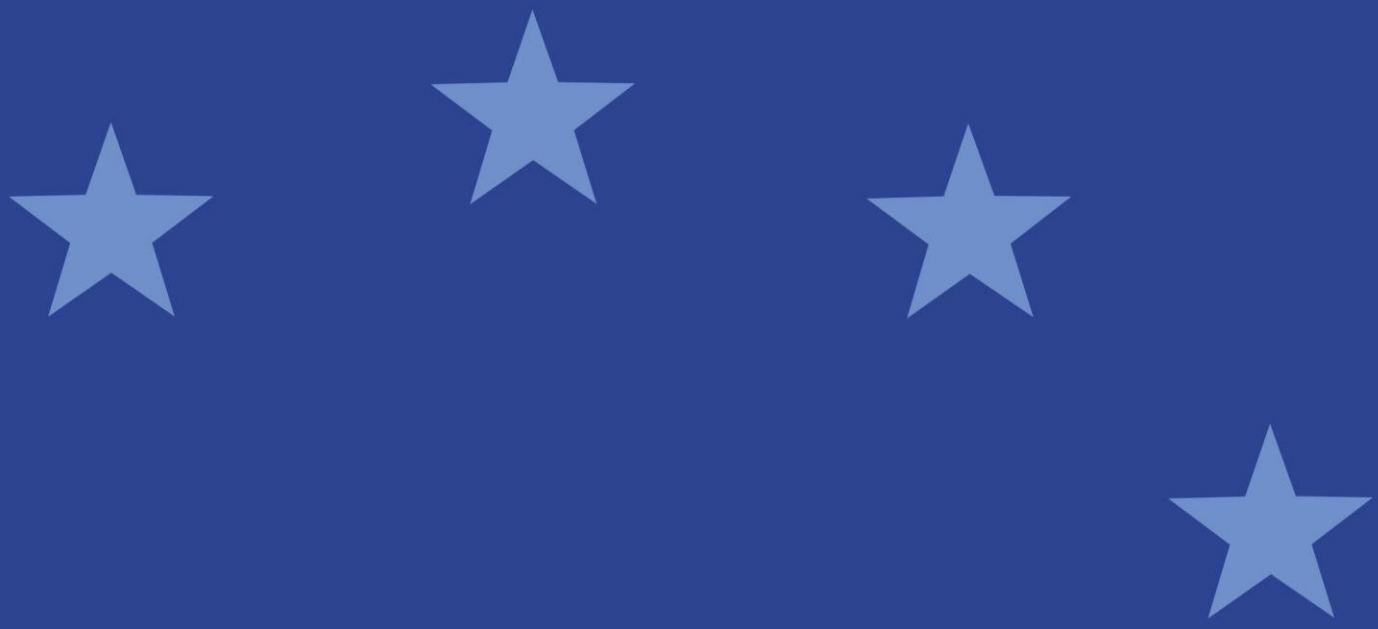
esma European Securities and Markets Authority

Reply form for the ESMA MiFID II/MiFIR Consultation Paper



22 May 2014

European Securities and
Markets Authority

Date: 22 May 2014

Responding to this paper

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

Instructions

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

i. use this form and send your responses in Word format;

ii. do not remove the tags of type <ESMA_QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and

iii. if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

i. if they respond to the question stated;

ii. contain a clear rationale, including on any related costs and benefits; and

iii. describe any alternatives that ESMA should consider

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

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

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

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

Publication of responses

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

Data protection

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

1. Overview

2. Investor protection

2.1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

Q1: Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?

<ESMA_QUESTION_1>
Yes, LSEG agrees with the conditions.

Please note, we provide an introduction to LSEG in footnote 1 below[1].
<ESMA_QUESTION_1>

2.2. Investment advice and the use of distribution channels

Q2: Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?

<ESMA_QUESTION_2>
LSEG: Yes, we agree.
<ESMA_QUESTION_2>

[1] London Stock Exchange Group (LSEG) is a financial market infrastructure provider, headquartered in London, with significant operations in Europe, North America and Asia. LSEG welcomes the opportunity to respond to ESMA's Discussion Paper and Consultation Paper on MiFID II/MiFIR.

LSEG operates a range of international equity, fixed income and derivatives markets, including: London Stock Exchange; Borsa Italiana; MTS Group, and Turquoise; post trade and risk management, including Cassa di Compensazione e Garanzia (CC&G), the EMIR authorised CCP, Monte Titoli, the Italian CSD and globeSettle, a new CSD based in Luxembourg; and is majority owner of the multi-asset global CCP, LCH.Clearnet Group serving major international exchanges and platforms, as well as a range of OTC markets (with EMIR authorised CCPs in France and the UK). LSEG operates the EMIR authorised trade repository, UnaVista, and offers a range of real-time and reference data products, as well as access to international equity, bond and alternative asset class indices, through the leading index provider, FTSE International. In addition to the Group's markets, over 30 other organisations and exchanges around the world use the Group's MillenniumIT trading, surveillance and post trade technology.

For further information contact: **Steven Travers/ Shrey Kohli, Regulatory Strategy, LSEG** (stravers@lseg.com/ skohli@lseg.com) or **Fabrizio Plateroti/ Lucia Bordigato, Regulation and Post Trading, Borsa Italiana** (fabrizio.plateroti@borsaitaliana.it/ lucia.bordigato@borsaitaliana.it)

2.3. Compliance function

Q3: Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?

<ESMA_QUESTION_3>
LSEG: Yes, we agree.
<ESMA_QUESTION_3>

Q4: Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?

<ESMA_QUESTION_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_4>

2.4. Complaints-handling

Q5: Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?

<ESMA_QUESTION_5>
LSEG: Yes, for instance, LSE has a complaints handling procedure in line with the requirement set out by our national competent authority, the Financial Conduct Authority (FCA).
<ESMA_QUESTION_5>

2.5. Record-keeping (other than recording of telephone conversations or other electronic communications)

Q6: Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.

<ESMA_QUESTION_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_6>

Q7: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.

<ESMA_QUESTION_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_7>

2.6. Recording of telephone conversations and electronic communications

Q8: What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?

<ESMA_QUESTION_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_8>

Q9: Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?

<ESMA_QUESTION_9>
LSEG believes that the accuracy of records is important for default procedures. Therefore, if this is in previous MiFID requirements and not covered by the home state regulator, then this should be included.
<ESMA_QUESTION_9>

Q10: Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?

<ESMA_QUESTION_10>
LSEG: We are unable to comment, as the standards presented by ESMA do not make it clear whether it applies to all meetings with clients or only those where a transaction was agreed.
<ESMA_QUESTION_10>

Q11: Should clients be required to sign these minutes or notes?

<ESMA_QUESTION_11>
LSEG: No, we do not think that this should be the case, because the notes may include an investment firm's own internal comments.
<ESMA_QUESTION_11>

Q12: Do you agree with the proposals for storage and retention set out in the above draft technical advice?

<ESMA_QUESTION_12>
LSEG: Yes we agree. This would help with member firm defaults.
<ESMA_QUESTION_12>

Q13: More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?

<ESMA_QUESTION_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_13>

2.7. Product governance

Q14: Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.

<ESMA_QUESTION_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_14>

Q15: When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?

<ESMA_QUESTION_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_15>

Q16: Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?

<ESMA_QUESTION_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_16>

Q17: What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product's target market)?

<ESMA_QUESTION_17>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_17>

Q18: What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?

<ESMA_QUESTION_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_18>

Q19: Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.

<ESMA_QUESTION_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_19>

Q20: Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.

<ESMA_QUESTION_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_20>

Q21: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?

<ESMA_QUESTION_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_21>

2.8. Safeguarding of client assets

Q22: Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?

<ESMA_QUESTION_22>
Yes LSEG agrees with this proposal in particular where an investment firm holds client assets, as this would help when a firm has financial difficulties.
<ESMA_QUESTION_22>

Q23: What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm's compliance with its obligations regarding the safeguarding of client instruments and funds?

<ESMA_QUESTION_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_23>

Q24: Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?

<ESMA_QUESTION_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_24>

Q25: Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?

<ESMA_QUESTION_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_25>

Q26: Do you agree with the proposal to require a reasonable link between the client's obligation and the financial instruments or funds subject to TTCA?

<ESMA_QUESTION_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_26>

Q27: Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?

<ESMA_QUESTION_27>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_27>

Q28: Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?

<ESMA_QUESTION_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_28>

Q29: Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?

<ESMA_QUESTION_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_29>

Q30: Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?

<ESMA_QUESTION_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_30>

Q31: Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?

<ESMA_QUESTION_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_31>

Q32: Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?

<ESMA_QUESTION_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_32>

Q33: Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.

<ESMA_QUESTION_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_33>

Q34: Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?

<ESMA_QUESTION_34>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_34>

Q35: Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?

<ESMA_QUESTION_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_35>

Q36: Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?

<ESMA_QUESTION_36>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_36>

Q37: Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?

<ESMA_QUESTION_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_37>

Q38: Do you place any client funds in a credit institution within your group? If so, what proportion of the total?

<ESMA_QUESTION_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_38>

Q39: What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?

<ESMA_QUESTION_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_39>

Q40: What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?

<ESMA_QUESTION_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_40>

Q41: What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?

<ESMA_QUESTION_41>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_41>

Q42: Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?

<ESMA_QUESTION_42>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_42>

Q43: Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?

<ESMA_QUESTION_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_43>

Q44: What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?

<ESMA_QUESTION_44>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_44>

Q45: Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?

<ESMA_QUESTION_45>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_45>

Q46: Should the option of 'other equivalent measures' for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?

<ESMA_QUESTION_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_46>

Q47: Should firms be required to develop additional systems to mitigate the risks of 'other equivalent measures' and require specific risk disclosures to clients where a firm must rely on such 'other equivalent measures', where not already covered by the Article 32(4) of the MiFID Implementing Directive?

<ESMA_QUESTION_47>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_47>

Q48: What would be the on-going costs of making disclosures to clients when relying on 'other equivalent measures'?

<ESMA_QUESTION_48>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_48>

Q49: Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client's financial instruments to settle the transactions of another client, including:

<ESMA_QUESTION_49>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_49>

Q50: Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?

<ESMA_QUESTION_50>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_50>

Q51: Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?

<ESMA_QUESTION_51>
LSEG: We agree. The LSE's experience with dealing with member defaults suggests that uncertainties regarding a firm's insolvency status can cause severe stress on end clients. If information is easily accessible, there is the chance that assets may be returned to clients more quickly and insolvencies can be resolved more rapidly.
<ESMA_QUESTION_51>

Q52: Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?

<ESMA_QUESTION_52>
LSEG: Yes, the information appears appropriate for the requirement.
<ESMA_QUESTION_52>

Q53: Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?

<ESMA_QUESTION_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_53>

2.9. Conflicts of interest

Q54: Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.

<ESMA_QUESTION_54>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_54>

Q55: Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.

<ESMA_QUESTION_55>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_55>

Q56: Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA_QUESTION_56>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_56>

Q57: Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA_QUESTION_57>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_57>

2.10. Underwriting and placing – conflicts of interest and provision of information to clients

Q58: Are there additional details or requirements you believe should be included?

<ESMA_QUESTION_58>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_58>

Q59: Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client's interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?

<ESMA_QUESTION_59>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_59>

Q60: Have you already put in place organisational arrangements that comply with these requirements?

<ESMA_QUESTION_60>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_60>

Q61: How would you need to change your processes to meet the requirements?

<ESMA_QUESTION_61>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_61>

Q62: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_62>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_62>

2.11. Remuneration

Q63: Do you agree with the definition of the scope of the requirements as proposed? If not, why not?

<ESMA_QUESTION_63>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_63>

Q64: Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?

<ESMA_QUESTION_64>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_64>

2.12. Fair, clear and not misleading information

Q65: Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?

<ESMA_QUESTION_65>
LSEG: Yes we agree. Information should be in a format that will help retail clients to get a better understanding of their position.
<ESMA_QUESTION_65>

Q66: Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?

<ESMA_QUESTION_66>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_66>

Q67: Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?

<ESMA_QUESTION_67>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_67>

2.13. Information to clients about investment advice and financial instruments

Q68: Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?

<ESMA_QUESTION_68>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_68>

Q69: Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?

<ESMA_QUESTION_69>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_69>

Q70: Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.

<ESMA_QUESTION_70>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_70>

2.14. Information to clients on costs and charges

Q71: Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?

<ESMA_QUESTION_71>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_71>

Q72: Do you agree with the scope of the point of sale information requirements?

<ESMA_QUESTION_72>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_72>

Q73: Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?

<ESMA_QUESTION_73>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_73>

Q74: Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.

<ESMA_QUESTION_74>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_74>

Q75: Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.

<ESMA_QUESTION_75>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_75>

Q76: Do you have any other comments on the methodology for calculating the point of sale figures?

<ESMA_QUESTION_76>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_76>

Q77: Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?

<ESMA_QUESTION_77>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_77>

Q78: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_78>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_78>

2.15. The legitimacy of inducements to be paid to/by a third person

Q79: Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.

<ESMA_QUESTION_79>

LSEG: **General Comments on Impact of restrictions on inducements**

In the context of smaller companies and SMEs with which we work closely, LSEG is concerned about the possible consequences of the moves to designate research (unless widely published) as a non-minor

benefit. If the change results, as some predict, in a material reduction in investment in research services, it may have the unintended consequence of reducing the level of research in the small and mid-cap sector and promoting a concentration in research in the most liquid securities; given the already limited information available on smaller companies, this effect will only exacerbate the situation for those issuers (and investors) in this vital sector. We are concerned that the consequence could run counter to the current agenda to promote SMEs as part of the economic recovery by generating jobs and growth.

Specific Response to Q79

Given our concern above, we suggest that the Technical Advice should reflect the importance of research for smaller companies, by specifically excluding "the publication and distribution of investment research, for smaller issuers, to improve the profile and visibility of quoted SMEs and SME Growth Market sectors" from the reference to "financial research" in para 5 (i).
<ESMA_QUESTION_79>

Q80: Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?

<ESMA_QUESTION_80>
LSEG: We repeat our response to Q79 above
<ESMA_QUESTION_80>

Q81: Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.

<ESMA_QUESTION_81>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_81>

Q82: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA_QUESTION_82>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_82>

2.16. Investment advice on independent basis

Q83: Do you agree with the approach proposed in the technical advice above in order to ensure investment firm's compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.

<ESMA_QUESTION_83>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_83>

Q84: What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?

<ESMA_QUESTION_84>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_84>

Q85: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA_QUESTION_85>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_85>

2.17. Suitability

Q86: Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?

<ESMA_QUESTION_86>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_86>

Q87: Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?

<ESMA_QUESTION_87>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_87>

Q88: What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently 'personalised' to have added value for the client, drawing on any initiatives in national markets?

<ESMA_QUESTION_88>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_88>

Q89: Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?

<ESMA_QUESTION_89>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_89>

2.18. Appropriateness

Q90: Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?

<ESMA_QUESTION_90>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_90>

Q91: Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?

<ESMA_QUESTION_91>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_91>

2.19. Client agreement

Q92: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.

<ESMA_QUESTION_92>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_92>

Q93: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?

<ESMA_QUESTION_93>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_93>

Q94: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?

<ESMA_QUESTION_94>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_94>

Q95: Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?

<ESMA_QUESTION_95>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_95>

2.20.

2.21. Reporting to clients

Q96: Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?

<ESMA_QUESTION_96>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_96>

Q97: Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?

<ESMA_QUESTION_97>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_97>

Q98: Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?

<ESMA_QUESTION_98>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_98>

Q99: Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?

<ESMA_QUESTION_99>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_99>

Q100: What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?

<ESMA_QUESTION_100>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_100>

2.22. Best execution

Q101: Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA's objective of facilitating clear disclosures to clients?

<ESMA_QUESTION_101>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_101>

Q102: Do your policies and your review procedures already the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.

<ESMA_QUESTION_102>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_102>

2.23. Client order-handling

Q103: Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.

<ESMA_QUESTION_103>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_103>

2.24. Transactions executed with eligible counterparties

Q104: Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?

<ESMA_QUESTION_104>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_104>

Q105: For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:

<ESMA_QUESTION_105>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_105>

Q106: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?

<ESMA_QUESTION_106>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_106>

2.25. Product intervention

Q107: Do you agree with the criteria proposed?

<ESMA_QUESTION_107>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_107>

Q108: Are there any additional criteria that you would suggest adding?

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>

3. Transparency

3.1. Liquid market for equity and equity-like instruments

Q109: Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA_QUESTION_109>

Introduction:
LSEG operates multiple trading venues in equities in Europe, including the London Stock Exchange (a regulated market with over 2300 admitted shares and depositary receipts, 700 ETFs and 360 ETCs/ETNs), AIM (an MTF for SMEs looking to access public equity capital, with over 1100 admitted SMEs), Turquoise (a pan-European MTF), Borsa Italiana (a regulated market with over 280 admitted shares, 640 ETFs and 210 ETCs/ETNs) and AIM Italia MAC (an MTF for SMEs in Italy with 46 admitted companies).

LSEG's markets cover equity and equity-like instruments across the liquidity spectrum. They operate through different market models to cater to the specific characteristics of the product and its liquidity – including continuous order-driven, quote-driven and other models. We use our experience of operating these diverse markets in answering the questions below.

Specific response to Q109:
In broad principle, LSEG is comfortable with the methodology proposed by ESMA for the definition of liquid markets.

LSEG understands why ESMA considers thresholds in in option 5 (i.e. a free float of €100 million, average daily number of transactions of 250 trades/day and ADT of €1 million) as its preferred option, compared to the other scenarios in the impact analysis. We also understand why ESMA needs to lower some of the current thresholds to account for a change of its methodology (from additive to cumulative criteria).

From the perspective of the **Italian market**, this definition seems to be appropriate for characteristics of the instruments on Borsa Italiana.

However for the **UK market**, we note that 11 securities in the FTSE Small Cap Index will be considered liquid under the proposed definition; whilst only 1 was considered to be liquid using the MiFID I thresholds. **We are concerned this may potentially lead to an adverse impact on investors and issuers in the market for SME securities**, since the conditions around the use of the negotiated trade waiver and a flexible settlement discipline approach in CSD-R that were specifically designed to avoid a one-size-fits-all approach for such SME less-liquid securities will not be available to these instruments.

We recognise here that, at this point of time, it is not clear whether the MiFID definition of liquidity (for the purposes of transparency requirements) and CSD-R definition (for the purposes of calibrating the buy-in procedures) will be the same or not – as CSD-R Article 7(14)(d) only requires ESMA to "take into account the criteria for assessing liquidity under Article 2(1)(17) of MiFIR", but not the actual thresholds. **In LSEG's response to ESMA's Discussion Paper on CSD-R, we welcomed clarification from ESMA on this point.**

Our position remains unchanged: clarification would be helpful, and ESMA should keep in mind that a single definition may not be fit for purpose across markets,

There are some additional considerations of which ESMA should be mindful:

- **Impact on microstructure:** We assume that this definition will now replace the definition of liquid markets in MiFID Implementation Regulation 1287/2006. If this is the case, ESMA should be mindful that the universe of liquid instruments will have an impact where the new liquidity determination is used to judge the market structure. ESMA uses this at several instances in the Discussion Paper (particularly **Section 4 on Microstructure**) without much impact analysis e.g. the potential tick size regime, OTR regime, requirements on market makers etc.).

- **Average daily number of transactions:** in our view, this is not necessarily the most relevant quantity to define liquidity, there may be external factors that determine the number of trades without changing the fundamental liquidity of the security, e.g. tick sizes (more granular ticks = more number of trades, and vice versa), presence of algorithms or fragmentation etc. However, we recognise this is in the Level 1 text, so ESMA may have limited ability to exclude this factor from definition.

Impact analysis[2]

London Stock Exchange

Currently there are 255 liquid shares and depositary receipts on the London Stock Exchange of 1567 in the FTSE UK Index Series (using the definition of liquid markets in Regulation 1287/2006), representing 16% of securities by number, 90% by number of trades and 93% by value of trades.

Using the proposed definition by ESMA, the number of liquid securities rises to 301 of 1567, representing 19% of securities by number, 93% by number of trades and 94% by value of trades. This includes 11 FTSE UK Small Cap securities that were previously classified as not liquid.

Borsa Italiana[3]

Currently there are 56 liquid shares on Borsa Italiana (using the definition of liquid instruments in Regulation 1287/2006) on a total of 267 traded on MTA at the end of December 2013, representing 21% of shares by number, 87% by number of trades and 96% by value of trades.

Using the proposed definition by ESMA, the number of liquid securities rises to 78 of 267, representing 29% of securities by number, 92% by number of trades and 98% by value of trades.

<ESMA_QUESTION_109>

Q110: Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer's home market? Please provide reasons for your answer.

<ESMA_QUESTION_110>

No, LSEG disagrees.

Depositary receipts (DRs) are often based on underlying companies outside of the EU, including emerging markets, who have also issued shares in their home markets. Sometimes, these markets will not have the same standards or calculation methodology for market capitalisation and free float as in the EU. Furthermore, the size of the DR program may be significantly different from the number of shares in issue in the domestic market which could significantly impact the relative liquidity of the DR versus its underlying.

[2] Analysis based on Jan-Dec 2013 data for all shares and DRs on the Regulated Market in the FTSE UK Series. Source: LSE

[3] Analysis based on Jan-Dec 2013 data, for all shares on the Regulated Market excluding shares suspended on 31 December 2013 (9), foreign shares (38, including MTA International), shares delisted in 2014 (3). Source: Borsa Italiana

LSEG's suggestion is that it would be more suitable to use an assessment independent of the underlying equity. One method could be to ask depositary banks to routinely publish the number of DRs in issue, tracking the creation and redemption changes. This quantity can then be used along with the price of the DR as a measure of the free float market capitalisation of the DR independent of the underlying.
<ESMA_QUESTION_110>

Q111: Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.

<ESMA_QUESTION_111>
Yes, LSEG agrees with ESMA's proposal. This is consistent with the approach to DRs with regards to pre- and post-trade transparency as well, and we don't see a reason for a different approach to defining liquidity.

<ESMA_QUESTION_111>

Q112: Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA_QUESTION_112>
Please see LSEG's responses to Q109 and Q110.
<ESMA_QUESTION_112>

Q113: Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA_QUESTION_113>
LSEG: In principle, yes. However, the free float for ETFs (in this case units issued for trading) is not an exhaustive characteristic of an ETF's liquidity, given that the liquidity of an ETF depends on the liquidity of the underlying basket.

In our view, ETFs are designed by issuers in a way that they are always liquid instruments. The defining characteristic of a liquid ETF is the presence of at least one market maker that supports trading of that ETF.
<ESMA_QUESTION_113>

Q114: Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.

<ESMA_QUESTION_114>
LSE: in our view the thresholds proposed by ESMA in table 12 are too high. LSEG's impact analysis suggests that under the proposed thresholds only 21% of ETFs on LSE and 35% of ETFs on Borsa Italiana by number would be considered liquid.

Setting such low thresholds could significantly undermine liquidity on transparent markets.

LSEG suggests that the thresholds should be:

- Average daily number of trades is set at 10 trades/day
- ADT is set at €100,000

Under this definition, c40% of ETFs on LSE and 50% of ETFs on Borsa Italiana by number (accounting for over 90% of value traded) will be considered liquid.
<ESMA_QUESTION_114>

Q115: Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA_QUESTION_115>
LSEG's view is that the thresholds proposed by ESMA in table 12 are too high. LSEG's impact analysis suggests that under the proposed thresholds only 21% of ETFs on LSE and 35% of ETFs on Borsa Italiana would be considered liquid.

Setting such low thresholds could significantly undermine liquidity on transparent markets.

LSEG suggests that:

- Average daily number of trades is set at 10 trades/day
- ADT is set at €100,000

Under this definition, c40% of ETFs on LSE and 50% of ETFs on Borsa Italiana by number (accounting for over 90% of value traded) will be considered liquid.

Frequency of calculation:
In our experience, ETFs are more sensitive to short-term changes in liquidity. So a more frequent calculation than that for shares and DRs (which we assume will be annual) may be appropriate. We suggest a semi-annual calculation, based on data from a previous 6-12 month period. This is consistent with our approach to pre- and post-trade transparency calculations for ETFs.
<ESMA_QUESTION_115>

Q116: Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?

<ESMA_QUESTION_116>
No comment. Please note there are no certificates on LSEG's markets
<ESMA_QUESTION_116>

Q117: Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.

<ESMA_QUESTION_117>
No comment. Please note there are no certificates on LSEG's markets
<ESMA_QUESTION_117>

Q118: Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.

<ESMA_QUESTION_118>
No comment. Please note there are no certificates on LSEG's markets
<ESMA_QUESTION_118>

Q119: Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA_QUESTION_119>
No comment. Please note there are no certificates on LSEG's markets
<ESMA_QUESTION_119>

Q120: Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?

<ESMA_QUESTION_120>
Yes, LSEG agrees.
<ESMA_QUESTION_120>

3.2. Delineation between bonds, structured finance products and money market instruments

Q121: Do you agree with ESMA's assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?

<ESMA_QUESTION_121>
Yes, we agree.
<ESMA_QUESTION_121>

3.3. The definition of systematic internaliser

Q122: For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.

<ESMA_QUESTION_122>
LSEG does not have any particular comments on the thresholds themselves. We note that in the absence of a Consolidated Tape, it will be challenging for both ESMA and investment firms to calculate and monitor such quantities. Absolute thresholds may be easier to deal with. A similar approach should be used for both liquid and non-liquid instruments.

We suggest that ESMA should clarify that by "number/value of OTC transactions" it will include both transactions concluded "pure" OTC **AND** through a firm's own systematic internaliser (i.e. OTC = "pure" OTC + SI). This is to account for the fact that both currently and in the future, OTC activity may be conducted by a firm through its systematic internaliser.
<ESMA_QUESTION_122>

Q123: Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?

<ESMA_QUESTION_123>
LSEG: Value traded may be a more appropriate criteria.
<ESMA_QUESTION_123>

Q124: For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.

<ESMA_QUESTION_124>
LSEG does not have any particular comments on the thresholds themselves. We note that in the absence of a Consolidated Tape, calculating and monitoring “market share” quantities accurately will be challenging for both ESMA and investment firms. Absolute thresholds may be easier to deal with.
<ESMA_QUESTION_124>

Q125: Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_125>
Yes, LSEG agrees with ESMA.
<ESMA_QUESTION_125>

Q126: ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:

<ESMA_QUESTION_126>
LSEG does not have any particular comments on the thresholds themselves. We note that in the absence of a Consolidated Tape, calculating and monitoring “market share” quantities accurately will be challenging for both ESMA and investment firms, especially for DRs and ETFs where post-trade transparency is currently not mandatory. Absolute thresholds may be easier to deal with.
<ESMA_QUESTION_126>

Q127: Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?

<ESMA_QUESTION_127>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_127>

Q128: For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.

<ESMA_QUESTION_128>
LSEG: For bonds, the criteria may need to be more granular in order to capture the peculiarities of the various instruments. Parameters like duration, coupon type, rating, industry should be taken into account.
<ESMA_QUESTION_128>

Q129: With regard to the ‘substantial basis’ criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_129>
LSEG: Nominal value should be the preferred option for bonds.
<ESMA_QUESTION_129>

Q130: Do you agree with ESMA’s proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_130>
LSEG: It may be more appropriate to look at basket of ISINs which include instruments of similar duration, issuer, rating.
<ESMA_QUESTION_130>

Q131: For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.

<ESMA_QUESTION_131>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_131>

Q132: Do you agree with ESMA's proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?

<ESMA_QUESTION_132>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_132>

Q133: Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?

<ESMA_QUESTION_133>
LSEG: Yes, we agree.
<ESMA_QUESTION_133>

Q134: Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.

<ESMA_QUESTION_134>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_134>

Q135: Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.

<ESMA_QUESTION_135>
LSEG: For the non-equities where there is more variety of assets/instruments and in the absence of a Consolidated Tape, calculating and monitoring "market share" quantities accurately will be challenging for both ESMA and investment firms; for this reason, in this case we suggest that percentages are preferable as these provide flexibility and are applicable to a wider range of instruments.
<ESMA_QUESTION_135>

Q136: What thresholds would you consider as adequate for the emission allowance market?

<ESMA_QUESTION_136>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_136>

3.4. Transactions in several securities and orders subject to conditions other than the current market price

Q137: Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?

<ESMA_QUESTION_137>
Yes, LSEG agrees. We also add that there may be occasions where the cumulative risk of the basket is such that the pricing of the basket would differ from the individual sum of its parts. For example, a large portfolio of equities from the oil sector will be priced differently than if each individual component were being priced because of the combined and correlated market risk.
<ESMA_QUESTION_137>

3.5. Exceptional market circumstances and conditions for updating quotes

Q138: Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA's view on the conditions for updating the quotes? Please give reasons for your answer.

<ESMA_QUESTION_138>
LSEG agrees in principle, however suggest some clarifications below:

- 1.iii, *[in the case of ETF, a reliable market price is not available for a significant number of instruments underlying the ETF or the index]* In the case of **ETFs**, some quantitative measure should be given otherwise this will be subjective and subject to potential misuse. Perhaps the number of instruments as a percentage of the weighted value of the ETF.

- 1.v.*[the total number and/or the volume of orders sought by clients exceeds the norm and the systematic internaliser decides to limit the number of transactions form different clients]* Regarding the potential limitation of transactions, we would suggest that this not one of the conditions as these circumstances should be covered by the conditions for updating quotes.

<ESMA_QUESTION_138>

3.6. Orders considerably exceeding the norm

Q139: Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?

<ESMA_QUESTION_139>
LSEG does not have any particular views on this issue. We suggest here that, if used, such parameters should be public and published ex ante to ensure consistency, fairness and predictability in market practices.
<ESMA_QUESTION_139>

3.7. Prices falling within a public range close to market conditions

Q140: Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.

<ESMA_QUESTION_140>
LSEG suggests that ESMA's approach requires further development. We suggest some broad thoughts on the SI regime in MiFID II for ESMA's consideration below.

Greater parity between trading venues and SIs, and impact of the trading obligation:
In our view, the Level II provisions must deliver *a level playing field for market participants*, regardless of which mechanism under the trading obligation for shares they use to trade – i.e. multilateral trading venues (i.e. Regulated Markets and MTFs) or on SIs (for trades executed bilaterally outside trading venues). This approach is consistent with ESMA's analysis in paragraph 9 of p.176 of the Consultation Paper in the context of liquidity, where it comments that *"Given that systematic internalisers are permitted platforms under the trading obligation and that their quoting obligations depend on whether the instrument is liquid, […] it is necessary to ensure a level playing field exists between trading venues and systematic internalisers to the extent possible".* We feel that it should also be true in the context of pre- and post-trade transparency.

There is a concern that whilst MiFID II/ R prescribes a thorough transparency regime, microstructure and limits to "dark" trading for market participants in the trading venue space, the requirements are not of the same nature in the SI space, where trading might be viewed as non-pre trade transparent for sizes above SMS. Further, we suggest that using the MiFID I thresholds to define the pre-trade transparency characteristics for SIs may not be appropriate, given that SIs are a permitted platform under the trading obligation; the purpose of which was to allow only "genuine OTC" and ensure that trades are transparent and contribute to the price-formation process. An outcome therefore might be an increase in execution through the SI category to avoid the limitations of "trading in the dark", which only apply to RPW and NT trading on trading venues. We recognise that in some circumstances dark execution may offer genuinely better results for investors (e.g. through better prices or sizes). However, we suggest that these circumstances need to be defined further.

One way of ensuring greater consistency might be to treat an SI as a private market making service for its clients (but not to the wider market), as the characteristics of a trade executed bilaterally against a market maker providing pre-trade transparency (up to SMS), or a negotiated trade are very similar to the activities of an SI. Thus, similar conditions should apply to the activities of SIs and those of a registered market maker.

Since one of the objectives of MIFID II is to protect price formation in pre-trade transparent markets, we suggest that the conditions around the pricing of SI quotes is developed further; particularly to clearly specify when it is appropriate for SIs to offer price improvement to their published quotes.

Therefore, we suggest that **for trades up to Standard Market Size,** if price improvement can be offered in certain justified cases for small sizes:

- For liquid securities, this should be **at the reference price as defined in MiFIR**, i.e. the mid-point of the best bid or offer on the market where that instrument was first admitted to trading or the most relevant liquid market. This would ensure parity of conditions under which price improvement can be offered in trading venues and through SIs. Price improvements of fractions from the BBO do not present a meaningfully better outcome for investors and do not contribute to the price discovery prices either, especially in small sizes; so we suggest the mid-point is an appropriate price.

- For securities that are not liquid, and the SI price must be a suitable percentage from the reference price, set by the venue where that instrument was **first admitted** to trading. This would be consistent with the treatment of NTs in instruments that are not liquid on trading venues.

For trades **above Standard Market Size**, we suggest that SI quotes must be subject to the best execution policy of the firm, but no worse than the conditions for NTW for the same instruments on public markets.<ESMA_QUESTION_140>

3.8. Pre-trade transparency for systematic internalisers in non-equity instruments

Q141: Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

<ESMA_QUESTION_141>
LSEG: Yes, we agree.
<ESMA_QUESTION_141>

Q142: Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?

<ESMA_QUESTION_142>
LSEG: Yes, we agree.
<ESMA_QUESTION_142>

4. Data publication

4.1. Access to systematic internalisers' quotes

Q143: Do you agree with the proposed definition of "regular and continuous" publication of quotes? If not, what would definition you suggest?

<ESMA_QUESTION_143>
LSEG: General Comments on Parity of Transparency Arrangements
A key policy objective of the MiFID review was to consider the effectiveness of the transparency arrangements as they developed under MiFID; a particular aspect that attracted attention and some comment from many, including the Commission and others was the proliferation of web-based publication arrangements. The concerns expressed were that such arrangements were not readily visible, not uniform, nor subject to supervision arrangements and could not always deliver information in machine-readable form or a standardised format.

As a supporter of the provision of standardised, harmonised, high-quality data across all markets in order to facilitate our customers performing an effective range of activities, we suggest that designation of web-based arrangements for the distribution of pre and/or post trade information to any market users is inconsistent with the policy aims of MiFID/MiFIR and the policy makers and is not a practice that should be supported or promoted in the Level II measures.

We suggest that it is particularly important to ensure that all actors performing the same functional activities are subject to broadly similar regulatory requirements; we support greater parity between the activity of market participants on RMs, MTFs and SI, to level the playing field for trading mechanisms, to increase investor confidence and reduce the potential for regulatory arbitrage. As an example, allowing publication of quotes and /or trades to proprietary websites also appears to us to be inconsistent with that objective.

Specific Response to Q143
LSEG: We agree.
<ESMA_QUESTION_143>

Q144: Do you agree with the proposed definition of "normal trading hours"? Should the publication time be extended?

<ESMA_QUESTION_144>
LSEG: We repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143:

- It is for the SI to determine its normal trading hours – it is OTC.
- However, given the change in MiFID now reflected in MiFIR Articles 3(3), 6(2), 8(3) and 10(2), it should be clearly set out that whatever the normal trading hours of an SI, it cannot require the facilities of the market operators and investment firms operating trading venue (MTFs) that they use for its arrangements for making information public under those articles to be open or available beyond the operational/trading hours of that market operator or MTF, unless they choose to do so on a commercial basis- OTC trading should not dictate trading venue timetables or operational hours.

<ESMA_QUESTION_144>

Q145: Do you agree with the proposal regarding the means of publication of quotes?

<ESMA_QUESTION_145>

LSEG: We repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143.

For this reason, our response is: No. We agree with all of the methods apart from 4(iv) as a website is a relatively obscure form of publication compared with other data reporting services, since it relies on market participants monitoring pro-actively the SI's website, rather than receiving the data in a data service provider's feed.
<ESMA_QUESTION_145>

Q146: Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?

<ESMA_QUESTION_146>
LSEG: We repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143

Yes, we agree with ESMA's reasoning.
<ESMA_QUESTION_146>

Q147: Is there any other mean of communication that should be considered by ESMA?

<ESMA_QUESTION_147>
LSEG: We repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143.

No; whatever approach is adopted, it is important that quotes are publicly available and the quoting party's identity is displayed so that buy-side clients are able to meet their obligations for best execution.
<ESMA_QUESTION_147>

Q148: Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?

<ESMA_QUESTION_148>
LSEG: We repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143.

Yes, we agree.
<ESMA_QUESTION_148>

Q149: Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?

<ESMA_QUESTION_149>
LSEG: General Comments on Data Standards and MMT
LSEG fully supports the drive for higher standards of data quality and greater harmonisation across data sources. Recognising the importance of such standards in developing a consolidated post trade tape, and building on the CESR Technical Advice of 2010, LSEG has worked closely with trading venues to shape and support the adoption of the Market Model Typology (MMT) referred to by ESMA in relation to Question 80 of its DP on development of the standards mandated under MiFIR Article 7(2).

The initiative is supported by European exchanges (including LSEG, BATS Chi-X Europe, ICE, Euronext, Deutsche Boerse), information vendors (including Bloomberg, Markit, Thomson Reuters) and user firms (including Deutsche Bank and Bank of America Merrill Lynch).

The rights in the MMT have been assigned by all the developing entities to FIX Protocol Ltd Trust on condition that it is made available freely for use as an industry standard by all market participants for this express purpose, so there should be no continuing concerns that ESMA would be adopting a proprietary methodology- that is exactly what it is for.

A number of exchanges (including LSEG) have already committed to providing data with this mapping in their proprietary trading data feeds, to ensure that trade data can be comprehensively mapped by end users and data aggregators across information sources.

We believe it will be vital that all trading/execution venues, MTFs and investment firms, including Systematic Internalisers and firms trading OTC, are required to adopt the identical standards to ensure there is a harmonised and standardised approach to trade reporting. This increases data quality and the ability to compare and analyse trading activity across Europe and is, in our view, the only basis on which a Consolidate Post Trade Tape can reliably be developed, whether by industry or by any single appointed entity.
More venues are expected to follow suit voluntarily, but we strongly believe that all market participants will benefit from ESMA's early endorsement of the initiative and requirement of its deployment in all trade publication arrangements.

LSEG has committed to including this in its latest data feeds due for release later this year.

Specific Response to Q149
LSEG: Yes, for the reasons set out above, we agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II and urge ESMA to adopt the MMT as a ready and widely accepted solution that is available free to the industry.
<ESMA_QUESTION_149>

Q150: Do you agree with the imposing the publication on a 'machine-readable' and 'human readable' to investment firms publishing their quotes only through their own website?

<ESMA_QUESTION_150>
LSEG: We refer to and repeat our General Comments on Parity of Transparency Arrangements set out in our response to Question 143.

Whilst we may agree that SI data should be required to be published in machine readable formats, for the reasons given above, we have reservations about the proposal that Sis can publish quotes on proprietary websites- we suggest it is inconsistent with the policy objectives of high-quality transparency.
<ESMA_QUESTION_150>

Q151: Do you agree with the requirements to consider that the publication is 'easily accessible'?

<ESMA_QUESTION_151>
LSEG: We refer to and repeat our General Comments on Parity of Transparency Arrangements set out in our response to Question 143.
Whilst we may agree that SI data should be required to be published in an accessible form, for the reasons given above, we have reservations about the proposal that Sis can publish quotes on proprietary websites- we suggest it is inconsistent with the policy objectives of high-quality transparency and does not establish a competitive environment in relation to EU trading of financial instruments.

If SI OTC business is nevertheless permitted to be published on websites, it must also be subject to additional requirements to provide ready access to full historical quote and trade data, made available upon request in the same formats to ensure regulators and clients can perform a number of analytical and evaluation activities using the data as they would with other trading venue data sources.
<ESMA_QUESTION_151>

4.2. Publication of unexecuted client limit orders on shares traded on a venue

Q152: Do you think that publication of unexecuted orders through a data reporting service or through an investment firm's website would effectively facilitate execution?

<ESMA_QUESTION_152>
LSEG: No - We refer to and repeat our General Comments on Parity of Transparency Arrangements set out in our response to Question 143.

Whilst it may be appropriate to require SIs to publish unexecuted orders through a DRS (where their clients have not given a blanket express instruction to the contrary), due to the potentially fragmentary and non-coherent nature of website publication, we suggest it is highly unlikely that all market participants will monitor all SI's websites, nor adjust their systems for using machine-readable information to track a change of format, presentation or url to which a website may be subject.
<ESMA_QUESTION_152>

Q153: Do you agree with this proposal. If not, what would you suggest?

<ESMA_QUESTION_153>
LSEG: Yes, but not to proprietary websites- we repeat the General Comments on Parity of Transparency Arrangements we made in response to Question 143
<ESMA_QUESTION_153>

4.3. Reasonable commercial basis (RCB)

Q154: Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?

<ESMA_QUESTION_154>
LSEG: General Comments on Data Charging and Reasonable Commercial Basis

LSEG has always been at the forefront of providing clients with market data solutions that are fit for purpose, high quality, reasonably priced and delivered in a robust and scalable manner. The complexities of the European financial services data environment have historically limited LSEG's ability to influence end user market data costs. Through direct client engagement and technological advancements, market operators like LSEG are working to deliver an ever more diverse range of client data solutions in Europe.

We make a number of points by way of context for our responses on these issues

1. **Commission request for Technical Advice**:

The Commission request for Technical Advice dated 23 April asserts, in para 3.19 "data charges in the EU are too high and that legislation is required to ensure that those charges are set at a reasonable level. The ultimate goal of this rule is to ensure that costs of data are brought down for the benefit of efficiently functioning markets, in particular efficient and fair price finding and formation through increased transparency"

LSEG notes that the first assertion is not supported by any recital or legislative text in MiFID or MiFIR - the Level I text simply mandates that market operators and MTFs should charge a reasonable cost for data- there is no legislative requirement for a reduction on the basis charges are too high and we do not accept this assertion.

2. Relative Cost of Market Data

It is not clear to LSEG that there is evidence of a market failure based on the cost of data that is proven to be contributing to inefficiently functioning markets that are, in turn, preventing fair price finding and formation. The Oxera study quoted by ESMA (in para 6 on page 219 of the CP) sets out that the data cost element is currently less than 2% of an institutional investor's costs of holding and trading securities. We do not believe this is excessive (and in the case of many institutions may well be much less than Oxera suggests) in the context of the charges levied on investors by brokers, dealers, trading platforms, clearing and settlement agencies and custodians.

In this context, we suggest it is important for ESMA to ensure that the arrangements it recommends will effectively deliver efficient and fair price finding and formation through increased transparency for the benefit of the ultimate users, the investors; it is not clear to us that the arrangements proposed will do this.

3. Key Issues

When considering data charges, it is important to consider two key factors:

3.1 How data is used by the many types of customer and

3.2 The role of the data vendors in data charges

We will examine each in turn:

3.1 How the data is used

It is important to understand that "market data" in this context is not one single stream of data, viewed and used in the same way; market data (in this context we mean the pre- and post- trade data referred to in MiFIR Articles 3 and 6 (and 8 and 10 in time)) can be viewed and, more importantly, used in a range of ways:

(A) It may be viewed on a web-based application- common for retail/private individuals

In the market for retail (and other) investors, there are currently many internet based solutions.

a) Over 200 real time distributors across Europe;

b) Private Investors can already receive in depth real time pre and post trade data at commoditised subscriber fees per month (e.g. LSE fee at £0.20pm and other exchanges, such as Euronext, at around €1.00pm); LSE and Borsa Italiana real time post trade data can already be accessed by retail investors at no cost in publicly accessible websites and products from Google and CNBC. The standard European model is that vendors who provide entry-level access to this data do not charge additional fees to the exchange fees as they recoup their revenues through on-line advertising;

c) Retail investors can view the time and sales of each stock in real time and can compare their execution price with others as well as creating a list of stocks and follow them in real-time. (Typical examples of these information providers are Money AM in the UK and Boursorama in France, although there are many more comparable services available), eg:

- www.ADVFN.com,
- www.agi.it
- www.Borse.it, ,
- www.classeditori.it
- www.cnbc.com
- www.google.com
- www.iii.co.uk,
- www.moneyam.com,

The websites above have been selected because they are effectively independent places to view price and other financial information, and users are not tied into signing up for a trading account.

d) Such vendors services become chargeable once they add extra 'value add' services such as news sources & analytics.

(B) It may be viewed as a "refreshed snapshot display" on a terminal provided by a Vendor's terminal (eg Bloomberg or Thomson Reuters)

(C) It may be viewed as a "refreshed snapshot display" on a user's own internal display systems, where they take a data feed from either a trading venue directly or from a Vendor

(D) It may be incorporated into a user's own internal systems for all or any of the following purposes:

- For transmission to DEA customers
- For transmission to clients for their display
- For use in internal applications, matching or crossing engines for any or all of the following:
  - semi-automated or automated order/quote generation;
  - order pegging;
  - price referencing for trading purposes, including OTC trading;
  - smart order routing to facilitate trading, including OTC trading;
  - order management;
  - execution management;
  - market making;
  - "black box" trading;
  - algorithmic trading on any venue;
  - program trading on any venue.

  (In many cases, the data from a venue will not necessarily be used in a way that is directly linked to trading on that venue- it may drive trading on a derivatives or other competing venue, or entirely OTC, so there is not always a direct correlation between the originating venue's data and the trading by a user
- To be used in TCA/Best execution analysis.
- To be used in development of other analytics/research data for distribution/selling to clients.
- In the creation of new synthetic products

In A, B and C, the trading venue charges a fee for display of the data on each terminal, and vendors will add their own data and charge additional fees.

In D, the data customer/user exploits the value in the data it receives from the venue to its own commercial advantage by using it in some way beyond simply viewing it to obtain a clear picture of the market at that point in time. It does this by generating trading and/or trading strategies through which it profits, onward vending it, manipulating it or combining it.

Trading venues expend considerable resources in ensuring that the data services they provide are of high quality, robust, reliable, secure, low latency and also ensuring that the systems from which the data is derived are similarly robust, reliable and have scaleable capacity. Stock exchanges in Europe must be allowed to develop their businesses to provide robust and scalable data solutions to their clients across an increasing array of securities within exchanges. The exchanges' commercial activity is focused around supporting and servicing the environment around the securities that are listed and trade on their markets.

If this is not the approach, then the only competitive option is for ALL market data users, whether vendors or other users, to be required to operate with transparent data pricing structures and similar price controls.

3.2 The role of the data vendors in data charges

MiFIR requires market operators, investment firms operating an MTF, CTPs and APAs to charge on a "reasonable commercial basis", discussed by ESMA in section 4.3 of the CP.

Regulatory requirements (including any disaggregation and cost control) will only potentially be effective if applied on a uniform basis, and it is clear to LSEG that they are not - the Level I MiFID and MiFIR create an unfair and uncompetitive environment in this sensitive area, because the commercial companies that manage and distribute the greatest proportion of market data derived from these entities are the data vendors, who are not subject to the RCB requirement.

This is key in the context of how a user's data charges are made up - the Oxera report highlights that the cost of exchange trading data licence fees represents between 8% and 15% of the total cost of accessing and subscribing to data, with "data vendor services estimated to account for the remaining 65% to 80%"- (page v). This clearly suggests that the vast majority of the cost of data sits outside the scope of the charges levied by trading venues, MTFs, APAs or CTPs, subject to the reasonable commercial basis requirements; data vendors are subject to no such requirement.

Without effectively addressing the other aspects of the cost chain (vendors charges, cost of IT connectivity infrastructure, cost of purchasing a display terminal), LSEG suggests this policy initiative may only be partially successful, leaving only additional costs for clients to access and manage the data, additional costs for trading venues to recover due to increased technical controls and technology infrastructure and potential reduction in the ability of exchanges to support their broader role.

4. The broader role of exchanges

It is important to bear in mind that exchanges in most Member States, in fulfilling their important role of bringing together investors and issuers, provide an infrastructure that offers services to a wide variety of investor types (from private individuals through to pension funds and insurance companies) and for a broad range of issuers, from the largest/ highly liquid to the small cap/SME that are less liquid.

LSEG is concerned that excessive price control on a key area of an exchange's business model such as data charges should not reduce the effectiveness of that infrastructure or the visibility that exchanges provide in relation to the small cap and SME sectors of the market, where the trading volumes are lower so the profile they would receive would be otherwise reduced. The small cap and SME markets are important in the current post-crisis agenda of supporting jobs and growth.

5. Delivering the MiFIR policy objective:

If the policy objective is to bring about "efficiently functioning markets, with fair price finding and formation, through increased transparency", LSEG suggests that the application of the RCB requirement should not be applied across all the uses of market data referred to in para 3.1 above, but only to those that have an impact on the ability of investors and market users to find out the current market pre- and post-trade price/s.

In our view, the RCB requirements in Articles 3 and 6 of MiFIR apply as follows:

- For pre- trade information, to the **best bid and offer price in each security with an indication of the depth of interest at that price**.

- For the post-trade information, the **price, volume and time of each trade in that security**.

On that basis, LSEG argues that the objective is to ensure that persons viewing the market data can, at any time, see a "snapshot" of the **best bid and offer and level of market interest in each security, with**

the price, volume and time trade information. This is, we believe, what is required for fair price finding and formation. We believe such uses of the data are as follows:

- viewed on a web-based application;
- viewed on a terminal provided by a Vendor's (eg a Bloomberg or Thomson Reuters) terminal;
- viewed on a user's own internal display systems, where they take a data feed from either a trading venue directly or from a Vendor.

and not the uses identified in para 3.1 (D) above, namely the onward vending and/or non-display use and exploitation of the data by customers- this does not "increase transparency" or bring about further fair price finding or formation and goes beyond the uses envisaged by the Level I text.

These comments underpin our responses to Questions 154 to 166.

Specific Response to Q154
LSEG: There are substantial benefits of this proposal which we firmly support.

LSEG already makes its data pricing policies and documents available on its websites (http://www.londonstockexchange.com/products-and-services/market-data/realtimedata/pricesandpolicies/pricesandpolicies.htm) and we would endorse this process as industry practice.

Option A would allow end users to clearly identify the venue charge for the data and any other charges made by their information vendor such as access fees, administration fees, currency conversions, the cost of the display product itself and any other related charges. By requiring key metrics to be displayed alongside pricing, the content of products becomes very clear to end users who can use that information to assist with their value-based judgement as to whether they subscribe to the content.

We also believe that complementing ESMA's suggested metrics with further requirements detailed in our response to Question 155 will assist in giving end users of data the ability to make better-informed choices.
<ESMA_QUESTION_154>

Q155: Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?

<ESMA_QUESTION_155>
LSEG: We suggest the following:

- It might be useful for users for data providers to include details of the range of instruments/markets covered, so that the relative merits of providers is clear.
- In addition to the central web location for the maintenance of data service price lists, the same location should be used to post pricing change notifications to maximise client awareness of such changes (clearly this would be in addition to any contractual mechanisms data suppliers are obliged to deploy). This step would contribute to awareness of data pricing to ensure their use of data is cost efficient and compliant.

LSEG constantly reviews its products and services to ensure that the content meets customers' demands and is as accessible to all types of end user on a reasonable commercial basis.

Real time data from both London Stock Exchange and Borsa Italiana (amongst other venues) is already available to private investors free of charge on a number of public websites, including Google. Many brokers also provide real time content at no charge to their clients.

In 2010, LSEG also disaggregated its pre- and post-trade data package, providing high quality post-trade data from its markets to professional users at a low cost (under £25 per month for all London Stock Exchange and Borsa Italiana listed and quoted instruments).

<ESMA_QUESTION_155>

Q156: To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?

<ESMA_QUESTION_156>
LSEG: Given our position in our General Comments set out in our response to Question 154, we do not believe that imposing price controls on trading venues is required or necessary to achieve the policy objectives; on that basis, we believe the proposals put forward by ESMA, together with the additional requirements make clear to consumers what content they are paying for and how such prices compare with other related content. This will ensure that such transparency creates additional competitive pressure on trading venues in the area of data services.
<ESMA_QUESTION_156>

Q157: What are you views on controlling charges by fixing a limit on the share of revenue that market data services can represent?

<ESMA_QUESTION_157>
LSEG: We repeat our general Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

On that basis, we believe that the transparency measures proposed by ESMA should be sufficient, and we do not believe that price controls should be applied to any charges. However, if a form of price control is nevertheless applied, we consider that any limit on share of revenue should only apply to charges for data giving a "snapshot" of the **best bid and offer and level of market interest in each security, with the trade information** that is:

- viewed on a web-based application
- viewed on a terminal provided by a Vendor's (eg a Bloomberg or Thomson Reuters) terminal
- viewed on a user's own internal display systems, where they take a data feed from either a trading venue directly or from a Vendor.

LSEG would say that we find the idea of price controls by way of a revenue proportion to be contrary to the spirit of MiFID I, which sought to introduce conditions that encouraged greater competition and innovation to drive investment in Europe. LSEG embraces innovation, transparency and competition, embodied by building open-access business models for trading, clearing and data. This is why we believe that Option A (supplemented by our suggestions in response to Question 155) best matches the spirit of MiFID. Option B appears to substantially disregard the spirit of MiFID and the fostering of competition and innovation to place a cap on the success of a trading venue by seeking to limit the organic demand for its data.

In the context of the impact on the exchange ecosystem more generally, we also suggest it is also likely that the effects would be disproportionate across trading venues.

It could also have potentially damaging effects on new entrants to the market stifling competition and innovation.
<ESMA_QUESTION_157>

Q158: Which percentage range for a revenue limit would you consider reasonable?

<ESMA_QUESTION_158>
LSEG: We repeat our General Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

On that basis, although we believe that the transparency measures proposed by ESMA should be sufficient, and we do not believe that price controls should be applied to any charges, if a form of price control

is nevertheless applied, we consider that any limit on share of revenue should only apply to charges for data as set out in our response to Q 157.

If a threshold must be chosen by ESMA to recommend to the Commission we would suggest the threshold exceeds 65% - 75% of a trading venue's total revenues. Below this level could have a serious impact on any trading venue developing its information services, its products and technology.

The concept of trading revenues should be sufficiently widely drawn, to ensure that it allows for the appropriate flexibility of business model for an exchange/MTF, so includes at least:

- charges for admission to listing/admission to trading,
- membership fees,
- disciplinary fines and charges,
- trading platform fees,
- where the trading venue is also the clearing and settlement provider, the charges relating to those services and
- Technology and testing services related to trading.

To enable venues to plan their business models and investment plans, we suggest it will also be necessary to prescribe the frequency of review of the effectiveness of the revenue percentage limit and the maximum level of change that may be advised by ESMA/the Commission at any point in time- it will be very difficult for venues and MTFs to plan if there is uncertainty as to how long a particular percentage limit is in force and this is important for planning long term capital investment and managing shareholder and market expectations, especially in the case of trading venues that are, or are part of, listed companies.
<ESMA_QUESTION_158>

Q159: If the definition of "*reasonable commercial basis*" is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?

<ESMA_QUESTION_159>
LSEG: We repeat our general Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

On that basis, we believe that the transparency measures proposed by ESMA should be sufficient.

LSEG does not believe that the cost based approach is proper or appropriate, for the following reasons:

1. Complexity and uncertainty

It is difficult to comment in detail, as it is unclear precisely how the LRIC+ model would work or be constructed; for instance, it is not clear what costs would be attributed on a bottom up approach - there would have to be an allocation of costs from the trading process, which might also relate to admission to trading costs, supervision overheads, default arrangements etc- all these elements are required to give a true cost of the data, before then looking at the data processing, checking and distribution element. Any model which promotes comprehensive under-recovery of costs will be damaging to the venue and to the wider market ecosystem.

ESMA's analysis in Table 19 on page 226 of the CP similarly describes the disadvantages of any LRIC+ model, which we would endorse. It also seems unlikely to us that Member States and their financial service NCAs will want to load an additional competition review cost on the NCAs, especially when the advantages in terms of the Policy Objective are likely to be even more remote in many of the smaller Member States.

2. Restraint of innovation and business development

As we outlined in our response to Q157, any action taken that is based upon restraint of business rather than nurturing competition and opportunities for growth would appear to be contrary to the objective of MiFID I and II. LRIC+ is not an appropriate measure for a 'reasonable commercial basis' framework. The premise itself creates additional regulatory responsibility for the relevant national and international authorities to oversee, the enforcement of which will ultimately create little difference to the overall cost of data. As ESMA observes in Table 19 on page 226 of the CP, the potential for inconsistency of application, the complex modelling required and the removal of any qualitative measurement such as the value of the content or the audience type, suggests strongly that this is neither a manageable or optimal method of achieving the goal of ensuring the overall costs of data to end clients.

3. Parity for all data users and vendors

LSEG refers again to the 2013 Oxera report and the 2010 Atradia report where information sources' such as exchanges' fees typically represent between 8-15% of the overall cost to end clients of accessing and subscribing to data. The LRIC+ model creates additional costs for information sources and regulators without addressing the 85-92% value of the cost chain which is not made of trading venue data fees.

Such an onerous and restrictive price control approach applied to trading venues, CTPs and APAs will appear all the more excessive when considering the ability of vendors and other service providers to use the data they receive under a price controlled regime, then free to charge without similar constraint- it will be difficult to ensure that any such approach serves the interests of investors or the market efficiency objective of MiFIR.
<ESMA_QUESTION_159>

Q160: Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?

<ESMA_QUESTION_160>
LSEG: We repeat our general Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

On that basis, we believe that the transparency measures proposed by ESMA should be sufficient, and a price control model should not be applied.

The questions posed on this option suggest exactly the complexity that makes it not feasible or appropriate for purpose.
<ESMA_QUESTION_160>

Q161: Do you believe that if there are excessive prices in any of the other markets, the same definition of "*reasonable commercial basis*" would be appropriate, or that they should be treated differently? If the latter, what definition should be used?

<ESMA_QUESTION_161>
LSEG: We repeat our general Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

It remains to be proven whether there are any "excessive prices" in any of the other markets, some of which do not actually exist at present, so we have some doubt that it is appropriate to start the debate with an *a priori* assumption that there is, or will be, excessive pricing (whatever that is defined to be).

We also start from the position that any RCB requirement would only be applied to the limited range of data we identify in our response to Q157.

However, if both those assumptions were correct, we would assume that it would be difficult to argue that it was fair or practical to apply different definitions for RCB to different entities or different markets - as we

have explained, the market in data services is highly complex and the actors are all interconnected in a wide variety of ways- if parties (sometimes even the same party) was required to determine pricing of similar products according to different requirements, it would invite fragmentation, confusion and more likely than not to lead to exactly the market inefficiencies the Level I text seeks to remove/reduce?

Depending on which price control measure is applied, one onerous and restrictive price control approach applied to trading venues, CTPs and APAs will appear all the more excessive when others are not subject to the same one, potentially leaving some classes of actor more freedom to exploit and monetise the value of data they receive under a price controlled regime, without similar constraint- we have to question how that could possibly be said to serve the interests of investors or the market efficiency objective of MiFIR.
<ESMA_QUESTION_161>

Q162: Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.

<ESMA_QUESTION_162>
LSEG: We repeat our General Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

On that basis and for the reasons given in responses to Questions 154 – 6 on Option A, Questions 157-8 on Option B and Questions 159-160 on Option C, LSEG believes that the transparency measures proposed by ESMA should be sufficient
<ESMA_QUESTION_162>

Q163: What are your views on the costs of the different approaches?

<ESMA_QUESTION_163>
LSEG: We repeat our General Comments on Data Charging and Reasonable Commercial Basis given in response to Question 154.

In particular, we suggest ESMA should also consider which of the proposed Options is likely to deliver the Policy Objectives LSEG refers to for the benefit of the market, rather than only one sector of market participants.
In terms of costs:

- It is clear that both Option B and Option C introduce new and potentially significant costs for the NCA to monitor, supervise and regulate the price of data subscription packages.

- Both options also introduce the problem for trading venues and clients of re-calibrating prices on a given frequency (presumably at least as frequently as annually), adding a new layer of budget uncertainty for clients.

- Trading venues, it appears, will also be expected to shoulder the additional cost burden of reconciling overall revenues with data revenues and re-modelling business and investment plans constantly, or in the case of Option C, reconciling the cost of every trading venue technology expense or saving to re-calibrate data pricing and again re-model business plans.

- There will also be a management cost for both the trading venues and NCAs, if the experience to date of operating LRIC+ in the telecoms sectors is any indicator- the regulator is in constant dialogue (at best) with its regulated entities on this issue and more often, in dispute.

    - We suggest this is an undesirable situation that is not in the interests of a close and continuous supervisory co-operation.

- In addition, for trading venues, investment firms and regulators who are primarily focused on developing the economy and the agenda of job and wealth creation, this could be a costly distraction. Again, for what, and whose, benefit?

As we have made clear in our responses to Questions 155 and 160, LSEG believes that Option A is the most beneficial option for data users proposed by ESMA, and we would expect that the transparency measures it promotes could be implemented at a relatively small cost to both NCAs/ESMA and the trading venues/MTFs. It would have no negative impact on data users business or operational activities.
<ESMA_QUESTION_163>

Q164: Is there some other approach you believe would be better? Why?

<ESMA_QUESTION_164>
LSEG: If the scope of the Commission's request for Technical Advice permits consideration of other approaches, based on our general Comments and our Responses in the preceding sections, we suggest this as an overall approach:

1. Determine that the RCB requirements in Articles 3 and 6 of MiFIR apply as follows:
   - For pre- trade information, to the best bid and offer price in each security with an indication of the depth of interest at that price.
   - For the post-trade information, the price, volume and time of each trade in that security.
2. Determine that the objective is to ensure that persons viewing the market data can, at any time, see a "snapshot" of the best bid and offer and level of market interest in each security, with the price, volume and time trade information. This is, we believe, what is required for fair price finding and formation.
3. Determine that any RCB requirement only applies to the following uses of the data defined above:
   - viewed on a web-based application
   - viewed on a terminal provided by a Vendor's (eg a Bloomberg or Thomson Reuters) terminal
   - viewed on a user's own internal display systems, where they take a data feed from either a trading venue directly or from a Vendor.
4. Determine RCB does not apply to the uses identified in para 3.1 (D) above, namely the onward vending and/or non-display use and exploitation of the data by customers- this does not "increase transparency" or bring about further fair price finding or formation and goes beyond the uses envisaged by the Level I text.
5. Apply ESMA Option A + to the defined data:

- Option A as set out in ESMA CP
- + our suggestions:
  - It might be useful for users for data providers to include details of the range of instruments/markets covered, so that the relative merits of providers is clear.
  - In addition to the central web location for the maintenance of data service price lists, the same location should be used to post pricing change notifications to maximise client awareness of such changes (clearly this would be in addition to any contractual mechanisms data suppliers are obliged to deploy). This step would contribute to awareness of data pricing and policies to ensure their use of data is cost efficient and compliant.

6. Apply RCB for the defined data to ALL entities, users and markets, including trading venues, CTPs, APAs, vendors and other onward distributors or users
7. Otherwise all such parties free to make full use of other data on a fully commercial basis, subject to usual competition law and other constraints.
8. Require all trading venues, CTPs, APAs, vendors etc to consider applying per user approach as per Question 165 below

<ESMA_QUESTION_164>

Q165: Do you think that the offering of a 'per-user' pricing model designed to prevent multiple charging for the same information should be mandatory?

<ESMA_QUESTION_165>

LSEG: Yes - We certainly agree with this as a recommended best practice initiative and LSE and Borsa Italiana has provided this as a reporting option open to all of our customers since 2010.

- However, as with other changes to date dissemination processes, it is not without costs and technology changes; this type of data usage reporting involves significant investment in software to automate part of the process and in human resource to on-board customers, administer contracts and liaise with data users.
- It may not be practical for some venues to offer this without a short term increase in their cost base, which may have the reverse effect of not helping their customers.

<ESMA_QUESTION_165>

Q166: If yes, in which circumstances?

<ESMA_QUESTION_166>
LSEG: See our response to Question 166 above
<ESMA_QUESTION_166>

5. Micro-structural issues

5.1. Algorithmic and high frequency trading (HFT)

Q167: Which would be your preferred option? Why?

<ESMA_QUESTION_167>
Option 1 is our preferred approach, and **we disagree with the proposal in Option 2**. LSEG also suggests some additional considerations to Option 1 for ESMA below.

General principles
LSEG agrees with ESMA's analysis in paragraph 5 on p.230 of the Consultation Paper that there are two regulatory consequences for investment firms that use high frequency (algorithmic) trading techniques (HFTT), i.e. **authorisation as investment firms** under MiFID Article 2(1)(d)(iii) if they are not already authorised; and **the requirement to maintain an approved form of an audit trail** of all orders, cancellations, amendments, quotes etc. available to NCAs on request, under MiFID Article 17(2).

LSEG's recommendation is that ESMA should keep these consequences in mind when defining the characteristics of HFTT, and pay **particular attention to any aspect of the definition that is relevant for firms on the margins of the criteria**. It is the **audit trail consequence** here that is of particular relevance, as it may lead to significant investment by firms in the infrastructure needed to fulfil this requirement. These Level I consequences are also global, i.e. they apply for all activity of the firm and are independent of the trading venue where the initial HFTT designation was made.

The authorisation requirement is likely to be a predictable outcome for most trading firms in Europe and have minimal impact, given that MiFID Article 2(1)(d)(i) [for market makers] and (ii) [for members or participants of trading venues, or firms that have DEA] requires authorisation in any case, and HFTT firms are most likely to fall in one of these categories. This is a generally positive outcome in our view, and similar to regulatory discussions in the United States.

Most firms that use HFTT have already implemented some form of **live audit trails** as a consequence of the German HFT Law. But other firms have not, and our understanding is this is a substantial administrative and compliance issue, and may not be proportionate for firms who may have similar characteristics to HFT firms, but are clearly not using HFTT. ESMA's advice must, thus capture only the real use of HFTT by firms to ensure regulatory proportionality.

Turning to each of ESMA's proposals in order:

Option 1
This is well defined, broadly principle-based but with some objective criteria. It is consistent with the definition in the German HFT Law and includes most characteristics of firms that use HFTT. We agree that all the requirements should be met for the definition to apply.

LSEG suggests some clarifications to the methodology and definition proposed by ESMA:

- This assessment should be done on a **member/trader ID basis**.
- **Only user generated messages should be included in the calculation.** Users do not control the messages generated by a trading venue's systems, so it would be disproportionate to include internal system messages this in the calculation.
    - In this regard, **an IOC order must be counted as ONE message**, because from a technical perspective it is only a single user generated message (order entry), like a limit or-

der. The cancellation is programmed in the system itself as an "order expiry" if the execution condition is not filled. This is similar to how limit orders are programmed – the system will "expire" the order under the specified condition e.g. next auction period, end of day etc. We therefore do not believe that IOC should be treated any differently.

- Re (i)(a) – ESMA should ensure that firms cannot circumvent this definition by locating outside the proximity zone. The term **"directly proximate"** should include colocation and other proximity hosting solutions.
- Re (ii) – an average participant rate of 2 messages/second (over a period of 12 months rolling daily) may easily capture a busy "standard" algorithmic trading platform or even a Smart Order Router. To avoid this excessive regulatory scope, **we suggest there is merit in considering a higher threshold,** or for ESMA to prescribe in principle what it wishes to achieve, and for different trading venues to set the exact message rate parameters suitable to their market model and products.

Option 2 ("daily lifetime of orders cancelled or amended")
LSEG disagrees with this approach, and argues that it is not suitable for the purpose of defining HFTT.

Although we see the merit of having a single quantitative criterion as a proxy to define HFTT, given the nature of trading across EU markets and the diversity of venues and participants, it is very challenging to create one that is universally fit for purpose.

In particular, this methodology proposed by ESMA has a number of flaws. In our view, some potential issues are:

- **It is based on other participants' activity and the market structure of the operating venue**, which is not in the investment firm's control, and hence not a predictable or planned outcome.
- **There are no absolute criteria in the definition, which may lead to surprising results**. For e.g., if the median is 1 message cancelled or amended every 10 minutes, does that make all participants with average order lifetimes less than 10 minutes HFTs?
- **It does not factor the use of aggressive strategies which take liquidity in the definition**. So an HFT which may act only in an aggressive manner (i.e. crossing the spread to buy or sell) may not be in scope.
- It does not take into account the use of low latency technology.

In addition, this may be complicated for trading venues to compute.
<ESMA_QUESTION_167>

Q168: Can you identify any other advantages or disadvantages of the options put forward?

<ESMA_QUESTION_168>
Please see LSEG's response to Q169. Both definitions present some advantages and challenges, but Option 1 is more suitable for purpose. We summarise our views in the table below:

Option	Advantage	Disadvantage
A	• Simple assessment process. • Based on German HFT law. • Covers most of the usual traits of "high frequency trading techniques". • Criteria (ii) is based on an absolute message rate.	• Criteria i(a) and i(b) are not entirely objective, therefore may be open to challenge. • Criterion (ii) 2 messages/second average (over a period of 12 months rolling daily) may easily capture a busy "standard" algorithmic trading platform or even a Smart Order Router. There is merit to considering a higher threshold, or for ESMA to prescribe in principle what it wishes to achieve, and for trading venues to set the exact message rate parameters.
B	• Quantitative assessment based on a single metric or "formula"	• **It is based on other participants' activity and the market structure of the operating venue**, which is not in the firm's control. • **There are no absolute criteria in the definition**,

		which may lead to surprising results. For e.g., if the median is 1 message cancelled or amended every 10 minutes, does that make all participants with average order lifetimes less than 10 minutes HFTs? • **It does not consider aggressive strategies** which take liquidity in the definition (and may be used by HFT firms). • **It does not take account of the use of low latency technology**. • It may be complicated for venues to compute.

<ESMA_QUESTION_168>

Q169: How would you reduce the impact of the disadvantages identified in your preferred option?

<ESMA_QUESTION_169>
Please see LSEG's response to Q167.

For **Option 1,** LSEG suggests that:

- **Only user generated messages should be counted**. IOC orders should be treated as one message, as from a technical perspective it is programmed in a similar way to a limit order (user entry, and then a system generated cancellation – for IOC, it is if the execution criteria is not fulfilled; for limit orders, this may be till the next auction or till end of day etc.)
- **In criterion (i)(a),** ESMA should ensure that firms cannot circumvent this definition by locating outside the proximity zone. The term **"directly proximate"** should include colocation and other proximity hosting solutions.
- **In criterion (ii),** we believe there is merit in considering a higher threshold, or for ESMA to prescribe in principle what it wishes to achieve in the definition, and for trading venues to set the exact message rate parameters.

For **Option 2**, LSEG's view is that there are fundamental flaws in the proposal. So, even if it can be improved (for example, by setting an absolute ceiling for the value of the median order lifetime above which no firms will be considered HFT, or combining it with some elements of Option 1 e.g. the use of low latency technology), some aspects of the proposal are not capable of being rectified. For example, there is no way to distinguish between aggressive HFTT flow, or other flow not arising from HFTT which is aggressive, but it is also not fit to exclude aggressive flow entirely. Thus, we suggest that ESMA considers adopting a modified Option 1 in its final advice.
<ESMA_QUESTION_169>

Q170: If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.

<ESMA_QUESTION_170>
Whilst LSEG does not agree with Option 2 (please see our response to Q167 and 169), it would make sense to consider orders for liquid instruments only if this was used.
<ESMA_QUESTION_170>

Q171: Do you agree with the above assessment? If not, please elaborate.

<ESMA_QUESTION_171>
Yes, LSEG agrees with ESMA's draft technical advice. This makes sense because whilst the assessment of the use of HFTT may be specific to the activity of a member/trader ID on a single trading market, the regulatory consequences in the Level 1 text – authorisation and audit trails – are global and apply to the entire activity of a firm.

With regards to ESMA's analysis in paragraph 24 of p.233 of the Consultation Paper, ESMA may need to consider further considering how client flow (whether a DEA or other client) is dealt with in the calculation. For DEA clients, LSEG suggests this should be excluded in the count of messages for a member/trader ID (using the client ID on the order), and there should be a separate assessment of the DEA user ID under the HFTT definition.
<ESMA_QUESTION_171>

5.2. Direct electronic access (DEA)

Q172: Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?

<ESMA_QUESTION_172>
LSEG: No further clarification is required, on the basis that the definition of Direct Electronic Access encompasses both Direct Market Access (DMA) and Sponsored Access (SA).
<ESMA_QUESTION_172>

Q173: Is there any other activity that should be covered by the term "DEA", other than DMA and SA? In particular, should AOR be considered within the DEA definition?

<ESMA_QUESTION_173>
For consistency with the definition of algorithmic trading in MiFID Article 4(1)(39), LSEG suggests that AOR is not considered within the DEA definition. Such systems have a different risk profile than DEA systems, and really represent further automation of order entry systems.

LSEG also supports ESMA's clarification in paragraph 7 and 8 on p.236 of the Consultation Paper that web based applications, which are particularly used by retail clients to access markets directly in some jurisdictions e.g. Italy, are not covered by the DEA definition.
<ESMA_QUESTION_173>

Q174: Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?

<ESMA_QUESTION_174>
LSEG: It is not clear what ESMA refers to by the term "shared connectivity arrangements". If it is referring to DMA, then yes this should be within DEA. If it is referring to the use of AOR, then no, this should not be considered within DEA.
<ESMA_QUESTION_174>

Q175: Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?

<ESMA_QUESTION_175>
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<ESMA_QUESTION_175>

6. Requirements applying on and to trading venues

6.1. SME Growth Markets

Q176: Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?

<ESMA_QUESTION_176>

General Comments on SME Growth Markets

LSEG supports the concepts for the SME Growth Market set out in the MiFID Level I text and agrees with ESMA's conclusions in the consultation document that it is important for each market operator to create, under the supervision of the national competent authority, an appropriate SME-GM framework that works for participants, issuers and investors in their Member State. LSEG has long experience of operating the largest growth markets in the EU very much along the lines of these principles (including AIM and AIM Italia MAC, with over 1100 admitted companies), and we have responded to the questions in the consultation based on our experience.

Specific Response to Q176

Yes LSEG supports this method of assessment in order to avoid unnecessary uncertainty amongst issuers, advisers and investors. Further, we believe that the numbers should still be looked at on a monthly basis, averaging the aggregated numbers over a year, rather than as a single data snapshot.
<ESMA_QUESTION_176>

Q177: Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?

<ESMA_QUESTION_177>

LSEG's preference is for option (iii):

at least 50% of the issuers admitted to trading on the SME-GM were SMEs based on an average of each month of the calendar year (the market capitalisation shall be checked at the end of each calendar month and an average shall be calculated on 31 December).

We agree with ESMA's assessment (paragraph 13) that of the three options, option (iii) is the most precise calculation method and that it provides a more representative assessment of the market constituents.
<ESMA_QUESTION_177>

Q178: Do you agree with the approach described above (in the box Error! Reference source not found.**), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?**

<ESMA_QUESTION_178>

LSEG agrees with the approach taken by ESMA, i.e. that de-registration should only be required if the market falls below the qualifying threshold for 3 consecutive years, as this is in line with the definition of an SME in Article 4(1)(13) of MiFID II: companies with an average market capitalisation of less than €200m on the basis of end-year quotes for the previous three calendar years.

A three year period would also allow a sufficient transition period for issuers and investors in the event that it was necessary for any companies to transition from a SME-GM to a regulated market.
<ESMA_QUESTION_178>

Q179: Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?

<ESMA_QUESTION_179>
LSEG agrees with ESMA's draft technical advice that a temporary failure to meet the 50% criterion should not lead to automatic deregistration of an SMG-GM. We also support the requirement that there should be 3 consecutive years of failure to meet the 50% threshold before a SME-GM is de-registered.

However, we do not support the requirement for a regulatory announcement in such an instance; given publication of monthly statistics, the information will already be available publicly. Furthermore, a formal public announcement could create unnecessary uncertainty and volatility amongst investors and issuers.
<ESMA_QUESTION_179>

Q180: Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the "*at least 50% criterion*" do you consider the most appropriate? Please give reasons for your answer.

<ESMA_QUESTION_180>
In deciding on whether a non-equity issuer is considered as an SME, for the purpose of determining whether an SME-GM meets the 50% requirement, LSEG would prefer that the decision of is based on either of the two approaches below:

- Option a – the overall outstanding nominal value of the debt securities issued by the issuer does not exceed €200m; or
- Option b – the annual net turnover of the issuer based on the last published annual accounts does not exceed €300,000,000

These thresholds will fit with the features and/or characteristics of the majority of the issuers currently listed on the LSEG market ExtraMOT PRO, which lists and trades SME bonds to professional investors.

Such a definition for non-equity SMEs would align with the requirements in the Prospectus Directive, which has a definition for SME issuers that do not issue equity. It will assist these SMEs in gaining exposure to capital markets and will increase the interest of institutional investors in this category of companies.
<ESMA_QUESTION_180>

Q181: Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?

<ESMA_QUESTION_181>
LSEG agrees that an SME-GM should be able to operate under the models described in the paper. We support ESMA's assessment and agree that it should not be for the MiFID Level II to prescribe what model to use, as each market operator should aim to create an appropriate SME-GM framework that works for their market and is based upon domestic market and investment practice and culture, and facilitates sufficient differentiation between the SME-GM and the regulated market offering, under the supervision of the national competent authority.
<ESMA_QUESTION_181>

Q182: Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are "appropriate"?

<ESMA_QUESTION_182>
Yes we do. LSEG considers that it is important to recognise that what is considered "appropriate" is likely to differ, on a case by case basis, from one market to another depending on the size and stage of development of the issuer. Therefore we consider that the precise requirements to meet the "appropriate" standard should be a judgement for the individual market in close cooperation with the NCA.

For example, a market operator's rules may require an assessment to be made by a third party corporate finance adviser appointed by the issuer, with an oversight regime for such advisers operated by the SME-GM. Where those models exist, the market operator should, in certain circumstances, be allowed to retain the power to refuse an admission proposed by the appointed adviser.
<ESMA_QUESTION_182>

Q183: Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM's regulatory regime is effective?

<ESMA_QUESTION_183>

Yes we agree with ESMA's assessment.

LSEG believes that NCAs should take an outcome-focused approach to the setting of criteria for the SME-GM, which should be tailored to the respective market, while preserving flexibility for the market operator to decide on the more specific detailed matters that reflect the characteristics of each market environment.
<ESMA_QUESTION_183>

Q184: Do you think that there should be an appropriateness test for an SME-GM issuer's management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?

<ESMA_QUESTION_184>

LSEG agrees that in order to maintain the integrity of SME-GMs and to ensure investor confidence, it is important to have policies in place to ensure the "appropriateness" of the directors (and the board) and to ensure that the issuer has sufficient systems, procedures and controls in place to discharge its responsibilities as a publicly quoted company. However, we believe that the diverse nature of the industry sector, and markets, in each member state will make it difficult to set "one-size-fits-all" criteria; it may also prove counter-productive.

As mentioned in the response to Q182, we consider that the precise requirements to meet the "appropriate" standard should be a judgement for the individual market in close cooperation with the NCA.
<ESMA_QUESTION_184>

Q185: Do you think that there should be an appropriateness test for an SME-GM issuer's systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?

<ESMA_QUESTION_185>
LSEG agrees with ESMA's draft advice that sets out the high level framework for the 'appropriateness' assessment at admission and support ESMA's assessment that prescriptive measures in relation to corporate governance, systems & controls or working capital would diminish the flexibility of SME-GM market operators and would be detrimental to the market model.
<ESMA_QUESTION_185>

Q186: Do you agree with Error! Reference source not found.**,** Error! Reference source not found. **or** Error! Reference source not found. Error! Reference source not found.**?**

<ESMA_QUESTION_186>

LSEG agrees with option (iii), which supports ESMA's own assessment that prescriptive measures in relation to corporate governance, systems & controls or working capital would diminish the flexibility of SME-GM market operators and would be detrimental to the market model.

LSEG believes that the Level 2 measures should avoid a prescriptive top down approach. On key issues such as corporate governance, systems and controls and working capital we would expect SME-GMs to adopt appropriate rules in order to satisfy investors about the appropriateness of the issuers to be admitted to a public market.
<ESMA_QUESTION_186>

Q187: Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?

<ESMA_QUESTION_187>
We believe that such criteria are best incorporated into rules of the SME-GM and that admission is based upon an issuer's ability to demonstrate that it meets the relevant admission criteria.
<ESMA_QUESTION_187>

Q188: Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?

<ESMA_QUESTION_188>
Yes. The main outcome should be that the information must be readily available and accessible to investors and regulators. LSEG believes that rather than setting a prescriptive framework, the flexibility of different models should be maintained.
<ESMA_QUESTION_188>

Q189: Do you agree that SME-GMs should be able to take either a 'top down' or a 'bottom up' approach to their admission documents where a Prospectus is not required?

<ESMA_QUESTION_189>
Yes. LSEG agrees with ESMA's view that it is not necessary to mandate either a 'top down' or a 'bottom up' approach; this will recognise the plurality of both approaches in the range of existing GMs.

As stated in our response to Q188 above, LSEG believes that the most important outcome should be that the information in the admission document must be comprehensive, factually correct, readily available and accessible to investors and regulators.
<ESMA_QUESTION_189>

Q190: Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?

<ESMA_QUESTION_190>
LSEG does not consider that detailed disclosure requirements should be set at the MiFID level. It should be for the market operator of the SME-GM to set out the requirements for the admission document, under the supervision of its NCA.
<ESMA_QUESTION_190>

Q191: If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?

<ESMA_QUESTION_191>
In response to the first question, we refer to our response to Q190.

With regards to the second question, LSEG believes that, in those instances where there is no public offer, the Prospectus Directive is the appropriate starting point for the SME-GM operator when defining the minimum contents of the initial admission document, which must be identified according to a bottom up approach.

Having said this, and considering the need for growth of SMEs, which are considered to be the incubators of growth and development of the real economy, LSEG considers that an effective approach would be to introduce further flexibility and proportionality to enable issuers to access new capital, expanding the scope of exemptions from the obligation to publish a prospectus in case of public offers concerning GMs (i.e. more than 500 investors, total consideration from €5m to €50m and capital increase up to 20%, etc).

With regards to the elements of the proportionate schedules in Annexes VII and VIII, IX and XIII of Commission Regulation (EC) No. 809/2004 that could be dis-applied or modified, LSEG would suggest the following:

1. the persons responsible (Section 1 of Annex IX);
2. the risk factors (Section 3 of Annex IX);
3. information on the issuer (exclusively as regards Section 4.1 of Annex IX, History and development of the issuer);
4. organisational structure (Section 6 of Annex IX);
5. the major shareholders (Section 10 of Annex IX);
6. financial information concerning the assets and liabilities, financial position and profits and losses of the issuer (Section 11 of Annex IX). Alternatively the latest annual accounts may be attached to the document;
7. information concerning the financial instruments Section 4 of Annex XIII);
8. admission to trading and dealing arrangements (Section 5 of Annex XIII).

<ESMA_QUESTION_191>

Q192: Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?

<ESMA_QUESTION_192>

LSEG believes that the responsibility for meeting the SME-GM's criteria for the admission to trading must always remain with the issuer.

The details of such a review will depend on the operating model of an SME-GM. However, it is important that any review, whether by the market operator or any other relevant party, does not give a false impression that the document has been vetted by the market operator.

<ESMA_QUESTION_192>

Q193: Do you agree with this initial assessment by ESMA?

<ESMA_QUESTION_193>

Yes, LSEG agrees with the initial assessment by ESMA and refers to the responses below for additional detail.

<ESMA_QUESTION_193>

Q194: In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?

<ESMA_QUESTION_194>

LSEG does not believe that requirements for reports should be prescriptive, as it will be difficult in this area to set "one-size-fits-all" criteria. The main requirement should be that the information required must be readily available and accessible to investors and regulators. LSEG's opinion is that the flexibility on the different venues for reporting requirements should be maintained.

<ESMA_QUESTION_194>

Q195: How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?

<ESMA_QUESTION_195>
LSEG agrees with ESMA that there should be requirements to make information widely available. We suggest that issuers could be required to make a regulatory announcement regarding publication of results, with details of where the results can be found either on the company's or market operator's website.

Ultimately, the dissemination of detailed financial reports to shareholders will depend on national company law governing communication with shareholders.
<ESMA_QUESTION_195>

Q196: Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph Error! Reference source not found.**) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?**

<ESMA_QUESTION_196>
LSEG supports the deadlines proposed by ESMA for making reports public. We agree that issuers should make their annual reports public within six months and half-year reports within 3 months.
<ESMA_QUESTION_196>

Q197: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?

<ESMA_QUESTION_197>
Yes, LSEG agrees with ESMA's assessment that the MiFID framework must not impose additional requirements or reliefs to those foreseen in MAR, as this could potentially be confusing for issuers and investors.
<ESMA_QUESTION_197>

Q198: What is your view on the possible requirements for the dissemination and storage of information?

<ESMA_QUESTION_198>
LSEG agrees with the requirement to make information widely available.
<ESMA_QUESTION_198>

Q199: How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?

<ESMA_QUESTION_199>
We would prefer the first option proposed (paragraph 25). LSEG believes that the flexibility of the different venues to decide on the means of dissemination should be maintained. Therefore, issuers should be allowed the choice between, or combination of, the issuer's or market operator's (or even the competent authority's) web-site.
<ESMA_QUESTION_199>

Q200: How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?

<ESMA_QUESTION_200>
LSEG's preference would be for a 3 year period, as this is in line with the requirements in the Prospectus Directive. However, the duration will depend on national regulation and/or civil/criminal law requirements, which will place different requirements on issuers.
<ESMA_QUESTION_200>

Q201: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?

<ESMA_QUESTION_201>
LSEG agrees that the MiFID framework must not impose additional requirements to those foreseen in MAR, as this could be potentially confusing for issuers and investors.
<ESMA_QUESTION_201>

6.2. Suspension and removal of financial instruments from trading

Q202: Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?

<ESMA_QUESTION_202>

LSEG agrees with approach set out by ESMA in seeking to strike balance between consistent application and appropriate judgement.

A non-exhaustive list allows more flexibility in exceptional circumstances and subjective judgements to be made on a case by case basis. Without the provision for proportionality, there would be a major risk of suspension in a relatively minor market, for reasons which might have local application, resulting in unjustified suspension of major markets, for which suspension is not appropriate. This could result in unnecessary market disruption and damage to investors' interests

However, criteria iii and iv are very hard to estimate/quantify.
<ESMA_QUESTION_202>

Q203: Do you agree that NCAs would also need to consider the criteria described in paragraph Error! Reference source not found. Error! Reference source not found. **and** Error! Reference source not found.**, when making an assessment of relevant costs or risks?**

<ESMA_QUESTION_203>
LSEG agrees. This is prudent in order to consider broader market affects. The overall impact has to be assessed, whether it is a direct or a knock-on, secondary effect.
<ESMA_QUESTION_203>

Q204: Which specific circumstances would you include in the list? Do you agree with the proposed examples?

<ESMA_QUESTION_204>
LSEG agrees with the proposed examples and they appear to capture most circumstances.
<ESMA_QUESTION_204>

6.3. Substantial importance of a trading venue in a host Member State

Q205: Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?

<ESMA_QUESTION_205>
LSEG: Yes, we consider that these remain appropriate as not aware of any change in circumstances that would make then no longer appropriate.

<ESMA_QUESTION_205>

Q206: Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?

<ESMA_QUESTION_206>
LSEG: Yes, the additional criteria appear sensible and well considered, particularly in consideration of small MTFs operating across borders.
<ESMA_QUESTION_206>

6.4. Monitoring of compliance – information requirements for trading venues

Q207: Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?

<ESMA_QUESTION_207>
LSEG: We agree with the circumstances in list and have no others to suggest, since the list suggested by ESMA adequately captures all circumstances
<ESMA_QUESTION_207>

6.5. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour

Q208: Do you support the approach suggested by ESMA?

<ESMA_QUESTION_208>
LSEG: Yes, we support ESMA's approach because it is principles-based and allows trading venues to exercise judgement based on their expertise.
<ESMA_QUESTION_208>

Q209: Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?

<ESMA_QUESTION_209>
LSEG: Yes, there is a limitation. It is important to stress that individual trading venues have their own individual supervision obligations, and common ownership should not be interpreted as automatic cross-market supervision. Owners of multiple trading venues are sometimes in the position to offer regulators a cross-market view, sometimes based on harmonised systems, but this should not be assumed as an automatic outcome of common ownership.
<ESMA_QUESTION_209>

Q210: What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers' dealings or major shareholders' notifications)? Are there other public sources of information that could be useful for this purpose?

<ESMA_QUESTION_210>
LSEG: The implication of trading venues making use of all information publicly available to complement their internal analysis of the potential abuse conduct, such as managers' dealings or major shareholders notifications, is that they are able to make more informed and reasoned decisions.
<ESMA_QUESTION_210>

Q211: Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?

<ESMA_QUESTION_211>
LSEG: We agree broadly with the signals as set out in the Annex, however 5(v-vii) should be set out in more detail, because as currently drafted they could represent normal trading behaviour.
<ESMA_QUESTION_211>

Q212: Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?

<ESMA_QUESTION_212>

LSEG: As ESMA acknowledges, front running is primarily a market abuse issue that needs addressing at the investment firm level, because trading venues do not have sufficient information on the investment firm's activities to usefully provide a reliable indicator.

A trading venue monitoring large and complex investment firms operating multiple trading strategies, in both principal and agency capacity, from different trading desks, will likely generate hundreds of possible daily alerts if the trigger is deemed to be the receipt of a principal trade shortly before a client trade in the same instrument. This will in turn produce huge volumes of false positive suspicious transaction reports that would be passed to NCAs, most likely overwhelming their ability to investigate those and genuine suspicious transactions.
<ESMA_QUESTION_212>

7. Commodity derivatives

7.1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

Q213: Do you agree with ESMA's approach on specifying contracts that "must" be physically settled and contracts that "can" be physically settled?

<ESMA_QUESTION_213>
LSEG: Yes, we agree with ESMA's approach.
<ESMA_QUESTION_213>

Q214: Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.

<ESMA_QUESTION_214>
TYPE YOUR TEXT HERE
.<ESMA_QUESTION_214>

Q215: Do you agree with ESMA's approach on specifying contracts that must be physically settled?

<ESMA_QUESTION_215>
LSEG: We agree, because the specifications set out by ESMA are consistent with the range of commodity contracts that can be physically settled.
<ESMA_QUESTION_215>

Q216: How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.

<ESMA_QUESTION_216>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_216>

Q217: Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.

<ESMA_QUESTION_217>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_217>

Q218: How do you understand and how would you describe the concepts of "force majeure" and "other bona fide inability to settle" in this context?

<ESMA_QUESTION_218>

LSEG: We consider it as: incapacity to settle due to external causes, applicable to both terms in the question.
<ESMA_QUESTION_218>

Q219: Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?

<ESMA_QUESTION_219>
LSEG: We agree that it has worked well in practice reflecting a framework with which the industry has been able to work.
<ESMA_QUESTION_219>

Q220: Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?

<ESMA_QUESTION_220>
LSEG: We agree - we have not encountered any issues with this definition in practice.
<ESMA_QUESTION_220>

Q221: Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?

<ESMA_QUESTION_221>
TYPE YOUR TEXT HERE
.<ESMA_QUESTION_221>

Q222: Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?

<ESMA_QUESTION_222>
LSEG: Yes we agree. The post-trade arrangements of a contract should not be a determinant of whether a contract is a commodity derivative; it is possible for a commodity derivative to be un-cleared as well as cleared.
<ESMA_QUESTION_222>

Q223: Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?

<ESMA_QUESTION_223>
LSEG: Yes we agree. These factors are the principal constituents of determining whether a contract can be standardised and classified.
<ESMA_QUESTION_223>

Q224: Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?

<ESMA_QUESTION_224>
LSEG: Yes we agree. Contracts can be traded on more than one venue.
<ESMA_QUESTION_224>

Q225: Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?

<ESMA_QUESTION_225>
LSEG: Yes we agree. The existing approach in article 38(3) is complete in capturing all instruments.
<ESMA_QUESTION_225>

Q226: Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?

<ESMA_QUESTION_226>
LSEG: Yes. We consider that the list is complete.
<ESMA_QUESTION_226>

Q227: What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?

<ESMA_QUESTION_227>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_227>

Q228: What do you understand by the terms "reason of default or other termination event" and how does this differ from "except in the case of force majeure, default or other bona fide inability to perform"?

<ESMA_QUESTION_228>
LSEG: The term "reason of default or other termination event" is a broad term, whereas "except in the case of force majeure, default or other bona fide inability to perform" is a more accurate term that captures circumstances that are out of the counterparty's control.
<ESMA_QUESTION_228>

7.2. Position reporting thresholds

Q229: Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.

<ESMA_QUESTION_229>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_229>

Q230: Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.

<ESMA_QUESTION_230>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_230>

Q231: Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?

<ESMA_QUESTION_231>
LSEG: Yes, we agree. We believe this is consistent with existing market practice.
.<ESMA_QUESTION_231>

7.3. Position management powers of ESMA

Q232: Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?

<ESMA_QUESTION_232>
LSEG: Yes, we agree.
<ESMA_QUESTION_232>

Q233: What other factors and criteria should be taken into account?

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

Q234: Do you agree with ESMA's definition of a market fulfilling its economic function?

<ESMA_QUESTION_234>
LSEG: Yes, we agree. The definition is complete in our view and captures the main functions performed by markets.
<ESMA_QUESTION_234>

Q235: Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?

<ESMA_QUESTION_235>
LSEG: Yes we agree. The criteria are complete and address the four pillars of demand, supply, market participants and infrastructure.
<ESMA_QUESTION_235>

Q236: What other factors and criteria should be taken into account?

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_236>

Q237: Do you consider that the above factors sufficiently take account of "the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives"? If not, what further factors would you propose?

<ESMA_QUESTION_237>
LSEG: Yes, we agree. This is compatible with factor (iv) of the economic functions of the market, as defined by ESMA.
<ESMA_QUESTION_237>

Q238: Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?

<ESMA_QUESTION_238>
LSEG: Yes, we consider the list complete.<ESMA_QUESTION_238>

Q239: What other factors and criteria should be taken into account?

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE.
<ESMA_QUESTION_239>

Q240: Do you agree that some factors are more important than others in determining what an "appropriate reduction of a position" is within a given market? If yes, which are the most important factors for ESMA to consider?

<ESMA_QUESTION_240>
LSEG: Yes, we agree – and we suggest that the most important factors are (ii) and (iii).
<ESMA_QUESTION_240>

Q241: Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?

<ESMA_QUESTION_241>
LSEG: Yes, we agree. The factors address fragmentation, fungibility, and underlying market, which are all areas in which regulatory arbitrage could be exploited.
<ESMA_QUESTION_241>

Q242: What other criteria and factors should be taken into account?

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>

Q243: If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?

<ESMA_QUESTION_243>
LSEG: We believe that volume will shift from one market to another for no discernable reason other than regulatory difference.
<ESMA_QUESTION_243>

8. Portfolio compression

Q244: What are your views on the proposed approach for legal documentation and portfolio compression criteria?

<ESMA_QUESTION_244>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_244>

Q245: What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?

<ESMA_QUESTION_245>
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<ESMA_QUESTION_245>