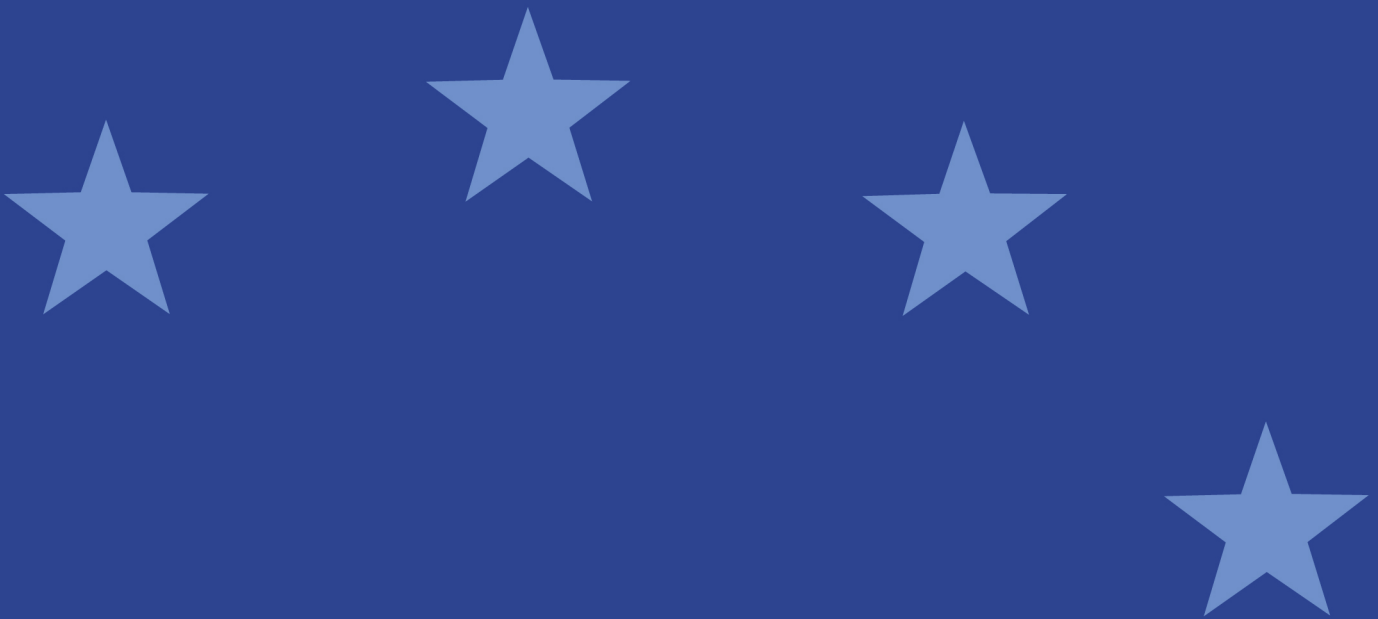




European Securities and
Markets Authority

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:

1. use this form and send your responses in Word format (do not send pdf files except for annexes);
2. 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
3. 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:

1. if they respond to the question stated;
2. contain a clear rationale, and
3. 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	Nordic Securities Association
Confidential ¹	<input type="checkbox"/>
Activity:	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Sweden, Denmark, Finland and Norway

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1 >

The Nordic Securities Association (NSA) has identified the following key issues in the Consultation Paper:

Transparency for non-equity instruments

The non-equity transparency related issues are among the most difficult and sensitive items on Level II. Unless properly calibrated, the new transparency regime for non-equities could have highly detrimental effects on the liquidity of existing non-equity markets and damage the SME financing in many Member States. This could in turn compromise the ambitions to build an efficient Capital Markets Union.

In order to achieve a proper calibration, it is important to take the interests of investors, issuers and different market structures into account (recital 16 of MiFIR) and to make sure that the future Level II rules have an evidence-based footing. It is also important to develop a flexible system that works for different types of non-equity markets rather than - at this stage - focus on a one-size fits all approach. Nordic markets, for instance, can be characterized with following perimeters:

- Limited number of liquidity providers
- Limited number of end-clients
- Large transactions
- Infrequent trading
- Own currency (Finland belongs to Eurozone)

It is very important that the harmonized transparency regime also works for smaller (and new) non-equity markets in the EU.

IBIA - the preferred way of measuring liquidity for bonds

The NSA takes the view that the IBIA approach gives more accurate result for measuring liquidity than the proposed COFIA approach (see below) and does not consider IBIA to be more challenging from an operational perspective. We therefore urge ESMA to reconsider its choice.

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.

Proposed COFIA model - not fit for purpose as it results in too many false liquids

ESMA's proposal for definition of liquid market uses issue size as sole proxy for liquidity. This approach is in our opinion not in line with the Level I text (article 2.1(17a) of MiFIR) and will result in too many illiquid instruments being classified as having a liquid market ("false liquids")². A definition that does not reflect true liquidity will give false signals to investors and create undue risk for market makers when complying with SI obligations and transparency requirements. ESMA must therefore revise the proposed methodology in order to ensure that a higher rate of liquid instruments is correctly classified (85% - 95 %). If issue sizes are used as sole proxy for liquidity, the thresholds must be increased and/or the ISINs selected as a consequence of the issue size must pass an additional liquidity test (using appropriate criteria developed in accordance with article 2.1 (17a) of MiFIR).

The Size specific to the instrument (SSTI) - thresholds much too high

The SSTI is a very important threshold which determines the applicability of SI obligations and pre/post-trade transparency requirements. The NSA is very concerned with ESMA's proposal to set an EU wide SSTI threshold fixed at 50 % of LIS for each sub-class of instruments. At least in many smaller markets, these thresholds are much too high and would considerably increase the risk incurred by market makers. This would in turn negatively affect their ability to quote prices/provide liquidity.

The methodology used by ESMA to determine the SSTI thresholds (i.e. fixed percentage of LIS) is not in line with the aim or contents of the political agreement on Level I. According to MiFIR, the thresholds should be set taking into account whether liquidity providers are able to hedge their risks and where a market consists in part of retail investors, the average value of transactions undertaken by such retail investors (article 9.1 (b) and 9 (5) (d) (ii) of MiFIR). According to NSA, it is essential that SSTI reflect retail order size. Therefore, if regulators persist in having a fixed threshold for all EU, we would propose either a maximum 500.000 euros (retail market size) or a significantly lower percentage (5 % - 10 %) of LIS.

Post trade deferral - flexibility crucial for smaller markets

The NSA is generally positive to the proposed Level II regime for deferred publication as we believe it allows NCAs to adjust the level of transparency to local market needs. For smaller non-equity markets dependent on market makers ability to hedge their (very large) positions it is in particular of essence to have access to sufficiently long deferral periods (up to 4 weeks) and aggregated publication.

Importance of Re-calibration and Ex-Post Effects

Level II must ensure that review and re-calculations of thresholds etc. are done in a timely manner and that Ex-Post Effects are taken into account, i.e. the effects that the introduction of the new transparency rules for non-equities has on the liquidity of EU markets.

Concern Regarding Derivatives

Liquidity analysis of derivatives classes is massive. Hundreds of different sub-classes have already been analyzed and labeled as liquid or illiquid. However, the analysis is based on

² Example: For covered bonds that only 26,45% are true liquid and 73,55% are deemed false liquid. For senior corporate bonds, the true liquid are 33,05% and the false liquid are 66,95%. The same pattern goes for all bonds. (See table 5 on page 104 in the Consultation Paper)

very generic criteria that fail to take into account many crucial elements of derivatives contracts. There are also concerns on the quality of the data. As a result, many sub-classes that are labeled liquid are not in practice liquid at all. It should also be noticed that the mapping of such huge amounts of listed contracts into systems will be very time-consuming and hence may lead to increased hedging costs.

Transparency for equities

Too broad definition of liquid market could cause less liquid markets - liquid shares should only consist of the blue chip shares ³

The concept of “liquid market” is central under MiFID II. MiFID II should capture only instruments that are truly liquid. It should be noted that within EU28 markets majority of instruments listed on MiFID regulated market are relatively illiquid. Notably this is the case for SME companies. If illiquid instruments are artificially labelled as “liquid” there is a risk that increased and complex transparency requirements (double cap mechanism and SI obligation) paradoxically reduce liquidity even further since the obligations and restrictions could expose the investment firm to undue risk.

Double Cap mechanism should not take LIS orders into account

We assume that the volume cap on the Negotiated Trade Waiver do not include Large-in-Scale (LIS) orders executed outside the order book but under the rules of the relevant trading venue. This is a logic conclusion since the limitation in the use of the Negotiated Trade Waiver and the Reference Price Waiver is to limit the use of waivers using the “lit prices” and do not contributed to the price discovery process themselves. However, Large-in-Scale Orders are per se exempted from pre-trade transparency and will not contribute to the price discovery process anyway. Thereby, the exception of LIS trades in the calculation of the volume cap will ensure the proper execution of large orders in case adequate volume is not available on the relevant trading venue without implying market impact.

The new tick size regime imply too low tick sizes which will discourage on-venue trading

From a Nordic perspective, ESMA’s proposal will imply a decrease in tick sizes for approximately 1/3 of the shares in total and approximately 40% of the liquid shares. This is too many.

Right tick sizes are crucial for liquidity and volume. Too low tick sizes will result in disincentive for traders to quote thereby reducing the depth of the order books. While changes in tick size might improve the liquidity for small size orders, institutional traders would be worse off. They have to bear increased trading costs following the decline in depth throughout the entire order book (market impact).

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

³ESMA Technical Advice, page 197

Binding market maker agreements will only capture “the good guys”

ESMA proposes that firms will be deemed market maker and must comply with certain binding agreements and commercial terms set by a trading venue, if they are posting firm, simultaneous two-way quotes of comparable size and at competitive prices for at least one instrument in no less than 30 % of the daily trading hours. However, these requirements will capture the traditional investment firms and leave behind the firms that should be captured, i.e. firms posting non-firm, one-way quotes etc. This will imply an incentive to trade less on venues in order not to be captured. In addition, with the lower tick sizes, market makers as a whole will face a decrease in the payment the risk they are taking, which will accelerate this inappropriate development.

However, since the requirements on “two-way quotes” are set at Level I, the only option seem to be to increase the 30% threshold considerably to e.g. 80% - 90% before the market maker are forced into binding, written agreements. Then the additional requirement for how long time the market maker/liquidity provider must provide firm quotes can be increased correspondingly.

Systematic internalisers must only do bilateral trading

With the restrictions of the use of NTW, the lower tick sizes, the market making obligations and the low average order sizes on the trading venues, there will be an incentive to increasingly use SI trading in order to serve clients need for order execution with minimal market impact. However, there are ambiguities in the SI definition and if they would be the new Brokers Crossing Networks (BCNs). We agree with the concerns and suggest that ESMA develop Guidelines to ensure that SIs are not taking over the role of the BCNs. The content of these guidelines could be to ensure proper definition and distinction of bilateral versus multilateral trading.

< 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>

TYPE YOUR TEXT HERE

<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>

In paragraph 3 of Section 2.2 of the Consultation Paper, ESMA requires the branch to provide information on financial instruments provided in the host Member States in addition to the investment services and ancillary services to be provided. Requirement to specify the financial instruments does not derive from MiFID article 34. Providing information on the ever-changing variety of financial instruments provided would be very cumbersome and not appropriate from both the investment firm's and the NCA's view. Investment firms need to comply with MiFID II and especially its product governance provisions in article 16 even if financial instruments were not included in the information. Thus the granted authorization should always cover all financial instruments.

<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>

According to MiFID recital 38 authorised credit institutions should not need an authorisation as investment firms in order to provide investment services or perform investment activities. According to article 4(2) investment services and activities are defined as activities listed in Section A of Annex I, including operation of an MTF and an OTF. Nevertheless ITS 4 article 1 (scope, which articles apply to credit institutions) does neither include articles 8-10 (MTF and OTF) nor are credit institutions explicitly mentioned in articles 8-10 of ITS 4.

In general, article 1 in both RTS 3 and ITS 4 (scope, which articles apply to credit institutions) are incorrect, as not every article applying to credit institutions are mentioned in the scope. For example ITS 4 article 20 is not included in article 1 even though credit institutions are explicitly mentioned in article 20.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We find it should be mandatory to accept transmissions by electronic means in English. Seen in the light of the technological improvement and development it would be outdated to make it optional to require transmission in paper. As regards to the use of language, English is commonly accepted in the financial sector.

<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>

TYPE YOUR TEXT HERE

<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>

ESMA has added to the proposed Level II regulation a definition of an execution venue, which is used in MiFID without definition. According to the definition (RTS 6, Chapter I, article 2, point 3) "Execution venue means a regulated market, multilateral trading facility, organized trading facility, systematic internaliser and market maker or other liquidity provider. It is problematic that execution venues include market makers and liquidity providers, since these cannot be considered as execution venues. Market makers and liquidity providers trade on venues and therefore the relevant information will be published by the respective venues. Also requiring SIs to provide the same amount of information as trading venues is disproportionate not at least with respect of the very different execution models, where SIs deals on own account when executing clients' orders. There should be a clear distinction between bilateral (SI) and multilateral venues.

It should also be noted that liquidity provider has not been defined.

Overall, ESMA is following a very prescriptive interpretation of how investment firms should comply with the illustration on whether best execution is achieved.

<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>

Yes.

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>

No. Please note that for SIs' it is essential that the firm requirements are only in relation to liquid instruments. Please also note that the "likelihood of execution" is not very meaningful information for SI. If there is a quote the likelihood of execution at that price is 100%.

<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>

No.

<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>

Yes.

<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>

Please see comments to Q36.

<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>

Yes, however not all firms distinguishes between different categories of clients and will therefore not make such distinction in their reporting. In addition, the requirement to publish details in paragraph 35 seems to be going much longer than Level I of MIFID.

The NSA believes that it should be subject to competition to develop the detailed information/feedback to clients. ESMA should just require the information under the first four columns in Annex 1 to draft RTS 7, meaning:

- Volume of orders executed on this as percentage of total
- Numbers of orders executed on this execution venue
- Percentage of passive orders executed on execution venue
- Percentage of aggressive orders executed on execution venue

<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>

Yes, this suggestion makes good sense and provides a general standard to be used by the venues in question. However, for equities, the Request for Quotes description is meaningless since the equity markets are order-driven and not price-driven.

<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>

Yes. In case the relevant market in terms of liquidity is the market with the highest turnover, the NSA agrees with an annual revision and that calculation does not include transactions executed under some pre-trade waivers since these waivers (e.g. negotiated trade waiver) are not order book trades.

However, the NSA urges that ESMA implements a consistent approach throughout Level II rules on whether ESMA will refer to most liquid market as the primary market or the market with the highest turnover.

<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>

First of all, the NSA assumes that price conditions for negotiated transactions in liquid instruments should be understood as at or within the Volume Weighted Average Spread (VWAS).

Secondly, the NSA assumes that a transaction in a liquid share at or above Large-in-Scale which is concluded as a negotiated transaction and thereby within the rules of the relevant trading venue in question, may be reported under the LIS pre-trade waiver.

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, we agree to include non-standard or special settlement trades in the list. This is normal procedure in the Nordic markets and it makes good sense.

<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>

The NSA does not see a need for a minimum size on orders under the order management facility waiver. ESMA's suggestion lacks justification and we find the present approach with no minimum size functioning well.

<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>

Yes, since it is a harmonised approach throughout the EU, the NSA can accept this.

<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>

Yes, since it is a harmonised approach throughout the EU, the NSA can accept this.

<ESMA_QUESTION_CP_MIFID_42>

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

<ESMA_QUESTION_CP_MIFID_43>

Yes, since it is a harmonised approach throughout the EU, the NSA can accept this.

<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>

Yes.

<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>

First of all, it needs to be clarified that when we are talking of SIs', and clients do not provide orders to SIs'. The SI provides firm quotes up to standard market size, which the client can

accept. In that sense, we do not understand ESMA's explanation on page 69 paragraph 5, since the SIs prices on equities are valid until changed by the SI.

It should be voluntary whether an SI chooses to publish timestamp and not a requirement. If there are any disputes, it would be possible to verify the time of quotes via the SIs' audit trail. By making this timestamp requirement, we believe that ESMA is going beyond Level I and creates a new unnecessary rule.

The NSA assumes that a SOR can send acceptance to an SI within the same legal entity. However, the time for acceptance of the SI quote should be the time for sending the acceptance from the SOR, and not when the acceptance was provided by the client.

<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>

As for the ambiguities for the SI in respect of whether the SI would be the new Brokers Crossing Networks (BCNs), described on page 70 paragraph 8, we agree with the concerns raised and suggest that ESMA develop Guidelines to ensure that SIs are not taking over the role of the BCNs. The content of these guidelines could be to ensure proper definition and distinction of bilateral versus multilateral trading.

As for the question on when a price reflects prevailing conditions, we accept the proposed definition. Being able to change the quotes is absolutely essential.

<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>

Yes, the NSA agrees with the proposed classes by average value of transactions and applicable standard market size since these are workable sizes which do reflect retail client orders sizes.

We urge ESMA to develop a similar approach for non-equities which also reflect retail clients order sizes.

<ESMA_QUESTION_CP_MIFID_47>

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

<ESMA_QUESTION_CP_MIFID_48>

Yes, at present, the list reflects the relevant transactions. However, the NSA does not support an exhaustive list since markets evolve. In case ESMA insists to keep an exhaustive list, there must be an annual review of the list, in order to ensure that the list at all times reflect the relevant transactions that do not contribute to the price discovery process in the context of the trading obligation for shares.

With regard to "transactions executed in the context of an investment firm that provides portfolio management services and transfers the beneficial ownership of a share from one *fund* to another and where no other investment firm is involved". It is unclear what the word "fund" entails. Should fund be understood in its generic context "funds", so that it covers all portfolio management clients and their funds in their customer accounts, no matter the clients' legal status? Or is it limited to entities which legally are determined as a fund, such as an AIF or UCITS? The exception only provides a level playing field, if it the generic understanding, and then we will suggest to use the words "customer account" instead of "fund". We agree that this exception does not contribute to price discovery, and is to the benefit of portfolio management clients.

<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>

Yes.

<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>

We can accept it since this information can be relevant for deferred transactions.

<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.

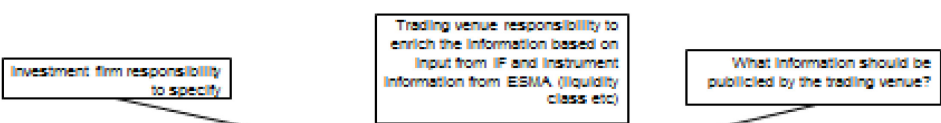
<ESMA_QUESTION_CP_MIFID_51>

ESMA must be aware of the operational risk since the requirements for some transactions will include manual procedures when choosing the right flag(s) which must be handled within the time limit of 1 minute. This could e.g. be the case for “special dividend trades”. An additional risk occurs if several flags are required for one transaction and these requirements cannot be handled automatically.

In short, at least the B, X, G, S, T and P must be specified by the investment firm in question can therefore be subject to manual procedures, which require longer reporting time than 1 minute, i.e. 3 minutes as already in place. If the longer reporting time is implemented, all these flags can be published without exposing the investment firm to undue risk.


The L (Large-in-Scale) must not be published since it will expose the investment firm to undue risk (it takes time to unwind a LIS position). In addition, the H (algorithmic trades) should not be public either, since this could create an incentive to try to game the algorithm.

Overall, NSA urges ESMA to develop guidelines with more in-depth information on how and in which situations the flags apply (with relevant examples).



		Inv Firm to spec	TV, enrichm.	Publ.
B	Benchmark trade	Y	N	Y
X	Agency Cross trade	Y	N	Y
G	Non-price forming trade	Y	N	Y
S	Special Dividend trade	Y	N	Y
T	Technical Trade	Y	N	Y
L	Large In Scale	N	Y	N
D	Deferred publ.	(Y)	Y	?
R	Reference Price	N	Y	Y
N	Negotiated trade (IIq)	N	Y	Y
O	Negotiated trade (III.)	N	Y	Y
P	Negotiated trade (other cond.)	Y	N	Y
H	Algorithmic trades	(Y)	Y	N
C	Cancellations	(Y)	Y	Y
A	Amendments	(Y)	Y	Y

if "Y", the 1-minute reporting limit could be questioned. Should be increased to 3 minutes for those cases.



<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>

The NSA does not agree that the proposed definition of normal trading hours should include auctions since SIs will face considerable pricing risk during auctions due to the uncertainty of

the market pricing during these phases. Auctions should be excluded. This definition would also be in line with the definition used for RTS 15 on market making. The NSA urges ESMA to find a consistent approach.

The NSA can accept the shortening of the maximum possible delay to one minute if other trades; like portfolio trades could benefit from longer reporting time due to the manual procedures, e.g. 3 minutes as already in place.

<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>

Yes, we 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.

However, as for other lists made by ESMA, the NSA does not support an exhaustive list, since markets evolve. However, if it is decided to continue with an exhaustive list, there should be a review clause included in order to ensuring that the list reflects the relevant transaction types at all times as markets evolve. And yes, transactions, which do not contributed to the price discovery process, should also be excluded from the reporting requirements.

<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>

Yes.

<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>

Yes.

<ESMA_QUESTION_CP_MIFID_55>

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

<ESMA_QUESTION_CP_MIFID_56>

Not applicable.

<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>

Please note that unless otherwise stated, the below comments apply to all the bonds mentioned in the question (i.e. 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).

General comments:

No, the NSA does not support the proposal by ESMA regarding the definition of liquid market. In our opinion, the proposed COFIA method fails to achieve the intended regulatory aim on Level I, i.e. to ensure that only truly liquid instruments are subject to real time transparency requirements and SI obligations to publish firm quotes. In fact, ESMA's method will result in a very large number of illiquid instruments being incorrectly classified as liquid (approximately 40 % - 74 %) which is a much too high failure rate.⁴ Furthermore, we do not support the proposal of using issue size as sole proxy as this is not in line with the Level I text which specifically lists four different liquidity criteria to be taken into account. We are also very concerned with the way ESMA has used its data and find that the assumptions seem blurred and that the proposals are not sufficiently substantiated by the data analysis. Thus, although the use of thresholds for issue size, LIS and SSTI per se are clear, the data used to support ESMA's conclusions can in some respects be questioned.

Based on the above, the NSA takes the firm view that ESMA should change its approach altogether and opt for the instrument by instrument approach (IBIA) for bonds, thus ensuring that only truly liquid instruments are classified as such.

⁴ Consultation Paper, table 5 page 104.

If kept, ESMA must modify its COFIA model, e.g. raise the thresholds for issue sizes. Alternatively, the issue sizes could be used only as the gross sample and then be made subject to a liquidity test (such as in ESMA's table 5, column 5 and 6 on page 104 in the Consultation Paper). In such test, the liquidity criteria should be changed to the following: 2400 trades during the 1-year period, the instrument should be traded at least on a daily basis and the average daily volume should be at least 10 million euros per day.

In addition to amending the model for defining liquidity, ESMA must significantly lower the SSTI thresholds so as to avoid that MiFIR will have detrimental effects on the liquidity of the EU bond markets. The threshold should be a maximum of 5 % -10 % of LIS and, for markets where retail clients are present, be set at retail market size. In Denmark, the retail market is easily reflected within a threshold of 500.000 euros.⁵

A proper and correct calibration of liquid markets is essential for the future well-functioning of bond markets in EU.

The classification of an instrument/class of instruments as having a liquid or non-liquid market will have a significant impact on the ability of market makers/SIs to provide liquidity to the market by executing client orders on own account. As regards trading in instruments with a liquid market, the transparency obligations in MiFIR are more stringent than for instruments without a liquid market and the regulation also requires a SI to make public firm quotes. In particular where an illiquid bond is incorrectly classified as liquid, compliance with these legal requirements in MiFIR will expose a market maker/SI to significant risks which can be very difficult to handle. This problem gets even more serious considering the extremely high thresholds of SSTI for bonds which have been proposed by ESMA. As a combined result of the proposed COFIA regime for classification of liquid market and the high SSTI thresholds there will be a significant risk that many market makers/SIs will no longer be able to provide quotes in bonds to the extent they do today or will withdraw from the market altogether. This is not a desired development for EU bond markets, neither the intention of the regulation!

From a Pan-European perspective, the NSA also wants to stress the importance of well-functioning bond markets. A decrease in liquidity provided by market makers and SIs will compromise the functioning of the secondary markets which will not only be negative for investors but also be to the detriment for issuers on the primary market due to the increasing cost of capital. Thus, unless properly calibrated, the method used for classifying what is a liquid market and the level of the SSTI threshold can have immediate negative effects on the ambitions to build an efficient EU Capital Markets Union where capital market financing of companies is intended to play a significant role.

The NSA wants to underline that the real market impact of the SI obligation together with the high thresholds for SSTI will be substantial. For example, in some of the Nordic countries, covered bonds are extremely important for the functioning of the housing markets. If SIs step out of their obligations, retail clients will face difficulties carrying out loan conversions and prices will be affected negatively. This will also subject clients to a substantial market

⁵ Since covered bonds are key in financing of homes in Denmark, the retail order sizes are measured as the average order prices for homes, i.e. 199.000 euros for houses (130 square meters) and 354.000 euros for apartments (130 square meters) ~i.e. 277.000 euros on (unweighted) average. See <http://www.realkreditforeningen.dk/statistik/Pages/boligpriser.aspx> and <http://www.realkreditraadet.dk/Statistikker/Boligmarkedsstatistik/Data.aspx>

risk that prices could move adversely between transactions. The end result could be clients not being able to redeem loans. A description of the Danish Covered Bond market where these problems are illustrated can be found in the separate response submitted by the Danish Securities Dealers Association.

Proposed COFIA model results in too high number of illiquid instruments being incorrectly classified as liquids (“false liquids”)

The analysis made by ESMA shows an extremely high failure rate in the model’s ability to accurately classify liquid bonds when compared to the liquidity criteria (as defined by ESMA). This high failure rate is demonstrated by ESMA’s own table 5 on page 104 in the Consultation Paper. For example, the table shows that out of the population of 586 covered bonds that are above the issue size threshold (i.e. classified as liquid) only 155 covered bonds are in fact liquid according to the liquidity criteria. Thus, the liquidity test shows that only 26.45 % of the covered bonds have been correctly classified as liquid whereas 73.55 % of the covered bonds are in fact illiquid (i.e. do not meet the liquidity criteria). Moreover, for the sub-class senior corporate bonds financials, the table shows that 33.05 % of the bonds which are above the threshold have been correctly classified as liquids whereas 66.95 % are in reality illiquid. For EU-sovereigns the figures are 57.57 % true liquids whereas 42.43 % are false liquids. This problem is the same for all other sub-classes. In fact, ESMA’s proposed COFIA model with issue size as sole proxy will imply that approximately between 40 % and 74 % illiquid bonds have incorrectly been classified as having a liquid market. Thus, ESMA’s COFIA model, where issue size is the only proxy for liquidity, is not fit for purpose.

In the Consultation Paper (page 102 paragraph 48), ESMA states that when applying the liquidity test, it is able to classify correctly as liquid/illiquid between 85 % and 99.7 % of the instruments, depending on the class. This statement is, as shown above, not correct. When looking at the figures the NSA understands that ESMA has arrived at this high success rate simply by adding the % of correctly classified as illiquids to the % of correctly classified as liquids. The NSA strongly questions this methodology used by ESMA in evaluating its own proposal. The goal must of course be to ensure that the model used for classification of liquid instruments is correct per se. In the opinion of NSA, at least 85-95 % of the instruments in each sub-class that are deemed liquid should also be truly liquid when applying the liquidity criteria (i.e. not as in the case of covered bonds only 26.45 %).

In addition to the problem with false liquids, one odd result of ESMA’s methodology with issue sizes as sole proxy is shown by the fact that with the present thresholds, Denmark will cover approximately 20 % of the “liquid” covered bonds in Europe (approximately 120 bonds out of 586 bonds)⁶. This is neither a workable nor acceptable solution.

Proposed COFIA model is not in line with Level I

The NSA questions whether the COFIA model proposed by ESMA - where issue size is used as a sole proxy for liquidity – is in line with the Level I definition of liquid market (article 2.1(17 a) of MiFIR). According to this definition, ESMA should take into account four criteria all relating to the trading behaviour of the instrument e.g. average frequency of transactions, average size of transactions, the number and type of market participants and average size of

⁶ See Consultation Paper table 5 page 104.

spreads. Thus, even if ESMA uses issue size as a first proxy, the Level I text requires also other liquidity criteria to be taken into account for the definition of liquid market.

Change to IBIA approach for bonds

As stated in our reply to the Discussion Paper, the NSA supports an Instrument by Instrument approach (IBIA) for determining whether bonds have a liquid market or not (if the COFIA model is not made more granular and reflects true liquidity). We do not share the concerns raised by ESMA that the IBIA model would be too complex from an operational perspective and also note that many of the respondents to the Discussion Paper actually preferred IBIA to COFIA for bonds. Moreover, using IBIA would have the advantage of avoiding the problem with “false liquids” as described above and would be more in line with the Level I definition of liquid market as the liquidity criteria would be used for each ISIN.

Amend the COFIA model

If ESMA decides not to change to an IBIA approach, a more granular COFIA model must be developed. Such model should ensure that at least 85-95 % of the instruments in each sub-class which are deemed liquid also are truly liquid. The sub-classes could be developed taking other criteria than issue size such as currency (e.g. euro/non-euro) into account.

If ESMA is not willing to change the use of issue size as the only proxy for liquidity, then ESMA must at least ensure that the thresholds of the issue sizes become significantly higher for all of the bond sub-classes. (For instance, in order to capture truly liquid instruments, the thresholds for covered bonds should be set at 2 billion euros). Alternatively, a liquidity test should be performed. This liquidity test should be developed in accordance with the criteria in article 2.1(17a) of MiFIR (such as in table 5, columns 5 and 6 of the Consultation Paper). However, please note that, as stated in our reply the Discussion Paper, the NSA takes the view that the liquidity criteria should be changed to 2400 trades during the 1-year period, the instrument should be traded at least on a daily basis and the average daily volume should be at least 10 million euros per day.

SSTI-thresholds must be lowered

The NSA agrees that the liquidity classification is closely linked with the Large in Scale (LIS) threshold and the Size Specific to the Instrument (SSTI) threshold and we support a flexible deferral regime as proposed by ESMA (Consultation Paper page 100 paragraph 35 see also replies to Q 77 and Q 83).

However, the level of the SSTI is much too high in ESMA's proposal. In order to be fit for purpose – i.e. ensure that liquidity providers are not subjected to undue risk caused by the transparency regime and SI-obligations – the levels of the SSTI need to be significantly lower. This is the case regardless if IBIA or COFIA is used. If the link between the LIS and the SSTI is maintained, the SSTI must as a maximum be 5-10 % of LIS and, for markets where retail clients are present, be set at retail market size. In Denmark, the retail market is reflected within a threshold of 500.000 euros as described above. (The NSA's views on SSTI threshold is described more in depth in Q77).

Need for recalibration of liquidity classification and thresholds

As mentioned in our reply to the Discussion Paper, the NSA supports introducing the new rules by a stepwise approach (rather than a “big bang”), carefully investigating the impact of each step before introducing the next step.

The NSA is also of the strong opinion that ESMA’s model for assessing liquidity is too static, with recalibration expected every two years (according to the Discussion Paper). This coupled with that fact that there seems to be little forward looking view as to how liquidity will change post MiFID II/MiFIR (Ex-Post Effects), means we would have to live with any harmful effects of a mis-calibration for two years. The proposal by NSA is instead to recalibrate within 6 months and thereafter on a yearly basis. It is absolutely crucial that any recalibration takes Ex-Post Effects into account, i.e. the consequences of the regulation. For the sake of legal certainty, it should also be clear from the RTS that ESMA undertakes to make such a recalibration of both liquidity classification and thresholds.

Questions:

Question 57 (1)

No, as the NSA prefers the IBIA approach for bonds. If ESMA decides to keep a COFIA model, the proposal must be amended. The sub-classes should be made more granular, and could take other criteria than issue size such as currency (e.g. euro/non-euro) into account.

If ESMA insists on using issue size as sole proxy, the thresholds must be increased in order to be more in line of what can be considered as liquid instruments. (As an example, for covered bonds, the issue size should be increased to 2 billion euros). Alternatively, the ISINs selected as a consequence of the issue size must pass an additional liquidity test using appropriate criteria developed in accordance with article 2.1 (17a) MiFIR.

In the opinion of the NSA, at least 85 % - 95 % of the instruments in each sub-class that are deemed liquid should also be truly liquid due to the liquidity test.

Also, if a COFIA model is adopted, the NSA thinks inflation-linked bonds should be added as a new sub-class. The reason for this is that the price formation for inflation-linked bonds is totally different from the price formation for notional bonds.

Please note that in addition to the above-mentioned amendments to the COFIA model, the SSTI must be lowered to 5 % -10 % of LIS or a fixed threshold corresponding to retail market size, e.g. maximum 500.000 euros.

Question 57 (2)

No, the NSA does not agree to ESMA’s proposals regarding the liquidity criteria.

First of all, in accordance with article 2.1 (17a) of MiFIR, ESMA should also take into account criteria such as number and type of market participants and the average spread. Thus, as stated in our reply to the Discussion Paper, where data is available, these criteria should also be used in order to ensure proper calibration of liquidity. As regards market participants, ESMA should take into account the number of willing buyers and sellers on a continuous basis.

In addition, we suggest that the criteria average frequency and size of transactions should be changed to 2400 trades during the 1-year period, that the instrument should be traded at least on a daily basis and the average daily volume should be at least 10 million euros per day. In this context, we also refer to our response to the Discussion Paper, where NSA suggested a combination of option 1 and option 2 which takes both the number of transactions and the number of trading days into account when determining average size of transactions.

Question 57 (3)

Yes, it follows from table 5 on page 104 of the Consultation Paper that ESMA's COFIA model to a very large extent results in illiquid instruments being incorrectly classified as liquid. This is not acceptable.

In the opinion of NSA, if a COFIA model is adopted, subordinated bonds should be classified as illiquid instruments per se. The sub-classes "Subordinated corporate bonds financial" and "Subordinated bonds non-financial" should therefore only be included in table 2 to Section 1 Annex III of the RTS 9 (see page 155 Annex B to the Consultation Paper).

<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>

No. As mentioned above, the NSA takes the view that the sub-classes should be made more granular, also taking into account other criteria than issue size such as currency (e.g. euro/non-euro).

If a COFIA model is adopted, "Inflation-linked bonds" should be added as a new sub-class. The reason for this is that the price formation for inflation-linked bonds is totally different from the price formation for notional bonds.

<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>

Please note that unless otherwise stated, NSA's reply below is valid for all securitised derivatives mentioned in the question (i.e. 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)

General comments:

As a general comment, regardless of the classes and sub-classes of derivatives contracts in this Consultation Paper, ESMA has taken an approach that captures sub-classes with very low activity as liquid in a way that would lead to adverse consequences. Increased requirements that stem from being considered as liquid will most likely lead to a decrease in the offering of these very rarely traded or rather small contracts. They will also lead to a significant raise in the prices due to the low amount of contracts.

The amount of analyzed classes of derivatives is huge and will be even larger as the remaining derivatives are listed and consulted in the addendum consultation paper. NSA would like to bring to ESMA's attention that the mapping of these classes and flagging them according to the final labels as liquid and illiquid will be a massive task. This work will be done fully manually in many firms and due to the huge amount of fields, even probabilities for mistakes are quite significant.

Questions:

To classify all securitised derivatives as liquid can only be acceptable for instruments which are de facto traded on (not only listed on) venues. Listing in itself is not a proxy for liquidity and therefore ESMA has to follow actual liquidity on given sub-class.

The NSA suggests that, for the avoidance of doubt, ESMA clarifies that bespoke securities derivatives are out of scope of the transparency regime.

For instruments actually traded on venue the proposed criteria and thresholds can be accepted. However, as stated on our reply to the Discussion Paper, securities derivatives which have the features of bonds should have the same treatment as bonds.

<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>

Yes, the NSA agrees to the proposed definition of securitised derivatives.

<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>

Please note that unless otherwise stated, NSA's reply below is valid for all interest rate derivatives mentioned in the question (i.e. 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)

General comments:

As a general comment, regardless of the classes and sub-classes of derivatives contracts in the Consultation Paper, ESMA has taken an approach that captures sub-classes with very low activity as liquid in a way that would lead to adverse consequences. Increased requirements that stem from being considered as liquid will most likely lead to a decrease in the offering of these very rarely traded or rather small contracts. They will also lead to a significant raise in the prices due to the low amount of contracts.

The NSA questions the data ESMA presents, i.e. in table 10 on page 116 of the Consultation Paper, we find it surprising that the most liquid instruments like "Long Bund up to 3 Months", "Medium Bund up to 3 Months" and "Short Bund up to 3 Month" are not included in the table. In addition, has row 1 and 2 in table 11 been switched? These inconsistencies raise concerns of the reliability of the data overall.

Moreover, the criteria for defining and classifying liquid/illiquid interest rate derivatives are too generic and simple and do not take into account all crucial characteristics of derivatives products. As a result the liquid class would include products that cannot be considered to be truly liquid in the market and therefore also not suitable for trading on venues. For instance, OTC derivatives contracts respond often to specified client need. Tailored contracts for individual hedging purposes should therefore not fall into the liquid category.

In the NSA's opinion, derivatives markets and products therein must be seen as a truly global market and instruments should only be considered liquid if they attract wider (for example cross-country) interest. The concern is that these (in fact) illiquid products would be subject to more stringent transparency requirements (if incorrectly classified as liquid) and become even more illiquid as a result. Too broad liquidity definitions should be avoided in order to ensure that risks can be properly hedged in the market in the future too and that companies are able to choose the product which is best suited for their purposes.

As an example, the following products are in our opinion not liquid at all but would still fall into the category of liquid products according to ESMA's current definitions (not an exhaustive list):

- NOK IR Swaps
- Inflation Swaps

- Certain swaptions, e.g. a 5 into 5 year maybe liquid, but not 7 into 12 year.

The amount of analyzed classes of derivatives is huge and will be even larger as the remaining derivatives are listed and consulted in the addendum consultation paper. NSA would like to bring to ESMA's attention that the mapping of these classes and flagging them according to the final labels as liquid and illiquid will be a massive task. This work will be done fully manually in many firms and due to the huge amount of fields, even probabilities for mistakes are quite significant.

As mentioned in our reply to the Discussion Paper in summer 2014, the NSA supports introducing the new rules by a stepwise approach (rather than a "big bang"), carefully investigating the impact of each step before introducing the next step. In this respect, a stepwise approach would mean that ESMA should only consider liquid a few of the most liquid derivative subclasses.

ESMA's model for assessing liquidity is too static, with recalibration expected every two years (based on the earlier discussion paper). This coupled with that fact that there seems to be little forward looking view as to how liquidity will change post MiFID II/MiFIR, means we would have to live with any harmful effects of a mis-calibration for two years. The proposal by NSA is to recalibrate within 6 months and thereafter on a yearly basis. It is absolutely crucial that any recalibration takes Ex-Post Effects into account. A faster recalibration cycle would allow for a stepwise approach as proposed above. This would mean that the positive effects of the new rules on transparency could become reality quickly and without harmful side-effects of big bang approaches.

Questions:

Question 61 (1)

Yes, ESMA needs to differ between floating leg maturities.

The NSA suggests using the tenor of the underlying floating-rate index as a criterion for defining sub-classes for interest rate derivatives. More specifically, it is absolutely necessary to distinguish between the 1 month, 3 month, 6 month and, if existent, the 12 month fixing tenor (in addition to the already used OIS index) which will lead to more representative results for the liquidity assessment. Implicitly we also suggest disregarding fixed-to-fixed single-currency and multi-currency swaps since they will not fall into any of the above sub-classes. Also, ESMA's analysis shows that these constructions can be considered illiquid across all currencies and tenors.⁷

For inflation derivatives we suggest to use the underlying inflation index as criteria for defining sub-classes.

Question 61 (2)

No. The parameters are fine per se but the thresholds do not reflect whether instruments are truly liquid, i.e. the thresholds are too low and will imply too many in fact illiquid instruments to be falsely considered as liquid instruments. To truly reflect the markets the NSA suggests

⁷ Only exceptions to this are the EUR-USD multi-currency swaps with tenors of 6 and 9 years. Taken the market for multi-currency swaps in to account these two results are rather surprising.

to raise the average notional number from 500 million euros to 1 billion euros, to increase the number of days traded from 80% to 90% and to increase the average number of trades per day from 100 to 400 (Cf. page 121 and 122 paragraph 73 in the Consultation Paper).

The NSA supports Option 2 as Option 1 would create problems in relation to the trading obligation. Trading obligation and broken dates would not work well together. Moreover, it should be noted that there is very little information value in including instruments with broken days. Therefore, Option 1 would not lead to better information at the same time as it would be a very costly and administratively burdensome rule for investment firms to implement. +/- 10 days should be set as the non-broken days.

Question 61(3)

Any interest rate swap has two legs: one fixed leg and one floating leg. The floating leg is indexed to an index i.e. Libor, OIS etc. with a specific maturity. Every currency has its own standard maturity of the index (i.e. USD - 3 month Libor). The sample used to assess the liquidity of a group of derivatives in one currency - IRS in SEK as an example - can only consist of transactions where the floating index of the swap has standard maturity. All other swaps are per definition illiquid.

If ESMA's proposal does not get amended as suggested in Q61 (1) any interest rate derivative which falls in to a tenor bracket will be falsely assessed as being liquid. This is regardless of the underlying fixing tenor of the floating-rate index but also regardless of the notional profile (bullet, serial, annuity, customized) and many other features of interest rate derivatives designed to cover end-users needs and demand.

Also, for inflation derivatives using only the currency as a criterion for liquidity is not sufficient. As an example, consider an inflation single currency swap in euro where a regional or local CPI-index is the underlying index. This trade would be assessed as being liquid even though the specific inflation index is trading at rare occasions only.

<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>

Yes, the NSA agrees to the proposed definitions of interest rate derivatives classes.

<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>

Unless otherwise stated, NSA's reply below is valid for all the equity derivatives mentioned in the question (i.e. (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).

Questions

The NSA prefers none of the options proposed by ESMA. The reason for this is that the equities derivatives market is dependent on market makers and liquidity providers. This is true even for markets such as in the Nordics where equity derivatives are traded on exchange. The criteria for determining liquidity proposed in the Consultation Paper fails to take this into account.

It is the firm view of NSA that only index options and index futures could be considered as having a liquid market. ESMA's own data gives a very clear indication of this fact; 99 % of all futures are index futures and 93 % of all options index options. However, even for such derivatives traded on exchange the liquidity must be determined against the background of the number of active market makers/liquidity providers, we propose minimum of two market makers. An alternative would be to link the liquidity measurement to a certain level of open balance. In any event the index must be a major, benchmark index.

<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>

Unless otherwise stated, the NSA's reply below is valid for all the equity derivatives mentioned in the question (i.e. (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).

General comments:

NSA assumes that proposed LIS and SSTI are based on value of underlying securities.

Questions:

Question 64 (1)

It is the firm view of NSA that only index options and index futures could be considered as having a liquid market, see arguments under response to question 64. However, even for such derivatives the liquidity must be determined against the number of market makers, or, alternatively the open balance per contract. In the opinion of NSA, a minimum of two market makers should be required in order for there to be a liquid market in index options and index futures. As alternative criteria for assessing liquidity, ESMA could look at the open balance.

Question 64 (2)

No comments

Question 64 (3)

The proposed level of SSTI for (liquid) index options and futures is much too high. Considering that the SI-obligations for liquid instruments are more stringent this would lead to increased risks to be an SI which in turn has a negative impact on their ability to provide liquidity to the markets. It is the firm position of NSA that the SSTI levels for equity derivatives must be lowered considerably in order to keep up an efficient and well-functioning market.

<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>

The NSA agrees with ESMA's proposal.

<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>

No comments on commodity derivatives.

<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>

No comments on commodity derivatives.

<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>

No comments on commodity derivatives.

<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>

No comments on emission allowances.

<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>

Yes. The NSA supports ESMA's proposal to add the following trading systems: RFQ and Voice. We also generally support the amended definition of RFQ but are concerned how the requirement to make public will work without damaging this trading model.

<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>

Yes since this facility can be useful if the non-equities markets become order driven in the future.

Although not covered by the wording of the question, the NSA would like to underline that we do not support the proposal in paragraph 21 on page 211 of the Consultation Paper, i.e. that the LIS threshold should be set until 30 April 2018 and calculated yearly. It is of outmost importance that re-calculation is made more frequently – every 6 months – and that the Ex-Post Effects of the regulation are taken into account.

<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>

No, the NSA does not have any other proposals regarding indicative prices, i.e. we agree that the methodology could be set by the trading venues. However, we are concerned of the signals of these indicative prices in illiquid instruments. For example, in Denmark there are approximately 2500 ISINs in covered bonds, where a significant part of these instruments are not traded at all. This implies that the indicative prices are connected with considerably uncertainty as it could signal prices which do not reflect executable price levels.

<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 NSA does not consider it absolutely necessary to include date and time of publication in the fields although it could be relevant for deferred transactions. We do not have proposals for further fields to be added.

Although not covered by the question we would like express strong support for the proposal not to include SI identification (paragraph 6 and 7 on page 216 of the Consultation Paper).

<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>

In the opinion of the NSA, the number of flags for non-equity transactions is too extensive. Many of the flags do not provide added value to the market and are costly to implement. NSA generally requests justification for these requirements and the use of certain flags. We urge ESMA to consider the need for proportionality in its proposals for the Level II rules especially from a cost/benefit perspective. Please also note that some of the flags (e.g. LIS and algo flag) could expose liquidity providers to undue risk. This is in particular true for smaller markets with a limited number of market makers where these flags and too detailed information would make it easy to identify who sits on a certain position. Such flags should therefore be deleted. It is also crucial that none of the flags require manual procedures in order not to create unnecessary operational risks.

<ESMA_QUESTION_CP_MIFID_74>

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

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

<ESMA_QUESTION_CP_MIFID_75>

General comment:

The NSA welcomes the fact that ESMA has proposed a more appropriate post-trade transparency regime in this Consultation Paper, i.e. which better deals with the risks faced by market makers/SIs and supports efficient markets.

We share ESMA's view that it is not possible to copy/paste the existing regime for Equities or the US transparency regime considering the major differences between these markets and EU non-equity markets.

We also agree that it is crucial that the deferral regime is flexible and calibrated in order to account for different trading systems and to give NCAs sufficient tools to achieve a proper balance between the needs of transparency and liquidity of local non-equity markets.

Questions:

Question 75 (1)

Yes, the NSA agrees to the 3-year initial implementation period.

Question 75 (2)

Yes, the NSA agrees to a maximum delay of 15 minutes during the initial implementation period.

Question 75 (3)

The NSA takes the view that a maximum delay of 5 minutes after the initial implementation period could work, provided that the Level II regulation provides for some kind of review mechanism that allows for revision in case it is shown that the 5-minutes delay has negative effects on non-equity markets in EU (e.g. decrease in liquidity).

It is essential that ESMA takes into account that the manual nature of non-equity markets can make it difficult to comply with a requirement of publication after 5 minutes. This is true today and can also be true 3 years after implementation of MiFIR. Close to real time trading is suitable for electronic venue based trading. Moreover it should be noted that for trades above retail market size conducted through an SI or other type of liquidity provider deferred publication will in most cases be necessary in order to protect them from undue risk.

<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, the NSA agrees that securities financing transactions etc. should be exempt from article 21. Please note that also repos and deliverance of underlying assets under derivatives contracts should be excluded.

<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>

Please note that unless otherwise stated, the NSA's reply below is valid for all bonds (i.e. 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)

General comments:

The NSA agrees with ESMA that it is necessary to have a flexible deferral regime as a means of reducing the negative effects that could be the result of an increased post trade transparency for some non-equity markets, in particular those smaller markets which are dependent on market making (such as the Nordics).

The NSA shares ESMA's view that it is not possible to copy/paste the current regime for Equities or the US transparency regime considering the major differences between these markets and the European non-equity markets.

The NSA also wants to stress it is crucial that any recalibration of thresholds takes Ex-Post Effects into account, i.e. the impact that the introduction of the new EU transparency regime will have on the liquidity of the instruments.

Questions:

Question 77 (1)

The NSA would like to express general support to ESMA for the deferral regime proposed in the Consultation Paper which we find more appropriately calibrated as it takes into account the risks faced by market makers/SIs (liquidity providers) and is also more in line with the political agreement on Level I.

In the opinion of the NSA, a shorter deferral time than T+2 (48 hours) would make it very difficult for market makers/SI to hedge their positions which would have a detrimental effect on the liquidity. In fact, on some smaller non-equity markets (e.g. where instruments do not trade every day or for which there exists no hedge) there is a case for even longer standard deferral time e.g. up to 10 days (see NSA reply to Discussion Paper).

However, the NSA asks ESMA to change the deferral rule to T+2 rather than 48 hours since this approach is more operational and in line with other rules, i.e. the CSDR settlement period of T+2, and will not cause the same conflicts with weekends etc. as 48 hours will do.

Question 77 (2)

No, the NSA does not agree. We are very concerned with the proposed SSTI level (50 % of LIS) which we consider to be far too high for all bonds - in particular for pre-trade and SI-obligations (articles 9.1 and 18 MiFIR). These very high SSTI thresholds have the effect of increasing the risks of SIs which in turn will have a negative effect on their ability to provide liquidity to non-equity markets to the extent that they do today. As a result, the costs for providing liquidity would increase, many SIs would step out from the market and competition will be negatively affected. This development would have very detrimental effects on the real

economy in particular for smaller markets such as in the Nordics where liquidity is dependent on market makers/SIs.

The SSTI and LIS are two different thresholds with very different aims. In our reply to the Discussion Paper, the NSA (as well as many other respondents) pointed to the fact that the SSTI threshold, according to the political agreement on Level I, intends to protect liquidity providers and SIs from “undue risk”. In order to achieve this goal, the SSTI threshold should be able to be adjusted for local market needs and not be set as one fixed threshold for the EU as a whole. However, if ESMA persists in having one SSTI-threshold for the whole of EU, it needs to be significantly lower than 50 % of LIS. It should be noted that the Level I text explicitly refers to the liquidity provider’s ability to hedge their risks and where a market consists in part of retail investors, the average value of transactions undertaken by retail investors (articles 9.1(b) and 9.5(d)ii of MiFIR). The SSTI threshold should as a maximum be 5% - 10 % of LIS and, for markets where retail clients are present, be set at retail market size. In Denmark, the retail market is reflected within a threshold of 500.000 euros (cf. footnote 5).

Question 77 (3)

Yes, the NSA agrees to the volume measures used to set LIS thresholds as specified in Annex II, Table 3 of draft RTS 9.

Question 77 (4)

Provided that the SSTI thresholds are set in accordance with the political agreement on Level I, i.e. so as to protect liquidity providers/SIs from undue risk and set at retail size, we see no reason for different thresholds for pre- and post-trade transparency. If this is not the case, the NSA considers an urgent need to differentiate between pre- and post-trade SSTI. Taking into account the nature of the risks incurred by a liquidity provider/SI and provided that ESMA’s proposals regarding post trade deferral are not changed, we believe it to be more important to lower the thresholds for pre-trade transparency/SI obligations than for post-trade transparency. The pre-trade/SI transparency SSTI thresholds should be maximum be 5% -10% of LIS and, for markets where retail clients are present, be set at retail market size. (In Denmark, the retail market is reflected within a threshold of 500.000 euros.)

Question 77 (5 a)

The NSA supports an annual recalculation of the thresholds (option 2).

Question 77 (5 b)

The NSA supports a recalculation after 6 months. The methodology for re-calculating thresholds from 2018 and onwards must be designed to take Ex-Post Effects of the transparency regulation into account, i.e. the effects that the introduction of the new EU transparency regime will have on the liquidity of the instruments.

<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>

Please note that unless otherwise stated, the NSA's reply below is valid for all interest rate derivatives mentioned in the question (i.e. 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).

General comments:

The NSA agrees with ESMA that it is necessary to have a flexible deferral regime as a means of reducing the negative effects that could be the result of an increased post trade transparency for some non-equity markets, in particular those smaller markets which are dependent on market making (such as the Nordics).

The NSA shares ESMA's view that it is not possible to copy/paste the current regime for Equities or the US transparency regime considering the major differences between these markets and the European non-equity markets.

The NSA also wants to stress that it is crucial that any recalibration of thresholds takes Ex-Post Effects into account, i.e. the impact that the introduction of the new EU transparency regime will have on the liquidity of the instruments and in the long run, on the stability of the markets as a whole if companies cannot properly hedge their risks from various sources.

It should be noted that derivatives serve an important role in allowing companies to manage risks arising from their commercial activities. If a product type is made too expensive for the end user, the end user may shy away from doing any hedging (at all), or if they cannot find the product that meets their specific needs they may use a less suitable product that leaves certain risks un-hedged (i.e. basis risk), or end users find it takes longer and is more difficult to fulfil their needs (i.e. execution risk). At an overall economic level this would increase systemic vulnerability as hedging levels could generally decrease and risks remain in the real economy.

It is likely that the greatest impact will be on those non-institutional end users wishing to hedge normal business risks, e.g. corporates (of various sizes) needing to hedge IR, FX risk etc. This could in turn lead to greater earnings volatility, greater challenges for those with cross-border operations (or growth ambitions in that direction), which will have a knock-on effect on investor returns (including pension funds etc.), employment, costs for consumers and overall growth and stability in the EU.

Questions:

Question 78 (1)

The NSA strongly supports ESMA's proposal for 48 hours standard deferral for eligible transactions (illiquid instruments, above LIS and above SSTI). This is a minimum deferral time for many smaller non-equity markets where liquidity is totally dependent on the ability of market makers/SIs to execute client orders against their own account. A shorter deferral time would make it very difficult for market makers/SI to hedge their positions. For some markets and instruments, there could even be a case for a longer standard deferral time.

However, in our opinion, the standard deferral rule should be changed into T+2 rather than 48 hours. This approach (T+2) would be more in line with other rules (i.e. the CSDR settlement rules) and will not cause the same practical problems with weekends etc.

Question 78 (2)

No, the NSA does not agree. We are very concerned with the proposed SSTI level (50 % of LIS) which we consider to be far too high for all interest rate derivatives - in particular for pre-trade and SI obligations (articles 9.1 and 18 MiFIR). These very high SSTI thresholds will have the effect of increasing the risks of SIs which will have a negative effect on their ability to provide liquidity to non-equity markets to the extent that they do today. As a result, the costs for providing liquidity will increase, many SIs will step out from the market and competition will be negatively affected. This development would have very detrimental effects on the real economy in particular for smaller member states such as in the Nordics where liquidity is dependent on market makers/SIs.

The SSTI and LIS are two different thresholds with very different aims. In our reply to the Discussion Paper, the NSA (as well as many other respondents) pointed to the fact that the SSTI threshold, according to the political agreement on Level I, intends to protect liquidity providers and SIs from "undue risk". In order to achieve this goal, the SSTI threshold should be able to be adjusted for local market needs and not be set as one fixed threshold for the EU as a whole. However, if ESMA persists in having one SSTI threshold for the whole of EU, it needs to be significantly lower than 50 % of LIS. It should be noted that the Level I text

explicitly refers to the liquidity provider's ability to hedge their risks and where a market consists in part of retail investors, the average value of transactions undertaken by retail investors (articles 9.1(b) and 9.5(d)ii of MiFIR). A maximum SSTI threshold that is 5% -10 % of LIS and, for markets where retail clients are present, set at retail market size, is more in line with Level I.

Question 78 (3)

Yes, the NSA agrees to the volume measures used to set LIS thresholds as specified in Annex II, Table 3 of draft RTS 9.

Question 78 (4)

Provided that the SSTI thresholds are set in accordance with the political agreement on Level I, i.e. so as to protect liquidity providers/SIs from undue risk and set at retail size, we see no reason for different thresholds for pre- and post-trade transparency. Taking into account the nature of the risks incurred by a liquidity provider/SI and provided that ESMA's proposals regarding post trade deferral are not changed, we believe it to be more important to lower the thresholds for pre-trade transparency/SI obligations than for post-trade transparency. The pre-trade/SI transparency SSTI thresholds should be maximum be 5% - 10% of LIS and, for markets where retail clients are present, be set at retail market size. (In Denmark, the retail market is reflected within a threshold of 500.000 euros, cf. footnote 5.)

Question 78 (5 a)

As proposed by the NSA across non-equity instruments, ESMA should change their approach on liquidity and take a stepwise approach instead of a big bang. With regard to derivatives this would mean i.e. that ESMA only considers some 5 to 10 most liquid sub-classes of interest rate derivatives to be considered liquid at first. In that case, the NSA would support yearly recalculation (option 2). Without a stepwise approach, the proposed model will imply that hundreds of derivatives sub-classes are considered liquid. In that case the NSA is concerned that a requirement of annual recalculation might mean continuous increase in compliance costs and administrative burden (i.e. to all the time check whether the recalculations affect the contract at hand or not). Thus, without a changed model for liquidity classification and/or stepwise approach, the NSA prefers not to have a requirement of yearly recalculation.

Question 78 (5 b)

The NSA supports a recalculation after 6 months. The methodology for re-calculating thresholds from 2018 and onwards must be designed to take Ex-Post Effects of the transparency regulation into account, i.e. the effects that the introduction of the new EU transparency regime will have on the liquidity of the instruments.

Question 78 (5 c)

No, the NSA would not use a different level of granularity for maturities shorter than 1 year. Yes, the maturities longer than one year could be grouped into the following buckets: 1-3 years, 3-6 years, 7-11 years, 11-15 years, 15-30 years and above 30 years.

<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>

No comments on commodity derivatives.

<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>

For index derivatives covering a benchmark index with at least two market makers, 48 hours may be a bit long. Different from all other on derivatives market end-of-day has been our culture for quite some time for exchange-traded equities derivatives (in other derivatives markets trading is not on exchange).

We do not understand how ESMA reaches the conclusion that 50 % of LIS should be equal to SSTI and thus do not agree at all to that principle. Pre- and post-trade thresholds should be separated, i.e. one LIS for pre-trade and another LIS for post-trade.

We do not understand the principle that pre- and post-trade thresholds are set at the same sizes (see arguments above).

The notional amount traded (contracts x size x strike/futures price) as volume measure makes sense and reasonable when comparing volumes across different strikes, maturities and underlying.

We urge ESMA to define an alternative mechanism for the LIS thresholds that is linked to ADV for underlying instruments – certainly LIS must be much higher for index derivatives for the market to work well.

<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>

Please note that unless otherwise stated, the NSA's reply below is valid for all securitised derivatives (i.e. 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)

General comments:

The NSA agrees with ESMA that it is necessary to have a flexible deferral regime as a means of reducing the negative effects that could be the result of an increased post trade transparency for some non-equity markets, in particular those smaller markets which are dependent on market making (such as the Nordics). A flexible deferral regime is also important considering that MiFIR does not currently provide for a step-by-step (phase in) approach.

The NSA shares ESMA's view that it is not possible to copy/paste the current regime for Equities or the US transparency regime considering the major differences between these markets and the European non-equity markets.

The NSA wants to stress that it is crucial that any recalibration of thresholds takes Ex-Post Effects into account, i.e. the impact that the introduction of the new EU transparency regime will have on the liquidity of the instruments.

Please also note that in the opinion of the NSA, securities derivatives which have the features of bonds should be treated same as for bonds.

Questions:

Question 81 (1)

The NSA supports ESMA's proposal for 48 hours standard deferral for eligible transactions (illiquid instruments, above LIS and above SSTI). This is a minimum deferral time for many smaller non-equity markets where liquidity is totally dependent on ability of market makers/SIs to execute client orders against their own account. A shorter deferral time would make it very difficult for market makers/SI to hedge their positions. For some markets and instruments, there could even be a case for a longer standard deferral time.

However, in our opinion, the standard deferral rule should be changed into T+2 rather than 48 hours. This approach (T+2) would be more in line with other rules (i.e. the CSDR settlement rules) and will not cause the same practical problems with weekends etc.

Question 81 (2)

No, the NSA does not agree. We are very concerned with the proposed SSTI level (50 % of LIS) which we consider to be far too high for all securitised derivatives/bonds - in particular for pre-trade and SI-obligations (articles 9.1 and 18 of MiFIR). These very high SSTI thresholds have the effect of increasing the risks of SIs which will have a negative effect on their ability to provide liquidity to non-equity markets to the extent that they do today. As a result, the costs for providing liquidity would increase, many SIs would step out from the market and competition be negatively affected. This development would have very detrimental effects on the real economy in particular for smaller markets such as in the Nordics where liquidity is dependent on market makers/SIs.

The SSTI and LIS are two different thresholds with very different aims. In our reply to the Discussion Paper, the NSA (as well as many other respondents) pointed to the fact that the SSTI threshold, according to the political agreement on Level I, intends to protect liquidity providers and SIs from "undue risk". In order to achieve this goal, the SSTI threshold should be able to be adjusted for local market needs and not be set as one fixed threshold for the

EU as a whole. However, if ESMA persists in having one threshold for the whole of EU, it needs to be significantly lower. It should be noted that the Level I text explicitly refers to the liquidity provider's ability to hedge their risks and where a market consists in part of retail investors, the average value of transactions undertaken by retail investors (articles 9.1(b) and 9.5(d)ii of MiFIR). A maximum SSTI threshold that is 5% - 10 % of LIS and, for markets where retail clients are present, set at retail market size, is more in line with Level I.

Question 81 (3)

Yes, the NSA agrees to the volume measures used to set LIS thresholds as specified in Annex II, Table 3 of draft RTS 9.

Question 81 (4)

Provided that the SSTI thresholds are set in accordance with the political agreement on Level I, i.e. so as to protect liquidity providers/SIs from undue risk and set at retail size, we see no reason for different thresholds for pre- and post-trade transparency. Taking into account the nature of the risks incurred by a liquidity provider/SI and provided that ESMA's proposals regarding post trade deferral are not changed, we believe it to be more important to lower the thresholds for pre trade transparency/SI obligations than for post-trade transparency. The pre-trade/SI transparency SSTI thresholds should be maximum be 5% - 10% of LIS and, for markets where retail clients are present, be set at retail market size. (In Denmark, the retail market is reflected within a threshold of 500.000 euros, cf. footnote 5.)

Question 81 (5 a)

As proposed by the NSA across non-equity instruments, ESMA should change their approach on liquidity and take a stepwise approach instead of a big bang. With regard to derivatives this would mean i.e. that ESMA only considers some 5 to 10 most liquid sub-classes of derivatives to be considered liquid at first. In that case, the NSA would support yearly recalculation (option 2). Without a stepwise approach, the proposed model will imply that hundreds of derivatives sub-classes are considered liquid. In that case the NSA is concerned that a requirement of annual recalculation might mean continuous increase in compliance costs and administrative burden (i.e. to all the time check whether the recalculations affect the contract at hand or not). Thus, without a changed model for liquidity classification and/or stepwise approach, the NSA prefers not to have a requirement of yearly recalculation.

Question 81 (5 b)

The NSA supports a recalculation after 6 months. The methodology for re-calculating thresholds from 2018 and onwards must be designed to take Ex-Post Effects of the transparency regulation into account, i.e. the effects that the introduction of the new EU transparency regime will have on the liquidity of the instruments

<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>

No comments for emission allowances.

<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>

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

A flexible regime enables NCAs who has 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 of MiFIR). To keep this calibrated approach is very important taking into account that no phase in approach is proposed for the EU-wide transparency regime!

As described by NSA in our reply to the Discussion Paper, on some smaller non-equity markets (e.g. where instruments do not trade every day or for which there exists no hedge) there could be a case for even longer standard deferral time than T+2 e.g. up to 10 days.

<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>

Question 84 (1)

Yes, the NSA agrees.

Question (84 (2))

No, since the calibration is done at asset class level, a drop in liquidity in one or a few ISIN will not affect the asset class as a whole and thereby it will not trigger the suspension in pre- and post-trade transparency requirements that is required.

Question 84 (3)

No comments.

<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>

Yes, the NSA agrees with ESMA's proposal.

<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>

The NSA does not have any comments to the methodology.

However, as specified in Q39, the NSA assumes that a transaction in a liquid share at or above Large-in-Scale which is concluded as a negotiated transaction and thereby within the rules of the relevant trading venue in question, may be reported under the LIS pre-trade waiver.

<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>

No comments.

<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>

As a general remark, it is crucial that determining liquid market for the purpose of the trading obligation should follow the same approach as for MiFIR 2.1(17a) but not necessarily using the same thresholds.

It is very important that all parameters are taken duly into consideration in order to ensure that the derivatives in question are truly liquid and ready for a trading obligation. Numbers of trading venues and number of ready and willing buyers and sellers on a continuous basis

could also be good parameters to take into account. In order for current OTC derivatives to fall under trading obligation there should be more than one available trading venue. At least one but preferably more venues must be open to all interested parties.

Please note that as the thresholds remain unknown for the time being it is very difficult to provide an assessment of the consequences and thereby a useful input to ESMA.

As stated in our reply to the Discussion Paper, it is also of outmost importance that ESMA takes into account the effect that the regulation will have on end users and on future market behaviour, i.e. Ex -Post Effects.

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

As a general remark, it is crucial that determining liquid market for the purpose of the trading obligation should follow the same approach as for MiFIR 2.1(17a) but not necessarily using the same thresholds.

It is very important that all parameters are taken duly into consideration in order to ensure that the derivatives in question are truly liquid and ready for a trading obligation. Numbers of trading venues and number of ready and willing buyers and sellers on a continuous basis could also be good parameters to take into account. In order for current OTC derivatives to fall under trading obligation there should be more than one available trading venue. At least one but preferably more venues must be open to all interested parties.

Please note that as the thresholds remain unknown for the time being it is very difficult to provide an assessment of the consequences and thereby a useful input.

As stated in our reply to the Discussion Paper, it is also of outmost importance that ESMA takes into account the effect that the regulation will have on end users and on future market behaviour, i.e. Ex -Post Effects.

<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>

No comments.

<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>

No comments.

<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>

No comments.

<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>

First of all, the NSA requests that firms only should apply to one set of rules, i.e. the ESMA present guidelines “Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities” are workable and should be implemented unchanged and serve as the only standard for testing and control as also indicated in the consultation paper page 347 paragraph 1. However, it is not exactly clear to which extent and where there have been any changes (ESMA only states that “ESMA has expanded on the guidelines by further specifying that compliance staff need to be in close contact with relevant trading personnel”) and we believe it is a fair requirement that ESMA specifies the changes in more detail (a delta review) in order for firms to assess the additional requirements relatively easy.

<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>

The NSA welcomes that all trading venues also are required to implement mandatory pre-trade control of orders since this is the crucial last “line of defence” in case investment firms’ own pre-trade control fails.

This pre-trade control should reject orders that deviate significantly from last traded price. The purpose of safeguards is primarily to avoid erroneous order entries. A good example of a future requirement could be the facility supplied by Nasdaq in its previous trading system, Saxess, where the standard price range for trading safeguards was +/-15% for liquid shares and +/- 50% for penny shares and illiquid shares. If orders were outside these price ranges, they were rejected. In case of Fast Market (i.e. extreme price volatility, extreme order flows, extreme order imbalances, extreme external events affecting the financial sector companies), the trading safeguard could be disabled. This was practically done by changing the parameters on submarket level by setting all thresholds to +/-100%. (*Nasdaq does not offer this facility anymore*).

<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>

Market impact assessment as a pre-trade control is basically meaningless since a comprehensive description would require live testing of algorithms. And how should a description serve as a pre-trade control? NSA suggestion is as described in Q95.

<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>

The NSA is very concerned with article 27(1) in MIFID which is further specified in ESMA's Technical Advice since the wording indicates that investments firms costs - when routing orders to different venues - should be included in the cost element in the best execution requirement. Is this correctly understood?

If so, as we do agree to *transparency* on various cost, we do believe that including venue cost when determining best execution could imply an element of conflict of interest, since the investment firm will have an incentive to route to venues with the lowest costs and these are not necessarily the venues where clients get the best execution in respect of i.e. price, time and market impact. The investment firm should always focus on the best interest of clients.

We therefore request ESMA to elaborate on this requirement with respect of the considerations listed above.

<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>

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<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>

Article 48 of MiFID II requires a regulated market to have in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing. It is important that member or participant has a primary responsibility to test their own algorithms. Testing on members algorithms should not be a duty of the trading venue. (Annex B, RTS 14, page 247, article 10).

<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>

No. The market making requirements will be counterproductive for on-venue trading and liquidity.

ESMA proposes that firms will be deemed market maker and must comply with certain binding agreements and commercial terms set by a trading venue, if they are posting firm, simultaneous two-way quotes of comparable size and at competitive prices for at least one instrument in no less than 30% of the daily trading hours. However, these requirements will capture the traditional investment firms and leave behind the firms that should be captured, i.e. firms posting non-firm, one-way quotes etc. The proposal is not in line with the intention of the directive and will imply that investment firms will do what they can to avoid being captured, meaning less “firm, simultaneous two-way quotes of comparable size and at competitive prices” on the trading venues and much more SI trading. The NSA does not believe this is a wanted outcome.

In addition, with the lower tick sizes, as ESMA also proposes, market makers as a whole will face a decrease in the payment the risk they are taking, which will accelerate this inappropriate development. For a new proposal on tick sizes which will take all kind of shares from “illiquid” to “super liquid” into account, please see Q 124.

This is not in the interest of neither investors, trading venues, investment firms nor the community as a whole.

However, since the requirements on “two-way quotes ...” are set at Level I, the only option seem to be to increase the 30% threshold considerably to i.e. 80% - 90% before the market

maker are forced into binding, written agreements. Then the additional requirement for how long time the Market maker must provide firm quotes can be increased correspondingly.

In addition, we also request ESMA to ensure that already well-functioning market making agreements are not compromised by the new regulation, i.e. systems where i.e. one investment firm has market making obligations with an issuer in a specific financial instrument (i.e. one order book).

<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>

No, see response to Q104. The threshold should be much higher in order not to force flow away from the trading venues, i.e. 80% - 90%.

<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>

No. The thresholds must correspond to the increased threshold on i.e. 80 % - 90% before investment firms are forced to enter into binding written agreements.

<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>

Yes.

<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>

No.

<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>

Yes, we agree with the RTS. It makes very good sense that the calculations of the thresholds are based on the same formula. However, the NSA finds it strange that ESMA has not the mandate to set any thresholds or sanctions for the OTR. ESMA should be aware that this may result in very different threshold and sanctions across Europe. In other words, venues may have an incentive to compete on this parameter, which is not in the interest of well-functioning markets. ESMA should consider developing guidelines on adequate thresholds, which support genuine orders.

<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>

The definition is sufficiently precise.

<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>

Yes.

<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>

No.

<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>

In order to ensure consistency, auctions should be excluded, cf. Q52.

<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>

Yes.

<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>

Yes.

<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>

When rebates exceed trading fees on other venues.

<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>

Not at present.

<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>

Absolutely not. Early look should be considered as market abusive behaviour.

<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>

Some venues provide rebates to algorithmic and high frequency flows (100% automated without any human involvement) e.g. Nasdaq. This fee structure favours e.g. HFT firms and should be banned.

<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>

Yes. Cliff edge implies rebates on all trading once a threshold is exceeded (also trades done before the threshold was reached), whereas volume discount only covers trades after the threshold is exceeded.

<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>

First of all, ESMA should use turnover as an indicator of liquidity since this is a much more correct proxy.

Secondly, ESMA should choose the most relevant market in terms of liquidity since this cover the most liquid market and apply a consistent approach throughout the Level II rules, as also previously stated.

<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>

From a Nordic perspective, ESMA's proposal will imply a decrease in tick sizes for approximately 1/3 of the shares in total and approximately 40% of the liquid shares. This is too many.

Right tick sizes are crucial for liquidity and volume. Too low tick sizes will result in disincentive for traders to quote thereby reducing the depth of the order books. While changes in tick size might improve the liquidity for small size orders, institutional traders would be worse off. They have to bear increased trading costs following the decline in depth throughout the entire order book (market impact).

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

In addition, the lower tick sizes will accelerate the negative impact of the proposed market making obligations as described in RTS 15 and Q104 and imply considerably increased SI-trading.

We suggest that the table is adjusted upwards in order to support liquidity and volume as suggested below:

Proposal for new tick size regime:

1.1 Introduction

When MiFID II is implemented in January 2017 through all EU markets, the tick size rules will be governed by ESMA. The rules will rely on metrics rather than decision by the venues and/or the members.

These suggestions are welcomed, it will bring level playing field and remove risk of rule arbitrage between the venues.

In latest Consultation Paper (and the Discussion Paper from summer 2014), there are some comments that are helpful in order to understand the rationale for the suggestion:

"Moreover, looking at market participants, it appears that when the spread on this blue chip is between 6 bps and 7 bps, their activity is well balanced between aggressive trades and passive trades". MiFID Discussion Paper, page 308 (May 2014).

"Most of the respondents further recommended that the new tick size regime should imply limited changes from the current regime in order to avoid an overall large decrease or increase in current tick sizes" Consultation Paper 4.6 page 418 (December 2014).

We concur with both these statements.

1.2 Model

The chosen model will rely on metrics based on average number of trades per day. Even if one can argue that Average Daily Turnover might be a better proxy, the proposed model is accurate enough.

The text (page 423 in the Consultation Paper) says that “ESMA proposes to build the new tick size regime on the basis of the existing FESE table 2 with three tick size increments: 1, 2 and 5”.


We welcome both these proposals:

A new increment “2” will smoothen out the jumps in the leeway (measured in basis points). To use current FESE-2 as the “base case” will reduce the risk of undesired negative effects of a large increase or decrease in current tick sizes. Calculations of the Nordic index stocks support the opinion that FESE-2 is a well-balanced option (see details in Annex.)

1.3 Proposed corrections

The proposed model is a very sensible. However, the connection between the proposed liquidity classes (i.e. “FESE 2 (amended with three decimals)”) seems to be disconnected from the proposed liquidity band. The current FESE-2 table (in red below) is attached to the liquidity group “FESE-2 up 1 level”.

		LESS LIQUID → → → → → → → → → → → LIQUID				
		FESE 2 up 3 levels	FESE 2 up 2 levels	FESE 2 up 1 level	FESE 2 (amended with three increments)	FESE 2 down 1 level
Liquidity bands						
Price ranges		0-100	100-500	500-2000	2000-15000	15000-
0	≤...< 0,1	0,0002	0,0001	0,0001	0,0001	0,0001
0,1	≤...< 0,2	0,0005	0,0002	0,0001	0,0001	0,0001
0,2	≤...< 0,5	0,001	0,0005	0,0002	0,0001	0,0001
0,5	≤...< 1	0,002	0,001	0,0005	0,0002	0,0001
1	≤...< 2	0,005	0,002	0,001	0,0005	0,0002
2	≤...< 5	0,01	0,005	0,002	0,001	0,0005
5	≤...< 10	0,02	0,01	0,005	0,002	0,001


 FESE-2

Our proposition is therefore:

- The proposed model is very well balanced
- Adjust the table “to the right” in order to match “FESE 2 (amended with three decimals)” with FESE-2 table
- Remove the 0-100 group and included the most illiquid stocks in the a slightly amended “0-500 group”
- Introduce a new group for the most ultra-liquid stocks (“30000-)

FESE-2

LESS LIQUID			→ → → → → → → →	→ → → → →	LIQUID	
FESE 2		FESE 2	FESE 2	FESE 2	FESE 2	
up 3 levels		up 2 levels	up 1 level	(amended with three increments)	down 1 level	

Liquidity bands						
Price ranges	0-100	0-500	500-2000	2000-15000	15000-	30000-
0 ≤...< 0,1		0,0002	0,0001	0,0001	0,0001	0,0001
0,1 ≤...< 0,2		0,0005	0,0002	0,0001	0,0001	0,0001
0,2 ≤...< 0,5		0,001	0,0005	0,0002	0,0001	0,0001
0,5 ≤...< 1		0,002	0,001	0,0005	0,0002	0,0001
1 ≤...< 2		0,005	0,002	0,001	0,0005	0,0002
2 ≤...< 5		0,01	0,005	0,002	0,001	0,0005
5 ≤...< 10		0,02	0,01	0,005	0,002	0,001

FESE-2

Annex

1.3.1 Effects on the index stocks on Nasdaq Nordic

Having in mind that the target spread on the blue chips stocks should be around 6-7 bp, its interesting to do some calculations on the index stocks on NasdaqOMX.

Theo unw (Theoretical unweighed). Theoretical spread if the STTR *) is 1.0 (always on tightest possible spread) using equal weight for all stocks.

Theo wt ((Theoretical weighed). Theoretical spread if the STTR *) is 1.0 (always on tightest possible spread) using index weights for all stocks.

Adj wt (Adjusted weighted). Time weighted spread, adjusted with STTR *), with index weights. This value is close to the “true” spread for the index.

		theo unw	theo wt	adj wt
	s30	6,1	5,5	7,0
	c20	5,2	4,9	8,2
	h25	5,5	5,6	8,3

One important observation is that Average weighted spread for OMXs30, OMXc20 and OMXh25 is already not far from 6-7 bp.

*) *STTR = Spread-to-tick-ratio* (STTR) – “number of ticks between the bid and the offer”

However, we are aware that a number of shares in Europe are “super-liquid” and will face considerably higher tick sizes with ESMA’s proposal as well as with the NSA proposal. And we recognise that other markets might see a need for more granularities in the super-liquid end of the table or an additional table for super liquid shares. It is just crucial that ESMA does

not apply more aggressive (lower) tick sizes than suggested by the NSA on the Nordic markets since this will be detrimental for on-order book trading and volume.

<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>

Yes. Maybe the NCAs should form a working group with relevant market experts to consult with its estimates.

<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>

Yes.

<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>

No.

<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>

No, this is only relevant for shares since it is the (spread of) shares which are relevant for other equity like products.

<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>

Until a transition period (one year from 3 January 2017) has ended it should be considered to introduce more frequent adjustments and maybe even an emergency clause in case a considerable (e.g. 10%) drop in liquidity is observed.

<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>

If the levels are adjusted as suggested in Q124, we do not expect considerable short term impact.

<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>

Yes, for the purpose of tick sizes, we do.

<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>

1. 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>

No. The data disaggregation should not be divided into two levels (article 1 and 2 in RTS 22), where article 2 is not mandatory, due to article 3. The venues have the data and should be required to offer the unbundling as described in both articles since market participant need the information and should not dependent on an arbitrary evaluation by the venues. We all know that art. 2 and 3 will result in a battle to get the venues to provide the requested information.

In case ESMA insist on a mandatory (article 1) and a voluntary section (article 2), we request that article 2, a) and b) are moved to mandatory disaggregation (article 1) AND that the article 3 is expanded with concrete measures to determine when there is “insufficient demand for additional disaggregation”. The NSA urges ESMA to consider that if 10% or more of the members of a venue or 10% or more of the market share in a given financial instrument request additional disaggregation according to article 2 in RTS 22, this must be accommodated within 30 business days from the request is made. These thresholds must be included in the RTS.

In addition, the venues could face lesser requirement on disaggregation IF Copenhagen Economics suggestion⁸ on cost based price regulation of raw data is introduced since this will create a competitive market for all parties on processed data and the input prices (the raw data) are priced at cost level.

<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>

The NSA supports as a main rule that the seller should report provided there is an exemption allowing SIs to report regardless if it is buyer or seller.

<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.

⁸ <http://www.copenhageneconomics.com/Website/Publications/Public-Finance-Financial-Markets.aspx>

<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>

2. 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>

3. 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_185>

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

<ESMA_QUESTION_CP_MIFID_186>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_186>

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

<ESMA_QUESTION_CP_MIFID_187>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_187>

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

<ESMA_QUESTION_CP_MIFID_188>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_188>

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

<ESMA_QUESTION_CP_MIFID_189>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_189>

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

<ESMA_QUESTION_CP_MIFID_190>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_190>

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

<ESMA_QUESTION_CP_MIFID_191>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_191>

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

<ESMA_QUESTION_CP_MIFID_192>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_192>

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

<ESMA_QUESTION_CP_MIFID_193>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_193>

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

<ESMA_QUESTION_CP_MIFID_194>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_194>

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



<ESMA_QUESTION_CP_MIFID_195>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_195>

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

<ESMA_QUESTION_CP_MIFID_196>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_196>

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

<ESMA_QUESTION_CP_MIFID_197>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_197>

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

<ESMA_QUESTION_CP_MIFID_198>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_198>

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

<ESMA_QUESTION_CP_MIFID_199>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_199>

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

<ESMA_QUESTION_CP_MIFID_200>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_200>

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

<ESMA_QUESTION_CP_MIFID_201>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_201>

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

<ESMA_QUESTION_CP_MIFID_202>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_202>

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

<ESMA_QUESTION_CP_MIFID_203>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_203>

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

<ESMA_QUESTION_CP_MIFID_204>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_204>

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

<ESMA_QUESTION_CP_MIFID_205>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_205>

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

<ESMA_QUESTION_CP_MIFID_206>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_206>

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

<ESMA_QUESTION_CP_MIFID_207>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_207>

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

<ESMA_QUESTION_CP_MIFID_208>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_208>

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

<ESMA_QUESTION_CP_MIFID_209>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_210>

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



<ESMA_QUESTION_CP_MIFID_211>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_212>

4. 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>

None of the listed formats support the new reporting requirements. It is desirable to develop a general format for reporting financial information at all. The format should be tailored to the requirements of all EMIR, MiFID, CSDR and SFT. The format could possibly assume TREM or FpML or keeping the present XML format. It should be noted that a quick access to a suitable format affects the conditions for an adequate reporting by January 2017.

<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>

Firms welcome ESMA's efforts to define what constitutes a 'transaction' and 'execution' for the purposes of transaction reporting. We also welcome clarity on the activities that are not included in the definition. However, firms have the following comments with regards to the definition:

With regard to what is a reportable transaction under MiFIR and what is not, we would like ESMA to comment on the overlapping requirements of EMIR and MiFIR transaction reporting. MiFIR article 26(7) seems to suggest that EMIR should be sufficient and double reporting of derivatives is not the intention of the Commission. However, as of now EMIR reports do not fulfil the requirements set out in the mentioned MiFIR article. Is it in the intention of ESMA that transactions that fall under the EMIR reporting obligation need not to be reported (again) under MiFIR? Is it the intention of ESMA to modify EMIR requirements to comply with MiFIR articles 26 (1), (3) and (9)?

Ref 22 i: We interpret the wording so that it relates primarily to derivative transactions considered on the view of a client who has an interest and his agreement with his counterpart. However, the transaction cannot be simplified classified as either buying or selling, see also Q217. It must be described how the decrease/increase should be reported when using the modification of contract –field in combination with seller/buyer info.

Ref 22 iii: Unclear what is a transaction? Is it the execution or the purchase/sale or both? Or should it be expressed "a purchase or a sale that follows the exercise of options."

Ref 22 iv: If the rights are financial instruments they are reportable. If they are not financial instruments they are not reportable. It is according to the rules. According to the proposal, Is the intention that the trades are reportable, even if they are not financial instruments, because there are "underlying" shares that are financial instruments?

Ref 22 v: Unclear what transfers between "funds" means, investment funds? What is meant by transfer?

Ref 22 vi: The example raises many questions.

We would like to get more clarification on what ESMA means by "in specie transfers where there is a change in beneficial ownership, gifts and transfers of title". Should we interpret that this means all kinds of transfers of title of securities, also in situations like inheritance (original owner has died), 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.

Consider 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”
- Etc

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 could not 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.

According to the wording gifts and pledges with transfer of ownership shall be considered as transactions also means departing from the commercial transaction in which one party sells and the other party buys and instead focuses on the actual transfer of ownership - which is an entirely different thing. You could even raise the question if this should be interpreted as, besides the regular transaction report you should also report when the actual change of ownership takes place meaning that even the custody bank should report, what is already reported, with the risk of double reporting?

It is also questionable whether information on gifts and transfers may represent the information necessary to prevent market abuse, which is one of the main purposes of the TRS reporting. Suspected AML behaviour should be reported but in another regulated way

We propose to add a comment to RTS 9, article. 3 (3) j:. We propose to change RTS 9, article 3(3j). The market abuse element is not present in the types of transactions covered by the exemption and should rightfully not be treated as a ‘transaction’. However, the thresholds mentioned in the article are so low that the exemption will not be of use. We suggest to set a cap at 5.000 euros and 2.500 euros respectively.

We propose that ESMA would remove the reporting requirement on transfers of title when the activity is purely a custody operation. However, if ESMA intends to keep the requirement, we propose that ESMA would study the custody processes, and design a separate set of reporting requirements that would make sense, considering the type of activity.

<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>

Ambiguities in the "Clarification or issues raised on inclusion of specific activity" especially 22-27 raises many questions rather than clarifies the issue.

<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

In general the answer is no. However, after reading the draft RTS 32 article 4(1) we feel that additional clarification is needed 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 draft RTS 32 article 4(1)(a)(iv). 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 is sufficient and results in successful transmission? A full list of the expected transmission fields (if applicable) would be of great help.

<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>

We support the proposed changes! However the changes must be supplemented with rules where transaction could not be classified as "Buyer" or "Seller" (e.g. derivatives, gifts etc.) and must be clarified with examples.

<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>

In general, firms believe that, in order to achieve clarity as to the population of each transaction reporting fields, this will require detailed scenarios to be analysed and examples on how fields are expected to be populated for each of the scenarios. We will therefore encourage ESMA to work with the industry to put in place - in good time before the implementation deadline January 3rd 2017 - a transaction reporting guide, which will assist firms in achieving accurate reporting. In the absence of such a guide, investment firms might end up interpreting the population of each field differently. Firms suggest that ESMA clearly identifies where fields are Mandatory / Optional and what values ESMA expects in the fields where data is applicable or does not exist for a specific transaction report.

Fields 8 – 19 Firms would like to reiterate their concern with amount of personal data that ESMA is suggesting to include in each transaction report. We believe that for natural persons the national ID number uniquely identifies each person and we therefore do not agree that additional information in order for competent authorities to monitor for market abuse. Additional information might only add noise to the reports as it leaves more room for errors. For example, we question how including the date of birth of an individual in the reports is considered as an essential piece of information for market abuse purposes when that person is already uniquely identified by a national ID number. In addition, ESMA also requires the post code of the client to be identified in the reports. As ESMA is aware individuals can change addresses very often and could also have several addresses. We therefore think that

requiring firms to include this additional information in the transaction reports is unreasonable and disproportionate.

Field 11, 26, Country of residence. Where a natural person is a national of more than one EEA country, the country code of the first nationality when sorted alphabetically by its ISO 3166-1 2 character code and the highest priority identifier obtainable related to the first nationality shall be used.

It is not uncommon that clients have multiple citizenships. However this is more seldom known by the investment firm. We assume that by the client supplied citizenship, previously certified by license or passport should not have to be questioned as the only one.

We would also point to the challenge and cost of continually updating information of identifiers in other countries. Tasks are usually not readily available. Usually, the data is highly classified. To check and update the data is thus a costly and administratively a heavy burden. We would also like to point out that one of the main objectives of the Financial EU directives and regulations is that the investment firms in Europe will compete among themselves throughout Europe and it should be easy for customers to purchase financial services from the investment firm of choice in all of Europe. The proposed regulation risks counteract this.

The field 50, Consideration, has to be clarified. Is this synonymous with Gross Amount or could it be calculated from the other already reported fields? There is as well a reference to Price notation (field 46) that I just a sign.

If the CFI code in Field 55 will become mandatory the code has to be developed to cover different kinds of derivatives. As long as the list of CFI codes is not complete and covers all types of securities, this code may only be optional.

With regard to field 58 in relation to baskets it should be noted that a basket can consist of numerous ISINs/constituents and hence field 58 should be able to handle this, alternatively to require only the top (by weight) 5/10 ISINs.

Field 77, Short Selling Indicator:

We would like to get additional clarification on how to identify short sale in transaction reporting. It could be interpreted that there are contradictory requirements in MIFIR and Regulation (EU) No 236/2012.

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.

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.

When reporting were the clients is short selling then Firms will have to rely on the clients accurately informing them of the fact that they are short selling. Notifications of customers' short selling positions are not a responsibility for the service provider/broker according to short selling regulation and there is no obligation to ask if customer is short or not according to short selling regulation. It could be questioned if customer can be responsible for providing short selling information to one or more individual brokers.

ESMA SSR regulations are specific to certain assets and market maker exemption. Firms recognise that they must retain sequencing information on orders and that this may inform when a short sell is being conducted by a particular trader but given the requirement to identify at an entity level and when MM exemption is/ is not applied, there are challenges where firms may have many orders happening across different trading desks/ locations that are over-riding each other with regards to short selling at an entity level especially when using a systemic approach such as a VWAP model.

For firms own short selling there are practical difficulties with the firm to calculating continuously across the trading day whether a particular transaction was / was not short, whether a borrow is in place or whether a borrow that was in place has had to be returned or where settlement has failed . Additionally firms may hold assets in fungible lines for example global bonds that have Euroclear and DTC lines. Firms risk management systems and the issuer would see these as the same line of stock with a common ISIN but without clear guidance firms may under or over-disclose as a short sell.

The “details to be reported” is interpreted so that when the investment firm transmits an order to a broker the short sale indicator will be omitted. We support this approach as it is important to not forward the information of the seller's position to anyone else but the client's investment firm.

Field 78. The description of how the field must be filled in is missing.

Field 80 last sentence in the column details to be reported "Who shall persist it into transaction reporting" how far does this responsibility, is it the entire chain?

<ESMA_QUESTION_CP_MIFID_218>

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



<ESMA_QUESTION_CP_MIFID_219>

Yes.

<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>

According to the #142 in the Consultation Paper the (equity) trading venue will provide the waivers (R, N, O, P and L) in the trade confirmation to the investment firm.

We do also expect when the trading venue reports “P” that is a response to the investment firm’s report, if reported to a trading venue, of a negotiated transaction supplemented with necessary information why the transaction do not have a market impact.

Examples of this kind of information are:

- B Benchmark trade
- X Agency cross trade
- G Non-price forming trades
- S Special dividend trades
- T Technical trade
- P Negotiated trades subject to conditions other than the current market price

This information must be included in the trade confirmation and then sent further when the investment firm reports the transaction to the CA.

Provided the trading venue provides necessary information in the trade confirmation, as described above, the TR-reporting will not cause big problems, however please note our response to question 51 regarding manual procedures for some post-trade flags.

<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>

Yes.

<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.

<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>

We do not foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity.

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

We expect clear benefits and support the introduction of the LEI. However we must not forget the small clients. They will face a difficult decision before making the first step. Before making the first transaction, the client must consider the cost of acquiring and maintaining its LEI for example 10 year. Approximately 1.000 euros is not perceived as negligible for all clients just for the benefit of doing perhaps one trade.

The major part of clients (being legal entities) currently trading in financial instruments do not have a LEI, as only legal entity customers trading in derivatives are today required to acquire a LEI. Hence, it would be imperative to cater for a gradual phase-in of the LEI requirement in the data reporting and to provide a sufficient time to comply with the requirement.

Local Operating Units (LOU) are not present in all countries and we anticipate that this will not change within the next years.

For small clients we propose the use of the Country Code and the National Legal entity identifier code for companies or, if applicable, the ordinary VAT code. This solution is cheap, in some countries even free of charge.

We also question the meaning of #184 and #185? Is the proposal that the investment firm should check the format and may, if deemed necessary, validate the LEI?

However we question the investment firms' responsibility to continuously verify the LEI. This may make it difficult for customers to quickly and easily want execute an investment service. Hinder may arise if, for example, the LEI subscription is not renewed, other technical obstacle may arise that hinder a smooth authentication of the LEI etc. This is not in the clients' interest.

<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

Regarding paragraph 186, we question 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 more easy for the firms to correctly identify the reportable instruments as well as derivatives, baskets and indices with reportable underlyings 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 NCAs (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 more difficult, prone to errors, and very expensive compared to the ESMA golden source approach.

The absence of a golden source leads to a number of challenges and problems.

Firms wish to reiterate that although best efforts will be made not to over-report; we do not think that over-reporting should be explicitly precluded in the RTS. When in doubt and will prefer to over-report instead of under-reporting. We do not think firms should be penalised (required to back report) for over-reporting as long as they make best efforts not to over-report and the information they send is complete and accurate.

In addition firms would like to reiterate that in the absence of a golden source of reportable products, firms would then report on a best endeavours basis and err on the side of caution and report transactions where there is an element of doubt. We would also like to reiterate that the golden source would have been one single technical solution to ESMA, while the absence of the golden source requires thousands of technical solutions from the investment firms

We also assume that there may be situations whether a transaction should be reported according MiFID II/MiFIR or as a Securities Financing Transaction, SFT. Although this uncertainty is likely to result in reporting that might be perceived as over-reporting.

There is therefore a risk of over reporting yet firms seek to assure ESMA that best efforts will be made not to do so.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_226>

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

<ESMA_QUESTION_CP_MIFID_227>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_231>

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

<ESMA_QUESTION_CP_MIFID_232>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_238>

5. 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>

TYPE YOUR TEXT HERE

<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?

<ESMA_QUESTION_CP_MIFID_240>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_242>

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

<ESMA_QUESTION_CP_MIFID_243>

TYPE YOUR TEXT HERE

<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>

The increased responsibilities for the CCPs and the clearing members in this new model are most likely leading to the same situation as is with the EMIR requirements. Even if there would be indirect clearing offering, the gross collateral requirements might make this opportunity too expensive to use. In the big picture, this would lead to a situation where companies decide not to hedge their risks anymore due to the collateral costs.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_245>