_CP_MIFID_195>

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<ESMA_QUESTION_CP_MIFID_195>

Q196. Should the application of less-liquid parameters be based on the age of the commodity derivative or the ongoing liquidity of that contract.

<ESMA_QUESTION_CP_MIFID_196>

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<ESMA_QUESTION_CP_MIFID_196>

Q197. Do you have any further comments regarding the above proposals on how the factors will be taken into account for the position limit calculation methodology?

<ESMA_QUESTION_CP_MIFID_197>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_197>

Q198. Do you agree with ESMA's proposal to not include asset-class specific elements in the methodology?

<ESMA_QUESTION_CP_MIFID_198>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_198>

Q199. How are the seven factors (listed under Article 57(3)(a) to (g) and discussed above) currently taken into account in the setting and management of existing position limits?

<ESMA_QUESTION_CP_MIFID_199>

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<ESMA_QUESTION_CP_MIFID_199>

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

<ESMA_QUESTION_CP_MIFID_200>

No, the members of European Association of Co-operative Banks (EACB)⁸ consider that the absence of a hedging exemption for financial entities would impede the ability of financial entities to enter into certain financing transactions where financial entities hold physical inventory and a derivatives position as a hedge against that inventory. There is a necessity for financial entities which carry out inventory financing, on behalf of wholesale clients in the commodity supply chain, to be able to hedge inventory that they have title to. Whilst a bank's commercial activity is providing finance, there is a link between the legitimate commercial activities of wholesale commodity clients and the banks financing such commercial activities. Banks, therefore, should be able to net off its physical inventory exposures provided that they can demonstrate that there is a materially recognisable

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

correlation between their derivatives exposure and physical inventory held by banks in connection with legitimate financing of commodity trade participants.

This hedging is done in the framework of inventory financing of commodity trade participants. By having the inventory on the banks book, the commodity trade participant is relieved from its hedging tasks and receives the inventory (back) when needed and as agreed on in the finance documentation. Therefore, we assume that this risk hedging by the banks of the inventory, which will be transferred/ returned to the non-financial clients at a later stage, can be seen as done on behalf of these non-financial clients within the meaning of article 57 (1) of MIFID II.

Thus, banks should be able to benefit from the same application of the exemption, provided that the correct arrangements are in place to be able to separately identify and segregate such activities.

<ESMA_QUESTION_CP_MIFID_200>

Q201. Do you have any comments regarding ESMA's proposal regarding what is a non-financial entity?

<ESMA_QUESTION_CP_MIFID_201>

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<ESMA_QUESTION_CP_MIFID_201>

Q202. Do you agree with the proposed draft RTS regarding the aggregation of a person's positions?

<ESMA_QUESTION_CP_MIFID_202>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_202>

Q203. Do you agree with ESMA's proposal that a person's position in a commodity derivative should be aggregated on a 'whole' position basis with those that are under the beneficial ownership of the position holder? If not, please provide reasons.

<ESMA_QUESTION_CP_MIFID_203>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_203>

Q204. Do you agree with the proposed draft RTS regarding the criteria for determining whether a contract is an economically equivalent OTC contract?

<ESMA_QUESTION_CP_MIFID_204>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_204>

Q205. Do you agree with the proposed draft RTS regarding the definition of same derivative contract?

<ESMA_QUESTION_CP_MIFID_205>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_205>

Q206. Do you agree with the proposed draft RTS regarding the definition of significant volume for the purpose of article 57(6)?



<ESMA_QUESTION_CP_MIFID_206>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_206>

Q207. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA_QUESTION_CP_MIFID_207>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_207>

Q208. Do you agree with the proposed draft RTS regarding the procedure for the application for exemption from the Article 57 position limits regime?

<ESMA_QUESTION_CP_MIFID_208>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_208>

Q209. Do you agree with the proposed draft RTS regarding the aggregation and netting of OTC and on-venue commodity derivatives?

<ESMA_QUESTION_CP_MIFID_209>

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<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>

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<ESMA_QUESTION_CP_MIFID_210>

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

<ESMA_QUESTION_CP_MIFID_211>

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<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

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<ESMA_QUESTION_CP_MIFID_212>

8. Market data reporting

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

<ESMA_QUESTION_CP_MIFID_213>

Concerning transaction reporting, the members of European Association of Co-operative Banks (EACB)⁹ would support the use of the XML format, including its sub-groups such as FpML. The XML and the associated subgroups offer today suitable formats to fulfil the complex reporting requirements.

<ESMA_QUESTION_CP_MIFID_213>

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

<ESMA_QUESTION_CP_MIFID_214>

Yes, the members of the European Association of Co-operative Banks (EACB)¹⁰ anticipate certain difficulties.

1. No inclusion of positions / position changes e.t.c. under the term "transaction"

First of all, the EACB members still oppose the inclusion of positions / position changes or the exercise of existing rights under the term "transaction" and thus within the reporting obligation under Art. 26 MiFIR, since this definition does not derive from MiFIR level-1. Indeed, there is nothing in level 1 text to indicate that the European Legislators intended such a fundamental extension.

Rather, level 1 of MiFIR understands the term "transaction" exclusively within the meaning of executed order or decision (please refer to recital 34 MiFIR. "... Competent authorities need to have full access to records at all stages in the **order execution** process, from the initial **decision to trade, through to its execution**. Therefore, investment firms should keep records of all their orders and all their **transactions** in financial instruments...",emphasis added). Therefore, the envisaged expansion of the reporting requirement to the positions / position changes or the exercise of existing rights is not based on MiFIR Level -1. This is also evidenced by a comparison with EMIR, where - in contrast to MiFIR - already level 1 provides that: "... the details of any derivative contract that they have

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

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

concluded **and of any modification or termination of the contract** are reported to a trade repository ..." (see Article 9 (1).. regulation (EU) No 658/2012; emphasis added).

At least, the members of EACB would like the following kind of operations to be explicitly excluded:

1. It should be clarified that "in specie transfers where there is a **change in beneficial ownership, gifts and transfers of title**" (par. 22 vi) should not be interpreted to cover all kinds of transfers of title of securities including situations like inheritance (original owner has died), donations, divorce, merger of two companies. In these situations there is not necessarily any trade. The transfer of title can be a pure custody activity, performed based on relevant legal documentation.

The nature of these types of changes of title, and the related processes and systems, are very different from the type of activity ESMA seems to have had in mind when designing the transaction reporting requirements.

By way of example we refer to the following transaction reporting fields in relation to transfer of title in a situation where the original owner of the securities has died, and the title is transferred to new owner via inheritance:

- There is no "price"
- There is no "decision maker"
- There is no "trading venue"
- There is no "trader", e.t.c.

In addition, the custody operation of the reporting financial institution might know the customer information of the "buyer" or "seller", but not necessarily both. So the reporting financial institution will not be in position to fill in both of the fields. This would often be the case, when "buyer" and "seller" have different financial institutions as custodians / sub-custodians. In addition, the chain of custodians / sub-custodians does not necessarily know whether a particular type of transfer of title is reportable or not, so we do not think ESMA would get the overview it is looking for.

Certain elements of the required transaction reporting information could potentially be obtained in custody systems, but many of the required data fields do not exist even conceptually.

We propose that ESMA would remove the reporting requirement on transfers of title when the activity is purely a custody operation. Should ESMA decide otherwise, we would at least propose that ESMA studies the custody processes, and design a separate set of reporting requirements that would make sense, considering the type of activity.

2. Moreover, **changes in ownership without transfers** (e.g. conversion of individual account to joint account and vice versa, inclusion or exclusion of co-owners) should also be clearly excluded. Also these activities are neither purchases nor sales nor are processed on a trading venue. That is why there is no price for reporting. Again, to include all these activities would cause disproportionately high costs - as all of them are technically totally different to buy or sell transactions.

- In addition, we would like refer to **instructions of clients to investment firms to enter into transactions**. On the basis of 27 (v) on page 566 and article 3 (4) RTS 32 these instructions would be out of scope of transaction and execution of a transaction to be reported. This instruction is an action of the client and not of the investment firm. The instruction of the client does not in itself mean an acquisition, disposal or modification of a reportable financial instrument. That will happen by the action of the investment firm following the instruction of the client (on own account on behalf of the client). That is a transaction as meant in article 26 MiFIR and is reportable. All the relevant information including details of the clients (buyer/ seller) which gave the instruction will be reported. Therefore it is not necessary to have instructions of clients to be reported separately. That could be achieved by making clear that actions as meant in article 3 (4) RTS 32 which qualify as execution means actions of the investment firm. Otherwise an overload and double reporting of information and high operational costs will be the result.

We suggest excluding all these activities as they clearly represent activities without any risk in market abuse.

2. Exhaustive definition

Moreover, we have reservations towards the fact that the definitions are not exhaustive (see Art. 3 (2) and (4) draft RTS 32 respectively, "... but will not be limited to:"). The determination of reportable transactions should be done in Level 1 and Level 2. Other circumstances can not be provided only by way of interpretation with level 3 guidelines.

3. No duplicated reports for transactions in derivatives

At the same time we feel it is necessary that the reporting requirements for transactions in derivatives ("derivative contracts") under MiFIR are synchronised with the requirements of EMIR in order to avoid double messages as envisaged in Art. 26 (7) MiFIR.

4. Required specifications

Some further specifications are necessary. For the assignment of the fields, the reporting party needs clear examples of how certain business cases or combinations are to be reported in the future. These specifications should be submitted on time. This includes the binding definition of the mandatory fields. Only if all the required specifications are submitted in time, these requirements can be implemented on time (i.e. 3 January 2017). A situation similar to the implementation of EMIR in which the final specifications were not available until much too late in some cases, should by all means be avoided. In that regard it is essential that when ESMA issues its Guidelines it performs a consultation, especially when it comes to very detailed technical specifications.

<ESMA_QUESTION_CP_MIFID_214>

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

<ESMA_QUESTION_CP_MIFID_215>

Yes. First of all, the EACB refers to its response to Q214 (concerning the definition of "transaction" and of "execution"). Moreover, the EACB would like to make the following observations:

1. We consider that the exception in Article 3 (3) (f) is too restrictive in that regard, insofar it only covers "internal transfers". It should, in any case, any change of position that does not lead to a change in ownership financial instrument, shall be exempted.
2. The EACB considers that the issue and redemption of units or shares in investment funds managed by an asset management company in their determined (fixed) issue price or redemption price should continue to be explicitly excluded from the reporting requirement. An exception appears to be reasonable, since in these cases, a market abuse is not possible. To clarify this, we ask at least an according recital to Art. 3 (3) (e) RTS 32.
3. The condition (iv) of in Art. 3 (3) (j) RTS 32 should be deleted. The conditions under (i) to (iii) are sufficient to prevent a possible market abuse. Moreover, the excluded activities as described under point 26 (on page 565) could prove particularly problematic. We consider that an obligation to report or not should be established for all transactions. It will be very difficult and costly – if workable- to have the relevant IT systems determine whether certain transactions meet the criteria or not, the caps and delay in time. For instance, investment firms will have several dividend re-investment plans in place with different criteria.
4. Further, in relation to Art. 3 (3) (a) RTS 32 (see also 9 on page 560) we strongly support that SFTs should not be reportable under MiFID II. We believe that the reports would not contribute to the purpose of the reporting under MiFID II. Please note that if there would be a reporting obligation, this will be a huge burden, as the automated system should need to recognise which SFT should be reportable under the Regulation SFT and which SFT should be reported under MiFID II. The two systems can be different, this will mean that there will be risks of incorrect reporting. This double reporting should avoided. We assume that the reporting requirement established in SFTR is adequate even if there would be a gap in time between respective application deadlines of MiFID II and the future SFT Regulation.

<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

Yes. The EACB agrees with the ESMA the receiving firm should be validating the information transmitted for obvious errors only. However, we would suggest defining what constitutes an obvious errors as referred to under point 43 page 569 of the consultation document. Because automated systems are used for reporting and according to the brief reporting time, this could only mean, to make a (technical) plausibility check. We ask the ESMA for an according clarification.

However, 32 Article 4(1) of the draft RTS would require further clarification over which fields are to be transmitted in order to successfully transmit an order. More specifically we would ask ESMA to clarify what is meant by Article 4(1)(a)(iv) of the draft RTS 32. That point seems to suggest that the identity of the client is sufficient. Does that mean that an order transmitted without e.g. decision maker details (to our reservations with respect of details to decision makers we refer to our answer to Q218) is sufficient and results in successful transmission? A full list of the expected transmission fields (if applicable) would be of great help.

In general, the timeframe for delivering the required information is too short.
<ESMA_QUESTION_CP_MIFID_216>

Q217. Do you agree with ESMA's proposed approach to simplify transaction reporting? Please provide details of your reasons.

<ESMA_QUESTION_CP_MIFID_217>

The EACB welcomes the proposal by ESMA to link the "Buy / Sell Indicator" clearly with the respective buyers and sellers. This approach is also technically feasible and allows a clear interpretation. For derivative contracts the reporting should follow the same way as in EMIR.

<ESMA_QUESTION_CP_MIFID_217>

Q218. We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.

<ESMA_QUESTION_CP_MIFID_218>

- **Concerning the client identification (Art. 6, Annex I, Table 1, fields 5 to 34)**

1. The method for identifying the client is not appropriate.

The proposed method to identify natural persons is new and not in line with the provisions of the 3rd EU Money Laundering Directive (Directive 2005/60 / EC)¹¹. The applicable national laws and the guidelines of the NCAs regulate in detail how the identification of clients is to be designated pursuant to Art. 8 (1) a) of the 3rd EU Money Laundering Directive. First of all, there doesn't exist a priority with respect of the different passports which can be used to identify the client according to the money laundering requirements. The client is free which of the according to the money laundering requirements possible passports he presents to the investment firm. As far as Annex II, Table 1 proposes a priority between different kinds of passports, this will not work in practice.

Second, especially with respect of "all other countries", it is doubtful, whether the required "national passport" (first priority of Annex II, Table 1) will be a passport which

¹¹ DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

fulfills the requirements to identify a client according to money laundering requirements. Whether an official photo always exists on the national identity card to verify whether the client who presents the passport is the same which is named in the presented passport is questionable. Above all, these national identity cards are regularly written exclusively in the national language, i.e. not also in English. So these passports wouldn't be readable and therefore not appropriate to identify a client.

Thirdly these problems are similar in other identification methods as far as ESMA proposed like using the national tax identification number or national insurance number or a so-called 10 DSS digit investor share. In any case, (also) in these cases an identification according to the money laundering requirements will be necessary. Furthermore, a duty to ask for the national tax identification number exists since 2004 and only for new contractual relationships (i.e. not for already existing contractual relationships, which are the most). Consequently, the clients are not obliged to provide the national tax identification number in further cases. Because of a missing according requirement, the clients are also not obliged to provide a national insurance number or 10 DSS digit investor share to the investment firms. Therefore, also in all these cases a "CONCAT" option will be necessary (so far not provided in any case).

As a final result, the members of EACB consider that the proposed client identification approach is inappropriate. It would be disproportionate to provide in addition to the already complex identification obligations under the 3rd EU Money Laundering Directive another complex and at the same time insufficient procedures..

In order to obtain the intended synchronisation of client identification and having in mind that no priority between the passports according to the money laundering requirements exists, the EACB would propose that only "CONCAT" is provided for the client identification.

2. No additional information

Moreover, the EACB has reservations towards the requirement for additional information regarding the identity of the client. In our view this is not covered by level -1. Art. 26 (3) MiFIR requires only "a designation to identify the clients ..." but not additional information about the client's identity. The mandate to specify the requirements of level- 1 (see Art. 26 (9) (c) MiFIR) in our view can not legitimate such information because the mandate can not go beyond the requirement itself at level-1 (see Art. 26 (3) MiFIR).

In any case additional information would not be proportionate. Both, the client identification and the additional information are personal data. Proportionality is necessary to justify these information with respect of data protection law. But any such additional information would not be necessary in addition to a client identification, because such additional information offers no added value to the automatic matching of transactions by the NCAs. It would also be disproportionate because suspicious transactions are the exception. In these exceptional cases the NCAs can ask for additional information. We would like refer to the " Guidelines on

data protection in EU financial services regulation”¹² of the European Data Protection Supervisor and note that the information requirement should follow the “privacy by design” approach.

3. Missing mandate for a designation or information of decision makers

Art 26 MiFIR doesn’t provide a designation of decision makers, neither in Art. 26 (3) MiFIR nor in Art. 26 (9) (c)MiFIR. In both provisions, the designation is limited to clients “on whose behalf the investment firm has executed that transaction”. In our view there is also no mandate for information to decision makers (see the according arguments with respect of the question whether there is a mandate for additional information of clients).

4. Identification of short sell (Field 77)

In relation to 154 on page 592, we anticipate that there will be problems in using the short selling flag. How would it work if transactions are entered into from different parts of the business to which even Chinese Walls may exist? It may not be possible to know whether a certain transaction at that moment is a short sell transaction.

Also, there are different requirements between MiFIR and Regulation (EU) No 236/2012 which would seem to contradict each other. Under MiFID II it will be an intra-day report (and thus use of flag) and under the SSR it is an end-of-day reporting.¹³ It could be that at the moment of a transaction intra-day it is a short sell, but which is ‘remedied’ by another transaction later that day. We do not think this information will provide the CA with the information they are looking for. And the SSR reporting already exists and provides the relevant information.

Moreover, it is very challenging to implement a reporting setup, that could calculate the legal entity level net short position for a security at any particular execution time during a day. This is potentially why Regulation (EU) No 236/2012 opted for an end-of-day calculation setup. The requirements should not be different, especially since MiFID2 explicitly refers to this regulation.

5. Concerning the identification by means of an LEI the EACB refers to its answer to Q224.

- We understand that firms are expected to correct reports retrospectively when a systematic error has been detected. While we agree with the general principle we

¹² https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Thematic%20Guidelines/14-11-25_Financial_Guidelines_EN.pdf

¹³ According to Regulation (EU) No 236/2012 “The relevant time for calculation of a net short position shall be at midnight at the end of the trading day on which the natural or legal person holds the relevant position”. However, in MiFIR, it is stated that “the short sale has been concluded at the time of the execution of the transaction in accordance with Article 2(1)(b) of Regulation (EU) 236/2012”.

It could be interpreted that the requirements are different. For example, if there is first a sale of a government bond, and immediately after that a similar-sized buy of the same instrument, this would result as a “short sale” reporting according to MiFIR, but would not be calculated as a short sale according to Regulation (EU) No 236/2012.

believe that five years retrospective correction would be extremely burdensome for firms especially given the data volume that can be expected with the implementation of MiFIR. We consider that a period expanding from the reporting year plus one year ago is appropriate. This time span would still enable NCAs to exercise appropriate supervision and control.

<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>

Yes, in general we agree with the proposed approach.

<ESMA_QUESTION_CP_MIFID_219>

Q220. Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details

<ESMA_QUESTION_CP_MIFID_220>

Yes. Although the identification of the "specific waiver(s) under which the trade took place" is already provided in MiFIR, the members of EACB consider that it will be difficult to integrate this feature in the transaction report, since in many cases information from the front or middle office systems shall be fed in the notification system. Therefore, it is necessary to create additional interfaces and processes, which further increases the complexity of the messages and the timeframe required.

At the same time, we wonder to what extent this information is necessary, since here there is no factor to detect market abuse. We would therefore recommend that this requirement is deleted.

In relation to 139 on page 589, we would like a clarification of what needs to be reported if there is a transaction to which multiple waivers are applicable (Would it be necessary to include all waivers or only one of the applicable waivers?)

<ESMA_QUESTION_CP_MIFID_220>

Q221. Do you agree with ESMA's approach for deciding whether financial instruments based on baskets or indices are reportable?

<ESMA_QUESTION_CP_MIFID_221>

The EACB would like to point out that we expect great difficulties in the implementation of the reporting obligation for basket and index-based financial instruments, to the extent that only one component of the basket or index will trigger the reporting requirement. This is especially true for financial instruments in such markets where the ISIN is not common but the financial instruments are identified by other means.

Our remarks concerning the identification of reportable financial instruments please refer to response to Q225.

<ESMA_QUESTION_CP_MIFID_221>

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

<ESMA_QUESTION_CP_MIFID_222>

Yes, in general the members of EACB agree with the proposed standards for identifying these instruments in the transaction reports.

<ESMA_QUESTION_CP_MIFID_222>

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

<ESMA_QUESTION_CP_MIFID_223>

Yes. The EACB has reservations concerning the implementation of the criterion "the primary relationship with the client" within the meaning of Art. 13 (2) (a). In the case of institutional customers come here regularly several branches into consideration, so that no clear separation criteria exist. In general, we foresee that it will be difficult to determine which entity will have the closest relationship with the client, without any guidance on how to assess the relationship, and without criteria that entities should take into account with that determination.

Moreover, the relationship with the client can change over time, when an entity uses a different branch or group entity more than at the beginning.

The EACB therefore proposes, that the (trading) book over which the order is executed, is decisive.

In addition, we believe that the 'specified activities' as referred to under 27(ii) on page 565 should be determined at EU level to prevent different implementation in different member states. This should be applicable to branches as well as to legal entities from the same group in different member states (please see under 27(v) on page 566). At the same time it should be clarified that groups should be able to design one reporting system for all branches and legal entities throughout the EU.

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

Yes, the members of EACB anticipate significant difficulties related to the implementation of LEI validation. We do not share the view that by 1 January 2017 all relevant customers will have a LEI.

First of all, for legal entities who are themselves not subject to reporting obligations - this applies to the majority of them in the securities business – there is no obligation to apply for an LEI.

Moreover, particular difficulties are expected to arise with legal entities located outside the European Economic Area. The case where legal entities are not required to apply for the LEI, will have in practice a much greater relevance by MiFIR than by EMIR. Therefore, we would recommend to foresee the use CONCAT for these costumers. For legal entities, the date of establishment and the company name would be the relevant data.

<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

Yes, the members of EACB foresee difficulties with the proposed requirements. The EACB considers the lack of information on whether a particular financial instrument triggers a duty to report, continues to be very problematic. This problem is particularly serious in view of the

prohibition of over-reporting. An over or under-reporting can only be avoided if the target amount is defined as 100%. Otherwise, there is bound deviations.

Therefore we consider that it is essential that ESMA provides for an actual, machine-readable list of all reportable financial instruments. ESMA is also the only institution to create and maintain such a list ("golden source"). The basis for this list could be the messages of trading venues to its competent authority pursuant to Art. 27 MiFIR. In particular, regarding point 186 we do not understand ESMA's reluctance to create a golden source of financial instruments traded on trading venues as mentioned in MiFIR Article 26(2a). By using the golden source, it would be much easier for the firms to correctly identify the reportable instruments as well as derivatives, baskets and indices with reportable underlying resulting in more coherent and accurate reports.

Moreover, ESMA in collaboration with CAs would be the most natural compiler of this information as trading venues are obliged to provide reference data on instruments traded on them to the CAs (MiFIR Article 27). As those are the same instruments referenced in MiFIR 26(2a), compiling this list should be relatively easy. The alternative would be every single investment firm compiling and maintaining own records from all EEA trading venues, which would be much more difficult, prone to errors, and extremely costly compared to the ESMA golden source approach.

Moreover, we would like to take the opportunity to comment on the issue of "Transaction Identifiers". In point 180 page 597 of the CP "ESMA proposes that the Transaction Reference Number (see field 80 in the table of fields in Annex I of the draft RTS) should be retained and amended to comply with certain requirements¹⁴. However, adding these requirements to the current Transaction Reference Number (TRN) would cause a lot of additional expenditure.

Moreover, the following clarification would be necessary with regard to the TRN:

- Is only the investment firm that is trading directly on a certain venue obliged to use the venue`s TRN?
- if the order was placed by an investment firm as an agent for another investment firm - who should use the venue`s TRN to fulfil the reporting obligation? Does every investment firm in a chain of investment firms has to use this TRN – does this mean, each investment firm has to report backwards the TRN of a certain trade in a multi-stage transaction?
- if an investment firm is aggregating client orders to one order - how could we use a "unique TRN" for each client's transaction? In this case the TRN of the stock exchange would be the same for each client's transaction.

<ESMA_QUESTION_CP_MIFID_225>

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

<ESMA_QUESTION_CP_MIFID_226>

The EACB does not understand why the client ID should be provided to the trading venue as this information is already known by the NCAs through the reporting obligation.

¹⁴Namely:

- i. It uniquely identifies every transaction report sent to the CA at the investment firm level;
- ii. It is a unique, persistent and consistent code at the level of the investment firm; and
- iii. In the particular case of a transaction report pertaining to direct execution on a trading venue, it shall be the same as generated and disseminated by the trading venue to both the buying and the selling parties when confirming the execution."

In addition, this will mean that the format of the reporting needs to be amended, which will increase the risk of incorrect reports.

<ESMA_QUESTION_CP_MIFID_226>

Q227. Do you agree with the proposed approach to flag liquidity provision activity?

<ESMA_QUESTION_CP_MIFID_227>

In relation to 25 on page 609, we do not understand how the trading venue will know that the transaction is executed in relation to liquidity provision.

<ESMA_QUESTION_CP_MIFID_227>

Q228. Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

<ESMA_QUESTION_CP_MIFID_228>

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<ESMA_QUESTION_CP_MIFID_228>

Q229. Is the approach taken, particularly in relation to maintaining prices of implied orders, in line with industry practice? Please describe any differences?

<ESMA_QUESTION_CP_MIFID_229>

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<ESMA_QUESTION_CP_MIFID_229>

Q230. Do you agree on the proposed content and format for records of orders to be maintained proposed in this Consultation Paper? Please elaborate.

<ESMA_QUESTION_CP_MIFID_230>

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<ESMA_QUESTION_CP_MIFID_230>

Q231. In your view, are there additional key pieces of information that an investment firm that engages in a high-frequency algorithmic trading technique has to maintain to comply with its record-keeping obligations under Article 17 of MiFID II? Please elaborate.

<ESMA_QUESTION_CP_MIFID_231>

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<ESMA_QUESTION_CP_MIFID_231>

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

<ESMA_QUESTION_CP_MIFID_232>

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<ESMA_QUESTION_CP_MIFID_232>

Q233. Do you agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation? Please elaborate.

<ESMA_QUESTION_CP_MIFID_233>

No, the members of EACB do not agree with the proposed criteria. It is positive that there is not a general obligation adjusting all systems to the microsecond. The factor selected in Art. 3 (4) draft RTS 36 (the same time accuracy applied by the trading venue, one is member or participant of, or in the case of membership or participation of multiple trading venues, the

same time accuracy to the most accurate trading venue of which one is a member or participant) is, however - at least as far as the level of time accuracy is concerned - not appropriate. ESMA itself recognises in point 18 page 629 of the consultation paper that such requirement might be disproportionate for participants and members that do not engage in high-frequency algorithmic trading techniques or more broadly operate at a high latency

The EACB supports this view expressed by ESMA. Admission to trading venue is not an appropriate criterion, since it is based on entirely different considerations such as trading participants executing their orders or self-issued financial instruments offered in a trading venue. The trading venues have different trading systems, that the member / participant of this trading venue need not necessarily used.

The only criterion for the accuracy of the time can therefore be that the member or participant operates high frequency algorithmic trading. Only in this case is an adjustment of the time of the members / participants with the time of the relevant trading venues appropriate. In the case Art. 3 (4) RTS 36 is maintained there is a risk that many participants / members would withdraw/ refrain from admission to a trading venue, because the cost of the admission would be too high due to the requirements of clock synchronization. Such withdrawal may in turn result in an increase in the price of the clients order, as it would then run through brokers and the intermediary chain would be longer.

In all other cases i.e. for non-high frequency algorithmic traders any synchronisation of clocks is not necessary Systems being able to react within a fraction of a second of order entry and lifetime of the orders within that timeframe do not exist. In the case of voice trading, a synchronisation of a second is not necessary.

Moreover, we consider that the scope of application should be specified in definite terms and not – as ESMA proposed – open for additions at level 3 (see Art 2 (2) "... shall include but not be limited to the following: ..."). The question of the scope should be established at level 1 and level 2. This cannot be provided by way of interpretation only at level 3.

<ESMA_QUESTION_CP_MIFID_233>

Q234. Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.

<ESMA_QUESTION_CP_MIFID_234>

As already stated in Q 233 above, this should only be the case when the member or participant operates high frequency algorithmic trading.

<ESMA_QUESTION_CP_MIFID_234>

Q235. Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.

<ESMA_QUESTION_CP_MIFID_235>

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<ESMA_QUESTION_CP_MIFID_235>

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



<ESMA_QUESTION_CP_MIFID_236>

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<ESMA_QUESTION_CP_MIFID_236>

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

<ESMA_QUESTION_CP_MIFID_237>

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<ESMA_QUESTION_CP_MIFID_237>

Q238. Do you agree with ESMA proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of new financial instruments.

<ESMA_QUESTION_CP_MIFID_238>

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<ESMA_QUESTION_CP_MIFID_238>

9. Post-trading issues

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

<ESMA_QUESTION_CP_MIFID_239>

The European Association of Co-operative Banks (EACB)¹⁵ understand ESMA's objective to ensure the highest possible certainty of clearing, both for ETDs and OTC derivatives (OTCDs). However, the trade pre-check cannot be operationalised in the same manner both ETDs and OTC derivatives (OTCDs) for the following reasons:

1. For ETDs, even for contracts subject to the clearing obligation, the client credit check by the venue at the level of the transaction could not have a definitive outcome and it should still be possible to reject it at the level of the CCP. This is due to the fact that a client is likely to have a single credit limit with its clearing member while being a trading member at multiple trading venues.

Moreover, the client trading firm may execute a trade on behalf of a third party (give-in), where the credit check for that third party would only be conducted after the trade has been taken up at the level of the CCP, and in any case after the transaction is concluded. Therefore, it is important to maintain the possibility to reject the trade at the level of clearing despite an initial positive check at the trading level.

Finally, in the prospective of open access between trading venues and CCPs, clients may use different clearers and different CCPs.

At the same time, in the OTC environment the checks could have a definitive outcome and be binding at the clearing level. The clearing member should have at all times a good visibility of the credit limit status of its client. In this vein, the admission/rejection of transactions for clearing is also easier to automate.

2. We have reservations whether the proposed limits of 60 seconds/10 minutes would be practicable and we fear that they do not take sufficient account of the different structure of the ETD and OTC environment. We urge ESMA to provide a more substantiated explanation on the proposed time limits for the pre-trade checks. We understand that the proposals are made solely on the basis of the current US standards. We urge ESMA to provide more clarity on which basis these standards are proposed and how they should be appropriate for the EU trading environment..

3. We highlight that at present there is a very high degree of clearing certainty in the ETD sphere, even without relevant regulatory standards applying.

<ESMA_QUESTION_CP_MIFID_239>

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

¹⁵ 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_CP_MIFID_240>

The EACB cannot comment on the ability of the trading venues, for the ETD environment, to submit the trades to the CCP within the proposed timeframes, and for the reconfirmation of trades by the CCP. However, the EACB agrees that these submissions should occur as soon as technologically possible.

For ETDs as already mentioned in our response to Q 239, it should be ensured that the pre-trade checks and the trading venue-CCP confirmations should not preclude the clearing member to reject the transaction at the subsequent stage.

Moreover, we would like to ask ESMA to clarify the treatment of block trades. Acceptance of the entire block for clearing before the breakdown shifts a higher amount of risk onto the clearing member with virtually no legal comeback. Breaking down the block before accepting for clearing would increase clearing certainty and keep the costs lower, but it would also require more flexibility in terms of timing. At the minimum, clearing members should not be under any legal obligation to accept block trades for clearing.

<ESMA_QUESTION_CP_MIFID_240>

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

<ESMA_QUESTION_CP_MIFID_241>

- The EACB cannot comment on the ability of the CCP to transmit trades for the acceptance of the clearing member within a 60 seconds timeframe, but we would agree that this should take place as soon as technologically possible. We would also welcome if ESMA provided some substantiation of the proposed timeframe of 60 seconds.
- We support the objective to establish a global STP that would guarantee clearing certainty “as soon as technologically possible”, including for bilaterally executed transactions. We notice that the clearing members are equally required to confirm to the CCP the clearing of the transaction within 60seconds. However, the proposed timeframe for the clearing member to reconfirm seems extremely short in the light of the confirmation being final and the risks passing entirely on the clearing member. This could result in unintended assumption of risks by the clearing member or, contrary to the intention, in less clearing certainty.
Trade acceptance by the clearing member requires performing “pre-clearing” controls of client limits to ensure that the transaction, once cleared, would not put the client in breach with its limits. To be risk-efficient, such controls shall be based on in-depth risk calculations performed on an ad hoc basis, and shall rely on additional information available within in-house applications (for example the client’s available assets which may be used as collateral, in the case the clearing member is also the depositary of the client). From an operational and technical point of view, performing these controls within 60 seconds is extremely problematic. To ensure that clearing acceptance is done within 60 seconds of trade reception, clearing members may decide to simplify their pre-clearing controls by using some basic trade by trade risk calculation methods or by simply not performing any pre-clearing controls. This would potentially lead to additional credit and operational risks for the clearing member.

We recommend a much longer timeframe for clearing member acceptance. 30 minutes seems a more appropriate timeframe to allow clearing members to systematically perform in-depth client limit controls before accepting the client trade.

We would also welcome ESMA's clarification on why it does not wish to distinguish between trades subject to the trading obligation and those cleared voluntarily.

- Moreover, the EACB is reluctant towards the feasibility of Art. 5 of the draft RTS 37: "For transactions that are executed on a bilateral basis and subject to the clearing obligation [...], the clearing member shall ensure that the counterparties send the information related to the trade to the CCP within 30 minutes from the execution of the transaction."

In the way cleared OTC bilateral transactions are processed today, there would be no material possibility for the clearing member to control that its clients abide to this 30 minute time frame. In general, the counterparties "confirm" the terms of the agreed transaction between them (typically on a middleware market platform) and subsequently forward it to the CCP in an automated way. It is only at the time of the confirmation that each party selects the clearing member it intends to use. Since the clearing members have no knowledge of the transaction before the counterparties' confirmation, they would be unable to ensure that their clients conform to the 30 min time frame.

<ESMA_QUESTION_CP_MIFID_241>

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

<ESMA_QUESTION_CP_MIFID_242>

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<ESMA_QUESTION_CP_MIFID_242>

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

<ESMA_QUESTION_CP_MIFID_243>

The EACB agrees with the ESMA proposal that contracts subject to the clearing obligation and executed on a trading venue should be voided if they are rejected from clearing by the CCP. Once a contract has been rejected from clearing, it should not be possible to resubmit it. Instead, counterparties should need to enter into a new commercial transaction. Re-submission to clearing should only be possible in situations where the rejection resulted from a technical failure.

Contracts NOT subject to the clearing obligation and voluntarily traded that have been rejected at the CCP level should also be voided. Trading venues should establish clear rules and disclose methods for the calculation of the breakage costs for those contracts which are subject to the trading obligation or are voluntarily traded on the trading venue, and have been rejected from clearing by the CCP.

However, we also agree that it is important to preserve the flexibility offered by Article 7(3) of the draft RTS in the OTC context, i.e. in respect of OTC cleared transactions that are rejected by the CCP. This may, amongst other things, allow resubmission of a rejected trade

for clearing or submission for clearing through a different clearing member, as may be appropriate to the particular client's circumstances. This is in line with the protocols already developed by many CCPs and enshrined in their rulebooks on the treatment of OTC cleared trades.

<ESMA_QUESTION_CP_MIFID_243>

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

<ESMA_QUESTION_CP_MIFID_244>

Before answering the question, we would like to once more raise your awareness to fact that smaller cooperative banks and building societies, encounter difficulties to access CCPs and to find Clearing Members ready to accept them as direct/indirect clients on reasonable and non-discriminatory terms. Should no solutions become available, small banks and building societies will de facto not be able to keep an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives to hedge their positions. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs. The continuity of these services could be at risk, therewith putting the smaller banks and building societies at a disadvantage. Therefore, we look positively at any initiative that could alleviate the problem.

Having said that, the members of EACB do not agree with the proposed draft RTS, even if they agree that deleting the requirement of portability addresses one major concern of market participants with regard to indirect clearing.

The members of EACB have the following concerns with regard to the proposed RTS:

The proposed RTS create uncertainty as to whether it is compulsory to use indirect clearing arrangement in the clearing of ETDs under Art. 29 and 30 of MiFIR:

Art. 29 para. 1 MiFIR creates a clearing obligation for ETD. Since it refers to the "operator" of a RM rather than Financial Counterparties and Non-Financial Counterparties above the clearing threshold, it can be understood that Art. 29 para. 1 MiFIR does only have impact on operators of a RM.

With this in mind we would invite ESMA to clarify that Art. 30 MiFIR does not require indirect clearing arrangements to be put in place but leaves it up to the parties to access ETD via the existing market practice especially known as brokerage agreements and undisclosed agencies.

Indeed, most market participants – even if it concerns Exchange Traded Derivatives (ETD) cleared by a Central Counterparty ("CCP") - ask Clearing Members (CM) to execute a certain ETD on a particular Regulated Market in exchange for an execution fee ("commission"). Its is questionable whether the relationship between the CM and the market participant qualifies as a derivative contract.

The described tripartite chain of contracts is usually extended by a forth counterparty in cases where a retail client places his order at his local bank which holds no clearing membership with the respective CCP and must therefore draw from the services of a CM. A fifth party enters the set-up when the CCP is domiciled in a foreign jurisdiction and national broker has to approach a local CM.

In the described practice, the CCP just distinguishes between those ETD a Clearing Member maintains for its own purposes and those a Clearing Member maintains for its customers (the market participants who have ordered the ETDs). If the CCP makes a payment to the Clearing Members with respect to the ETD which is maintained with respect to a customer's order, the Clearing Members is obliged to forward it to the relevant customer. If the CCP has a claim against the Clearing Member with respect to the ETD which is maintained with respect to a customer's order, the relevant customer is obliged to fulfil a corresponding reimbursement claim the Clearing Member (but not an obligation arising from any derivative between the CM and the customer) has against the customer.

This an widely accepted and applied standard market practice in many countries and we would fear that ESMA's proposal would have a negative impact on ETD trades iff these four- and five-party arrangements would be asked to apply the rules for indirect ETD clearing. Wwe believe that banks acting as clients and CM would find it extremely difficult to abide to the rules set forth in ESMA's Draft RTS 38 as already EMIR demonstrates that market participants did not find a solution to create arrangements that fulfil the requirements on indirect clearing arrangements. As a consequence smaller and medium sized banks will refrain from offering indirect ETD clearing with the – from a systemic-risk-perspective – unintended effect of further market concentration. Furthermore, such a development might undermine the goal of the G20 to promote ETD against OTC business.

In case EMSA does not follow this approach, we would propose to at least introduce clearing thresholds - corresponding to the relevant EMIR provisions, in particular Delegated Regulation 149/2013, Art. 11. The thresholds could even be set higher than in relevant Delegated Regulation 149/2013, since the risk related to ETD is lower than with regard to OTC trades.

Furthermore, in order to establish a level playing field between OTC trades and ETD, transactions entered into for hedging purposes should be exempt from the obligation to establish (indirect) clearing relationships (Art. 10 (3) EMIR).

Moreover, we would like share the following detailed remarks that relate to account segregation, default management procedures and return of liquidation proceeds.

- Obliging clearing members to manage the client's default as set forth in Art. 4(4) of the Draft RTS amounts to CM acting as a quasi-CCP but without the insolvency protections granted to actions taken by CCPs (for example under the Settlement Finality Directive).
 - o In addition, we would recommend removing the word "individually" in Art. 4(5) of the Draft RTS, in order to made clear that the CCP -upon request of the clearing member- is only required to open an omnibus segregated account for the exclusive purpose of holding the assets and positions of the client's indirect clients. Otherwise, the Draft RTS 38 would exceed the protection level granted by Art. 5(2) of the EMIR Delegated Regulation 149/2013 and contradict the legal mandate set out in Art. 30(2) of MiFIR.
- A similar reasoning applies for the obligation imposed by the Draft RTS on the CM in the case of a client's default to pay out liquidation proceeds directly to the indirect client. Such a provision must be regarded as "gold-plating" the protection level provided in Art. 48(7) of EMIR which permits a CCP to return liquidation proceeds to the clients of the clearing member for its account of its clients. The procedures for the

return of liquidation proceeds to the indirect clients should therefore only apply when the indirect clients have chosen a gross omnibus account.

- We also suggest that contractual arrangements between the clearing member and the clearing client facilitating indirect clearing should govern the treatment of any excess collateral. This is due to the risk management considerations of the indirect clearing arrangements which are usually specific to the client, and which require the clearing member to have some flexibility in the legal arrangements so as to cater to its risk-mitigation needs.

<ESMA_QUESTION_CP_MIFID_244>

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

<ESMA_QUESTION_CP_MIFID_245>

No, the operational requirements for clearing members and clearing clients facilitating indirect clients still require further fine tuning so as to ensure the right balance between the commercial viability of indirect clearing, the need for proper risk mitigation by the clearing member as well as the client and the indirect client, and the need to ensure the required statutory protections for the indirect users. In particular, the EACB would have doubts on whether the segregation of positions within one gross account as provided for in Art. 3 of Draft RTS 38 will achieve the same level of protection as the full segregation of accounts as provided for under EMIR. That is because, in case an indirect client fails to provide sufficient collateral, the CCP will use any collateral contained in the gross account in order to hedge its positions, irrespective of which indirect client actually provided the collateral.

<ESMA_QUESTION_CP_MIFID_245>