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:

a) use this form and send your responses in Word format (do not send pdf files except for annexes);
b) 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
c) 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:

- if they respond to the question stated;
- contain a clear rationale, and
- 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	Wholesale Markets Brokers' Association (WMBA)
Confidential[1]	☐
Activity:	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1>

The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as 'WMBA') are the European industry associations for the wholesale intermediation of organised venue and Over-the-Counter (OTC) markets in financial, energy, commodity and emissions markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result they are classified as Limited Activity and Limited Licence under BIPRU and IFPRU in the UK where they carry out the vast majority of their activities regardless of home domicile of the individual holding companies. This makes them which makes them MiFID Investment Firms as opposed to being MTF's per se.

Evidently many WMBA member firms offer electronic venues that are not operated under MTF rules, often alongside their MTFs due to the nature of the instrument, the tenor, the technology, the clients and the jurisdiction. In this way we emphasise the complexity and interplay between the number of moving parts being organised here and the very global nature of the wholesale liquidity being arranged. In particular we note that six member firms operate SEFs under the CEA act (Dodd-Frank) in the US. Whilst SEFs have public rulebooks in accordance with Title VII, there are many regulated parameters under the conduct of business, transparency, post-trade protocols and fee structures which are of utmost importance, but outside the scope of the publically disclosed rules.

Conversely the overarching commonality we should state here is the wholesale nature of the venues. There are no retail customers to our member firms, only professional, eligible and third country market counterparties.

The following summarizes a number of the key parts of our response to the CP.

"Best Execution" - Information re Execution of Orders

We are concerned that the proposed information requirements relating to 'quality of execution' will not help to inform investment firms' selection of execution venues and may lead to the disclosure of commercially sensitive information. We consider that the information which ESMA proposes to require is partially duplicative of publically available data and overly complex, posing a serious risk that the intended consumers will simply not invest in the effort to understand it. Moreover, the information

[1] The field will 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.

that ESMA is proposing to be make public would, in particular for less liquid instruments, comprise transaction-level information providing details of positions and trading strategies. We therefore believe that the proposed approach requires significant re-consideration to deliver a workable outcome and valuable information.

Bond Market Transparency

We are concerned by the proposals generally form a barrier to the ambitions on Capital Markets Union and the growth agenda of the G20. In particular we underline the roles that both secondary bond markets and securities financing transactions are due to play under this agenda over the next decade. These markets are organised by WMBA members. In particular therefore the level 2 RTS measures should embrace matched principal bond arranging and execution on OTFs. We note that they do the opposite and contravene the ambitions of the level 1 text in doing so.

WMBA also hold broad doubts over an overly broad definition of liquid markets which does not recognize the heterogeneous and dynamic nature of fixed income liquidity and are as such inconsistent with ESMA's Level 1 mandate. If illiquid markets are treated as liquid under the transparency regimes, liquidity providers will be discouraged from committing capital to the detriment of both investors and issuers.

The Instrument-by-Instrument Approach (IBIA) that ESMA proposed in its 2014 Discussion Paper on Regulatory Technical Standards (RTS) for MiFID II/MiFIR represented the framework that would have had the best chance of reflecting the idiosyncrasies of bond market liquidity, in the view of the majority of market participants. ESMA's own analysis demonstrates that the proposed application of COFIA to categorizing bond markets will mean that the majority of instruments classified as liquid are in fact illiquid. ESMA acknowledges the risks that might arise from COFIA and states its intention to address these through (unspecified) allowances to the SSTI and LIS thresholds.

However, we are concerned that MIFID II will set a precedent for defining secondary market liquidity, so it is critical that the definition of liquidity is fit-for-purpose in and of itself. We therefore urge ESMA to reconsider its proposal and instead use IBIA for liquidity categorization. We acknowledge and address the challenges associated with IBIA, including identification of bond pools for CA assessment and new issues. If ESMA nevertheless persists with its proposal to use COFIA, we would urge a more granular assessment that considers bond lifecycle and currency, increased issuance size thresholds and more accurate underlying data.

Despite ESMA's statement of mitigation, we highlight that ESMA has not incorporated any allowances for the liquidity error margins in the SSTI/LIS thresholds. If ESMA adopts a regime with large errors, there needs to be a specific adjustment for this in the SSTI/LIS regime (e.g. reduce the test threshold).

We also believe that the framework for determining the SSTI thresholds is a critical. The current proposals are not workable and will lead to undue risks for liquidity providers and significant adverse consequences for investors and issuers if implemented. The SSTI thresholds are set too high and do not differentiate between pre and post trade transparency and illiquid and liquid instruments which present different types and levels of market impact risk.

Finally we consider that SSTI set at 50% to be inappropriate as there is inter alia no evidence that the level of undue risk to liquidity providers on which SSTI is to be based is connected to half of LIS. We believe and suggest that an uncomplicated alternative approach can be achieved by decoupling SSTI from LIS without requiring a SSTI threshold for each instrument and without compromising a risk-based calibration.

We concur with other market participants that a three-point solution would, we believe, not only simplify the COFIA regime further but optimise its ability to capture those instruments that are truly liquid. We recommend ESMA considers:

i. Adjusting the liquidity calibration to more accurately reflect the liquidity of the instrument
ii. Considering solutions for RFQ systems to balance the objectives of transparency and market efficiency
iii. Re-calibrating the pre- and post-trade transparency waivers and deferrals within each class of instrument

Derivative Market Transparency

Scope and Data sources: It is essential that ESMA clearly identify within RTS 9 those liquidity/SSTI/LIS tables that apply only to transactions occurring on regulated markets versus those that would apply to transactions occurring on MTFs and OTFs, versus those executed OTC; versus those executed on third country venues, particularly SEFs. Instruments traded on regulated markets are standardised and fungible contrasted with the other categories. We would therefore expect that where the liquidity assessments are based WMBA member venue data, that none of the tables itemising liquid classes apply to OTC derivative contracts unless ESMA undertakes the type of analysis, at a comparable level of granularity, to that currently performed for interest rate swaps.

The data sets used to assess liquidity did not appear to us to include the vital and voluminous data sets supplied to ESMA by WMBA members covering all products traded off RMs over a calendar year. Indeed three months of data from a brand new trade repository is a poor substitute and is insufficient. Also, using this substandard trade repository data from the period shortly after the EMIR reporting requirement came into effect raises concerns about the quality of the dataset given the widely publicised challenges that this reporting requirement presented to the industry. For example, that ESMA's fixed-floating single currency USD swap data - across tenors - has more trades and larger notional amounts than the DTCC data we used in our analysis.

Suitable Calibrations, Timely Re-calibration and Granularity is Essential rather than a '*Nice to Have*'; It is essential that ESMA calibrate COFIA in such a way that the taxonomy applied to instrument classes under consideration is appropriately granular. To do otherwise risks illiquid instruments being classified as liquid instruments which could have adverse consequences on the ability to transact such contracts. The WMBA gap analysis of standard broking size versus LiS/SSTI indicates that swaptions in particular makes this point clearly; delineating this class in terms of currency is insufficient and at very least, the tenor of the swap and tenor of the underlying must also be considered. We emphasise need for timely liquidity re-calibration more regularly in the relevant questions.

The parameters that ESMA has used to calibrate liquidity for interest rate, equity and commodities derivatives as applied to its data sets, has yielded too many false positives – i.e. instruments being designated as liquid when they are, in fact, illiquid. WMBA would also highlight that the concept of liquidity is not static. As markets evolve, innovate and react to external circumstances (including regulation), a product that is liquid today may not be liquid tomorrow, and vice versa. It is therefore of upmost importance that ESMA revisits the liquidity determination, especially once it is able to obtain better quality data through the post-trade reporting regime as implemented under MiFID II.

Alternatively, a dynamic calibration approach, such as the one considered for setting large-in-scale (LiS) and size-specific-to-the-instrument (SSTI) thresholds, should be developed.

The relevant LIS/SSTI thresholds need to be set at a level appropriate to the liquidity (or illiquidity) of an instrument. The proposed 50% SSTI/LIS ratio is arbitrary and we are concerned that it assumes falsely that the dealer-to-client relationship is the same as the interdealer liquidity pool. It also suffers a grave mistake in making linear relationship between SSTI and LIS rather that approaching the SSTI from the bottom-up in order to minimise false outcomes. The expressions of the thresholds need to be aligned to how the instrument trades via our recommended bottom-up approach. Whilst we appreciate that for the purposes of making an initial assessment of liquidity, it was expedient for ESMA to put all swaps in terms of Euros, the LIS and SSTI thresholds in the RTS should be written in local currency units. This applies equally for commodities and FX.

In order to determine whether a class of derivatives is sufficiently liquid for the trading obligation, the WMBA recommends that the "sufficiently liquid" test should be applied at a more granular level than is utilised for the general test of liquidity. WMBA consider that one aim of this exercise was to ensure multi-to-multi transactions are conducted on a venue, however existing trade data will include intercompany, treasury hedging and bilateral transactions, again increasing the view of liquidity on certain instruments and skewing the average size of transactions. We are also concerned about the use of a 70% volume threshold. This could easily be skewed by very few, very large trades, and we would thus suggest to only use the 90th percentile of transactions as a more natural reading of above normal market size.

Lastly, we would highlighted that the risk for market makers clearly differ and are of greater relevance pre-trade than post-trade. As such, there should be clear differentiation in the LiS thresholds pre- and post-trade."

Package Transactions require a specific treatment. WMBA would query the approach taken when setting the LIS and SSTI data for calibrating when the pre-trade requirements kick in. In our view, the use of existing transaction reporting and/or trade data will provide a skewed view of the market. In particular, existing trade data will include packaged transactions/strategies, whereby one leg of the package would rarely trade as a stand-alone instrument, however as part of package will frequently trade. These legs will not be identified in trade reporting data and as such will give a false view of the liquidity and size of that instrument when traded outright

The MiFID II/MiFIR framework and standards include a specific treatment for package transactions to ensure these transactions (i) benefit from the transparency waivers and deferrals available to the transactions that make up their component parts and (ii) can continue to execute in their entirety (particularly where some, but not all of the transactions are in scope of the derivatives trading obligation).

Commodity Derivatives

WMBA stress that the concept of '***Open Interest'***, whilst present in the level 1 text is wholly inappropriate for MiFID2 and the segregation of venues from CCPs under the so-called '***Open Access***' requirements. We believe ESMA should have returned this language to the EU Commission rather than try to build a detailed regulation that relies on silos and vertical integration.

Similarly, the Commitment of Traders report as required by venues is fragmented, partial, anti-competitive, and severely duplicative and undermines both systemic risk measures and the role of trade repositories. Again we believe that rather than build a system not fit for purpose, ESMA should have returned this mandate to the EU Commission qualified appropriately.

Microstructural Issues

We are concerned by the proposed non-live testing regime which would impose onerous requirements on market participants and appears to allow the various trading venues to establish divergent testing practices. We seek clarification in regards to the scope of application of the pre-trade controls, which could be interpreted as applying broadly to all orders submitted by an investment firm instead of being limited to the activity of trading algorithms. We also seek clarification in relation to whether a market making agreement would be necessary per comparable instrument or whether such an agreement would be based on asset class. Requiring a market making agreement per individual instrument would make the application of the proposed parameters impractical, particularly for on equity instruments where there can be instances of high liquidity and subsequently low liquidity within short timeframes

Post Trade Connectivity to CCPs

WMBA are concerned that the proposals for pre-trade credit do not distinguish between investment firms that self-clear on their own accounts at a CCP (so called “self-clearers”) and their own clearing clients. In the US under Dodd Frank self-clearers do not post pre-trade credit (to themselves!) and care needs to be made in drafting the level 2 rules under MiFIR to avoid such an outcome in the EU.

Lastly, we would like to suggest that, in drafting these regulatory standard, ESMA has regard not just to the objectives of the Level 1 text, but also the wider objectives of current European financial services legislation. For example, post-trade risk reduction services are encouraged in multiple guises through EMIR technical standards and received special treatment in other global legislation (e.g. CFTC no action relief). Their services are becoming increasingly relevant in reducing risks and collateral demands. However, and despite a clear recital 27 in the Level 1 text, they have not today been recognise in any associated technical standard.

Overall, we would like to commend ESMA on the important work undertaken to date.

We hope you find our responses helpful in further developing the technical standards and would be happy to discuss them further with you if that would be helpful.

< ESMA_COMMENT_CP_MIFID_1>

- **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>
Yes
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_8>

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

<ESMA_QUESTION_CP_MIFID_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_9>

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

<ESMA_QUESTION_CP_MIFID_10>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_20>

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

<ESMA_QUESTION_CP_MIFID_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_21>

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

<ESMA_QUESTION_CP_MIFID_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_22>

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

<ESMA_QUESTION_CP_MIFID_23>
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>
No, the WMBA disagrees. The venues operated by WMBA members are wholesale and intrinsically globally in the nature of the market participants. We think that the requirement for a written

declaration by the third country competent authority that the firm is subject to effective supervision, specifying the services and activities for which it is authorised – in RTS 5 Article 1(1)(k) – should be deleted. The European Commission will have confirmed the effectiveness of the third country's supervision in determining the equivalence. MIFIR Article 47 already provides for cooperation and exchange of information between ESMA and the third country's competent authorities: that is the route which ESMA should use to establish the supervisory and enforcement status of the applicant firm. Furthermore, in practice, it may be difficult or impossible for the third country firm to obtain such a declaration from its competent authority for this purpose. The absence of such a declaration, because, for example, the relevant competent authority was not prepared to provide it, or there are delays in providing it, should not be used to justify refusal in circumstances where a firm is in fact duly authorised and regulated, and ESMA itself has access to the relevant information about the effectiveness of supervision directly from the relevant competent authority.

If ESMA considers it necessary for the third country firm to include in the application some form of statement about the third country firm's supervisory and enforcement status, it should be possible for the third country firm itself to make a declaration that it is duly regulated, which ESMA would then be able to verify through its direct contacts with the third country jurisdiction.
<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>
No, the WMBA does not agree with the approach taken by ESMA.

In particular our views diverge from the CP across the following issues: Volume of Data; Minimum Threshold of volume; Standardisation of Format and Presentation; Order Definition; Frequency of Reporting; Less frequently traded instruments and large transactions; Ranges; Costs; Retail Clients Likelihood of Execution; Cancellation and Fill Ratios; Times; Depth of Market Analysis; Market Mechanism; Required Data and Class Taxonomy; Averages; Point-in-Time; Daily Information; Reports of Disruptions; Volume, Value and Number of Trades; and in Order Conditions

Volume of Data
Article 27(3) MIFID II requires trading and execution venues to publish execution quality data on an instrument by instrument basis.

As ESMA will be aware with the introduction of the OTF, the numbers of 'on-venue' traded instruments will expand considerably with potentially several hundreds of thousands of instruments available for trading each day and cumulatively significantly more across a period of time. As a result there likely to be severe limitations in the usefulness of the required data due to the likelihood of many irrelevant or nil value data fields making the mere volume of such data difficult to manage efficiently and appropriately. We would therefore urge ESMA to concentrate the execution quality data requirements on key information fields which are of most relevance and use in assessing execution quality for an instrument relative to the trading or execution venue on which it has traded.

It is important that the information provided is accurate, relevant, appropriate and not misleading. If the data is too complex, market participants will not have the capability, resources or inclination to use the data. For example, the more complex the data the more resources a market participant will need to devote to understanding the make-up of the data as well as the building systems and methodologies to incorporate it into its own analyses. NCAs will also have similar difficulties in supervising the appropriate provision of execution quality data.

We also believe that it is important to understand that the information required under Article 27(3) is for execution analysis and not liquidity analysis.

Minimum Threshold of volume

We propose that the reporting requirement in Article 27(3) MIFID II should be limited by a minimum threshold of trading activity in an instrument below which the specified publications would not be required. The reason for this is that, in the case of infrequently traded instruments, the data required to be published under Article 27(3) will only ever be relevant for an assessment of the execution quality of the particular transaction to which the execution quality data relates. As a consequence, the publication of execution quality data relating to such transactions would have little relevance for a market participant's assessment of execution venue selection.

In light of this we propose that the requirement to publish execution quality data should only apply to liquid instruments falling below the relevant SSTI threshold and not to instruments that are either fall above the SSTI threshold or are illiquid. Alternatively, we propose that where an instrument is either illiquid or falls above the SSTI threshold, the only data which should be required to be published is the fact that such instrument is illiquid or above the SSTI threshold, as appropriate.

Standardisation of Format and Presentation

While we support the general aim of the requirement for the standardisation of format and presentation, we believe that this standardisation should not be allowed because potentially misleading information to be made available. A requirement for standardisation of format and presentation should not inhibit the trading/execution venue's ability to provide the most appropriate and suitable analysis relative to the particular transaction or an ability to highlight and explain deviations from the standard disclosure templates.

• It is our view that a 'one size fits all' publication format and presentation requirement is unlikely to be useful to market participants. We believe that a trading/execution venue should have the ability to use any specified templates in the most appropriate way for their activities. We therefore propose that the formats for publication should take into consideration: The particular instrument type (e.g. equities, bonds, non-standardised derivatives etc.);

• The trading method (CLOB, RFQ, order driven, quote driven, voice, auction etc.);

• The fact that certain information fields may not be available; and

• The fact that the provision of information in a specified format may not be the most appropriate way of satisfying the overall objective.

Order Definition

It is our view that any requirement for the publication of order related information will be significantly hampered by the absence, both at Level 1 and Level 2, of a definition of an 'order'. This will lead to inconsistent interpretations and applications of the execution quality data requirements which in turn will detrimentally impact the objective of providing market participants with reliable information with which to assess execution quality.

Frequency of Reporting

We agree with the proposal that the frequency of reporting should be quarterly. We also agree that the quarterly reports should provide the analysis broken down by month.

Less frequently traded instruments and large transactions

As indicated above we believe that for certain instruments the level of execution activity is too low for the proposed statistics to be of consistent usefulness to market participants. For transactions in illiquid instruments or liquid instruments above the SSTI thresholds, the specific market circumstances of the transaction including the willingness and ability of the counterparties to trade, as well as other relevant factors make the information relating to such transactions unsuitable as a basis to extrapolate the information to other transaction circumstances, in particular given the fact that such transactions may not recur in the future. In light of this, we believe that information should only be required to be published for liquid instruments falling below the relevant SSTI threshold.

Ranges

We do not believe that any ranges should be used for reporting. The information that may be appropriate for an assessment of historic execution is only valid for those instruments where there is a liquid market and for trades which are of a relatively standard size for the instrument concerned. We also believe that splitting trades into ranges will provide overly granular information with the implication of inconsistencies between the ranges due to the particular circumstances of the trades themselves. Therefore, as indicated above, we believe that the execution quality data should be limited to liquid instruments falling below the SSTI threshold.

Costs

We agree that the cost analysis for venues should only reflect the costs imposed by that venue.

Retail Clients

We agree that the level of detail required in the analyses should reflect the categorisation of the market participants and users of the trading venue. Hence it is appropriate to require a more granular approach to venues and activities which may involve Retail Clients.

Likelihood of Execution

We appreciate the difficulty of defining criteria related to the likelihood of execution. As indicated above, given the variation in instruments and how they are traded it is also clear that what may be useful for one set of purposes may not be appropriate for another. Hence we believe that disclosures should only be required for trades in liquid instruments falling below the SSTI threshold including scope for flexibility in the presentation depending on the type of instrument and method of trading.

We do not believe that the comparison of numbers of orders to numbers of trades provides consistent and useful information in relation to the likelihood of execution. Any individual order will be created in the circumstances prevailing at the time and, as a result, information relating to that order will not necessarily be a guide for circumstances which prevail at other times. In addition, there are many factors relating to an orders which it would be difficult to capture in a summarised analysis which have an important impact on the relevance of the quote being made for likelihood of execution e.g. conditions on orders, systems supported by streaming of prices, RFQ systems where quotes are effectively provided on demand etc. We believe therefore that where any such metrics are used they are based on unconditional orders provided on a non-request basis.

Cancellation and Fill Ratios

We do not believe that order cancelation or fill ratios can be used consistently as part of an assessment of execution quality. Order cancellations, withdrawals and modifications will be driven by market participants rather than attributable to the structure or performance of the venue in facilitating transactions.

Times
We do not believe that the time data for certain actions (e.g. response to RFQ, response to quote provided etc.) represent reliable information relating to the speed of execution. This is because these timescales are controlled by market participants themselves.

Depth of Market Analysis
The information required under Article 27 MIFID relates to executions. We therefore do not believe information requirements, for order driven markets, relating to certain data elements such as depth of market to be relevant for an assessment of execution quality.

Market Mechanism
In order for execution related information to be useful, we believe that such information should not only be accurate should also add value to the process of understanding execution and not be misleading. The metrics that are available and relevant to assessing execution are highly dependent on the methodology of trading. We are therefore in favour of ESMA's recognition of these distinctions.

We do not agree however that a simplistic quote driven and order driven distinction can be imposed. As highlighted by the CP there are multiple methods of execution or market mechanism which may also, at times, be used in combination. We therefore believe that venues should be permitted the ability to publish customised execution quality data (for example, using a customised version of the template) in order to provide what they believe to be the most relevant fields taking into account such data which is relevant to the particular method of execution or market mechanism used on the venue. For example, for negotiated deals the analysis of speed of execution is not appropriate, as ultimately the timeliness of the conclusion of a transaction is determined by the actions of the market participants than attributable to the structure and functioning of the venue itself.

We do not believe that it is necessary or appropriate to require the disclosure of information relating to the type of mechanism used in the execution of trades on the platform. This information is already provided to venue users under separate obligations requiring such disclosure in the form of Rulebooks, User Guides or other similar documentation. It is not necessary to replicate this disclosure in the execution analysis.

Required Data and Class Taxonomy
We agree that the data provided should be precisely defined but would also make the point that it should only be provided where it is likely to be relevant and will not be potentially misleading e.g. use of an inappropriate metric for a particular market mechanism.

We understand that standardised templates might be a useful approach for ensuring the usefulness of the disclosed information. We would note however that given the volume of data that will be produced it is not necessary to require this to be a standardised form. The volume of data that is likely to be required will only be possible to be used effectively if it is provided in machine readable format. Hence the key is standardisation of the definitions of the fields required rather than the layout.

We agree that the information provided should be appropriate and useful to market participants. We therefore believe that venues should have the option of customising the template to provide what they believe are the most relevant fields or if a standardised template is used, venues should only require to complete data which is relevant to the particular method of execution or market mechanism used on the venue. For example, for negotiated deals the analysis of speed of execution is not appropriate as ultimately the timeliness of the conclusion of a transaction is determined by the actions of the market participants rather than attributable the structure and functioning of the venue itself.

We agree that if there is to be a requirement to provide an instrument class in the analysis such class or categorisation of instruments should follow that used for the pre and post trade transparency requirements. This will not only ensure consistency of information but also avoid requiring systems to manage differing classification regimes.

Averages
We do not believe that the provision of median information is of relevance to the execution analysis required.

In order to ensure that averages are relevant we believe that they should be calculated only for liquid instruments falling below the SSTI threshold in which case the mean is the most appropriate statistic to use. Averages for illiquid instruments or including, for liquid instruments, significant sizes of trades are potentially misleading and an inappropriate way of representing what may be quite disparate data elements.

Point-in-Time
We do not believe that the use of “point in time” analyses is either required or helpful. Such measures are too narrowly related to all the circumstances at the times of the measurement and are not indicative of the future status of the market at the particular time a market participant may wish to execute a transaction. In particular since the analysis required is at an individual instrument level the granularity of “point in time” analysis is too great and for all but the most actively traded instruments will provide details of each individual transaction.

In addition, given the vast majority of instruments will not in fact have regular executions the bulk of the data will potentially consist of blanks or static numbers which do not have any analytical value but which then make processing the bulk of information much more difficult for market participants?

If a point-in-time analysis is to be required it should only be required for appropriate market mechanisms where the data may have some relevance and usefulness for market participants e.g. active CLOBs in liquid instruments. In addition if trade information is required it is not appropriate that this is required just for the next trade – in certain markets this could be hours, days or even weeks away. The timeframe for such information should be very narrowly defined and not more than one minute to ensure the comparability of the information.

Daily Information

We do not believe that the use of daily information in the analyses is either required or helpful. Such measures are too narrowly related to all the circumstances on the day of the measurement and are not indicative of the future status of the market when a market participant may wish to execute a transaction. In particular since the analysis required is at an individual instrument level the granularity of an analysis based on daily information is too great and for all but the most actively traded instruments will provide details of each individual transaction. We would recommend that the requirements are simplified to the average across the month or quarter. If a daily periodicity is to be maintained then this requirement should be limited to only the most appropriate market mechanism e.g. active CLOBs in liquid instruments.

Failed Trades

We believe that information on failed or unsettled transactions is post trade information and therefore not relevant to the execution of the trades themselves.

Market Share

We do not agree that the execution analysis information has any relevance to providing market share information. Market share information will be available from post trade publication information and it is duplicative to include market share as an objective of the analysis under Article 27.

Reports of Disruptions

We do not believe that any information related to disruptions on the platform should form part of the venue execution analysis. The availability of a venue is a separate question from the performance or service provided by the venue. In addition, not all venues will be a purely electronic platform with the implication that it is very difficult to ensure a consistent understanding of “disruption” across multiple business models e.g. electronic platforms, hybrid systems, voice etc.

Volume, Value and Number of Trades

Several of the analyses require “value” information as well as “volume”. We believe that it may be inappropriate to include value as part of the analysis as this will hamper comparisons regarding the same instrument based on the price it has at any particular time.

In place of value of trade or order, we believe that the number of transactions may a useful additional indicator. In particular for illiquid or other less frequently traded instruments an indication of how many trades occur may be important information which serves to put the other execution information into context.

Order Conditions

In order to provide a consistent analysis we believe that all order information should only relate to orders which are not subject to specific execution requirements as defined by the relevant market participant.

<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>

No, the WMBA does not agree with the approach taken by ESMA.

Ranges

We do not believe that any ranges should be used for reporting. The statistics that may be appropriate to be used for the assessment of historic execution is only valid for those instruments where there are active markets and where the size of trades is of a relatively standard size for the instrument concerned. We also believe that splitting trades into ranges will provide over granular information e.g. with apparent inconsistencies between the ranges due to the particular circumstances of the trades themselves. We also believe that adding a further granular analysis will make the information even less useful for Market Participants. If mean averages are provided this will provide market participants with sufficient information regarding the relevance of the execution data analysis. We also believe that the execution analysis should be restricted to liquid instruments under the SSTI threshold to ensure the comparability of data.

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>

Yes the WMBA agrees that further metrics would be helpful to measure the likelihood of execution.

Costs

The WMBA agrees that the cost analysis for venues should only reflect the costs imposed by that venue.

Rebates, Discounts and Similar Payments

The WMBA believes that where a disclosure is required of rebates, discounts or other similar payments then a prescribed format is not an appropriate methodology for such disclosures. In order to present this information in way which is clear, useful and not misleading venues must be able to provide a balanced presentation and have flexibility in the way this is done. Too crude a standardisation presentation will not be useful and may require many additional notes to ensure clarity of understanding that the attempt to assist comparability is only falsely achieved.

We do not believe that it is appropriate to require the disclosure of conflicts of interests' information unless the conflicts of interest are not being identified and managed appropriately by the investment firm. The use of disclosure for conflicts of interests is now regarded as a last resort and therefore to require a standardised format for disclosure may indicate that the conflicts are not being appropriately managed. We would note that there are already separate guidelines related to the disclosure, if required, of conflicts of interest which are unlikely to be satisfied by a standardised template disclosure.

We believe that where a disclosure is required of conflicts of interest then a prescribed format is not an appropriate methodology for such disclosures. In order to present this information in way which is clear, useful and not misleading venues must be able to provide a balanced presentation and have the flexibility in the way this is done. Too crude a standardisation presentation will not be useful and may require many additional notes to ensure clarity of understanding that the attempt to assist comparability is only falsely achieved.

It is also likely that when such disclosure are required i.e. in cases where a conflict cannot be appropriately managed, more specific disclosure to affected market participants may be more appropriate than a more generalised, generic disclosure.

Likelihood of Execution
The WMBA appreciates the difficulty of defining criteria related to the likelihood of execution. Given the variation in instruments and how they are traded it is also clear that what may be useful for one set of purposes may not be appropriate for another. Hence we believe that standardised disclosures should only be required for trades in liquid instruments under SSTI with a flexibility in presentation between instruments and method of trading.

We do not believe that the comparison of numbers of orders to numbers of trades always provides consistent and useful information in relation to the likelihood of execution. Any individual order will be created in the circumstances at the time which will not necessarily be a guide for other periods. In addition there are many factors of orders which it would be difficult to capture in a summarised analysis which have an important impact on the relevance of the quote being made for likelihood of execution e.g. conditions on orders, systems supported by streaming of prices, RFQ systems where quotes are effectively provided on demand etc. We believe therefore that where any such metrics are used they are only based on unconditional orders provided on a non-request basis.

Number of Market Makers
The WMBA believe that it would be useful information for an assessment of likelihood of execution to disclosure, where appropriate and relevant, the number of market makers on a venue who support an instrument. We believe that it would be useful information to disclosure information, where relevant, regarding the market maker agreements which may be in place on a venue for certain instruments. For example the minimum coverage or minimum spread required under the market making agreement. <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>
Times

The WMBA does not believe that the time data for certain actions (e.g. response to RFQ, response to quote provided etc.) represent reliable information related to “speed” as the timescales are controlled by the market participants themselves. These usefulness of times are specific to the market mechanism being used e.g. active CLOBs in liquid instruments. In many instances, particularly for illiquid instruments, the timescales for actions (including either initial trading and as appropriate hedging of transactions) can be hours, days or even weeks. It is erroneous to try to measure the timeliness of these activities and then use this measure as a reliable indicator of how quickly a future transaction can be agreed and concluded. Hence we believe that the execution analysis should be restricted to liquid instruments under the SSTI threshold.

We note ESMA’s comment that certain elements of information may be required where there is full pre-trade transparency. We would highlight that this indicates ESMA’s acknowledgement that a differentiation in the appropriateness of disclosure is necessary e.g. only for transactions in instruments where pre-trade transparency applies. These disclosures therefore should not go further than the information which has already been made public under the pre or post trade transparency requirement.

We do not believe that conditional orders should be reflected in the analyses as it is not realistically possible to reflect the impact of any such conditions on the quality of execution compared to other transactions with none or other conditions. In addition we do not believe that depth of market, open and close prices, high and low measures are appropriate. Many of these measures are more appropriately available already via post-trade information.

<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>

No the WMBA does not agree with ESMA’s proposed approach.

Frequency of Reporting

WMBA agrees with the proposal that the frequency of reporting should be quarterly. We also agree that the quarterly reports should provide the analysis broken down by month.

We wish to point out the apparent anomaly that the proposed timescale for the annual publication by an investment firm is the same as that required by a venue for the final quarter of the year reviewed by the investment firm. To ensure that the investment firm is able to accommodate an analysis of the most recent information from the venues it uses we believe that investment firms should have a two month reporting deadline due to the complexity of the data.

Daily Information

WMBA does not believe that the use of daily information in the analyses is either required or helpful. Such measures are too narrowly related to all the circumstances on the day of the measurement and are not indicative of the future status of the market when a market participant may wish to execute a transaction. In particular since the analysis required is at an individual instrument level the granularity of an analysis based on daily information is too great and for all but the most actively traded instruments will provide details of each individual transaction. We would recommend that the requirements are simplified to the average across the month or quarter. If a daily periodicity is to be maintained then this requirement should be restricted to only the most appropriate market mechanism e.g. active CLOBs in liquid instruments.

<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>
No the WMBA does not agree with ESMA's proposed approach.

Frequency of Reporting
We wish to point out the apparent anomaly that the proposed timescale for the annual publication by an investment firm is the same as that required by a venue for the final quarter of the year reviewed by the investment firm. To ensure that the investment firm is able to accommodate an analysis of the most recent information from the venues it uses we believe that investment firms should have a two month reporting deadline due to the complexity of the data.

Conflicts of Interest
We do not believe that it is appropriate to require the disclosure of conflicts of interests' information unless the conflicts of interest are not being identified and managed appropriately by the investment firm. The disclosure of conflicts of interests is commonly regarded by NCAs as a last resort measure and to require a standardised format for disclosure would indicate that the conflicts are not being appropriately managed. We would note that there are already separate guidelines relating to the disclosure, if required, of conflicts of interest which are unlikely to be satisfied by a standardised template disclosure.

We believe that where a disclosure of conflicts of interest is required then a prescribed format is not an appropriate methodology for such disclosures. In order to present this information in way which is clear, useful and not misleading venues must be able to provide a balanced presentation and have the flexibility in the way this is done. Too crude a standardised presentation will not be useful and may require many additional notes to ensure clarity of understanding that the attempt to assist comparability is only falsely achieved.

It is also likely that when such disclosure is required i.e. in cases where a conflict cannot be appropriately managed more specific disclosure to affected market participants may be more appropriate than a more generalised, generic disclosure.

Percentages
The WMBA does support the use of percentages in the analyses required from investment firms. We therefore believe that, for consistency, the data on orders should be "Percentage of orders executed on this execution venue" rather than "Numbers of orders executed on this execution venue".

Class Taxonomy
We agree that if there is to be a requirement to provide an instrument class in the analysis any class or categorisation of instruments should follow the class analysis used for the pre and post trade transparency requirements. This will not only ensure consistency of information but also avoid requiring systems to manage differing classification regimes.
<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>

Client Category Breakdown

The WMBA does not believe that a breakdown by category of client is required in the information to be disclosed. This goes beyond the Level 1 requirements of Article 27. In requiring such disclosure it presupposes that the category of client may in itself be a factor in the quality of execution when any differentiation of result, if any is shown, will be down to other underlying factors such as type of trading activity, volume of trading, volume of trades, availability of credit and other potential factors such as internal trading decision procedures.

Conflicts of Interest

The WMBA does not believe that it is appropriate to require the disclosure of conflicts of interests' information unless the conflicts of interest are not being identified and managed appropriately by the investment firm. The disclosure of conflicts of interests is commonly regarded by NCAs as a last resort measure and to require a standardised format for disclosure would indicate that the conflicts are not being appropriately managed. We would note that there are already separate guidelines relating to the disclosure, if required, of conflicts of interest which are unlikely to be satisfied by a standardised template disclosure.

We believe that where a disclosure of conflicts of interest is required then a prescribed format is not an appropriate methodology for such disclosures. In order to present this information in way which is clear, useful and not misleading venues must be able to provide a balanced presentation and have the flexibility in the way this is done. Too crude a standardised presentation will not be useful and may require many additional notes to ensure clarity of understanding that the attempt to assist comparability is only falsely achieved.

It is also likely that when such disclosure is required i.e. in cases where a conflict cannot be appropriately managed more specific disclosure to affected market participants may be more appropriate than a more generalised, generic disclosure.

Internal Monitoring

The WMBA does agree with the proposal to allow the use of internal monitoring information if this is a meaningful way of proving the required disclosures.

We do not agree however that the details of internal monitoring itself should be made publicly available. The full results of internal monitoring are for internal purposes only. To require disclosure of all internal monitoring information, or certain key elements such as action taken, goes beyond the Level 1 requirement. Such a requirement would also inhibit the free use of internal monitoring procedures if it was known these were to be made public as well as the commercial considerations involved between investment firms. In particular it is inappropriate for any corrective action taken to be made public as this should be used for internal governance and, as necessary, NCA supervision.

Sample Analysis

We agree that a sample methodology may be an appropriate and proportionate methodology for an investment firm to perform its execution monitoring analysis and that, as appropriate, the information from such sample analysis may be a useful element of the disclosures made by an investment firm.

Frequency of Reporting

The WMBA wishes to point out the apparent anomaly that the proposed timescale for the annual publication by an investment firm is the same as that required by a venue for the final quarter of the year reviewed by the investment firm. To ensure that the investment firm is able to accommodate an

analysis of the most recent information from the venues it uses we believe that investment firms should have a two month reporting deadline due to the complexity of the data.
<ESMA_QUESTION_CP_MIFID_36>

- **Transparency**

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

<ESMA_QUESTION_CP_MIFID_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_37>

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

<ESMA_QUESTION_CP_MIFID_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_38>

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

<ESMA_QUESTION_CP_MIFID_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_39>

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

<ESMA_QUESTION_CP_MIFID_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_40>

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

<ESMA_QUESTION_CP_MIFID_41>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_41>

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

<ESMA_QUESTION_CP_MIFID_42>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_42>

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

<ESMA_QUESTION_CP_MIFID_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_43>

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

<ESMA_QUESTION_CP_MIFID_44>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_44>

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

<ESMA_QUESTION_CP_MIFID_45>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_45>

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

<ESMA_QUESTION_CP_MIFID_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_46>

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

<ESMA_QUESTION_CP_MIFID_47>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_48>

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

<ESMA_QUESTION_CP_MIFID_49>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_49>

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

<ESMA_QUESTION_CP_MIFID_50>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_50>

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

<ESMA_QUESTION_CP_MIFID_51>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_51>

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

<ESMA_QUESTION_CP_MIFID_52>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_52>

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

<ESMA_QUESTION_CP_MIFID_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_53>

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

<ESMA_QUESTION_CP_MIFID_54>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_54>

Q55. Do you agree with the proposed classes and thresholds for large in scale transactions in ETFs? Should instead a single large in scale threshold and deferral period apply to all ETFs regardless of the liquidity of the financial instrument as described in the alternative approach above? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_55>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>

Q57 (i)

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)?

The WMBA disagrees with the subclass criteria defined in the Consultation Paper.

We fundamentally agree with the primary segmentation into liquid and illiquid products or instruments. The WMBA was a proponent of a more granular and proportional classification from the 2014 summer discussion paper (the IBIA model) and consequently considers ESMA's definition of a liquid market for financial instruments too broad and generic. The COFIA problems arising from the adoption of a broad COFIA model are detailed in the AFME response and include the following points that heightens the concerns of the WMBA:

- ESMA's COFIA approach is inconsistent with the Level 1 text
- The concept of inherent liquidity characteristics for fixed income is not meaningful resulting in poor liquidity classification
- A COFIA approach cannot truly incorporate the dynamic nature of liquidity of bonds
- ESMA itself has recognised that the IBIA approach is the most appropriate way of measuring liquidity
- IBIA is not more operationally burdensome to implement
- A COFIA approach is likely to lead to regulatory arbitrage

Specifically, the number of false positives would appear to compromise the usefulness of the demonstrated outcomes. Derivatives, forwards and all the bonds in scope need more granularity in order to define more homogeneous classes; this may now need to be derived through a more thorough set of sub-classes and hierarchies and these should be segmented via different criteria. These sub-classes should be defined on further criteria including the period to maturity and the credit rating agency treatment of the instrument. The WMBA concur with the granularities set out by both AFME and ISDA in their respective responses.

Under paragraph 35, ESMA has stated that it is aware of the risks that might arise from COFIA and it intends to remedy possible weaknesses through the waivers and deferrals for LIS or SSTI. In acting as a foundation, it is of primary importance to get the liquidity calibration right in the first place. It is not sufficient for the related MiFID provisions and other regulations to produce a flawed calibration and attempt to soften the adverse effectives of the significant errors using other tools under MiFID II. Nowhere under Level 1 is ESMA given such a mandate.

MiFID II sets a legal precedent for defining secondary market liquidity which may be implemented in other legislative regimes for other purposes (such as the CSDR). Therefore, it is critical that the definition of “liquid market” is appropriate in and of itself. Further, despite ESMA’s statement of mitigation, we highlight that ESMA has not incorporated any allowances for the liquidity error margins in the SSTI/LIS thresholds.

The WMBA members provided ESMA with a profound amount of traded data covering the year to June 2014 to facilitate the liquidity calibration which constituted just about all of the wholesale market trading in Europe across five broad asset classes. None of this quantitative provision is evident in the liquidity classification output, nor has it been anywhere cited by ESMA. Therefore, the WMBA is also concerned about the way in which ESMA has used other non-relevant and insufficient data to produce its results, specifically regarding the inconsistency across the proposals and the opacity of the details of its analysis (such as assumptions). Instead of using the real traded data supplied, it would appear that the newly reported EMIR data within a singled traded repository has been used. This is clearly both subordinate and insufficient as the data is from the period shortly after the EMIR trading reporting requirement came into effect, for which the EU Commission have acknowledged widespread failure in the efficacy of this reporting regime.

Specifically, ESMA has instead used a data set predominantly representing dealer-to-client trades to produce a calibration for dealer-to-dealer trades in multilateral venues. These markets are the locus of liquidity and therefore highly relevant for the sourcing of prices and liquidity. Further impinging on the relevance of the analysis for the SSTI and LIS thresholds, ESMA has removed trades below EUR 100k in size from its analysis, yet it has not done this for the liquidity tests. If ESMA were to remove the below EUR 100k trades from its analysis for liquidity purposes, seeing as approximately half of corporate trades are below EUR 100k, the margins of error (false positives) would significantly increase because more instruments would fail to meet the liquidity test (under paragraph 45).

The WMBA urges ESMA to be more transparent in its data sourcing and its calculation methodologies to ensure that the industry can provide effective feedback and that it ensures that the data is used consistently to ensure integrity of the output.

The WMBA also note that the approach towards capturing third country bonds is a markedly different approach to that in the US under Dodd Frank, which references from the participant rather than the venue location or its authorisation.

Q57 (ii)

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?

The WMBA would propose both different parameters and thresholds to those defined in the Consultation Paper in order to create a more granular set of outcomes. The WMBA considers that ESMA’s definition of a liquid market and its parameters and thresholds for bonds needs refinement and would recommend different criteria in line with the approaches set out by both ISDA and AFME in their responses to this consultation.

We note that both ISDA and AFME sought the views and consensus of both venue operators and the buy-side in considering their approaches. These new/modified parameters and thresholds are not set out in our reply to avoid duplication. In particular, the WMBA endorses the 'number of trades per day approach', as opposed to the volumes accruing from those trades. Importantly, we underline studies undertaken by the WMBA which show that across the wholesale market venues, even the most liquid (*on-the-run 10 year coincident with being the cheapest-to-deliver issue*) German Government bonds trade only 40-50 times per day at an average ticket size of Eur 40mm. Other sovereign issues which easily fall into the liquid category will only trade a handful of times daily.

Segmentation via different criteria, including the period to maturity and the credit rating agency treatment of the instrument, would be a simple tool to segregate the key bond classes in the European sovereign market between Bunds on one hand; the second tier of UK, France and Italy; and the periphery as tertiary markets. It would facilitate a similar fundamental categorization of the corporate bond markets once combined with the current criteria.

Q57 (iii)

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

For derivatives, the WMBA would recommend a liquidity threshold in line with the recommendations made by market participants in response to ESMA's May 2014 discussion paper, 15 trades per day and EUR 500 million notional turnover.

For bonds, we would advocate the following core liquidity criteria in which a liquid market will be deemed to exist for a bond if the issuance size of a bond is >500mm and the bond trades:

a. at least [50] days a quarter
b. at least [250] times a quarter
c. on average, at least [€5,000,000] nominal amount per day

It should be paramount to ensure that the gap is narrowed between the levels of transparency introduced by the liquidity test compared to the given COFIA test. Due to the market heterogeneity and consequent complexity, the WMBA understands that the only true way to calibrate liquidity is daily (trading) behaviour. Any other methodology will generate a high proportion of false liquidity as evidenced in ESMA's own data. It is quite complex, made up of moving parts such as maturity dates, coupons, multiple currencies and cyclicality.

The WMBA notes that ESMA is progressing down a line towards a hybrid IBIA/COFIA model and note that between 42% and 74% of the instruments listed by ESMA as liquid are in fact illiquid on the common measures used by ISDA and AFME. Throughout ESMA's discussion of COFIA, ESMA has materially underestimated the importance and number of false positives that COFIA throws up.

We would urge that ESMA bear in mind the following in implementing a sub-categorisation regime: ESMA should minimise the error margins by increasing the issuance size thresholds; it is critical that block trades are used rather than allocations to test instruments against the liquidity test; the liquidity test should also not count non-price forming trades; and issuance size needs to be the outstanding amount scaled for the free float in circulation.

The WMBA disagrees with ESMA's view as to where it is appropriate to set the boundary between liquid and illiquid classes and considers that ESMA's definition of a liquid market for bonds needs more refinement and calibration (including criteria, parameters and thresholds). ESMA's definition of a liquid market and its parameters and thresholds for bonds needs more refinement. We would therefore recommend different criteria including the period to maturity and the credit rating agency treatment of the instrument.

We would query the approach taken when setting the LIS and SSTI data for calibrating when the pre-trade requirements kick in. In our view, the use of existing transaction reporting and/or trade data will provide a skewed view of the market.

In particular, existing trade data will include packaged transactions/strategies, whereby one leg of the package would rarely trade as a stand-alone instrument, however as part of package will frequently trade. These legs will not be identified in trade reporting data and as such will give a false view of the liquidity and size of that instrument when traded outright.

We would urge that ESMA bear in mind the following in implementing a sub-categorisation regime. ESMA should minimise the margin for error by recalibrating the liquidity assessments and determinations to take into account, at a minimum, the following points:

- The issuance size thresholds should be increased;
- Block trades rather than allocations should be used to test instruments against the liquidity test;
- Non-price forming trades should be excluded from consideration;
- The 'time period since issuance' should be taken into account due to the fact that, over time, the number of bonds in circulation after issuance will fall depending on the proportion of issued bonds which are wrapped/invested in other investment structures such as funds etc., with the implication that the actual amount of bonds in circulation will be smaller than the issuance size; and
- The credit rating agency treatment of a bond should be taken into account so that, for example, sovereign bonds subject to different treatment by credit rating agencies would accordingly receive different treatment for liquidity assessment purposes.

In addition, the aim of this exercise was to ensure multi-to-multi transactions are conducted on a venue, however existing trade data will include intercompany, treasury hedging and bilateral transactions, again increasing the view of liquidity on certain instruments and skewing the average size of transactions. We are also concerned about the use of a 70% volume threshold. This could easily be skewed by very few, very large trades, and we would thus suggest to only use the 90th percentile of transactions as a more natural reading of above normal market size.

Lastly, we would highlighted that the risk for market makers clearly differ and are of greater relevance pre-trade than post-trade. As such, there should be clear differentiation in the LiS thresholds pre- and post-trade.

Whilst we appreciate that for the purposes of making an initial assessment of liquidity, it was expedient for ESMA to put all swaps in terms of Euros. This should, however, be avoided for setting LIS and SSTI thresholds going forward. Notably, for energy market commodities, the expression of these thresholds by reference to a notional amount in euros is not aligned to the manner in which these commodities trade (i.e. mostly in terms of the units delivered, for instance MWHrs, or US dollars in the case of oil related products) and, irrespective of the currency, thresholds should be expressed by reference to market turnover volumes and units of commodities.

The liquidity framework also needs to include a specific treatment for package transactions that would allow these transactions to both benefit from the transparency waivers and deferrals available to the underlying transactions that make up their component parts, and continue to execute in their intended risk based construction (particularly where some, but not all, of the transactions are in scope of the trading obligation). If ESMA fails to provide for the appropriate trading of packages, end investors will be required to trade the components independently, resulting in increased transaction costs and increased execution risks, which would seem to conflict with ESMA's policy objectives. The Level 1 text is able to empower ESMA to specify how package transactions are treated, so we would endorse the suggested framework developed by ISDA in this respect.

Transparency: Calibrating SSTI and LIS and realising their potential interplay with liquidity determinations.

We also suggest that if ESMA aims to use Large in Scale (LIS) or Size Specific to the Instrument (SSTI) thresholds to correct for an illiquid instrument being incorrectly classified as liquid, then the relevant LIS and/or SSTI thresholds need to be set at a sufficiently low level and we make a number of recommendations. In ISDA's view, this has not been achieved. We suggest that:

- SSTI/LIS levels be lowered, and that this is particularly important in the pre-trade context where the likelihood of the market moving against a firm quoting for a trade is greatest
- The proposed 50% SSTI/LIS ratio is arbitrary and we are concerned that it assumes a linear relationship between SSTI and LIS, so we propose two possible ways forward: a median measure of SSTI or a lower SSTI/LIS ratio in the region of 10%
- LIS should be recomputed on a dynamic basis, but the measure should be based on a percentile measure of trades below the threshold which is the most natural measure of LIS – i.e. trade count
- LIS to be based on a 90% percentile for homogenous classes but be set at a lower percentile for heterogeneous classes.

<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, the WMBA does not agree.

Annex III:

(1) The definition of "bond" should be amended, as follows:

'Bond' means a transferable security that is constituted by an order, promise, engagement or acknowledgement to pay on demand, or at a determinable future time, a sum in money to, or to the order of, the holder of one or more units of the security. It includes depositary receipts representative of bonds falling within Article 4(1)(44)(b) of Directive 2014/65/EU which is not a structured finance product or a structured debt security.

(5) The definition of "convertible bond" should be amended, as follows:

> *'Convertible bond' means an instrument consisting of a bond or a securitised debt instrument with an embedded derivative, such as an option to buy the underlying equity acquire shares of an issuer or a member of the issuer's group.*

<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>

No, the WMBA does not agree with the liquidity parameters proposed by ESMA for securitised derivatives. We do not believe that the presence of one market maker should be sufficient for a sub-class of securitised derivatives to be deemed liquid:

- As ESMA itself has noted in paragraph 62 of page 112 of the Consultation paper, whilst 98% of securitised derivatives analysed by ESMA had a dedicated market maker, these instruments only make up 29% of total trades and 39% of total volume traded. It is clear, therefore, that the presence of a market maker does not equate to liquidity. additional factors must also be taken into account to determine which sub-classes of securitised derivatives are liquid
- The definition of "liquid market" in Article 2(17)(a) of MiFIR requires there to be "willing buyers and sellers on a continuous basis". This requires there to be more than one buyer or seller in a market for a particular sub-class of instruments for that sub-class to be determined liquid

We note that the definition of securitised derivatives in the RTS is extremely broad and would capture a diverse range of securities. In fact, the definition overlaps with many types of derivatives since it captures both securitised and unsecuritised instruments.

The liquidity calibration is too broad given the breadth and diversity of the universe of instruments that would be classified as securitised derivatives, a more granular approach. Indeed, the presumption that, prima facie, the presence of a market maker implies liquidity in all related markets is false, and that the nature of the product as well as the number and type of market participants is highly relevant to such a determination.

Within this large universe, there is a subset of instruments that can be categorized as liquid because they are predominately retail focused and transactions are often executed in relatively small sizes. However, there are many other instruments falling within this class that are wholesale products and are illiquid.

<ESMA_QUESTION_CP_MIFID_59>

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

<ESMA_QUESTION_CP_MIFID_60>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_60>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_61>
No, the WMBA does not agree with the proposed classification of a liquid market for interest rate derivatives. We in particular note that 'Swaption' are all within one category creating a plethora of false positives and some false negatives. Additionally, it is difficult for the WMBA to understand where spreads and mixes of bonds/swaps would be classified. Clearly a set of very granular sub groups are necessary in tandem with more lien given to venues to appoint trades to an appropriate classification. The WMBA would cross refer to the ISDA answer on the detailed granularity of a classification for Interest rate derivatives including:

- Refines the assessment of liquid classes as follows:
- By analysing swaptions at a greater degree of granularity in order to ensure that each sub-class against which liquidity is assessed contains reasonably homogenous derivatives. This can be achieved by using additional criteria to define the sub-classes of swaptions.
- By utilising higher liquidity thresholds which accord better with the MiFIR definition of a liquid market (that is one where there are ready and willing buyers and sellers on a continuous basis).
- By refining its data analysis methods, including the classification of swaps which do not have whole year tenors, and ensure that the dataset used is accurate.
- By clarifying the illiquid status of exotic interest rate derivatives which do not currently appear in the interest rate derivatives taxonomy of RTS 9. Under ISDA's taxonomy,

exotics are a product distinct from options, cross-currency swaps, caps, floors, FRAs, or interest rate swaps; so creating (as ESMA has done for equity and commodity derivatives and bonds) an “all other products” category in RTS 9 will further align ESMA’s taxonomy with ISDA’s and clarify the status of these derivatives. Given the heterogeneity of derivatives in this class, we expect it to be considered illiquid.

- Seek to achieve its policy objective of ensuring transparency at the aggregate level of the interest rate derivatives asset class, and not attempt to find at least some liquid sub-classes in as many classes of interest rate derivatives as possible. Some classes are simply very illiquid or extremely heterogeneous. Appropriate and consistent use of liquidity thresholds across sub-classes when defined with comparable levels of granularity will ensure that illiquid classes are not incorrectly identified as liquid. If ESMA wishes to assess whether or not it has “captured” a sufficiently broad range of derivatives as liquid instruments, it should make this assessment at the aggregate level of the interest rate derivatives asset class rather than at the level of each class or sub-class.
- Recognise package transactions as a distinct class of financial transactions and ensure that they are adequately provided for in the RTS. We believe that certain dates – especially those tenors falling outside the traded tenor of 2,3,5,10 years – would display much lower liquidity if ESMA were to only consider outright trading in those tenors. This has been recognised in the US, where it is only the benchmark tenors which have been declared subject to mandatory trading.

Further we would note the requirement for the inclusion of the following:

- The need for sufficient granularity in the venue test and the liquidity test
- The importance of not conflating on-venue and off-venue instruments
- The need not to bring into scope OTC derivative transactions that are not listed on venues
- The inappropriateness of the COFIA approach and the broad scope of the proposed liquidity provision, which would include too many illiquid instruments
- The need for appropriate treatment of packaged trades
- The need to use pre-trade order book data
- The need to use broader data sets
- The need to use number of contracts rather than notional value
- The need for a properly calibrated time line for calculations
- The need to refine the classes of instruments used
- The need to extend the maturity frontier from three to four months
- The need for more granularity in the average trade per day and average notional amount per day parameters

<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>
The WMBA are very concerned at the categorisation and therefore the liquidity categorisation of swaptions. These are very significant risk hedging products and it is therefore necessary to include an "all other interest rate derivatives" class to capture interest rate derivatives which do not fall within any of the classes set out in tables 5 to 31. However, we would set out the note that not every swaption is hedged with an interest rate and so becomes a *packaged product*.

For example, tables 5 to 31 do not currently include instruments such as exotic interest rate derivatives, caps, floors and debt options. Exotics, caps and floors are products distinct from options, cross-currency swaps, FRAs or interest rate swaps.

Debt options are products distinct from exchange-traded options on bond futures underliers. Creating (as ESMA has done for equity and commodity derivatives and bonds) an “all other products” category for interest rate derivatives in RTS 9 will ensure that these classes of derivatives are given a liquidity determination and that appropriate SSTI and LIS thresholds are assigned. Given the heterogeneity of derivatives in this class, we expect it to be considered illiquid.

WMBA agrees with the ISDA analysis of definitions as below:

- The definition of "Swap" should be amended so that the reference to "financial instrument" is removed. It is not necessary for the exchanged cash flows to relate to a financial instrument. For example, a swap could simply involve the exchange of cash flows relating to two different interest rates. The definition should be amended as follows:

  ‘Swap’ means a contract in which two parties agree to exchange cash flows ~~in one financial instrument for another~~ at a certain future date <u>or dates</u>.

- The definition of "Forward agreement" should be amended to adequately distinguish it from a futures contract, as follows:

  ‘Forward agreement’ means a ~~private agreement~~ <u>contract that is not a futures contract</u> between two parties to buy or sell a commodity or financial instrument at a designated future date at a price agreed upon at the initiation of the contract by the buyer and seller.

- The definition of “Swaption” should be amended to ensure that it captures cash-settled contracts, i.e. swaptions which are settled at expiry of the period of optionality based on the market value or rate of the underlying swap (without resulting in the two parties to the swaption entering into a swap). The existing definition only refers to a physically-delivered swaptions. The definition should be amended as follows:

  ‘Swaption’ means a contract that gives the owner the right, but not the obligation, to enter <u>into</u> a swap at or up to a certain future date or exercise date. <u>In some cases, the swaption may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.</u>

- ESMA should define the term ‘tenor’ in the context of Tables 15 to 31 in Annex III of RTS 9. We consider the appropriate definition to be the time period from trade date to maturity date. Failure to do so will leave the classification of forward starting or backward starting swaps unclear. We would propose the addition of the following wording in section 4 of Annex III of RTS 9:

"For the purposes of Tables 15 to 31, 'tenor' means the time period from trade date to maturity date of the contract."

- The definition of 'Interest rate derivatives' should be amended as follows:

  'Interest rate derivatives' means any contract as defined in Annex I, Section C(4) of Directive 2014/65/EU whose underlying is an interest rate, a bond, a loan, a swapnote, any basket, portfolio or index including an interest rate, a bond, a loan, a swapnote or any other product representing the performance of an interest rate, a bond, a loan~~,~~ or a swapnote.

It is necessary to include an "all other interest rate derivatives" class to capture interest rate derivatives which do not fall within any of the classes set out in tables 5 to 31. For example, tables 5 to 31 do not currently include instruments such as exotic interest rate derivatives, caps, floors and debt options. Exotics, caps and floors are products distinct from options, cross-currency swaps, FRAs, or interest rate swaps. Debt options are products distinct from exchange-traded options on bond futures underliers. Creating (as ESMA has done for equity and commodity derivatives and bonds) an "all other products" category for interest rate derivatives in RTS 9 will ensure that these classes of derivatives are given a liquidity determination and that appropriate SSTI and LIS thresholds are assigned. Given the heterogeneity of derivatives in this class, we expect it to be considered illiquid.

<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>

The WMBA notes that ESMA has not been clear that its proposal relates only to exchange-traded equity derivatives contracts and does not apply to bilateral OTC equity derivatives contracts. OTC equity derivatives will have very different contractual and economic terms (including, amongst others, underlying asset, expiry, strike, pay-off methodology, pricing methodology, lifecycle event scenarios and consequences and adjustment methodologies) to the equivalent exchange-traded equity derivatives contract and are not fungible and therefore have very different degrees of liquidity compared to exchange-traded equity derivatives contracts.

<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>
The WMBA concurs with ISDA's view on equity derivatives and notes that members' business models are inclusive of both OTFs and in acting as agent to the exchange traded derivatives in order to execute packaged products.
It is important, therefore, to distinguish between: (i) exchange-traded equity derivatives contracts; and (ii) OTC equity derivatives contracts.

(i) Exchange-traded equity derivative contracts
In summary, ISDA's view is that ESMA's determination of liquidity for exchange-traded equity derivatives does not appear justified by the trading venue data.

a) Futures
With regard to Futures, ESMA's own data, as evidenced in Tables 19 and 20, provide indisputable evidence that a finding of "liquid" cannot be supported for Futures on Stocks (0.78% of trades, 0.045% of notional), Basket/Portfolio (0.00% of trades, 0.00% of notional), Dividend Index (0.12% of trades, 0.19% of notional) or Others (0.62% of trades, 0.07% of notional). Only Futures on Stock Index (98.47% of trades, 99.69% of notional) could qualify for a "liquid" determination; however, even this determination would need to be subject to more detailed review of individual contracts as within this category the volumes are overwhelmingly concentrated on a small number of indices.
ESMA's own data, as evidenced in Charts 13 to 15, provides indisputable evidence that a finding of "liquid" cannot be supported for any contract with a time to maturity in excess of four months (being the front-month plus roll at expiry).
Accordingly, the data only supports a finding of "liquid" for futures contracts on certain stock indices, with a time to maturity of less than or equal to four months and given the limited number of contracts and the concentration of volumes on a subset of actively-traded indices, a significantly more granular COFIA assessment (akin to interest rate derivatives) would be more justified. In the context of this more granular COFIA assessment, the data-based determination should, at a minimum, distinguish between: (i) contracts with a time to maturity of less than or equal to four months and other contracts, and (ii) contracts with different underlying stock indices.

b) Options
With regard to Options, ESMA's own data, as evidenced in Tables 19 and 20, provides indisputable evidence that a finding of "liquid" cannot be supported for Options on Basket/Portfolio (0.00% of trades, 0.00% of notional), Dividend Index (0.00% of trades, 0.00% of notional) or Others (1.81% of trades, 0.08% of notional). Only Options on individual Stock (18.89% of trades, 6.06% of notional) and Stock Index (79.29% of trades, 93.85% of notional) could qualify for a "liquid" determination. However even this determination would need to be subject to more detailed review of individual contracts as within this category, the volumes are overwhelmingly concentrated on a small number of actively-traded stock and index contracts within a narrow strike range.
ESMA's own data, as evidenced in Chart 12, provides indisputable evidence that a finding of "liquid" cannot be supported for any contract with a time to maturity in excess of four months.
Accordingly, the data only supports a finding of "liquid" for Options contracts on certain stocks and stock indices, with a time to maturity of less than or equal to four months and, given the limited number of contracts and the concentration of volumes on a subset of actively-traded stocks and stock

indices, a significantly more granular COFIA assessment would be more justified. In the context of this more granular COFIA assessment, the data-based determination should distinguish between: (i) contracts with a time to maturity of less than or equal to four months and other contracts, (ii) contracts with different underlying stocks and stock indices, and (iii) contracts with different strikes .

c) ISDA's alternative proposal for exchange-traded equity derivatives

ISDA suggests that, based on the evidence of the data, the following COFIA classes need to be deemed <u>non-liquid:</u>

(a) Stock futures.
(b) Futures on a basket or portfolio of shares
(c) Dividend index futures
(d) Stock dividend futures
(e) Futures on other underlying values
(f) Options on a basket or portfolio of shares
(g) Dividend index options
(h) Stock dividend options
(i) Options on other underlying values

The following sub-classes need to be assessed at a significantly greater degree of granularity, akin to ESMA's assessment of exchange-traded interest rate derivatives, to inform a possible determination of liquidity:

(a) Index futures
(b) Stock options
(c) Index options

In the context of this more granular COFIA assessment, the data-based determination should distinguish between contracts with a time to maturity of less than or equal to four months and other contracts and differentiate contracts with different underlying indices.

We anticipate that on this more granular COFIA assessment the main national indices and the Eurostoxx 50 will be determined liquid, as these contracts are objectively liquid, and most sector indices will not be determined liquid. We would also note that Stock and Index Options outside of a 90/110 strike range are less liquid and ESMA should, therefore, include this characteristic as part of the liquidity assessment.

(ii) OTC equity derivative contracts

In summary, ISDA is concerned that ESMA’s determination of liquidity creates potential ambiguity as to the scope of application.

The data on which ESMA has based its proposed determination is drawn solely from trading venues and concerns only exchange-traded equity derivatives contracts. Accordingly, any determination based solely on data applicable to exchange-traded equity derivatives should only apply to exchange-traded equity-derivatives. Exchange-traded contracts are very different in nature and scope from equity derivatives contracts traded bilaterally. These bilateral OTC contracts are not fungible with, or economically equivalent to, exchange-traded contracts. Their economic and contractual terms (including, inter alia: underlying asset, expiry, strike, pay-off methodology, pricing methodology, lifecycle event scenarios and consequences, adjustment methodologies) differ widely from the

standard contracts listed on trading venues. Also, OTC equity derivatives contracts of the same type differ between firms as the documentation is not standardised. Firms negotiate different clauses into bespoke confirmations and master agreements depending on many factors including the status of the counterparty. ISDA is taking steps to introduce standardised documentation for OTC equity derivatives contracts; however such standardisation will take a long time to implement for a large proportion of contract types and there will be a proportion of contract types where standardisation is not achievable. ESMA, therefore, needs to clarify that a finding of "liquid" on an exchange-traded equity derivatives contract class, which is solely based on data derived from trading venues where such contracts are listed, should not apply to equity derivatives which are actually traded OTC.
<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 WMBA concurs with ISDA's view on equity derivatives.
<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>
Commodity derivatives – Metals - The WMBA/LEBA is only active in iron ore (freight) derivatives in relation to metals, and confers to the answer given by ISDA.
<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>
To assess the liquidity of energy commodity derivatives, we understand that ESMA has analysed data collected from a number of trading venues. Whilst these also included all trades in the year to June 2014 within WMBA (LEBA) members, we do not believe that any of the IDB data has actually been incorporated into the liquidity framework. Given that the Trayport market share data demonstrates that the vast majority of trades occur through the WMBA (LEBA) members, the residual dataset is far too narrow and, therefore, the assessments do not provide an accurate representation of liquidity in the energy forward and derivative commodity markets.
In addition to WMBA (LEBA) members, the analysis should also include data collected from the major non-EU trading venues such as CME Group and ICE Futures. We are very surprised indeed that the liquidity assessment for power ranks Sweden as very liquid and oil related derivatives appears to imply that the EU is confined to, or represented by, those traded in Romanian Leu. Neither of these are remotely the case.
We also concur with ISDA and EFET that neither the consultation nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodity related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C (6) definition or pursuant to the scope of the C (7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF.
In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes frequently and routinely. Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.
In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are 'traded on a trading venue' are liquid for the purposes of the MiFID2 transparency regime. We note that at the end of February, ESMA has published an Addendum to this consultation which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal [and iron ore]) which are not addressed in either consultation.

Approach and parameters
We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support ESMA's current determination of the relevant sub-classes. In our view, ESMA sub-classes should be set at a more granular level and we include our initial suggestions for energy in the illustrative assessment below.

In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of energy commodity contracts, we believe that the proposed parameters are inappropriate. In particular:

d) The threshold of “one trade per day” and “€100,000 per day” is too low and does not give a true indication of the liquidity of a market.
e) Expression of thresholds by reference to notional amount in euros is not appropriate because energy commodity contracts are traded in US dollars. Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
f) Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).
g) The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

<ESMA_QUESTION_CP_MIFID_67>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_68>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_68>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_69>
WMBA (LEBA) members are active across the emissions derivatives spectrum of products; however, we understand that ESMA has analysed data collected from only three trading venues. We believe that the dataset provided by the WMBA (LEBA) members comprising all trades for the year to June 2014 was not utilised in the liquidity assessment. Conversely, we do advise that outside the emissions

options market and bespoke structured products related to compliance units, the majority of vanilla trades are traded directly as the near vintage on ICE or given up as 'futures blocks'.

<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>

Q. 70

No, the WMBA does not agree with ESMA's proposal on trading systems and pre-trade transparency. The WMBA also believes that both the definitions of prescribed trading systems and the issue of 'Packaged Transactions' need to be specifically addressed in the RTS.

1. Definitions of trading systems

Voice trading system

Draft RTS 9 (Annex 1, Table 1) defines 'voice trading system' as:

'A trading system where transactions between members are arranged through voice negotiation.'

The WMBA does not believe that this definition accurately describes the universally accepted market models of voice trading and model which, if left uncorrected not corrected, presents meaningful negative implications for market participants. In particular, the term 'voice negotiation' is overly narrow and does not take into account the increasing use of a variety of voice replicating technologies in *the* market*.*

In light of the above points, the WMBA proposes that the definition of voice trading system must include technologies which merely serve as a replacement for the spoken word (e.g., email, instant messaging, other social communication methods etc.). We do not believe that the term 'voice negotiation' achieves this because the term 'voice' itself is not defined. We therefore propose the following definition of 'voice trading system':

Definition Proposal 1

'Whilst the WMBA members use the complete variety of venue methodologies across their systems, the voice element remains widely utilised and we understand the requirement for a suitable and appropriate definition. Millions of OTC transactions occur annually where the execution has a voice component but may not be exclusively voice only on both sides of that trade. Therefore, the critically undefined term 'voice negotiation' lacks vital clarity and, most urgently, in limiting the definition only to 'negotiation' may exclude the completion of transactions.

As ESMA states in paragraph 11, voice in a core role focuses on negotiations towards a transaction, aided by technological tools but with the matching occurring as a consequence of the considerations initially within and consequently between the humans interacting. Content on the system is manually created and therefore discretionary whilst communications may be automated. We also note that the required flexibility in the role of voice can be achieved by understanding that the role of voice may be in the '*negotiation'* AND/OR *'conclusion'* of a transaction.

> *"ESMA is well aware of the many hybrid systems which are arranged by voice and the technological support to conclude transactions, however ESMA is of the opinion that the essential element to consider for classifying a system as a voice trading system is that the voice element is the core part of the system to negotiate and conclude transactions. This may be supported by other technological tools. If the voice element is not the essential part of the*

system then the operator of the trading venue need to classify the system as a hybrid trading system."

- Proposed as per CP, "a trading system where transactions between members are arranged through voice negotiation *the spoken word or any technology which replicates the spoken word*'.

We appreciate that ESMA may be concerned that the above proposed definition could be interpreted as including technologies which do more than replicating voice negotiation, such as technology that also serves as a transaction matching system. We acknowledge that the definitions of trading systems should distinguish and differentiate between communication technologies which serve merely as a means for negotiation communication through replication of the spoken word (e.g., email, instant messaging, other social communication methods etc.) and those which are transaction matching technologies such as CLOB, RFQ and auction systems. In the event that this is a concern for ESMA which it believes will not be adequately met by Definition Proposal 1, we believe that the following proposed definition of 'voice trading system' should be adopted:

Definition Proposal 2

'A trading system where transactions between members are arranged through ~~voice negotiation~~ the spoken word or any technology which replicates the spoken word excluding any order or transaction matching technology'.

In addition, it is important to note that Definition Proposals 1 and 2 enable consistency with the US definition of voice in Dodd Frank which appropriately includes communication methods such as email and instant messaging.

2. Definitions of Packaged Transactions

- The WMBA wishes to underline the predominance of packaged transactions in the wholesale non-equity markets, a factor which ESMA has not considered having based much of its approach to transparency on the equity markets. Packaged transactions are particularly prevalent in the Information to be made public, "The bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system"

Voice systems are more easily defined away from what they are not. The WMBA further notes that it is clear to understand what is outside the bounds of a 'Voice Trading System' which are clearly inclusive of systems such as 'RFQ', 'CLOB' and several types of auctions. Common within non-voice systems is the absence of discretion within the messaging system itself and the commonality of technology between the message and the system itself. In this way, the WMBA understands that it is the component term 'voice' which needs to be elaborated in order to assess its role as the 'core part' of the system. Voice content is manually created [by humans] and therefore discretionary, regardless of whether those subsequent communications may be automated which enables key consistency to the US definition of voice within Dodd Frank as "any means of interstate commerce".

Indeed, 'voice trading system' as prescribed in 3.7.14 does include the full scope of one to one or many to many negotiation that may be carried out by other means such as screen based voice assisted execution, hybrid execution (where only one side of the trade is voice based), single price and weighted price auction execution (where the pre-trade price discovery process is conducted by voice), voice work up (which may stem from a fully electronic transaction), instant messaging system based execution or email based executions (which may then be stored in a 'durable medium' as defined under MiFID record keeping requirements). All of these methods receive similar audit trail, post-trade processing and trade reporting treatment.

Therefore, the specific inclusion of this wider, integrated and more comprehensive scope is necessary to describe the current voice based arrangement, negotiation and execution operations of the wholesale multilateral market in which technologies that replicate and enhance voice execution, and which are able to store details on a durable medium, are widely employed on a global basis. It is more than likely that the terminology needs to be able to encompass and add in any new technologies which are not currently widespread that replicate voice and that would not otherwise be included within the other categories.

Accordingly, in the view of the WMBA, a 'voice trading system' definition should include a significantly more complete summary of hybrid execution methodologies for which there are multiple means of communications. The term '*voice*' includes the spoken-word and any systems that replicate the spoken-word (as socialised communications). These systems will be third party technologies and not those operated by the trading system itself. Therefore, voice systems will not include Consolidated Limit Order Books [CLOB], Request for Quote [RFQ], Continuous Auction Order Book Systems, Quote Driven Trading Systems, Periodic Auction Trading System.

The WMBA notes that within MiFID, ESMA employs not only the term 'Voice trading system,' but also 'Voice System' and 'Voice Negotiation'. We note that a 'trading system' as defined in RTS 34 (electronic, voice, open outcry) has two distinct uses of voice, both a market method and also as a trading system. We further note that a *'trading system'* as defined in RTS 34 (electronic, voice, open outcry) has in mind two distinct uses of the term voice: a market method and also as a trading system. Therefore, as RTS 34 closely defines an electronic system, the WMBA endorses it will be better to define voice more generally as being residual and away from this prescription.

We further note that with WMBA members operating multilateral non-equity wholesale markets, both globally and specifically in the US under Dodd-Frank, the notion of 'voice' is specifically and carefully incorporated into the Act under the broad term 'by any means of interstate commerce'. This encompasses all forms of electronic communication other than those involving the spoken word, particularly instant messaging and email. As a result, the WMBA would specifically request that the broad definition be expanded to "Any *trading system where transactions between members are either arranged, negotiated or executed partially or completely by voice to include any medium that replicates voice procedures*".

Concisely, therefore, this includes not only emails or instant messaging, but also has the scope for forward technologies not yet created or widely used. For a voice price to be executable in a multi to multi system, it needs to be broadcast across that system such that the point of publication needs to be such prior to the IDB saying 'done'. We note that within SEF protocols, the embargo rule has demanded that there needs to be evidence that any price has been 'widely distributed'.

The WMBA notes our comments made to the MiFID2 Level 2 Discussion Paper and thinks it worth setting these out again here:

> *The WMBA does not agree with this overly narrow definition of the term 'voice trading system'. We do not concur that the discussion paper accurately captures the current universally accepted market model which if not corrected presents meaningful negative implications for market participants.*

Millions of OTC transactions occur annually where the execution has a voice component but may not be exclusively voice only on both sides of that trade. Therefore, the critically undefined term 'voice negotiation' lacks vital clarity and, most urgently, in limiting the definition only to 'negotiation' may exclude the completion of transactions.

Indeed, 'voice trading system' as prescribed in 3.7.14 does include the full scope of one to one or many to many negotiation that may be carried out by other means such as screen based voice assisted execution, hybrid execution (where only one side of the trade is voice based), single price and weighted price auction execution (where the pre-trade price discovery process is conducted by voice), voice work up (which may stem from a fully electronic transaction), instant messaging system based execution or email based executions (which may then be stored in a 'durable medium' as defined under MiFID record keeping requirements). All of these methods receive similar audit trail, post-trade processing and trade reporting treatment.

Therefore, the specific inclusion of this wider, integrated and more comprehensive scope is necessary to describe the current voice based arrangement, negotiation and execution operations of the wholesale multilateral market in which technologies that replicate and enhance voice execution, and which are able to store details on a durable medium, are widely employed on a global basis.

Accordingly, in the view of the WMBA, a 'voice trading system' definition should include a significantly more complete summary of hybrid execution methodologies for which there are multiple means of communications.

Further, we would note that as the organisation that represents multilateral markets, both globally and specifically in the US under Dodd-Frank, the notion of 'voice' is specifically and purposefully incorporated into the Act under the broad term 'by any means of interstate commerce'. Forms of electronic communication other than those involving the spoken word, such as instant messaging and email, should be included within the term.

As a result, the WMBA would specifically request that the broad definition be expanded to "Any trading system where transactions between members are either arranged, negotiated or executed partially or completely by voice to include any medium that replicates voice procedures".

Given consideration to the developments around the drafting of the RTS, however, we would commend a more succinct definition of the term voice which may usefully be set out in a Recital to the RTS as below.

*"**Voice includes the spoken-word and any systems that replicate the spoken-word as socialised communications. These systems will be third party technologies and not those operated by the trading system itself. Voice systems therefore, will not include Consolidated Limit Order Books [CLOB], Request for Quote [RFQ], Continuous Auction Order Book Systems, Quote Driven Trading Systems, and Periodic Auction Trading System**"*

Hybrid trading system

Any differentiation of 'Voice Systems' versus 'Hybrid Systems' is not simply workable. Rather, WMBA view 'Hybrid Systems' as the interactions between different systems and may be particularly important in the negotiation and assemblage of packaged products. The WMBA underline that MIFID level 1 text itself does not define the term 'hybrid' beyond reference in Paragraph 8.

We note that such a broader interpretation would be more consistent with Level 1 which provides for the requirements to be calibrated for different types of trading systems. For example, Recital 14 of MiFIR provides that "timely pre-trade and post-trade transparency requirements taking into account the different characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems…"

Whilst the WMBA members conjointly operate the majority of the global non-equity trading systems, we simply do not recognise that any of the suggested information should be made public. We would recommend a simple reversion to the existing level 1 text which has proved perfectly adequate.

Whilst the WMBA concur with ESMA that the definition of a Hybrid trading system is necessarily residual in nature, we disagree that the system itself should be defined as discreet from the other designated systems and would suggest the leaner definition stated below.

"'A Hybrid Trading Systems is the interaction between other different trading systems".

Request-For-Quote definition (RFQ) trading system

The WMBA would underline that the usage, and therefore the definitions of Request-For-Quote (RFQ) trading systems, are markedly or entirely different in a multilateral system of a MIFID venue to that in a dealer to client relationship in a Systematic Internaliser [SI]. We therefore clearly understand that the changes suggested from the summer 2014 DP into this CP are orientated towards the SI system and unworkable for MIFID venues.

ESMA has proposed two significant changes to its previous RFQ definition in its May 2014 Discussion Paper: (i) changing "provided" to "published"; and (ii) adding an exclusivity of execution feature.

For the WMBA, operating multilateral MTFs and OTFs, the RFQ should effectively represent a 'risk free cross'. The idea put forward here by ESMA for wider public live inspection of the negotiation to enter such a cross is simply unworkable for MIFID venues who are open to the entire wholesale market place and normally engage in volume discovery and working-up trade sizes and participants. RFQ systems as operated by IDBs around the world and, most particularly, in acting as SEFs under Dodd Frank which involves the publication of quotes rather than provision of quotes.

For these reasons, the WMBA would strongly concur with the widespread view to replace the word "published" with "provided". The WMBA would underline that clearly the definition of RFQ system should describe the trading system and not prescribe what should be published.

2. Definitions of Package Transactions

The WMBA underlines that wholesale non-equity markets due to the large notional trade sizes, the diversity of instruments, episodic liquidity and the widespread use of derivatives in those markets... Therefore, we emphasise that the treatment of packaged transactions is very important for MIFID2 and state our concerns here that they have the appearance of being somewhat of an afterthought in the timelines.

Since neither the MiFID II Consultation Paper nor the RTS address packaged transactions work, the WMBA recommends that ESMA specifically consider their treatment as follows:

a. When assessing liquidity criteria for a packaged transaction, such criteria should be applied to the most risky or least liquid component with the implication that where a packaged transaction contains at least one illiquid component the entire packaged transaction will be deemed illiquid.

b. Packaged transactions should be considered as assisting end users to reduce transaction costs, i.e., a single packaged transaction is less expensive to execute than multiple transactions.).
c. Packaged transactions should be considered to contribute to managing execution risk, i.e., , execution of a single packaged transaction alleviates timing and other mechanical/process risks associated with the execution of multiple transactions.).

Trading venues should be afforded the scope and flexibility to classify packaged transactions in accordance with relevant factors including but not limited to:

a. Whether or not the packaged transaction is made up of a combination of asset classes;
b. Whether some components of a packaged transaction are traded on a trading venue; but others are not.
c. Whether certain components of a packaged transaction are deemed liquid or illiquid; but others are not.
d. Whether some components of a packaged transaction fall above the relevant LIS or SSTI thresholds; but others are not.
e. Whether some components of a packaged transaction assessed individually fall below the relevant LIS or SSTI but when assessed together constitute a single transaction falling above the LIS or SSTI; and.
f. Whether the packaged transaction contains bonds or derivatives which trade on a different trading venue to the other components, such as inter-dealer brokered trades.

The WMBA would therefore recommend that a 'packaged transaction' be defined as: ***A transaction comprising two or more components, each of which is either a financial instrument, a payment or a securities financing transaction where:***

a. The components of a package must be negotiable on a single venue in order that the package be considered to be 'traded on a trading venue'. Evidently bond versus futures basis trades on an IDB are prime example of such.
b. The components are priced as a 'package' with simultaneous execution of all such components.
c. The execution of each component is contingent on the execution of the other components.
d. Each component must be able to stand alone and must be able to bear economic risk.

The WMBA recommends that an additional flag be reported on trades that are components of packaged transactions and that such flag be added to the list of flags set out in draft RTS 9.

3. Pre-Trade Information to be Made Public

Article 8(2) of MiFIR provides that the transparency requirements should be calibrated for the different types of trading systems. The clear intention of MiFIR is to ensure that pre trade transparency is introduced in a manner that is appropriate for both the trading system and its participants. By introducing a pre-trade regime for trades under either the LiS or the SSTI that requires every Actionable-IOI, bid or offer, together with underlying to be published or supposedly standard volume, as ESMA's proposals could be interpreted, could easily undermine and make unworkable both those markets caught with inappropriate LIS parameters and those dependent upon RFQ within their trading systems. We note that ESMA has not provided any explanation as to how it has fulfilled its mandate under Article 8(2), such that the integrity of the sub LIS/SSTI trading systems are preserved.

Within level 1, Article 8 states that "Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices". We note that it does not state that every bid and offer and attaching volume should be published. Notably, the disclosure requirements for continuous auction order book trading systems, which highly liquid markets use, require less granularity than the proposed requirements for RFQ and voice trading which, as ESMA has recognised, attracts markets which have insufficient trading interests to attract continuous quoting. Specifically, order book trading systems need to disclose the five best bid and offers and RFQ systems need to disclose the bid and offers and attaching volumes submitted by each responding entity. A more onerous disclosure regime on RFQ systems is not appropriate and is not consistent with Article 8(2).

The WMBA's preferred solution to mitigate all the above risks would be to require venues to provide indicative prices of the specific instrument for voice systems below the SSTI/LIS and for instruments derived from hybrid venues. In this sense, we note the hybridity may more simply apply to the instrument than to the venue which must in such a case be conjoined. Venue provision of indicative prices would also alleviate the problems and conflicts pertaining to RFQ systems on multilateral OTFs and MTFs rather than the ESMA proposed quasi-private/quasi-public price-by-price information.

The WMBA firmly disagrees with ESMA's proposal in paragraph 34 on page 213 of the Consultation Paper that the SSTI threshold be the same for pre- and post-trade transparency. The WMBA wrote extensively in the July 2014 Discussion Paper that the point of the SSTI was to protect market participants from being penalised for making prices and the capital commitment to liquidity. We therefore proposed that the first and foremost concern was not to link the SSTI to the LiS in a top down matrix, but rather to understand its purpose in the level 1 text and build an IBIA lead framework bottom up. This, in our opinion, is simply evident in the name of the waiver – "The Size Specific to the Instrument".

In operating most of the prospective OTFs, and with its members purely engaged in the process to gathering and building market liquidity across all non-equity products and instruments around the globe, the WMBA may therefore be in an appropriate position to suggest the better routes to a workable liquidity and transparency regime. Evidently, however, ESMA ignored these suggestions, presumably in the interests of simplicity and due to the timeframe pertaining. We consequently have a proposed SSTI regime solely derivative from the LiS quantum. It should be recognised that this outcome will reduce the ability of the SSTI waivers to make amends for the false outcomes from the liquidity framework, which is also a stated goal now for ESMA.

To elaborate this case, the WMBA has made a gap analysis from this top down approach to waivers to a bottom up impact. One would suggest the hypothesis to be tested here is that the LiS should be in similar to, or at least within an order of magnitude, to commonly accepted standard market size in the global wholesale markets. The SSTI should be under this measure.

We have compared the standard size of each derivative, forward and bond instrument in a sample control group across 30 instruments, as commonly brokered across the our membership, to the LiS and the SSTI derived from the CP proposals. There are no cases where the suggested LiS/SSTI are lower than standard market size. Many instruments appear workable if only the SSTI is compared. There are, however, notable outliers where standard market size falls far below both the LiS and the SSTI. These are the truly 'false positives' and this is particularly relevant for inflation swaps, swaptions (likely due to the lack of differentiation between sub-categories), € denominated OIS, and float-to-float GBP swaps. The WMBA would be happy to discuss this framework and provide more information if ESMA or NCAs would deem useful at this stage.

To mitigate the deleterious impact of false positives, the WMBA would like to recommend that SSTI/LIS ratio for pre-trade transparency purposes is segregated from that in place for the post-trade transparency. This segregation of waiver parameters is currently the case for equity markets under existing MiFID1. The pre-trade SSTI should be reduced, with either being set at 10% of LIS or at the median trade size for the relevant sub-class. If ESMA's intention is to use LIS or SSTI thresholds to compensate for an illiquid instrument being incorrectly classified as liquid, then the relevant LIS and/or SSTI thresholds need to be set at a sufficiently low level to satisfy this intention. ESMA's proposed calibration of LIS and SSTI levels will not allow this important safeguard in the framework to function as anticipated.

The WMBA also firmly disagrees with the exclusion of "Matched Principal" trades from both pre-trade and post-trade transparency SSTI waivers. We raised this issue at the Paris open hearing to the broad support of all market participants and emphasise that the addition of this phrase into the RTS goes not only beyond the mandate of the MiFID level 1, but positively acts to undermine the legislation. This is ultra vires of ESMA here. WMBA note that the SSTI waiver is to protect the capital commitment of participants in providing liquidity however, ESMA appear to fail to understand the trilateral nature of Matched Principal trades where the venue sits between the two counterparties. Where the venue acts to arrange a trade between counterparties, as in the OTF model, it clearly and simply requires the same waiver treatment applying to the counterparties. Therefore, as drafted, the SSTI waiver could be applied only to half of a trade; that is to Counterparty1<>Venue and not to Venue<>Counterparty2. This would directly compromise Counterparty1.

The WMBA therefore suggests a simple drafting amendment to Article 15. 1(a) with the addition of the words, '*except when traded on an OTF*'.

<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, the WMBA does agree.

<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>

The WMBA evidently agrees with ESMA's view in paragraph 30 of the Consultation Paper that the market operator of the trading venue should determine which methodology to use. Any other outcome would be prescriptive and this would have the impact of cementing venues in the current point in time and this would clearly be anti-competition as well as anti-innovation. In this way, the market power remains with the customers and their discretion to choose between venues, which is the way it should be.

The WMBA agrees that the composition and calculation of these indicative prices should be based on a clear and comprehensive methodology that is made transparent to the public beforehand and laid down in the rules of the trading venue. We also concur that it is essential that a clear and comprehensive description of the methodology is disclosed to the public beforehand.

Conversely, the WMBA firmly disagrees with ESMA's proposal in paragraph 34 on page 213 of the Consultation Paper that the SSTI threshold be the same for pre- and post-trade transparency. The WMBA wrote extensively in the July 2014 Discussion Paper that the point of the SSTI was to protect market participants from being penalised for making prices and the capital commitment to liquidity. We therefore proposed that the first and foremost concern was not to link the SSTI to the LiS in a top down matrix, but rather to understand its purpose in the level 1 text and build an IBIA lead framework bottom up. This, in our opinion, is simply evident in the name of the waiver – "The Size Specific to the Instrument".

In operating most of the prospective OTFs, and with its members purely engaged in the process to gathering and building market liquidity across all non-equity products and instruments around the globe, the WMBA may therefore be in an appropriate position to suggest the better routes to a workable liquidity and transparency regime. Evidently, however, ESMA ignored these suggestions, presumably in the interests of simplicity and due to the timeframe pertaining. We consequently have a proposed SSTI regime solely derivative from the LiS quantum. It should be recognised that this outcome will reduce the ability of the SSTI waivers to make amends for the false outcomes from the liquidity framework which is also a stated goal now for ESMA.

To elaborate this case, the WMBA have made a gap analysis from this top down approach to waivers to a bottom up impact. One would suggest the hypothesis to be tested here is that the LiS should be similar to, or at least within an order of magnitude, to commonly accepted standard market size in the global wholesale markets. The SSTI should be under this measure.

We have compared the standard size of each derivative, forward and bond instrument in a sample control group across 30 instruments, as commonly brokered across the our membership, to the LiS and the SSTI derived from the CP proposals. There are no cases where the suggested LiS/SSTI are lower than standard market size. Many instruments appear workable if only the SSTI is compared. There are, however, notable outliers where standard market size falls far below both the LiS and the SSTI. These are the truly 'false positives' and this is particularly relevant for inflation swaps, swaptions (likely due to the lack of differentiation between sub-categories), € denominated OIS, and float-to-float GBP swaps. The WMBA would be happy to discuss this framework and provide more information if ESMA or NCAs would deem useful at this stage.

To mitigate the deleterious impact of false positives, the WMBA would like to recommend that SSTI/LIS ratio for pre-trade transparency purposes is segregated from that in place for the post-trade transparency. This segregation of waiver parameters is currently the case for equity markets under existing MiFID1. The pre-trade SSTI should be reduced, with either being set at 10% of LIS or at the median trade size for the relevant sub-class. If ESMA's intention is to use LIS or SSTI thresholds to compensate for an illiquid instrument being incorrectly classified as liquid, then the relevant LIS and/or SSTI thresholds need to be set at a sufficiently low level to satisfy this intention. ESMA's proposed calibration of LIS and SSTI levels will not allow this important safeguard in the framework to function as anticipated.

The WMBA also firmly disagrees with the exclusion of "Matched Principal" trades from both pre-trade and post-trade transparency SSTI waivers. We raised this issue at the Paris open hearing to the broad support of all market participants and emphasise that the addition of this phrase into the RTS goes not only beyond the mandate of the MiFID level 1 but positively acts to undermine the legislation. This is ultra vires of ESMA here. WMBA note that the SSTI waiver is to protect the capital commitment of participants in providing liquidity; however, ESMA appear to fail to understand the trilateral nature of Matched Principal trades where the venue sits between the two counterparties. Where the venue acts to arrange a trade between counterparties, as in the OTF model, it clearly and simply requires the same waiver treatment applying to the counterparties. Therefore, as drafted, the SSTI waiver could be applied only to half of a trade; that is to Counterparty1<>Venue and not to Venue<>Counterparty2. This would directly compromise Counterparty1.

The WMBA therefore suggests a simple drafting amendment to Article 15. 1(a) with the addition of the words, '*except when traded on an OTF*'.

<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 WMBA does consider that it is necessary to include the date and time of publication among the fields included in Annex II, Table 1 of RTS 9. ESMA should, however, consider further care that this should be treated proportionately for packaged trades where evident complexities arise across the legs.

The WMBA consider that a better approach would be to:

a. allow a basic report and follow up with supplemental information.
b. redefine the time of trade as that later point in time at which all the economic details are agreed between counterparties.

This conforms more suitably to the legal definition of what point in the negotiations and commitment process that the trade does actually occur. Further, we emphasise that the obligation to make the publication can only start once the venue has all the information that they require to enact this (we note that this is the widespread '*exchange approach'* – we particularly note the latest Eurex submission timeframes). The advantage to this approach for the NCAs is that an obligation is placed onto the venue client to provide all the necessary data to the trade file in a timely manner. This is the core of transparency and accords with the central theme of MiFID.

To be clear, the following fields are available to the venue:

i. Instrument Identifier code and type: ESMA should ensure the format and definition of fields which appear both in Table 1 Annex II of RTS 9 match those of Table 1 Annex I of RTS 32 match.
ii. Venue Nominated Instrument Identifier (where the venue hasn't prelisted reference data).
iii. Price; or the contingent indicative prices for packaged products, batched multiple executions or SFTs .
iv. Trade size [Quantity Notation field]: This may be the cash flow, the nominal amount, the notional amount or it may trade by the associated hedge amount. We would therefore agree that more options should be available, particularly for commodity derivatives reporting. A trade

on oil, for example, will be described in barrels and not Number of units: U, Nominal value: N, Monetary value: V.

v. Trading Day and Trading Time: in EMIR the Execution Timestamp field is a concatenation of the date and time of execution where as for MiFIR it is separated and called Trading Day and Trading Time. It would be preferable to have the same fields under both EMIR and MiFIR.

One issue where the WMBA would particularly disagree with the proposals in the CP is the reduction of the 15 minutes post trade reporting limit down to 5 minutes after 3 years. We emphasise that most trades require longer than 10 minutes to make a trilateral confirmation in the name give up model and we do not see it as likely that this will be purely automated across all global counterparties within three years as this requires a comprehensive roll out of LEI and UTI together with a multilateral venue substituted compliance regime (that is, beyond a purely EU – US agreement). We would therefore recommend that a review is tabled for the 3 year horizon.

The WMBA also notes that the post-trade treatment of FX forwards under proposals appear inappropriate. Many FX products will not be clearing mandated, yet they will likely be classed as liquid (i.e. FX Forwards would not get the waiver treatment were they caught under the clearing mandate). We therefore set out that this proposal goes beyond the level 1 mandate (9.5 powers of ESMA interpretation of 9.1.c), so paragraph 38 proposals exceeds level 1 which only applies to the trading obligation. The consequence of this is that certain instruments, via poor drafting, will not receive the treatment that they are owed.

With regard to Article 7(6) of RTS 9 where ESMA states that "*investment firm that sells the financial instrument concerned shall be responsible for making the transaction public*". The WMBA have noted elsewhere in this response the difficultly in designating the buyer and seller on a derivative transaction. This is a further example of an oversimplified cash-equity market read-across which ESMA have applied throughout the technical standards. This is particularly an issue for SFTs, for any FX exchanges and for OTC swap derivatives where firms exchange cash flows that are each based on floating rates or prices. As MiFID expands to encompass such products, it is important that the technical standards consider such products.

- Examples of such trades in interest rate markets would be basis swaps where one party pays a floating rate according to a specific index (e.g. 1-month USD LIBOR) to their counterparty whilst receiving another floating rate (e.g. 6-month USD LIBOR) from their counterparty.
- In commodity markets such trades, where floating rates or flows based on the prices of different commodities are exchanged by counterparties, are also common and termed spreads or spread swap trades. There are no buyers and sellers.
- In SFTs, Bond Repurchase agreements [REPO} are cash flows. There are no buyers and sellers.
- In FX forwards and FRA's the contracts are a commitment to forward cash flows. There are no buyers and sellers.

Therefore, the WMBA would urge ESMA to firstly work across the industry to develop and endorse best practices and to make sure global standards are followed across jurisdictions in order to ensure the determination of buyer and seller is done as consistently and accurately as possible. The WMBA would endorse the best practice documents of ISDA, developed regarding determination of the reporting party for reporting in certain jurisdictions, which may be applicable to this solution.

<ESMA_QUESTION_CP_MIFID_73>

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

<ESMA_QUESTION_CP_MIFID_74>

No, the WMBA does not agree. In particular, we are concerned at the general plethora of the new flag proposed as evidencing an uncontrolled "*Flag Inflation*" for no particular benefit. The WMBA argued against this in the July 2014 Discussion Paper, endorsing that 8 flags was enough. We consider 16 to be far too many than is required and therefore overly burdensome for all participants, and particularly venues compared to any value added. The real risks here to liquidity are that too much information may be disclosed, especially for wholesale markets with a small set of players. In such markets where transactions are commonly shopped around, volume and price will independently act as tags or markets to the prior shopped remaining economic terms of the complete transaction. This inflation does indeed accord to the general theme throughout the Consultation Paper which evidences ESMA creating more data and 'big data' for no particular reason other than bureaucracy.

We would, however, join proposals for amendments to the flags proposed for identifying transactions carried out under a pre-trade transparency waiver. In line with our recommended treatment of package transactions, a flag for package transactions should be added including a "*link ID*" to connect together trade reports of components of packages. However, if such a flag is included then we would like to see other flags removed since in essence it purely duplicates the role of a deferral flag.

We note calls for a 'Matched Principal' flag. Whilst useful at a superficial level we note that any bond market transaction on an OTF will be a Matched Principal trade, whilst such trades are not permitted on MTFs under constraints in level 1. Therefore, again, the WMBA would query the efficacy of such "*Flag Inflation*" without compromising the need and value for post-trade reporting.

The WMBA would additionally note the following position: ESMA should remove the algorithmic trading flag; ESMA should clarify that the non-price forming flag should not apply to give-up/give in trades; and ESMA should provide more guidance on the scope of technical trades to fixed income by including relevant examples.

<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>

The principal point that the WMBA makes here is that Trade Venues can only publish what information the clients give to them. It may often be the case that the MTF or OTF may simply not have the suggested information, either within the specified time frame because it does not exist, or because the counterparty is not a MiFID firm or is outside the EU and has no requirement therefore to provide it.

One issue where the WMBA would particularly disagree with the proposals in the Consultation Paper is the reduction of the 15 minutes post trade reporting limit down to 5 minutes after 3 years. We emphasise that with most trades, it requires longer than 10 minutes to make a trilateral confirmation in the name give up model and we do not see it as likely that this will be purely automated across all global counterparties within three years as this requires a comprehensive roll out of LEI and UTI together with a multilateral venue substituted compliance regime (that is, beyond a purely EU – US agreement). We would therefore recommend that purely a review is tabled for the 3 year horizon.

The WMBA also firmly disagrees with the exclusion of "Matched Principal" trades from both pre-trade and post-trade transparency SSTI waivers. We raised this issue at the Paris open hearing to the broad support of all market participants and emphasise that the addition of this phrase into the RTS goes not only beyond the mandate of the MiFID level 1 but positively acts to undermine the legislation. This is ultra vires of ESMA here. The WMBA note that the SSTI waiver is to protect the capital commitment of participants in providing liquidity; however, ESMA appear to fail to understand the trilateral nature of Matched Principal trades where the venue sits between the two counterparties. Where the venue acts to arrange a trade between counterparties, as in the OTF model, it clearly and simply requires the same waiver treatment applying to the counterparties. Therefore, as drafted, the SSTI waiver could be applied only to half of a trade; that is to Counterparty1<>Venue and not to Venue<>Counterparty2. This would directly compromise Counterparty1.

The WMBA therefore suggests a simple drafting amendment to Article 15. 1(a) with the addition of the words, '*except when traded on an OTF*'.

Finally, the WMBA supports the view that if an investment firm or venue can publish the trade information sooner than the maximum time limit then they should do this because Level 1 requires trades to be published as close to real time as possible. However, we do not agree that the information should only be published close to the maximum time limit in exceptional circumstances. Instead firms and venues should be able to rely on the time limit whenever systems do not allow publication in a shorter time. Evidently, it is in the interest of venues and participants alike to communicate the maximum amounts of information practicable as soon as practicable to ensure well-functioning and liquid markets.

<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>

The WMBA agrees (for the reasons ESMA provides) that securities financing transactions and primary market transactions [and other types of transaction listed in RTS 9 Article 9] should be exempt from the reporting requirement under article 21.

The WMBA would also urge ESMA to include a recital to RTS 9 confirming that the post-trade transparency obligations on investment firms in Article 21 of MiFIR do not apply in respect of transactions executed on a trading venue (as this transaction would be made public by the relevant trading venue in accordance with Article 10 of MiFIR). This is important to avoid the same transaction being made public multiple times, once by the venue and once by the relevant investment firm. Whilst the operative provisions of the RTS are drafted on this basis, we believe that firms understanding of their obligations would be enhanced if this recital is included. For example, Article 7 of RTS 9 refers to "investment firms trading outside a venue and market operators and investment firms operating a trading venue..."

<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>

The WMBA disagrees with the proposals.

First and foremost, we do not agree with the 48 hour deferral period being set per-se as this creates a multiple setting and resetting of deferral limits akin to having multiple alarm clocks. It is important for consistency of implementation across Europe (and to eliminate arbitrage and uncertainty) that it should be a precise limit, with all regimes applying the same 48 hour period, with end of day cut offs rather than a rolling deferred clock which would confuse and obfuscate.

These issues quickly become infeasible for Trading Venues who will have tens of thousands of trades and therefore a continuum of expiring alarm clocks. Rather we strongly endorse a standardisation here and believe such a technical standard to be much more in line with the requirements in level 1 than that proposed by ESMA currently. Specifically we would confer all the deferral expiries to the end of the following trading day. This could simply be done by employing the ESMA rule that certain times can be extended by the NCA with a deadline expiring at a certain point. [*Paragraph 63(b) (c) pp 610*]. In this way, the text should read to define a certain fixed point shortly following the expiry of the 48 hour period.

Secondly, a deferral period of 48 hours is shorter than the maximum deferral period available under MIFID 1 for equities. In the opinion of the WMBA, this is worryingly restrictive for very large or illiquid trades, though this restriction may be compensated by effective and consistent operation of the extended deferral regimes.

To ensure a continuation of liquidity by dealers and to reduce the potential sensitive effects of arising from a loss of anonymity, we would suggest for large trades in illiquid bonds and SFPs a price deferral of up to [28] days.

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

It is inappropriate to set SSTI at such a high percentage of LiS, particularly for pre-trade transparency. Such a high threshold will discourage liquidity provision and lead to firms heavily limiting the number of times they would trade on a quote. 50% means that two SSTI level trades only would be executed before the firm has taken on risk equivalent to the LIS threshold, which would be restrictive.

The risks to liquidity addressed by the SSTI is of a different nature in the post-trade context. At this stage, the counterparties have already committed balance sheet and capital to the trade. The risks faced at this stage relate to the management of accruing exposure (i.e. the ability to conduct a successful hedging strategy). However, again, if the ratio is set too high for post-trade purposes, the risks the liquidity providers face in managing an onwards hedging strategy in relation to certain products will be reflected in wider prices being quoted to the market as a whole.

We consider that for pre-trade transparency, a level of 5-10% of LiS would be more appropriate, though there may be potential for a higher level for post-trade transparency. We also note AFME's calls for the median trade size (50th percentile of transaction sizes) for transactions in the relevant sub-class. The appeal of using the median size would be that ESMA can be sure that half of transactions in any liquid sub-class would be subject to pre-trade transparency and would not experience deferred publication. We consider this to be inferior to the specific regime we continue to propose for pre-trade SSTI, but after the trade it will accord better with a normal market transaction at which liquidity providers could be reasonably expected to hedge their risks (as per MiFIR Article 9(5)(d). Furthermore, breaking the link to LiS is a fundamental WMBA viewpoint and would prevent the SSTI being skewed by individual, large transactions (which could result under ESMA's current proposal for LIS calibration).

As described in our response to the summer DP, the SSTI should be independent of the LiS and based upon a bottom up scenario analysis of market practice for standard size to be transacted between participants. The WMBA has done a quantitative analysis of where such normal practice resides in comparison to the output of the top down mechanical approach prescribed by ESMA. In particular, dangerous false positives are witnessed in GBP Swaps, Scandinavian Swaps and all Swaptions and Bond Options.

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

The WMBA agrees with ESMA's proposals. We agree with the proposed use of "notional amount of traded contracts" as the appropriate volume measure for interest rate derivatives. ESMA, however, clearly must use all trade sizes when calibrating LiS and SSTI, and should not consider excluding transactions below €100k.

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

The WMBA considers that for pre-trade transparency, a level of c.10% of LIS would be more appropriate, though there may be potential for a higher level for post-trade transparency. Therefore, we recommend using only the percentile of trades to calibrate the LiS (i.e. Criterion 1).

Whilst we agree with the use of criterion 1, we believe that the percentile level used for the LiS threshold should be varied according to the homogeneity of the class in order to compensate for inaccuracies in the liquidity determination. For homogenous classes of financial instruments (such as single-currency interest rates swaps as classified by ESMA) the proposed LiS threshold of the 90th percentile transaction size is appropriate. However, for less homogenous classes (e.g. swaptions as currently classified by ESMA), the LiS threshold should be lower than the 90th percentile transaction size, potentially as low as the 50th percentile, in order to compensate for the lack of granularity in the composition of the class.

(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.

The WMBA considers that thresholds should be recalculated annually.

There should be no LiS floor: there is no mandate in the Level 1 text to create such a floor which would lead to a false LiS level. Rounding should be mathematical rounding to the nearest level, not rounding up, which would inappropriately skew the outcome. €100,000 trades should not be excluded from the assessment. We agree with the 90th percentile on trades.

As described in our response to Q57, ESMA can compensate for weaknesses of its liquidity determination by setting LiS and SSTI at low levels. The WMBA were encouraged by the statements in Verena Ross speech in London on 26th February 2015 which clarified similar comments made by ESMA at the Paris open hearing the prior week. Similar scope is allowed for in Paragraph 35 on page 100 of the Consultation Paper in this regard, since this is an important method of compensation. However, we are concerned that ESMA has not specifically embedded this mitigation into its proposals.

LiS and SSTI are proposed by ESMA to be calibrated using the same methodology (in terms of percentiles of volumes and transactions) regardless of how granularly classes are defined or regardless of how many illiquid instruments are classified as liquid in a given class. For example, ESMA's methodology is the same for the Bund Future (shown in Table 2 of Annex III of RTS9), which is a single instrument and for which the liquidity determination is accurate, as for covered bonds, a class for which table 5 on page 104 of the Consultation Paper identifies 74% of bonds labelled as liquid by ESMA are in fact illiquid (on ESMA's test, which is itself questionable as to whether it meets the description of a liquid market). The WMBA therefore repeat our proposals made in the answers to Q70 and Q72 that ESMA calibrate LiS and SSTI differently both to each other and pre-trade verses post-trade, depending on a bottom up specific liquidity and how good a fit COFIA achieves for any given class.

Package transactions

The WMBA urges ESMA to consider specific and tailored treatment for package transactions as the Consultation Paper does not address how these transactions might be treated under the new framework.

We believe that Level 1 text is flexible enough to empower ESMA to specify how package transactions are treated in order to determine if such transactions are liquid or "traded on a trading venue" (both for determining whether transparency obligations apply as well as determining whether the derivatives trading obligation applies). The Level 1 text clearly sets the foundation for the pre- and post-trade transparency regimes in non-equities by defining the asset classes – "bonds, structured finance products, emission allowances and derivatives" – on which the Level 2 measures must be built.

A proportionately tailored treatment for package transactions which recognises that a package transaction should be considered in its entirety when being assessed as subject to transparency/derivatives trading obligation is vital. The absence of such would contribute to a significant risk that such transactions may no longer be available to clients in the EU. These challenges are likely to be particularly acute where one or more of the components of a package transaction includes derivatives subject to the trading obligation:

a. If some components of a package transaction are traded on a trading venue but others are not.
b. If some components of a package transaction are deemed liquid but others are not.
c. If some components of a package transaction are above the relevant LIS or SSTI thresholds but others are not.
d. If the components of a package transaction are below the relevant LIS or SSTI thresholds but together they behave similarly to a single transaction above the LIS or SSTI.
e. If the package transaction contains a listed derivative which trades on a different trading venue to other components.

Therefore, the WMBA understands that if the package transaction contains liquid and illiquid components:

a. The package transaction should be considered illiquid; and
b. If any one component is above the relevant threshold (LiS or SSTI) then the package transaction should be deemed to be above the threshold.

<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>

The WMBA would challenge the approach taken when setting the LIS and SSTI data for calibrating when the pre-trade requirements commence. In our view, the use of existing transaction reporting and/or trade data will provide a skewed view of the market.

In particular, existing trade data will include packaged transactions/strategies, whereby one leg of the package would rarely trade as a stand-alone instrument but frequently as part of a package. These legs will not be identified in trade reporting data and as such will give a false view of the liquidity and size of that instrument when traded outright.

In addition, the aim of this exercise was to ensure multi-to-multi transactions are conducted on a venue, however existing trade data will include intercompany, treasury hedging and bilateral transactions, again increasing the view of liquidity on certain instruments and skewing the average size of transactions.

Therefore our strong opinion is that the use of a 70% volume threshold is very misleading and yields poor results for policy purposes. The figures are easily be skewed by very few, very large trades, and we would thus propose to only use the 90th percentile of transactions as a more natural reading of above normal market size.

Lastly, we would highlight that the risk for market makers clearly differ and are of greater relevance pre-trade than post-trade. As such, there should be clear and distinct differentiation in the LiS thresholds pre- and post-trade to reflect this reality.

<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>

See WMBA reply to Q77 and Q78.

<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>

See WMBA reply to Q77 and Q78.

<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>

See WMBA reply to Q77 and Q78.

<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>

See WMBA reply to Q77 and Q78.

<ESMA_QUESTION_CP_MIFID_82>

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

<ESMA_QUESTION_CP_MIFID_83>

No, the WMBA do not agree.

1. Although we acknowledge ESMA's intention to afford NCAs discretion to allow for supplementary deferral, we do not believe that ESMA's proposals achieve the correct outcome. This is because the proposed regime does not take into account the following critical factors:
    a. Liquid instruments benefiting from a deferral.
    b. In the case of a liquid instrument benefiting from a deferral, the volume of the transaction constitutes sensitive information which should be protected from publication. Therefore, it is our view that any standard or supplementary deferral mechanism exercised by the NCA must protect the volume of transactions in liquid instruments benefiting from a deferral from being published.
    c. Illiquid instruments benefiting from a deferral.
    d. In the case of an illiquid instrument benefiting from a deferral, both the volume and price of the transaction constitute sensitive information which should be protected from publication. Therefore, it is our view that any standard or supplementary deferral mechanism exercised by the NCA must protect from being published both the volume and price of transactions in illiquid instruments benefiting from a deferral.

e. In addition, where an instrument is illiquid it cannot by its very nature be aggregated with other instruments. Therefore, any standard or supplementary deferral mechanism should not require publication, on an aggregated basis, of an illiquid instrument.

2. On the basis of the above mentioned critical factors, we have set out in diagrammatical format how we believe the supplementary/enhanced deferral regime should operate taking into account the distinction between a liquid and illiquid instrument.
3. The diagram illustrates that while we agree that a requirement to publish all details of a transaction except volume may be suitable for liquid instruments benefiting from a deferral, the same is not suitable for an illiquid instrument benefiting from a deferral. Therefore, we propose that any standard or supplementary deferral regime should ensure that in the case of an illiquid instrument neither the price nor the volume of the transaction is published during any deferral period.
4. In addition, whilst a requirement to publish all details of a transaction on an aggregated basis may be suitable for liquid instruments, the same is not suitable for an illiquid instrument. Therefore, we propose that any standard or supplementary deferral regime should not require publication of transaction details on an aggregated basis for illiquid instruments.

<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>

The WMBA does generally welcome and agree with ESMA on the temporary suspension of transparency requirements. We do note that any instrument suspension creates a wider suspension applicable to all the instruments in the entire class.

The simplest way to detect sudden drops in liquidity is to identify significant market events. We recommend for the RTS to list these market events but to remain non-exhaustive such that ESMA can make a determination on additional market events in the future. The simplest way to detect sudden drops in liquidity is to identify significant market events. We recommend for the RTS to list these market events but to remain non-exhaustive such that ESMA can make a determination on additional market events in the future. We note that COFIA is unworkable for temporary suspensions. It would be necessary for the whole market in a class to collapse before a temporary suspension came into effect. ESMA's proposed 30 day look-back and opinion would come too late for the needs of market users. The measure needs to be able to come into effect immediately. The approach based on 12 months' previous activity may not be an accurate indicator, as markets may move significantly over a 12 month period (this may not be a 'market event', justifying temporary suspension). In contrast, an increase in activity may be an indicator of a 'market event', justifying suspension.

By requiring there to be a reduction in trading activity over a 30-day look-back period in order for temporary suspension to apply means that it will not be able to detect sudden drops of liquidity in the timeliness needed to protect the markets and mitigate financial stability risks. For the temporary suspension provisions to be fit for purpose, the measures need to be able to detect these sudden drops in liquidity in real time (or thereabouts) and apply immediately.

Importantly, given that ESMA is proposing that a change in trading activity needs to take place at class-level, the temporary suspension regime could in fact never detect significant local market events. For example, the proposed RTS would require the liquidity of all EU sovereign bonds to decrease on average over a 30-day period. Therefore, if there is a local market event, such as the Greece crisis, this would not be detected.

<ESMA_QUESTION_CP_MIFID_84>

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

<ESMA_QUESTION_CP_MIFID_85>

The WMBA agrees with the ESCB exemption.

<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 WMBA notes that Q.86 is not applicable to relevant markets.
<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>
The WMBA supports the objectives and many of the provisions of Article 22. We also note strong advocacy of more frequent recalculation of transparency frameworks by ESMA.

However, we do not believe that a firm two week time frame would always be appropriate and would propose inserting the language, "*as soon as reasonably practical*" (as agreed between the NCA and the venue). The risk otherwise is towards poor data and worse outcomes.
<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>
The WMBA considers broadly that if an instrument meets the requirements as set, then ESMA should create an obligation or explain the exception. This does not preclude the fact that we consider a trading obligation only rarely appropriate across the episodic liquidity in non-equity markets. If this approach is not followed then there is a risk that a derivative product which is insufficiently standardised, and which cannot be traded on venue or in which there insufficient third-party buying and selling interest, will be declared subject to the trading obligation.

The WMBA have collectively had a great deal of experience operating SEFs under Dodd Frank in the US, and in respect of such we would highlight the risks for unintended consequences liable in determining whether a sub-class of derivatives should be made subject to the trading obligation. We therefore underline the chaos and uncertainty that footnote 88 has created across implementation of Title 9 in the US via a failure to align trading mandates on a cross-border basis and the consequent demonstrable impact on market liquidity when products and participants are wholesale.

In this regard, ESMA is also required to "*take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities*" (Article 32(3) of MiFIR).

With regards to the clearing obligation in general, we would note that in line with Recital (27), it will be necessary for ESMA to state how MIFIR provisions in relation to the trading obligation – and thereto related pre- and post-trade transparency requirements – will be applied in practice. Appropriate treatment of post-trade risk reduction activities (as set out in more detail in response to Question 89) is necessary not only in order to continue the important reduction of risk in existing derivatives portfolios, but also to maintain orderly markets and avoid misleading information in relation to price

transparency and transaction reporting. In that context, it is important to clarify that the trading obligation cannot apply to these services.
<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>
The WMBA have no other comments.
<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, in the view of the WMBA it is not necessary or appropriate for the trading obligation to apply to third country entity trades where the clearing obligation under EMIR does not apply to the relevant transactions by virtue of an equivalence assessment under Article 13 of EMIR. We underline that the majority of trades organised by WMBA firms contain at least one counterparty who is not an EU person.

ESMA's current proposal could lead to a situation in which the EU imposes an obligation on two counterparties to trade an instrument on an EU trading venue despite the fact that neither counterparty is based in the EU and the relevant transaction is exempted from the EU clearing obligation by virtue of Article 13 of EMIR. In our view, such transactions cannot be properly interpreted as having a direct, substantial and foreseeable effect within the EU and nor is the application of the trading obligation to such transactions necessary to prevent the evasion of the MiFIR as those trades do not impose additional risks in the EU.

Furthermore, such counterparties may be subject to conflicting local law trading requirements and are unlikely to have access to EU trading venues which will make it difficult for such entities to comply with the EU trading obligation. Determining the relevant third country's trading platforms pursuant to Article 28(4) of MiFIR alone insufficiently addresses the potential for duplicative and conflicting rules as the legislation of the relevant third country may not (for legitimate reasons) impose a trading obligation on the particular transaction.

Accordingly, we would urge ESMA to specify in the draft MiFIR RTS that the criteria will not have been met if the clearing obligation does not apply to the transaction as a result of the application of Article 13 of EMIR.

<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, the view of the WMBA is that ESMA does not have the vires to increase the scope of the RTS in this way and we endorse ESMA's opinion to delete the reference to non-EU non-financial counterparties.
<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>
The WMBA have no further comments on costs & benefits at this stage.
<ESMA_QUESTION_CP_MIFID_92>

- ## 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>

WMBA disagrees with ESMA's approach, which it considers overly prescriptive and therefore itself possibly disruptive at a point of market failure. Indeed this seems to be a further rewrite of equity rules where all the liquidity resides in a single venue. For MTF and OTF operators this is simply not the case and ESMA's approach is disproportional for the majority of venues for whom their market share of liquidity across a myriad of financial instruments is utterly variable and indeterminate. Venues may assist, but to coerce this within the legal constraints cannot be operational. We do note however, that as investment firms acting as operators of venues rather than as market participants, WMBA members are reliant to some extent upon the resilience of their customers' systems. Therefore, market participants should have crisis management procedures in place for managing automated trading software and operational failures. Bit that ability to manage in a crisis should not be inhibited by an overly prescriptive crisis management procedure. Instead these procedures should be designed by the market participant that intends to use them and should be commensurate with the type of business they are conducting.

The content of a disaster recovery plan itself should comprise

(1) a functional communications protocol for updating key staff

(2) clear procedures for disaster recovery including for relocating to back-up sites where necessary, and

(3) alternative arrangements to manage (not necessarily trade) existing orders in order to minimise risk exposure for both the individual firm and the market as a whole.

We would therefore suggest that ESMA's list of disruptive scenarios in Article 20(2)(b) be a non-exhaustive list of examples of what firms can consider in determining appropriate arrangements, rather than a minimum list, or alternatively edit the list to contain only items (1), (2), and (3) in the paragraph above.

WMBA would therefore recommend a change to Article 20: Business continuity arrangements as to that below:

- Investment firms shall have adequate and effective business continuity arrangements in relation to their trading systems which are proportionate to the nature, scale and complexity of their business.
- Business continuity arrangements of investment firms shall be able to effectively deal with disruptive incidents and where appropriate ensure a timely resumption of trading or controlled management of outstanding orders.

<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>
WMBA disagrees with ESMA's approach towards the non-live testing having to occur in trading venue testing environments. According to Article 17(1) of MiFID II investment firms must ensure their systems are fully tested and properly monitored. Whilst this appears proportionate, the WMBA has material concerns with non-live testing in trading venue testing environments.

Trading venues are not capable of providing adequate non-live testing environments for investment firms to test their algorithms against disorderly trading conditions and such will be not be available in the quality required within coming years. Any such obligation on trading venues to design and build such environments to be useful to firms will impose enormous costs on both trading venues and investment firms for very little return in terms of systemic benefits. MTF and OTF Trading venues do not and cannot offer non-live testing environments at present that fully replicate the production environments, and we do not consider this a realistic or useful obligation compared to the alternative of placing the obligation with investment firms directly. As we see no basis for requiring non-live testing to take place at the trading venues, we strongly recommend amending this requirement to delete the reference to "*trading venues*."

WMBA also proposes to delete the requirement for annual stress testing from the list of minimum requirements for investment firms. Stress testing should be outcomes lead and proportional to the risks garnered in the process of supervision. Such non-functional testing to check that a system operates during periods of atypical amounts of external inputs and internal events should not be part of an annual 'box ticking' regime that ESMA suggests, but an integral part of the ongoing supervisory dialogue.

<ESMA_QUESTION_CP_MIFID_94>

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

<ESMA_QUESTION_CP_MIFID_95>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_95>

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

<ESMA_QUESTION_CP_MIFID_96>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_96>

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

<ESMA_QUESTION_CP_MIFID_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_97>

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

<ESMA_QUESTION_CP_MIFID_98>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_98>

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

<ESMA_QUESTION_CP_MIFID_99>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_99>

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

<ESMA_QUESTION_CP_MIFID_100>
The WMBA is supportive of the rationale for maintaining adequate controls in an automated trading environment; however, we make the following points in respect of RTS14:

Overall comment in respect of RTS14: we ask ESMA to clarify in RTS 14 that the term "order" excludes IOIs, and believe that Recital 1 would be an appropriate place for this clarification.

- Article 1 – Subject Matter and Scope (2): The WMBA disagrees with the definition of "allowing algorithmic trading" as set out in the RTS; this definition is too broad and will bring a variety of trading activities that are not exposed to genuine algorithmic trading into the scope of Article 48 of Directive 2014/65/EU. This will have multiple unintended consequences and will be unworkable for models such as trading venues operating an RFQ system where a quote is requested and an order is then submitted electronically. In addition, this is inconsistent with the definition of "algorithmic trading" set out in Article 4 of Directive 2014/65/EU in paragraph 1 (39). We therefore propose amending the definition to read: *"(2) For the purposes of this regulation, it is considered that a trading venue allows or enables algorithmic trading where orders placed by electronic means are derived from members using computers to automate their trading activity on the basis of pre-defined programming on a central limit order book model in accordance with the definition stated in Article 4 of Directive 2014/65/EU* in *paragraph 1 (39); this definition of algorithmic trading does not capture activity carried out on voice, hybrid, quote-driven or request for quote activity models".*

In this respect, we also propose that Recital 2 of RTS 14 is amended as follows: *the potential impact of technological developments is one of the main drivers to determine the capacity and arrangements to manage the potential risks of a trading venue. The risks arising from algorithmic trading can be present in any trading model ~~that is supported by electronic means~~**where orders placed by electronic means are derived from members using computers to automate their trading activity on the basis of pre-defined programming on a central limit order book model.** Therefore, these Standards apply **to** regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading **as per this description** through their systems considering as such those where algorithmic trading may take place as* *opposed to trading venues which do not permit algorithmic trading* ***or which operate voice, hybrid, quote-driven or request for quote activity models****.*

- Article 3 – Organisational Requirements for Trading Venues and the Proportionality Principle 1.: We believe it would be appropriate to include a point in this section to the effect that the extent to which Article 48 of Directive 2014/65/EU and RTS 14 is applied by trading venues may take into account the nature, scale and complexity of their business. The RTS as drafted refers to the proportionality principle as a factor in self-assessment; however, our view is that venues should be able to apply a proportionality rule in their implementation of the requirements of Article 48 of Directive 2014/65/EU and RTS 14 overall.
- Article 7 – Outsourcing 1. (a): In many markets, the trading venue itself is operated and governed by a different legal entity than that of the legal owner of the system and its associated intellectual property itself. Set-ups such as these are already considered acceptable evidenced by existing regulatory permissions granted by a national competent authority to the operating/governing entity, rather than to the legal entity owning the system itself. Further clarification within RTS 14 that this provision does not refer to such internal arrangements within the same corporate group is necessary to avoid any confusion in this respect.
- Article 8 – Due Diligence for Members or Participants of Trading Venues 1.: We believe the term “publicly available” should be defined as meaning “available to the Members or Participants of the Trading Venue”.
- Article 8 – Due Diligence for Members or Participants of Trading Venues 3.: It would be appropriate for this requirement to be applied using a risk-based approach.
- Article 8 – Due Diligence for Members or Participants of Trading Venues 5.: Consistent with record-keeping requirements, this proposal should be for a minimum of five years.
- Article 10 – Testing the member’s capacity to access trading systems: It is not appropriate that this requirement extends to algorithms used in other trading venues; each trading venue can only require testing in respect of algorithms to be used in their own venue.
- Article 12 – Trading Venues’ capacity 1.: We believe that the infrastructure of trading venues should be robust and resilient. However, we do not agree with the proposal to require trading venues to be able to accommodate at least twice the historical peak of messages; this is inconsistent with the minimum record-keeping requirements. A more appropriate measure would be to require trading venues to be able to accommodate at least twice the peak reached during the previous 5 years. The cross-references in Articles 4 and 15 should also be amended accordingly.
- Article 16 – Business Continuity Arrangements 2: Trading venues already have a significant commercial incentive to ensure a timely resumption of trading. We do not consider it appropriate to mandate a specific recovery time of no later than 2 hours in the RTS; this is because reasons for a system shut-down will vary and may well be dependent on externalities beyond the venue operator’s control. Two hours may not be sufficient time to ensure a robust recovery; putting operators under pressure to reach this target may result in unwanted consequences or rapid decisions being made ahead of

all the facts being known. We propose amending point 2 of Article 16 to read as follows: The business continuity arrangements shall ensure the best possible timely resumption of trading appropriate to the circumstances causing the shut-down.

- Article 19 – Prevention of Disorderly Trading Conditions 1: These requirements should be determined by the trading venue according to the extent to which algorithmic activity takes place on that venue.
- Article 19 – Prevention of Disorderly Trading Conditions 1. (c): ESMA should clarify in the RTS whether the reference to pre- and post-trade controls refers to the items listed in point 2, or if this refers to another section.
- Article 19 – Prevention of Disorderly Trading Conditions 2. (d): Trading venues which operate markets that settle bi-laterally are not technically or legally able to cancel or correct transactions. In these circumstances, it is dependent on the parties to the trade to make the correction. The best that a trading venue could do would be to request a correction; however, it would have no oversight of the contractual changes to the transaction. We consider that this requirement would not be workable for many venues and suggest that ESMA delete this requirement from the RTS.
- Article 19 – Prevention of Disorderly Trading Conditions 4: The requirement to make these items public should be limited to members/participants using the trading venue.
- Article 20 – Mechanisms to Manage Volatility 1.: The WMBA would propose that ESMA introduces a specific proportionality rule to the effect that venues which have a low proportion of algorithmic activity implement volatility halting mechanisms (circuit breakers) using a risk-based approach to determine the extent to which such mechanisms are required taking into account the factors cited in point 3 of Article 20. Implementing volatility mechanisms as a mandatory requirement would prove very costly to venues with a low proportion of algorithmic activity. In addition, the requirement to be informed where there is a significant price movement in a financial instrument traded on another venue where the same instrument is traded is unworkable. In markets that do not have a defined primary listing, or where instruments may have variable attributes, e.g. currency swaps, or which are traded across multiple jurisdictions, it is not possible to take a price feed from all the other venues. The requirement to halt volatility must be both proportionate and also relevant to the each venue in question; venues must be responsible for determining their own volatility mechanisms appropriate to their markets.
- Article 20 – Mechanisms to Manage Volatility 8: We request ESMA to confirm that "website" may be limited to a member-only accessible site.
- Article 21 – Pre-trade controls 1: We propose that the requirement for venues to operate the pre-trade controls specified in Article 21 of RTS 14 is not mandated by ESMA, but rather left to the discretion of venues according to their risk assessment and the extent to which algorithmic activity takes place on the venue. The controls proposed may not be relevant to all markets. The imposition of price collars may also have adverse effects on Members that wish to leave "stop-loss" or resting orders. A more appropriate control would take into account both price limit and size, but this should be a matter for individual venues to determine. In addition, the reference in (c) to shares or lots is not appropriate to all markets and should be struck.

- Article 23 – Pre-determination of the conditions to provide direct electronic access 1: The requirement to "make public" should be limited to members/participants accessing the system.

We therefore propose a redraft of the relevant points commented on above in RTS 14 as follows:

Recital 1

Articles 18(5) and 48 of Directive 2014/65/EU determine the obligation of trading venues (regulated markets, multilateral trading facilities and organised trading venues) to have adequate arrangements and capacity so as to undertake their business appropriately. In this context, recitals (59) to (68) of Directive 2014/65/EU frame the obligations of trading venues permitting algorithmic trading through their systems under Article 48. Article 17 of Directive 2014/65/EU determines the organisational requirements for investment firms engaging in algorithmic trading. **For clarity, the expression "order" does <u>not</u> refer to IOIs.**

Recital 2

The potential impact of technological developments is one of the main drivers to determine the capacity and arrangements to manage the potential risks of a trading venue. The risks arising from algorithmic trading can be present in any trading model ~~that is supported by electronic means~~ **where orders placed by electronic means are derived from members using computers to automate their trading activity on the basis of pre-defined programming on a central limit order book model in accordance with the definition stated in Article 4 of Directive 2014/65/EU in paragraph 1 (39).** Therefore, these Standards apply **to** regulated markets, multilateral trading facilities and organised trading facilities allowing for or enabling algorithmic trading **as per this description** through their systems considering as such those where algorithmic trading may take place as opposed to trading venues which do not permit algorithmic trading **or which operate voice, hybrid, quote-driven or request for quote activity models**.

Article 1

Subject matter and scope

(2) For the purposes of this regulation, it is considered that a trading venue allows or enables algorithmic trading where ~~order submission and order matching is facilitated by electronic means~~ **orders placed by electronic means are derived from members using computers to automate their trading activity on the basis of pre-defined programming on a central limit order book model in accordance with the definition stated in Article 4 of Directive 2014/65/EU in paragraph 1 (39); this definition of algorithmic trading does not capture activity carried out on voice, hybrid, quote-driven or request for quote activity models**.

Article 3

Organisational requirements for trading venues and the proportionality principle

1. Before the deployment of a trading system and at least once a year, trading venues shall elaborate a report to assess their degree of compliance with Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. **The degree to which trading venues**

should apply Article 48 of Directive 2014/65/EU and RTS 14 should also take account of the elements listed in Annex 1.

Article 4

Governance

2. The senior management of the trading venue shall at least approve:

[…]

(b) the measures planned to expand the capacity of the trading venue following a **five-year** historical peak of messages;

[…]

Article 7

Outsourcing

1. If a trading venue outsources all or part of its operational functions, it shall ensure that:

(a) the outsourcing exclusively relate**s** to operational functions and does not encompass the responsibilities of the senior management and the management body of their responsibilities **except for internal intercompany outsourcing arrangements where the legal owner of the system and the operating/managing entity are within the same corporate group**;

[…]

Article 8

Due diligence for members or participants of trading venues

1. A trading venue shall have pre-defined~~, publicly available~~ standards **available to the members or participants of the trading venue and** specifically relevant to its trading model which cover the knowledge and technical arrangements of the staff of the members for using the order submission systems of the trading venue. The standards shall cover, at least:

[…]

3. At least once a year, a trading venue shall ~~assess~~ **conduct an assessment using a risk-based approach of the** compliance of its members with the standards in paragraph 1 and check whether its members remain registered as investment firms.

5. ~~A t~~**T**rading venues shall maintain **for at least five years** records of:

[…]

Article 10

Testing the member's capacity to assess trading systems

1. Trading venues shall pre-determine and require their members to undertake conformance testing:

   […]

(b) before deploying new algorithms ~~or, algorithms used in other trading venues~~; and

   […]

Article 12

Trading venues' capacity

1. Trading venues shall ensure that their trading systems have sufficient capacity to accommodate at least twice the highest number of messages per second and per value as the maximum recorded on that system in one day **as recorded during the previous five years** (**five-year** historical peak).

Article 15

Periodic review of the performance and capacity of the trading systems

1. (a) the **five-year** historical peak of messages managed by the system and successive multipliers beyond that level;

   […]

Article 16

Business continuity arrangements

2. The business continuity arrangements shall ensure a timely resumption of trading~~, targeting a recovery time no later than 2 hours and a recovery point objective close to zero~~ appropriate to the circumstances causing the shut-down.

Article 19

Prevention of disorderly trading conditions

1. Trading venues shall have at least the following arrangements to prevent disorderly trading and breaches of capacity limits **appropriate to the nature, scale and complexity of the algorithmic activity prevalent on that venue as determined and applied using a risk-based approach**:

   (a) limits per member on the number of orders sent (throttle limits) per second to prevent flooding of the order book;

   (b) mechanisms to manage volatility;

   (c) pre- and post-trade controls **as detailed in point 2 below**;

   (d) requirements on their members to have pre- and post-trade controls;

2. Trading venues shall be able to:

(a) obtain information from any member/participant or user to monitor compliance with the rules and procedures of the trading venue relating in particular to organisational requirements and trading controls;

(b) suspend the access of a member or a trader's ID to the trading system at the trading venue's own initiative or at the request of that member, a clearing member, the CCP (in the pre-defined cases by the CCP's governing rules) or the competent authority;

(c) cancel orders at least under the following circumstances:

   (i) on request of a member that is technically unable to delete its own orders;

   (ii) when the order book is corrupted by erroneous duplicated orders;

   (iii) in cases of a suspension initiated either by the market operator or the regulator; and

   (iv) in cases of a request from the CCP in the pre-defined cases of the CCP's governing rules~~.~~**; and**

~~(d) cancel or correct transactions; and~~

(~~e~~**d**) balance order entrance between their different gateways to avoid collapses.

4. Trading venues shall make ~~public~~ **available to its members / participants** the policies and procedures listed in paragraph 3.

Article 20

Mechanisms to manage volatility

1. Trading venues shall ensure that ~~appropriate~~ mechanisms **that are appropriate to the nature, scale and complexity of the algorithmic activity prevalent on that venue as determined using a risk-based approach** to automatically halt or constrain trading are operational at all times in all phases of trading (from opening to close of trading) **taking into account the factors cited in point 3 of Article 20.** ~~and, to be informed where there is a significant price movement in a financial instrument traded on another trading venue where the same instrument is traded.~~

8. Trading venues shall disclose on their **member/participant accessible** websites the rules, policies and procedures relating to the operating conditions of the mechanisms to manage volatility. This obligation does not include the specific parameters of dynamic mechanisms to manage volatility.

Article 21

Pre-trade controls

1. Trading venues shall ensure that their members operate the pre-trade risk limits and controls described in the Regulation on the organisational requirements for investment firms engaged in algorithmic trading. Additionally, trading venues ~~shall~~**should determine using a risk-based approach and depending on the nature, scale and complexity of algorithmic activity prevalent on the venue whether any pre-trade controls appropriate to their market should be implemented.**

   ~~(a) price collars which automatically block or cancel orders that do not meet set price parameters with respect to different financial instruments, both on an order-by-order basis and over a specified period of time~~

   ~~(b) maximum order value (fat-finger notional limits) which prevent orders with uncommonly large order values from entering order books by reference to notional values per financial instrument; and~~

   ~~(c) maximum order volume which prevent orders with an uncommonly large order size from entering order books by reference to limits set in shares or lots.~~

Article 23

Pre-determination of the conditions to provide direct electronic access

1. Trading venues permitting direct electronic access (DEA) through their systems shall set out and make ~~public~~ **available to members and participants** the rules and conditions pursuant to which their members may provide DEA to their own clients [DEA users]. These rules and conditions shall at least cover:

   […]

<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>

No, the WMBA sees no requirements for further clarification with respect to the outsourcing obligations for trading venues.

<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>

No, the WMBA sees no requirements for further elements to be addressed with respect to the testing obligations.

<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>

No WMBA comment on DEA.

<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 WMBA disagrees with the proposed draft RTS for the following reasons:

1. Article 17(3) of Directive 2014/65/EU (MIFID II) states an investment firm that engages in algorithmic trading to pursue a market making strategy shall comply with Article 17(3)(a)-(c) taking into account the following considerations: 'liquidity, scale and nature of the specific market and the characteristics of the instrument traded'.
2. In our view, the provisions of draft RTS 15 do not take into account these considerations. Instead, the provisions appear to assume that the fact that an investment firm is engaging in algorithmic trading is the only sufficient consideration to be taken into account. Therefore, we do not believe that the provisions of draft RTS 15 are in line with the intention of Article 17(3) MiFID II.
3. Further, it is our view that Article 3 draft RTS 15 carries the risk of capturing activity which should not ordinarily be characterised as the pursuit of a market making strategy. This is because in trading environments, which are increasingly electronic, it is commonplace for buy/sell orders to be placed electronically by clients/members and for those orders to remain unexecuted for long periods of time. This is common practice in even small or illiquid electronic markets. There is a risk that even this practice will be deemed to be the pursuit of a market making strategy under Article 3 draft RTS 15. We do not believe that this should be the case. This is because the characterisation of this type of practice as a 'market making strategy' is likely to dissuade market participants from placing orders electronically, thereby reducing electronic market participation and ultimately detrimentally impacting transparency and liquidity.
4. The WMBA also seeks simplicity in using the terms '*market hours, trading hours, normal trading hours, daily trading hours'* ESMA is referring to European market hours. Since WMBA members operate global platforms across all FICC markets that are 'open' continuously, it should be made clear throughout ESMA's proposals in aid of consistency. Should ESMA's intention not have been

to specify the trading hours it references, then a clarification is necessary? In operating these continuous venues, a considerable difference arises between imposing a quoting obligation of 30% compared to a quoting obligation of 50% during the hours of 8.30 and 16.30. We would suggest that consideration be given to the differing trading venues' trading hours and that a standard timeframe should be noted to avoid confusion.

5. In order to address these real concerns in line with the intention of Article 17 MiFID II, we propose that ESMA should calibrate the criteria for qualification as a market making strategy as follows:
    a. Liquidity: ESMA should introduce a minimum number of price updates by market makers per day as well as carving out, from the identification of investment firms pursuing market making strategies, those firms that participate in markets deemed by ESMA to be illiquid. For example, a client/member who is content with leaving a firm static simultaneous two-way quote on an electronic trading platform for the entire trading day should not be deemed to be pursuing a market making strategy.
    b. Scale: ESMA should introduce a requirement for a minimum number of participants in the market below which any market making strategy calibration would not apply. For example, market making strategies should not be deemed to be pursued in markets with less than 50 participants.
    c. Nature: ESMA should take into account the episodic nature of capital markets. It is typical for markets and participants to experience ebbs and flows in liquidity. Therefore, ESMA should significantly broaden from 'one trading day' the time period during which the market making calibration is determined under Article 3 draft RTS 15.

The WMBA also disagrees with the comment in recital 2 that: "*The risk arising from algorithmic trading can be present in any trading model that is supported by electronic means. Therefore, these Standards apply to RMs, MTFs and OTFs allowing for or enabling algorithmic trading through this systems*". This does not seem to acknowledge that there may be different risks depending on the type of trading system, and so the one-size-fits all approach is not appropriate.

Since the OTF venues require discretion, it would appear to be self-evident that they cannot therefore act as venues for DEA and receiving the routing of algorithmic orders. Therefore, they are incompatible with the comments in recital 2. The proposed definition of "allowing algorithmic activity" is also inconsistent with the definition in MiFID II Article 4, 1. (39)).

The WMBA would note on a more general basis that '*market-making*' is a commercial activity and across all asset classes it is important that an appropriate commercial framework is put in place. Failure to do so will lead to a deliberate withdrawal of market making activities or particularly in the case of FICC markets, a broad move away from providing firm continuous quotes with a fall-back to indicative quotes only. In FICC markets, firm quotes are present today in some of the more liquid instruments but under threat from ill designed models.

The design of the structure needs to be based on a simple principle which is the deliberate intention by a firm to want to be a market maker. These requirements should encourage such activity and not try to undermine it by creating unclear open-ended obligations for these firms. We do not therefore believe that it is appropriate for a firm to be deemed to be pursuing a market making strategy based on the actions of a single trading day.

<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, the WMBA disagrees with the 30% threshold within the daily trading hours for the following reasons:

1. Notwithstanding our answer to Q104 and the requirement for the 'liquidity, scale and nature of the specific market and the characteristics of the instrument traded' to be taken into account when complying with Article 17(3)(a)-(c) MiFID II, we fundamentally disagree with the imposition of a threshold proportion of the trading venue's trading hours as a condition for the entry into a market making agreement. In the interests of increased competition, trading venues should be afforded the freedom to establish thresholds for market making in accordance with their own circumstances, market knowledge and commercial judgment. In line with the spirit of Article 17 MiFID II, draft RTS 15 should go no further than requiring trading venues to enter into market making agreements with investment firms which are achievable and non-discriminatory.

2. Further, it is our view that the thresholds of 30% (in Article 3(1) draft RTS 15) and 50% (in Article 4(2) (a) and Article 8(1) (b) (i) draft RTS 15) are arbitrary ones, in light of which we strongly recommend that these thresholds should be the same rather than different numbers. Market participants that typically provide liquidity to a trading venue which is close to these thresholds are likely to reduce liquidity provision merely in order to avoid the onerous requirement to enter into market making agreements rather than for sound commercial reasons. This risk is exacerbated by the short (one day) time period during which the market making calibration is determined under Article 3 draft RTS 15. We believe that this real risk will reduce market participants' appetite for liquidity provision and is contrary to, as well as significantly undermines, the rationale behind the thresholds which the abovementioned Articles of the draft RTS 15 impose.

<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 WMBA disagrees that a market maker be obliged to remain present in the market for higher or lower than the proposed 50% of trading hours for the following reasons:

1. Notwithstanding our answer to Q104 and the requirement for the 'liquidity, scale and nature of the specific market and the characteristics of the instrument traded' to be taken into account when complying with Article 17(3) (a)-(c) MiFID II, we fundamentally disagree with the imposition of a threshold proportion of the trading venue's trading hours as a condition for the entry into a market making agreement. In the interests of increased competition, trading venues should be afforded the freedom to establish thresholds for market making in accordance with their own circumstances, market knowledge and commercial judgment. In line with the spirit of Article 17 MiFID II, draft RTS 15 should go no further than requiring trading venues to enter into market making agreements with investment firms which are achievable and non-discriminatory.

2. Further, it is our view that the thresholds of 30% (in Article 3(1) draft RTS 15) and 50% (in Article 4(2)(a) and Article 8(1)(b)(i) draft RTS 15) are arbitrary ones, in light of which we strongly recommend that these thresholds should be the same rather than different numbers. Market participants that

typically provide liquidity to a trading venue which is close to these thresholds are likely to reduce liquidity provision merely in order to avoid the onerous requirement to enter into market making agreements rather than for sound commercial reasons. This risk is exacerbated by the short (one day) time period during which the market making calibration is determined under Article 3 draft RTS 15. We believe that this real risk will reduce market participants' appetite for liquidity provision and is contrary to, as well as significantly undermines, the rationale behind the thresholds which the abovementioned Articles of the draft RTS 15 impose.

The WMBA also recognise the need not to make assessments on a monthly, rather than a daily basis; and note that as operators of MTFs, OTFs and SEFs which do not close throughout the global trading day, we call for clarity on the interpretation of market hours.

<ESMA_QUESTION_CP_MIFID_106>

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

<ESMA_QUESTION_CP_MIFID_107>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_107>

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

<ESMA_QUESTION_CP_MIFID_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_108>

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

<ESMA_QUESTION_CP_MIFID_109>
The WMBA agrees with the right permitted to trading venues in Article 3(3) draft RTS 16 to apply a more granular approach at its discretion and determine the OTR at financial instrument level.

However, we disagree that OTR should be an absolute number as the WMBA clearly understands that it can only be a relative concept proportional to the parameters of the products traded on the venues and the number, nature and type of the market participants.

Instead, we propose that trading venues should be afforded the flexibility to determine that the OTR is a function relative to the particular circumstances of the markets trading venue's market and allowing trading venues to take into account, inter alia, the average level of participant activity for a particular financial instrument.

<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>
No, the WMBA disagrees with the counting methodology proposed.

We propose that that trading venues should be afforded the flexibility to determine that the OTR is a function relative to the particular circumstances of the markets trading venue's market and allowing trading venues to take into account, inter alia, the average level of participant activity for a particular financial instrument.

Despite the fact that the OTR regime prima facie would empower venues over their participants, WMBA do not support the suggested RTS. However, we disagree that OTR should be an absolute number as the WMBA clearly understands that it can only be a relative concept proportional to the parameters of the products traded on the venues and the number, nature and type of the market participants.

Any venue should be allowed to set the OTR as a function of the general behaviour on the platform. This is because instruments are ephemerally or periodically liquidity and also they are occasionally derived and implied from other benchmark prices. Without this, the quantum would need to be regularly reset and almost always inappropriate.

<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>

No, the WMBA does not agree with the definition of "orders," unless ESMA permits trading venues to determine that that the OTR is a function relative to the particular circumstances of the trading venue's market and allowing those trading venues to take into account, inter alia, the average level of participant activity for a particular financial instrument.

The OTR should not be an absolute number as it can only be a relative concept proportional to the parameters of the products traded on the venues and the number, nature and type of the market participants.

<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>

No, the WMBA disagrees.

<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>

Yes, the WMBA agrees with an annual determination, provided that ESMA permits trading venues to determine that that the OTR is a function relative to the particular circumstances of the markets trading venue's market and allowing trading venues to take into account, inter alia, the average level of participant activity for a particular financial instrument.

<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
WMBA no comment.
<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>
The WMBA believes that the number of trades across all trading venues for any single financial instrument should be considered. Limiting this only to the most relevant market would result in an undercount in the number of daily trades which could ultimately lead to the instrument being assigned an incorrect liquidity band and, hence, the wrong tick size. Therefore, we would recommend a change to RTS 18 article 1 paragraph 3 to allow for the consolidation of trade counts across trading venues trading the same instrument:

> *'number of trades per day' means the number of transactions carried out in a given financial instrument* ***on all trading venues****, excluding...*

We note that under article 2 paragraph 2, this change would then require the ***most relevant market*** to collect this information from other trading venues before presenting it to its competent authority. We note that the concept of ***most relevant market*** is not applicable to non-equities markets where IP rights are not venue owned and open access is common.
<ESMA_QUESTION_CP_MIFID_123>

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

<ESMA_QUESTION_CP_MIFID_124>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_124>

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

<ESMA_QUESTION_CP_MIFID_125>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_125>

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

<ESMA_QUESTION_CP_MIFID_126>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_126>

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

<ESMA_QUESTION_CP_MIFID_127>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_127>

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

<ESMA_QUESTION_CP_MIFID_128>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_128>

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

<ESMA_QUESTION_CP_MIFID_129>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_129>

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

<ESMA_QUESTION_CP_MIFID_130>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_130>

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

<ESMA_QUESTION_CP_MIFID_131>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_131>

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

<ESMA_QUESTION_CP_MIFID_132>
No, the WMBA disagrees.

The draft RTS is unclear as to whether the material market test applies only to regulated markets or to all trading venues. RTS 19 uses the term trading venue, which reads as applying to all venues (regulated markets, MTFs and OTFs). We ask ESMA to provide clarity on this.

With regards to fixed income, bonds are often listed on regulated markets (for many reasons) but never traded on these venues. For those instruments that trade on venue, they often trade on platforms would be classified MTFs and OTFs in the new MiFID regime, which very often do not have lists of instruments admitted to trading. Article 1(1) applies to all instruments; therefore, it is important that it is workable and relevant for all markets.

The WMBA would be happy to provide ESMA with further information and data to help the development of such a regime. We also recommend that ESMA ensure consistency with RTS 33 with regards to the use of the term admitted to trading and traded on a trading venue.

<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>

The WMBA believes that the concept of "*material in terms of liquidity*" is inappropriate for non-equities markets where trades are fungible and no IP rights are owned by venues.

<ESMA_QUESTION_CP_MIFID_133>

vi. 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>
The WMBA notes that despite the fact that the CTP regime will impact non-equities, the ESMA provisions only focus on equity and equity-like instruments. We urge ESMA to also consider non-equity products.
<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>
WMBA is not clear that this section only applies to equities (as per Q 138 and Q140) or wider. If wider WMBA are concerned that the data in an APA should only be viewed, but not consumed with free manipulation rights.
<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

The WMBA notes that despite the fact that the CTP regime will impact non-equities, the ESMA provisions only focus on equity and equity-like instruments. We urge ESMA to also consider non-equity products.

<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>

The WMBA makes no comment.

<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>

The WMBA believes that the APA publication and actual execution times are sufficient.

<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>

The WMBA makes no comment.

<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 form the investment firm or the last source reporting it to the CTP? Please explain your rationale.

<ESMA_QUESTION_CP_MIFID_144>

The WMBA makes no comment.

<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>

The WMBA makes no comment.

<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>

The WMBA makes no comment.

<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 WMBA makes no comment.
<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>

WMBA do not agree with the elements of the draft RTS that cover a CCP's ability to deny access.

In principle the WMBA endorses:

- Support for access between trading venues and CCPs;
- Expectation that CCPs should be able to handle the incremental volumes created by a new trading venue, and not seek to avoid competition;
- Analysis that incompatibility of trading venue and IT systems is not an issue for operational risk / complexity;
- Clarity on which insolvency law / default procedure applies if the trading venue and CCP are in different jurisdictions.

Specifically:

i. The WMBA does not agree with ESMA that, "*incompatibility of IT systems such that the CCP cannot provide for connectivity*" is a valid reason to deny access. We believe that IT compatibility and connectivity issues should be rectifiable in the development phase.
ii. We note RTS 24, Art 3 which suggests that the two considerations 2(a) and 2(b) are the "*relevant type of risk, among others*". This raises the question as to quite what are those other risks which ESMA has identified. WMBA would prefer that this list was exhaustive, and are against the use of the vague term, "*among others*".
iii. It's not clear to us which are the situations that ESMA envisages when it refers to the, "*incompatibility of trading venue and CCP rules that cannot be remedied*". Does ESMA refer to the risk of different trade acceptance models? Again, to the WMBA it would appear that these are covered in "*legal risks*" [para 35 and Art 4(1) c]. This needs to be defined further, or excluded. Again the WMBA preference is for an exhaustive list of risks.

Therefore we would endorse the deletion of the terms "among others" and of 2(a) in its entirety.

<ESMA_QUESTION_CP_MIFID_148>

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

<ESMA_QUESTION_CP_MIFID_149>

WMBA do broadly agree with the elements of the draft RTS that cover a trading venue's ability to deny access.

However:

i. In respect of Paragraph 42, the WMBA does not agree with ESMA that, "*incompatibility of IT systems such that the trading venue cannot provide for connectivity*" is a valid reason to deny access
ii. Significant IT compatibility and connectivity issues should be rectifiable in the development phase
iii. Therefore we would endorse the deletion of Article 5 point 2 in its entirety
    - In principle WMBA supports more clarity around the controls over, and the ability to deny access on grounds of each of:
        i. IT incompatibility
        ii. Threat to the viability or minimum capital requirements of a trading venue
        iii. Incompatibility of infrastructure
        iv. Clearing of products outside a CCP's EMIR authorisation

<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>

The WMBA does not agree with ESMA's assessment that human resource requirements should not have the same timeliness and relevance for trading venues as it has regarding CCPs.

In our opinion, a similar consideration is needed for venues. Trading venue would need to require adequate and appropriately skilled human resources for the provision of feeds to multiple CCPs. This is particularly relevant if the product category in the access request is new, i.e. the venue does not provide for trading in that product (but the CCP provides for clearing.

<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>

The WMBA does agree with ESMA's assessment that the elements of the draft RTS that cover an NCA's ability to deny access.

In paragraph 49, we would assume that ESMA is referring to a trading venue or a CCP's "*regulatory*" obligations rather than any "*legal*" obligations. That is, supposing that a trading venue or a CCP has a contract with exclusivity? Is that then a legal obligation it wouldn't be able to meet when granting access?

Therefore we would endorse the deletion of the term "*legal*" in Article 7 point (a) and replace with the term "*regulatory*".

<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>
The WMBA does agree with ESMA's assessment of the draft RTS that cover the conditions under which access is granted.
<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>
The WMBA does agree with ESMA's assessment of the elements of the draft RTS that cover fees.

Any costs of granting the access request need to be evidenced, justified and reasonable. It is important that different fees for different trading venues, CCPs or its clearing members are not used to frustrate the benefits of access.
<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>
No, WMBA does not agree with ESMA's proposed draft RTS. ESMA's approach may work to some extent, but there are clearly are better solutions available.

We understand that ESMA will require that all contracts cleared by a CCP within a prescribed EMIR categorisation for which it is authorised, will be deemed to be economically equivalent, and thus suitable for the same collateral requirements and netting. However in reality, we believe that CCPs will use the provisions in Art 12(2) – which empowers CCPs to exclude such contracts from that netting process (*when it considers that the legal or basis risk is not sufficiently mitigated*) to narrow down the set of contracts that it nets. This may commonly result in the Risk Committees of the CCP may be conflicted and the Article 49 procedure may take a while to conclude on the right approach to netting.

Further, we think that "Basis risk" is not a valid reason to exclude a contract from netting - this is not in line with Level 1, which refers to legal risk ("applicable insolvency law" - see Art 35(1)(a))

In terms of Costs/ Benefits and disadvantages:

i. Legal & Compliance costs will rise as CCPs will continuously resort to legal opinions to rule out contracts from netting procedures.

ii. Lack of harmonisation - different CCPs will apply the provisions differently. There will be no consistency across the EU.

Therefore the WMBA would join others in advocating an alternative approach wherein ESMA would establish guidelines in the RTS to determine what netting processes apply and for what type of economically equivalent contracts.
<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>
The WMBA agrees with the elements of the draft RTS 24 that cover notification procedures.

<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>
The WMBA agrees with the elements of the draft RTS that cover the calculation of notional amount. Specifically the higher value should be used.
<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>
The WMBA does agree with ESMA's approach.

We do note how difficult it is for trading venues and CCPs to confirm whether they are being treated in a non-discriminatory manner by the owner of proprietary rights to a benchmark, because price information is not public (as per Art 20(4-5) of RTS 24).

In this regard the WMBA would particularly offer the case example of the cost of the credit index 'ITRAXX' index generation fee's; for which access costs amount to between 5-10% of all execution costs. This is, notably in addition to the closely related and already substantial Markit 'RED CODE' costs.

Rather, the WMBA believes that the list of information that a CCP or trading venue can request should be finite to reduce the potential administration burden on the benchmark administrator.
<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>
The WMBA agrees with ESMA's approach.
<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>
The WMBA agrees with ESMA's approach. We would like also clarify that the 30 months grace period cited should be dated from when a benchmark first has a financial product based on it.
<ESMA_QUESTION_CP_MIFID_159>

- ## 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>

The WMBA makes no comment.

<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>

The WMBA makes no comment.

<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>

The WMBA makes no comment.

<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>

The WMBA makes no comment.

<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>

No the WMBA does not agree.
The main area to concern the WMBA in this section is the straight copy across of the market making requirements for Regulated Markets (in Article 48 and 49 of MiFID) to MTFs and OTFs.

In respect of the other reporting requirements for MTFs the underlying rules and procedures are already current requirements under the FCA rules and hence should not pose a problem for member firm.

In respect of the other reporting requirements for OTFs the WMBA would draw attention to the following areas which we do not consider appropriate for voice and hybrid systems:

- Rules and procedures for making financial instruments available to trade together with details of the publication arrangements used to make that information available to the public (IT 27 Article 2 1 b)
- Description of arrangements to facilitate the provision of liquidity to the system (IT 27 Article 2 1 f)

Since it should be encouraged that each venue would operate with competing methods and operate different markets, a very prescriptive list would result in duplication of information throughout. For example, a number of the CFTC SEF application exhibits, per the required list, are copies of other exhibits where the information is already provided making the application 1000+ pages. It should be up to the local NCA to deem what information they need/how prescriptive this list needs to be.

We would also like to highlight the following points:

- Given the commercial sensitivity of the application, it should be treated confidentially
- Under Art 2.1k, the venue shall provide a list of participants. It is not clear what 'participants' are being referred to here given that, at the point of application, the venue may not have any true participants.
- Art 7. 2 should specify the level of granularity for the tradable asset classes, otherwise the list could become unmanageable.

Another key point is timing of the application. We would request clarification when NCAs expect venues to apply / re-apply for authorisation – especially in light of proposed national implementation guidance in the course of 2016.

<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>

Yes, the WMBA agrees on the standardisation of reporting formats.

<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>

Yes, the WMBA agrees on the standardisation of reporting formats.

<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>

The WMBA makes no comment.

<ESMA_QUESTION_CP_MIFID_167>

- **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>
The WMBA and LEBA do not agree with the proposal to use the gross notional of contracts. We would propose to use 'lots' as the appropriate indicator for contracts

To elaborate, should a business be forced to use gross notional as the baseline indicator, when the underlying instruments' price fluctuates the ratio would also change.
<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>
No, in the view of the WMBA and LEBA it would be better if freight fell under the commodities section in C6 and C7, and possibly subcategorised further into oil.

If freight remains as an asset class of its own, as there are only around 60 players in wet freight, the market is not large enough for companies to trade without breeching the 0.5% threshold. Looking at actual trade data over the last two and a half years, we have calculated that a firm could not even trade the minimum trade size outlined by Dodd Frank (block future minimum clip size) without breaching the threshold. The approach as suggested could thus lead to the closing of the market (at least in the EU).

Our preference to ensure that the freight market can survive and continue to grow, is to reassign our classification with energy commodity products.

The Wet FFA Market is a place for owners, trading houses, majors and other financial institutions to hedge their exposure, but they cannot do that without someone taking the other side of the trade. As such people need to be able to speculate as no market is ever likely to be perfectly balanced.
<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>
In defining the threshold for ancillary activities, ESMA should take account of the profile of the market segment in question. In many more regional or specialised commodity products, where very few market participants exist with respect to a contract, trading volumes will naturally be limited. As an example, the relatively small size of certain contract markets (e.g. the freight derivatives market) may mean that a single position could trigger a firm to exceed their ancillary activities thresholds as outlined in response to question 178
<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>
WMBA and LEBA believe that any position limits should take account of the liquidity profile but also the number of participants and the size of the market in question to ensure that the limits do not damage developing and existing liquidity in these contracts

In many more regional or specialised commodity products, where very few market participants exist with respect to a contract, liquidity will naturally be limited. Any consideration and/or methodology adopted for new contracts should therefore be extended to existing illiquid contracts.
<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>
WMBA and LEBA note that the deliverable supply is better suited for calculating positions in the spot month. Beyond that we again recommend a reversion to daily turnover.
<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>
The WMBA and LEBA do not agree that a specified period is a sufficient consideration in determining whether a contract is 'new'. The liquidity of a given contract should be the

determining feature when a contract starts trading. Not until a certain minimum level of liquidity is met, should a contract be treated as 'new'.
<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>
The WMBA and LEBA would add that the ongoing liquidity of a contract is the appropriate measure
<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?

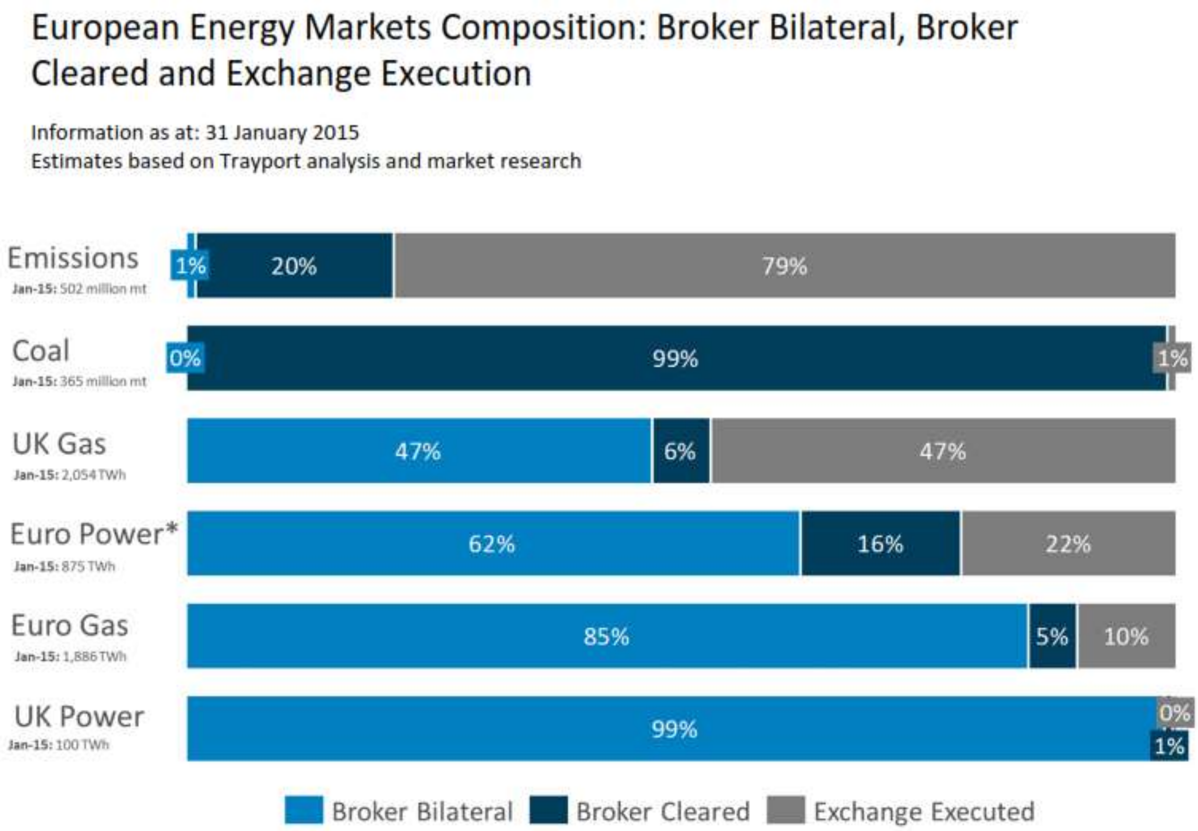
<ESMA_QUESTION_CP_MIFID_209>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>
WMBA/LEBA firmly disagrees with the proposed formats of CoT reports as detailed in the annex of the draft ITS. Neither the categories (x axis measures) nor the classes (y-axis measures) exist for commodity derivatives traded and executed on MTFs and OTFs. We therefore would recommend that the approach taken in the reference data reporting is adopted wherein only individual instruments that are included into the specified list are eligible for CoT reports.

Evidently it is remains clearly both impractical and inefficient that venues should receive position reports from their clients solely for the purpose of onward reporting, this creates exponential duplication as each market participant would send all their own client chain reports to all the venues that they employ across the EU.

ESMA, as was still very apparent at the Paris open hearing last week, still does not comprehend the difference between venues and siloed exchanges which include CCPs and therefore the post-trade cleared positions. ESMA demonstrated that it does not appreciate that only 10% of EU traded energy market volumes are cleared (see Trayport monthly reporting).



Rather, the WMBA/LEBA recommend that ESMA consider a process akin to that in the US under Dodd Frank where the '***Form 40***' under the CFTC rules enables the end-client to directly send the relevant information to the CFTC without passing through the chain of intermediaries. This preserves data quality, reduces duplications and protects client confidentiality vis-à-vis the intermediaries therefore removing the conflict with EU data and with national privacy laws.

For CoT reports as mandated by the level 1 text, venues should only report that business that they are direct witnesses to, rather than acting as a ***quasi-trade repository*** to clients' external risk positions. For all MTF and OTF trades there is no concept or quantum for 'open interest', nor is there client categorisation as detailed into 'Investment Firms', 'Investment Funds', 'Other Financial Institutions', 'Commercial Undertakings' or even 'Emission Operators'.

Further, for packaged transactions and other derivatives there is no notion of long and short, rather the position may be in volatility, spreads or correlations.

Trade repositories already exist in the EU; the point of asking trade venues to duplicate this appears to us to be simply bizarre. The venue s are able to collect and therefore to report flow data only.

Therefore, any venue should aggregate the flows executed on its own venue in each financial instrument, or class thereof, on a weekly basis per customer.
<ESMA_QUESTION_CP_MIFID_210>

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

<ESMA_QUESTION_CP_MIFID_211>
The WMBA and LEBA firmly disagree with the proposed formats of '*Daily Position Reports*' as detailed in the annex of the draft ITS. This is specifically because neither the categories (x axis measures) nor the classes (y-axis measures) exist for commodity derivatives traded and executed on MTFs and OTFs.

We therefore would recommend that the approach taken in the reference data reporting is adopted wherein only individual instruments that are included into the specified list are eligible for CoT reports.

Article 58 of MiFID2 states that venues should:

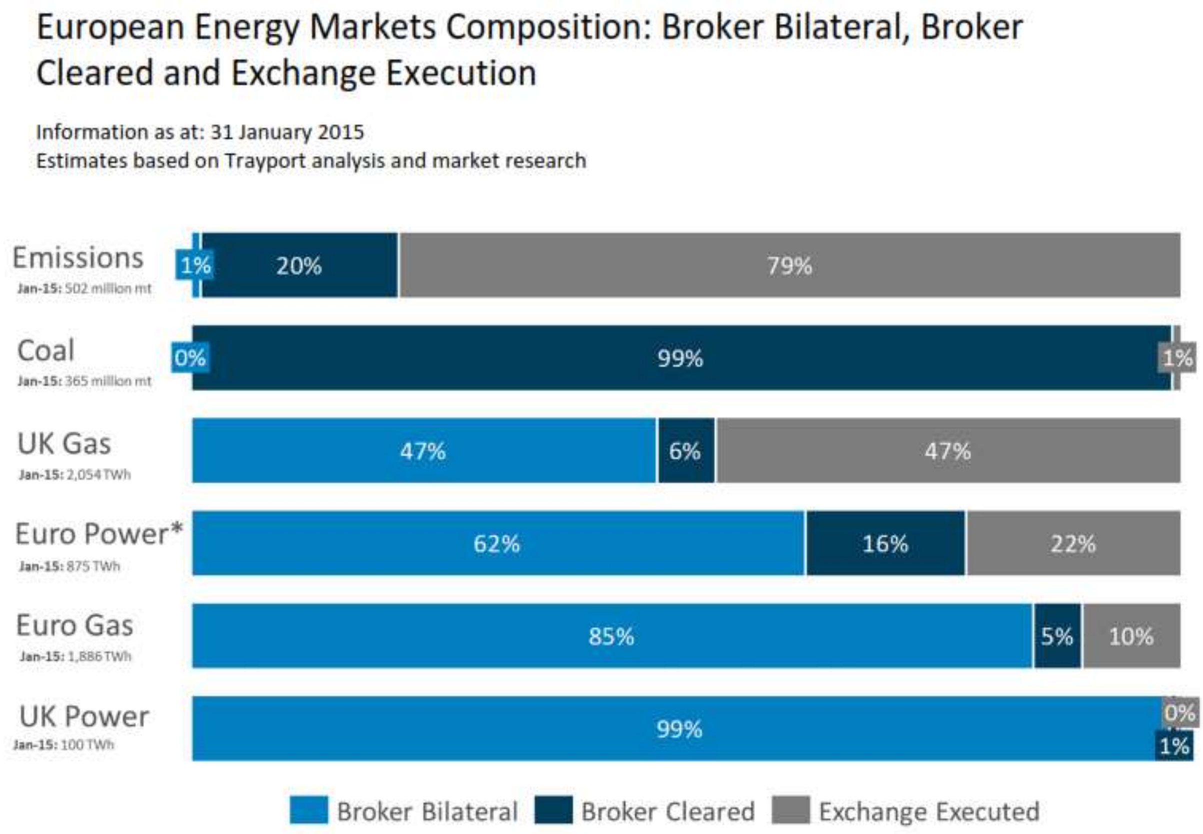
> *'provide the competent authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.'*

The WMBA and LEBA note that neither MTFs nor OTFs actually "***hold positions on that trading venue***".

Therefore we would ask that ESMA clarify that the daily position reports do not apply to all MiFID venues, but rather only to RMs where the position is cleared into CCP within the vertical silo or into an equivalent tied warehouse.

Evidently it is remains clearly both impractical and inefficient that venues should receive position reports from their clients solely for the purpose of onward reporting, this creates exponential duplication as each market participant would send all their own client chain reports to all the venues that they employ across the EU.

ESMA, as was still very apparent at the Paris open hearing last week, fail to understand the difference between venues and siloed exchanges which include CCPs. ESMA also fail to understand that only 10% of EU traded energy market volumes are cleared (see Trayport monthly reporting).



<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

Evidently it is remains clearly outlandish and unreasonable to all parties that venues (that is all the venues used by any counterparty) should receive position reports from each of their clients (and the backward client chain) solely for the purpose of onward reporting, this creates exponential duplication as each market participant would send all their own positions plus all their clients' reports to all and each of the venues that they utilise across the EU.

In order to avoid issues of data protection and confidentiality, we would propose that participants and their clients can report their positions themselves. ESMA, as was still very apparent at the Paris open hearing last week, fail to understand the difference between venues and siloed exchanges which include CCPs. ESMA also fail to understand that only 10% of EU traded energy market volumes are cleared (see Trayport monthly reporting).

Rather, WMBA/LEBA recommend that ESMA consider a process akin to that in the US under Dodd Frank where the 'Form 40' under the CFTC rules enables the end-client to directly send the relevant information to the CFTC without passing through the chain of intermediaries. This preserves data quality, reduces duplications and protects client confidentiality vis-à-vis the intermediaries therefore removing the conflict with EU data and with national privacy laws.

The WMBA and LEBA also note that venues would not be able to delineate between hedges [risk reducing] and [exempt] intercompany trades. It is also unclear how chains of back-to-back contracts should be treated by a receiving venue. In addition, it is likely that an OTC contract may be economically equivalent to contracts traded on two or more venues (perhaps with different competent authorities). It is not then clear whether it should be expected that a position in those contracts would be reported separately to each relevant competent authority.

Further, there will likely be no unique product identifier for commodity forwards and packaged products of such which are the most common trade shapes. WMBA and LEBA would again highlight the valuable and robust work done by ACER to develop the TRUM under REMIT and repeat out calls on ESMA to defer reporting to REMIT wherever feasible. Conversely for warrants, we add that there may also be an ISIN as well as or rather than, an Alternative Instrument Identifier.

WMBA and LEBA would also point out that for forwards traded on OTFs, OTC derivatives, derivative warrants and emission allowances, the "number of contracts" may not be a meaningful measure (or possible to calculate). The notional amount, number of warrants, units of allowances, and others, may be more meaningful.
<ESMA_QUESTION_CP_MIFID_212>

- ## 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>
WMBA no comment.
<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>
WMBA no comment.
<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>
The WMBA disagrees with the exclusions from the definition of transaction or execution. There may be a difference in the implementation timing of MiFIR and the Securities Financing Transaction Regulation ("SFTR"), as well as potential exemptions from reporting under the SFTR which may not be carried through to the MiFIR reporting framework under the current draft of Article 3(3)(a) of RTS 32.

We do not consider that investment firms should be required to report SFTs under MiFIR for the period between MiFIR implementation and SFTR implementation, nor should they need to transaction report particular SFTs if such transactions are exempt from reporting under SFTR. We therefore suggest redrafting Article 3(3)(a) in order to avoid any such consequences – we would suggest that the Article is re-drafted simply to read "Securities financing transactions", and that an additional definition of "securities financing transaction" as is used in RTS 8 could be added to RTS 32 – namely "securities financing transactions means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell or sell-buy back transaction.
<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>
The WMBA notes that the business model of the name passing broker is the reception of orders rather than their transmission. We therefore welcome further clarity to distinguish between receiving and transmission and the obligations attached.

There are two major issues with venues being mandated to report on behalf of non-MIFIR firms. The first is that the venue will not have access to all the fields – they are not naturally provided in the normal course of business, so this will be operationally costly to implement for both firm and venue, and secondly the firm may not want to provide that information, or may not be able to (e.g. in countries with increased DP/secrecy laws). What happens then? It could drive business to venues outside the EU?

Secondly, the way the reports have been structured requires both the buyer and seller fields to be populated. Venues should complete both these fields in a single report as they see both sides of the transaction, and should therefore also populate the venue field. However, we note that there is only a single capacity field and it's not clear whether this relates to the buyer, the seller or the venue.

Further, as venues, WMBA members would not expect that information pertaining to algo orders (i.e. algo id) to be made available. WMBA members as venues will only have access to the name of the executing person, not the investment decision maker if different. Similarly, venues (reporting on behalf of non-MiFID firms) would only have access to the counterparty ID, not their client's information. Lastly, short selling is not a meaningful concept in the array of non-equities markets.
<ESMA_QUESTION_CP_MIFID_216>

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

<ESMA_QUESTION_CP_MIFID_217>
"The WMBA does agree in principle with ESMA's proposed approach, the fields are too wide ranging, and it should be noted that it is not a "one size fits all" approach. In all likelihood, if we have to deliver reporting on such scale, it will lead for bifurcation of liquidity in those markets that are currently truly global in scope.

When proposing a similar regime in the US, it was determined that the CFTC's reporting requirements were too burdensome and the regime was amended to include a trader ID within the firm but not an identification process for the natural person. In the case where venues have to report for non-MiFID firms, requiring details such as date of birth, identification number, short selling information, will not be obtainable. In some cases, these will contravene local confidentiality and data protection rules, in other instances the clients will already have local reporting obligations and will thus be reluctant to agree to dual reporting to a foreign NCA.

This approach for example does not consider the characteristics of some OTC derivatives products which may make the determination of the buyer and seller subjective, leading to inconsistencies in reporting between firms. Especially, in an FX, FRA or a swap transaction it is not always clear which counterparty to the trade originated the transaction and therefore who should be assigned buyer or seller of the trade. In order to ensure the determination of buyer and seller is done as consistently and accurately as possible, firms would urge ESMA to work with the industry to develop Level 3 guidelines regarding pre-set criteria as a standard mechanism to determine the buyer and seller for different types of asset classes of OTC derivatives.

Indeed quantity may not be known at the point of working the trade because it is dependent upon a further quantity, spread, or option dynamic. For example the industry already uses conventions that assign roles to counterparties to a trade e.g. in the case of a fixed / float interest rate swap, the payer of the fixed rate may be assigned the role of BUYER and the payer of the floating rate may be assigned the role of the SELLER.

Additionally, firms would prefer to opt for an approach which is consistent and harmonised with the requirements to retain detailed records of orders. If ESMA decides to opt for this approach for transaction reporting, we would suggest for this approach to also be applied to orders to be stored under RTS 34/35 so that the buyer/ seller information is stored in a consistent manner.

As arrangers of transactions rather than acting as agent for any one counterparty side, the WMBA notes concerns with the new approach for reporting laid out in scenario 4, where we consider that ESMA appears to be confusing the trading capacity of Agent with receipt and transmission of an order which is incorrect."

<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>

Field Specific comments

Natural person information:

Fields 8 – 19 & 23-34- The amount of personal data that ESMA is suggesting to include in each transaction report is both impractical and unfeasible for global counterparties.

We believe that ESMA's proposals to have natural persons identified by a national ID number robustly and uniquely identifies each natural person is already inflexible and excessive and should be supplanted by authorisation identifiers for transaction reporting purposes. WMBA members have found similar requirements for SEFs under Dodd Frank to be difficult to comply with.

We do not agree that additional information such as the name, the surname, the date of birth, the country of residence and the post code is required in order for competent authorities to monitor for market abuse. The proposed additional information might on the contrary overcomplicate the report with unnecessary attributes in 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 their national ID number.

Further, two natural persons will not have the same national ID number so we do not see how adding its date of birth to the report will provide any additional useful information to the regulators. In addition, ESMA also requires the post code of natural persons to be identified in the reports. As ESMA is aware individuals frequently change addresses and/or could have multiple addresses. For all these reasons, we think that requiring firms to include all this additional information in the transaction reports is not properly justified, and is unreasonable and disproportionate. We would urge ESMA to review the amount of personal data that it is proposing to include in transaction reports and to reduce it to a minimum.

In the consultation paper (paragraph 98), ESMA's acknowledges concerns related to data protection and states that it will ensure full compliance with the data protection law. Providing personal data in transaction reports greatly increases the risk of personal data fraud, risks of identity theft and raises important privacy concerns under EC Data Protection Directive.

Execution Time – Field 41
ESMA should set a fixed format for reporting of execution timestamp to enable firms to implement more efficiently and enable their control frameworks to operate with a standard field length.

Information on prices: Fields 45 -50
The consideration field is subject to interpretation and question e.g. listed futures transactions do not have a 'settlement consideration' and other derivative transactions will have complex calculations to determine consideration, a consideration in many cases not existing at all.

Currency throughout a trade is not always consistent, with executed price currency (field 47), underlying instrument currency where applicable (field 48) and consideration (settlement) currency often differing (field 50), which can be dependent on client and counterparty preference.

Instrument identification code: Field 54
Firms note that the details required when using an AII (or Aii) would not accommodate the information that is provided to the regulator today, whilst derivatives do not currently have a global UTI regime, although the WMBA is endorsing the FIGI approach. ESMA has not allowed an alternative identifier where neither an ISIN nor AII exists. We prefer that an option is included to cater for such occurrences otherwise firms will be unable to make the necessary transaction reports.

The information on the venue is already specified in Field 51 so there is no need to include this information twice. An OTHER category would allow a report to be made and ESMA should encourage firms to minimise use of the OTHER categorisation.

Instrument classification: Fields 55 - 56
The CFI code is not available for OTC derivatives as it currently only exists for listed instruments with an ISIN. Where the CFI code is unavailable for classes of derivatives that are traded on a platform under MiFIR that firms derive their own internal CFI in the interim until international standards are agreed for UPI

Ultimate underlying instrument code Field 58
WMBA would ask ESMA to revise the guidance in RTS32 so that derivatives where there is for example no underlying ISIN, Aii, ISO or LEI can be reported as 'OTHER'. Examples would include FX derivatives, CDS, issuers and commodities.

Baskets Field 58
This field poses problems in terms of the potential large number of underlying identifiers that may not even have ISINs that firms might have to populate in this field.

For example an Equity Swap on a bespoke basket of the FTSE250 index with the banking stocks removed – would result in a repeating group population of in excess of 200 lines. The 25 alphanumerical characters allowed will not be sufficient to accommodate these types of baskets. Firms suggest that where an ISIN or name (if the name is official) is available to identify baskets, sectors or indices then these should be allowed to be used as opposed to free form text which is likely to be widely different amongst firms and therefore less helpful to regulators in detecting market abuse. Firms would ask that Article 3 (3) (h) is amended to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred: "A change in the composition of an index or basket after a transaction occurred is not reportable"

Option style: Field 61
Not all complex options fit into these categories – firms suggest that where a complex option does not fit into the categories listed then ESMA specify an additional category designated “COMPLEX” for this purpose.

Trader identification code: Field 68 -69
The WMBA would firmly reiterate our concern with ESMA’s proposal to have traders identified by National ID numbers. WMBA members have found this entirely impracticable in SEF operation under Dodd Frank and would suggest that there are other more suitable items of identification that could be used and are already used within firms to identify individuals, for example the National Competent Authorities registration number. While we understand the need for a unique national ID number to be used for natural persons when they are clients, we do not think this is justified in the case of a trader working within a firm and already identified by the NCA via the registration number. A trader ID need not be identified more broadly. Moreover, a registration number is better than a personal ID, as it does not inherit the problem of people with dual nationalities.

Short selling indicator: Field 77
The IBD will not know whether the client is short selling.

Report Status – Field 81
Only N (new) and C (cancel) are applicable, and there is no mention of A (amend). This will create an unnecessary additional volume of reports. We would – welcome the possibility to amend reports instead of cancelling reports and then reporting as new trades.
<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>
The WMBA agrees with the “Matched Principal” flag although in our opinion it as largely redundant as we note that this can only be applicable on an OTF where all bond transactions will be arranged as Matched Principal.

In the scenario, where a venue has to report for third country participants, it will not be in possession of information regarding the trading capacity of the client. Whilst it can request such information, the venue is clearly not in a position to verify the information received.
<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>
No, the WMBA does not see a problem with identifying the specific waiver(s) under which the trade took place in a transaction report. We do however think that several waivers may coincidentally apply, whilst the designation of the trade from the transaction is an ongoing problem through the level 2.
<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>
WMBA agrees with the approach stated in Article 11.

<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>
Once a basket has been identified as reportable (i.e. at least one component of the basket is a financial instrument admitted to trading or traded) WMBA would suggest all the component of the basket to be identified in the report.
<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>
The WMBA has no comment
<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>
The WMBA has concerns that by the Jan 2017 deadline LEI might not yet be fully rolled out and this could firms in a difficult situation when facing a non EEA counterparty in a jurisdiction where LEI is not yet mandatory. We would welcome a phase-in period where alternative identifiers (like BIC) would be allowed still during the first year (2017).

WMBA would also urge ESMA to consult with the Regulatory Oversight Committee (ROC) and Local operating Units (LOU) and review the pricing for the maintenance of the LEI for NFC (non-financials). The yearly cost to maintain the LEI in a valid status can be high if taking into consideration the low number of trades they have, and might lead to large number of LEI to go into “lapsed” status.
<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>
The WMBA would like to highlight general concerns around the number of fields required for transaction reporting. Unless the principal to a transaction is responsible for the reporting, it will be unlikely that a third party would be able to get hold of the information on a voluntary basis. This is the key issue faced by trading venues which have to report for third country participants. Notably in the case of fields in relation to the trader identification code type and the short selling indicator are unlikely to be available.

We remain concerned around the identification of financial instruments. Whilst for bonds and equities, there are existing terminologies (ISINs), these are much less used in the OTC derivative markets. It is important to recognise that any transaction report can thus only make reference to internal instrument identifiers in the absence of an external reference point.

Over reporting:

WMBA notes that over-reporting may be likely in the early years of MiFID2, 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 firms will prefer to over-report to ensure they meet their transaction reporting obligations. We therefore 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. Indeed, in the absence of a golden source of reportable products, firms will report on a best endeavours basis and err on the side of caution and report transactions where there is an element of doubt. It is the firms' responsibility to determine which instruments are reportable.

Calculation of positions:

Evidently WMBA members are not authorised to hold positions. Whilst the WMBA notes ESMA's efforts to define 'transaction' and 'execution of a transaction' for transaction reporting purposes. As stated in the draft RTS 32 Article 3, not all actions and transactions are included in the transaction reporting scope.

As not all actions/transactions are reportable it would be impossible for competent authorities to use transaction reports to calculate firms' exact positions and moreover we expect that this methodology would hypothecate positions at IDBs where none actually exist.

Conversely, the draft RTS 32 Article 14(5) (a), seem to require investment firms to 'have adequate arrangements in place to ensure that the transaction reports submitted by the firm accurately reflect the changes in position of the firm'. For IDBs, whilst do position report that latter stipulation is redundant. We would therefore qualify the requirement to add, 'where relevant, and not applying to (limited activity / limited licence) investment firms acting as MiFID venues.
<ESMA_QUESTION_CP_MIFID_225>

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

<ESMA_QUESTION_CP_MIFID_226>
The WMBA has no comment
<ESMA_QUESTION_CP_MIFID_226>

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

<ESMA_QUESTION_CP_MIFID_227>
The WMBA does not agree with the approach to flag market makers for the reasons outlined in the relevant microstructural section which include the fact that clients may be deemed as market makers in non-equity markets where they themselves would not consider as acting in this capacity. Due to the wide reaching definition of an Algo this will encompass those streaming prices to the screen and will show a misleading level of market making activity.
<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>
The WMBA does not foresee any difficulties with the application of proportionate timestamps, but requests that hybrid venues are treated in the same capacity as voice.

We note that RTS 34 requires that electronic systems time stamp and put a unique ID on orders which is updated when events occur. It is less clear how this can work in a market with constant price streaming and market makers whose prices will move consistently in the order book and slightly change prices to remain in line with the market. Would every re-pricing event be classified as a new orders which will require to be time stamped and identified as such? It would be useful to clarify how this standard applies in such circumstances.

Similarly, we would like to clarify whether RTS 34 Art 5 Article d also covers OTFs. A defining feature of OTFs is the element of discretion and an OTF provider therefore won't have a prescribed price/size protocol.
<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>
For the Identification Code of Order and identification of Order Book, the WMBA notes that amongst five elements of data required to be separately maintain by venues, the financial instrument's identification code may not be possible as either an ISIN or an Aii as required. This is especially the situation in the case of derivatives, forwards and packaged products. This requirement will increase the number of order records and ID's by an unknown multiplier, and we consequent do not see the value of retention when they are not orders received from participants.
<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>
The WMBA has no comment.
<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>
The WMBA has no comment.
<ESMA_QUESTION_CP_MIFID_231>

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

<ESMA_QUESTION_CP_MIFID_232>
No, the WMBA considers that this requirement would be disproportionate and put a significant burden on venue operators. It would also create a significant barrier to entry especially in lower volume markets.
<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>
The WMBA notes that ESMA has acknowledged industry concerns with the proposals outlined in the original DP, and in particular that the level of accuracy should be calibrated to take account of different types of market participant and trading venues, as well as different trading models. We do not believe that the proposals in the RTS currently achieve the intended outcome of an appropriately calibrated model.

Specifically, most IDB trades take periods from several seconds to several days to arrange and execute, therefore a *per-second* synchronisation would appear inappropriate. Further hybrid and auction systems needed to be proportionately treated equivalent to the voice category. Therefore the WMBA is firmly of the opinion that proportionality is again key, and particularly even where HFT/Algo participation is occurring, that any specification closer than 1 millisecond creates rapidly increasing costs and are beyond the scope of MiFID2. Concisely, proportionality would guide that if a venue cannot complete a 'round turn' inside a set latency, then there is no benefit to disproportionally close timing requirements.

The ESMA consultation clearly notes in its cost benefit analysis that the implementation of the clock synchronisation requirement “will result in a considerable cost implication for some TVs serving HFT firms, as may require an upgrade of the existing infrastructure of the live trading and position systems, potential reconfiguration of network topology, including dedicated hardware, specific enhancements and some alterations to the protocols, new routers and switches”. It thus seems that, from ESMA’s own cost benefit analysis, the concept of clock synchronisation should be limited to those venues servicing HFT firms only and not required for those that do not.

Lastly, we would note that a practical way to achieve clock synchronisation would be to restrict the requirement to venues rather than bringing participants into scope and the WMBA supports the UTC reference.

<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>

The WMBA suggests that the time divergence set out in *table 1* should only apply to reportable events meeting the definition of high frequency algorithmic trading techniques.

All other reportable events should be treated as being in either the voice or coarsest level of accuracy (milliseconds) so as to limit the number of technical platforms a participant needs to synchronise to the higher precision to those that are occurring in near real-time with market events. WMBA would therefore propose that where communications are conducted by multiple means (i.e. voice, instant messenger, and electronic means) synchronisation of all systems is not plausible and it would propose that firms should only be mandated to use their best endeavours to ensure synchronised time reporting.

The method of synchronisation should be left to the firm and would be undertaken either electronically of manually based on the size. Other than for High Frequency Trading on Regulated Exchanges, WMBA considers a divergence of one minute to be appropriate, different and in contrast to the ESMA proposal.

<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>
A number of new instrument attributes are mentioned in the MiFID/R documentation and the WMBA has consistently advocated the significant benefits to the industry to have a single 'golden source' copy of such data, especially where the original source of such data may be the various NCAs.

Having industry participants having to collate such data themselves and/or derive it themselves would impose an unnecessary implementation burden and inevitably result in the usage of erroneous data. It is therefore suggested that such attributes be added to ESMA's centralised instrument reference data file as per the list at *RTS 33 Annex I*.
This would include:

- Large in scale value
- Standard market size
- Unique Product Identifier (UPI)

<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>
In respect of the venue provision of reference data, the WMBA understand that the ESMA CP text was missing the term at the end of point [4]: "... ***during that day***". OTF and some MTF providers that deal in instruments without a defined list, shall only report those instrument files for which they receive orders and trades on that day. If the intention is to provide a cumulative list of instruments, the reportable reference data could soon become unmanageable.

Concisely, the WMBA would commend the RTS to specify, "***on that day and only pertaining to orders and transactions available on the venue on that da*y**." Therefore it should be that that ESMA definition of "individual instruments" should only apply to those instruments that are pre-defined and listed for trading – where all relevant data are known and listed before trading commences.

Other instruments where factors such as dates and payments are allowed, but not included under that definition and the rules that therefore apply. Therefore OTFs should not be caught as having individual instruments whilst MTFs may or may-not be according to the nature of the financial instruments being executed.

For instruments that are not caught under the definition of "***individual instruments***" – venues should only supply reference data once that the instrument has either traded or received an "***order***". In this case the venue submits the reference data that day only and not again thereafter unless further activity occurs on subsequent dates.

The exception to that would be when the new instrument fulfils the requirement for all relevant data to be available and known in anticipation of trading, in which case the product become subsumed under *individual instruments* and is included into the *specified list*.
<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>
We agree in part with Article 3(4) draft RTS 33 which permits MTFs and OTFs that do not use a specified list of financial instruments to provide reference data pursuant to Article 3(1) draft RTS 33 for instruments traded on those markets or for which orders or quotes were placed to those markets. We appreciate that the intention behind this provision is to capture instrument reference data in markets in which any financial instrument can trade at any point in time in accordance with an infinite number of value permutations (e.g., strike, maturity, clearing venue etc.) However, given that this is the intention we believe that the provision is incomplete because it does not specify the time period in relation to which the instrument reference date is required to be provided. We therefore propose that Article 3(4) draft RTS 33 be amended as follows:

> '*4. Multilateral trading facilities, organised trading facilities and systematic internalisers that do not use a specified list of financial instruments shall provide instrument reference data pursuant to paragraph (1) for instruments traded on those markets or for which orders or quotes were placed on those markets during that day*.'

In respect of the venue provision of reference data, the WMBA understand that the ESMA CP text was missing the term at the end of point [4]: ***"... during that day***". Therefore it should be that that ESMA definition of "individual instruments" should only apply to those instruments that are pre-defined and listed for trading – where all relevant data are known and listed before trading commences.

Other instruments where factors such as dates and payments are allowed, but not included under that definition and the rules that therefore apply. Therefore OTFs should not be caught as having individual instruments whilst MTFs may or may-not be according to the nature of the financial instruments being executed.

For instruments that are not caught under the definition of "***individual instruments***" – venues should only supply reference data once that the instrument has either traded or received an "***order***". In this case the venue submits the reference data that day only and not again thereafter unless further activity occurs on subsequent dates. The exception to that would be when the new instrument fulfils the requirement for all relevant data to be available and known in anticipation of trading, in which case the product become subsumed under individual instruments and is included into the specified list.
<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>
WMBA reiterate the requirement for a centralised golden source is still needed. This should be able to differentiate between instruments across different trading venues with SI information as always being a subset of venue reports. Clearly this database needs to be owned centrally and updated in real time and it also needs to be made available to the public. The benefits of such a reference entity would additionally reduce any potential for over-reporting and therefore create a far more effective trade and transaction reporting infrastructure.

With regards to the classification of instruments, we would like to highlight that not all instruments are currently coded and it is thus difficult (especially in OTC market) to come up with an instrument classification.

<ESMA_QUESTION_CP_MIFID_238>

- **Post-trading issues**

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

<ESMA_QUESTION_CP_MIFID_239>

The WMBA does not agree with the obligation under Article 3(2) draft RTS 37 on trading venues to check, before execution of a client order, whether the amount of that order is within the limit set by the clearing member for that client. The reasons for this are as follows:

1. Article 27(3) MiFIR does not specifically mandate ESMA to impose an obligation on trading venues to perform the checks envisaged by Article 3(2) draft RTS 37. ESMA is mandated only to develop draft RTS to specify the minimum requirements for systems, procedures and arrangements to ensure that cleared derivatives are submitted and accepted for clearing as quickly as technologically possible using automated systems. In other regulatory regimes globally, the obligation to check credit allocation prior to executing a transaction rests with the customer's clearing member or, if the customer self-clears, the customer itself. No obligation rests with the venue. The vast majority of orders into MTFs (and soon OTFs) emanate from self-clearers and checking each one (which numbers would be in the tens of millions per day for fully electronic CLOBs in just one market such as EUR Interest Rate Swaps) would conflict with the policy objective of providing immediate pre-trade transparency by delaying the posting of the price. The answer would always be yes. Therefore to be consistent with other regimes and to ensure that existing business remains in the EU we propose that a more practical alternative consistent with policy objectives will be to require trading venues to obtain written assurances from their clients, by way of commercial agreement and other legal documentation such as venue rulebooks prior to being authorised to transact that all orders will be within the limits imposed by the clearing member.
2. The reliance of venues on third party 'credit hubs' to provide this real-time information to all venues equally and simultaneously will create the risk of a 'single point of failure' which in the event of an interruption will close the entire market. Therefore taking this obligation away from the venues and placing it upon customers to manage within their own systems, consistent with rules outside the EU, will prevent this potentially catastrophic risk from occurring.
3. The cost of implementing such checks will be disproportionately high in comparison to the risk ESMA is attempting to avoid.
    a. Firstly, ESMA itself acknowledges that the processing time of derivative transactions subject to the clearing obligation concluded electronically on a trading venue is very short and carries either no, or an extremely limited, risk of damage being suffered by the counterparties if the transaction is rejected by a CCP. The prohibitively burdensome infrastructure which trading venues will need to implement to comply with this obligation is disproportionate to the extremely limited risk of detriment to counterparties and the market. This is particularly the pertinent to wholesale

markets where the vast majority of counterparties will clear on their own clearing memberships/accounts. Imposing on trading venues requirements to perform prescriptive pre-clearing checks will unnecessarily add cost and complexity to the processing of derivative transaction and thereby increase operational risk.

   b. Secondly, the impact of such checks on the acceptability of transactions for clearing has not been proven to date even under the US SEF Rules which impose an equivalent obligation on venues to 'pre-screen' transactions in advance of clearing. ESMA reference the experience of SEFs in the CP to the RTS, but do so somewhat in error. For the avoidance of doubt, those clearing members who clear on their own account at a CCP and therefore are termed "self-clearers" are NOT currently or hitherto pre-screened under SEF rules. MiFID needs to separate and treat proportionately self-clearers from those firms engaged in client clearing.

4. A trading venue's ability to comply with this obligation is entirely dependent on it being provided with the necessary information by third parties to perform such checks and there could be many occasions where a trading venue will not have the requisite information at its disposal. This makes compliance with the obligation impracticable and inevitably inconsistent across different trading venues. This will compromise trading venues' ability to maintain fair and orderly markets due to reasons outside their control.
5. The impracticability of complying with this obligation is further evidenced by the requirement to perform the checks within the timeframes stipulated in Article 3(3) draft RTS 37. These timeframes do not take into account the fact that a transaction may be executed before the relevant time frame for performing the check. For example, trading venues are required to perform the check within 10 minutes from the receipt of the order when the order is not entered into electronically (Article 3(3) draft RTS 37) but this does not cater for the scenario where an order is executed before the end of the 10 minute period. This should be avoided by rejecting the current proposal and placing the obligation on the customer to warrant the availability of credit prior to placing the order.

<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>

It is the view of the WMBA that:

1. A trading venue's ability to comply with Article 4 draft RTS 37 is entirely dependent on it being provided with the requisite information on an equal and identical basis compared to other venues and there will be many occasions where a trading venue will not have the requisite information at its disposal. This makes compliance with the obligation impracticable and inevitably inconsistent across different trading venues.
2. The timeframes stipulated in Article 4 draft RTS 37 do not take into account certain transactions which by their very nature make compliance unachievable. . For example, ni the case of packaged transactions, a trading venue may not have the requisite information provided to it in relation to each leg of the transaction and therefore compliance with the obligation in Article 4 draft RTS 37 is not possible. This is another reason why the obligation should not be placed on venues required to comply with rules outside the EU. Again, this risk

is eliminated by placing the obligation directly on market participants rather than on the venues.

<ESMA_QUESTION_CP_MIFID_240>

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

<ESMA_QUESTION_CP_MIFID_241>
The WMBA has no comment.
<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>
If the timeframe of 10 seconds is adopted for submitting orders to the CCP, and is combined with a 10 second timeframe for acceptance by the CCP, then in the opinion of the WMBA, potential error trades will clear within 20 seconds total from execution to clearing because of insufficient time for any form of trade affirmation/checking. Given the large average size of derivative transactions this may rapidly prove to be problematic, most particularly in times of market stress and volatility when certainly is at a premium.
<ESMA_QUESTION_CP_MIFID_242>

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

<ESMA_QUESTION_CP_MIFID_243>
The WMBA underlines that it is absolutely vital that trades failing credit are able to be resubmitted. However, although we agree with the provision in Article 7(4) draft RTS 37, we do not believe the stipulated resubmission period of 10 seconds is sufficient or realistic as it does not allow enough time to prepare the transaction for resubmission. Traders cannot be made aware of a trade failure in every case within 10 seconds. We therefore propose that the resubmission period should be no less than 15 minutes which will dramatically reduce the likelihood of failed trades and is generally consistent with policy objectives.

WMBA would also point out that it will not be clear if a trade is rejected by the CCP due to technical or other issues, meaning there will be uncertainty over the exact status of the trade at the trading venue.
<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 WMBA has no comment.
<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>
The WMBA has no comment.
<ESMA_QUESTION_CP_MIFID_245>