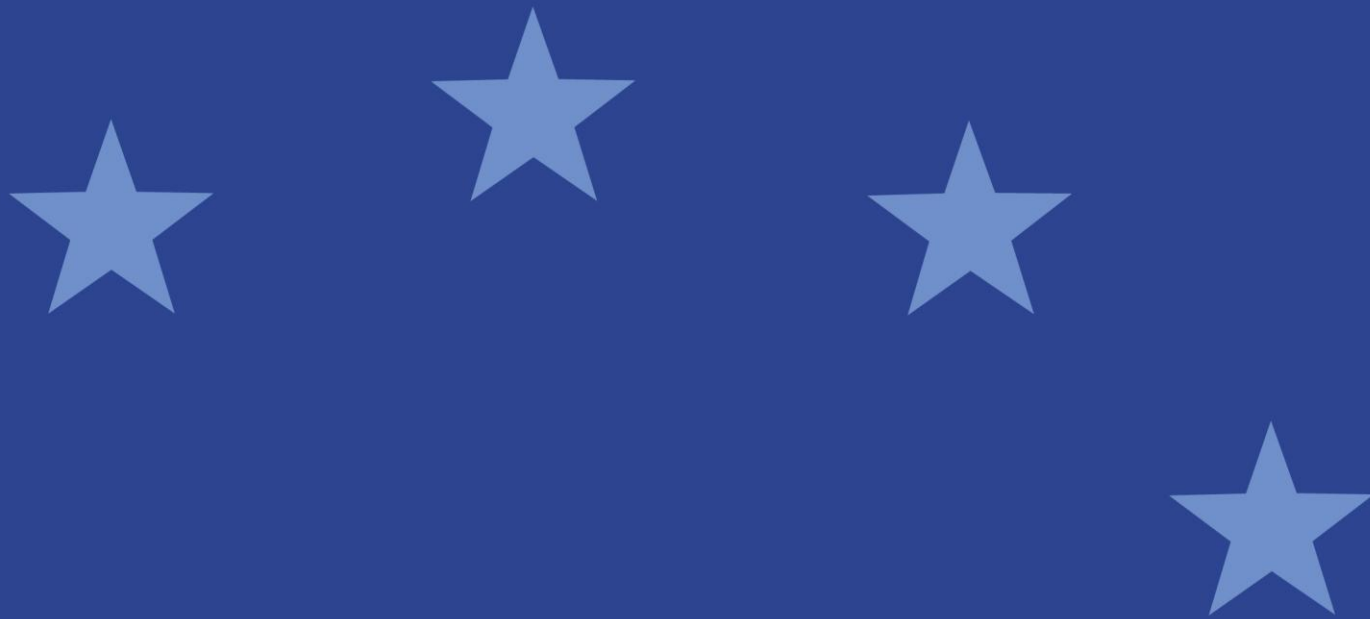


Reply form for the Consultation Paper on MiFID II / MiFIR



Responding to this paper

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

Instructions

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

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

Responses are most helpful:

- (1) if they respond to the question stated;
- (2) contain a clear rationale, and
- (3) describe any alternatives that ESMA should consider.

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses

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

Data protection

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

General information about respondent

Name of the company / organisation	Association for Financial Markets in Europe
Confidential ¹	<input type="checkbox"/>
Activity:	Banking Sector.
Are you representing an association?	X
Country/Region	Europe.

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1 >

AFME Response

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the ESMA Consultation Paper on regulatory technical standards and implementing technical standards for MiFID II and MiFIR.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its Members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

The following summarizes a number of the key parts of our response to the CP. As a summary, it is not exhaustive in terms of the depth and breadth of points covered and we refer to our answers to the CP questions for further detail. We have structured the summary according to high-level policy and product areas, covering these in the order in which they appear in the CP.

Information re Execution of Orders

We are concerned that the proposed information requirements relating to 'quality of execution' will not help to inform investment firms' selection of execution venues and may lead to the disclosure of commercially sensitive information. We consider that the information which ESMA proposes to require is partially duplicative of publically available data and overly complex, posing a serious risk that the intended consumers will simply not invest in the effort to understand it. Moreover, the information that ESMA is proposing to be made public would, in particular for less liquid instruments, comprise transaction-level information providing details of positions and trading strategies. We therefore believe that the proposed approach requires significant re-consideration to deliver a workable outcome and valuable information. To this end, we present an alternative proposal (taking into consideration the

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

fundamental differences between equity and non-equity instruments), which retains the aspects of ESMA's proposals which potentially add value. Our proposal is based on an analysis of ESMA's proposed metrics against the four market models to identify actionable, non-redundant information which is of use in the first stage of execution venue selection.

Equity Transparency

In the context of the proposed pre-trade transparency requirements, we are concerned by ambiguities and inconsistencies in the proposed exhaustive lists of transactions not contributing to the price formation process under both negotiated transactions and the trading obligation. We thus seek confirmation from ESMA that the list in the CP text for negotiated transactions should include give-up / give-in transactions as per the list in the draft RTS. We are also concerned that the exhaustive list of negotiated transactions has been shortened. For example it no longer includes 'securities financing transactions' and 'exchange for physical' trades. We believe that this is contrary to ESMA's declared aim to ensure that the proposed list is sufficiently flexible to allow for changes in the regulatory regime around negotiated trades. AFME is particularly concerned that these exhaustive lists are not more similar, given that ESMA is seeking to apply a consistent and coherent approach to all transactions considered to not contribute to the price formation process either under the trading obligation or as a negotiated transaction. With respect to the proposed post trade deferrals, we consider that longer delays (up to T+5) than the proposed end-of-day will be required to avoid negative impacts on liquidity for SME issues and very large trades.

Bond Market Transparency

We are concerned by the proposals for an overly broad definition of liquid markets that does not recognize the heterogeneous and dynamic nature of fixed income liquidity and are as such inconsistent with ESMA's Level 1 mandate. If illiquid markets are treated as liquid under the transparency regimes, liquidity providers will be discouraged from committing capital to the detriment of both investors and issuers. ESMA's own analysis demonstrates that the proposed application of COFIA to categorizing bond markets will mean that the majority of instruments classified as liquid are in fact illiquid. ESMA acknowledges the risks that might arise from COFIA and states its intention to address these through (unspecified) allowances to the SSTI and LIS thresholds. However, we are concerned that MIFID II will set a precedent for defining secondary market liquidity, so it is critical that the definition of liquidity is fit-for-purpose in and of itself. We therefore urge ESMA to reconsider its proposal and instead use IBIA for liquidity categorization. We acknowledge and address the challenges associated with IBIA, including identification of bond pools for CA assessment and new issues. If ESMA nevertheless persists with its proposal to use COFIA, we would urge a more granular assessment that considers bond lifecycle and currency, increased issuance size thresholds and more accurate underlying data. On this basis, our alternative proposal produces significantly less false positives, similar false negatives, and similar transparency levels to the ESMA liquidity test. Despite the improvement in the error margins, however, we highlight that the more granular COFIA approach is still highly imperfect and, as such, SSTI and LIS need to be adjusted. Despite ESMA's statement of mitigation, we highlight that ESMA has not incorporated any allowances for the liquidity error margins in the SSTI/LIS thresholds. If ESMA adopts a regime with large errors, there needs to be a specific adjustment for this in the SSTI/LIS regime (e.g. reduce the test threshold). We also believe that the framework for determining the SSTI thresholds is a critical. The current proposals are not workable and will lead to undue risks for liquidity providers and significant adverse consequences for investors and issuers if implemented. The SSTI thresholds are set too high and do not differentiate between pre and post trade transparency and illiquid and liquid instruments which present different types and levels of market impact risk. Finally we consider that SSTI set at 50% to be inappropriate as there is inter alia no

evidence that the level of undue risk to liquidity providers on which SSTI is to be based is connected to half of LIS. We believe and suggest that an uncomplicated alternative approach can be achieved by decoupling SSTI from LIS without requiring a SSTI threshold for each instrument and without compromising a risk-based calibration

Foreign Exchange

We believe that there are still opportunities for the key transparency and trading obligations to be further harmonized between European and non-European jurisdictions. Specifically, we believe that there needs to be further harmonization on the types of FX instruments included in the transparency and trading obligations and that any transparency deferrals or suspension of the trading obligations needs to be calibrated (and in the case of trading obligations, be dynamic) to reflect the real-time and global nature of the FX asset class. Evidence suggests that for global, cross border markets like FX, market fragmentation can occur due to conflicting regulatory obligations. This may result in a reduced product offering for the end-users of FX, impacting the ability to sufficiently hedge risk or to fund growth agendas.

Microstructural Issues

We are concerned by the proposed non-live testing regime which would impose onerous requirements on market participants and appears to allow the various trading venues to establish divergent testing practices. We seek clarification in regards to the scope of application of the pre-trade controls, which could be interpreted as applying broadly to all orders submitted by an investment firm instead of being limited to the activity of trading algorithms. We also seek clarification in relation to whether a market making agreement would be necessary per comparable instrument or whether such an agreement would be based on asset class. Requiring a market making agreement per individual instrument would make the application of the proposed parameters impractical, particularly for non-equity instruments where there can be instances of high liquidity and subsequently low liquidity within short timeframes. Finally, we do not consider it appropriate to determine whether a firm is pursuing a market maker activity based on a single day trading. As a result, we believe that market making obligations should be assessed over a 4 week period to be more consistent with the proposed SI regime.

Commodity Derivatives

In the context of the proposed position limits regime, we note that the EU framework sets baseline position limits for both spot and other months by reference to 'deliverable supply'. Before market participants are able to opine on the appropriateness of the baseline figure (of 25%) we require clarity regarding how the concept of deliverable supply will be applied by ESMA. At a minimum, we ask ESMA to: publish the methodology for calculating deliverable supply; publish estimates of deliverable supply for (at minimum) the key commodity contracts; and provide clarity as to how the adjustment mechanism will work in relation to the factors proposed, in particular, deliverable supply and open interest (the latter which we believe to be a more suitable base line metric for other months limits). Referring to the ancillary activity proposals, we believe that entities engaged in similar activities should be regulated in a consistent manner and therefore welcome overall, the direction of ESMA's proposals to restrict the availability of the ancillary activities exemption in the case of firms who are active traders in the commodities derivatives markets. However, as many corporates rely on an adequate level of market activity to hedge the commodity risks inherent in their businesses, the impact of ESMA's proposals needs to be balanced with any

potential market disruption affecting the ability of such organisations to effectively manage such risks. We encourage ESMA to consider this in the context of their cost/benefit analysis.< ESMA_COMMENT_CP_MIFID_1>

(i)

(ii) Investor protection

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

<ESMA_QUESTION_CP_MIFID_1>

AFME Response

Not entirely. We agree with ESMA's overall approach and strongly support its proposal to include more proportionality with regard to the information firms need to provide. We also believe that it is important that ESMA clarifies that the proposals shall only apply to new requests for the authorisation of investment firms with all firms with existing authorisations being grandfathered into the new regime.

However, we believe that some of the requirements are still too broad. For example, the information requirements regarding the financial and non-financial interests of close relatives of members of the management body are in some cases overly broad, in others too detailed and intrusive and may pose questions over privacy issues in some jurisdictions. Specific examples of such instances of broad scope include the list of all custodians together with contracts under Art 6 1(c) (iii) which is overly specific, as well as the headcount information under Art 4 (2). In particular, the terms "non-financial interests" and "relationships" lack clarity, and the disclosure requirement should be limited to those particular interests or relationships which may give rise to conflicts of interest on the part of a member of the management body.

With regard to Article 2(1)(f), rather than requiring evidence that "no money laundering or terrorist financing is attempted", which in effect places a burden on the applicant firm to prove the non-existence of something for which no evidence of any kind may exist, it would be more effective to require a firm to explain which precautionary steps and control measures it had taken in order to identify and mitigate any potential money laundering and terrorist financing risks arising with regard to its source of capital and funding. In addition, further clarity is needed with respect to the types of documentary support required to ensure that the anti-money laundering risk is appropriately managed.

With respect to Article 6(1) (a), the requirement to provide a programme of initial operations for the next three years is potentially challenging and we believe a shorter period would be more appropriate. For example, the UK Financial Conduct Authority forms have focused on the initial twelve months, whilst three years is more consistent with requirements on existing firms being acquired. Alternatively, the requirement could be amended such that the programme of initial operations for the next three years would only be required so far as the firm has developed such plans, but, at a minimum, a programme for the first twelve months

would be required. Furthermore, a start-up likely would find it difficult to provide a definitive and detailed programme for its regulated and unregulated activities.

We note that in 6(1) (a) (ii) ESMA requires an applicant investment firm to “assess” whether it may have opted for the regulatory system of one Member State for the purposes of evading the stricter standards in another Member State. The term “assess” runs the risk of being misconstrued in this context and it seems more logical that a programme of operations would “describe” rather than provide an assessment of the nature referenced here. Similarly, the term “stricter standards” remains unclear, and risks being misconstrued. We would therefore suggest that this provision be replaced with a requirement for an applicant investment firm to provide a description of its rationale for having opted for the particular (regulatory system of) a Member State. We believe that, in the appropriate commercial context, this will give the firm an opportunity to explain its objectives rather than having to justify its decision to be based in one Member State over another Member State, or setting out facts concerning its commercial decision or activities which could be misinterpreted without further explanation.

<ESMA_QUESTION_CP_MIFID_1>

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

<ESMA_QUESTION_CP_MIFID_2>

AFME Response

We agree in principle, but note that the criterion for such a person to be “easily contactable at short notice” appears rather vague.

<ESMA_QUESTION_CP_MIFID_2>

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

<ESMA_QUESTION_CP_MIFID_3>

AFME Response

It is important that these criteria are applied proportionately and pragmatically.

<ESMA_QUESTION_CP_MIFID_3>

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

<ESMA_QUESTION_CP_MIFID_4>

AFME Response

We agree in principle but it is important that the Competent Authorities interpret these requirements proportionately and pragmatically in the overall context of the issue under consideration.

<ESMA_QUESTION_CP_MIFID_4>

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

<ESMA_QUESTION_CP_MIFID_5>

AFME Response

We would suggest that the requirement for an applicant to provide a fax number should either be deleted (or made optional) given that faxes are becoming increasingly obsolete in a business context. In Annex I, it is also not entirely clear what the difference is between the “designated contact person” in the applicant firm and “the person in charge of preparing the application” and it would be helpful if ESMA could clarify this. With regard to the details required for members of the management body (Annex II) we would suggest to combine the 2 sections of “educational qualification” and “training” to a new category of “qualifications/training” to avoid duplication and acknowledge that not all qualifications may have been acquired in a formal educational context.

<ESMA_QUESTION_CP_MIFID_5>

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

<ESMA_QUESTION_CP_MIFID_6>

AFME Response

Yes, we agree that such a receipt should be provided and we agree that a designated contact point in the competent authority should also be provided. It might be helpful to specify within which timeframe such a receipt should be provided, e.g. within 1 week of receipt. Furthermore, it will be particularly important for an investment firm to be notified when the authority has decided that the application to be complete and the date upon which the clock has started.

<ESMA_QUESTION_CP_MIFID_6>

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

<ESMA_QUESTION_CP_MIFID_7>

AFME Response

See our answers to Questions 1-6. We note that the assessment of the accuracy and completeness of the information provided undertaken pragmatically and within the context of the overall application.

<ESMA_QUESTION_CP_MIFID_7>

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

<ESMA_QUESTION_CP_MIFID_8>

AFME Response

We agree with the information and do not believe that additional information is required.

<ESMA_QUESTION_CP_MIFID_8>

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

<ESMA_QUESTION_CP_MIFID_9>

AFME Response

We have no specific comments on this question.

<ESMA_QUESTION_CP_MIFID_9>

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

<ESMA_QUESTION_CP_MIFID_10>

AFME Response

We support a short description of the arrangements and business model but it is important that competent authorities accept that this will be high-level only and that firms will not be able to fully anticipate all elements of their future business model such as the marketing approach which may change over time to take account of changing customer needs.

<ESMA_QUESTION_CP_MIFID_10>

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

<ESMA_QUESTION_CP_MIFID_11>

AFME Response

It will be important that competent authorities will allow sufficient flexibility to firms regarding the format and content in which the information (within the parameters of the common templates) is provided and apply proportionality principles in assessing the information.

<ESMA_QUESTION_CP_MIFID_11>

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

<ESMA_QUESTION_CP_MIFID_12>

AFME Response

We have no specific comments.

<ESMA_QUESTION_CP_MIFID_12>

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

<ESMA_QUESTION_CP_MIFID_13>

AFME Response

We have no specific comments.

<ESMA_QUESTION_CP_MIFID_13>

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

<ESMA_QUESTION_CP_MIFID_14>

AFME Response

Yes, we agree.

<ESMA_QUESTION_CP_MIFID_14>

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

<ESMA_QUESTION_CP_MIFID_15>

AFME Response

We believe that notifications of changes in branch particulars should focus on material changes, and in this context, any further acknowledgment ESMA could provide of materiality considerations would be most helpful. For example, with regard to notifications concerning the termination of the operation of the branch, the provision needs to be interpreted flexibly and pragmatically. In many instances businesses will be wound down over time and, whilst it is reasonable to set out a schedule for the planned termination, it will not always be possible (or in the interests of clients) to strictly adhere to any pre-determined schedules. It is also not clear to what extent material changes to the already communicated termination schedule would need to be notified. Furthermore, the 10-day requirement to notify the competent authority of any change to the membership of the management body under Art 4 (1) would

appear very short, and could also cause some issues with company registration requirements in certain jurisdictions. We therefore suggest a minimum 14-day timeframe.

<ESMA_QUESTION_CP_MIFID_15>

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

<ESMA_QUESTION_CP_MIFID_16>

AFME Response

See our answers to the questions above.

<ESMA_QUESTION_CP_MIFID_16>

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

<ESMA_QUESTION_CP_MIFID_17>

AFME Response

Yes, we agree.

<ESMA_QUESTION_CP_MIFID_17>

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

<ESMA_QUESTION_CP_MIFID_18>

AFME Response

Yes, we agree.

<ESMA_QUESTION_CP_MIFID_18>

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

<ESMA_QUESTION_CP_MIFID_19>

AFME Response

No, we do not agree entirely. In particular, it will be important that the Home Member State applies the requirement for “all necessary information” reasonably and pragmatically. Some of the information requirements can be interpreted in different ways so firms should be given sufficient leeway to submit information in a range of formats (within the parameters of the common templates) and level of detail as long as they are in line with the overall requirements, rather than authorities expecting and assessing an application’s completeness according to their own expectation of specific content being covered (something about which firms would not be necessarily aware). We welcome the objective of reducing the risk of inconsistent national approaches to passporting notifications. However, it is not clear what external mechanism would exist for firms to raise concerns if they felt that a certain competent authority was interpreting the information unduly prescriptively, thus delaying the review period which only starts to run from the time that the information has been assessed

to be complete and correct. ESMA are encouraged to give further thought to enhancing supervisory convergence in this context.

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

AFME Response

Yes, we agree. Whilst we generally support a move towards electronic means of communication, given for example potential technology issues and varying protocols in firms, we believe that firms should be given maximum flexibility and the ESMA should allow for both paper and electronic options for transmitting the information. We believe that the language options should make it clear that all competent authorities will accept notifications in “a language that is customary in the sphere of international finance”, typically considered to refer to English. We welcome the appointment of designated contact points by Competent Authorities.

<ESMA_QUESTION_CP_MIFID_20>

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

<ESMA_QUESTION_CP_MIFID_21>

AFME Response

Yes we believe that this would be useful. It would also be useful if it could be specified within which period such receipt should be provided, e.g. within 1 week. Furthermore, it will be particularly important for an investment firm to be notified when the authority considers the application to be complete and the clock has started.

<ESMA_QUESTION_CP_MIFID_21>

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

<ESMA_QUESTION_CP_MIFID_22>

AFME Response

We have no specific comments.

<ESMA_QUESTION_CP_MIFID_22>

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

<ESMA_QUESTION_CP_MIFID_23>
AFME Response

We have no specific comments.
<ESMA_QUESTION_CP_MIFID_23>

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

<ESMA_QUESTION_CP_MIFID_24>
AFME Response

Yes, we agree.
<ESMA_QUESTION_CP_MIFID_24>

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

<ESMA_QUESTION_CP_MIFID_25>
AFME Response

Yes, we agree.
<ESMA_QUESTION_CP_MIFID_25>

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

<ESMA_QUESTION_CP_MIFID_26>
AFME Response

See our comments to Q.10.
<ESMA_QUESTION_CP_MIFID_26>

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

<ESMA_QUESTION_CP_MIFID_27>
AFME Response

We have no specific comments.
<ESMA_QUESTION_CP_MIFID_27>

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

We do not believe that any further items should be added.

We do not support the requirement for a written declaration issued by the competent authority of the third country which formally states that the firm is subject to its effective supervision and enforcement and specifies which investment services, activities, and ancillary services it is authorised to provide in its home jurisdiction. Given that the relevant competent authorities of third countries will already be required to have entered into cooperation agreements pursuant to Article 47(2) and the Commission would have confirmed equivalence of these countries' legal and supervisory frameworks, we do not believe that such additional requirements would provide any additional regulatory reassurance and would simply be duplicative. In addition, we are concerned that in the absence of any further guidance on the obligations of competent authorities to provide such a statement (and which format it should take), the process of obtaining such a statement could be onerous and time-consuming for firms especially in the early years of the MiFID third country regime. There could even be instances where some regulators might be unwilling to provide such declarations (at least within a reasonable timeframe) which should not be used as a means to refuse access as this would run counter to the overall objectives of MiFID.

Whilst we strongly support deletion of Article 1(1) (k) of RTS 5 for the reasons outlined above, if ESMA insists that additional confirmation is required, we would suggest that a requirement for a self-declaration by the third country firm that they are duly regulated could avoid some of the issues highlighted. The existing Memoranda of Understanding between regulators should allow regulators to resolve any potential additional questions.

We therefore propose the following alternative wording to replace Article 1(1) (k) of RTS 5: with *"a written declaration issued by the third country firm ~~competent authority~~ stating that the firm is duly regulated in the third country ~~subject to effective supervision and enforcement~~, specifying which investment services, activities, and ancillary services it is authorised to provide in its home jurisdiction.*

If ESMA feel that additional reassurance is required, an efficient way of achieving this would be to expand the existing memoranda by including a general statement from the third country supervisor in relation to the firms authorised by it, perhaps by reference to any publicly available register or non-public register that the authority is willing to give ESMA access to for these purposes. The statement might confirm that the firms appearing in the register are subject to its effective supervision and enforcement and that they are authorised to provide the investment services activities and ancillary services referred to there.

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

<ESMA_QUESTION_CP_MIFID_29>

AFME Response

Not entirely. In particular, we would suggest that the requirement for characters to be of “readable size” is quite vague and should be replaced with wording such as “sufficiently prominent” which would also be in line with language used by ESMA with regards to requirements for client communications to be “fair, clear and not misleading”.

<ESMA_QUESTION_CP_MIFID_29>

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

<ESMA_QUESTION_CP_MIFID_30>

AFME Response

AFME believes that the proposed approach requires significant re-consideration to lead to a workable and beneficial outcome. Members consider that there are instances where the reporting data is duplicative of otherwise publically available market data. It is felt the level of detailed information proposed is overly complex and poses a serious risk that the intended consumers will simply not invest in the effort to understand it. Moreover the sheer number of metrics and complex structure will make it costly for regulators to ensure that the data is being produced in a consistent way that allows for valid comparisons. This will further undermine confidence in its utility. In addition, the information required to be made public under RTS 6 would lead [in certain circumstances] to commercially sensitive information being disclosed. As we will see below, the information that ESMA is proposing to be made public would, in particular for less liquid instruments, comprise in effect of transaction-level information providing details of all systematic internalisers’ positions and trading strategies in a machine-readable format.

We provide below some further concerns we have regarding the proposals as they stand and we also provide some proposals which reflect the current market practices and aid in the enhancement of valuable transparency.

Objective

To put our views in context we would like to begin by setting out the way in which we understand that the resulting information will be consumed and put to use by investment firms.

We understand that the information should be used both by buy and sell side firms to inform venue selection strategy. In this context it is useful to explain further our understanding of *venue selection*.

AFME’s members may typically carry out venue selection as a two stage process:

Stage 1: Investment firms may consider which venues should be included in their execution policy. This is a longer term process which involves deciding which venues the firm should retain a capability to access in order to be able to provide the best possible result for clients when orders are actually executed.

Stage 2: As orders are executed, investment firms will assess, on a dynamic basis, which venue(s) to which they have access can best be used to fulfil orders. In this stage of venue

selection firms may use the most up-to-date (and usually real time) market data available to ensure that selection decisions are optimised at the time of routing. It is felt that the data proposed by ESMA to be disclosed will be stale and therefore redundant for any market participant for the purpose of stage 2.

AFME is of the opinion that the proposed information to be published by execution venues is primarily used in the first stage of venue selection. Specifically it should inform investment firms as to whether the portfolio of execution venues to which a firm has access is sufficient to meet best execution or conversely if there is a likelihood that venues to which the firm does not have access can provide opportunities to materially improve the quality of execution.

We note below areas of concerns with regards to ESMA's proposal:

1) Definition of 'execution venue':

We are opposed to ESMA's view that market makers and other liquidity providers should be considered as execution venues as the terms "market makers" and "liquidity providers" are defined in MiFID 2 in a way that is inconsistent with principal OTC advancements of liquidity. Both terms relate to the provision of liquidity to trading venues and therefore their data will constitute part of the data that the trading venue publishes. In their capacity as market makers, firms interact with clients directly only when they trade away from a trading venue, either as an SI or OTC. It may have been ESMA's intention to capture those firms which may still execute as an SI or OTC in instances where the trading obligation does not apply. In that case, the obligations for such firms should be calibrated appropriately and that any language referring to market making or liquidity provision be deleted.

We also, believe that Systematic Internalisers or firms trading OTC must not be treated in the same vein as trading venues for the purpose of RTS 6 for the application of disclosing data or execution of orders. MiFID 2 Level 1 Article 27 (10) (a) clearly requires ESMA to take into account the special features of each venue and this has been overlooked in the requirements of RTS6, by subjecting Systematic Internalisers to the same requirements as a trading venues. We propose that the disclosure requirements of RTS 6 be removed for Systematic Internalisers and replaced by a separate set of requirements calibrated appropriately with high enough aggregation of data to match the risk profile of the venue.

Furthermore, there is a distinction in the Level 1 text which is not reflected in draft RTS 6. Article 27 (3) of MiFID II refers to best execution reporting requirements applying to trading venues and systematic internalisers in relation to financial instruments subject to the trading obligations under articles 23 and 28 of MiFIR, and to 'execution venues' for all other financial instruments. RTS 6 sets out reporting requirements applying to all 'execution venues', not recognising the distinction between financial instruments subject to the trading obligation and those that are not, as required under Level 1. In this regard, we believe that ESMA has exceeded its mandate in broadening the application of the reporting requirements to venues beyond those specified in Level 1 in relation to financial instruments subject to the trading obligation and therefore RTS 6 should be amended to reflect Level 1.

AFME recommends that the definition of 'other liquidity providers' used in RTS 34 (2) (e) as per the below is adopted in RTS 6 for clarity:

"Other liquidity providers are persons, other than person's pursuing a market making activity as referred to in Articles 17 and 48 of Directive 2014/65/EU, that under a formal agreement

with an issuer, hold themselves out on the financial markets on a continuous basis as willing to deal by buying and selling financial instruments.”

2) ‘Point-in-time information’ (RTS 6 – Article 3(4))

AFME does not believe that point in time information should be used to demonstrate quality of execution, rather aggregated information should be used. Point in time information is not an appropriate metric as this will lead to sensitive information being disseminated which would be very harmful to firms and will disincentives them to provide liquidity to the market.

Negative consequences for SIs: ESMA proposes under Article 3(4) of RTS 6 execution venues to make public ‘point-in time’ information on executed transactions 4 times a day, including prices and sizes, for each financial instrument. In this, there is an assumption that this information is already/or will be made publicly available through the MiFID post-trade regime. However, there is one major difference between post-trade transparency information and the information that ESMA is proposing to make public under this RTS. Under post-trade reporting, the identity of SIs is not required to be disclosed, whereas for best execution the identity of SIs has to be disclosed. This is a fundamental contradiction between the two regimes which needs to be taken into consideration.

For less liquid instruments, particularly for fixed-income instruments, the information proposed to be made publicly available under Article 3(4) of RTS 6, would effectively lead to a transaction by transaction-level/position-level information providing detailed information on all positions and trading strategies of all systematic internalisers’ in a machine-readable format. For example, for instruments that are merely traded a few times a week or a day, this requirement will lead to all trades being made public.

The information proposed to be reported under Article 3(4) of RTS 6, would, for non-equities, effectively lead to a transaction by transaction-level/position-level information providing detailed information on all positions and trading strategies of all systematic internalisers’ in a machine-readable format. For example, for instruments that are merely traded a few times a week or a day, this requirement will lead to all trades being made public.

SI performs a significant and valuable function by providing liquidity in specific instruments. The information published under Article 3(4) will, for less-liquid instrument, unveil to third parties the risk that particular SIs are taking in particular instruments and consequently adversely affect their ability to manage and unwind that risk. Such information is commercially sensitive and should not be mandated to be exposed to the public: doing so will discourage SIs from performing their function in the market. In this Consultation Paper (page 217, paragraph 7), ESMA agrees that the identity of the SIs should not be disclosed under the post-trade transparency regime considering the risks that this could cause to them. By imposing the information under article 3(4) of RTS 6 to be made public, ESMA will completely undermine the risks they are trying to prevent for SIs under the post-trade transparency regime.

Misleading non-value adding information: We believe that the intention of the point-in-time observations is to provide investment firms with a way to assess whether some venues may provide opportunities to trade at more advantageous prices than others. However, in most cases this will not be an effective metric. For example, systematic internalisers will provide quotes based on commercial policies (e.g. inventory availability, counterparty risk, settlement risk etc). Comparison of point-in-time information across SIs would therefore be meaningless and potentially misleading as, prices would have been quoted/provided based on their commercial policies. We also understand that under ESMA’s proposal disclosure

should reflect that actual transactions executed by the venue immediately after the reference times indicated. If our understanding is correct then these prices would provide a poor means of comparison as the times of the relevant transactions may vary significantly between the different venues. The result will be that the data are simply “noise” and therefore not actionable. This is true of all asset classes but, in the case of non-equities in particular, such transactions might take place hours later after the point-in-time. In other words, the point-in-time observations don’t provide a valid means of identifying whether there might have been a missed opportunity to execute a trade at a superior price.

A more valid approach (which would also work for quote-driven markets and Systematic Internalisers) would be to disclose the best quotes available. However, this information is already readily available, free of charge (with 15 minutes delay for both equities and non-equities) to any firm with a market data terminal.

We believe that a simpler and more accessible assessment of pricing quality can be made by simply referring to the non-point-in-time spread metrics already contained within the proposal. We believe that these will adequately remove the previously referred-to “noise” and provide metrics which are easy to digest and can point toward opportunity costs in terms of price. We would note that the information in this RTS is intended to be a “minimum” and would not preclude an investment firm from performing further analysis based on the data available to it

3) Timing

We do not support ESMA’s proposal to require information to be aggregated on a daily basis. We do not think that such granular data will actually be used by investment firms to make decisions as to the quality of execution of venues. Information on trends at an aggregated level over a broader period of time provides information on the quality of execution in a meaningful and appropriate format. We would therefore urge ESMA to require information to be provided on a 3 months aggregated basis. This information should be made public on a quarterly basis within ‘three months of each quarter end’ instead of within one month of each quarter end. This is still in line with the Level 1 text which requires the information to be made public at least on an annual basis.

4) Identification of financial instruments (Article 3(2)):

We believe that financial instruments should be identified by unique identifiers such as ISIN codes when available. We therefore believe that all the information that can be derived from the ISIN (such as put/call; strike price; option style; maturity date etc) should not be required to be made public. With regards to OTC derivatives instruments who do not have an ISINs, we believe it would be very challenging for best execution information to be provided instrument by instrument. As stated by ESMA in the Final Report on ESMA’s technical advice to the Commission on MiFID II/R (page 225, paragraph 32), the concept of ‘financial instrument’ although being relatively clear for bonds and SFP (where the ISIN code can be used as a proxy), is less practical for derivatives. We do not think it would be practical for best execution information to be published for each OTC derivative contract and we would therefore suggest for the information to be published based on derivatives buckets. For consistency, we would suggest ESMA to adopt the same buckets as defined for SIs. We believe this would make the information easier to read and analyze and provide more meaningful information to the public.

5) Volume of data:

The extreme large amount of data (ESMA is asking for daily information) will make it very difficult/near impossible for firms to use this data in a meaningful way. Moreover the sheer number of metrics and complex structure will make it costly for regulators to ensure that the data is being produced in a consistent way that allows for valid comparisons.

6) Execution costs and competition issues

It is important to note that costs and charges for RMs, MTFs and OTFs are legally subject to public access, due to the requirement that trading venues should treat all participants and prospective participants on identical terms. However SIs are only required to have commercial policies, and are allowed to 'tier' their clients based on these policies as long as they are non-discriminatory. The costs of an SI would disclose how an investment firm approaches its client base costs. Information of such nature is proprietary and confidential and must not be shared between competitors, so as not to encourage collusive behaviour between them in terms of pricing. Therefore, we are surprised with the recommendation that SIs should be publishing information on their costs, as this is diametrically opposed to long-standing principles of European Union law in the field of competition. We strongly believe that this requirement should be deleted. DG Competition will also have an interest in this issue, if the RTS is put in place as proposed.

7) Treatment of market model (Article 4 & Article 5):

ESMA acknowledges in the preamble of RTS 6 (recital 2) that differences in the execution venue, as well as the market mechanism, trading model and transaction type should be considered for purposes of requiring different validation and monitoring data. In that context, AFME members welcome that ESMA proposed different provisions for order-driven and quote-driven execution venues. However, AFME members feel that the application of this differentiation is not clear throughout the ESMA proposals.

- Data referred to as being relevant to "quote-driven markets" appear to relate in fact to "request for quote" (RFQ) markets. The correct treatment of order-driven markets in the way in which we understand them (and in the way in which they are referred to elsewhere in MiFID2/MiFIR) is therefore unclear. We are also concerned that there is no differentiation between voice and electronic for RFQ systems.
- As mentioned above, Systematic Internalisers (SIs) are not differentiated from other venues. We feel it is necessary to treat SIs under a separate set of obligations to reflect the fact that under MiFID, an SI is a firm which engages in bilateral trading with its clients in specific instruments rather than a public trading venue offering the opportunity for counterparties to match their trades

AFME's proposal

Below we present AFME's alternative proposal in which we retain the elements of ESMA's proposal which we believe can add the most value to the process.

We have analysed the ESMA proposals against the four market models which we believe are necessary to provide functional rules:

- Order driven markets (trading venues)
- Quote driven markets (trading venues)
- Request for Quote Markets (Electronic and Voice) (trading venues); and
- Systematic Internalisers

We have analysed the individual metrics in the proposal against their ability to provide actionable, non-redundant information which is of use in the first stage of venue selection. Based on this analysis we have produced a table to indicate the metrics that we believe can be usefully applied to each market model (please see below for complete table).

(*Please note:

- The Article references in the table below refer to the current ESMA RTS 6 drafting.
- Article 3.3 periodicity amended to quarterly as per suggested drafting amendments detailed towards the end of the response to this question)

Legend: Relevant; Available Elsewhere/Market Data; Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
*Art 3.3 (Likelihood)				Electronic	Voice
(a) the number of orders or requests for quotes, both in terms of volume and value, that were received quarterly	(orders only)	(orders only)	(orders only)	(orders only)	Please see footnote ²
(b) the number of transactions, both in terms of volume and value, that were executed per quarter on that day;					
(c) the number of orders or accepted/released quotes, both in terms of volume and value, that were cancelled quarterly ;					
(d) the number of orders both in terms of volume and value, that were modified per quarter					

² From an RFQ voice perspective this is impractical due to the nature of RFQs. It is difficult to record this information without further clarification as to whether this would exclude any requests for improvement to quotes following the initial request as well as the impracticability of controlling such calibration at trade level. There exists a record of those RFQ requests executed in the market, however the initial requests made are subject to quote improvements or alternatively cancels which are challenging to calibrate in the RFQ process. In the voice system there exists a reliance on human action to record such instances and it is not an automated process (unlike electronic RFQ).

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
(e) the mean and median transaction size per quarter ;	■	■	■	■	■
(f) the mean and median transaction price per quarter ;	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants
(g) Volume weighted average price per quarter ;	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants	No utility of this information to participants
(h) Market makers shall also indicate the quarterly total value of exchange-traded product units created and redeemed at their request.	n/a	n/a	n/a	n/a	n/a
Art 3.4 (Price)					
<p>As explained above we do not think that point-in-time information should be used to demonstrate quality of execution, but rather aggregated information should be used. We also wish to note that liquidity plays a large part in determining whether or not it is possible to provide certain information as requested. For highly illiquid non-equity instruments it may not be possible to provide any data which would be of benefit to the client.</p>					
Art 3.5 (Cost)					
	Order Driven	Quote Driven	SI	Electronic	Voice
(a) a description of each component of the costs imposed by the execution venue;	■	■	For further reasoning please refer to 'Execution costs and	■	■

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
			competition issues' as per above point 6		
(b) the total value of any costs;	This metric should be expressed as basis points not absolute total value	This metric should be expressed as basis points not absolute total value	For further reasoning please refer to 'Execution costs and competition issues' as per above point 6		
(c) the total value of any rebate, discounts or other payment offered to the parties; and	This metric should be expressed as basis points not absolute total value	This metric should be expressed as basis points not absolute total value	For further reasoning please refer to 'Execution costs and competition issues' as per above point 6		
(d) the existence of any non-monetary benefit received by the execution venue in connection with the order.					
Art 4.1 (Order Driven)	N/a as contingent on Art 3.4 (a) & (b)				
Art 4.2 (Order Driven)	Order Driven	Quote Driven	SI	RFQ Trading venue	
				Electronic	Voice
(a) average effective spread;			<u>Equities</u>	Please note that this is dependent on	Please note that this is dependent on liquidity
			<u>For Non-Equities</u> Please note that this is		

Legend: Relevant; Available Elsewhere/Market Data; Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
			dependent on liquidity from a non-equities perspective. Additionally, the majority of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	liquidity from a non-equities perspective. Additionally, the majority of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	from a non-equities perspective. Additionally, the majority of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.
(b) average realised spread;			<u>For Equities</u>	Please note that this is dependent on liquidity from a non-equities perspective. Additionally, the majority	Please note that this is dependent on liquidity from a non-equities perspective. Additionally, the majority of orders/quo
			<u>For Non-Equities</u> Please note that this is dependent on liquidity from a non-equities perspective. Additionally, the majority of orders/quotes are single		

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
			sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	tes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.
(c) volume-weighted average effective spread;			<u>For Equities</u>	N/A	
			<u>For Non-Equities:</u> This is Proprietary information, people choose us based on our prices not our spreads		
(d) volume weighted average realised spread;			<u>For Equities</u>	Please note that this is dependent on liquidity from a non-equities perspective. Additionally	Please note that this is dependent on liquidity from a non-equities perspective. Additionally, the
			<u>For Non-Equities</u> Please note that this is dependent on liquidity from a non-equities perspective. Additionally, the majority of		

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
			orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	ly, the majority of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.	majority of orders/quotes are single sided and due to the illiquid nature of certain instrument classes there are instances where a mid price is not something which can be provided.
(e) time weighted average price (TWAP);				N/A	N/A
(f) average volume at BBO;			For Equities	N/A	N/A
			For Non-Equities: There is n obligation for SIs to quote 'two way quotes' so this should be non applicable to SI		
(g .1) TWAP average spread at BBO;			For Equities	N/A	N/A
			For Non-Equities: There is n obligation for SIs to quote 'two way		

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
	■	■	quotes' so this should be non applicable to SI	■	■
(g .2) VWAP average spread at BBO;	■	■	For Equities For Non-Equities: There is n obligation for SIs to quote 'two way quotes' so this should be non applicable to SI	N/A	N/A
(h) book depth at 3 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 3 price increments (ticks) for each financial instrument from the BBO;	■	■		N/A	N/A
(i) book depth at 5 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 5 price increments (ticks) for each financial instrument from the BBO;	■	■		N/A	N/A
(j) previous day closing price;	■	■	■	■	■
(k) opening price;	■	■	■	■	■

Legend: ■ Relevant; ■ Available Elsewhere/Market Data; ■ Not Applicable / Unnecessary;

Identifier	Order Driven	Quote Driven	SI	RFQ Trading venue	
(l) highest executed price of the quarter ;	■	■	■	■	■
(m) lowest executed price of the quarter;	■	■	■	■	■
(n) last price before closing	■	■	■	■	■
(o) the mean and median time elapsed (to the milli-second) between a marketable order being received, by the execution venue and the subsequent execution; and	■	■	■	■	N/A
(p) average speed of execution for unmodified passive orders at first limit.	Only relevant for an order driven venue	■	■	N/A	N/A
Art 5.2 (Quote Driven)					
(a) the mean and median time elapsed between acceptance/release of a quote and execution, for all transactions in a given financial instrument; and	■	Acceptance/release is the function of the Participant not the responding venue	Acceptance/release is the function of the Participant not the responding venue	Acceptance/release is the function of the Participant not the responding venue	Acceptance/release is the function of the Participant not the responding venue
(b) the mean and median time elapsed between a request for a quote and provision of that quote, for all quotes in a given financial instrument when applicable.	■	■	■	■	■

Please note our proposed drafting for RTS 6 below. This is based on our proposals above and incorporating the table above.

AFME Proposal for RTS 6: Draft regulatory technical standards under Article 27(10)(a) of MiFID II

DRAFT COMMISSION DELEGATED REGULATION (EU) No .../..
supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the data to be provided on financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 by each trading venue and systematic internaliser and for other financial instruments each execution venue on the quality of execution of transactions on that venue.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), and in particular Article 27.

HAS ADOPTED THIS REGULATION:

CHAPTER I

General

Article 1

Subject matter

This Regulation lays down the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with Article 27(3) of Directive 2014/65/EU, taking into account the type of execution venue and the type of financial instrument concerned for the purposes of Article 27(10)(a) of Directive 2014/65/EU.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. Execution quality means assessment of price, costs, speed, likelihood of execution and settlement or any other relevant consideration.
2. Best bid and offer (BBO) means the best bid price and the best offer price provided by an execution venue for those looking to buy and sell, respectively, a specific financial instrument for at a given time.
3. Execution venue means a regulated market, multilateral trading facility, organised trading facility and systematic internaliser.

4. Trading venues means a regulated market, an MTF or an OTF, as defined in Article 4(24) of Directive 2014/65/EU
5. Other liquidity providers are persons, other than person's pursuing a market making activity as referred to in Articles 17 and 48 of Directive 2014/65/EU, that under a formal agreement with an issuer, hold themselves out on the financial markets on a continuous basis as willing to deal by buying and selling financial instruments
6. Costs mean all fees, commissions, taxes and regulatory levies imposed or incurred by the execution venue on behalf of the client.
7. Identifier means International Securities Identification Number (ISIN) as defined by ISO6166, All (Alternative Instrument Identifier) or a Unique Product Identifier available under an alternative taxonomy as defined by RTS under Article 25(2) of Regulation (EU) No 600/2014.
8. Venue identifier means the Market Identifier Code (MIC) or where unavailable the Legal Entity Identifier (LEI).
9. Market mechanism means the way in which an execution venue executes orders.
10. Trading mode means continuous trading, scheduled or unscheduled auction, trading at close, trading out of main session.
11. Transaction type means transaction category as defined under taxonomy developed for post-trade transparency purposes under Article 25(2) of Regulation (EU) No 600/2014.
12. Trading systems means the type of platform the execution venue operates: electronic, voice
13. Average effective spread means execution price compared with midpoint of BBO at time of receipt.
14. Average realised spread means execution price compared with midpoint of BBO five minutes after the time of execution (if the execution time is less than five minutes before the close or a halt, the last quote before the close or the halt is used).
15. Time weighted average price (TWAP) means the average price of a security over the course of a specified period of time.
16. Volume weighted average price (VWAP) means the average price weighted by volume, it is measured by the currency value of all trading periods divided by the total trading volume for a specified period of time.
17. Average speed of execution for unmodified passive orders at first limit means the time elapsed between a limit order (that matches the BBO) being received by the execution venue, and the subsequent execution of this order, calculation shall exclude modified orders.
18. LIS is the minimum qualifying transaction size in accordance with Art 4 of the Regulation (EU) No 600/2014.
19. Standard Market Size means the Standard Market size defined in accordance with Article 14 of the Regulation (EU) No 600/2014.

Article 3

Content of information to be published by execution venues

1. The information to be published shall include for each execution venue, subject to (c) and (d) below, the following information:

- (a) the instrument identifier and venue identifier or name;
- (b) the date for which the information relates, ISO 8601 date format.;

(c) for trading venues only, the nature and duration of any outage or trading suspension or scheduled auctions on that day; and

(d) for trading venues only, the duration of trading interruptions as the result of any volatility auction or circuit breaker which occurred in relation to any instrument on that day;

2. For financial instruments identifiable by an instrument identifier, each financial instrument traded on each execution venue shall be identified by the instrument identification code type and the financial instrument identifier. The following information relevant to the each financial instrument shall also be identified: the currency code (ISO 4217) and, the price notation (indication as to whether the price is expressed in monetary value, in percentage or in yield);

3. For derivative instruments not identifiable by an instrument identifier, information on the quality of execution shall be made public at an aggregated level as defined for the purpose of the systematic internaliser calculations under Article x of Regulation x [forthcoming delegated acts].

4. The information to be published shall include the following information relevant to the **likelihood of execution**, when applicable:

(a) the number of orders or requests for quotes, both in terms of volume and value, that were received in that quarter;

(b) the number of transactions, both in terms of volume and value, that were executed in that quarter;

(c) the number of orders or accepted/released quotes, both in terms of volume and value, that were cancelled in that quarter;

(d) the mean and median transaction size in that quarter;

5. The information to be published shall include for trading venues the following information quarterly, relevant data to the **execution costs**:

(a) a description of each component of the costs imposed by the execution venue;

(b) the total in basis points of any costs; and

(c) the total in basis points of any rebate, discounts or other payment offered to the parties.

The information to be published shall also include for all execution venues quarterly, relevant data to the execution costs:

(a) the existence of any non-monetary benefit received by the execution venue in connection with the order.

Article 4

Additional data to be published by trading venues

1. For each financial instrument traded on each trading venue , when applicable:

(a) average effective spread;

(b) average realised spread;

- (c) volume-weighted average effective spread;
- (d) volume weighted average realised spread;
- (e) average volume at BBO;
- (f.1) TWAP average spread at BBO;
- (f.2) VWAP average spread at BBO
- (g) book depth at 3 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 3 price increments (ticks) for each financial instrument from the BBO;
- (h) book depth at 5 ticks, representing the total available liquidity, expressed as the product of price and volume of all bids and offers for 5 price increments (ticks) for each financial instrument from the BBO;
- (i) the mean and median time elapsed (to the mili-second) between a marketable order being received, by the execution venue and the subsequent execution; and
- (j) average speed of execution for unmodified passive orders at first limit.

Article 5

Additional data to be published by quote driven execution venues

1. (a) the mean and median time elapsed between an **electronic** request for a quote and provision of that quote, for all quotes in a given financial instrument when applicable.

Article 6

Additional data to be published by systematic internalisers

1. For each financial instrument traded as a systematic internaliser, the following information shall also be made public:

- (a) the mean and median time elapsed (to the mili-second) between an order being received, by the execution venue and the subsequent execution

Article 7

Format of the information to be published

1. The content set out in this Annex shall be recorded for each trading day that the execution venue is open for trading. The tables attached sets out the prescribed format for the publication of this information.
2. Execution venues shall make available the data in a consistent, usable, and machine-readable electronic format and make such reports available for downloading from an internet web site that is free and readily accessible to the public.

Article 8

Frequency of the information to be published

The reporting period shall commence on the first of each quarter to the last day of that quarter for each quarter of the year. This data shall be published without charge within three month at each quarter end.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,
For the Commission
The President On behalf of the President [Position]
<ESMA_QUESTION_CP_MIFID_30>

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

<ESMA_QUESTION_CP_MIFID_31>
AFME Response

As per our explanation above, we believe it is neither reasonable nor effective to require point-in-time information to be made public. Therefore, as the ESMA's proposal to split trades into ranges only relates to the point-in time-information we think that the ranges should not apply.

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>
AFME Response

Further differences and considerations should be made between types of venues (e.g. multilateral vs. bilateral venues) to tailor the information that different market participants and venues are able to produce. There are relevant differences between trading infrastructures from a micro structural point of view that should be addressed in assessing the suitability of publishing the requested data.

AFME members wish to highlight that for some quote-driven markets such as RFQ, it is beyond their operational capacity to provide some of the fields requested that make reference to actionable moments in time (mean and median time elapsed between requests for a quote and the provision of a quote and between the client's acceptance of a quote and its execution).

For voice trading systems, non-equity market participants consider that making publicly available the time in which it takes to respond for all transactions in a given instrument as

required by Article 5 is impractical and onerous for the type of transaction system. In the case of electronic venues, members consider that the capacity to provide the data will be determined by the market structure and the features that are present in the trading venue.

<ESMA_QUESTION_CP_MIFID_32>

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

<ESMA_QUESTION_CP_MIFID_33>

AFME Response

Members considered that the metrics and the data required as proposed by ESMA might be duplicative of other existing and proposed information systems such as post-trade disclosure under the MiFID transparency regime. Consistency between the various reporting systems is required for purposes of ensuring the orderly and effective functioning of the markets for market participants.

ESMA proposes in Article 7(2) of RTS 6 that execution venues should publish on an internet website, on a free and available basis, data gathered for each day that the venue opened during the quarter. For this requirement, AFME members wish to note the importance of any client confidentiality agreements which may be in place and the possible abuse of the information by third parties who may attempt to redistribute or exploit the information for purposes beyond the objectives of the regulation. Client confidentiality may be at risk for cases when data is presented in ways that allows the identification of the parties by looking at the orders published.

The required metrics also expose commercial information of systematic internalisers and market makers to the rest of the market and will have an adverse impact on the ability of such systems to advance risk. In addition, in equities, the exposure of the information may assist predatory trading techniques.

<ESMA_QUESTION_CP_MIFID_33>

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

<ESMA_QUESTION_CP_MIFID_34>

AFME Response

We do not support ESMA's proposal to require information to be aggregated on a daily basis. AFME members consider that the aggregation level proposed on a daily basis is overly unnecessary and could end up being very harmful for SIs.. In addition, we do not think that such granular data will actually be used by investment firms to make decisions as to the quality of execution of venues. We propose that the language as per preamble 3 in RTS 7 should be used as the basic aggregate requirement: *'To prevent potentially market sensitive disclosures, the volume of execution and the number of executed orders shall be expressed as a percentage of the investment firm's total execution volumes and number of trades rather than as an absolute value'*

Information on trends at an aggregated level over a broader period of time provides information on the quality of execution in a meaningful and appropriate format. We would therefore urge ESMA to require information to be provided on a 3 months aggregated basis.

This information should be made public on a quarterly basis within ‘three months of each quarter end’ instead of within one month of each quarter end. This is still in line with the Level 1 text which requires the information to be made public at least on an annual basis.

<ESMA_QUESTION_CP_MIFID_34>

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

<ESMA_QUESTION_CP_MIFID_35>

AFME Response

RTS 7(4), in the lists of instruments there should be an additional “Other” subcategory for instruments not caught by explicit references, e.g. under Commodity Derivative and Other Derivatives.

<ESMA_QUESTION_CP_MIFID_35>

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

We do not fully agree with ESMA's proposed RTS 7.

Article 27(6) of MIFID II requires investment firms who execute client orders to summarise and make public on an annual basis, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained.

We believe that ESMA's draft RTS 7 Article 6 completely goes beyond the Level 1 text.

Our proposition is that Article 6 should only apply to the quality of execution obtained in relation to the five execution venues (and not the quality of execution obtained by an investment firm more broadly on all execution venues).

Therefore, Article 6(1) (b) of RTS 7 should be deleted as this is only required for the top 5 execution venues and this is already covered under Article 5(5) to 5(12) of RTS 7. Our rationale for this may be summarised as follows:

- The construction of Article 27(6) suggests that the information on the quality of execution obtained must be linked to the executions on the top five trading venues (i.e. if the EC had intended to require firms executing client orders to provide information on quality of execution obtained independently of the top five trading venues, arguably it would have included the requirement more explicitly and independently of the top-5 disclosure).
- This is mirrored in recital 97 of the MiFID 2, which requires firms to make public their top five venues – there is no mention of broader information on all venues being needed (as would be the case if article 6(1)(b) were interpreted broadly).

In addition, under Article 6(1) (a) of RTS 7, ESMA also proposes firms to make public a 'summary of the analysis and conclusions' drawn by the investment firm on the quality of execution obtained on the execution venues. Again here, we believe that the word summary in the level 1 text only applies to the top 5 execution venues and not to ALL execution venues. This should also be reflected under Article 3(2) of RTS 7.

Finally, with regards to Article 6 (2) (c) to (e), we believe that ESMA has no mandate to require these further summaries to be made publicly available. Here again, we believe these requirements go beyond the level 1 text. In addition, we do not see how these additional summaries would add any value to the information already made available.

With regards to Article 5 of RTS 7, we have the following proposals and we would suggest this article to be redrafted as follows:

- RTS 7, Article 5 (1): The information to be published for all client orders of each class of financial instrument, executed by the investment firm, ***excluding any orders directed by the client to such venue***, in each month of the year shall include the following:

- RTS 7, Article 5(5): 'For each of the top five execution venues the percentage of ~~passive and aggressive~~ **liquidity-added, liquidity-removed or traded-in-auction** orders executed on that execution venue'
- RTS 7, Article 5(6) for each of the top five execution venues the breakdown of the percentage of client orders between retail clients, professional clients and **eligible counterparties which have elected to receive best execution**, respectively.
- RTS 7, Article 5(7): ~~For each of the top five execution venues the percentage of client order that was directed by the client to be executed on that execution venue~~
- RTS 7(9): ~~For each of the top five execution venues the existence and monthly value of any payments, discounts or rebates received from the execution venue together with a description of the nature of any non-monetary benefits;~~

Reasoning for deletion of Article 5 (9): the payment structure of venues is already publically available and should not be disclosed by the investment firm as it may give the impression that it is a factor in the choice of venue. If such payment or rebate structures are problematic, regulators should not approve the structures.

<ESMA_QUESTION_CP_MIFID_36>

(iii) Transparency

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

<ESMA_QUESTION_CP_MIFID_37>

AFME Response

Yes, we agree with the proposal to add to the current table a definition of request for quote trading systems. However, this is subject to the comments that we make below which are consistent with our response to Q70 in the non-equities transparency section of the CP on RFQ trading systems. We believe that in the case of ETFs, RFQ systems constitute a valid market system and should therefore be included on the table

Request-For-Quote definition (RFQ) trading system

ESMA has made two significant changes to its RFQ definition as of its May 2014 Discussion Paper: (i) “provided” has been changed to “published”; and (ii) an exclusivity of execution feature has been added. The definition of RFQ in ESMA’s May 2014 Discussion paper was: “A trading system where a quote or quotes are only provided to a member or participant in response to a request submitted by one or more other members or participants. The requesting member or participant may conclude a transaction by accepting the quote or quotes to it on request”.

AFME does not agree that RFQ systems involve the publication of quotes rather than provision of quotes. We suggest ESMA replace the word “published” with “provided”. In RFQ protocols, firms only provide the quote to the requestor of the quote; the quote is not published widely. The term “publication” in ESMA’s proposed definition suggests that the trading system involves disclosure of the quote to a wider audience - inconsistent with existing RFQ systems. If ESMA’s intention is to redefine RFQ trading systems to incorporate pre-trade disclosure into the definition, this not appropriate. The pre-trade requirements are applied to trading systems; they should not redefine the trading system itself. ESMA does not redefine other trading systems based on the information to be made public based on the pre-trade transparency requirements. If the term “published” is used and interpreted in the broadest sense of the word, existing RFQ systems would fall within “trading systems not covered by the first four rows” under Table 1 Annex 1 of draft RTS 9. This cannot be the intention.

Further, for any instruments/trades eligible for to pre trade waivers, they care not obliged to publish trades meaning that they could not be classified as RFQ systems. Finally, this is inconsistent with Level 1, whereby the intent is for the requirements to be calibrated for different types of trading systems. For example, Recital 14 of MiFIR provides that “timely pre-trade and post-trade transparency requirements taking into account the different

characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems...”.

AFME agrees with ESMA’s addition of the exclusivity element of RFQ – this is consistent with and a critical element of the way in which RFQ protocols operate.

RFQ trading system information to be made public

Under the draft RTS, ESMA proposes that under RFQ systems, the bids and offers and attaching volumes should be made pre trade transparent. We believe that such a regime: (i) would have significant unintended consequences; and (ii) is inconsistent with ESMA’s Level 1 mandate.

Request-driven markets exist to provide liquidity and a point-in-time price in markets that may not have sufficient continuous buying and selling interest to support an order-driven model. RFQ is the principal trading model in the non-equity markets for this reason. As a result, if a workable RFQ system is not permissible under the new MiFID regime, there would be no means for trades to be executed – i.e. there would be no other trading protocols that could absorb the trade flow. Therefore, it is critical to ensure well-functioning RFQ trading systems may continue to operate under the new MiFID framework with a pre-trade regime. The ESMA pre-trade proposal goes beyond what a functioning RFQ system could support. Ultimately, if the pre trade information to be made public remains as is, it will be detrimental to market liquidity and result in wider spreads, negatively impacting end-investors and issuers. AFME proposes that there are alternative disclosure requirements that would be in keeping with the Level 1 requirements.

We understand that ESMA is limited by the Level 1 requirements, which requires venues to disclose bids, offers and depth of trading interest to the public (Article 8 MiFIR). However, we stress that MiFIR Article 8 provides that the pre trade transparency requirements should be calibrated to the trading system.

Further, ESMA is aware that, the value of the SSTI threshold will be critical to ensuring a workable regime, since it is at sizes below the SSTI that the pre trade regime will apply.

(i) Disclosure on a price-by-price basis for RFQ could have significant unintended consequences

AFME supports ESMA’s objective to increase pre trade transparency in line with the MiFID II mandate. However, we are concerned that there will be significant adverse impacts as a result of inappropriate transparency on RFQ systems.

We believe that, for RFQ systems, making the “bids and offers and attaching volumes submitted by each responding entity” pre trade transparent may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency. As at today, the answers provided to an RFQ are only known to the entity, which submitted the request. The entities answering to the RFQ do not see the prices provided by the other responding entities and, more importantly, third parties. This asymmetry of information is justified by the fact that the responding entities take on risk that

would be increased, with no benefit for both parties, if the bids and offers were made publicly known. Such sealed auctions take place in many business sectors and are important to ensure integrity of the systems and do not adversely impact pricing. As the fixed income market is generally quite illiquid, disclosure on a price-by-price basis to the wider public pre trade disclosure could have severe consequences. It is essential that market makers on venue operating an RFQ protocol are not required to disclose pre trade prices to other market makers (i.e. other price makers).

RFQs on and off venues are privately negotiated. The responses that are returned to the client (from the dealers the client requests quotes from) are bilaterally private, in other words, the dealers that are party to the request for quote will not see each other's quotes. This allows market makers to protect their risk by ensuring that no-one can move the market against the potentially winning quote. Once the client has secured the best price within the live auction and the dealer subsequently accepts the trade, that winning dealer is privy to immediate cover information (i.e. the differential between the accepted price and the next best price). The other dealers will know, after a rules-determined time period, if they covered, tied or if they traded away (typically meaning they provided the 3rd or least best price). Again, the post trade information that is disseminated is deliberately designed to ensure that winner's curse is reduced as much as possible and is only available to those dealers that participated in the RFQ process.

If full disclosure was required to the wider public price makers would be disincentivised to quote and there would be a race to the bottom. Specifically, the risk for the responding entity would increase as other price makers could price against them, disincentivising liquidity providers to quote in a short time frame and leading a cumulative impact of dealers pricing against each other (i.e. a race to the bottom), resulting in increased financial stability risks, market makers that are unable to hedge their risks/unwind their positions and worse prices for end-users. Further, the winner's curse would be exacerbated, with market participants pricing against both the price maker and the investor, resulting in wider spreads and less depth of liquidity.

This is all the more important as RFQ systems are prevalent only for those markets/instruments characterised with insufficient trading interest to support continuous trading. Such instruments are often characterised by:

- The fact that, for a given instrument/class of instruments, investors often have similar interests at the same time, so that revealing an interest is equivalent to revealing the side of the position taken by the counterparty to this interest;
- The difficulty for liquidity providers to find a counterpart to unwind their position, leading them to manage imperfect hedges.

For these instruments, imposing full transparency on bids and offers provided by entities responding to RFQs would increase the risk taken by market makers in a domain where no effective hedge is available. As a result, it would discourage market makers to answer RFQs and would increase investor costs, leading to greater borrowing costs for issuers.

(ii) ESMA's proposal is inconsistent with its Level 1 mandate

Article 8(2) of MiFIR provides that the transparency requirements should be calibrated for the different types of trading systems. The clear intention of MiFIR is to ensure that pre trade transparency is introduced in a manner that is appropriate for the trading system. By introducing a regime that requires every bid and offer and underlying volume to be published pre trade, as ESMA has proposed, undermines the RFQ (as explained above), making it unworkable as a trading system. This directly conflicts and inconsistent with MiFID II. Nowhere does the regulation seek to prohibit RFQ systems – which the ESMA proposals, in effect, do. We note that ESMA has not provided any explanation as to how it has fulfilled its mandate under Article 8(2), such that the integrity of the RFQ trading system is preserved.

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

(iii) AFME that venues should disclose the average prices for each RFQ at instrument level

AFME’s proposed solution to mitigate all the above risks would be to require venues to provide average prices at instrument level for RFQ systems rather than price-by-price information. In such a framework, venues would provide the average price based on the prices provided by price-makers in response to each RFQ.

Disclosure by the venue of average RFQ prices provides the market with a great deal more information than the indicative prices provided by venues and would be of a high level of value. Another significant different between indicative prices and average prices by RFQ is that market participants will see that there is actual trading interest with the average, whereas they will not see this in the indicative prices of venues. Further, we believe that disclosure of average prices for each for each RFQ is completely consistent with Level 1. Article 8(1) MiFIR requires that “market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices...”. We note that the text does not require each and every bid and offer to be published. In fact, Article 8(1) provides that pre trade transparency should be calibrated for different types of trading systems.

AFME acknowledges that volume information is important to make sense of the price information. However, we do not believe that the specific volume size is necessary and, in fact, could be detriment. Therefore, we suggest that the average price with the volume band is published.

AFME's proposed amendments to RTS 9 Annex 1 Table 1

Description of the type of system and the related information to be made public

Type of system	Description of system	Information to be made public
Request-for-quote trading system	A trading system where a quote or quotes are provided published in response to a request for quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.	The bids and offers and attaching volumes submitted by each responding party. The average bids and offers for each RFQ and attaching volume band

<ESMA_QUESTION_CP_MIFID_37>

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

<ESMA_QUESTION_CP_MIFID_38>

AFME Response

Referring to CP p56, para 26(i)-(v) AFME feels the drafting in this section will give rise to uncertainty and ambiguity given the differences in agency law between Member States and therefore for the purpose of proper legal context and clarity this section would be better drafted with the following proposed amendments:

- i. dealing on own account with another member or participant who acts for the account of **or on behalf of** a client;*
- ii. dealing with another member or participant where both are executing orders on own account;*
- iii. acting for the account of **or on behalf of** both buyer and seller;*
- iv. acting for the account of **or on behalf of** the buyer where another member or participant acts for the account of **or on behalf of** the seller; and*
- v. trading for own account against a client order.*

With regard to the exhaustive list of transactions which fall within the scope of a negotiated transaction that does not contribute to the price formation process AFME seeks clarity from

ESMA that it is an oversight or error in the CP that the list at p58, para 36, does not also contain give-up/give-in per the list at RTS 8, Art 6.

In relation to portfolio trades, the RTS 8, Article 1(4) definition appropriately repeats the description of these trades as ESMA defined them in both the DP and CP as *“a transaction in more than one financial instrument where those financial instruments are traded as a single lot against a specific reference price”*. However, Article 6(b) describes a portfolio trade as one *“that involves the execution of 10 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot”*. AFME therefore believes that this is inconsistent and proposes the following drafting amendment to Article 6(b) (reiterated at our response to Q48 in relation to corresponding Article 2 (b)):

*“the transaction is part of a portfolio trade that involves the execution of **more than one 10 or more** financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot”*

AFME is concerned that the exhaustive list has been shortened in any case and now lacks clarity. For example it no longer explicitly includes a reference to “securities financing transactions” and “exchange for physical” trades. AFME believes that this is contrary to ESMA’s declared aim to ensure that the proposed list is sufficiently flexible to allow for changes in the regulatory regime around negotiated trades. By way of another example, the exchange of ordinary shares for depositary receipts* AFME would regard as within the scope of transactions not considered to contribute to the price formation process, but again there is no specific reference which demonstrates the disadvantages of exhaustive lists. We would like to also note that the list should include forward looking prices/ forward benchmark pricing because these do not contribute to the price formation process. AFME would be grateful therefore for clarification that these trades are intended to be captured by one of the defined transactions in the proposed list or proposes that these be explicitly re-included.

With regard to transactions more generally that involve the creation/redemption or conversion of ordinary shares, and AFME’s belief that these meet the intent of inclusion in this list but risk falling outside owing to potentially not meeting the current drafting, then AFME proposes Article 6(d) (and the corresponding Article 2(c)) should be redrafted as follows:

*“The transaction is contingent **on the purchase, sale, creation or redemption** of a derivative contract **or other financial instrument** having the same underlying and where all the components of the trade are meant to be executed only as a single lot*

Furthermore, AFME is concerned that the list is not more similar to the exhaustive list under RTS 8, Article 2, given ESMA seeks a consistent and coherent approach which AFME believes should also apply to all transactions considered to not contribute to the price formation process either under the trading obligation or as a negotiated transaction.

**the exchange of ordinary shares for depositary receipts in which the buyer transfers to the seller either (a) depositary shares representing a corresponding amount of ordinary shares and receives in return from the sell; or (b) ordinary shares and receives in return from the seller the equivalent ordinary shares or depositary shares*

evidencing ordinary shares, as the case may be, with the functional goal of operationally moving the security between markets

<ESMA_QUESTION_CP_MIFID_38>

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

<ESMA_QUESTION_CP_MIFID_39>

AFME Response

Referring to CP p56, para 26(i)-(v) AFME feels the drafting in this section will give rise to uncertainty and ambiguity given the differences in agency law between Member States and therefore for the purpose of proper legal context and clarity this section would be better drafted with the following proposed amendments:

- vi. dealing on own account with another member or participant who acts for the account of **or on behalf of** a client;*
- vii. dealing with another member or participant where both are executing orders on own account;*
- viii. acting for the account of **or on behalf of** both buyer and seller;*
- ix. acting for the account of **or on behalf of** the buyer where another member or participant acts for the account of **or on behalf of** the seller; and*
- x. trading for own account against a client order.*

With regard to the exhaustive list of transactions which fall within the scope of a negotiated transaction that does not contribute to the price formation process AFME seeks clarity from ESMA that it is an oversight or error in the CP that the list at p58, para 36, does not also contain give-up/give-in per the list at RTS 8, Art 6.

In relation to portfolio trades, the RTS 8, Article 1(4) definition appropriately repeats the description of these trades as ESMA defined them in both the DP and CP as “*a transaction in more than one financial instrument where those financial instruments are traded as a single lot against a specific reference price*”. However, Article 6(b) describes a portfolio trade as one “*that involves the execution of 10 or more financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot*”. AFME therefore believes that this is inconsistent and proposes the following drafting amendment to Article 6(b) (reiterated at our response to Q48 in relation to corresponding Article 2 (b)):

*“the transaction is part of a portfolio trade that involves the execution of **more than one 10 or more** financial instruments from the same client and at the same time and the components of the trade are meant to be executed only as a single lot”*

AFME is concerned that the exhaustive list has been shortened in any case and now lacks clarity. For example it no longer explicitly includes a reference to “securities financing transactions” and “exchange for physical” trades. AFME believes that this is contrary to ESMA’s declared aim to ensure that the proposed list is sufficiently flexible to allow for changes in the regulatory regime around negotiated trades. By way of another example, the

exchange of ordinary shares for depositary receipts* AFME would regard as within the scope of transactions not considered to contribute to the price formation process, but again there is no specific reference which demonstrates the disadvantages of exhaustive lists. We would like to also note that the list should include forward looking prices/ forward benchmark pricing because these do not contribute to the price formation process. AFME would be grateful therefore for clarification that these trades are intended to be captured by one of the defined transactions in the proposed list or proposes that these be explicitly re-included.

With regard to transactions more generally that involve the creation/redemption or conversion of ordinary shares, AFME's belief that these meet the intent of inclusion on this list but risk falling outside owing to potentially not meeting the current drafting, then AFME proposes Article 6(d) (and the corresponding Article 2(c)) should be redrafted as follows:

*"The transaction is contingent **on the purchase, sale, creation or redemption** of a derivative contract **or other financial instrument** having the same underlying and where all the components of the trade are meant to be executed only as a single lot*

Furthermore, AFME is concerned that the list is not more similar to the exhaustive list under RTS 8, Article 2, given ESMA seeks a consistent and coherent approach which AFME believes should also apply to all transactions considered to not contribute to the price formation process either under the trading obligation or as a negotiated transaction.

**the exchange of ordinary shares for depositary receipts in which the buyer transfers to the seller either (a) depositary shares representing a corresponding amount of ordinary shares and receives in return from the sell; or (b) ordinary shares and receives in return from the seller the equivalent ordinary shares or depositary shares evidencing ordinary shares, as the case may be, with the functional goal of operationally moving the security between markets*
<ESMA_QUESTION_CP_MIFID_39>

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

<ESMA_QUESTION_CP_MIFID_40>

AFME Response

AFME agrees with ESMA's definition of the key characteristics of orders held on order management facilities.

<ESMA_QUESTION_CP_MIFID_40>

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

<ESMA_QUESTION_CP_MIFID_41>

AFME Response

AFME welcomes ESMA's acknowledgment that ADT may not provide the best metric on which to establish the large in scale threshold in all circumstances, as raised by AFME in its response to the DP. AFME is therefore concerned that ESMA has not taken the opportunity

to explore or propose any other valid substitute or complimentary measures representing alternative approaches that, as ESMA itself states, are possible.

ESMA states that the LIS threshold is designed to protect large orders from adverse market impact and to avoid abrupt price movements that can cause market distortions. However, under the current, and also now proposed by ESMA, LIS thresholds, just 0.17% of trades are executed above this level (as previously demonstrated by analysis provided by AFME in its DP response) and as such the proposed solution will not therefore meet its primary objectives.

While there may be some limited merit to the introduction of a lower band, particularly for less liquid and more often SME shares, LIS as a proportion of ADT is still very high for illiquid shares. Owing to the comments made in this and its DP response AFME believes that a super liquid band is unwarranted and superfluous.

<ESMA_QUESTION_CP_MIFID_41>

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

<ESMA_QUESTION_CP_MIFID_42>

AFME Response

AFME supports the simplification brought by the alternative approach based on a single LIS threshold of €1m and this avoids 2 ETFs on the same benchmark potentially being treated differently

<ESMA_QUESTION_CP_MIFID_42>

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

<ESMA_QUESTION_CP_MIFID_43>

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<ESMA_QUESTION_CP_MIFID_43>

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

<ESMA_QUESTION_CP_MIFID_44>

AFME Response

Yes, AFME supports the proposed approach.

<ESMA_QUESTION_CP_MIFID_44>

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

<ESMA_QUESTION_CP_MIFID_45>

AFME Response

Yes, AFME supports the proposal to publish with each quote the time the quote has been entered or updated.

<ESMA_QUESTION_CP_MIFID_45>

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

<ESMA_QUESTION_CP_MIFID_46>

AFME Response

Yes, AFME agrees that a price reflects the prevailing market conditions when close to comparable quotes for the same share, depositary receipt, ETF, certificates or other similar financial instrument on other trading venues.

<ESMA_QUESTION_CP_MIFID_46>

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

<ESMA_QUESTION_CP_MIFID_47>

AFME Response

AFME does not feel that ESMA's selected proposal adequately reflects average trade sizes. This is apparent in that it places 95% of securities into a single band and make SMS unrepresentative of average trade size for the overwhelming majority of securities.

It is for this reason that AFME would have preferred DP Option 1, as although it would still leave some seven redundant bands, and make SMS three times the average trade size of some 30% of securities in the lowest band, this option would go some way to remediating the mismatch in the current proposal.

<ESMA_QUESTION_CP_MIFID_47>

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

AFME reiterates the concerns highlighted at question 39 in regard to the proposed exhaustive list of transactions not contributing to the price formation process. With regard to this list at RTS, Article 2, AFME notes that it has no explicit reference to ““exchange for physical” trades or to the exchange of ordinary shares for depositary receipts*, as well as forward looking prices/ forward benchmark pricing, which AFME regards as within the scope of transactions not considered to contribute to the price formation process. Again AFME believes that this is contrary to ESMA’s declared aim to ensure that the proposed list is sufficiently flexible to allow for changes in the regulatory regime around such trades and this illustrates the disadvantages of exhaustive lists.

AFME would be grateful therefore for clarification that these trades are intended to be captured by one of the defined transactions in the proposed list or proposes that these be explicitly re-included. Furthermore, including these trades here at RTS 8, Article 2 and also in RTS 8 Article 6, therefore making these lists more similar, would ensure ESMA achieves a consistent and coherent approach as per its objective.

Regarding the specific transactions in the list at Article 2 we make the following comments:

In line with our comments on portfolio trades in our response to Q39 above, the RTS 8, Article 1(4) definition appropriately repeats the description of these trades as ESMA defined them in both the DP and CP as *“a transaction in more than one financial instrument where those financial instruments are traded as a single lot against a specific reference price”*. However, Article 2 (b) describes a portfolio trade as one *“that involves the execution of 10 or more shares from the same client and at the same time and the components of the trade are meant to be executed only as a single lot”*. AFME therefore believes that this is inconsistent and proposes the following drafting amendment to Article 2 (b):

*“the transaction is part of a portfolio trade that involves the execution of **more than one 10 or more** shares from the same client and at the same time and the components of the trade are meant to be executed only as a single lot”*

With regard to transactions more generally that involve the creation/redemption or conversion of ordinary shares, and AFME’s belief that these meet the intent of inclusion on this list but risk falling outside owing to potentially not meeting the current drafting, then AFME proposes Article 2(c) should be redrafted as follows:

*“The transaction is contingent **on the purchase, sale, creation or redemption** of a derivative contract **or other financial instrument** having the same underlying and where all the components of the trade are meant to be executed only as a single lot*

In relation to Article 2(f), we do not agree with ESMA’s proposal to limit the “collateral trade” exemption to “segregated collateral” trades. First, “segregated” and “non-segregated” collateral trades are operationally equivalent, and neither can contribute to the price discovery process. Applying ESMA’s proposal would hence result in a de facto ban of “non-segregated” collateral trades. Second, the European Market Infrastructure Regulation

authorizes “non-segregated” collateral arrangements, and it is not in ESMA’s mandate to supersede EMIR Level 1 text through a MiFID II Level 2 text.

In order to avoid this alteration of European markets, we recommend the following drafting amendment:

“the transaction is for the purpose of transferring financial instruments as ~~segregated~~ collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;”

Specifically under Article 2 none of the transactions as described would cover any subsequent leg of a back to back transaction completed solely for the purposes of allowing a single settlement and so we propose this be included in this list as per the following suggested drafting:

“(i) the transaction is a subsequent leg of a back to back transaction completed for the purposes of allowing a single settlement”

Furthermore, in regards to the flexibility of the lists, we would be grateful for further detail on the relevant process and timescales required to add transactions to the list should the need arise.

**the exchange of ordinary shares for depositary receipts in which the buyer transfers to the seller either (a) depositary shares representing a corresponding amount of ordinary shares and receives in return from the sell; or (b) ordinary shares and receives in return from the seller the equivalent ordinary shares or depositary shares evidencing ordinary shares, as the case may be, with the functional goal of operationally moving the security between markets.*

<ESMA_QUESTION_CP_MIFID_48>

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

<ESMA_QUESTION_CP_MIFID_49>

AFME Response

AFME notes a possible inconsistency of approach in the proposed identifier of “XOFF” “where an investment firm does not know it is trading with another investment firm acting as SI” to the proposed approach at CP Section 5.4 p450-452, and in particular para 12.

CP Section 5.4 and the related RTS 23 proposes the following hierarchy:

- Seller always reports UNLESS
- One firm is an SI, then it reports.

AFME understands that ESMA is trying to ensure that where an investment firm trades with a client in the capacity of an SI that it is clear to both the broker and the client that the investment firm acting as an SI will report the trade “SI” which is achieved if the SI always reports. However certain other issues arise. Firstly, this reverses the current practice that the broker investment firm when not acting as an SI still reports, even for a client seller. This reversal which potentially will require the client seller to report will be at considerable and unnecessary cost to the industry and likely disruption to market data quality without an

outweighing meaningful benefit. Secondly, RTS 8, Article 12 conveys post trade transparency obligations on investment firms, not an SI, and an investment firm is an SI on an instrument by instrument basis not as a firm. In relation to broker to broker transactions and following ESMA's logic, to report "SI" confers upon an investment firm to know always whether or not the investment firm with which it trades is acting in the capacity of an SI. As this is unlikely to be the case then ESMA risks that all investment firms will report "XOFF" in this circumstance leading to few trades identified "SI" and will lead to double reporting and to the low quality of transaction data which ESMA seeks to avoid in section 5.4 of the CP.

In order to fulfil the need for clarification with regard to publication and address issues of low quality transaction data, AFME instead proposes:

1. Executing (or order-handling) firm reports. The executing firm is:
 - a. The firm that receives an order and fills it. [This would include any SI receiving an order]
 - b. The firm that receives a request-for-quote and subsequently executes a transaction based on that quote.
2. If the executing firm cannot be determined, then the seller reports
3. Reporting firm would report their status with respect to the instrument [SI or XOFF]

Furthermore, Table 1 in RTS 8 proposes currency as one of the required fields and makes reference to ISO4217. We would like to highlight that ISO4217 does not officially support minor currencies. We would appreciate if ESMA could confirm whether this requirement assumes currency reporting should be done in major currency.

<ESMA_QUESTION_CP_MIFID_49>

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

<ESMA_QUESTION_CP_MIFID_50>

AFME Response

Yes AFME considers that it contributes to further insight as to the timeliness of publication, as it would show the possibility of delay due to factors such as technical faults as well as the possibility of cancellation or amendment on a day later than trade date.

<ESMA_QUESTION_CP_MIFID_50>

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

<ESMA_QUESTION_CP_MIFID_51>

AFME Response

While we broadly agree with the proposed list of flags that trading venues and investment firms have to make public we caveat this with the following comments:

- Both flag “G” and flag “T” in Annex I, Table 2, reference “Non-price forming trades” but both are described as an Article 2 transaction flag, confusing terminology used between that which is used for transactions falling under Article 2 and Article 6.
- In this respect, flag “G” also appears to be a duplicate of flag “T”,
- We therefore propose that flag “G” be deleted and collapsed into flag “T”, and flat “T” be corrected to refer to trades that do not contribute to the price discovery process as per Article 2. This will allow clarity for reporting non-price discovery transactions under Article 2 as “T” and for reporting non-price forming transactions under Article 6 as “P” providing clear delineation.
- We would like to express concern at the inclusion of a large-in-Scale flag, as it may contradict the purpose of a LIS waiver. For example, the trade report can allow market participants to infer the presence of a stub which is allowed to remain hidden, from a pre-trade perspective. Therefore, we believe the reporting deferral should apply to the whole order and flagging LIS trades where a stub remains leads to information leakage to the detriment of the client whose order is being executed and any firm committing capital to facilitate execution
- We would recommend that further work in regards to the allowed permutations of the fields is undertaken and suggest this is modelled on the Market Model Typology (MMT).

<ESMA_QUESTION_CP_MIFID_51>

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

<ESMA_QUESTION_CP_MIFID_52>

AFME Response

Yes, we agree with the proposed definition of normal trading hours for market operators and for OTC, and with shortening the maximum possible delay to one minute. . However, we would like to seek further clarification of normal trading hours for OTC, as we understand it to be the “standard hours of the investment firm”. Should this be the case, we would also appreciate confirmation that APAs would be available to support investment firms during the operation of standard hours. We believe that portfolio trades should only be reported when the whole basket is complete because all the components of a portfolio trade should be considered to be one order and hence the full order should be reported at the same time. Failing to do so may lead to information leakage which goes against the spirit of such trades being exempt from pre-trade transparency

<ESMA_QUESTION_CP_MIFID_52>

Q53. Do you agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under article

20? Do you think other types of transactions should be included? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_53>

AFME Response

Yes we broadly agree, but note that consistent with our answer to Q48, we also believe there is an issue in reserving the exemption for “collateral trades” for trades related to “segregated collateral”. We hence recommend the following drafting amendment to RTS 8, Article 13 (f):

“transfers of financial instruments as ~~segregated~~ collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.”

We also propose that RTS 8 Article 13 includes intra-group trades in the list of non-price forming trades. Such trades are undertaken for the purposes of transferring risk within corporate groups. An investment firm transferring risk in this way to another group entity should not be considered to have concluded a transaction for the purposes of the MiFID II transparency requirements. This would be equivalent to the CFTC Part 43 reporting rules. Such transactions facilitate the appropriate risk management within a financial group, and do not have any relevance to the price formation process.

<ESMA_QUESTION_CP_MIFID_53>

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

AFME welcomes that ESMA recognises the need to ensure a more appropriately calibrated regime of deferred publication for SME shares. However, AFME believes strongly that the proposal put forward by ESMA will not achieve this objective. A smaller absolute minimum qualifying size (MQS) in the lowest average daily turnover (ADT) band does not have relevance for the purpose of ensuring proportionate thresholds for the lower level of liquidity of these shares compared those in the higher bands. Instead the relevant measure is the relationship of the size of the MQS to the ADT and to normal traded sizes which must be taken into account when setting MQS thresholds, particularly for SME shares. Changes to address this are shown in green and italics in table below.

AFME remains generally concerned about the impact of the proposed delays on large trades also in liquid stocks. Superimposing this concern AFME is convinced that a second unaddressed problem exists, common to all levels of liquidity, which relates to the more occasional trades that might be deemed “super large”. To allow for continuation of these important trades we propose a fourth MQS level for each ADT band. The tables demonstrate that AFME proposes the longer delays are available only to trades that represent the normal total market activity of many days, such that in the last bucket MQS equates to 100 days trading. Changes to address this are shown in red and bold in table below.

To demonstrate these issues we set out the percentages of the MQS to ADT in ESMA’s proposal alongside what we consider to be more appropriate levels of MQS and delays:

ESMA			AFME Proposal			ESMA		AFME Proposal		
Average daily turnover (ADT) in EUR	Minimum qualifying size of transaction for permitted delay	Timing of publication	Average daily turnover (ADT) in EUR	Minimum qualifying size of transaction for permitted delay	Timing of publication	Max available MQS to ADT %	Min available MQS to ADT %	Max available MQS to ADT %	Min available MQS to ADT %	
> 100m	10,000,000 60 minutes 20,000,000 120 minutes 35,000,000 EOD		> 100m	10,000,000 60 minutes 20,000,000 120 minutes 35,000,000 EOD 350,000,000 EOD +1		10% 20% 35%		10% 20% 35% 350%		
50m – 100m	7,000,000 60 minutes 15,000,000 120 minutes 25,000,000 EOD		50m – 100m	7,000,000 60 minutes 15,000,000 120 minutes 25,000,000 EOD 250,000,000 EOD +1		14% 30% 50%	7% 15% 25%	14% 30% 50% 500%	7% 15% 25% 250%	
25m – 50m	5,000,000 60 minutes 10,000,000 120 minutes 12,000,000 EOD		25m – 50m	5,000,000 60 minutes 10,000,000 120 minutes 12,000,000 EOD 150,000,000 EOD +1		20% 40% 48%	10% 20% 24%	20% 40% 48% 600%	10% 20% 24% 300%	
5m – 25m	2,500,000 60 minutes 4,000,000 120 minutes 5,000,000 EOD		5m – 25m	2,500,000 60 minutes 4,000,000 120 minutes 6,000,000 EOD 100,000,000 EOD +1		50% 80% 100%	10% 16% 20%	50% 80% 120% 2000%	10% 16% 24% 400%	
1m – 5m	450,000 60 minutes 750,000 120 minutes 1,000,000 EOD		1m – 5m	450,000 120 minutes 1,500,000 EOD 5,000,000 EOD +1 50,000,000 EOD +2		45% 75% 100%	9% 15% 20%	45% 150% 500% 5000%	9% 30% 100% 1000%	
500,000 – 1m	75,000 60 minutes 150,000 120 minutes 225,000 EOD		500,000 – 1m	100,000 120 minutes 500,000 EOD 5,000,000 EOD +1 40,000,000 EOD +2		15% 30% 45%	8% 15% 23%	20% 100% 1000% 8000%	10% 50% 500% 4000%	
100,000 – 500,000	30,000 60 minutes 80,000 120 minutes 120,000 EOD		100,000 – 500,000	100,000 120 minutes 250,000 EOD 1,000,000 EOD +2 25,000,000 EOD +3		30% 80% 120%	6% 16% 24%	100% 250% 1000% 25000%	20% 50% 200% 5000%	
< 100 k	15,000 60 minutes 30,000 120 minutes 50,000 EOD		< 100 k	100,000 EOD 250,000 EOD +3 1,000,000 EOD +4 10,000,000 EOD +5			15% 30% 50%		100% 250% 1000% 10000%	

The low level of MQS to ADT, particularly in the lower bands, highlights that when an investor seeks to exit it is unlikely that the party trading on risk will have had sufficient time to unwind the position by the time of the investor's deferred publication. This in turn demonstrates how

MQS set at levels which do not bear a calibrated and proportionate relationship with ADT will penalise risk transfer and those larger investors which seek to benefit from it. Provision of capital remains a vital aspect in the provision of liquidity for growth instruments.

Therefore we propose to significantly increase the MQS thresholds sizes for SMEs (in some instances by over 2,000%) as detailed in the following amendments to the table which allow only the longest delays for the highest MQS, thus not disadvantaging SME shares and providing consistency across all of the bands. We would suggest that by reshaping the table as below it becomes easier to see the dynamics we are trying to accommodate.

Furthermore, it is important to note that the shortening of thresholds also has an significant impact on costs in terms of 'market impact': our initial analysis suggests that the increase in market impact of a T+0 unwind for ALL trades THAT qualified for the maximum T+2 or T+3 deferred reporting in 2014 ranges from approx. 35% to 55% in aggregate (across all sizes of trade observed) and depending on the level of liquidity of the instrument. Within this, less liquid instruments are most impacted: for stocks with <€50m ADV, transactions sized at 50-100% of ADV may see an increase in market impact of more than 160%, with this increasing

still further for transactions representing >100% of ADV. In reality, such transactions will be hard if not impossible to unwind on a T+0 basis.

Minimum qualifying size of transaction for permitted delay

		Average daily turnover (ADT) in EUR							
		> 100m	50m – 100m	25m – 50m	5m – 25m	1m – 5m	500k – 1m	100k – 500k	< 100 k
Timing of publication	60 minutes	10,000,000	7,000,000	5,000,000	2,500,000				
	120 minutes	20,000,000	15,000,000	10,000,000	4,000,000	450,000	100,000	100,000	
	EOD	35,000,000	25,000,000	12,000,000	6,000,000	1,500,000	500,000	250,000	
	EOD +1	350,000,000	250,000,000	150,000,000	100,000,000	5,000,000	5,000,000		100,000
	EOD +2					50,000,000	40,000,000	1,000,000	250,000
	EOD +3							25,000,000	1,000,000
	EOD +5								10,000,000

This allows a simple restatement to display the relevant dynamic which is not the size of the trade but the number of days' worth of market activity it represents. Thus:

Maximum number of days worth of trading for permitted delay

		Average daily turnover (ADT) in EUR							
		> 100m	50m – 100m	25m – 50m	5m – 25m	1m – 5m	500k – 1m	100k – 500k	< 100 k
Timing of publication	60 minutes	0.1	0.1	0.2	0.5	n/a	n/a	n/a	n/a
	120 minutes	0.2	0.3	0.4	0.8	0.5	0.2	1.0	n/a
	EOD	0.4	0.5	0.5	1.2	1.5	1.0	2.5	n/a
	EOD +1	3.5	5.0	6.0	20.0	5.0	10.0	n/a	n/a
	EOD +2	n/a	n/a	n/a	n/a	50.0	80.0	10.0	n/a
	EOD +3	n/a	n/a	n/a	n/a	n/a	n/a	250.0	n/a
	EOD +5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Minimum number of days worth of trading for permitted delay

		Average daily turnover (ADT) in EUR							
		> 100m	50m – 100m	25m – 50m	5m – 25m	1m – 5m	500k – 1m	100k – 500k	< 100 k
Timing of publication	60 minutes	n/a	0.1	0.1	0.1	n/a	n/a	n/a	n/a
	120 minutes	n/a	0.2	0.2	0.2	0.1	0.1	0.2	n/a
	EOD	n/a	0.3	0.2	0.2	0.3	0.5	0.5	Tables 2-4
	EOD +1	n/a	2.5	3.0	4.0	1.0	5.0	n/a	1.0
	EOD +2	n/a	n/a	n/a	n/a	10.0	40.0	2.0	2.5
	EOD +3	n/a	n/a	n/a	n/a	n/a	n/a	50.0	10.0
	EOD +5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	100.0

<ESMA_QUESTION_CP_MIFID_54>

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

<ESMA_QUESTION_CP_MIFID_55>

AFME Response

AFME supports ESMA's alternative proposal of a standard €5m threshold.

<ESMA_QUESTION_CP_MIFID_55>

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

<ESMA_QUESTION_CP_MIFID_56>

<ESMA_QUESTION_CP_MIFID_56>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_57>

AFME Response

No. AFME does not agree.

1. *The framework for determining a liquid market is critical and an inappropriate regime, which doesn't account for the characteristics of the fixed income markets (e.g. dynamic liquidity and heterogeneity) and is inconsistent with the Level 1 will result in significant unintended consequences*

Before commenting on ESMA's specific proposals, we highlight the importance of the liquidity calibration under MiFID II. Whilst a primary objective of MiFID II is to increase transparency, the various calibrations have been introduced by the legislation to safeguard liquidity and the functioning of the markets. The purpose of the liquidity calibration is to ensure that illiquid markets: (i) are not subject to the pre trade transparency regime and (ii) are subject to deferred post trade transparency. If illiquid markets are treated as liquid under the transparency regimes, market makers will be discouraged from committing capital to facilitate trades, impacting liquidity and spread. Ultimately, this would adversely impact end-investors (pension funds and insurance policy holders) and issuers: (i) it would be more difficult for investors to manage their portfolios since liquidity would decrease and spreads would widen; and (ii) it would be more difficult for issuers (such as corporates and governments) to raise financing through debt. We note that this is contrary to the European

Commission's growth agenda, including the Capital Markets Union project. Therefore, it is of critical importance that the liquidity calibration is fit for purpose.

AFME is very concerned by the approach that ESMA has taken and we do not believe that the proposed framework is fit for purpose. We believe that the proposal is: (i) inconsistent with ESMA's mandate under Level 1; and (ii) ineffective. ESMA has justified that its framework is appropriate because a high proportion of bonds are correctly classified. ESMA's own analysis demonstrates that this is not an appropriate conclusion. Whilst indeed the overwhelming majority of instruments classified as illiquid are correctly done so, as demonstrated in column 8 of **Table 5** (page 104), 42% to 74% of instruments in the liquid category are incorrectly classified based on ESMA's own liquidity test - this means that the majority of instruments classified as liquid are in fact illiquid. Therefore, the calibration is not fit for purpose. Further, AFME has undertaken its own analysis using TRAX data³, demonstrates that almost all trading volume and transactions fall in the liquid category, rendering the calibration redundant. For example, using the TRAX data, 99.57% of trading volume and 97.42% of trades in European Sovereign Bonds are classified as liquid, more or less equivalent to having no calibration at all.

Under paragraph 35, ESMA has stated that it is aware of the risks that might arise from COFIA and it intends to remedy possible weaknesses through the waivers and deferrals for LIS or SSTI. First and foremost, we stress the importance of getting the liquidity calibration right in the first instance. It is not sufficient to produce a flawed calibration and attempt to soften the adverse effects of the significant errors using other tools under MiFID II. MiFID II sets a legal precedent for defining secondary market liquidity, which may be implemented in other legislative regimes for other purposes (such as the CSDR). Therefore, it is critical that the definition of "liquid market" is appropriate in and of itself. Further, despite ESMA's statement of mitigation, ESMA has not incorporated any allowances for its liquidity error margins in the SSTI/LIS thresholds. If ESMA nonetheless adopts a static liquidity calibration that has significant error margins, there needs to be a specific adjustment for this in the SSTI/LIS regime (e.g. reduce test threshold for LIS to 50th percentile).

AFME is also concerned about the way in which ESMA has used its data to produce its results, especially regarding the inconsistency across the proposals and the opacity of the details of its analysis (such as assumptions). For example, for calculating the SSTI and LIS thresholds, ESMA has removed trades below EUR 100k in size from its analysis. It has not done this for the liquidity tests. If ESMA were to remove the below EUR 100k trades from its analysis for the liquidity calibration, since approximately half of corporate trades are below EUR 100k, the margins of error (false positives) would significantly increase because more instruments would fail to meet the liquidity test (under paragraph 45). We urge ESMA to be more transparent in its calculations to ensure that the industry can provide effective feedback and that it ensures that the data is used consistently to ensure integrity of the output.

³ AFME has undertaken testing on trade data provided by TRAX. 10,091 traded fixed income bonds were randomly chosen from six asset classes (government bonds, supranationals, corporate bonds, high yield, covered bonds and securitisation). Trade data for these securities was tested over the period 1 October 2011 to 30 September 2013. Given that these securities were chosen at random, we can assume that this universe is proportionally representative.

2. We urge ESMA to reconsider its choice and adopt the IBIA approach rather than the COFIA model

As expressed in AFME's response to the Discussion Paper dated 22 May 2014, IBIA is the appropriate framework for liquidity calibration for bonds rather than the COFIA approach. As such, we urge ESMA to reconsider its proposal to apply COFIA to bonds. ESMA has given the following reasons for its decisions: (i) COFIA approach will provide the market participants with stability and predictability in respect of transparency rules; (ii) COFIA is much less complex than IBIA and will be less of an administrative burden for industry and authorities alike; and (iii) applying COFIA will calibrate the liquidity status of newly issued financial instruments in an easy and straightforward manner. We believe that these reasons are flawed and insufficient to justify a COFIA regime for a number of reasons:

- **ESMA's COFIA approach is inconsistent with the Level 1 text** – MiFID II defines a liquid market as a market for financial instruments or class of instruments for which there are ready and willing buyers and sellers taking into consideration the average frequency and size of transactions, the number and type of market participants and the average spread. A COFIA approach whereby liquidity is based on the features (such as issuance size alone) of the instruments is inconsistent with this definition.
- **The concept of inherent liquidity characteristics for fixed income is not meaningful resulting in poor liquidity classification** – as per AFME's response in May 2014, we again stress that the concept of inherent liquidity characteristics is not appropriate for fixed income. This is demonstrated in ESMA's own calculations, which show that whilst classes of illiquid instruments can be identified, classes of liquid instrument cannot: ESMA's results show that the proposed COFIA produces false positives of approximately 40% to 74% (i.e. illiquid instruments incorrectly classified as liquid). While there is some broad correlation between issuance size and liquidity (as discussed later), this is not a sufficiently granular approach to establish liquidity parameters in the fixed income markets that are highly heterogeneous. Liquidity is driven by a complex set of fundamental factors and not the features of the instruments. We recommend that liquidity should only be measured by parameters that observe the behaviour of the instrument (e.g. frequency of trading – consistent with Level 1). Physical features can neither be used to predict the "inherent" liquidity nor categorise instruments into groups that behave in a similar way in terms of liquidity.
- **A COFIA approach cannot truly incorporate the dynamic nature of liquidity of bonds** – it is widely understood that bond liquidity changes over time: bonds may become more or less liquid throughout the term outstanding. As such, the Level 1 definition of MiFID is explicit that the lifecycle of bonds needs to be considered. However, a COFIA approach by its nature cannot monitor changes in liquidity over time. The ESMA in its proposal in no way even attempts to capture this aspect of liquidity – the COFIA approach is static as it is based solely on the unchanging characteristic of issuance size. This is completely inconsistent with the Level 1 mandate.
- **ESMA itself has recognised that the IBIA approach is the most appropriate way of measuring liquidity** – ESMA itself used an IBIA approach based on parameters

consistent with the level 1 text to test the accuracy of its COFIA proposal. The results show that COFIA is fundamentally flawed as it results in an extremely high error margin relating to false positives. We argue that as ESMA has recognised the accuracy of the IBIA approach and as it is possible for investment firms and authorities to implement it (as it has been done for equities), there is no possible foundation for the COFIA approach to be adopted.

- **COFIA approach is likely to lead to inconsistency of application and an inefficient regime** – the decentralised nature of the COFIA approach means that each and every market participant will be applying classifications. Having firms undertaking the same classification exercises individually will likely result in an inconsistent, duplicative, inefficient, unworkable and highly fragmented regime. Such a fragmented regime is in direct contradiction with objectives of Capital Markets Union and even the objectives of MiFID II: *“in the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 stressed the need to establish a European single rule book applicable to all financial instruments in the internal market”*.
- **IBIA is not more operationally burdensome to implement** – notably, the majority of the industry that is materially active in the fixed income markets proposed IBIA for bonds, meaning it is the approach that not only the industry deem most appropriate for bonds but, also, can be operationally workable. We note that the calculations using IBIA will be no more operationally burdensome than the SI, the SSTI and the LIS calculations. In addition, as referenced by ESMA in its Technical Advice to the Commission, a market solution must be developed prior to implementation to provide EU wide trade data in all instruments across all types of trading (venue and OTC), which data can be used for IBIA calculations. Therefore, the operational challenges are not sufficient reason for ESMA to reject the IBIA approach.
- **A COFIA approach is likely to lead to regulatory arbitrage** - by basing liquidity categorisation primarily on such factors as issuance size produces greater opportunities for regulatory arbitrage. Specifically, it enables issuers to devise issuance strategies to obtain the best regulatory treatment (e.g. issuing below the issuance size). It is essential that the regime adopted by ESMA does not introduce perverse incentives for issuers. Objective measurements of liquidity based on the trading behaviour of instruments are far sounder.

We also highlight that whilst ESMA is right that IBIA does not work for all non-equity products (such as derivatives) and many market participants identified this in their response, including AFME, the significant majority of market participants materially active in the bond markets supported an IBIA approach for bonds. Level 1 does not prescribe that the same approach needs to be taken for all non-equity products (i.e. a class or an instrument approach). Also, it is false that adopting an IBIA approach for bonds and a COFIA approach for derivatives would make the regime complex. We reiterate that ESMA has already introduced an IBIA approach for equities; therefore, demonstrating that is not too complex to adopt different approaches for different asset classes.

Article 6 of draft RTS 9 sets out ESMA's proposed draft provision dealing with the specification of what instruments could benefit from the MiFIR Article 9(1)(c) pre-trade waiver and MiFIR Articles 11(1)(b) and 21(4) post-trade deferrals in relation to instruments for which there is no liquid market as follows:

For the purpose of Article 9(1)(c) of Regulation (EU) No 600/2014, financial instruments for which there is not a liquid market are specified in Annex III.

We would suggest that Article 6 should be amended by the addition of the text in ***bold italics*** below:

1. For the purpose of Article 9(1)(c) of Regulation (EU) No 600/2014, financial instruments for which there is not a liquid market are as specified in accordance with this Article 6 and Annex III.

Suggested amendments to draft regulatory technical standards

2. The criteria for determining whether there is a liquid market for a bond as specified in Annex III table 1 shall be applied to all relevant bonds on a quarterly basis on the first working day of the months of January, April, July and October based on trading data from the previous [x months]:

a. by the competent authority for the most relevant market in terms of liquidity for that bond; or

b. where the competent authority opts not to make the determination directly, by investment firms either themselves or under appropriate arrangements established by them.

3. The most relevant market in terms of liquidity for a bond shall be the Member State in which the trading venue that first provided reference data to ESMA under Article 3 of [RTS 33] is authorised.

4. A liquid market will be deemed to exist for newly issued bonds if the issuance size is above [750mm].

5. Where a bond with an issuance size above [750mm] has been issued within 14 days of the end of a quarter, that bond shall be deemed illiquid until assessed at the end of the following quarter.

Definitions

'bond' has the meaning given to that term in Annex III.

Annex III: Table 1
Bonds – liquidity criteria

A liquid market will be deemed to exist for a bond if the issuance size of a bond is >500mm and the bond trades:

- (1) at least [50] days a quarter***
- (2) at least [250] times a quarter***
- (3) on average, at least [€5,000,000] nominal amount per day***

Rationale behind the above proposed approach:

AFME generally views the COFIA approach to be fundamentally flawed and unworkable to determine the liquidity of bonds. All manageable variations of the COFIA approach in terms of complexity result in unacceptable margins of error. Arguably there should be no allowance for margins of error as the result is to disadvantage issuers whose debt instruments are incorrectly classified. An IBIA approach does not have this fundamental disadvantage.

We believe that ESMA and certain competent authorities may support the COFIA approach despite its flaws for various reasons:

1. Limited appetite for competent authorities to perform calculations:

We would argue that it is appropriate for regulators to own this process as they do for equities. In the event that a local authority opts not to do so, it is reasonable that firms be permitted to apply the criteria either directly or via other arrangements (for example, with another firm or third party service provider). We believe that this will be possible and that there will be limited room for variation as the trading dataset should be the same for all. ESMA notes in their technical advice that a commercial solution will necessarily have to come to the fore to provide firms with EU wide trading data on a quarterly basis so that firms can do their systematic internaliser calculations. This same data can be used to apply the liquidity criteria to bonds.

2. Easy with limited room for error:

ESMA's primary goal should be correct classification of an instrument as liquid on the basis that it actually is liquid. Enshrining an approach that is by its nature flawed on the basis that it is simpler, puts liquidity providers, investors and individual issuers at risk with no legitimate justification. In addition, once a solution to gathering systematic internaliser calculations is in place, presumably it should be relatively easy to apply the criteria on an automated basis.

3. Stable, static regime

The very nature of bond liquidity is what makes a static classification of instruments problematic. The liquidity or otherwise of a bond varies over time. While it is possible to apply the label 'liquid' or 'illiquid' at any time, it is important that the label reflects the reality. If it does not, the impact on the behaviour of the market and the price of the underlying instruments is likely to be negative. It is impossible to determine bond liquidity based on a point in time measure as individual bonds vary in terms of liquidity and will become more or less liquid over the bond lifecycle, as recognised in the MiFIR definition of liquid market. The only measure of bond liquidity is its own distinct trading pattern over time.

A stable, static regime also provides opportunities for market participants to work around the regime resulting in unintended consequences. The same cannot be said for an IBIA approach. The bond either meets the trading criteria or it does not.

4. Capture target

ESMA made it clear in its Open Hearing on 19 February 2015 that it intends to capture a certain portion of the market as liquid. It is inappropriate for policymakers to set a target for the number of bonds they would like to capture as liquid under MiFIR and consequently create a regime to meet that objective. There is no power in MiFIR for ESMA to do so, nor should there be an inclination to do so. A bond is liquid or it is not and appropriate measures must be applied to make that specific determination. All bonds will be subject to post-trade transparency, which will contribute to bond liquidity. As more bonds become liquid they will then also become subject to pre-trade transparency. A static measure also puts an arbitrary cap on the number of bonds that may move into the 'liquid' space.

Challenges with the above-proposed approach:

We respect that there are several challenges with the above-proposed IBIA approach. We address each of these in turn below:

1. Identification of the pool of bonds a competent authority would assess

If competent authorities opt to apply the criteria directly someone will need to determine the pool of bonds to which they would apply the criteria. We believe that this should be based on the relevant market for the liquidity of the bond, which could be the Member State in which the trading venue that first provided reference data to ESMA under Article 3 of [RTS 33] is authorised.

2. Consistency of application of the criteria

Again, because a solution is required under the systematic internaliser regime with respect to gathering trade data across the EU, this should actually be fairly straightforward.

3. New issues

ESMA specifically notes that an IBIA approach would not be suitable for new issues. As explained in our response to ESMA's May 2014 Discussion Paper, ESMA could incorporate a simple solution. Because an IBIA approach relies on trading data, new issues of bonds will need to be dealt with in an alternative way. A supportable approach is to consider all bonds above a certain issuance size to be considered liquid until the next calculation date. For smaller issuances, to ensure sufficient data is collected, it will make sense to stagger the approach where a new issue comes out within 14 days of the calculation date. For example, if a new bond with an issuance size below 750mm were issued on 20th March, the first calculation date would be 1 July.

3. If ESMA continues to believe that the COFIA approach needs to be adopted for bonds, significant modifications need to be made to the current proposal

We must reiterate that a COFIA approach is not a workable approach for bonds. We believe that even if ESMA adopts the COFIA approach (which for the reasons set out above will result in significant margins of error compared with an IBIA approach), ESMA will need to

rework its proposal given the high proportion of false positives (illiquid instruments classified as liquid), as shown in **Table 5 (page 104 of the Consultation Paper)**.

We ask ESMA to take the following into account when it reconsiders its approach – each of which is set out in detail below:

- The COFIA assessment must be more granular;
- At a very minimum, issuance size thresholds must be increased; and
- ESMA must calibrate the liquidity thresholds using accurate data.

Even if the COFIA approach is improved, there will still persist significant margins of error; which would if following ESMA's approach need to be expressly accounted for in the LIS/SSTI thresholds.

(i) A more granular COFIA is needed

As explained above, even if the issuance size thresholds are increased, additional liquidity measures will be required to be incorporated into the regime since there will still be disproportionately high number of false positives. We propose that if ESMA does not propose an IBIA approach, introducing granularity to the COFIA categories can reduce the errors. Specifically, we suggest that similar to the approach taken for derivatives, ESMA introduce bond subclasses for each bond type. We stress that since ESMA has proposed a highly granular approach for derivatives (the asset class which the industry largely agreed should be calibrated using a COFIA approach), there is no clear reason to maintain the highly non-granular approach currently for bonds (the asset class which the industry largely agreed should be calibrated to the most granular approach of IBIA).

AFME has undertaken analysis using TRAX data⁴ and identified COFIA categories detailed in **Table 1**, which is based on the the following relevant characteristics: asset class, issuance size, the lifecycle of the bond and currency. In the event that ESMA continues to propose a COFIA approach, we urge ESMA to consider our a granular approach since it results in a calibration with significantly fewer false positives (illiquid bonds based on ESMA's liquidity test in paragraph 45 of Section 3 of the Consultation Paper misclassified as liquid) than ESMA's proposed COFIA approach, similar levels of false negatives (liquid bonds based on ESMA's liquidity test in paragraph 45 of Section 3 of the Consultation Paper misclassified as illiquid) and, in the majority, greater levels of transparency than ESMA's liquidity test (see **Graphs 1 and 2 and Tables 2 and 3**) for all bond types. For example, using TRAX data, for senior financial corporate bonds, ESMA COFIA approach had 83% false positives and 3% false negatives. In terms of transparency it produced 34% for trade volume, 48% for transactions and 9% for instruments. By way of comparison, in the AFME granular COFIA, there were only 10% false positives and 5% false negatives for senior corporate financials. Further, it introduces comparable levels of transparency levels of 39% for volume, 34% for trades and 15% for instruments.

⁴ ⁴ AFME has undertaken testing on trade data provided by TRAX. 10,091 traded fixed income bonds were randomly chosen from six asset classes (government bonds, supranationals, corporate bonds, high yield, covered bonds and securitisation). Trade data for these securities was tested over the period 1 October 2011 to 30 September 2013. Given that these securities were chosen at random, we can assume that this universe is proportionally representative.

Despite the improvement in the error margins, however, we highlight that the more granular COFIA approach is still highly imperfect and, as such, SSTI and LIS need to be adjusted.

Table 1: AFME's proposed granular COFIA categories

Bond type: EU sovereign bonds			
Subcategory			
Lifecycle	Currency	Outstanding amount test (EUR)	Liquidity
New issue	All currencies	1,000,000,000	Liquid
Recent issue	EUR	3,000,000,000	Liquid
Recent issue	GBP	5,000,000,000	Liquid
Recent issue	Other currency	5,000,000,000	Liquid
Old issue	All currencies	5,000,000,000	Liquid
Bond type: Non-EU sovereign bonds			
Subcategory			
New issue	USD	1,000,000,000	Liquid
New issue	JPY	1,000,000,000	Liquid
New issue	AUD	1,000,000,000	Liquid
New issue	CAD	1,000,000,000	Liquid
New issue	Other currency	-	Illiquid
Recent issue	USD	5,000,000,000	Liquid
Recent issue	AUD	5,000,000,000	Liquid
Recent issue	CAD	5,000,000,000	Liquid
Recent issue	Other currencies	-	Illiquid
Old issue	All currencies	-	Illiquid
Bond type: Senior corporate bonds			
Subcategory			
New issue	All currencies	500,000,000	Liquid
Recent	EUR	1,250,000,000	Liquid
Recent	Other currency	-	Illiquid
Old issue	EUR	1,250,000,000	Liquid
Old issue	Other currency	-	Illiquid
Bond type: Subordinated financial corporate bonds			
Subcategory			
New issue	All currencies	500,000,000	Liquid
Recent	EUR	1,000,000,000	Liquid
Recent	Other currency	-	Illiquid
Old issue	EUR	1,000,000,000	Liquid
Old issue	Other currency	-	Illiquid
Bond type: Subordinated non-financial corporate bonds			
Subcategory			
New issue	All currencies	500,000,000	Liquid
Recent	EUR	1,000,000,000	Liquid
Recent	Other currency	-	Illiquid
Old issue	All currencies	-	Illiquid
Bond type: Other EU public bonds			
All	All currencies	2,000,000,000	Liquid
For covered bonds, convertibles bond and others – further work is needed			
SFPs			
All	All	-	Illiquid
Convertible bonds financial			
All	All	-	Illiquid
Others			
All	All	-	Illiquid

We recommend using the following lifecycle categories: newly issued instruments as those that are within four weeks from issuance, recent issues as those that are one month to three years from issuance; and old instruments as those that are more than three years from issuance. Further, with regards to the new issuance category, to minimise regulatory arbitrage, we propose that any TAP on an instrument be considered a new issuance.

We note that we have not provided categories for covered bonds or convertibles because sufficient data was not available to undertake the analysis.

Graph 1: Comparison of AFME COFIA and ESMA COFIA false positives and false negatives by bond type using TRAX data from 1 October 2011 to 30 September 2012

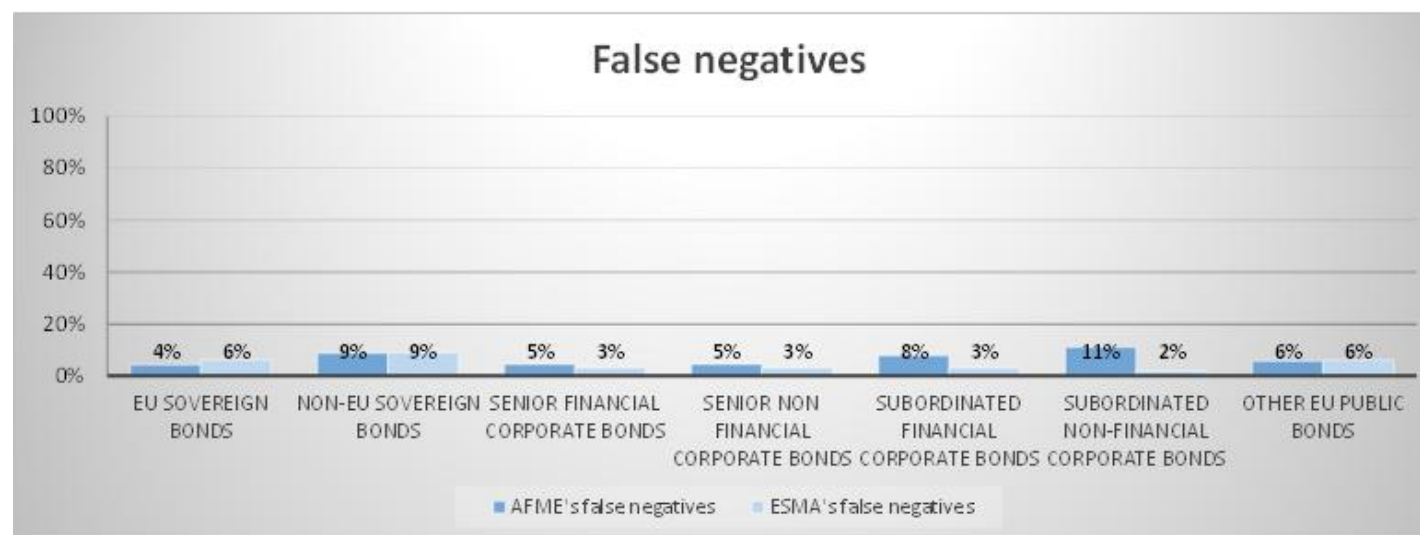
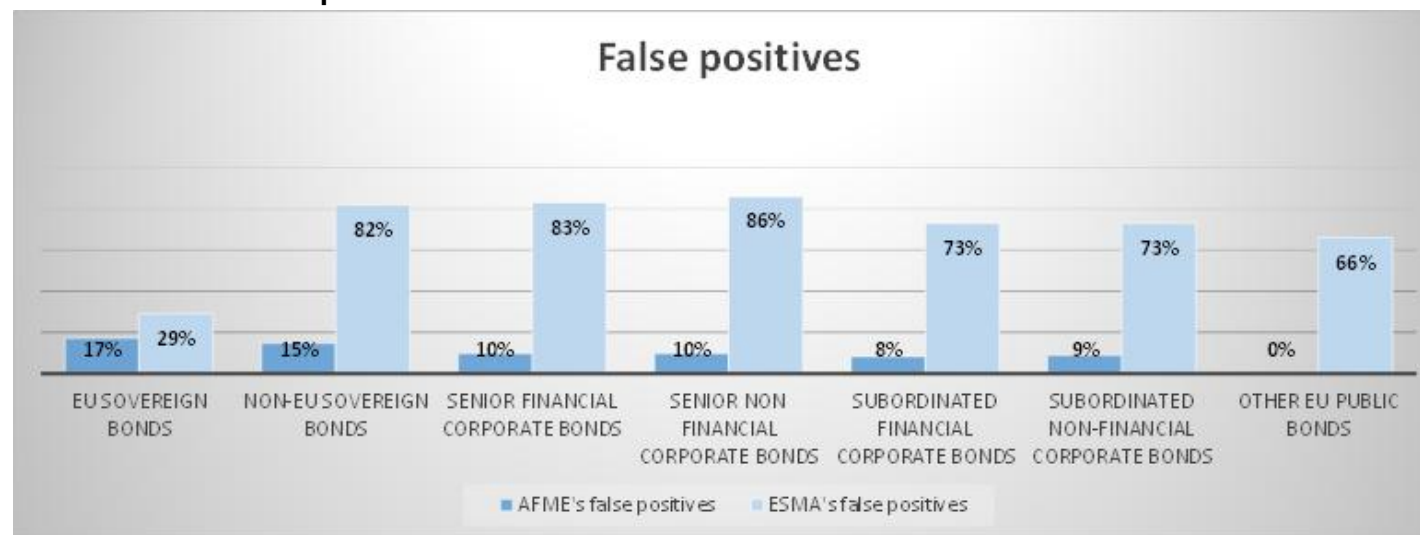
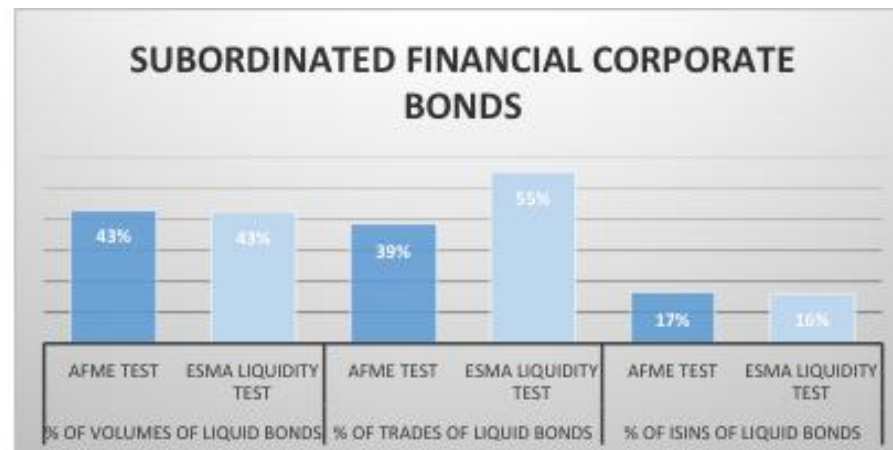
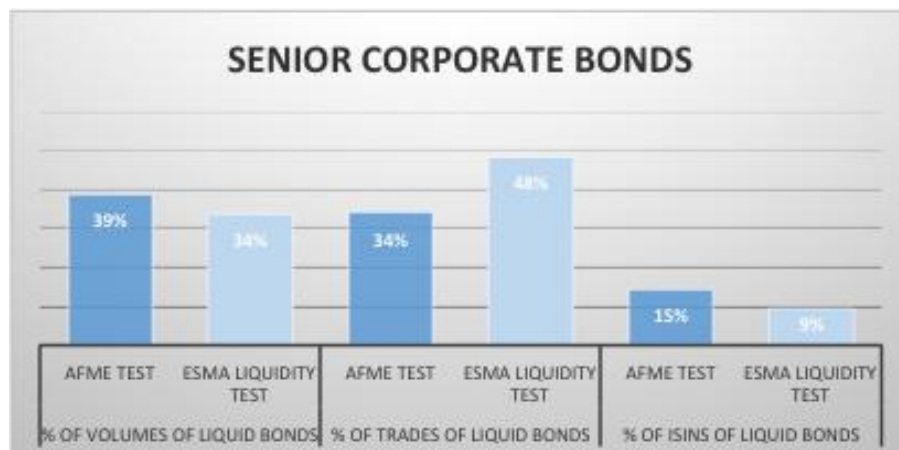
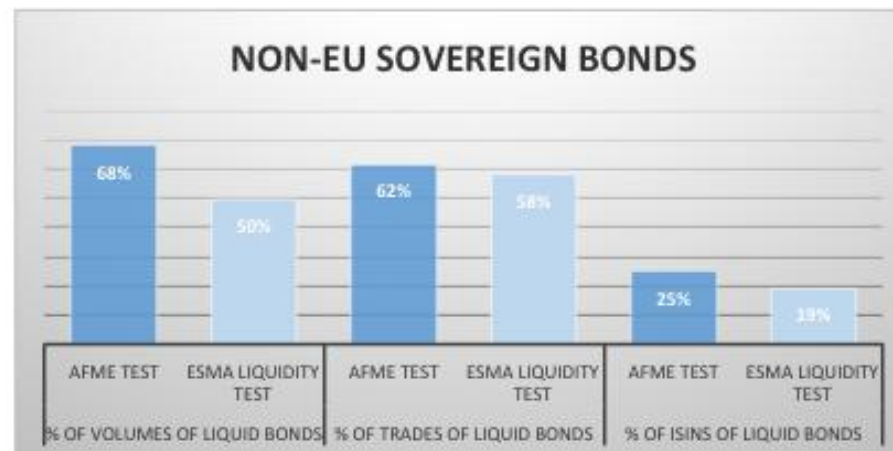
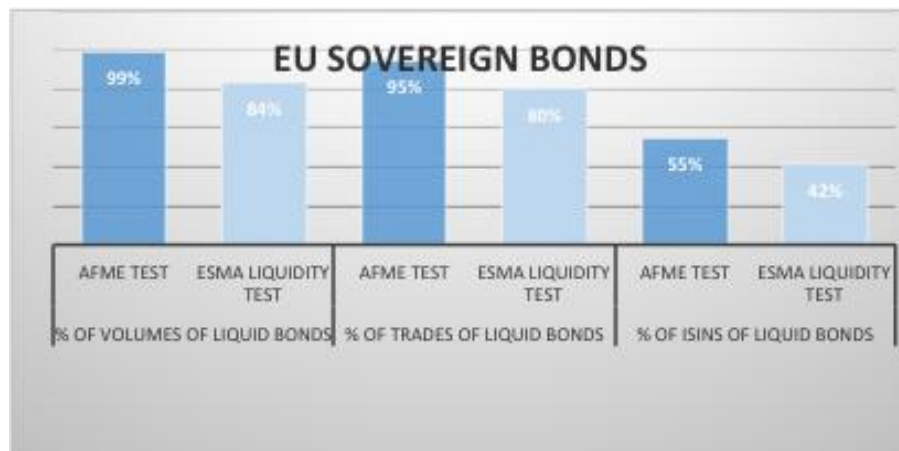
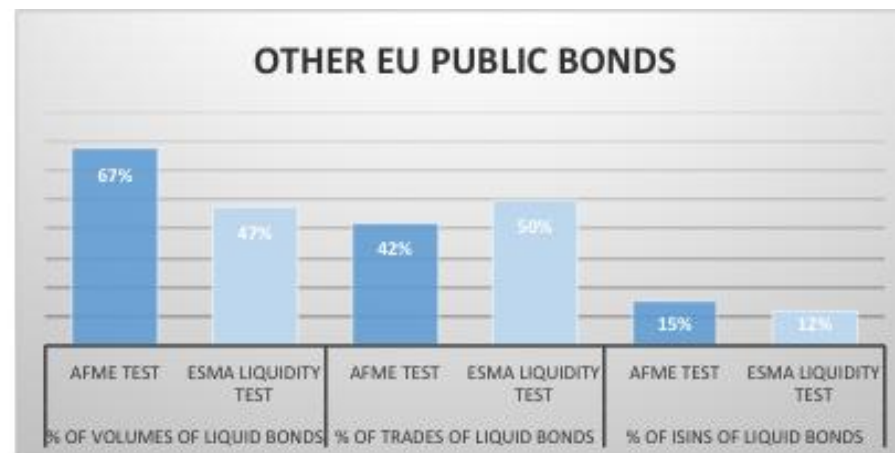
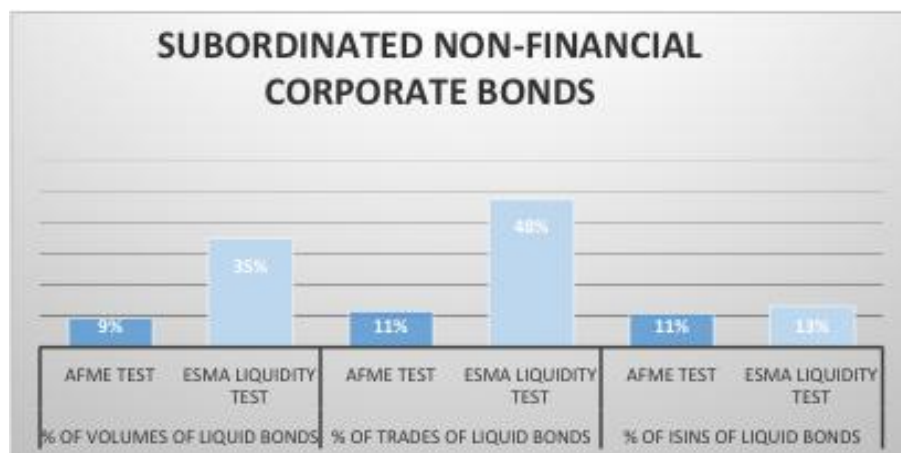


Table 2 Comparison of AFME granular COFIA and ESMA COFIA false positives and false negatives by bond type using TRAX data from 1 October 2011 to 30 September 2012

	FALSE POSITIVES		FALSE NEGATIVES	
	AFME's false positives	ESMA's false positives	AFME's false negatives	ESMA's false negatives
EU SOVEREIGN BONDS	17%	29%	4%	6%
NON-EU SOVEREIGN BONDS	15%	82%	9%	9%
SENIOR FINANCIAL CORPORATE BONDS	10%	83%	5%	3%
SENIOR NON FINANCIAL CORPORATE BONDS	10%	86%	5%	3%
SUBORDINATED FINANCIAL CORPORATE BONDS	8%	73%	8%	3%
SUBORDINATED NON-FINANCIAL CORPORATE BONDS	9%	73%	11%	2%
OTHER EU PUBLIC BONDS	0%	66%	6%	6%

Graph 2: Comparison of AFME granular COFIA by and ESMA liquidity test transparency levels by bond type (ISIN, volume and trades) using TRAX data from 1 October 2011 to 30 September 2012





	% of VOLUMES of liquid bonds		% of TRADES of liquid bonds		% of ISINs of liquid bonds	
	AFME Test	ESMA Liquidity Test	AFME Test	ESMA Liquidity Test	AFME Test	ESMA Liquidity Test
EU SOVEREIGN BONDS	99%	84%	95%	80%	55%	42%
NON-EU SOVEREIGN BONDS	68%	50%	62%	58%	25%	19%
SENIOR CORPORATE BONDS	39%	34%	34%	48%	15%	9%
SUBORDINATED FINANCIAL CORPORATE BONDS	43%	43%	39%	55%	17%	16%
SUBORDINATED NON-FINANCIAL CORPORATE BONDS	9%	35%	11%	48%	11%	13%
OTHER EU PUBLIC BONDS	67%	47%	42%	50%	15%	12%

Table 3: Analysis of AFME granular COFIA by bond type using TRAX data from 1 October 2011 to 30 September 2012

				Meeting AFME's issuance test			Meeting ESMA's liquidity test			Meeting AFME's issuance test and below ESMA's liquidity test	Not meeting AFME's issuance test and above ESMA's liquidity test	
EU SOVEREIGN BONDS				% of bond type total ISINs	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]
Column Number				1	2	3	4	5	6	7	8	9
Bond type total				100.00%							17.29%	4.29%
Bond type liquid subclasses total				54.64%	99.05%	94.91%	54.64%	83.50%	80.50%	41.65%		
Bond type illiquid subclasses total				45.36%								
Subcategory		Outstanding amount test (EUR)	Liquidity									
Lifecycle	Currency											
New issue	All currencies	1,000,000,000	Liquid	10.67%	1.32%	1.69%	9.16%	1.28%	1.51%	6.50%	28.26%	3.26%
Recent issue	EUR	3,000,000,000	Liquid	27.61%	46.22%	43.99%	20.42%	33.41%	29.85%	11.14%	34.87%	1.26%
Recent issue	GBP	5,000,000,000	Liquid	3.13%	12.42%	8.08%	2.78%	9.69%	6.47%	1.62%	37.04%	0.00%
Recent issue	Other currency	5,000,000,000	Liquid	12.18%	0.99%	1.31%	2.09%	1.07%	2.38%	2.78%	7.62%	13.33%
Old issue	All currencies	5,000,000,000	Liquid	46.40%	38.11%	39.83%	20.19%	38.06%	40.28%	19.61%	5.50%	4.25%

NON-EU SOVEREIGN BONDS				% of bond type total ISINs	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]	
Column Number				1	2	3	4	5	6	7	8	9	
Bond type total				100.00%								14.75%	8.72%
Bond type liquid subclasses total				25.03%	68.07%	61.53%	25.03%	49.65%	58.24%	18.99%			
Bond type illiquid subclasses total				74.97%									
Subcategory		Outstanding amount test (EUR)	Liquidity										
Lifecycle	Currency												
New issue	USD	1,000,000,000	Liquid	6.82%	17.66%	17.13%	5.47%	16.65%	16.21%	5.03%	14.75%	8.20%	
New issue	JPY	1,000,000,000	Liquid	2.68%	1.15%	0.41%	2.68%	0.90%	0.37%	1.90%	29.17%	0.00%	
New issue	AUD	1,000,000,000	Liquid	0.34%	0.04%	0.06%	0.34%	0.00%	0.00%	0.00%	100.00%	0.00%	
New issue	CAD	1,000,000,000	Liquid	0.56%	0.03%	0.02%	0.56%	0.00%	0.00%	0.00%	100.00%	0.00%	
New issue	Other currency	-	Illiquid	4.25%	0.00%	0.00%	0.00%	0.00%	0.00%	0.11%	0.00%	2.63%	
Recent issue	USD	5,000,000,000	Liquid	21.23%	39.91%	35.50%	12.51%	12.10%	20.53%	4.13%	51.58%	12.11%	
Recent issue	AUD	5,000,000,000	Liquid	1.56%	3.64%	4.55%	1.23%	3.69%	4.72%	1.23%	7.14%	7.14%	
Recent issue	CAD	5,000,000,000	Liquid	2.23%	5.65%	3.86%	2.23%	4.53%	3.01%	1.23%	45.00%	0.00%	
Recent issue	Other currency	-	Illiquid	28.38%	0.00%	0.00%	0.00%	7.11%	4.13%	2.35%	0.00%	8.27%	
Old issue	All currencies	-	Illiquid	31.96%	0.00%	0.00%	0.00%	4.67%	9.27%	3.02%	0.00%	9.44%	

SENIOR CORPORATE BONDS				% of bond type total ISINs	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]	
Column Number				1	2	3	4	5	6	7	8	9	
Bond type total				100.00%								9.76%	4.58%
Bond type liquid subclasses total				14.59%	38.91%	33.98%	14.59%	33.70%	48.37%	9.40%			
Bond type illiquid subclasses total				85.41%									
Subcategory		Outstanding amount test (EUR)	Liquidity										
Lifecycle	Currency												
New issue	All currencies	500,000,000	Liquid	10.94%	3.52%	2.62%	6.47%	1.56%	1.91%	2.07%	45.42%	5.23%	
Recent	EUR	1,250,000,000	Liquid	12.91%	21.67%	20.11%	5.29%	15.54%	23.03%	3.18%	27.15%	10.80%	
Recent	Other currency	-	Illiquid	43.22%	0.00%	0.00%	0.00%	4.00%	6.31%	1.25%	0.00%	2.89%	
Old issue	EUR	1,250,000,000	Liquid	9.44%	13.72%	11.25%	2.82%	12.22%	16.23%	2.72%	13.64%	12.50%	
Old issue	Other currency	-	Illiquid	23.49%	0.00%	0.00%	0.00%	0.39%	0.89%	0.18%	0.00%	0.76%	

SUBORDINATED FINANCIAL CORPORATE BONDS			% of bond type total ISINs	% of volumes of bond type[volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type[volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]
Column Number			1	2	3	4	5	6	7	8	9
Bond type total			100.00%							8.27%	7.79%
Bond type liquid subclasses total			16.55%	43.15%	38.53%	16.55%	42.64%	55.42%	16.06%		
Bond type illiquid subclasses total			83.45%								

Subcategory		Outstanding amount test (EUR)	Liquidity									
Lifecycle	Currency											
New issue	All currencies	500,000,000	Liquid	4.87%	2.86%	1.67%	3.16%	0.75%	0.72%	1.70%	40.00%	10.00%
Recent	EUR	1,000,000,000	Liquid	5.35%	13.44%	11.66%	3.41%	9.40%	10.29%	1.95%	31.82%	4.55%
Recent	Other currency	-	Illiquid	19.22%	0.00%	0.00%	0.00%	1.62%	2.63%	0.97%	0.00%	5.06%
Old issue	EUR	1,000,000,000	Liquid	26.76%	26.84%	25.20%	9.98%	24.12%	28.55%	8.03%	17.27%	10.00%
Old issue	Other currency	-	Illiquid	43.80%	0.00%	0.00%	0.00%	6.75%	13.23%	3.41%	0.00%	7.78%

SUBORDINATED NON-FINANCIAL CORPORATE BONDS				% of bond type total ISINs	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]	
Column Number				1	2	3	4	5	6	7	8	9	
Bond type total				100.00%								9.03%	11.11%
Bond type liquid subclasses total				11.11%	9.49%	11.40%	11.11%	35.06%	47.67%	13.19%			
Bond type illiquid subclasses total				88.89%									
Subcategory		Outstanding amount test (EUR)	Liquidity										
Lifecycle	Currency												
New issue	All currencies	500,000,000	Liquid	7.64%	1.98%	1.99%	5.56%	0.41%	0.31%	1.39%	54.55%	0.00%	
Recent	EUR	1,000,000,000	Liquid	18.06%	7.52%	9.41%	5.56%	16.19%	18.18%	3.47%	26.92%	15.38%	
Recent	Other currency	-	Illiquid	19.44%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Old issue	All currencies	-	Illiquid	54.86%	0.00%	0.00%	0.00%	18.47%	29.18%	8.33%	0.00%	15.19%	

OTHER EU PUBLIC BONDS				% of bond type total ISINs	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of volumes of bond type [volumes of liquid bonds/volumes of bond type]	% of trades of bond type [trades of liquid bonds/trades of bond type]	% of ISINs of bond type [liquid ISINs /ISINs of bond type]	% of false positives [ISINs liquid for AFME's test and illiquid for ESMA's test/ISINs of bond type]	% of false negatives [ISINs illiquid for AFME's test and liquid for ESMA's test/ISINs of bond type]	
Column Number				1	2	3	4	5	6	7	8	9	
Bond type total				100.00%								0.00%	5.66%
Bond type liquid subclasses total				15.26%	67.35%	42.18%	15.26%	47.47%	49.89%	11.81%			
Bond type illiquid subclasses total				84.74%									
Subcategory		Outstanding amount test (EUR)	Liquidity										
Lifecycle	Currency												
All	All currencies	2,000,000,001	Liquid	100.00%	67.35%	42.18%	15.26%	47.47%	49.89%	11.81%	9.11%	5.66%	

(ii) We agree issuance size is one indicator of liquidity for certain instruments but the thresholds need to be increased to limit incorrect classifications

AFME agrees with ESMA that there can be a correlation between issuance size and liquidity. However, the issuance size thresholds are set far too low and do not represent the true level at which the market would consider issuances to be illiquid. We strongly recommend for the thresholds to be set higher for all the asset classes. We propose that the issue size thresholds be increased to the levels set out in the table below for each class of bonds.

We stress that despite these increases, issuance size alone is not a sufficient parameter to differentiate between liquid and illiquid instruments and if the industry's strong arguments in favour of an IBIA approach continue to be rejected, a more granular COFIA approach is required. This is demonstrated by the higher number of false positives based on ESMA's liquidity test. AFME has undertaken analysis of TRAX data⁵ to devise these proposals. AFME's reasoning is provided in further detail below.

Table 4: AFME's proposed increases in issuance size

Bond type	ESMA issuance size threshold (EUR)	AFME proposed outstanding size threshold (EUR)
EU Sovereign bonds	2bn	5bn
Non-European Sovereigns	2bn	5bn
Other European public bonds	1bn	2bn
Covered bonds	750mm	Insufficient data for analysis
Senior Financial Corporate Bonds	500mm	1.25bn
Senior non-financial corporates	750mm	1.25bn
Subordinated Financial Corporates	500mm	1bn
Subordinated Non-Financial Corporate Bonds	500mm	1bn
Convertible bond financial	750mm	Insufficient data for analysis

The table below demonstrates that the AFME issuance size thresholds achieve similar levels of transparency to the ESMA liquidity test based on trading activity and produces fewer false positives. The number of false negatives does increase; however, this is not to a level greater than the amount of false positives. **We do stress that even though these increased thresholds do reduce the number of false positives, it is still not sufficient and a more granular COFIA (or preferably IBIA) is necessary.**

- **AFME agrees with ESMA that there is a strong relationship between small issue sizes and a lack of liquidity.**

⁵ AFME has undertaken testing on trade data provided by TRAX. 10,091 traded fixed income bonds were randomly chosen from six asset classes (government bonds, supranationals, corporate bonds, high yield, covered bonds and securitisation). Trade data for these securities was tested over the period 1 October 2011 to 30 September 2013. Given that these securities were chosen at random, we can assume that this universe is proportionally representative.

As is shown in column 11 of **Table 5** of the Consultation Paper, there is a strong relationship between small issues and low levels of liquidity. There are a very small number of false negatives: 97.54% to 99.69% of the small issues are correctly classified according to ESMA's liquidity test.

- **ESMA should minimise the error margins by increasing the issuance size thresholds**

As the issuance sizes increases, there are a greater proportion of liquid instruments. However, at the thresholds ESMA has proposed, the proportion of illiquid instruments classified as liquid (as per ESMA's liquidity test) is disproportionately too high.

Using TRAX data, AFME has analysed the relationship between the false positives and the issuance size (Tables 4 and 5). We note that in our data sample set, we did not include ISINs that did not trade; therefore, the number of false positives in our results will be lower (since ESMA in the Discussion Paper dated 22 May 2014 noted that 55% of instruments in its sample set did not trade at all).

It is important that ESMA ensures that, to the greatest extent possible, error margins are minimised because there are greater risks associated with an illiquid instrument being categorised as liquid compared to illiquid instruments being categorised as liquid to ensure that the calibration is fit for purpose.

Table 5: Comparison of ESMA's and AFME's issuance size liquidity thresholds on market segments using TRAX data: 1 October 2011 to 30 September 2012

Bond type	ESMA issuance size threshold [3⁶]	AFME issuance size threshold	% ISINs using ESMA issue size threshold correctly classified	% ISINs using AFME issue size threshold correctly classified	FALSE POSITIVES % ISINs ABOVE ESMA issue size threshold AND BELOW ESMA's liquidity test	FALSE POSITIVES % ISINs ABOVE AFME issue size threshold AND BELOW ESMA's liquidity test	FALSE NEGATIVES % ISINs BELOW ESMA issue size threshold AND ABOVE ESMA's liquidity test	FALSE NEGATIVES % ISINs BELOW AFME issue size threshold AND ABOVE ESMA's liquidity test
EU Sovereign	2bn	5bn	80%	86%	29%	17%	6%	11%
Non-EU Sovereign	2bn	5bn	46%	50%	82%	84%	9%	13%
Other EU Public Bonds	1bn	2bn	77%	85%	66%	53%	6%	8%
Senior Corporate Financial	500mm	1.25bn	42%	73%	83%	74%	3%	7%
Senior Corporate Non- Financial	750mm	1.25bn	76%	90%	86%	79%	3%	5%
Subordinated Corporate Financial	500mm	1bn	60%	79%	73%	62%	3%	9%
Subordinated Corporate Non- Financial	500mm	1bn	59%	74%	73%	73%	2%	13%

⁶ Column reference to ESMA's Table 5 of Section 3 of the Consultation Paper

Table 6: Comparison of ESMA's and AFME's issuance size liquidity thresholds on level of transparency introduced by market segment using TRAX data: 1 October 2011 to 30 September 2012

Bond type	ESMA issuance size threshold [37]	AFME issuance size threshold	% BONDS LIQUID using ESMA issue size threshold	% BONDS LIQUID using AFME issue size threshold	% TRANSACTIONS LIQUID using ESMA issue size threshold	% TRANSACTIONS LIQUID using AFME issue size threshold	% VOLUME LIQUID using ESMA issue size threshold	% VOLUME LIQUID using AFME issue size threshold	% BONDS LIQUID using ESMA liquidity test	% TRANSACTIONS LIQUID using ESMA liquidity test	% VOLUME LIQUID using ESMA liquidity test
EU sovereign	2bn	5bn	60%	47%	97%	91%	100%	98%	45%	86%	89%
Non-EU Sovereign	2bn	5bn	62%	53%	86%	78%	97%	94%	15%	44%	35%
Other-EU Public	1bn	2bn	28%	15%	61%	43%	86%	68%	14%	55%	51%
Senior Corporate Financial	500mm	1.25bn	68%	30%	88%	52%	94%	61%	13%	50%	35%
Senior Corporate Non-Financial	750mm	1.25bn	24%	7%	49%	22%	57%	29%	6%	54%	41%
Subordinated Corporate Financial	500mm	1bn	53%	23%	81%	47%	85%	53%	16%	55%	55%
Subordinated Corporate Non-Financial	500mm	1bn	55%	21%	85%	34%	87%	37%	16%	54%	40%

⁷ Column reference to ESMA's Table 5 of Section 3 of the Consultation Paper

- **ESMA needs to ensure that the gap is narrowed between the levels of transparency introduced by the liquidity test compared to the COFIA test**

The ESMA issuance size thresholds capture in far more instruments, volume and transactions than ESMA's liquidity test based on secondary market activity. Given the imperfect nature of the COFIA approach, it is inappropriate for the issuance threshold to have a broader scope than ESMA's liquidity test.

- **The liquidity calibration should not introduce disproportionate levels of transparency**

It is critical that the approach to liquidity calibration is fit for purpose such that the thresholds ensure that illiquid markets are not subject to the pre trade transparency regime and are subject to deferred post trade transparency. The levels of transparency should not be disproportionately excessive as a result of liquidity calibration. For example, it is not reflective of the market that 99.57% of trading volume in European sovereign bonds is within the scope of "liquid" – this would effectively capture no "illiquid" activity.

EU Sovereign bonds

ESMA has proposed a EUR 2bn issuance size threshold for EU sovereign bonds. This is not the appropriate level. **Graphs 3 and 4** illustrate that the margin of error with regards to false positives is lowest (6%) at approximately EUR 20bn issuance size⁸.

Notably, the proportion of bonds that meet ESMA's liquidity test (on paragraph 45) is significantly lower at 45% than the issuance size threshold at 60%. The number of bonds falling within scope under the COFIA approach should not be greater than under the IBIA liquidity test (which as ESMA notes is a more precise test).

The proportion of volume and transactions that meet the issuance size test is also significantly greater than under the ESMA liquidity test. The levels of transparency are actually consistent at issuance sizes in the range of EUR 9bn to 12bn. However, even at EUR 12bn, the margin of error is still significant.

Non-European Sovereign Bonds

ESMA has proposed a EUR2bn issuance size threshold for non-European sovereign bonds. ESMA has not provided any data on this. AFME's data set shows a false positive level of 82% at that threshold.

Graphs 5 and 6 illustrate that the number of false positives is lowest at EUR 36bn. However, even at this issuance size, the false positive rate is 59%, which is still disproportionately high and only 5% of bonds are deemed liquid.

The percentage number of bonds that fall above ESMA's liquidity test is significantly lower at 15% than the issuance threshold at 62%. For there to be consistency, the issuance size threshold needs to be approximately EUR 26bn (however, the percentage of false positives is still high at 77%).

⁸ Note that our false positives are significantly lower than ESMA's

With regards to the levels of volume and trade transparency, the liquidity test brings 35% and 44% into the “liquid” regime, whereas at ESMA’s issuance size is inconsistent and significantly higher with 97% and 62% captured in the “liquid” regime. The issue size threshold needs to be in the range EUR 26bn and EUR 29bn to make these consistent. We believe that these large issue sizes correspond to the large bonds issued by the US. However, if a bond denominated in USD had a smaller issue size, we suggest that it would be equally liquid as a large bond because of the depth of liquidity of this market. Therefore, we would suggest aligning the issue size for non-European sovereigns with that of European sovereigns.

We do note, however, that it is unclear how ESMA intends to define liquidity in terms of jurisdiction. Specifically, ESMA’s liquidity test suggests that only bonds that trade frequently in Europe should be deemed liquid. However, it uses global trade repository data for derivatives, which suggests a different approach for these instruments. Certain bonds, such as those issued out of the US or India, are very liquid in their local market but not as liquid outside their local market. Time zone differences will also be observed. For example, a US bond in Europe will only be liquid when US trading hours are open because counterparties in the US will be available. These same considerations apply to non-sovereign bonds.

Other European Public Bonds

ESMA has proposed a EUR 1bn issuance size threshold for other European public bonds. Table 5 in the Consultation Paper, shows there are 56.25% false positives. AFME’s data set shows a false positive level of 66%.

Based on the data in **Graphs 7 and 8**, illustrate that the number of false positives is lowest at 7bn; however, a negligible number of bonds are classified as illiquid.

The percentage number of bonds that fall above ESMA’s liquidity test is significantly lower at 14% than the issuance threshold at 28%. For there to be consistency, the issuance size threshold needs to be approximately EUR 2bn (however, the percentage of false positives is still high at 53%).

With regards to the levels of volume and trade transparency, the liquidity test brings 51% and 55% into the “liquid” regime, whereas at ESMA’s issuance is inconsistent and significantly higher with 86% and 61% captured in the “liquid” regime. The issue size threshold needs to be approximately EUR 3bn to make these consistent.

Covered bonds

AFME did not have the appropriate data to make suggestions with regards to covered bonds. The industry would welcome the opportunity to provide further input on this bond type.

Senior Financial Corporate Bonds

ESMA has proposed a EUR 500mm issuance size threshold for senior financial corporates. Table 5 in the Consultation Paper, shows there are 66.96% of false positives. AFME’s data set shows a false positive level of 82%.

Graphs 9 and 10 illustrate that the number of false positives is lowest at EUR 1.5bn. However, even at this issuance size, the false positive rate is 73%, which is still disproportionately high.

The percentage number of bonds that fall above ESMA's liquidity test is significantly lower at 13% than the issuance threshold at 68%. For there to be consistency, the issuance size threshold needs to be approximately EUR 1.75bn (however, the percentage of false positives is still high at 74%).

With regards to the levels of volume and trade transparency, the liquidity test brings 35% and 50% into the "liquid" regime, whereas at ESMA's issuance is inconsistent and significantly higher with 94% and 87% captured in the "liquid" regime. The issue size threshold needs to be approximately EUR 1.25 to make these consistent.

Senior Non-Financial Corporate Bonds

ESMA has proposed a EUR 750mm issuance size threshold for senior non-financial corporates. Table 5 in the Consultation Paper shows there are 51.38% false positives. AFME's data set shows a false positive level of 74%.

Graphs 11 and 12 illustrate that the margin of error with regards to false positives is lowest (0%) at approximately EUR 2.75bn. However, 0% of bonds meet the threshold. This is explained by the fact that only 6% of bonds meet ESMA's liquidity threshold compared to the 24% of bonds that meet the issuance size threshold. Further, under the ESMA liquidity test, only 54% of transactions and 41% of volume is "liquid". However, the proportion of volume and transactions under the issuance test is greater at 49% and 57%. The issuance size needs to be approximately EUR 1.25bn for proportion of bonds deemed liquid to be consistent.

Subordinated Financial Corporate Bonds

ESMA has proposed a EUR 500mm issuance size threshold for subordinated financial corporates. Table 5 in the Consultation Paper shows there are 55.28% false positives. AFME's data set shows a false positive level of 71%.

Graphs 13 and 14 illustrate that the number of false positives is lowest at EUR 1.75bn. However, at this issuance size, only 4% of bonds are captured.

The percentage number of bonds that fall above ESMA's liquidity test is significantly lower at 16% than the issuance threshold at 53%. For there to be consistency, the issuance size threshold needs to be between EUR 1bn and EUR 1.25bn (however, the percentage of false positives is still high at 60 % to 62%).

With regards to the levels of volume and trade transparency, the liquidity test brings 43% and 55% into the "liquid" regime, whereas at ESMA's issuance is inconsistent and significantly higher with 85% and 81% captured in the "liquid" regime. The issue size threshold needs to be approximately EUR 1 to make these consistent.

Subordinated Non-Financial Corporate Bonds

ESMA has proposed a EUR 500mm issuance size threshold for subordinated non-financial corporates. Table 5 in the Consultation Paper, shows there are 57.14% false positives. AFME's data set shows a false positive level of 80%.

Graphs 15 and 16 illustrate that the number of false positives is lowest at EUR 2.75bn. However, at this issuance size, only 1% of bonds are captured.

The percentage number of bonds that fall above ESMA's liquidity test is significantly lower at 16% than the issuance threshold at 55%. For there to be consistency, the issuance size threshold needs to be between EUR 1bn and EUR 1.25bn (however, the percentage of false positives is still high at 71% to 73%).

With regards to the levels of volume and trade transparency, the liquidity test brings 40% and 54% into the "liquid" regime, whereas at ESMA's issuance is inconsistent and significantly higher with 87% and 85% captured in the "liquid" regime. The issue size threshold needs to be approximately EUR 1.25bn to make these consistent.

(iii) The underlying liquidity test needs to be modified by increasing the thresholds and including the other Level 1 tests

ESMA has tested its COFIA approach using the liquidity test detailed in paragraph 45. AFME believes that the liquidity test used is set far too low and is not an appropriate measure of liquidity. Specifically, ESMA has proposed that instruments that trade at least 400 times a year, on at least 200 days a year and have an average daily turnover EUR100k be deemed liquid. First, this supposes that an instrument that trades two times a day across Europe on average is liquid. This is not an appropriate threshold; it is far too low. The Level 1 text clearly defines a liquid market as one where there are "*ready and willing buyers and sellers on a continuous basis*" (Article 2(1)(17) MiFIR), which should be determined on the basis of trading frequency as well as other parameters. In this context, an instrument trading only twice a day on average cannot be considered continuous.

Further, the annual nature of the test does not account for the lifecycle of an instrument (as required under Level 1) and concentration of trades. It is widely accepted that the liquidity of instruments change over time and trading activity tends to be much greater within the first few months of issuance. Therefore, the annual calculation is not appropriate for fixed income and is especially problematic for shorter-term instruments.

For example, if the ESMA test period at random captures the first month of issue of an instrument, which is highly liquid (e.g. 200 trades occur), it may meet the liquidity test even if the instrument trades infrequently during the remaining 11 months (but enough to meet the 200 traded days a year test).

AFME recommends that the following liquidity test be used:

Table 7: AFME proposed underlying liquidity test

Issuance size (EUR)	Liquidity test
<500mm	Illiquid
>=500mm	250 trades a quarter, 50 traded days a quarter, EUR 5mm average daily volume

The Level 1 test for liquidity identifies four parameters that need to be considered in the definition of liquid market, of which the number of market participants and spread are two. We note that ESMA has decided not to incorporate these two parameters into its liquidity test due to lack of data. We are concerned that this is inconsistent with the ESMA's Level 1 mandate. As

we explained in our response to ESMA's Discussion Paper dated 22 May 2014, we believe that these parameters mandated by Level 1 should be used as backstops.

We note that transaction reporting data and data collected by ESMA from trading venue could be used to determine the market participant thresholds. TRAX data was used to produce AFME's previous recommendations in relation to a threshold for the number of market participants – this data is also received by NCAs as part of transaction reporting. Further, ESMA can collect information from trading venues. If ESMA believes that the data is still insufficient, we suggest that ESMA review its decision when more data is available as a result of the new MiFID regime.

We note that it is also unclear how ESMA has applied the liquidity thresholds to its data set:

- ***It is critical that block trades are used rather than allocations to test instruments against the liquidity test.***

It is unclear what has been used in ESMA's calculations. Even though matching is a very important process, it is essential that the allocations are not included in the trade frequency counts and traded days count (volume is unaffected). Rather, it should be block trades that are counted. For example, if a bank undertakes a trade of EUR 50mm notional with a client and that client allocates the EUR 50mm to 100 different funds the trade count should be one (one trade of EUR 50mm and not 100 trades of EUR 500,000). Counting at the allocation level would be misleading and would incorrectly inflate the number of trades. It is essential that this be clarified by ESMA.

- ***The liquidity test should also exclude non-price forming trades.***

Many trades that investment firms undertake are not price forming trades. For example, technical trades such as those that occur for purposes of risk management (e.g. inter-affiliate trades) are not price forming. If these were to be included, the calculation of frequency of trades, traded days and volume would be severely distortive. We note that for swaps, these trades were excluded. Further, very small non-price forming trades should be scrubbed from the calculations, typically in the region of EUR 10,000 in size or less⁹. Including such trades would be highly distortive. It is unclear whether ESMA has included these trades in its calculations.

(iv) Issuance size needs to be outstanding amount, except for amortising bonds

As explained above, using issuance size as the liquidity threshold creates far more opportunities for regulatory arbitrage by issuers. For example, an issuer could issue a bond in a small issue size, which is below the liquidity threshold. It could, at a later date, undertake a TAP to increase the outstanding amount of the issue size. Despite this, the instrument would still fall below the issue size threshold. Buy-backs also introduce a similar problem.

Therefore, we recommend that rather than issuance size, issued and outstanding amount be used. As such, if the outstanding amount of an instrument increases, it receives the same treatment as a bond with the same outstanding amount but issued at that size. However, using

⁹ This does not mean all trades below EUR 10,000 are non-price forming.

outstanding amount is not appropriate for amortising bonds, whereby the outstanding amount decreases over time because principal as well as coupon is paid. For these bonds, it is too complex to reference the outstanding value at any given time. It is general market practice to trade these securities at the original notional rather than at the factored amount.

(v) *There needs to be a centralised approach to categorising bonds if a COFIA approach is used*

AFME is concerned that the Consultation Paper implies that the categorisation of bonds may not be centralised. We recommend that where possible, categorisation should be centralised (i.e. either produced by national authorities or by the ESMA). If the categorisation is centralised at the national authority level, it will reduce the amount of data processing required and will concentrate data interpretation onto a significantly smaller number of group (i.e. national authorities and ESMA). We believe centralisation of the categorisation process not only permits sufficiently appropriate data quality but also creates an auditable process that can be monitored and corrected for errors. Any form of discretion in the categorisation of instruments by market participants could lead to inconsistencies between firms.

This process for producing categories involves interpretation of raw data by such a large number of entities (each individual investment firm and national authority) and is processed so many times that quality and meaningfulness of the data will deteriorate and will not be fit for purpose, and at worse harmful.

If investment firms are required to group or label each instrument according to this categorisation, investment firms must make a determination– even if the ESMA provides a clear categorisation methodology, this exercise would involve a significant amount of interpretation by each individual firm, creating a huge margin for error and inconsistency, further exacerbated by the level of granularity required for an appropriate COFIA.

The most effective solution for the market would be to centralise the categorisation process. NCAs and/or ESMA could identify the categories of instruments from the reference data they receive. NCAs/ESMA could then disseminate these categories.

(vi) *ESMA should specify what exchange rate should be used, especially if a decentralised approach is adopted*

If ESMA and the NCAs adopt a decentralised approach, it is critical that the methodology for categorisation is clear and unambiguous so that all market participants can apply the categorisation consistently. One important factor for consideration is the exchange rate. Since the issuance size threshold is in Euros, ESMA needs to clarify which exchange rate should be used. Otherwise, the same instrument is likely to be categorised differently by market participants.

(vii) *ESMA needs to consider a workable solution for package trades*

AFME encourages ESMA to consider the appropriate application of the MiFIR pre- and post-trade transparency obligations and the derivatives trading obligation, to package transactions. We consider that MiFIR is flexible enough to empower ESMA to specify how package transactions are to be treated, and it is important to do so, otherwise investors could lose the advantages of the ability to transact certain package types and will experience increased transaction costs and execution risk as a consequence of having to trade different components separately, of being unable to obtain appropriate waivers and deferrals. Package transactions

frequently involve bonds (for example, spread transactions across a yield curve, switches between one issuer's bonds and another's, or asset swap transactions. AFME's membership is therefore supportive of ISDA's proposals for the definition of a package transaction, the appropriate classification of package transactions into liquid and illiquid classes, and the calibration of SSTI and LIS for packages.

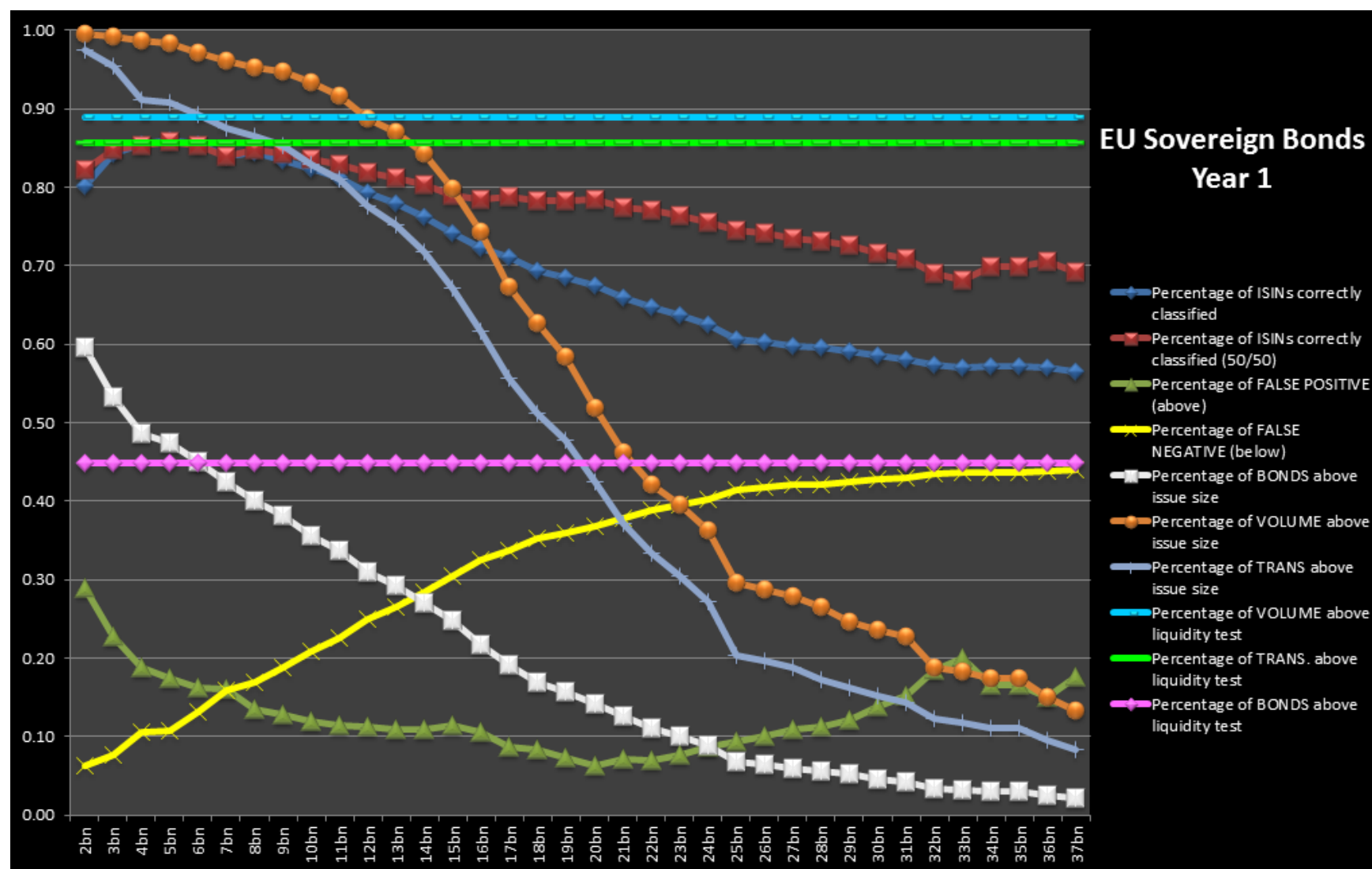
Table 8: Application of ESMA's issuance size and liquidity thresholds on market segments: 1 October 2011 to 30 September 2012

YEAR 1																									
					ISINs with issuance size above the threshold				ISINs above the issuance size threshold and above the liquidity threshold		ISINs above the issuance size threshold and below the liquidity threshold		ISINs with issuance size below the threshold				ISINs below the issuance size threshold and below the liquidity thresholds		ISINs below the issuance size threshold and above the liquidity thresholds		Liquidity test percentages (static for issue size increments)			Difference of percentages (Issuance - liquidity tests)	
Bond Type	Total Number of ISINs	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Issuance Size Threshold (liquid) (>=)	Number	Percentage	Percentage of Volumes	Percentage of Transactions	Number	Percentage	Number	Percentage	Number	Percentage	Percentage of Volumes	Percentage of Transactions	Number	Percentage	Number	Percentage	Percentage of VOLUMES above liquidity test	Percentage of TRANS. above liquidity test	Percentage of ISINs above liquidity test	Difference of % of VOLUMES (issuance size test - liquidity test)	Difference of % of TRANS (issuance size test - liquidity test)
Column 1 ~ (ref. to ESMA Table 5 in 3.5 of CP)	2 ~ [1]	3 ~[2]	4	5 ~[3]	6 ~[4]	7	8	9	10 ~ [5]	11 ~ [6]	12 ~ [7]	13 ~ [8]	14 ~ [9]	15	16	17	18 ~ [10]	19 ~ [11]	18 ~ [10]	19 ~ [11]	22	23	24	25	26
Legenda (numbers refer to columns)		(10+18)/2	(10/6+18/14)/2			6/2	(vol. above issue size) / (total vol.)	(trans. above issue size) / (total trans.)		10/6	12/6		14/2	(vol. below issue size) / (total vol.)	(trans. below issue size) / (total trans.)		18/14	18/14					8-22	9-23	
European Sovereign Bond	776	80%	82%	2,000,000,000	462	60%	99.57%	97.42%	328	71%	134	29%	314	40%	0.43%	2.58%	294	94%	20	6.37%	88.83%	85.74%	44.85%	10.74%	11.68%
Other European Public Bonds	1,226	77%	64%	1,000,000,000	342	28%	85.81%	61.34%	116	34%	226	66%	884	72%	14.19%	38.66%	832	94%	52	5.88%	51.37%	55.34%	13.70%	34.44%	6.00%
Covered Bonds	1,353	45%	51%	750,000,000	749	55%	88.87%	88.20%	11	1%	738	99%	604	45%	11.13%	11.80%	604	100%	-	0.00%	2.30%	6.39%	0.81%	86.57%	81.82%
Senior Corporate Bonds (Financial)	1,382	42%	57%	500,000,000	944	68%	93.58%	87.53%	162	17%	782	83%	438	32%	6.42%	12.47%	424	97%	14	3.20%	35.12%	49.87%	12.74%	58.46%	37.66%
Senior Corporate Bonds (Non-Financial)	1,120	76%	55%	750,000,000	274	24%	56.98%	49.47%	38	14%	236	86%	846	76%	43.02%	50.53%	817	97%	29	3.43%	41.48%	53.78%	5.98%	15.50%	-4.31%
Subordinated Corporate Bonds (Financial)	392	60%	62%	500,000,000	206	53%	85.37%	81.10%	55	27%	151	73%	186	47%	14.63%	18.90%	180	97%	6	3.23%	42.85%	55.27%	15.56%	42.52%	25.83%
Subordinated Corporate Bonds (Non-Financial)	140	59%	63%	500,000,000	77	55%	86.92%	85.07%	21	27%	56	73%	63	45%	13.08%	14.93%	62	98%	1	1.59%	39.55%	53.59%	15.71%	47.36%	31.48%
Convertible Bonds (Financial)	-			750,000,000					-		-		-				-		-				0.00%	0.00%	
Convertible Bonds (Non-Financial)	-								-		-		-				-		-				0.00%	0.00%	
SFPs	-								-		-		-				-		-				0.00%	0.00%	
Other Non-European Public Bond	565	0%			-	0%	0.00%	0.00%	-		-		-	0%	0.00%	0.00%	-		-	0.00%	0.00%	0.00%	0.00%	0.00%	
Non-European Sovereign Bond	768	46%	54%	2,000,000,000	477	62%	97.14%	86.25%	87	18%	390	82%	291	38%	2.86%	13.75%	264	91%	27	9.28%	35.07%	44.14%	14.84%	62.07%	42.12%

Table 9: Application of ESMA's issuance size and liquidity thresholds on market segments: 1 October 2012 to 30 September 2013

YEAR 2																										
					ISINs with issuance size above the threshold				ISINs above the issuance size threshold and above the liquidity threshold		ISINs above the issuance size threshold and below the liquidity threshold		ISINs with issuance size below the threshold				ISINs below the issuance size threshold and below the liquidity thresholds		ISINs below the issuance size threshold and above the liquidity thresholds		Liquidity test percentages (static for issue size increments)				Difference of percentages (Issuance - liquidity tests)	
Bond Type	Total Number of ISINs	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Issuance Size Threshold (liquid) (>=)	Number	Percentage	Percentage of Volumes	Percentage of Transactions	Number	Percentage	Number	Percentage	Number	Percentage	Percentage of Volumes	Percentage of Transactions	Number	Percentage	Number	Percentage	Percentage of VOLUMES above liquidity test	Percentage of TRANS. above liquidity test	Percentage of ISINs above liquidity test	Difference of % of VOLUMES (issuance size test - liquidity test)	Difference of % of TRANS (issuance size test - liquidity test)	
Column 1 ~ [ref. to ESMA Table 5 in 3.5 of CP]	2 ~ [1]	3 ~ [2]	4	5 ~ [3]	6 ~ [4]	7	8	9	10 ~ [5]	11 ~ [6]	12 ~ [7]	13 ~ [8]	14 ~ [9]	15	16	17	18 ~ [10]	19 ~ [11]	18 ~ [10]	19 ~ [11]	22	23	24	25	26	
Legenda (numbers refer to columns)		(10+18)/2	(10/6+18/14)/2			6/2	(vol. above issue size) / (total vol.)	(trans. above issue size) / (total trans.)		10/6	12/6		14/2	(vol. below issue size) / (total vol.)	(trans. below issue size) / (total trans.)		18/14	18/14					8-22	9-23		
European Sovereign Bond	776	80%	82%	2,000,000,000	462	60%	99.52%	97.12%	337	73%	125	27%	314	40%	0.48%	2.88%	287	91%	27	8.60%	82.51%	80.48%	46.91%	17.02%	16.65%	
Other European Public Bonds	1,226	76%	59%	1,000,000,000	342	28%	86.32%	61.08%	70	20%	272	80%	884	72%	13.68%	38.92%	859	97%	25	2.83%	54.37%	55.82%	7.75%	31.95%	5.27%	
Covered Bonds	1,353	45%	50%	750,000,000	749	55%	86.90%	85.82%	2	0%	747	100%	604	45%	13.10%	14.18%	604	100%	0	0.00%	1.63%	3.95%	0.15%	85.27%	81.87%	
Senior Corporate Bonds (Financial)	1,382	39%	55%	500,000,000	944	68%	93.44%	87.24%	108	11%	836	89%	438	32%	6.56%	12.76%	431	98%	7	1.60%	36.15%	48.54%	8.32%	57.28%	38.70%	
Senior Corporate Bonds (Non-Financial)	1,120	75%	53%	750,000,000	274	24%	55.84%	44.06%	27	10%	247	90%	846	76%	44.16%	55.94%	813	96%	33	3.90%	38.68%	44.47%	5.36%	17.16%	-0.41%	
Subordinated Corporate Bonds (Financial)	392	59%	61%	500,000,000	206	53%	86.54%	84.51%	49	24%	157	76%	186	47%	13.46%	15.49%	181	97%	5	2.69%	42.35%	53.67%	13.78%	44.19%	30.84%	
Subordinated Corporate Bonds (Non-Financial)	140	56%	59%	500,000,000	77	55%	90.41%	85.44%	17	22%	60	78%	63	45%	9.59%	14.56%	61	97%	2	3.17%	34.57%	41.95%	13.57%	55.84%	43.49%	
Convertible Bonds (Financial)	-			750,000,000	0				-		0		-				-		0					0.00%	0.00%	
Convertible Bonds (Non-Financial)	-				0				-		0		-				-		0					0.00%	0.00%	
SFPs	-				0				-		0		-				-		0					0.00%	0.00%	
Other Non-European Public Bond	565	0%			0	0%	0.00%	0.00%	-		0		-	0%	0.00%	0.00%	-		0		0.00%	0.00%	0.00%	0.00%	0.00%	
Non-European Sovereign Bond	768	43%	52%	2,000,000,000	477	62%	94.53%	72.36%	76	16%	401	84%	291	38%	5.47%	27.64%	256	88%	35	12.03%	41.28%	49.68%	14.45%	53.25%	22.68%	

Graph 3: EU sovereign bonds: issuance size testing: 1 October 2011 to 30 September 2012



Graph 4: EU sovereign bonds: issuance size testing: 1 October 2012 to 30 September 2013

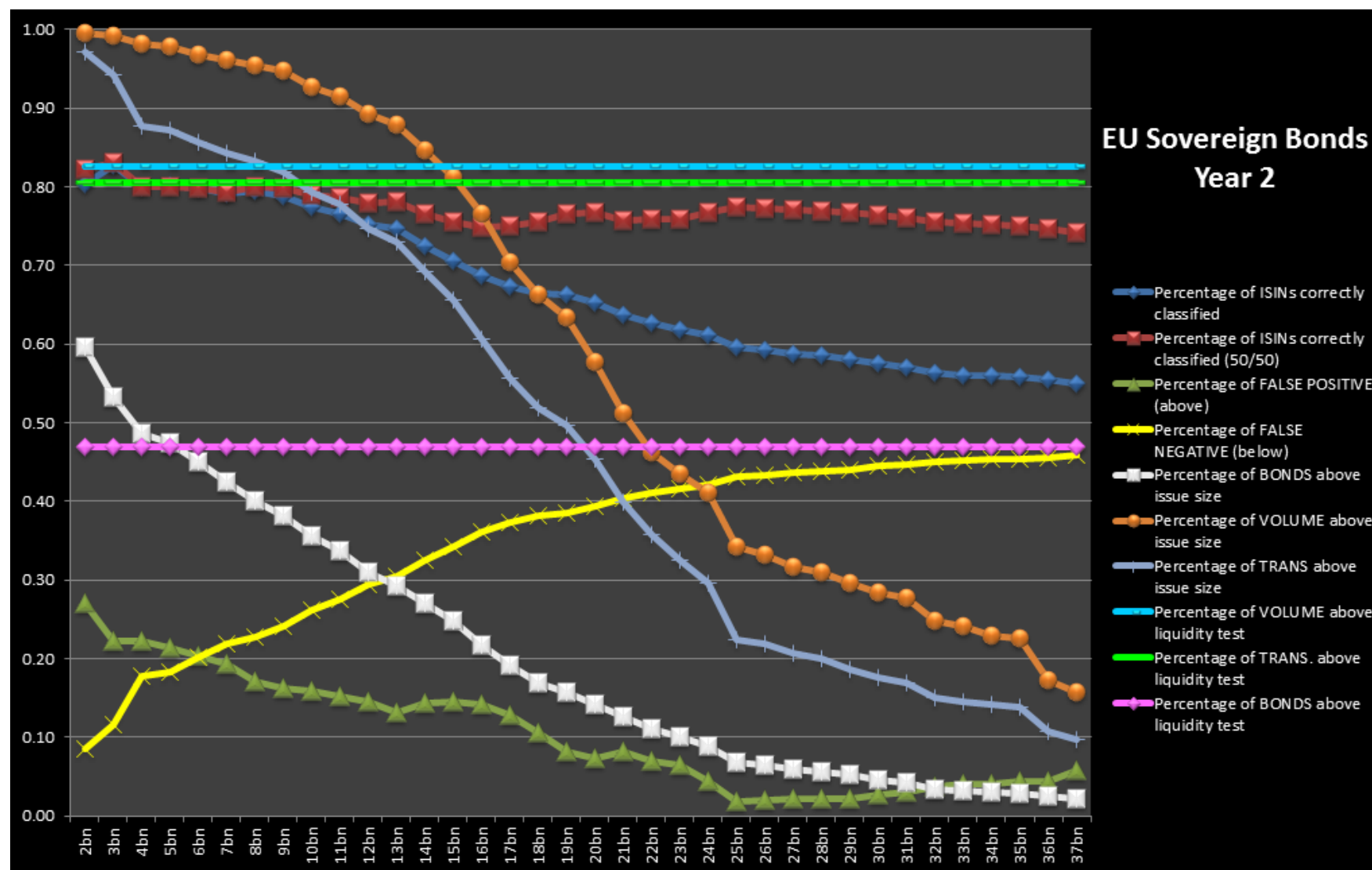


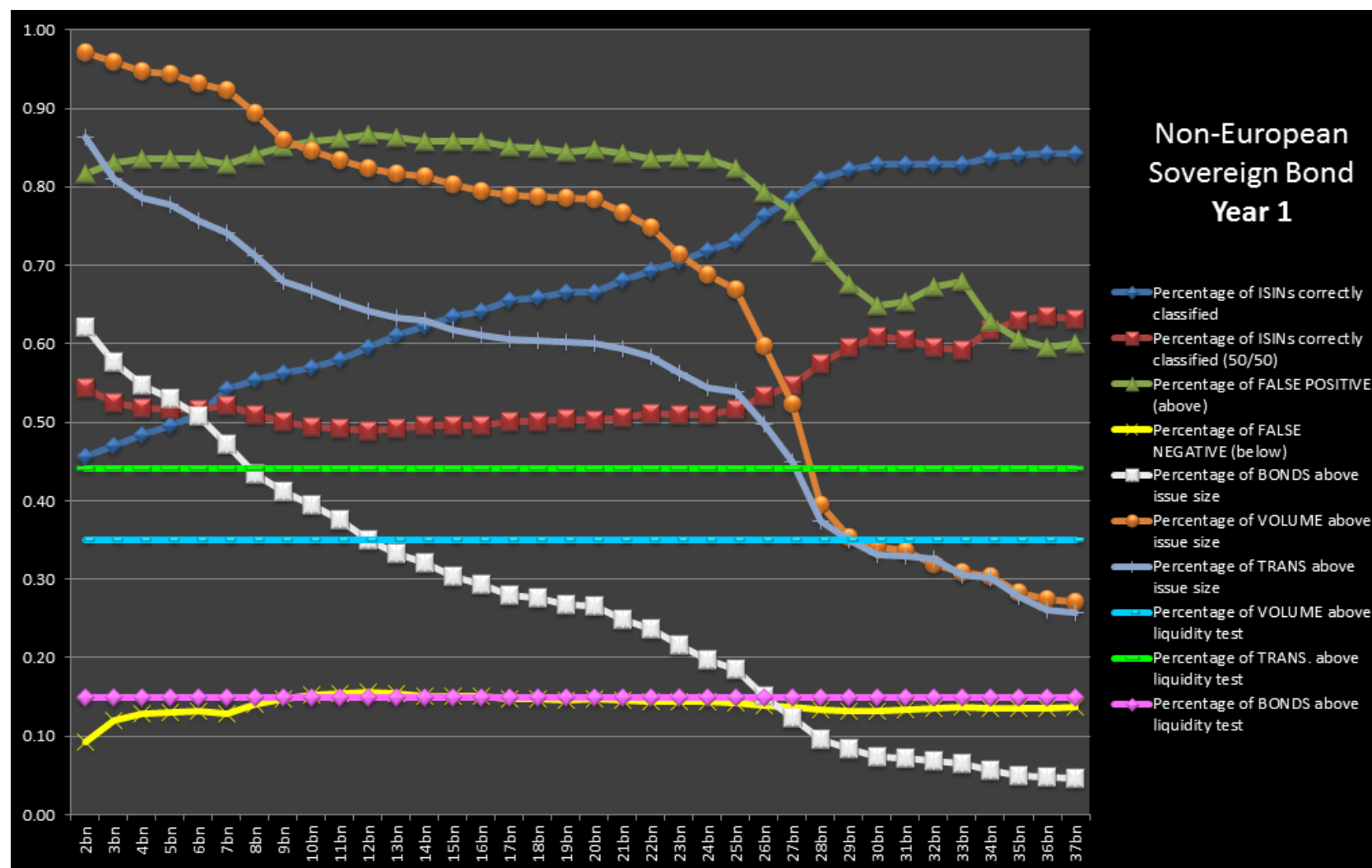
Table 10: EU Sovereign Bonds: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~[8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
2bn	0.80	0.82	0.29	0.06	0.60	1.00	0.97	0.89	0.86	0.45
3bn	0.84	0.85	0.23	0.08	0.53	0.99	0.95	0.89	0.86	0.45
4bn	0.85	0.85	0.19	0.11	0.49	0.99	0.91	0.89	0.86	0.45
5bn	0.86	0.86	0.17	0.11	0.47	0.98	0.91	0.89	0.86	0.45
6bn	0.85	0.85	0.16	0.13	0.45	0.97	0.89	0.89	0.86	0.45
7bn	0.84	0.84	0.16	0.16	0.43	0.96	0.88	0.89	0.86	0.45
8bn	0.84	0.85	0.14	0.17	0.40	0.95	0.87	0.89	0.86	0.45
9bn	0.84	0.84	0.13	0.19	0.38	0.95	0.85	0.89	0.86	0.45
10bn	0.82	0.84	0.12	0.21	0.36	0.93	0.83	0.89	0.86	0.45
11bn	0.81	0.83	0.11	0.23	0.34	0.92	0.81	0.89	0.86	0.45
12bn	0.79	0.82	0.11	0.25	0.31	0.89	0.78	0.89	0.86	0.45
13bn	0.78	0.81	0.11	0.27	0.29	0.87	0.75	0.89	0.86	0.45
14bn	0.76	0.80	0.11	0.28	0.27	0.84	0.72	0.89	0.86	0.45
15bn	0.74	0.79	0.11	0.30	0.25	0.80	0.67	0.89	0.86	0.45
16bn	0.72	0.78	0.11	0.32	0.22	0.74	0.62	0.89	0.86	0.45
17bn	0.71	0.79	0.09	0.34	0.19	0.67	0.56	0.89	0.86	0.45
18bn	0.69	0.78	0.08	0.35	0.17	0.63	0.51	0.89	0.86	0.45
19bn	0.69	0.78	0.07	0.36	0.16	0.58	0.48	0.89	0.86	0.45
20bn	0.68	0.78	0.06	0.37	0.14	0.52	0.42	0.89	0.86	0.45
21bn	0.66	0.77	0.07	0.38	0.13	0.46	0.37	0.89	0.86	0.45
22bn	0.65	0.77	0.07	0.39	0.11	0.42	0.33	0.89	0.86	0.45
23bn	0.64	0.76	0.08	0.40	0.10	0.40	0.31	0.89	0.86	0.45
24bn	0.63	0.75	0.09	0.40	0.09	0.36	0.27	0.89	0.86	0.45
25bn	0.61	0.75	0.09	0.41	0.07	0.30	0.20	0.89	0.86	0.45
26bn	0.60	0.74	0.10	0.42	0.06	0.29	0.20	0.89	0.86	0.45
27bn	0.60	0.74	0.11	0.42	0.06	0.28	0.19	0.89	0.86	0.45
28bn	0.60	0.73	0.11	0.42	0.06	0.26	0.17	0.89	0.86	0.45
29bn	0.59	0.73	0.12	0.42	0.05	0.25	0.16	0.89	0.86	0.45
30bn	0.59	0.72	0.14	0.43	0.05	0.24	0.15	0.89	0.86	0.45
31bn	0.58	0.71	0.15	0.43	0.04	0.23	0.14	0.89	0.86	0.45
32bn	0.57	0.69	0.19	0.44	0.03	0.19	0.12	0.89	0.86	0.45
33bn	0.57	0.68	0.20	0.44	0.03	0.18	0.12	0.89	0.86	0.45
34bn	0.57	0.70	0.17	0.44	0.03	0.17	0.11	0.89	0.86	0.45
35bn	0.57	0.70	0.17	0.44	0.03	0.17	0.11	0.89	0.86	0.45
36bn	0.57	0.71	0.15	0.44	0.03	0.15	0.09	0.89	0.86	0.45
37bn	0.57	0.69	0.18	0.44	0.02	0.13	0.08	0.89	0.86	0.45

Table 11: EU Sovereign Bonds: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~[8]	4 ~[13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
2bn	0.80	0.82	0.27	0.09	0.60	1.00	0.97	0.83	0.80	0.47
3bn	0.83	0.83	0.22	0.12	0.53	0.99	0.94	0.83	0.80	0.47
4bn	0.80	0.80	0.22	0.18	0.49	0.98	0.88	0.83	0.80	0.47
5bn	0.80	0.80	0.21	0.18	0.47	0.98	0.87	0.83	0.80	0.47
6bn	0.80	0.80	0.20	0.20	0.45	0.97	0.86	0.83	0.80	0.47
7bn	0.79	0.79	0.19	0.22	0.43	0.96	0.84	0.83	0.80	0.47
8bn	0.80	0.80	0.17	0.23	0.40	0.95	0.83	0.83	0.80	0.47
9bn	0.79	0.80	0.16	0.24	0.38	0.95	0.82	0.83	0.80	0.47
10bn	0.77	0.79	0.16	0.26	0.36	0.93	0.79	0.83	0.80	0.47
11bn	0.77	0.79	0.15	0.28	0.34	0.92	0.78	0.83	0.80	0.47
12bn	0.75	0.78	0.15	0.30	0.31	0.89	0.75	0.83	0.80	0.47
13bn	0.75	0.78	0.13	0.30	0.29	0.88	0.73	0.83	0.80	0.47
14bn	0.72	0.77	0.14	0.33	0.27	0.85	0.69	0.83	0.80	0.47
15bn	0.71	0.76	0.15	0.34	0.25	0.81	0.66	0.83	0.80	0.47
16bn	0.69	0.75	0.14	0.36	0.22	0.77	0.61	0.83	0.80	0.47
17bn	0.67	0.75	0.13	0.37	0.19	0.70	0.56	0.83	0.80	0.47
18bn	0.66	0.76	0.11	0.38	0.17	0.66	0.52	0.83	0.80	0.47
19bn	0.66	0.77	0.08	0.39	0.16	0.63	0.50	0.83	0.80	0.47
20bn	0.65	0.77	0.07	0.39	0.14	0.58	0.45	0.83	0.80	0.47
21bn	0.64	0.76	0.08	0.40	0.13	0.51	0.40	0.83	0.80	0.47
22bn	0.63	0.76	0.07	0.41	0.11	0.46	0.36	0.83	0.80	0.47
23bn	0.62	0.76	0.06	0.42	0.10	0.44	0.33	0.83	0.80	0.47
24bn	0.61	0.77	0.04	0.42	0.09	0.41	0.30	0.83	0.80	0.47
25bn	0.60	0.77	0.02	0.43	0.07	0.34	0.22	0.83	0.80	0.47
26bn	0.59	0.77	0.02	0.43	0.06	0.33	0.22	0.83	0.80	0.47
27bn	0.59	0.77	0.02	0.44	0.06	0.32	0.21	0.83	0.80	0.47
28bn	0.59	0.77	0.02	0.44	0.06	0.31	0.20	0.83	0.80	0.47
29bn	0.58	0.77	0.02	0.44	0.05	0.30	0.19	0.83	0.80	0.47
30bn	0.57	0.76	0.03	0.44	0.05	0.28	0.18	0.83	0.80	0.47
31bn	0.57	0.76	0.03	0.45	0.04	0.28	0.17	0.83	0.80	0.47
32bn	0.56	0.76	0.04	0.45	0.03	0.25	0.15	0.83	0.80	0.47
33bn	0.56	0.75	0.04	0.45	0.03	0.24	0.15	0.83	0.80	0.47
34bn	0.56	0.75	0.04	0.45	0.03	0.23	0.14	0.83	0.80	0.47
35bn	0.56	0.75	0.04	0.45	0.03	0.23	0.14	0.83	0.80	0.47
36bn	0.55	0.75	0.04	0.46	0.03	0.17	0.11	0.83	0.80	0.47
37bn	0.55	0.74	0.06	0.46	0.02	0.16	0.10	0.83	0.80	0.47

Graph 5: Non-European Sovereign Bond: issuance size testing: 1 October 2011 to 30 September 2012



Graph 6: Non-European Sovereign Bond: issuance size testing: 1 October 2012 to 30 September 2013

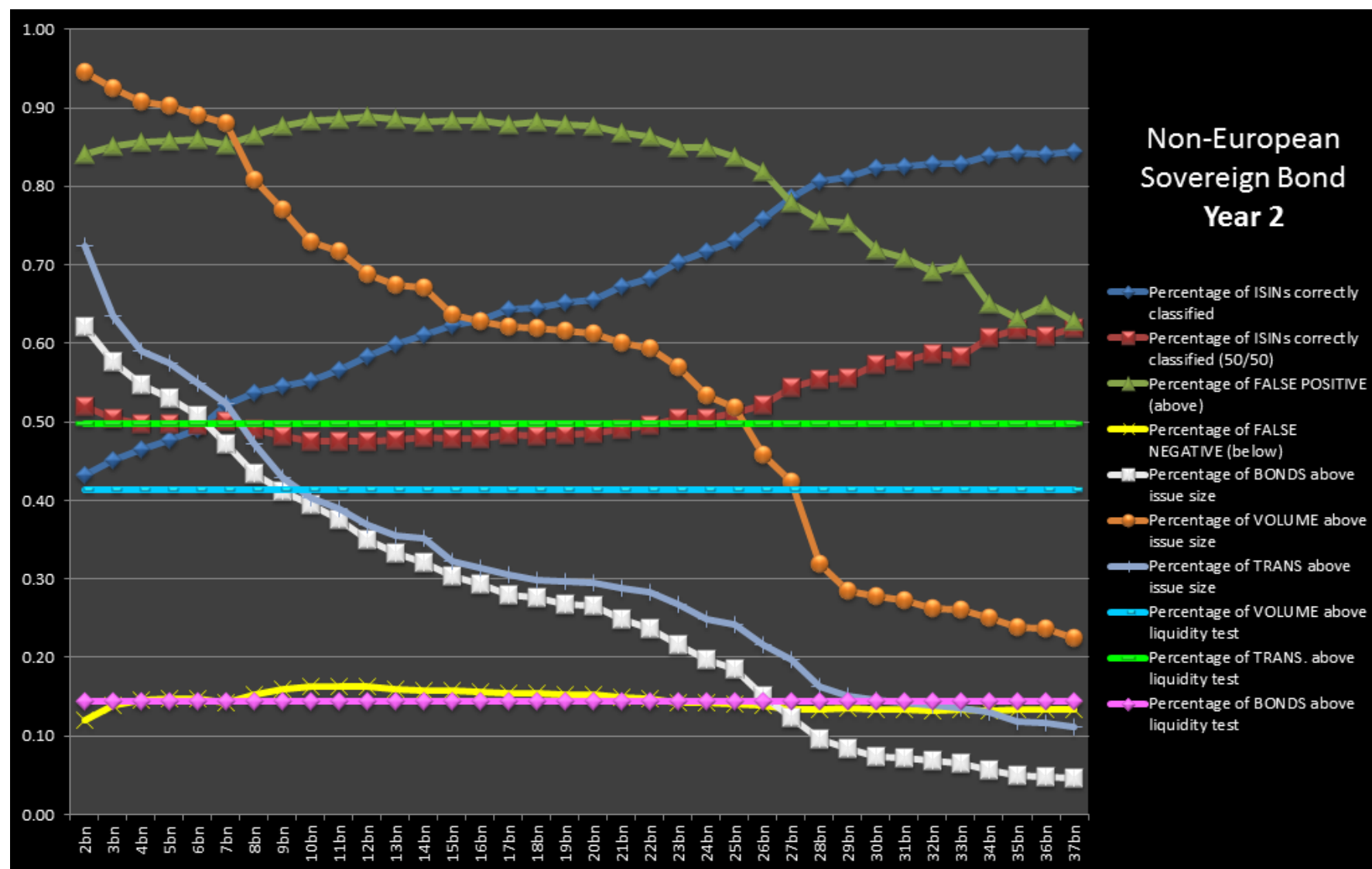


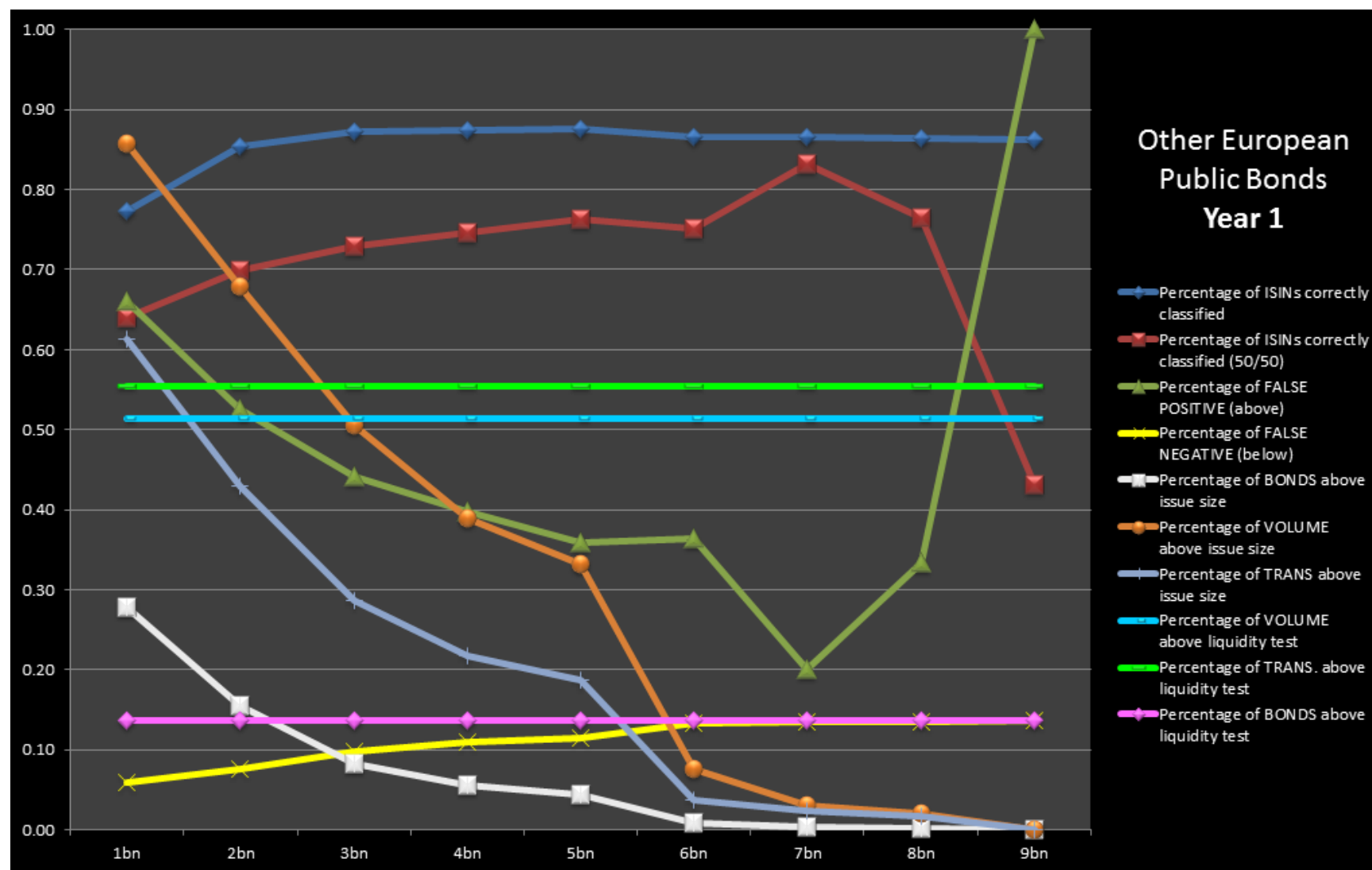
Table 12: Non-European Sovereign Bond: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~[8]	4 ~[13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
2bn	0.46	0.54	0.82	0.09	0.62	0.97	0.86	0.35	0.44	0.15
3bn	0.47	0.52	0.83	0.12	0.58	0.96	0.81	0.35	0.44	0.15
4bn	0.48	0.52	0.84	0.13	0.55	0.95	0.79	0.35	0.44	0.15
5bn	0.50	0.52	0.84	0.13	0.53	0.94	0.78	0.35	0.44	0.15
6bn	0.51	0.52	0.84	0.13	0.51	0.93	0.76	0.35	0.44	0.15
7bn	0.54	0.52	0.83	0.13	0.47	0.92	0.74	0.35	0.44	0.15
8bn	0.55	0.51	0.84	0.14	0.43	0.89	0.71	0.35	0.44	0.15
9bn	0.56	0.50	0.85	0.15	0.41	0.86	0.68	0.35	0.44	0.15
10bn	0.57	0.49	0.86	0.15	0.39	0.85	0.67	0.35	0.44	0.15
11bn	0.58	0.49	0.86	0.15	0.38	0.83	0.65	0.35	0.44	0.15
12bn	0.60	0.49	0.87	0.16	0.35	0.82	0.64	0.35	0.44	0.15
13bn	0.61	0.49	0.86	0.15	0.33	0.82	0.63	0.35	0.44	0.15
14bn	0.62	0.50	0.86	0.15	0.32	0.81	0.63	0.35	0.44	0.15
15bn	0.63	0.50	0.86	0.15	0.30	0.80	0.62	0.35	0.44	0.15
16bn	0.64	0.50	0.86	0.15	0.29	0.79	0.61	0.35	0.44	0.15
17bn	0.65	0.50	0.85	0.15	0.28	0.79	0.61	0.35	0.44	0.15
18bn	0.66	0.50	0.85	0.15	0.28	0.79	0.60	0.35	0.44	0.15
19bn	0.67	0.50	0.84	0.15	0.27	0.79	0.60	0.35	0.44	0.15
20bn	0.67	0.50	0.85	0.15	0.27	0.78	0.60	0.35	0.44	0.15
21bn	0.68	0.51	0.84	0.15	0.25	0.77	0.59	0.35	0.44	0.15
22bn	0.69	0.51	0.84	0.14	0.24	0.75	0.58	0.35	0.44	0.15
23bn	0.71	0.51	0.84	0.14	0.22	0.71	0.56	0.35	0.44	0.15
24bn	0.72	0.51	0.84	0.14	0.20	0.69	0.54	0.35	0.44	0.15
25bn	0.73	0.52	0.82	0.14	0.18	0.67	0.54	0.35	0.44	0.15
26bn	0.76	0.53	0.79	0.14	0.15	0.60	0.50	0.35	0.44	0.15
27bn	0.79	0.55	0.77	0.14	0.12	0.52	0.45	0.35	0.44	0.15
28bn	0.81	0.57	0.72	0.13	0.10	0.40	0.37	0.35	0.44	0.15
29bn	0.82	0.60	0.68	0.13	0.08	0.35	0.35	0.35	0.44	0.15
30bn	0.83	0.61	0.65	0.13	0.07	0.34	0.33	0.35	0.44	0.15
31bn	0.83	0.61	0.65	0.13	0.07	0.34	0.33	0.35	0.44	0.15
32bn	0.83	0.60	0.67	0.14	0.07	0.32	0.33	0.35	0.44	0.15
33bn	0.83	0.59	0.68	0.14	0.07	0.31	0.31	0.35	0.44	0.15
34bn	0.84	0.62	0.63	0.14	0.06	0.30	0.30	0.35	0.44	0.15
35bn	0.84	0.63	0.61	0.14	0.05	0.28	0.28	0.35	0.44	0.15
36bn	0.84	0.63	0.59	0.14	0.05	0.28	0.26	0.35	0.44	0.15
37bn	0.84	0.63	0.60	0.14	0.05	0.27	0.26	0.35	0.44	0.15

Table 13: Non-European Sovereign Bond: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~[8]	4 ~[13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
2bn	0.43	0.52	0.84	0.12	0.62	0.95	0.72	0.41	0.50	0.14
3bn	0.45	0.51	0.85	0.14	0.58	0.93	0.64	0.41	0.50	0.14
4bn	0.46	0.50	0.86	0.15	0.55	0.91	0.59	0.41	0.50	0.14
5bn	0.48	0.50	0.86	0.15	0.53	0.90	0.58	0.41	0.50	0.14
6bn	0.49	0.50	0.86	0.15	0.51	0.89	0.55	0.41	0.50	0.14
7bn	0.52	0.50	0.85	0.14	0.47	0.88	0.52	0.41	0.50	0.14
8bn	0.54	0.49	0.87	0.15	0.43	0.81	0.47	0.41	0.50	0.14
9bn	0.55	0.48	0.88	0.16	0.41	0.77	0.43	0.41	0.50	0.14
10bn	0.55	0.48	0.88	0.16	0.39	0.73	0.40	0.41	0.50	0.14
11bn	0.57	0.48	0.89	0.16	0.38	0.72	0.39	0.41	0.50	0.14
12bn	0.58	0.47	0.89	0.16	0.35	0.69	0.37	0.41	0.50	0.14
13bn	0.60	0.48	0.89	0.16	0.33	0.67	0.35	0.41	0.50	0.14
14bn	0.61	0.48	0.88	0.16	0.32	0.67	0.35	0.41	0.50	0.14
15bn	0.62	0.48	0.88	0.16	0.30	0.64	0.32	0.41	0.50	0.14
16bn	0.63	0.48	0.88	0.16	0.29	0.63	0.31	0.41	0.50	0.14
17bn	0.64	0.48	0.88	0.15	0.28	0.62	0.31	0.41	0.50	0.14
18bn	0.64	0.48	0.88	0.15	0.28	0.62	0.30	0.41	0.50	0.14
19bn	0.65	0.48	0.88	0.15	0.27	0.62	0.30	0.41	0.50	0.14
20bn	0.65	0.49	0.88	0.15	0.27	0.61	0.29	0.41	0.50	0.14
21bn	0.67	0.49	0.87	0.15	0.25	0.60	0.29	0.41	0.50	0.14
22bn	0.68	0.50	0.86	0.15	0.24	0.59	0.28	0.41	0.50	0.14
23bn	0.70	0.50	0.85	0.14	0.22	0.57	0.27	0.41	0.50	0.14
24bn	0.72	0.50	0.85	0.14	0.20	0.53	0.25	0.41	0.50	0.14
25bn	0.73	0.51	0.84	0.14	0.18	0.52	0.24	0.41	0.50	0.14
26bn	0.76	0.52	0.82	0.14	0.15	0.46	0.22	0.41	0.50	0.14
27bn	0.79	0.54	0.78	0.13	0.12	0.42	0.20	0.41	0.50	0.14
28bn	0.81	0.55	0.76	0.13	0.10	0.32	0.16	0.41	0.50	0.14
29bn	0.81	0.56	0.75	0.14	0.08	0.28	0.15	0.41	0.50	0.14
30bn	0.82	0.57	0.72	0.13	0.07	0.28	0.15	0.41	0.50	0.14
31bn	0.83	0.58	0.71	0.13	0.07	0.27	0.14	0.41	0.50	0.14
32bn	0.83	0.59	0.69	0.13	0.07	0.26	0.14	0.41	0.50	0.14
33bn	0.83	0.58	0.70	0.13	0.07	0.26	0.14	0.41	0.50	0.14
34bn	0.84	0.61	0.65	0.13	0.06	0.25	0.13	0.41	0.50	0.14
35bn	0.84	0.62	0.63	0.13	0.05	0.24	0.12	0.41	0.50	0.14
36bn	0.84	0.61	0.65	0.13	0.05	0.24	0.12	0.41	0.50	0.14
37bn	0.84	0.62	0.63	0.13	0.05	0.22	0.11	0.41	0.50	0.14

Graph 7: Other European Public Bond: issuance size testing: 1 October 2011 to 30 September 2012



Graph 8: Other European Public Bond: issuance size testing: 1 October 2012 to 30 September 2013

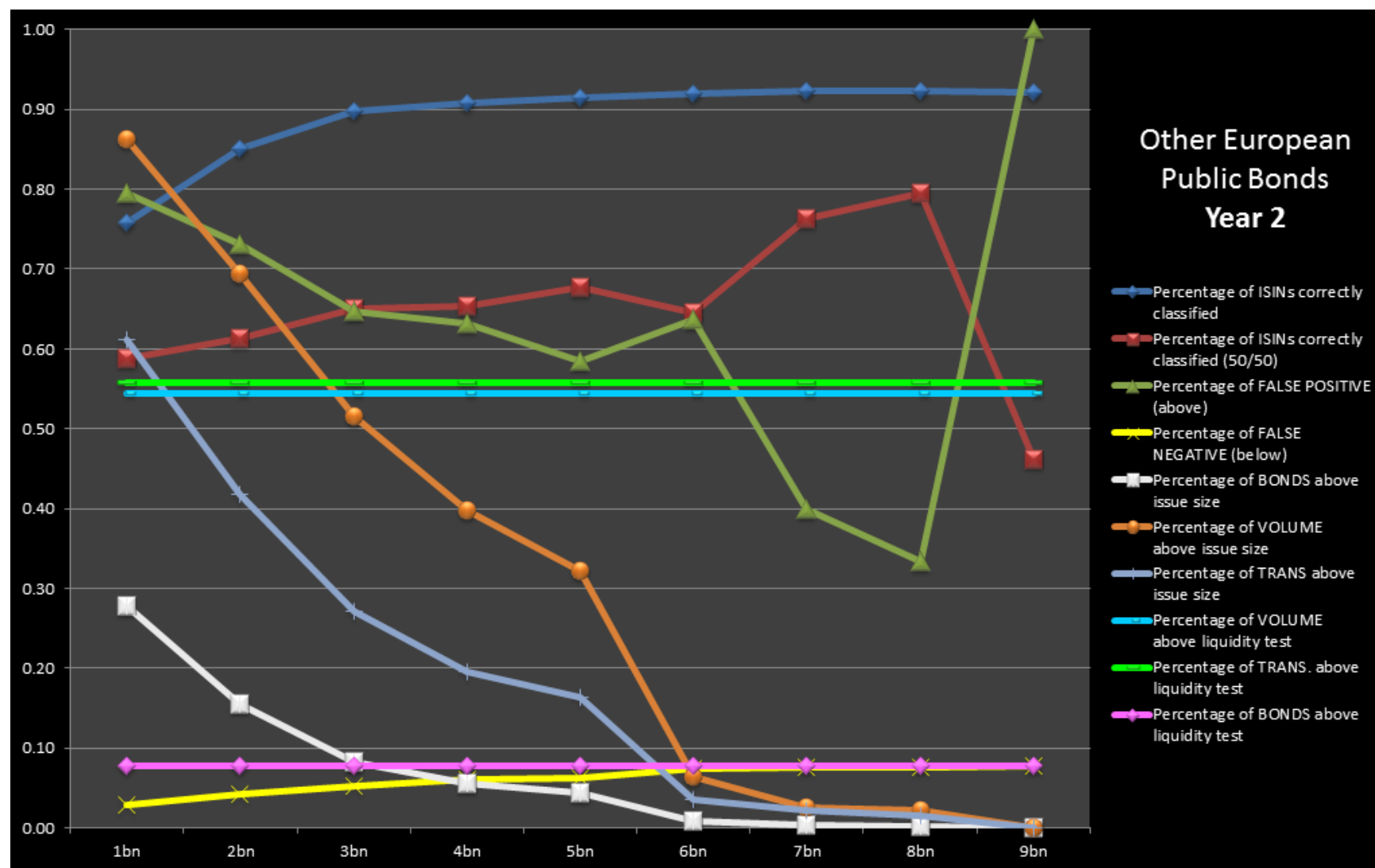


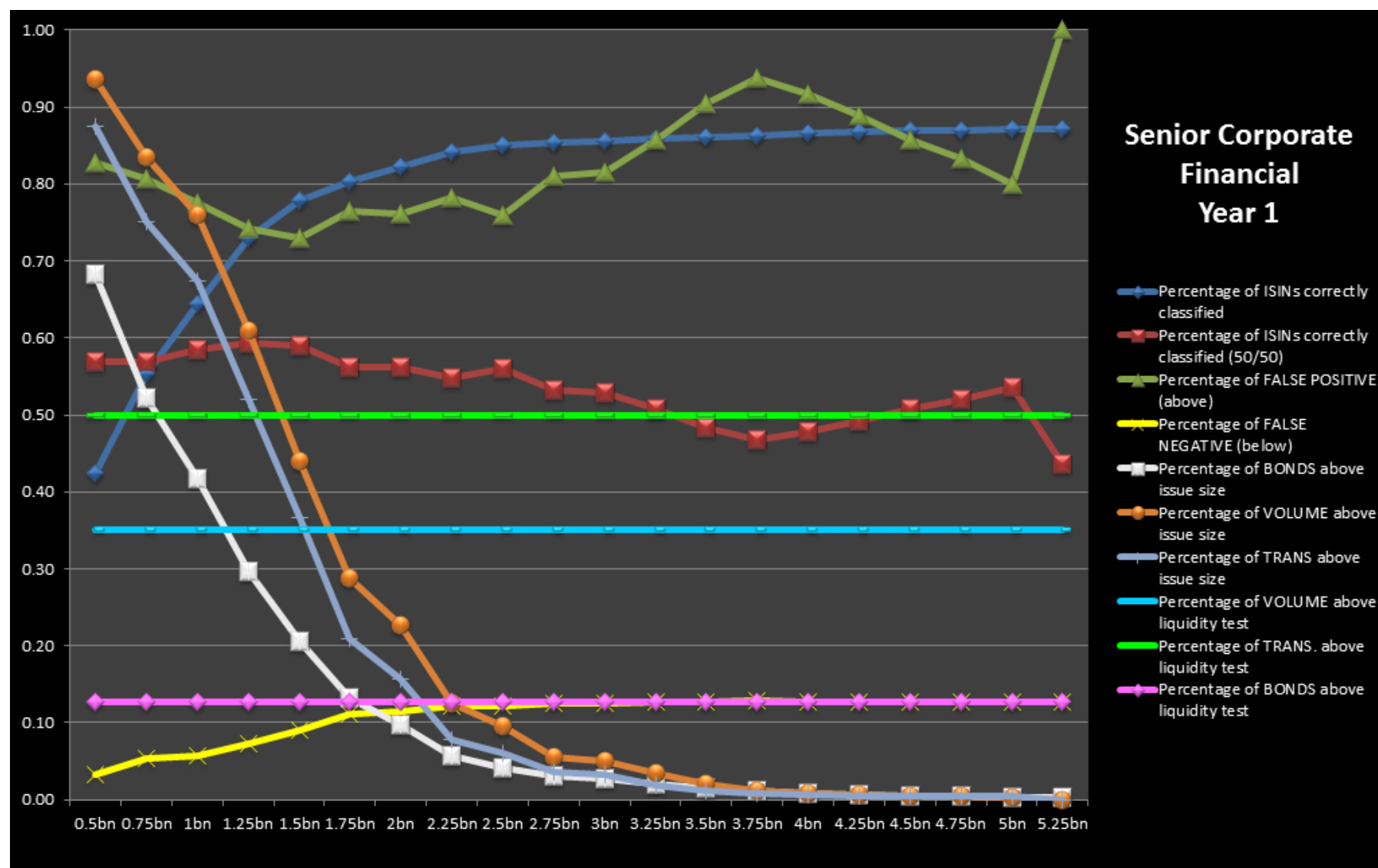
Table 14: Other European Public Bond: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
1bn	0.77	0.64	0.66	0.06	0.28	0.86	0.61	0.51	0.55	0.14
2bn	0.85	0.70	0.53	0.08	0.15	0.68	0.43	0.51	0.55	0.14
3bn	0.87	0.73	0.44	0.10	0.08	0.51	0.29	0.51	0.55	0.14
4bn	0.87	0.75	0.40	0.11	0.06	0.39	0.22	0.51	0.55	0.14
5bn	0.88	0.76	0.36	0.11	0.04	0.33	0.19	0.51	0.55	0.14
6bn	0.87	0.75	0.36	0.13	0.01	0.08	0.04	0.51	0.55	0.14
7bn	0.87	0.83	0.20	0.13	0.00	0.03	0.02	0.51	0.55	0.14
8bn	0.86	0.77	0.33	0.14	0.00	0.02	0.02	0.51	0.55	0.14
9bn	0.86	0.43	1.00	0.14	0.00	0.00	0.00	0.51	0.55	0.14

Table 15: Other European Public Bond: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
1bn	0.76	0.59	0.80	0.03	0.28	0.86	0.61	0.54	0.56	0.08
2bn	0.85	0.61	0.73	0.04	0.15	0.69	0.42	0.54	0.56	0.08
3bn	0.90	0.65	0.65	0.05	0.08	0.52	0.27	0.54	0.56	0.08
4bn	0.91	0.65	0.63	0.06	0.06	0.40	0.20	0.54	0.56	0.08
5bn	0.92	0.68	0.58	0.06	0.04	0.32	0.16	0.54	0.56	0.08
6bn	0.92	0.64	0.64	0.07	0.01	0.06	0.03	0.54	0.56	0.08
7bn	0.92	0.76	0.40	0.08	0.00	0.03	0.02	0.54	0.56	0.08
8bn	0.92	0.80	0.33	0.08	0.00	0.02	0.02	0.54	0.56	0.08
9bn	0.92	0.46	1.00	0.08	0.00	0.00	0.00	0.54	0.56	0.08

Graph 9: Senior Corporate Financial: issuance size testing: 1 October 2011 to 30 September 2012



Graph 10: Senior Corporate Financial: issuance size testing: 1 October 2012 to 30 September 2013

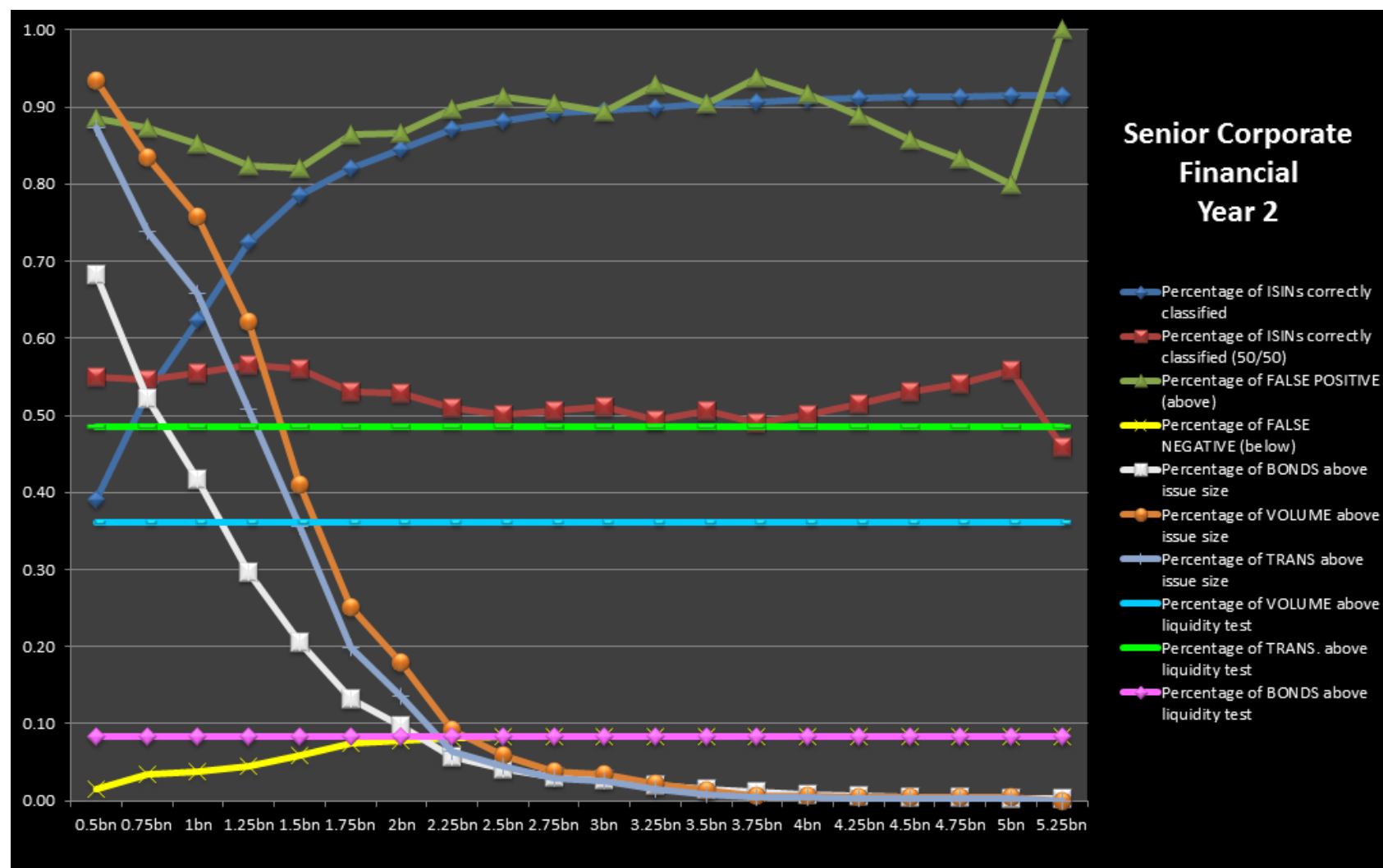


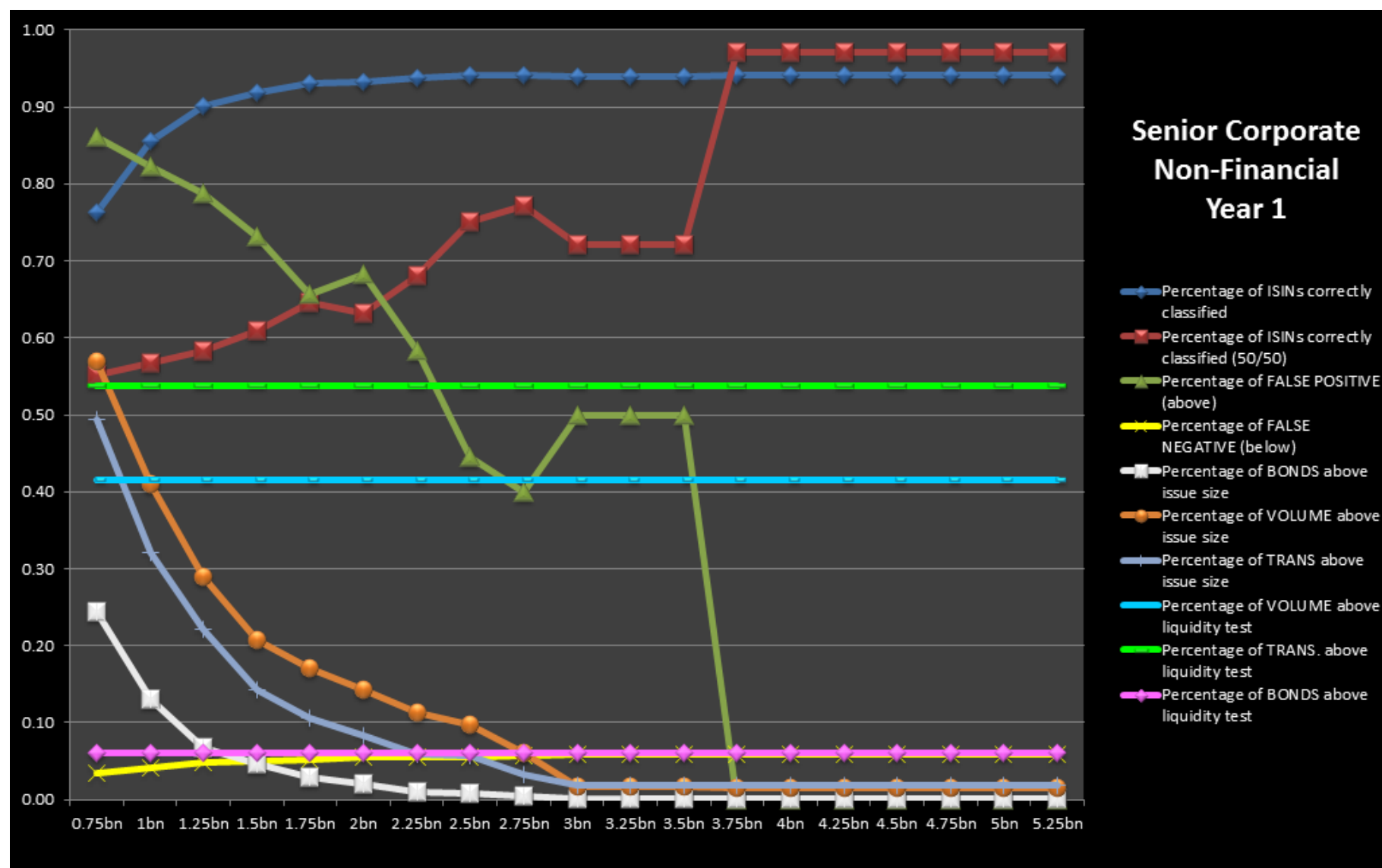
Table 16: Senior Corporate Financial: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.42	0.57	0.83	0.03	0.68	0.94	0.88	0.35	0.50	0.13
0.75bn	0.55	0.57	0.81	0.05	0.52	0.84	0.75	0.35	0.50	0.13
1bn	0.64	0.58	0.77	0.06	0.42	0.76	0.67	0.35	0.50	0.13
1.25bn	0.73	0.59	0.74	0.07	0.30	0.61	0.52	0.35	0.50	0.13
1.5bn	0.78	0.59	0.73	0.09	0.21	0.44	0.37	0.35	0.50	0.13
1.75bn	0.80	0.56	0.77	0.11	0.13	0.29	0.21	0.35	0.50	0.13
2bn	0.82	0.56	0.76	0.12	0.10	0.23	0.16	0.35	0.50	0.13
2.25bn	0.84	0.55	0.78	0.12	0.06	0.12	0.08	0.35	0.50	0.13
2.5bn	0.85	0.56	0.76	0.12	0.04	0.10	0.06	0.35	0.50	0.13
2.75bn	0.85	0.53	0.81	0.13	0.03	0.06	0.04	0.35	0.50	0.13
3bn	0.86	0.53	0.82	0.13	0.03	0.05	0.03	0.35	0.50	0.13
3.25bn	0.86	0.51	0.86	0.13	0.02	0.03	0.02	0.35	0.50	0.13
3.5bn	0.86	0.48	0.90	0.13	0.02	0.02	0.01	0.35	0.50	0.13
3.75bn	0.86	0.47	0.94	0.13	0.01	0.01	0.01	0.35	0.50	0.13
4bn	0.87	0.48	0.92	0.13	0.01	0.01	0.01	0.35	0.50	0.13
4.25bn	0.87	0.49	0.89	0.13	0.01	0.01	0.00	0.35	0.50	0.13
4.5bn	0.87	0.51	0.86	0.13	0.01	0.00	0.00	0.35	0.50	0.13
4.75bn	0.87	0.52	0.83	0.13	0.00	0.00	0.00	0.35	0.50	0.13
5bn	0.87	0.54	0.80	0.13	0.00	0.00	0.00	0.35	0.50	0.13
5.25bn	0.87	0.44	1.00	0.13	0.00	0.00	0.00	0.35	0.50	0.13

Table 17: Senior Corporate Financial: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.39	0.55	0.89	0.02	0.68	0.93	0.87	0.36	0.49	0.08
0.75bn	0.53	0.55	0.87	0.03	0.52	0.83	0.74	0.36	0.49	0.08
1bn	0.62	0.56	0.85	0.04	0.42	0.76	0.66	0.36	0.49	0.08
1.25bn	0.72	0.57	0.82	0.04	0.30	0.62	0.51	0.36	0.49	0.08
1.5bn	0.79	0.56	0.82	0.06	0.21	0.41	0.36	0.36	0.49	0.08
1.75bn	0.82	0.53	0.86	0.08	0.13	0.25	0.20	0.36	0.49	0.08
2bn	0.85	0.53	0.87	0.08	0.10	0.18	0.14	0.36	0.49	0.08
2.25bn	0.87	0.51	0.90	0.08	0.06	0.09	0.06	0.36	0.49	0.08
2.5bn	0.88	0.50	0.91	0.08	0.04	0.06	0.04	0.36	0.49	0.08
2.75bn	0.89	0.51	0.90	0.08	0.03	0.04	0.03	0.36	0.49	0.08
3bn	0.90	0.51	0.89	0.08	0.03	0.03	0.03	0.36	0.49	0.08
3.25bn	0.90	0.49	0.93	0.08	0.02	0.02	0.01	0.36	0.49	0.08
3.5bn	0.90	0.51	0.90	0.08	0.02	0.01	0.01	0.36	0.49	0.08
3.75bn	0.91	0.49	0.94	0.08	0.01	0.01	0.00	0.36	0.49	0.08
4bn	0.91	0.50	0.92	0.08	0.01	0.01	0.00	0.36	0.49	0.08
4.25bn	0.91	0.51	0.89	0.08	0.01	0.00	0.00	0.36	0.49	0.08
4.5bn	0.91	0.53	0.86	0.08	0.01	0.00	0.00	0.36	0.49	0.08
4.75bn	0.91	0.54	0.83	0.08	0.00	0.00	0.00	0.36	0.49	0.08
5bn	0.91	0.56	0.80	0.08	0.00	0.00	0.00	0.36	0.49	0.08
5.25bn	0.91	0.46	1.00	0.08	0.00	0.00	0.00	0.36	0.49	0.08

Graph 11: Senior Corporate Non-Financial: issuance size testing: 1 October 2011 to 30 September 2012



Graph 12: Senior Corporate Non-Financial: issuance size testing: 1 October 2012 to 30 September 2013

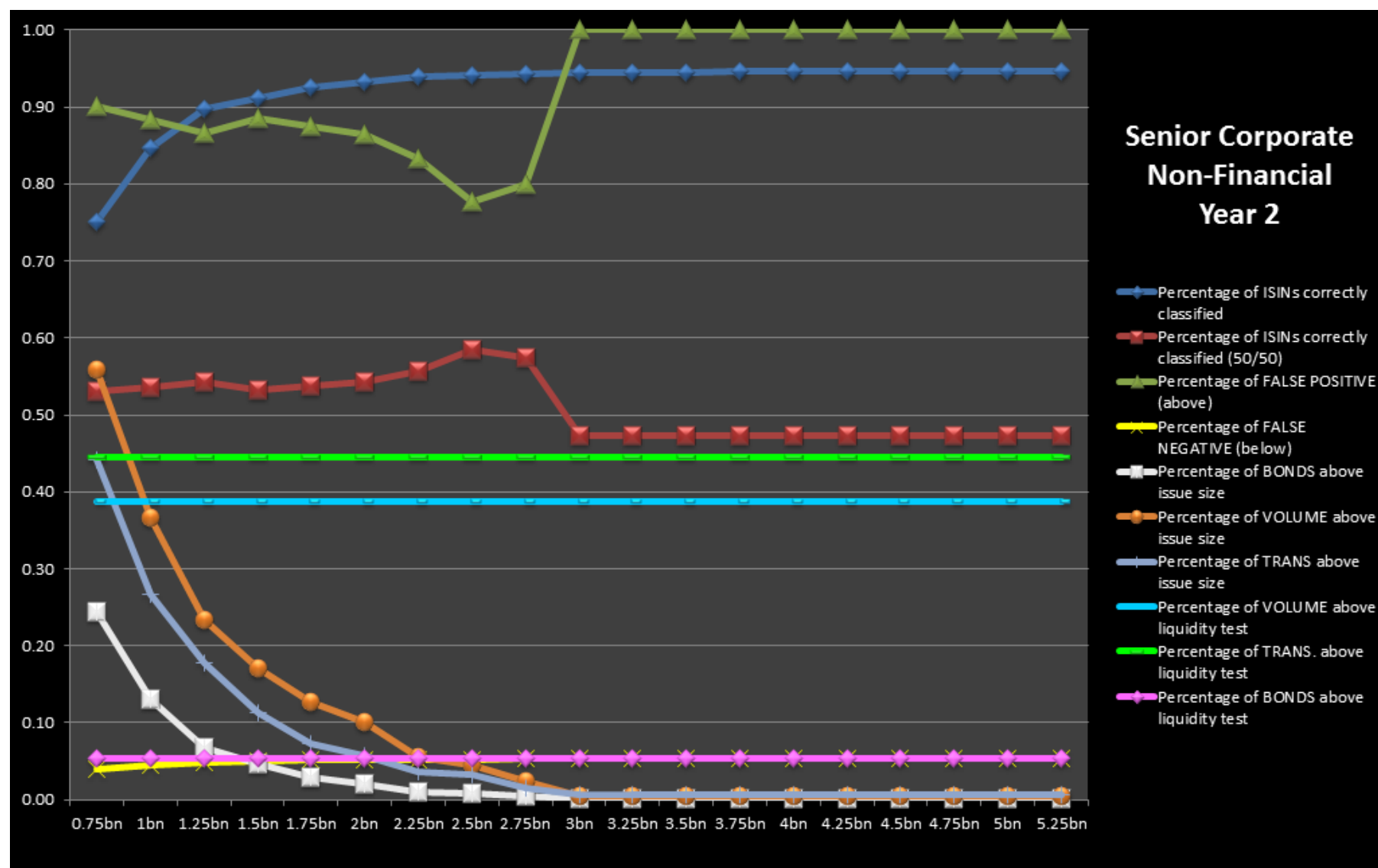


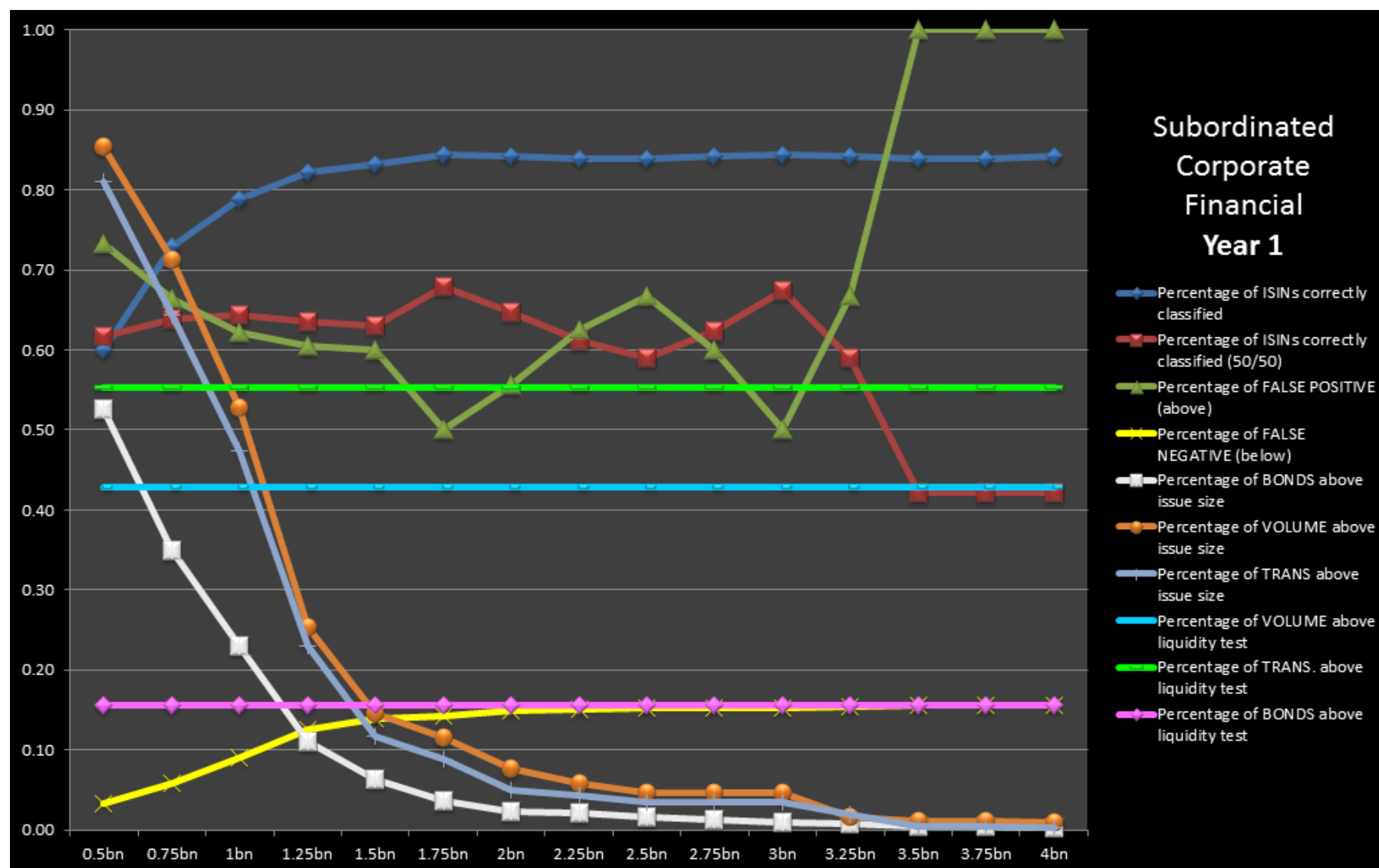
Table 18: Senior Corporate Non-Financial: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (250mm)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.75bn	0.76	0.55	0.86	0.03	0.24	0.57	0.49	0.41	0.54	0.06
1bn	0.86	0.57	0.82	0.04	0.13	0.41	0.32	0.41	0.54	0.06
1.25bn	0.90	0.58	0.79	0.05	0.07	0.29	0.22	0.41	0.54	0.06
1.5bn	0.92	0.61	0.73	0.05	0.05	0.21	0.14	0.41	0.54	0.06
1.75bn	0.93	0.65	0.66	0.05	0.03	0.17	0.11	0.41	0.54	0.06
2bn	0.93	0.63	0.68	0.05	0.02	0.14	0.08	0.41	0.54	0.06
2.25bn	0.94	0.68	0.58	0.06	0.01	0.11	0.06	0.41	0.54	0.06
2.5bn	0.94	0.75	0.44	0.06	0.01	0.10	0.06	0.41	0.54	0.06
2.75bn	0.94	0.77	0.40	0.06	0.00	0.06	0.03	0.41	0.54	0.06
3bn	0.94	0.72	0.50	0.06	0.00	0.02	0.02	0.41	0.54	0.06
3.25bn	0.94	0.72	0.50	0.06	0.00	0.02	0.02	0.41	0.54	0.06
3.5bn	0.94	0.72	0.50	0.06	0.00	0.02	0.02	0.41	0.54	0.06
3.75bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
4bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
4.25bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
4.5bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
4.75bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
5bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06
5.25bn	0.94	0.97	0.00	0.06	0.00	0.02	0.02	0.41	0.54	0.06

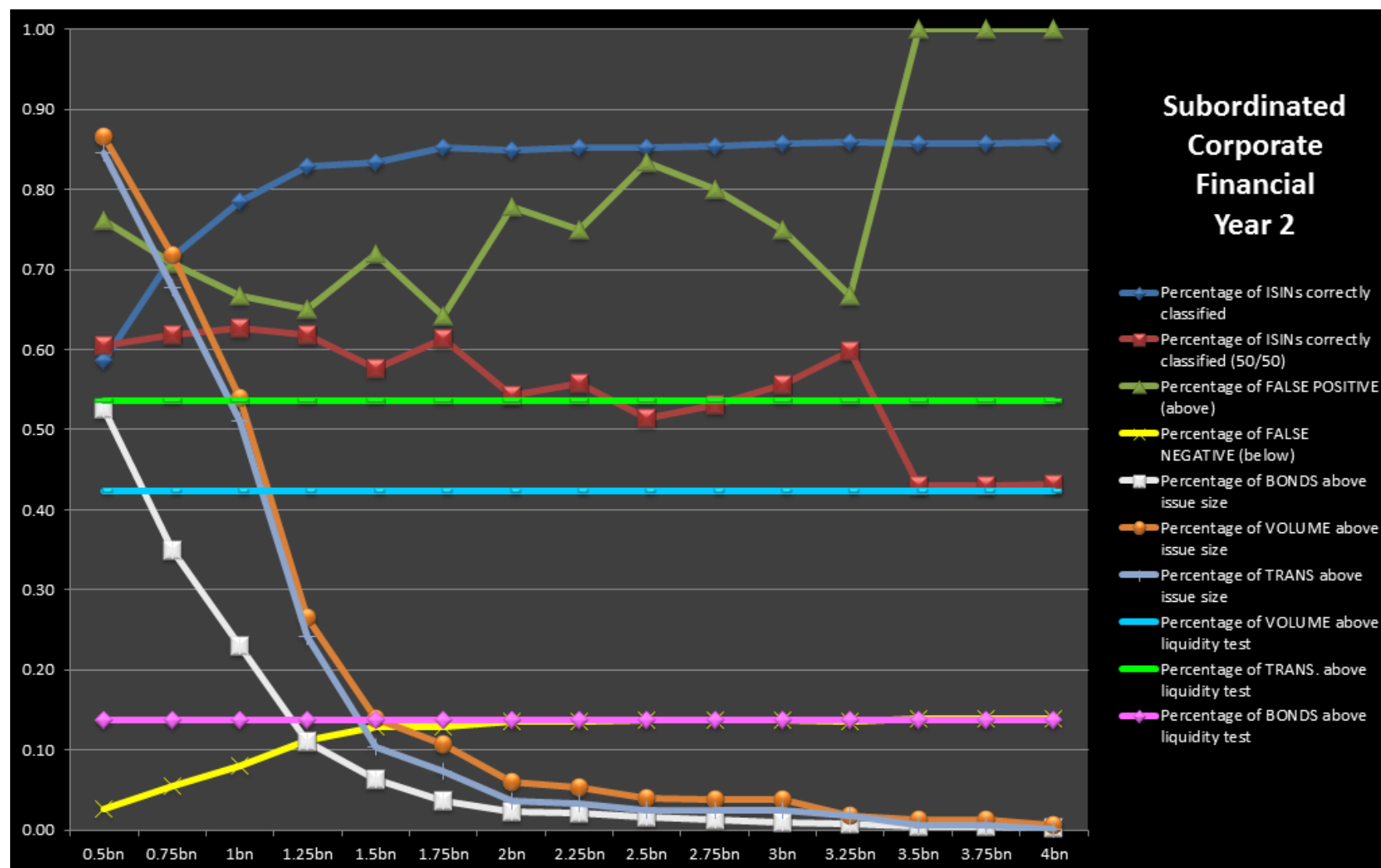
Table 19: Senior Corporate Non-Financial: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.75bn	0.75	0.53	0.90	0.04	0.24	0.56	0.44	0.39	0.44	0.05
1bn	0.85	0.54	0.88	0.04	0.13	0.37	0.27	0.39	0.44	0.05
1.25bn	0.90	0.54	0.87	0.05	0.07	0.23	0.18	0.39	0.44	0.05
1.5bn	0.91	0.53	0.88	0.05	0.05	0.17	0.11	0.39	0.44	0.05
1.75bn	0.93	0.54	0.88	0.05	0.03	0.13	0.07	0.39	0.44	0.05
2bn	0.93	0.54	0.86	0.05	0.02	0.10	0.06	0.39	0.44	0.05
2.25bn	0.94	0.56	0.83	0.05	0.01	0.05	0.04	0.39	0.44	0.05
2.5bn	0.94	0.59	0.78	0.05	0.01	0.05	0.03	0.39	0.44	0.05
2.75bn	0.94	0.57	0.80	0.05	0.00	0.02	0.01	0.39	0.44	0.05
3bn	0.94	0.47	1.00	0.05	0.00	0.01	0.01	0.39	0.44	0.05
3.25bn	0.94	0.47	1.00	0.05	0.00	0.01	0.01	0.39	0.44	0.05
3.5bn	0.94	0.47	1.00	0.05	0.00	0.01	0.01	0.39	0.44	0.05
3.75bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
4bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
4.25bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
4.5bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
4.75bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
5bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05
5.25bn	0.95	0.47	1.00	0.05	0.00	0.00	0.01	0.39	0.44	0.05

Graph 13: Subordinated Corporate Financial: issuance size testing: 1 October 2011 to 30 September 2012



Graph 14: Subordinated Corporate Financial: issuance size testing: 1 October 2012 to 30 September 2013



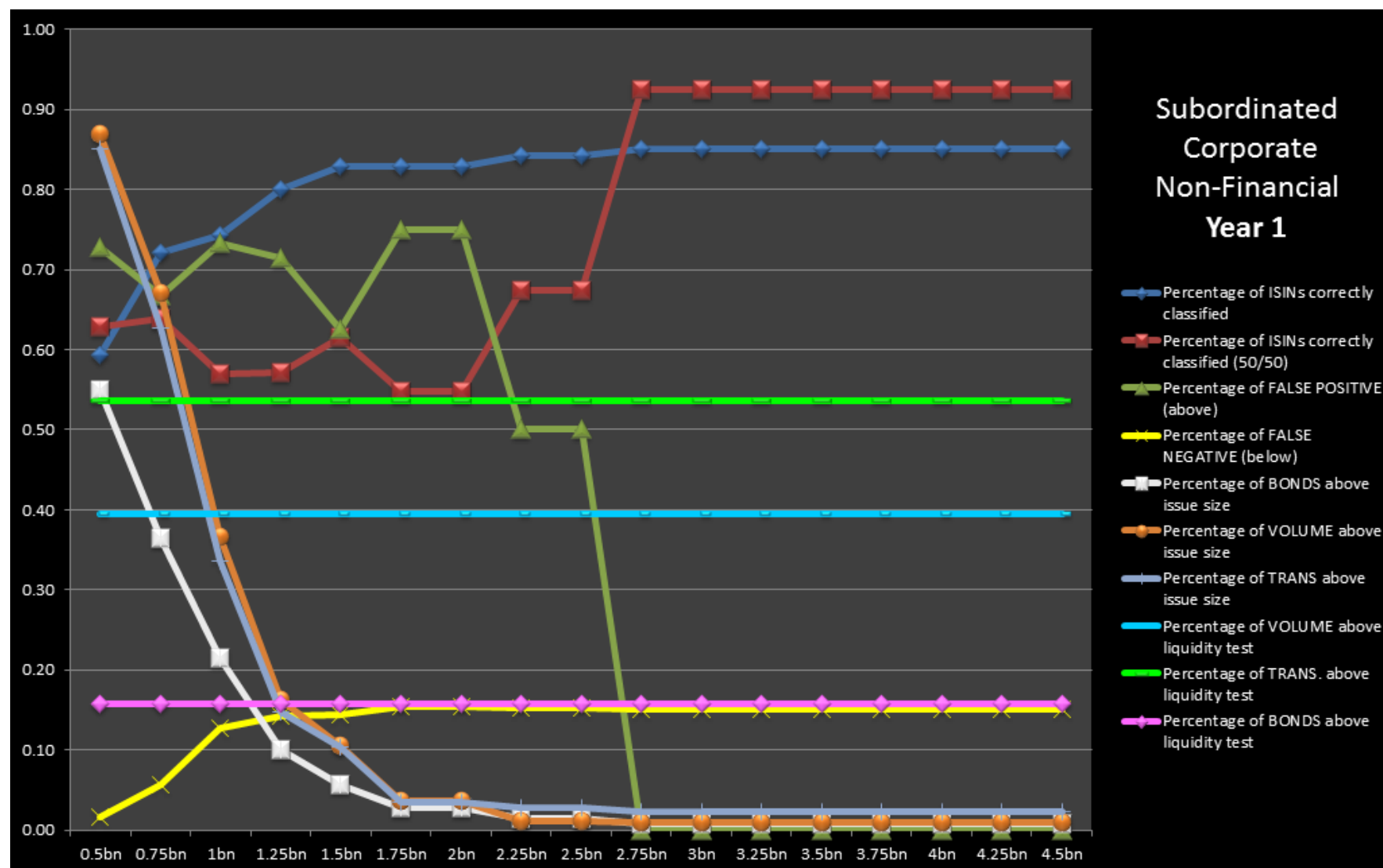
Graph 20: Subordinated Corporate Financial: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.60	0.62	0.73	0.03	0.53	0.85	0.81	0.43	0.55	0.16
0.75bn	0.73	0.64	0.66	0.06	0.35	0.71	0.64	0.43	0.55	0.16
1bn	0.79	0.64	0.62	0.09	0.23	0.53	0.47	0.43	0.55	0.16
1.25bn	0.82	0.63	0.60	0.13	0.11	0.25	0.23	0.43	0.55	0.16
1.5bn	0.83	0.63	0.60	0.14	0.06	0.15	0.12	0.43	0.55	0.16
1.75bn	0.84	0.68	0.50	0.14	0.04	0.12	0.09	0.43	0.55	0.16
2bn	0.84	0.65	0.56	0.15	0.02	0.08	0.05	0.43	0.55	0.16
2.25bn	0.84	0.61	0.63	0.15	0.02	0.06	0.04	0.43	0.55	0.16
2.5bn	0.84	0.59	0.67	0.15	0.02	0.05	0.03	0.43	0.55	0.16
2.75bn	0.84	0.62	0.60	0.15	0.01	0.05	0.03	0.43	0.55	0.16
3bn	0.84	0.67	0.50	0.15	0.01	0.05	0.03	0.43	0.55	0.16
3.25bn	0.84	0.59	0.67	0.15	0.01	0.02	0.02	0.43	0.55	0.16
3.5bn	0.84	0.42	1.00	0.16	0.01	0.01	0.00	0.43	0.55	0.16
3.75bn	0.84	0.42	1.00	0.16	0.01	0.01	0.00	0.43	0.55	0.16
4bn	0.84	0.42	1.00	0.16	0.00	0.01	0.00	0.43	0.55	0.16

Graph 21: Subordinated Corporate Financial: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.59	0.61	0.76	0.03	0.53	0.87	0.85	0.42	0.54	0.14
0.75bn	0.72	0.62	0.71	0.05	0.35	0.72	0.68	0.42	0.54	0.14
1bn	0.79	0.63	0.67	0.08	0.23	0.54	0.51	0.42	0.54	0.14
1.25bn	0.83	0.62	0.65	0.11	0.11	0.27	0.24	0.42	0.54	0.14
1.5bn	0.83	0.58	0.72	0.13	0.06	0.14	0.10	0.42	0.54	0.14
1.75bn	0.85	0.61	0.64	0.13	0.04	0.11	0.07	0.42	0.54	0.14
2bn	0.85	0.54	0.78	0.14	0.02	0.06	0.04	0.42	0.54	0.14
2.25bn	0.85	0.56	0.75	0.14	0.02	0.05	0.03	0.42	0.54	0.14
2.5bn	0.85	0.51	0.83	0.14	0.02	0.04	0.02	0.42	0.54	0.14
2.75bn	0.85	0.53	0.80	0.14	0.01	0.04	0.02	0.42	0.54	0.14
3bn	0.86	0.56	0.75	0.14	0.01	0.04	0.02	0.42	0.54	0.14
3.25bn	0.86	0.60	0.67	0.14	0.01	0.02	0.02	0.42	0.54	0.14
3.5bn	0.86	0.43	1.00	0.14	0.01	0.01	0.01	0.42	0.54	0.14
3.75bn	0.86	0.43	1.00	0.14	0.01	0.01	0.01	0.42	0.54	0.14
4bn	0.86	0.43	1.00	0.14	0.00	0.01	0.00	0.42	0.54	0.14

Graph 15: Subordinated Corporate Non-Financial: issuance size testing: 1 October 2011 to 30 September 2012



Graph 16: Subordinated Corporate Non-Financial: issuance size testing: 1 October 2012 to 30 September 2013

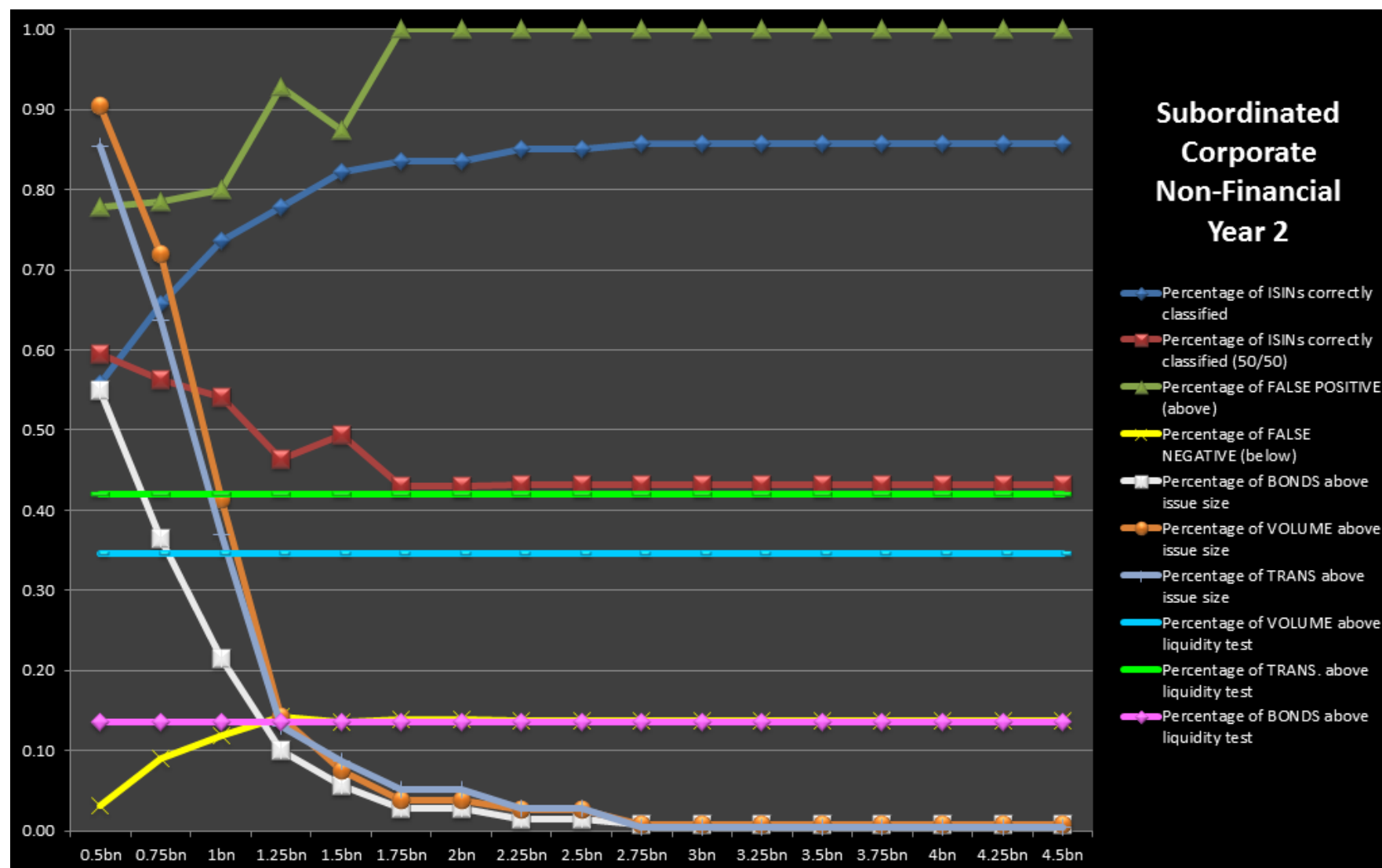


Table 22: Subordinated Corporate Non-Financial: issuance size testing: 1 October 2011 to 30 September 2012

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.59	0.63	0.73	0.02	0.55	0.87	0.85	0.40	0.54	0.16
0.75bn	0.72	0.64	0.67	0.06	0.36	0.67	0.63	0.40	0.54	0.16
1bn	0.74	0.57	0.73	0.13	0.21	0.37	0.34	0.40	0.54	0.16
1.25bn	0.80	0.57	0.71	0.14	0.10	0.16	0.15	0.40	0.54	0.16
1.5bn	0.83	0.62	0.63	0.14	0.06	0.10	0.10	0.40	0.54	0.16
1.75bn	0.83	0.55	0.75	0.15	0.03	0.04	0.03	0.40	0.54	0.16
2bn	0.83	0.55	0.75	0.15	0.03	0.04	0.03	0.40	0.54	0.16
2.25bn	0.84	0.67	0.50	0.15	0.01	0.01	0.03	0.40	0.54	0.16
2.5bn	0.84	0.67	0.50	0.15	0.01	0.01	0.03	0.40	0.54	0.16
2.75bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
3bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
3.25bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
3.5bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
3.75bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
4bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
4.25bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16
4.5bn	0.85	0.92	0.00	0.15	0.01	0.01	0.02	0.40	0.54	0.16

Table 23: Subordinated Corporate Non-Financial: issuance size testing: 1 October 2012 to 30 September 2013

Columns No. ~ [ref.to ESMA Table 5 in 3.5 of CP]	1 ~[2]	2	3 ~ [8]	4 ~ [13]	5	6	7	8	9	10
ISSUE SIZE INCREMENTS (1bn)	Percentage of ISINs correctly classified	Percentage of ISINs correctly classified (50/50)	Percentage of FALSE POSITIVE (above)	Percentage of FALSE NEGATIVE (below)	Percentage of BONDS above issue size	Percentage of VOLUME above issue size	Percentage of TRANS above issue size	Percentage of VOLUME above liquidity test	Percentage of TRANS. above liquidity test	Percentage of BONDS above liquidity test
0.5bn	0.56	0.59	0.78	0.03	0.55	0.90	0.85	0.35	0.42	0.14
0.75bn	0.66	0.56	0.78	0.09	0.36	0.72	0.64	0.35	0.42	0.14
1bn	0.74	0.54	0.80	0.12	0.21	0.41	0.37	0.35	0.42	0.14
1.25bn	0.78	0.46	0.93	0.14	0.10	0.14	0.13	0.35	0.42	0.14
1.5bn	0.82	0.49	0.88	0.14	0.06	0.08	0.09	0.35	0.42	0.14
1.75bn	0.84	0.43	1.00	0.14	0.03	0.04	0.05	0.35	0.42	0.14
2bn	0.84	0.43	1.00	0.14	0.03	0.04	0.05	0.35	0.42	0.14
2.25bn	0.85	0.43	1.00	0.14	0.01	0.03	0.03	0.35	0.42	0.14
2.5bn	0.85	0.43	1.00	0.14	0.01	0.03	0.03	0.35	0.42	0.14
2.75bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
3bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
3.25bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
3.5bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
3.75bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
4bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
4.25bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14
4.5bn	0.86	0.43	1.00	0.14	0.01	0.01	0.00	0.35	0.42	0.14

<ESMA_QUESTION_CP_MIFID_57>

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

<ESMA_QUESTION_CP_MIFID_58>

AFME Response

To ensure that there is minimal overlap between the bond definitions and remove ambiguity in the definitions in order to minimise confusion with regards to bond classification, we propose the following amendments to the definitions.

A new definition of "structured debt security" should be included, as follows:

"Structured debt security" means a transferable security falling within Article 4(1)(44)(b) of Directive 2014/65/EU with an embedded derivative which is not a convertible bond.

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

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

- The definition of "bond" should be amended, as follows:

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

- The definition of "securitised derivatives" should be amended, as follows:

'Securitised derivative' means a **structured debt security or a** transferable security **as defined in falling within** Article 4(1)(44)(c) of Directive 2014/65/EU ~~different from~~ which is not a structured finance product.

- Recital 11 should be amended, as follows:

"For the purposes of this Regulation, plain vanilla covered warrants, leverage certificates, exotic warrants, exchange-traded-commodities, exchange-traded notes, negotiable rights and structured medium-term-notes **(and other structured debt securities)** should be considered securitised derivatives. This is not meant to be an exhaustive list of securitised derivatives."

<ESMA_QUESTION_CP_MIFID_58>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_59>

AFME Response

No. AFME does not agree.

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

With regards to the liquidity calibration, given the breadth and diversity of the universe of instruments that would be classified as securitised derivatives, we suggest that ESMA take a more granular approach. We believe that ESMA's approach in the Consultation Paper is not appropriate.

AFME does not agree with a presumption that, prima facie, the presence of a market maker implies liquidity in all markets, and that the nature of the product as well as the number and type of market participants is highly relevant to such a determination.

Within this large universe, there is a subset of instruments that can be categorized as liquid because they are predominately retail focused, have genuine secondary market activity (either with or without a presence of a market maker) and transactions are often executed in relatively small sizes (e.g. Exchange Traded Derivatives). However, there are many other instruments falling within this class that are wholesale products and are illiquid (e.g. Structured Notes).

<ESMA_QUESTION_CP_MIFID_59>

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

<ESMA_QUESTION_CP_MIFID_60>

AFME Response

AFME refers to its response to Question 59.

<ESMA_QUESTION_CP_MIFID_60>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_61>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_61>

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

<ESMA_QUESTION_CP_MIFID_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_62>

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

<ESMA_QUESTION_CP_MIFID_63>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_63>

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

(1) your alternative proposal

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

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

<ESMA_QUESTION_CP_MIFID_64>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_64>

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

<ESMA_QUESTION_CP_MIFID_65>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_65>

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

- (1) Would you use different qualitative criteria to define the sub-classes? In particular, do you consider the notional currency as a relevant criterion to define sub-classes, or in other words should a sub-class deemed as liquid in one currency be declared liquid for all currencies?**
- (2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?**
- (3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.**

AFME Response

In relation to the definition of a liquid market, we agree with the concerns raised in our responses in the Fixed Income context about the potential negative impact of an inappropriately calibrated transparency regime.

To assess the liquidity of metal commodity derivatives, we understand that ESMA has analysed data collected from five trading venues. We believe this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., LME) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the consultation paper is minimal, that the taxonomy presented is not as detailed as for other asset classes and as a result we have very real concerns regarding the accuracy of this data.

We also note that neither the consultation paper nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or may pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time. Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.

Moreover, we note the current difficulties for market participants to access OTC data. Although this information is reported by market participants to trade repositories under the existing reporting regimes which apply to commodity derivatives (e.g., EMIR), these details are accessible only to regulators.

In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are 'traded on a trading venue' (e.g. excluding bespoke OTC transactions) are liquid for the purposes of the MiFID 2 transparency regime. Such an assessment should be based on complete data available from the major commodities trading venues (including the major non-EU venues) for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that at the end of February 2015 ESMA published an Addendum to this consultation paper, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that

there are certain sub-classes (for example, coal and iron ore) which are not addressed in either consultation paper.

Therefore, we recommend ESMA conducts (i) an in-depth analysis, similar to the one performed for other asset classes and (ii) a further consultation which provides market participants with sufficient time to respond, consider the proposals and to review the relevant data and analysis.

Approach and parameters

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

In particular, for metals, we believe that a distinction should be made between base metals and precious metals.

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

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

Illustrative assessment

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes its liquidity determinations on the basis of a complete set of data from trading venues and trade repositories.

We acknowledge, however, that the assessment will be an extremely complex task and we are therefore keen to assist ESMA in the development of an appropriate framework. Accordingly, we set out below some principles for a taxonomy, which we believe ESMA may be able to use as a starting point in conducting its assessment, and an illustrative assessment of the liquidity of certain metals commodity derivatives.

The proposed tables are illustrative only and, given the absence of data, demonstrate our efforts to reflect a more appropriate framework for the definition of the liquidity of the main metals commodity derivative contracts. We would therefore stress that the taxonomy and liquidity assessments should not be adopted by ESMA without first conducting a detailed assessment of the liquidity of the commodity derivative contracts. Any assessment must utilise data from trading venues and trade repositories. For ease of reference, the tables include the following information:

- for ETD contracts, our initial analysis includes an indicative liquidity test (including thresholds) that we believe more appropriate than the proposed “one trade per day” and “€ 100,000 per day”. The liquidity test is based on the publicly available data from the major trading venues.
- for OTC contracts, due to the difficulties in accessing the data noted above, we have not been able to indicate a more appropriate threshold/liquidity test. However, we have marked the various contracts which may be considered liquid or illiquid on the basis of the information which is available to us.

Tables:

1. Base metals

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Aluminium	≤ 12 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Liquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Liquid	
	12 - 24 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Illiquid	
	> 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
Copper	≤ 12 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Liquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Liquid	
	12 - 24 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Illiquid	

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
	> 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
Nickel	≤ 12 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Liquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Liquid	
	12 - 24 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Illiquid	
	> 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
Zinc	≤ 12 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Liquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Liquid	
	12 - 24 months	LME Forward	Liquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Liquid	
		OTC Option	Illiquid	
	> 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
All other LME metals	≤ 12 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
	12 - 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	
	> 24 months	LME Forward	Illiquid	2,500 trades/day; \$ 350 million/week
		LME Option	Illiquid	2,500 trades/day; \$ 350 million/week
		OTC Cash Settled Swap	Illiquid	
		OTC Option	Illiquid	

2. Precious metals

Due to the fact that the precious market is predominantly OTC, there is limited publicly available data on precious metals instruments. Therefore, we have not been able to provide metrics by which liquidity for precious metal instruments can be assessed. However we are able to provide an illustrative assessment of how market participants perceive liquidity in the precious market based on trading knowledge (included in the table below) taking into account as outlined above that (i) the majority of the precious market is physically settled on a bilateral (OTC) basis; and (ii) the list of instruments noted in the table below may not be exhaustive.

We note that ESMA has made an assessment for the liquidity of gold (which in the EU is mainly traded OTC along with silver, platinum and palladium) and we would be grateful if ESMA could disclose the data underlying these assessments. We would then review this data and provide our views on the quality of the data set including whether the source(s) is/are representative of the precious market, whether additional granularity is required and thereafter propose metrics by which liquidity can be assessed.

We offer our availability to continue the discussion with ESMA on this and all other sub-classes on the basis of the information that will be collected from trade repositories.

Specific Commodity	Tenor	Instrument Type	Liquidity Category
Gold	≤ 3 months	OTC Swap	Liquid
		OTC Forward	Liquid
		OTC Option	Liquid
		LME/CME Swap physical	Illiquid
	3 - 12 months	OTC Swap	Liquid
		OTC Forward	Liquid
		OTC Option	Liquid
		LME/CME Swap physical	Illiquid
	12 - 24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	>24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
Silver	≤ 3 months	OTC Swap	Liquid
		OTC Forward	Liquid
		OTC Option	Liquid
		LME/CME Swap physical	Illiquid
	3 - 12 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid

Specific Commodity	Tenor	Instrument Type	Liquidity Category
	12 - 24 months	LME/CME Swap physical	Illiquid
		OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
	> 24 months	LME/CME Swap physical	Illiquid
		OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
Platinum	≤ 3 months	OTC Swap	Liquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	3 - 12 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	12 - 24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	>24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
Palladium	≤ 3 months	OTC Swap	Liquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	3 - 12 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	12 - 24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid
	>24 months	OTC Swap	Illiquid
		OTC Forward	Illiquid
		OTC Option	Illiquid
		LME/CME Swap physical	Illiquid

<ESMA_QUESTION_CP_MIFID_66>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_67>

AFME Response

In relation to the definition of a liquid market, we agree with the concerns raised in our responses in the Fixed Income context about the potential negative impact of an inappropriately calibrated transparency regime.

To assess the liquidity of energy commodity derivatives, we understand that ESMA has analysed data collected from seven trading venues. We believe this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the consultation paper is minimal, that the taxonomy presented is not as detailed as for other asset classes and, as a result, we have very real concerns regarding the accuracy of this data. For example, the liquidity assessment for oil related derivatives appears to imply that oil related derivatives traded in the EU are either confined to, or represented by, those traded in Romanian Leu, which is clearly not the case.

We also note that neither the consultation paper nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or may pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time. Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity

assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.

Moreover, we note the current difficulties for market participants to access to OTC data. Although this information is reported by market participants to trade repositories under the existing reporting regimes which apply to commodity derivatives (e.g., EMIR), these details are accessible only to regulators.

In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are 'traded on a trading venue' (e.g., excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities trading venues (including the major non-EU venues) for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that at the end of February 2015 ESMA published an Addendum to this consultation paper, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain sub-classes (for example, coal and iron ore) which are not addressed in either consultation paper.

Therefore, we recommend ESMA conducts (i) an in-depth analysis, similar to the one performed for other asset classes and (ii) a further consultation which provides market participants with sufficient time to respond, consider the proposals and to review the relevant data and analysis.

Approach and parameters

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

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

- a) The thresholds of "one trade per day" and "€ 100,000 per day" are too low and do not give a true indication of the liquidity of a market.
- b) Expression of thresholds by reference to notional amount in euros is not appropriate because a large number of energy commodity contracts are traded in currencies other than euros (USD, GBP). Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
- c) Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g., maturity, volatility, number

and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).

- d) The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

Illustrative assessment

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes its liquidity determinations on the basis of a complete set of data from trading venues and trade repositories.

We acknowledge, however, that the assessment will be an extremely complex task and we are therefore keen to assist ESMA in the development of an appropriate framework. Accordingly, we set out below some principles for a taxonomy, which we believe ESMA may be able to use as a starting point in conducting its assessment, and an illustrative assessment of the liquidity of certain energy commodity derivatives.

The proposed tables are illustrative only and, given the absence of data, demonstrate our efforts to reflect a more appropriate framework for the definition of the liquidity of the main energy commodity derivatives contracts. We would therefore stress that the taxonomy and liquidity assessments should not be adopted by ESMA without first conducting a detailed assessment of the liquidity of the commodity derivative contracts. Any assessment must utilise data from trading venues and trade repositories. For ease of reference, the tables include the following information:

- for ETD contracts, our initial analysis includes an indicative liquidity test (including thresholds) that we believe more appropriate than the proposed “one trade per day” and “€ 100,000 per day”. The liquidity test is based on the publicly available data from the major trading venues.
- for OTC contracts, due to the difficulties in accessing the data noted above, we have not been able to indicate a more appropriate threshold/liquidity test. However, we have marked the various contracts which may be considered liquid or illiquid on the basis of the information which is available to us.

Tables:

1. Oil and Oil Products

i. Crude Oil

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Crude Oil	≤ 6 months	ICE Brent Future	Liquid	4,000 trades/day; \$ 6 billion/week
		ICE Brent Option	Liquid	4,000 trades/day; \$ 6 billion/week
		ICE WTI Future	Illiquid	4,000 trades/day; \$ 6 billion/week

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
		ICE WTI Option	Illiquid	4,000 trades/day; \$ 6 billion/week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A
	>6 months	ICE Brent Future	Illiquid	4,000 trades/day; \$ 6 billion/week
		ICE Brent Option	Illiquid	4,000 trades/day; \$ 6 billion/week
		ICE WTI Future	Illiquid	4,000 trades/day; \$ 6 billion /week
		ICE WTI Option	Illiquid	4,000 trades/day; \$ 6 billion /week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A

ii. Distillates

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Distillates	≤ 4 months	ICE Gas Oil Futures	Liquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Gas Oil Options	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Heating Oil Future	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Heating Oil Option	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A
	> 4 months	ICE Gas Oil Futures	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Gas Oil Options	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Heating Oil Future	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		ICE Heating Oil Option	Illiquid	1,000 trades/day; \$ 1.5 billion/week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A

iii. Light ends

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Light ends	≤ 4 months	ICE NYH RBOB Future	Liquid	500 trades/day; \$ 7.5 million/week
		ICE NYH RBOB Option	Illiquid	500 trades/day; \$ 7.5 million/week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A
	>4 months	ICE NYH RBOB Future	Illiquid	500 trades/day; \$ 7.5 million/week
		ICE NYH RBOB Option	Illiquid	500 trades/day; \$ 7.5 million/week
		OTC Vanilla Swap	Illiquid	N/A
		OTC Vanilla Option	Illiquid	N/A

2. Natural Gas

We note the difficulties in obtaining data for natural gas. It would be helpful if ESMA could provide more complete data, together with the information underlying its assessment on this product.

We would then review the data and provide our views on those including whether the source(s) is/are representative of this market and propose metrics by which liquidity can be assessed.

For the purpose of an initial discussion we set out below the results of our analysis of our datasets.

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Natural Gas - UK	< 12 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Natural Gas - Dutch	< 12 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Natural Gas	< 12	Exchange Future	Illiquid	50 trades/day; € 250 million/week

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
- German	Months	OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Natural Gas - French	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Natural Gas - Other	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	50 trades/day; € 250 million/week

3. Electricity

We note the difficulties in obtaining data for electricity. It would be helpful if ESMA could provide more complete data, together with the information underlying its assessment on this product.

We would then review the data and provide our views on those including whether the source(s) is/are representative of this market and propose metrics by which liquidity can be assessed.

For the purpose of an initial discussion we set out below the results of our analysis of our datasets.

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Electricity - Nordic	< 12 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - German	<12 Months	Exchange Future	Liquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - UK	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - France	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - Italian	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - Spanish	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
Electricity - Other	< 12 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	12-24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A
	>24 Months	Exchange Future	Illiquid	50 trades/day; € 250 million/week
		OTC Physical Forward (If MIFID 2 Financial Instrument)	Illiquid	N/A
		OTC Swap	Illiquid	N/A
		Option (Exchange or OTC)	Illiquid	N/A

<ESMA_QUESTION_CP_MIFID_67>

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

- (1) Would you use different qualitative criteria to define the sub-classes?**
- (2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average notional amount traded per day) but different thresholds in order to define a sub-class as liquid?**
- (3) Would you define classes declared as liquid in ESMA's proposal as illiquid (or vice versa)? Please provide reasons for your answer.**

<ESMA_QUESTION_CP_MIFID_68>

AFME Response

In relation to the definition of a liquid market, we agree with the concerns raised in our responses, in the Fixed Income context, about the potential negative impact of an inappropriately calibrated transparency regime.

To assess the liquidity of agricultural commodity derivatives, we understand that ESMA has analysed data collected from seven trading venues. We believe this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading

venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the consultation paper is minimal, that the taxonomy presented is not as detailed as for other asset classes and as a result we have very real concerns regarding the accuracy of this data.

We also note that neither the consultation paper nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or may pursuant to the scope of C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time. Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.

Moreover, we note the current difficulties for market participants to access OTC data. Although this information is reported by market participants to trade repositories under the existing reporting regimes which apply to commodity derivatives (e.g., EMIR), these details are accessible only to regulators.

In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are 'traded on a trading venue' (e.g., excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities trading venues (including the major non-EU venues) for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that at the end of February 2015 ESMA has published an Addendum to this consultation paper, which also covers additional commodities derivatives. However, we have similar concerns regarding the data underlying that analysis and note that there are certain sub-classes (for example, coal and iron ore) which are not addressed in either consultation paper.

Therefore, we recommend ESMA conducts (i) an in-depth analysis, similar to the one performed for other asset classes and (ii) a further consultation which provides market participants with sufficient time to respond, consider the proposals and to review the relevant data and analysis.

Approach and parameters

We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support ESMA's current determination of the relevant sub-

classes. In our view, ESMA's sub-classes should be set at a more granular level and we include our initial suggestions for agricultural in the illustrative assessment below.

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

- a) The thresholds of “ten trades per day” and “€ 500,000 per day” are too low and do not give a true indication of the liquidity of a market.
- b) Expression of thresholds by reference to notional amount in euros is not appropriate because many agricultural commodity contracts are traded in US dollars. Expressing the thresholds in a currency other than the currency in which the relevant contracts are traded could lead to arbitrary and inconsistent results as contracts become liquid or illiquid based solely on movements in the relevant exchange rate.
- c) Irrespective of currency, the more appropriate parameter would be open interest and units of commodities. The open-interest metric would reflect all relevant market factors relating to the trading of the relevant contract (e.g., maturity, volatility, number and size of market participants, thereby ensuring flexibility to prevailing market conditions for the relevant commodity).
- d) The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

Illustrative assessment

As noted above, we believe that it is imperative that ESMA conducts a full liquidity assessment and makes its liquidity determinations on the basis of a complete set of data from trading venues and trade repositories.

We acknowledge, however, that the assessment will be an extremely complex task and we are therefore keen to assist ESMA in the development of an appropriate framework. Accordingly, we set out below some principles for a taxonomy, which we believe ESMA may be able to use as a starting point in conducting its assessment, and an illustrative assessment of the liquidity of certain agricultural commodity derivatives.

The proposed tables are illustrative only and, given the absence of data, demonstrate our efforts to reflect a more appropriate framework for the definition of the liquidity of the main agricultural commodity derivatives contracts. We would therefore stress that the taxonomy and liquidity assessments should not be adopted by ESMA without first conducting a detailed assessment of the liquidity of the commodity derivative contracts. Any assessment must utilise data from trading venues and trade repositories. For ease of reference, the tables include the following information:

- for ETD contracts, our initial analysis includes an indicative liquidity test (including thresholds) that we believe more appropriate than the proposed “ten trades per day” and “€ 500,000 per day”. The liquidity test is based on the publicly available data from the major trading venues.

- for OTC contracts, due to the difficulties in accessing the data noted above, we have not been able to indicate a more appropriate threshold/liquidity test. However, we have marked the various contracts which may be considered liquid or illiquid on the basis of the information which is available to us.

Tables:

1. Corn

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Chicago Corn	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Matif Maize	<3 Months	Futures	Illiquid	3,000 trades/week; € 500 million/week
		ETD Options	Illiquid	3,000 trades/week; € 500 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	3-6 Months	Futures	Illiquid	3,000 trades/week; € 500 million/week
		ETD Options	Illiquid	3,000 trades/week; € 500 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/ week; € 500 million/week
		ETD Options	Illiquid	3,000 trades/ week; € 500 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/ week; € 500 million/week
		ETD Options	Illiquid	3,000 trades/ week; € 500 million/week
		OTC Swap	Illiquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
		OTC Vanilla Options	Illiquid	N/A

2. Wheat

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Chicago Wheat	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Kansas Wheat	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		Swap	Liquid	N/A
		Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Minneapolis Wheat	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
	3-6 Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Milling Wheat	<3 Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A

3. Soft

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
NY Raw Sugar	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-	Futures	Liquid	3,000 trades/week; \$750 million/week

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
	12Months	ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Ldn White Sugar	<3 Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	3-6 Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Coffee (Family)	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Cocoa (Family)	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
	3-6 Months	OTC Vanilla Options	Liquid	N/A
		Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-12Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A

4. Oil Seeds

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
Soybeans	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	6-12Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	>12Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Illiquid	N/A
Soymeal	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A

Specific Commodity	Tenor	Instrument Type	Liquidity Category	Liquidity test (applicable to ETD contracts only)
	6-12Months	OTC Vanilla Options	Liquid	N/A
		Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
	>12Months	OTC Vanilla Options	Illiquid	N/A
		Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
Soybean Oil	<3 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Liquid	3,000 trades/week; \$750 million/week
		OTC Swap	Liquid	N/A
		OTC Vanilla Options	Liquid	N/A
	3-6 Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	6-12Months	Futures	Liquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A
	>12Months	Futures	Illiquid	3,000 trades/week; \$750 million/week
		ETD Options	Illiquid	3,000 trades/week; \$750 million/week
		OTC Swap	Illiquid	N/A
		OTC Vanilla Options	Illiquid	N/A

.<ESMA_QUESTION_CP_MIFID_68>

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

- (1) Would you use additional qualitative criteria to define the sub-classes?**
- (2) Would you use different parameters or the same parameters (i.e. average number of trades per day and average number of tons of carbon dioxide traded per day) but different thresholds in order to define a sub-class as liquid?**
- (3) Would you qualify as liquid certain sub-classes qualified as illiquid (or vice versa)? Please provide reasons for your answer.**

In relation to the definition of a liquid market we endorse the concerns expressed in our responses, in the Fixed Income context, about the potential negative impact of an inappropriately calibrated transparency regime.

To assess the liquidity of emission allowances commodity contracts, we understand that ESMA has analysed data collected from three trading venues. We believe this dataset is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. In our view, in order to present a more accurate reflection of liquidity in the relevant contracts, the analysis must at a minimum include data collected from the major EU trading venues (e.g., ICE Futures Europe) and the major non-EU trading venues (e.g., CME Group). In the absence of disclosure of the details regarding the underlying data sources it has not been possible to test the underlying data. However, we note at a high level that the data presented in the consultation paper is minimal, that the taxonomy presented is not as detailed as for other products and as a result we have very real concerns regarding the accuracy of this data.

We also note that neither the consultation paper nor the proposed taxonomy explains how ESMA proposes to deal with new categories of commodities related contracts that will become financial instruments under the new MIFID II/R definition (for example, physically settled commodities related derivatives that are traded on an OTF that will fall within the new C(6) definition or may pursuant to the scope of the C(7) category). In this regard, we are concerned that ESMA does not explain how it proposes to obtain a robust dataset for its liquidity assessment of commodities related contracts traded on an MTF or OTF. In addition to our concerns regarding the underlying dataset for existing financial instruments and obtaining a robust dataset for new categories of financial instruments, we note that liquidity in markets changes over time. Given the importance of commodities derivatives in enabling end-users to hedge exposures to underlying risks, it is vital to ensure that the liquidity assessments are appropriately calibrated and the basis on which such assessments have been made are transparent and tested.

Moreover, we note the current difficulties for market participants to access OTC data. Although this information is reported by market participants to trade repositories under the existing reporting regimes which apply to commodity derivatives (e.g., EMIR), these details are accessible only to regulators.

In light of the above, we strongly believe that it is necessary for ESMA to conduct a further market assessment of the liquidity of the commodity derivative contracts which utilises an appropriate data set for assessing whether the relevant derivatives which are 'traded on a trading venue' (e.g., excluding bespoke OTC transactions) are liquid for the purposes of the MiFID2 transparency regime. Such an assessment should be based on complete data available from the major commodities trading venues (including the major non-EU venues), for trading venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We note that at the end of February 2015 ESMA published an Addendum to this consultation paper, which also covers additional commodities derivatives.

However, we have similar concerns regarding the data underlying that analysis and note that there are certain products (for example, coal and iron ore) which are not addressed in either consultation paper.

Therefore, we recommend ESMA conducts (i) an in-depth analysis, similar to the one performed for other asset classes and (ii) a further consultation which provides market participants with sufficient time to respond to and consider the proposals and to review the relevant data and analysis..

Approach and parameters

We note that ESMA favours a COFIA approach that may be workable for commodities derivatives. However, we do not support the ESMA's current determination of the relevant sub-classes. In our view, ESMA's sub-classes should be set at a more granular level.

In terms of the appropriate parameters, whilst we agree that it is appropriate to use the same parameters and thresholds for each sub-class of emission allowances, we believe that the proposed parameters are inappropriate. In particular the threshold of “five trades per day” and “150,000 tons of carbon dioxide per day” is too low and does not give a true indication of the liquidity of a market.

The assessment of the liquidity of all commodity derivatives has to appropriately consider the tenor of the contracts as the liquidity of these instruments varies along the curve and, generally, they become more liquid when closer to the expiry date.

Illustrative assessment

Due to the very limited availability of publicly available data on Emission Allowances (which are financial instruments), we have not been able to provide an illustrative assessment for this category. However, we offer our availability to continue the discussion also on this sub-class with ESMA on the basis of the information that will be collected from trade repositories.<ESMA_QUESTION_CP_MIFID_69>

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

<ESMA_QUESTION_CP_MIFID_70>

AFME Response

1. Definitions of trading systems

- **Request-For-Quote definition (RFQ) trading system**

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

AFME does not agree that RFQ systems involve the publication of quotes rather than provision of quotes. We suggest ESMA replace the word “published” with “provided”. In

RFQ protocols, firms only provide the quote to the requestor of the quote; the quote is not published widely. The term “publication” in ESMA’s proposed definition suggests that the trading system involves disclosure of the quote to a wider audience - inconsistent with existing RFQ systems. If ESMA’s intention is to redefine RFQ trading systems to incorporate pre-trade disclosure into the definition, this is not appropriate. The pre-trade requirements are applied to trading systems; they should not redefine the trading system itself. ESMA does not redefine other trading systems based on the pre-trade transparency requirements. If the term “published” is used and interpreted in the broadest sense of the word, existing RFQ systems would fall within “trading systems not covered by the first four rows” under Table 1 Annex 1 of draft RTS 9. This cannot be the intention.

Further, for any instruments/trades eligible for to pre trade waivers, they are not obliged to publish trades meaning that they could not be classified as RFQ systems. Finally, this is inconsistent with Level 1, which provides for the requirements to be calibrated for different types of trading systems. For example, Recital 14 of MiFIR provides that *“timely pre-trade and post-trade transparency requirements taking into account the different characteristics and market structures of specific types of financial instruments other than shares should thus be introduced and calibrated for different types of trading systems...”*.

AFME agrees with ESMA’s addition of the exclusivity element of RFQ – this is consistent with and a critical element of the way in which RFQ protocols operate.

- **Voice trading system**

AFME agrees with the definition of voice trading system

2. **Pre-trade information to be made public**

- **RFQ trading system information to be made public**

In the draft RTS 9, ESMA proposes that under RFQ systems, the bids and offers and attaching volumes should be subject to pre trade transparency. We believe that such a regime: (i) would have significant unintended consequences; and (ii) is inconsistent with ESMA’s Level 1 mandate.

Request-driven markets exist to provide liquidity and a point-in-time price in markets that may not have sufficient continuous buying and selling interest to support an order-driven model. RFQ is the principal trading model in the non-equity markets for this reason. As a result, if a workable RFQ system is not permissible under the new MiFID regime, there would be no means for trades to be executed – i.e. there would be no other trading protocols that could absorb the trade flow. Therefore, it is critical to ensure well-functioning RFQ trading systems may continue to operate under the new MiFID framework for pre-trade transparency. The ESMA pre-trade proposal goes beyond what a functioning RFQ system could support. Ultimately, if the pre trade information to be made public remains as is, it will be detrimental to market liquidity and result in wider spreads, negatively impacting end-investors and issuers. AFME proposes that there are alternative disclosure requirements that would be in keeping with the Level 1 requirements.

We understand that ESMA is limited by the Level 1 requirements, which requires venues to disclose bids, offers and depth of trading interest to the public (Article 8 MiFIR). However,

we stress that MiFIR Article 8 provides that the pre trade transparency requirements should be calibrated to the trading system.

Further, as ESMA is aware, the value of the SSTI threshold level will be critical to ensuring a workable regime, since it is at sizes below the SSTI that the pre trade regime will apply.

(i) Disclosure on a price-by-price basis for RFQ could have significant unintended consequences

AFME supports ESMA's objective to increase pre trade transparency in line with the MiFID II mandate. However, we are concerned that there will be significant adverse impacts as a result of imposing inappropriate transparency on RFQ systems.

We believe that, for RFQ systems, making the "bids and offers and attaching volumes submitted by each responding entity" published pre trade may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency. Currently, the answers provided to an RFQ are only known to the entity, which submitted the request. The entities answering to the RFQ do not see the prices provided by the other responding entities and, more importantly, third parties. This asymmetry of information is justified by the fact that the responding entities take on risk that would be increased, with no benefit for either party, if the bids and offers were made publicly known. Such sealed auctions take place in many business sectors and are important to ensure integrity of the systems and do not adversely impact pricing. As the fixed income market is generally quite illiquid, disclosure on a price-by-price basis to the wider public pre trade could have severe consequences. It is essential that market makers on venue operating an RFQ protocol be not required to disclose pre trade prices to other market makers (i.e. other price makers).

RFQs on and off venues are privately negotiated. The responses that are returned to the client (from the dealers the client requests quotes from) are bilaterally private, in other words, the dealers that are party to the request for quote will not see each other's quotes. This allows market makers to manage their risk by ensuring that no-one can move the market against the potentially winning quote. Once the client has secured the best price within the live auction and the dealer subsequently accepts the trade, that winning dealer is privy to immediate cover information (i.e. the differential between the accepted price and the next best price). The other dealers will know, after the applicable time period, if they covered, tied or if they traded away (typically meaning they provided the 3rd or least best price). Again, the post trade information that is disseminated is deliberately designed to ensure that winner's curse is reduced as much as possible and is only available to those dealers that participated in the RFQ process.

If full disclosure were required to the wider public price markers would be disincentivised to quote and there would be a race to the bottom. Specifically, the risk for the responding entity would increase as other price makers could price against them, disincentivising liquidity providers to quote in a short time frame and leading a cumulative impact of dealers pricing against each other (i.e. a race to the bottom), including increased financial stability risks, market makers that are unable to hedge their risks/unwind their positions and worse prices for end-users. Further, the winner's curse would be exacerbated; with market participants

pricing against both the price maker and the investor, resulting in wider spreads and reduced liquidity.

This is all the more important as RFQ systems are prevalent only for those markets/instruments characterised with insufficient trading interest to support continuous trading, such as:

- The fact that, for a given instrument/class of instruments, investors often have similar interests at the same time, so that revealing an interest is equivalent to revealing the side of the position taken by the counterparty to this interest;
- The difficulty for liquidity providers to find a counterparty to unwind their position, leading them to manage imperfect hedges.

For these instruments, imposing full transparency on bids and offers provided by entities responding to RFQs would increase the risk taken by market makers in a domain where no effective hedge is available. As a result, it would discourage market makers to answer RFQs and would increase investor costs, leading to greater borrowing costs for issuers.

(ii) ESMA's proposal is inconsistent with its Level 1 mandate

Article 8(2) of MiFIR provides that the transparency requirements should be calibrated for the different types of trading systems. The clear intention of MiFIR is to ensure that pre trade transparency is introduced in a manner that is appropriate for the trading system. By introducing a regime that requires every bid and offer and underlying volume to be published pre trade, as ESMA has proposed, undermines the RFQ (as explained above), making it unworkable as a trading system. We note that ESMA has not provided any explanation as to how it has fulfilled its mandate under Article 8(2), such that the integrity of the RFQ trading system is preserved.

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

AFME's preferred solution to mitigate all the above risks would be to require venues to provide average prices of the specific instrument for RFQ systems rather than price-by-price information. In such a framework, venues would provide the average price calculated using the prices provided by price-makers in response to each RFQ.

Disclosure by the venue of average RFQ prices provides the market with a great deal more information than the indicative prices provided by venues and would be of a high level of value. Another significant advantage of average prices being published by RFQs is that

market participants will see that there is actual trading interest, whereas they will not see this in the indicative prices of venues. Further, we believe that disclosure of average prices for each for each RFQ is completely consistent with Level 1. Article 8(1) MiFIR requires that *“market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices...”*. We note that the text does not require each and every bid and offer to be published. In fact, Article 8(1) provides that pre trade transparency should be calibrated for different types of trading systems.

AFME acknowledges that volume information is important to make sense of the price information. However, we do not believe that the specific volume size is necessary and, in fact, could be detrimental. Therefore, we suggest that the average price with the volume band is published.

(iv) ESMA needs to develop a solution for package trades

AFME encourages ESMA to consider the appropriate application of the MiFIR pre- and post-trade transparency obligations and the derivatives trading obligation, to package transactions. We consider that MiFIR is flexible enough to empower ESMA to specify how package transactions are to be treated, and it is important to do so, otherwise investors could lose the advantages of the ability to transact certain package types and will experience increased transaction costs and execution risk as a consequence of having to trade different components separately, of being unable to obtain appropriate waivers and deferrals. Package transactions frequently involve bonds (for example, spread transactions across a yield curve, switches between one issuer's bonds and another's, or asset swap transactions. AFME's membership is therefore supportive of ISDA's proposals for the definition of a package transaction, the appropriate classification of package transactions into liquid and illiquid classes, and the calibration of SSTI and LIS for packages.

AFME's proposed amendments to RTS 9 Annex 1 Table 1

Description of the type of system and the related information to be made public

Type of system	Description of system	Information to be made public
Continuous auction order book trading system	A system that by means of an order-book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a	For each financial instrument, the aggregate number of orders and the volume they represent at each price level, for at least the five best bid and offer price levels

	continuous basis	
Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposures itself	<p>For each financial instrument, the best bid and offer by price of each market maker in that instrument, together with the volumes attaching to those prices.</p> <p>The quotes made public shall be those that represent binding commitments to buy and sell the financial instruments and which indicate the price and volume of financial instruments in which registered market makers are prepared to buy or sell. In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.</p>
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention.	For each financial instrument, the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price by participants in that system.
Request-for-quote trading system	A trading system where a quote or quotes are provided published in response to a request for quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes	<p>The bids and offers and attaching volumes submitted by each responding party.</p> <p>The average bids and offers for each RFQ and attaching volume band</p>

	provided to it on request.	
Voice trading system	A trading system where transactions between members are arranged through voice negotiation	The bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system
Trading system not covered by the first 5 rows	A hybrid system falling into two or more of the first five rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by the first five rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the instrument, if the characteristics of the price discovery mechanism so permit.

<ESMA_QUESTION_CP_MIFID_70>

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

<ESMA_QUESTION_CP_MIFID_71>

AFME Response

No AFME comment

<ESMA_QUESTION_CP_MIFID_71>

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



<ESMA_QUESTION_CP_MIFID_72>

AFME Response

FIXED INCOME

AFME agrees with ESMA's view in paragraph 30 of the Consultation Paper that the market operator of the trading venue should determine which methodology to use.

FOREIGN EXCHANGE

In addition to the above, for FX the GFXD does not have a preference on the methodology chosen. However, we do believe that the method chosen should be consistently applied across all trading venues in Europe. It is critical to the well-functioning of the market that commercial decisions are not able to influence the application of regulatory obligations.

<ESMA_QUESTION_CP_MIFID_72>

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

FIXED INCOME**(i) Date and time**

Yes. AFME agrees that the date and time are essential fields for post trade publication. Without these fields, the prices and volumes will be misleading and unusable to users of the information. Since markets are dynamic, for price and volume information to be useful, it is critical to understand when those trades took place (to understand under what market conditions they took place). It is also necessary in order to be able to analyse the data and draw trends. Notably, the time the trade is published may not be the execution time. For example, publication may take place within 15 minutes, trades will be deferred under the post trade regime and, as seen the in the US under TRACE, firms may report late.

We also agree with the description of the date and time data fields. However, we highlight that the format of the trading day and trading time is in UTC; other parts of the MiFID reporting requirements mandate reporting in CET. We urge ESMA to ensure consistency of approach; otherwise, firms will have to produce the same data in different formats for different purposes under MiFID, which is unnecessarily onerous.

Furthermore, we believe that in relation to the timestamp accuracy, ESMA should decouple the accuracy from the precision/granularity:

(1) For the reasons set out in our response to Question 233 and Question 234 on Clock Sync, we think this should be to microsecond level (6dps) at most.

(2) In relation to the accuracy of the population of that field, this should be determined by the respective upstream obligations, or otherwise separately specify that the accuracy should be in line with Clock Sync RTS as we propose.

(ii) The Quantity field should be at block-level rather than allocation level

We recommend that ESMA clarify whether firms and venues should publish trades at block-level or at allocation-level. For the post-trade information to be useful, it is critical that trades are published in a consistent manner.

We suggest that block-level trades should be published rather than allocations. Allocation-level trade reports would provide a distortive view of market activity. For example, if a bank undertakes a trade of EUR 50mm notional with a client and that client allocates the EUR 50mm to 100 different funds, there is only one trade (one trade of EUR 50mm and not 100 trades of EUR 500,000). Publication of the allocation level is misleading since it inflates the level of activity.

(iii) We agree with the other fields.**(iv) Additional fields**

With regards to additional fields, we propose a publication time field. Post trade publication may take place 15 minutes after execution and volume information may be published

FOREIGN EXCHANGE

For FX, the GFXD agrees that it is necessary to include the date and time of publication among the fields to be published.

As mentioned in our response to the Discussion Paper, the GFXD strongly supports that trade data attributes should be applied on a globally consistent basis and should be aligned within all reporting obligations – for instance, data is currently made available to the public in the US under CFTCs part 43 obligations and this should be consistent with other regional obligations to prevent the exposure of market sensitive data to the public. Consistent requirements will afford market participants the best opportunity to interpret any data made publically available, especially for those using global markets such as FX. Globally consistent data sets/data fields will also enable scalable technology builds – it is likely that the same data sets will be required for multiple purposes, such as real-time public reporting, T+ reporting to trade repositories, transaction reporting and best execution reporting. When you consider that each trade will likely be reported in multiple jurisdictions, the scale of the challenge for market participants is clear.

<ESMA_QUESTION_CP_MIFID_73>

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

<ESMA_QUESTION_CP_MIFID_74>

AFME Response

FIXED INCOME

No. AFME does not agree

(i) *We support ESMA's removal of the SI identification flag*

We fully support ESMA's proposal that there should not be an SI identity flag. We strongly believe that a systematic internaliser's identity should not be disclosed on trade reports. By publishing the name of the SI alongside each trade will disincentivise provision of liquidity and widen bid-offer spreads, and will therefore be entirely counterproductive to what we believe is the regulatory intent.

We highlight, however, that ESMA has taken an inconsistent approach under RTS 6, whereby the systematic internalisers are treated like trading venues that must publish trade information with their identity. Imposing a requirement on SIs fails to take into account the different characteristics of SIs compared to public trading venues such as RMs, MTFs and OTFs, in particular the fact that they deal in their own account when executing client orders. It is tantamount to SI identity post trade disclosure and is at odds with the post-trade transparency regime. RTS6 reporting for SIs should be quarterly aggregated information to ensure that the information is meaningful for market participants, not misleading and does not subject SIs and other liquidity providers to undue risk.

(ii) *ESMA should include a non-standard settlement flag*

Typically, privately negotiated trades with a non-standard settlement will not correspond to the current market price. Unless such a trade is flagged as having a non-standard settlement, the trade will appear no different to other standard trades and the price will, therefore, be misleading to the public. It is important that investors and other market participants understand the reason behind the price deviation in these circumstances.

(iii) *ESMA should include a package trade flag*

On page 218, paragraph 12 of the Consultation Paper, ESMA states that industry comments included that there should be a specific flag for package trades. However, no such flag is proposed in RTS 9 Annex 1 Table 2. We urge ESMA to reconsider.

A package trade has two or more components that are priced as a package with simultaneous execution of all components and the execution of each component is contingent on the execution of the other components. Since these trades are conditional on one another, they will not have the same market price as non-conditional trades. Therefore, without a flag indicating conditional trades, investors and other market participants will be unable to effectively interpret and use the post trade price information.

(iv) *ESMA should remove the algorithmic trading flag*

AFME does not agree with the inclusion of an algorithmic trading flag. Such information is very commercially sensitive and price sensitive. ESMA has stated that the objective of the flags is to improve the content of the public information and assist NCAs in monitoring the extent to which waivers from pre-trade are used. AFME supports these objectives. However, we believe that an algorithmic trading flag does not improve the quality of the data for users of the post trade information and instead simply broadens the publication requirements to reveal sensitive information.

Further, the algorithmic trading flag is not the appropriate mechanism for NCAs monitoring because firms to their NCAs under the transaction reporting regime will report detailed information on algorithms. Specifically, in Section 8.2, ESMA is seeking to obtain information on algo IDs for the purposes of detecting instances where certain algorithms are used in potential market abuse or disorderly trading activities.

Finally, we note that in paragraph 29 on page 352 of the Consultation Paper, ESMA has decided not to pursue its proposal to require investment firms to use internal algorithm flags as an additional risk management tool on the basis of industry arguments that this would be disproportionate and unduly complex. We agree with this approach and believe that ESMA should ensure consistency by applying similar logic in relation to the post trade publication flags.

(v) *ESMA should clarify that the non-price forming flag should not apply to give-up/give in trades (as currently defined)*

Under Article 1 RTS 8, ESMA defines a “give-up” or “give in” as a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purposes of post trade processing. Given this definition, a flag is unnecessary. In the event a client uses a firm for post trade processing, that firm will simply publish the trade on behalf of the client (since the client more than likely does not have the capacity to

undertake post trade operations itself). As such, there will only be post trade publication by the counterparties to the trade (whereby the post trade processing firm undertakes the publication on behalf of the client); when the firm providing this service is not a counterparty to the trade, it should not be under an obligation to publish the trade. Therefore, a flag for give-up/give-in will not provide any value: (i) there has only been one trade and there is no risk of duplicative reporting, (ii) it does not impact the price of the trade. In fact, a flag will be misleading since the trade published on behalf of the client will be price forming; it is the post trade processing by the firm that is not price forming.

(vi) ***ESMA should remove the LIS flag***

Furthermore, we would like to express concern at the inclusion of a large-in-Scale flag, as it may contradict the purpose of a LIS waiver. For example, the trade report can allow market participants to infer the presence of a stub, which is allowed to remain hidden, from a pre-trade perspective. Therefore, we believe the reporting deferral should apply to the whole order and flagging LIS trades where a stub remains leads to information leakage to the detriment of the client whose order is being executed and any firm committing capital to facilitate execution

(vii) ***ESMA should provide more guidance on the scope of technical trades to fixed income by including relevant examples***

The definition that ESMA has used is that same definition used by CESR for equities. Since the publication requirements have been expanded to non-equities, even though the list of examples is intended to be non-exhaustive, we believe that it would be helpful to add fixed income examples, such as free of payment technical trades for flow purposes and loan conversions.

(viii) ***ESMA has proposed two flags labelled “G”: the non-price forming trade flag and daily aggregated transaction flag – we suggest ESMA should amend as appropriate.***

(ix) ***ESMA should ensure that the same trade identifiers are used for both equities and non-equities where relevant and the same identifiers should not be used for different purposes***

It would be useful for the trade flag identifiers to be standardised between equities and non-equities where relevant. We support that ESMA’s use of the same trade identifiers for the same type of trade flag for both non-equities and equities. However, it is also important to ensure that the same identifier is not used for different flags; this introduces ambiguity and confusion. For example, ESMA has used the identifier “S” for post trade size specific flag for non-equities and for the special dividend trades for equities. We suggest that ESMA propose a different unique identifier for each of these trade flags.

(x) ***AFME agrees with the remaining flags, venue/publication arrangement and the definitions.***

AFME proposes the following amendments to RTS 9 Annex 1 Table 2:

Identifier	Name of trade	Venue/publication	Definition

	flag	arrangement	
"B"	Benchmark trade flag	RM, MTF, OTF, APA	All kinds of volume weighted average price transactions and all other trades where the price is calculated over multiple time instances according to a given benchmark
"X"	Agency cross trade flag	RM, MTF, OTF, APA	Trades where an investment firm has brought together two clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price
"G"	Non-price forming trades flag	RM, MTF, OTF,	All types of transactions listed under Article 9 of this Regulation and which do not contribute to price formation, except give-ups or give-ins
"T"	Technical trade flag	RM, MTF, OTF, APA	Category covering trades which represent non-addressable liquidity or trades where the exchange of financial instrument is determined by factors other than the current market valuation of the instrument. Non-exhaustive examples of such trades may include OTC hedges of a derivative, inter-fund transfers, non-equity hedge trades related to the creation/redemption of ETFs, and Exchange for Physical trades and free of payment technical trades for flow purposes and loan conversions
"L"	Post trade LIS flag	RM, MTF, OTF, APA	Transactions executed under the post-trade large in scale deferral
"I"	Illiquid instrument trade flag	RM, MTF, OTF, APA	Transactions executed under the deferral for instruments for which there is not a liquid market
"S" "E"	Post trade size specific flag	RM, MTF, OTF, APA	Transactions executed under the post trade size specific deferral
"H"	Algorithmic trades	RM, MTF, OTF	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(49) of Directive (EU)

			65/2014
"C"	Cancellation flag	RM, MTF, OTF, APA	Transaction cancelled
"A"	Amendment flag	RM, MTF, OTF, APA	Transaction amended
"U"	Update flag	RM, MTF, OTF, APA	Transaction for which limited details have been previously published in accordance with Article 10(1)(a)(i)
"G" "F"	Daily aggregate transaction flag	RM, MTF, OTF, APA	Publication of daily aggregated transaction in accordance with Article 10(1)(a)(ii)
"V"	Volume publication flag	RM, MTF, OTF, APA	Transaction for which limited details have been previously published in accordance with Article 10(1)(b)
"J"	Four weeks aggregation flag	RM, MTF, OTF, APA	Publication of aggregated transactions in accordance with Article 10(1)(c) and transactions which have previously benefited from aggregated publication in accordance with Article 10(1)(c)
"K"	Indefinite aggregation flag	RM, MTF, OTF, APA	Transactions for which the publication of several transactions in aggregated form for an indefinite period of time has been allowed in accordance with Article 10(1)(d)
"W"	Consecutive volume masking flag	RM, MTF, OTF, APA	Transactions for which limited details have been previously published in accordance with Article 10(1)(b) and for several transactions in aggregated form for an indefinite period of time and has been consecutively been allowed in accordance with Article 10(2)
"M"	Non-standard settlement flag	RM, MTF, OTF, APA	Where there is a need for a participant to match with settlement obligations which there may be longer or shorter than the standard settlement cycle
"Q"	Package trade flag	RM, MTF, OTF, APA	(1) The Package has two or more components that are price as a package with simultaneous execution of all components and (2) the

			execution of each component on is contingent on the execution of the other components
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FOREIGN EXCHANGE

In addition to the above, for FX the GFXD believes that flags that require 'non-static' information (such as the 'Technical Trade' flag) are likely to require the updating of a trade at execution, most likely via manual means. FX as a market has benefitted from developments in electronic execution processes over the last 10 years, which has facilitated the significant growth in volumes witnessed during the same period (\$1.934 trillion/day in 2004 to \$5.3 trillion/day in 2014 according to BIS). We believe that the addition of such 'non-static' flags would break established STP processes (creating additional operational risks for market participants and moving the market away from regulatory STP goals) and would provide minimal practicable benefits to market participants.

Specifically, we note:

- i) The use of flags for cancellations will vary amongst market participants. Trade cancellations are reflected in different ways depending on the booking models used, and we believe that the use of a cancellation flag will be inconsistent. We recommend that a 'cancellation' flag is not included in the final text
- ii) With reference to RTS 9, article 7, paragraph 4 on page 134 of Annex B, the GFXD is concerned that such a requirement to publish a cancellation report, followed by an amendment report, could be unnecessarily complicated to introduce into existing trade flows. As referenced above, we suggest that such changes to introduce a 'cancellation' flag would over complicate existing trade booking models, which are proprietary in nature, and if implemented, would result in inconsistent use (therefore being of limited value to the market)
- iii) We would like to ensure consistency with the US in the treatment of package transactions. We note that discussions are ongoing between the CFTC and the industry, and recommend that ESMA leverage industry dialogue in its final determination
- iv) Identifier 'G' is used in 2 separate instances in Table 2 of Annex 2 (for 'non-price forming trades' and for 'daily aggregated trades')
- v) We believe that inclusion of a flag for 'Algorithmic trades' is of little benefit to market participants and suggest that the method of execution is not relevant in the price discovery process. We do however support that such information is of value for regulatory monitoring and suggest that its inclusion in transaction reporting is more appropriate

<ESMA_QUESTION_CP_MIFID_74>

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

- (1) a 3-year initial implementation period**
- (2) a maximum delay of 15 minutes during this period**

(3) a maximum delay of 5 minutes thereafter. Please provide reasons for your answer.

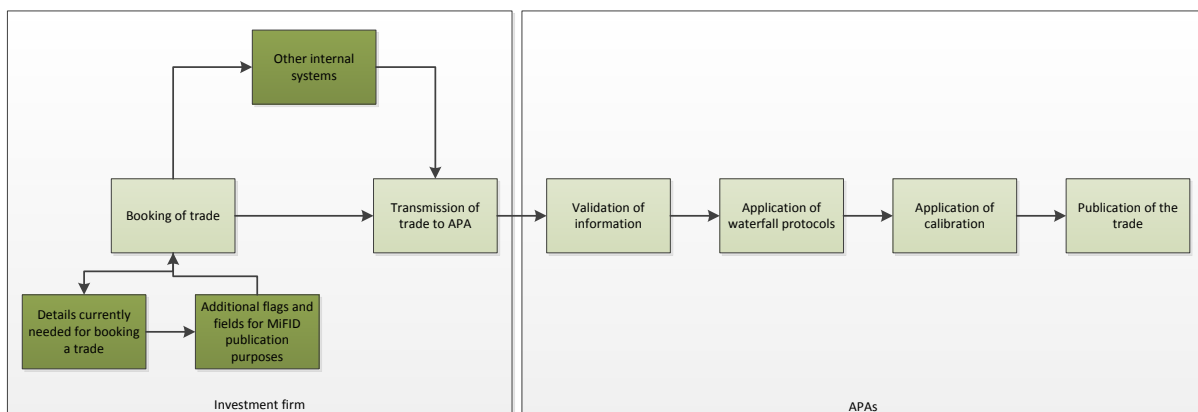
<ESMA_QUESTION_CP_MIFID_75>

AFME Response

FIXED INCOME

AFME agrees with ESMA's approach of a three year-implementation period to permit market participants to adapt to the MiFID requirements.

We also agree that the maximum delay should be 15 minutes for the first three years. However, we note that Recital 3 RTS 9 provides that *"The information should only be published as close to the maximum time limit specified under Article 7(5) of this Regulation in exceptional cases where the systems available do not allow for publication in a shorter period of time"*. AFME supports the view that if an investment firm or venue can publish the trade information sooner than the maximum time limit then they should do this because Level 1 requires trades to be published as close to real time as possible. However, we do not agree that the information should only be published close to the maximum time limit in exceptional circumstances. Instead firms and venues should be able to rely on the time limit whenever systems do not allow publication in a shorter time. Fixed income markets largely rely on manual functionalities and processes that may affect the time of publication, such as booking of trades. Further, there are many processes that need to take place before publication of a trade (illustrated below). These many processes will create a time lag even if automated because they will still involve checks, queries and reconciliations. Therefore, for the majority of fixed income trades, especially bilateral trades, a shorter publication time may not be possible.



AFME does not agree with the maximum delay to be automatically reduced to 5 minutes after the initial 3-year implementation period. Instead, we propose for ESMA to review the 15 minute maximum time limit after an initial 3-year period and only then make a determination as to whether or not it should be reduced and by how much. We are concerned that despite the 3-year period giving firms the flexibility to adapt their systems, an automatic reduction in the time limit to 5 minutes could result in significant unintended consequences. Therefore, an impact analysis is critical before the time limit is reduced significantly. We recommend that a review clause will permit ESMA to undertake such an impact analysis to determine

whether a reduction is appropriate. Alternatively, to ensure that the requirements are sensitive to changes to market infrastructure, ESMA could undertake periodic reviews every three years.

If the limit is reduced to 5 minutes automatically without an impact assessment, it may result in a greater number of errors and inconsistencies in the post trade information and an increase in the proportion of trades that are reported late. This is because:

- (i) ***There are processes that need to take place prior to publication, which cannot be adapted to achieve instantaneous trade publication.*** For example, booking will need to remain manual.
- (ii) ***There are processes that always involve a time lag because of system infrastructure integrity features, such as checks, queries and reconciliations.***
- (iii) ***The MiFID II regime introduces operational complexity, which extends the processing time needed prior to publication.*** For example, MiFID will require more fields and flags to be populated during the booking process. Since these will need to involve manual processes that will involve the subjectivity of traders, a shorter time limit would result in a greater number of errors.
- (iv) ***The shorter the time limit, the greater the number of trades that will be cancelled and amended following the publication, impairing the quality of the data.***
- (v) ***A shorter time limit may result in fewer matched trades being published, since the matching processes may be completed any time before settlement.*** We would urge ESMA to introduce a regime that results in as many published trades as possible having been matched.

We urge ESMA to aim for higher quality post trade data that is meaningful to its users through consistently applied protocols rather than excessively fast publication.

We propose the following amended text to RTS 9 Article 7(5):

Post-trade information shall be made available as close to real time as possible and in any case within 15 minutes as possible and in any case 15 minutes after the execution of the relevant transaction (**Publication Time Limit**) from 3 January 2017 until 1 January 2020. ~~and within 5 minutes thereafter~~ **On 1 January 2020, and every three years thereafter, ESMA shall review the Publication Time Limit.**

We also propose the following amendment to RTS 9 Recital 3:

...The information should only be published close to the maximum time limit specified under Article 7(5) of this Regulation in ~~exceptional~~ cases where the systems available do not allow for publication in a shorter period of time.

FOREIGN EXCHANGE

In addition to the above, for FX the GFXD suggests that the text defining the period for submission should be globally consistent and should read 'as soon as technically possible'. Given that the FX market acts as the global payments system, it is typified as having a wide

variety in both the number and type of market participants. We are concerned that market participants with lower levels of sophistication would be unable to meet such narrowly defined timeframes, irrespective of any phase-in periods. We suggest that after 3 years there is a review of post-trade transparency timing, rather than an automatic shortening of the maximum delay to 5 minutes. We are also concerned about the possibility of regulatory arbitrage should trade data be made publically available in one jurisdiction before another.

<ESMA_QUESTION_CP_MIFID_75>

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

<ESMA_QUESTION_CP_MIFID_76>

AFME Response

No. AFME does not agree

Whilst we agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under Article 21, this exemption should not be limited to OTC transactions but should also be applied to venue trades. Non-price forming trades should also be excluded from the pre trade transparency requirements.

Information on the types of non-price forming trades listed in RTS 9 Article 9 would, at best, be of no value and at worst, reveal commercially sensitive information. For example, the publication of primary trades could adversely impact the placement of new issues with investors.

With regards to securities financing transactions, it is unclear what type of information venues are expected to publish. The trade publication fields in RTS 9 Annex II Table 1 are not meaningful for these types of transactions. Further, we believe that a requirement to publish these trades is both inconsistent with and front-runs the global regulatory efforts regarding the introduction of transparency to the securities financing markets (such as the FSB data collection templates on securities financing transactions and SFTR).

We urge ESMA to provide guidance that SFTs should not be subject to venue pre-trade transparency requirements under Article 8 MiFIR and should not be subject to the obligations for systematic internalisers to make public firm quotes under Article 18 MiFIR. We consider that the intention of MiFIR was not to require quotes on SFTs to be made public pre-trade, but request ESMA's clarification for the following reasons:

- The Article 8 obligation is to make “public current bid and offer prices...for bonds...” and the SI obligation in Article 18 is to make “public firm quotes in respect of bonds...” which, on a plain reading of the text, refers to bid/offer prices or firm quotes in outright bond sales and purchases. Contrast this with the venue post trade transparency obligation under Article 10 MiFIR which requires venues to “make public the price...of the transactions executed in respect of bonds...” (our emphasis) which is more expansive

and which we consider would include SFTs on bonds. Article 21 which sets out OTC/SI post trade transparency obligations contains similar wording to Article 10 which would scope SFTs in – which MiFIR recognises in Article 21(5)(b) and therefore considers necessary to exclude SFTs from the Article 21(1) obligation. However, we stress that this exclusion is only necessary because of the expansive definition in the first place, which is a different construction from the venue pre-trade and SI transparency provisions referred to above. Given how Article 18 is drafted, we consider that the intention is to require publication of bid/offer prices or firm quotes in outright bond sales and purchases.

- From a commercial standpoint, if pre-trade price information is to be of greatest use to market participants, it is imperative that pre-trade transparency obligations on quotes or prices for bonds is not confused with quotes or prices for SFTs in relation to such bonds. SFTs on bonds are very different transactions economically and the price quoted for an outright sale or purchase of a bond would not be comparable with from the price quoted for an SFT on such a bond (which would be quoted in terms of the relevant repo interest rate for the term of the financing transaction). Co-mingling quotes on SFTs with price quotes for purchases and sales will result in information that is confusing for market participants seeking to purchase or sell securities. We strongly encourage ESMA to provide guidance to confirm that their reading of these pre-trade transparency provisions is consistent with ours.

AFME also believes that reporting primary trades could prove misleading, where you would end up with lots (often hundreds) of late booked trades (after pricing and syndicate allocations have been determined) either with spurious trade times (reflecting booking times which often runs into the night) or simply very late bookings. The consolidate tape would show a significant distortion in the market and exaggerate liquidity from a calibration perspective (the bond could in practice be totally illiquid after the trade date if locked up by investors)

Whilst we understand that Level 1 states that a non-price forming trade exemption applies to OTC trades and that there is no similar provision for venue trades, we nonetheless believe that ESMA can extend the exemption to venue trades and pre trade transparency. Under MiFID I, ESMA excluded all non-price forming trades from the publication requirement, despite the absence of a Level 1 exemption provision. We recommend that ESMA use the empowerment it used under MiFID I for MiFID II as well.

We propose that RTS 9 Article 9 includes intra-group trades in the list of non-price forming trades. Such trades are undertaken for the purposes of transferring risk within corporate groups. An investment firm transferring risk in this way to another group entity should not be considered to have concluded a transaction for the purposes of the MiFID II transparency requirements. This would be equivalent to the CFTC Part 43 reporting rules. Such transactions facilitate the appropriate risk management within a financial group, and do not have any relevance to the price formation process.

We provide the following by way of example: Group entity A (an investment firm) purchases some bonds from its client. Such bonds are then immediately sold, on a back-to-back (i.e.

same price, same quantity) basis, to Group entity B because Group entity B is where the group's risk in respect of the relevant product is housed. We consider that the trade between Group entity A and its client is the only trade which should be reported in this instance, on the basis that it is this trade which is important in the price formation process, rather than the second trade which is purely undertaken for the purposes of intragroup organisational purposes. Similarly, where Group entity A purchases such bonds through a trading venue, rather than directly from a client and then enters into a back-to-back risk transfer transaction in respect of such bonds with Group entity B, only one trade should be reported to the market. The trade should, per our discussion above, be reported by the relevant trading venue.

Another example would be a corporate event such as a merger between two investment firms. If, following a merger, the risk in certain asset classes such as bonds were consolidated into one legal entity, then – in the absence of an intra-group exemption - the entire bond portfolio being transferred would have to be disclosed to the market. This would give a false impression of liquidity and is not in our view intended by the level 1 text.

Finally, we do not agree with ESMA's proposal to limit the "collateral trade" exemption to "segregated collateral" trades. First, "segregated" and "non-segregated" collateral trades are operationally equivalent, and neither can contribute to the price discovery process. Applying ESMA's proposal would hence result in a de facto ban of "non-segregated" collateral trades. Second, the European Market Infrastructure Regulation authorizes "non-segregated" collateral arrangements, and it is not in ESMA's mandate to supersede EMIR Level 1 text through a MiFID II Level 2 text.

AFME recommends the following amendments:

Article 9

Application of OTC post-trade transparency to certain transactions

The obligations in Articles **8(1), 10(1) 18 and 21(1)** of Regulation (EU) No 600/2014 shall not be applied to the following:

- (a) transactions included under Article 3(3) of Regulation (EU) No xxx/20xx [Obligation to report transactions] where applicable;
- (b) securities financing transactions;
- (c) the exercise of options, of covered warrants or convertible bonds;
- (d) primary markets transactions (such as the issuance, allotment or subscription, the placements and the exercise of pre-emption rights);
- (e) give-ups or give-ins; **or**
- (f) transfers of financial instruments such as **segregated** collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.; **or**
- (g) **Intra-group transactions.**

<ESMA_QUESTION_CP_MIFID_76>

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

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

AFME Response

No. AFME does not agree.

(i) ESMA's proposal for a 48 hour deferral

Despite the improvement of the deferral period, there will be unintended consequences for very illiquid instruments

Whilst AFME supports ESMA's extension of the deferral period for LIS trades from end-of-day (as proposed in ESMA's May 2014 Discussion Paper) to 48 hours, the price deferral period remains too short for truly illiquid markets involving large trade sizes. We believe that the price deferral period is appropriate for large trades of liquid bonds and small trades of illiquid bonds (as long as LIS, SSTI and liquidity is calibrated appropriately). An effective deferral regime addresses the risks of post trade transparency, ensuring market makers facilitating transactions by committing capital have sufficient time to hedge and unwind their risk.

The thinness of these very illiquid markets causes concerns that the transparency regime could have an implied unmasking effect of the identity of the firm taking on risk. We believe that data on this segment of the market would support a view that is not uncommon that specific of instruments that trade as little as once or twice per year – For any trading via BWIC or Auction then at least one of the participants would be inferred by the information published (i.e. seller) alongside potentially sensitive information to that counterparty (i.e. price). We understand a key feature of the proposed transparency regime was the anonymity of parties to a specific transaction.

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

Case study

In 2014 there were two notable portfolio sales in SFP instruments with two of the state protected bank liquidating multi-billion EUR portfolios.

- In August 2014 LBBW sold a portfolio of \$6.3bn US and European ABS, CDO, CMBS and RMBS securities, which had been guaranteed by the state. The portfolio was sold in a closed auction situation to a handful of dealers. Assets were sold line by line, all items traded.*
- In October 2014 Bayern LB sold a portfolio of \$8.3bn US and European ABS, CDO, CMBS and RMBS securities, which had been guaranteed by the state. The portfolio was sent out as a BWIC through a handful of dealers. Assets were sold line by line, all items traded*

In neither case are we aware that prices were publically disclosed by the seller to the market immediately following. It would not be beyond reason that given otherwise limited transaction volume and the likely unique trade sizes, a market participant would be able to reverse engineer the total portfolio proceeds/price – something which was not disclosed and could be potentially materially sensitive to the entities given the sizes of the portfolios sold.

The deferral period should be a single time period rather than a range

RTS 9 Article 8 provides that competent authorities may authorise deferred publication in respect of transactions in accordance with Article 11 MiFIR for a period of no longer than 48 hours. The use of the term “no longer” implies that the deferral period is a spectrum rather than a discrete period, such that each competent authority can choose any deferral period they wish of up to 48 hours. We recommend that ESMA should propose a single deferral period rather than a range. Each competent authority, as per Level 1, can then determine whether or not to adopt that deferral. Whilst Article 11(3) MiFIR introduces the possibility of different transparency regimes across the EU, incorporating a range exacerbates this fragmentation. Ultimately, such a regime would create an un-level playing field between jurisdictions, arbitrage opportunities and cross-border challenges. We highlight that this is inconsistent with the European Commission’s CMU objectives.

A 48 hours deferral from the time of the trade is complicated and unworkable in practice; we suggest T+2 be used

The format of the proposed deferral would mean that each firm would be required to “start the clock” and monitor the time passed from each trade. Such a process is operationally complex to implement. We recommend that ESMA adopt a T+2 deferral, which is an already well established and used format for the purposes of settlement.

AFME proposes the following amendments:

Article 8

Deferred publication of transactions

The deferred publication of information in respect of transactions may be authorised by the competent authority in accordance with Article 11(1) of Regulation (EU) 600/2014, for a period of **no longer than** 48 hours for bonds, structured finance products, derivatives and emission allowances, provided that one of the following criteria is satisfied:.....

(ii) The SSTI thresholds

- ***The framework for determining the SSTI threshold is critical and an inappropriate regime will have significant adverse consequences***

As explained in AFMEs response to **Question 57**, the transparency calibration is critical for ensuring that the Level 1 objective of increased market transparency is achieved without compromising liquidity. The size specific to the instrument threshold is one of the most critical components of the regime and it is essential that it correctly set. We are concerned that the current proposals are not workable and there would be significant adverse

consequences if implemented. As provided in Level 1, the threshold should be set to a level whereby the transparency regime would cause undue risk to liquidity providers. As such, the SSTI serves the purposes of achieving the right balance between transparency and undue risk. We highlight that in the Consultation Paper, there is no identification or analysis of undue risk relating to SSTI in the context of pre and post trade transparency. In addition, as ESMA has identified in its proposals, there are weaknesses in its liquidity calibration – if an imperfect calibration remains with large error margins, the risks created as a result of imperfect calibration also need to be considered in the SSTI (since these are also undue risks) and an appropriate adjustment needs to be made. We urge ESMA to consider the following undue risks when determining the SSTI.

For post trade transparency, if the SSTI is set too high (further exacerbated for illiquid instruments that are incorrectly classified as liquid), the larger trades will be subject to real time transparency (without NCA discretion for deferral) and market makers will be unable hedge and unwind their positions. This will ultimately discourage market makers from committing capital to facilitate trades, resulting in less depth of liquidity and wider spreads, at the expense of investors and issuers.

The **disclosure** pre trade risks are much greater than the post trade risks because the price formation process can be intervened with:

- other dealers could price against the market maker with regards and result in a race to the bottom in pricing that does not reflect market risk. Further, the disclosure of prices pre trade could result in predatory pricing practices; and
- other dealers could take contrarian positions against the market maker prior to execution, increasing the cost of hedging or unwinding of the market maker's risk.

RFQs on and off venues are privately negotiated. In venues, it is typical for a real money client to request a quote from multiple dealers. The responses that are returned to the client are private (bilaterally); in other words, dealers party that are to the request for quote will not see each others' quotes. This allows market makers to protect their risk by ensuring that no-one can move the market against the potentially winning quote. Once the client has secured the best price within the live RFQ system and the trade is subsequently accepted by the dealer, that winning dealer is privy to immediate cover information, i.e. the differential between the accepted price and the next best price. The other dealers will know, after a rules-determined time period, if they covered, tied or if they traded away (typically meaning they provided the 3rd or less best price). Again the post trade information that is disseminated is deliberately designed to ensure that winner's curse is reduced as much as possible and is only available to those dealers that participated in the auction.

If full disclosure was required to the wider public, price makers would be disincentivised to quote and there would be a race to the bottom. Specifically, the risk for the responding entity would increase as other price makers could price against them disincentivising liquidity providers from quoting and leading to a cumulative impact of dealers pricing against each other (i.e. a race to the bottom), resulting in increased financial stability risks, market makers that are unable to hedge their risks/unwind their positions and worse prices for end-users.

Further, the winner's curse would be exacerbated, with market participants pricing against both the price maker and the investor, resulting in wider spreads and less depth of liquidity.

With regard to the size specific to the instrument threshold under the SI pre trade regime, whereby quotes have to be made available to other clients, there are additional risks. This requirement for SIs means that market makers would face inventory risks. Specifically, when a market maker agrees to provide a quote to a client, it is subject to the risk of all its clients trading on the price. Therefore, whilst under the current regime, a market maker would only have to price in the risk of one trade, a market maker under MiFID II needs to price in the risk of multiple trades (and the risks associated with hedging and unwinding). As such, as the size of the trade increases, the risk increases in magnitude.

Dealers' own account trading has a crucial role in ensuring continuous markets and allowing client's orders to be matched gradually over time. If market makers are discouraged from committing capital, clients' flows would be unmatched. Such unmatched flows cause two problems: one is that the bond's price may change abruptly, even if there has been no shift in either supply or demand for the bond. Second is that either buyers have to pay more, or sellers have to accept lower prices, if they want to make their trade immediately. It is therefore crucial that the new transparency regime is appropriately calibrated in order to protect liquidity in the market place

- ***SSTI and LIS thresholds should be set according to the margin of error in the liquidity calibration***

As mentioned above, weaknesses in the liquidity calibration need to be actively considered in the setting of the SSTI and LIS thresholds. Specifically, if there are large margin of errors, the misclassification of illiquid instruments as liquid needs to be considered as undue risk and, therefore, accounted for in the setting of the SSTI and LIS thresholds. We have provided specific adjustments in our proposals below.

- ***AFME believes that SSTI should neither be linked to SSTI nor be set at 50% of large in scale***

Whilst AFME appreciates that ESMA has taken a pragmatic approach to the SSTI threshold by proposing an operationally simple model, we do not believe that that the 50% of LIS threshold is appropriate for the reasons outlined below. We stress that a simple approach can be achieved without requiring a SSTI threshold for each instrument and without compromising a risk-based calibration:

- (i) There is no analysis in the Consultation to indicate that undue risk has been considered*** – as explained above, ESMA's mandate with regards to SSTI is to consider undue risk to liquidity providers. There is no indication that such an analysis has been conducted. We urge ESMA to conduct and/or disclose this analysis.
- (ii) Linking SSTI to LIS is inconsistent with Level 1*** - Level 1 requires that LIS be set as large in scale compared with normal market size and SSTI be set as the size at which it would cause undue risk to liquidity providers. The basis of each of these

thresholds is clear and there is no evidence that undue risk is connected to half large in scale. Therefore, we strongly oppose for SSTI to be set as a percentage of LIS.

(iii) The proportion of trades captured by the SSTI threshold is so high that it is not consistent with the undue risk calibration – especially for pre trade transparency and illiquid post trade. AFME has conducted analysis on the percentile of trades by asset class; the data (**Graphs 17 to 23** and **Tables 23 to 30** below) demonstrates that for all asset classes, 50% of the LIS, both in terms of Table 1 Annex III RTS 9 and 90th percentile of transactions, captures approximately 70-85% of all trades. We do not accept that there is no undue risk to market makers in relation to pre trade and post trade transparency for trades sizes that relate to the these proportions of the market.

(iv) Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements. At the levels ESMA has proposed, the pre trade regime becomes unworkable because SIs will be unable to execute with multiple clients with respect to trade sizes up to half block trades. Therefore, the proposed SSTI runs contrary to the objective of the SI pre trade transparency requirements under Level 1 which is to ensure that SIs offer the same prices to multiple clients and execute on those prices.

(v) Given the high margin of error in the liquidity calibration proposed by ESMA, a 50% LIS threshold is excessively conservative – in paragraph 35 of Section 3 of the Consultation Paper, ESMA has stated that it will strive to remedy the weaknesses of its COFIA approach and that the potential adverse impact on liquidity is mitigated by means of the waivers and deferrals for transactions that are LIS and SSTI. Since under ESMA's proposed liquidity calibration 40 to 74% of instruments are wrongly classified as liquid, it is essential that ESMA give this due consideration when setting the SSTI and LIS. Specifically, market makers are subject to undue risk at much smaller sizes for illiquid instruments compared to liquid instruments. Therefore, ESMA needs to actively lower the SSTI depending on the error margin levels in the liquidity calibration.

(vi) There will be a significant and disproportionate changes in the SSTI levels on 1 April 2018

Bond type	SSTI from 3 January 2017 to 1 April 2018 (EUR)	Approximate SSTI level based on 50% of 90 th percentile of trades (EUR) excluding EUR 100k trades	Approximate SSTI levels based on 50% of 90 th percentile of trades (EUR)
European sovereign bonds	5,000,000	14,477,500	12,000,000
Non-European sovereign bonds	5,000,000	10,187,206	10,187,206

Other European public bond	2,500,000	1,455,139	737,000
Corporate bond senior financial	1,250,000	1,887,975	1,071,564
Corporate bond senior non-financial	750,000	925,000	500,000
Corporate bond subordinated financial	1,000,000	1,194,011	925,000
Corporate bond subordinated non-financial	2,500,000	1,000,000	615,490

- ***Trades below EUR 100k should be included in the calculations of SSTI and LIS***

In paragraph 43 of Section 3 of the Consultation Paper, ESMA notes trades below EUR 100,000 were excluded from its calculations. ESMA has not provided any explanation for doing this. At the ESMA hearing on Thursday 19 February 2015, ESMA stated that these trades were excluded because, without doing so, the resulting SSTI and LIS sizes produced would be too low. We do not believe that this is a sufficient reason to exclude approximately 20% of sovereign trades, 55% of other EU public bond trades, 40% of senior financial corporate bond trades, 55% of senior non-financial corporate bond trades, 30% of subordinate financial corporate bond trades and 45% of subordinate non-financial corporate bond trades. A trade that is large in scale and undue risk cannot be determined if such large proportions of trading are excluded from the calculations.

- ***AFME proposes that there should be a different SSTI for pre trade transparency and post trade transparency***

As explained above, the risk associated with the post trade threshold is the time permitted for the market maker to unwind and hedge risk. The pre trade risks to the market maker is much greater than the post trade risks because the price formation process can be intervened with. Therefore, we believe that the pre trade SSTI should differ from post trade SSTI and that the levels should be much lower. We do not believe that introducing different thresholds for pre trade and post trade would make the regime too operationally complex.

- ***AFME proposes that the SSTI for pre trade transparency should be set as the 50th percentile of transactions (including EUR 100k trades) if there is a minimal margin of error in the liquidity calibration, otherwise a 35th percentile of transactions should be used***

If there is a minimal error margin in the liquidity calibration, AFME proposes that a threshold of the 50th percentile of transactions (i.e. the median trade size) is workable for SSTI for pre trade transparency (including trades below 100k in the calculations). Such a threshold is appropriate because it achieves the regulatory objective by introducing transparency to a significant proportion of liquid markets and sets the pre trade threshold to trade sizes whereby undue risk is minimised. We propose that if the margin of error is significant in the liquidity calculation, there is greater undue risk at smaller sizes; therefore, the SSTI threshold needs to be set even lower. We propose that in this case a threshold of the 35th percentile is appropriate.

We highlight that pre trade undue risk is minimised at trade sizes whereby investment firms can easily unwind their positions and also be able to execute with multiple clients easily. Such sizes are those that occur most frequently. **Graphs 24 to 30 and Tables 30 to 36** illustrate the trade sizes ranges that are most frequently traded (and where there are sudden drops in frequency of trade sizes) for each asset class based on TRAX trade data from 1 October 2011 to 30 September 2013, and, as such, demonstrate that the levels at which there is lowest risk. The trade sizes that relate to the 35th to 50th trade percentiles are consistent with the histogram analysis.

If ESMA chooses to exclude trades below EUR 100k in size and thereby a significant part of the market, we suggest that a threshold of 10th percentile of transactions be used.

- ***AFME proposes that the SSTI and LIS thresholds for illiquid instruments should differ to the thresholds set for liquid instruments for post trade transparency and should be set to 50th percentile of transactions if there is a minimal margin of error in the liquidity calibration, otherwise, it should be set to 35th percentile of trades***

In paragraph 39 of Section 3, ESMA states that it is of the view that LIS and SSTI thresholds must also be set for illiquid instruments: such thresholds would be necessary in the instance where an NCA does not wish to authorise deferred publication for all transactions in illiquid instruments but wishes to allow such deferral for transactions above a certain size. Whilst AFME does not disagree with this principle, we recommend that the threshold for illiquid instruments will need to differ from those applied to liquid instruments. As mentioned above, market makers typically find it more difficult to hedge and unwind their risk positions in relation illiquid instruments compared to liquid instruments and at much smaller trade sizes. Setting the threshold for illiquid instruments at the same level as that applied to liquid instruments would be inappropriate and would discourage market makers from committing capital in these already thin markets. Therefore, in order for the calibration to be suitable to the risks, the SSTI and LIS thresholds for illiquid instruments need to be significantly lower. We would suggest that for simplicity, the illiquid post trade levels be aligned to those of pre trade transparency.

- ***The SSTI levels are suitable for post trade transparency for liquid instruments as long as there is a low margin of error in the liquidity calibration but rather than setting the threshold as 50% LIS, set it as 80th percentile of transactions if the liquidity calibration has a low margin of error. Otherwise, 50th percentile of transactions should be used.***

For instruments that are truly liquid, with the exception of subordinate non-financial corporate bond and covered bonds, AFME believes that the SSTI levels proposed by ESMA in Table 1 Annex III RTS 9 and the resulting levels from the calculation of 50% of the 90th percentile of trades are appropriate as long as there is a minimal margin of error in the liquidity calibration (despite AFME's disagreement with the 50% methodology). We recommend that subordinate non-financial corporates are typically less liquid than subordinate financials; therefore, the thresholds should be reduced to at least match the level of financials.

As discussed above, we do not agree that SSTI should be linked to LIS. Therefore, we recommend that ESMA identify the percentile of trades that are consistent with the values for 50% LIS and use this percentile as the SSTI threshold. Using our analysis, we propose that this level is the 80th percentile of trades. However, if the large of error in the liquidity calibration remain significant, this is a significant undue risk and we urge ESMA to reduce the SSTI to 50th percentile of trades.

However, as discussed above, the greater the number of illiquid bonds misclassified as liquid in the liquidity calibration, the lower the SSTI and LIS need to be. Therefore, if ESMA does not adopt an IBIA approach, we recommend that ESMA actively adjust the thresholds

depending on the proportion of illiquid bonds falsely classified as liquid (i.e. the false positive level). AFME's specific proposals on these adjustments are detailed below.

- ***Matched principle trades should not be excluded from the SSTI waiver***

In paragraph 37 Section 3 of the Consultation Paper, ESMA states that it believes that the applicability of the SSTI should be restricted to market participants trading on own account other than matched principal. AFME does not agree with the exclusion of matched principal trading from the SSTI. The Level 1 MiFIR text is clear that the SSTI waiver can be applied to all trading venues (RMs, MTFs and OTFs) and does not provide any such restriction. It is also clear that except for OTFs with respect to illiquid sovereigns, no venue can act on a principal basis (i.e. on own account). Therefore, it is highly inconsistent for Level 1 and ESMA to permit venues acting on a pure agency basis to apply the SSTI but for ESMA to then exclude venues utilising matched principal-based trading from applying the SSTI waiver.

Whilst we agree with ESMA that the SSTI relates to undue risk to liquidity providers, we highlight that it is not the venue that is exposed to undue risk but those participating on the venues. Market makers use venues as a medium to trade on own account for the purposes of facilitating client trades. Therefore, the disclosure of pre trade quotes or post trade prices could expose the participants on the venue to risks such as the winner's curse but never the venue itself.

AFME proposes the following amendment to Article 8(c) RTS 9:

The size of the transaction executed between an investment firm dealing on own account ~~other than on a matched principal basis~~ as per article 4(1)(38) of Directive 2014/65/EU and another counterparty I equal to or exceed the relevant size specific to the instrument....

(iii) The LIS thresholds

As with the SSTI, the LIS calibration is a critical element to ensuring a workable transparency regime, and, in particular, in relation to post trade transparency. We are again concerned that In addition to our proposals that (i) the LIS for illiquid instruments needs to be lower than the LIS for liquid instruments; and (ii) EUR 100k trades should not be excluding from the calculations, our proposals are outlined above.

- ***LIS for liquid bonds should be calculated using the 90th percentile of trades (including trades below EUR 100k) and not the 70th percentile of volume***

Based on the Level 1 text, we understand that LIS is intended to set the threshold at which the trade size is large in scale compared with normal market size such that a deferral would be needed for post trade transparency. We agree with ESMA that analysing the universe of trade sizes is a useful and meaningful methodology for identifying LIS. Further, we agree that for liquid instruments, the 90th percentile is an appropriate threshold, as long as the liquidity definition has minimal error margins.

However, we believe that using volume coverage as a measure of LIS is neither appropriate nor relevant. First, using the percentile of volume can be highly distortive. For example, a few large trades can skew volume significantly. By way of illustration, if a particular class of instruments frequently trades in sizes in the range of EUR 1mm-5mm in size, a large trade should be EUR 4-5mm. However, if there are a few sporadic large trades of EUR 100mm in size, determining LIS based on 70th percentile of volume would be distorted by these outliers (whereas the 90th percentile of trades would not).

- ***ESMA should not introduce LIS floors***

AFME does not agree that the RTS should include LIS floors. We believe that the concept of a floor runs contrary to the objective purpose of the LIS, which is intended to be the threshold at which trades are large in scale compared with normal market size. For example, if a floor is introduced, the LIS values can only ever be greater than the floors even if the normal market size decreases over time. Further, we believe that by setting the floor, ESMA is exceeding its mandate since there is no such concept in Level 1.

We also highlight that, in fact, the floors proposed for bonds are not true back-stop floors. Unlike for interest rate swaps, where ESMA has taken the lowest pre-April 2018 LIS to serve as the floor for all interest rate swaps, ESMA proposes to use each of the pre-April 2018 bond LIS levels as the floors.

- ***AFME does not agree with ESMA's rounding methodology***

In paragraph 44 of Section 3 of the Consultation Paper, ESMA proposes that the 90th trade/70th volume percentiles should be rounded to produce the final LIS thresholds. Whilst we agree that rounding is valuable to ensure a workable and simple regime, we do not agree with ESMA's methodology. ESMA proposes that values should always be rounded up. For example, if the percentile value is EUR 100,001, the value should be rounded by 100,000 to 200,000. Such an approach is inconsistent with standard mathematical rounding rules and produces odd results.

- ***AFME agrees with Option 2***

Since markets are dynamic, AFME supports option 2 since it adapts to changing market conditions. Rightly, such a dynamic approach would result in LIS and SSTI thresholds that could either increase or decrease.

- ***If ESMA adopts a COFIA approach, the SSTI and LIS and need to be set by COFIA subcategory.***

In order to minimise the error margins in the liquidity calibration, we urge ESMA to reconsider the IBIA approach. However, if ESMA chooses to adopt a COFIA approach, we propose that ESMA set the thresholds by subcategory.

- (iv) ***ESMA needs to develop a solution for package trades***

AFME encourages ESMA to consider the appropriate application of the MiFIR pre- and post-trade transparency obligations and the derivatives trading obligation, to package transactions. We consider that MiFIR is flexible enough to empower ESMA to specify how package transactions are to be treated, and it is important to do so, otherwise investors could lose the advantages of the ability to transact certain package types and will experience increased transaction costs and execution risk as a consequence of having to trade different components separately, of being unable to obtain appropriate waivers and deferrals. Package transactions frequently involve bonds (for example, spread transactions across a yield curve, switches between one issuer's bonds and another's, or asset swap transactions). AFME's membership is therefore supportive of ISDA's proposals for the definition of a package transaction, the appropriate classification of package transactions into liquid and illiquid classes, and the calibration of SSTI and LIS for packages.

- **AFME proposes the following amendments to Article 11 RTS 9:**

1. In respect of each class of financial instruments for which there is a liquid market and each class of financial instruments for which there is not a liquid market as specific in Annex III, competent authorities shall ensure that the calculations to determine the following measures are made promptly after the end of each calendar year:

(a) the large in scale referred to in Articles 3(b) and 8(1)(a)(ii);

(b) the size specific to the financial instrument referred to in Articles 5(1)(b); and

(c) the size specific to the financial instrument referred to in 8(1)(c)

2. The large in scale size referred to in paragraph 1(a) of this Article **in respect of each class of financial instruments for which there is a liquid market**, shall be determined as **the greater of:**

~~(a) the trade size corresponding to the trade below which lies 90% of all the transactions executed for this class of financial instruments;~~ **and**

~~(b) the trade size corresponding to the trade below which lies 70% of the total volume of the transactions executed for this class of financial instruments; and~~

~~(c) the large in scale threshold floor as provided for in Table 47 of Section 11 of Annex III for the corresponding class~~

3. The large in scale size referred to in paragraph 1(a) of this Article in respect of each class of financial instruments for which there is not a liquid market, shall be determined as the trade size corresponding to the trade below which lies [x%] of all the transactions executed for this class of financial instruments.

~~3.~~ 4. The threshold determined in accordance to paragraph (2) shall be rounded ~~up~~ to the **next nearest:**

(a) 100,000.....

4.5 The calculation....

5.6. The trade size ~~and the total volume~~ of the transaction referred to in paragraph 2(**a**) and (b) 3 should be determined for the class in question as specified in Table 3 of Annex II of this Regulation.

7 The size specific to the financial instrument referred to in paragraph 1(b), shall be ~~calculated as 50% of the corresponding large in scale~~ **the trade size corresponding to the trade below which lies [50%][35%][10%] of all the transactions executed for this class of financial instruments** determined in accordance with paragraphs ~~2~~, 3, 4 and 5.

8. The size specific to the financial instrument referred to in paragraph 1(c) for instruments for which there is a liquid market, shall be the trade size corresponding to the trade below which lies ~~[80%][50%][65%]~~ **[50%][35%][10%]** of all the transactions executed for this class of financial instruments determined in accordance with paragraphs 3, 4 and 5.

9. The size specific to the financial instrument referred to in paragraph 1(c) for instruments for which there is not a liquid market, shall be the trade size corresponding to the trade below which lies ~~[50%][35%][10%]~~ **[50%][35%][10%]** of all the transactions executed for this class of financial instruments determined in accordance with paragraphs 3, 4 and 5.

~~79...~~

~~810...~~

~~911...~~

Annex III: Liquidity assessment, LIS, SSTI thresholds for non-equity financial instruments

Bond - liquid classes post trade transparency

Bond type: EU sovereign bonds					
Subcategory					
Lifecycle	Currency	Above outstanding amount test (EUR)	Liquidity	SSTI	LIS
New issue	All currencies	1,000,000,000	Liquid		
Recent issue	EUR	3,000,000,000	Liquid		
Recent issue	GBP	5,000,000,000	Liquid		
Recent issue	Other currency	5,000,000,000	Liquid		
Old issue	All currencies	5,000,000,000	Liquid		
Bond type: Non-EU sovereign bonds					
Subcategory					
New issue	USD	1,000,000,000	Liquid		
New issue	JPY	1,000,000,000	Liquid		
New issue	AUD	1,000,000,000	Liquid		
New issue	CAD	1,000,000,000	Liquid		
Recent issue	USD	5,000,000,000	Liquid		
Recent issue	AUD	5,000,000,000	Liquid		
Recent issue	CAD	5,000,000,000	Liquid		
Bond type: Senior corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,250,000,000	Liquid		
Old issue	EUR	1,250,000,000	Liquid		
Bond type: Subordinated financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,000,000,000	Liquid		
Old issue	EUR	1,000,000,000	Liquid		
Bond type: Subordinated non-financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,000,000,000	Liquid		
Bond type: Other EU public bonds					
All	All currencies	2,000,000,000	Liquid		
For covered bonds, convertibles bond and others – further work is needed					

Bond - classes not having a liquid market post trade transparency

Bond type: EU sovereign bonds					
Subcategory					
Lifecycle	Currency	Below Outstanding amount test (EUR)	Liquidity	SSTI	LIS
New issue	All currencies	1,000,000,000	Illiquid		
Recent issue	EUR	3,000,000,000	Illiquid		
Recent issue	GBP	5,000,000,000	Illiquid		
Recent issue	Other currency	5,000,000,000	Illiquid		
Old issue	All currencies	5,000,000,000	Illiquid		
Bond type: Non-EU sovereign bonds					
Subcategory					
New issue	USD	1,000,000,000	Illiquid		
New issue	JPY	1,000,000,000	Illiquid		
New issue	AUD	1,000,000,000	Illiquid		
New issue	CAD	1,000,000,000	Illiquid		
New issue	Other currency	-	Illiquid		
Recent issue	USD	5,000,000,000	Illiquid		
Recent issue	AUD	5,000,000,000	Illiquid		
Recent issue	CAD	5,000,000,000	Illiquid		
Recent issue	Other currency	-	Illiquid		
Old issue	All currencies	-	Illiquid		
Bond type: Senior corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Illiquid		
Recent	EUR	1,250,000,000	Illiquid		
Recent	Other currency	-	Illiquid		
Old issue	EUR	1,250,000,000	Illiquid		
Old issue	Other currency	-	Illiquid		
Bond type: Subordinated financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Illiquid		
Recent	EUR	1,000,000,000	Illiquid		
Recent	Other currency	-	Illiquid		
Old issue	EUR	1,000,000,000	Liquid		
Old issue	Other currency	-	Illiquid		
Bond type: Subordinated non-financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Illiquid		
Recent	EUR	1,000,000,000	Illiquid		
Recent	Other currency	-	Illiquid		
Old issue	All currencies	-	Illiquid		
Bond type: Other EU public bonds					
All	All currencies	2,000,000,000	Illiquid		
For covered bonds, convertibles bond and others – further work is needed					
SFPs					
All	All	-	Illiquid		
Convertible non-financials					
All	All	-	Illiquid		
Other					
All	All	-	Illiquid		

Bond – liquid classes pre trade transparency

Bond type: EU sovereign bonds					
Subcategory					
Lifecycle	Currency	Above outstanding amount test (EUR)	Liquidity	SSTI	LIS
New issue	All currencies	1,000,000,000	Liquid		
Recent issue	EUR	3,000,000,000	Liquid		
Recent issue	GBP	5,000,000,000	Liquid		
Recent issue	Other currency	5,000,000,000	Liquid		
Old issue	All currencies	5,000,000,000	Liquid		
Bond type: Non-EU sovereign bonds					
Subcategory					
New issue	USD	1,000,000,000	Liquid		
New issue	JPY	1,000,000,000	Liquid		
New issue	AUD	1,000,000,000	Liquid		
New issue	CAD	1,000,000,000	Liquid		
Recent issue	USD	5,000,000,000	Liquid		
Recent issue	AUD	5,000,000,000	Liquid		
Recent issue	CAD	5,000,000,000	Liquid		
Bond type: Senior corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,250,000,000	Liquid		
Old issue	EUR	1,250,000,000	Liquid		
Bond type: Subordinated financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,000,000,000	Liquid		
Old issue	EUR	1,000,000,000	Liquid		
Bond type: Subordinated non-financial corporate bonds					
Subcategory					
New issue	All currencies	500,000,000	Liquid		
Recent	EUR	1,000,000,000	Liquid		
Bond type: Other EU public bonds					
All	All currencies	2,000,000,000	Liquid		
For covered bonds, convertibles bond and others – further work is needed					

Graph 17: EU sovereign bonds: trade size percentiles (including all trades)

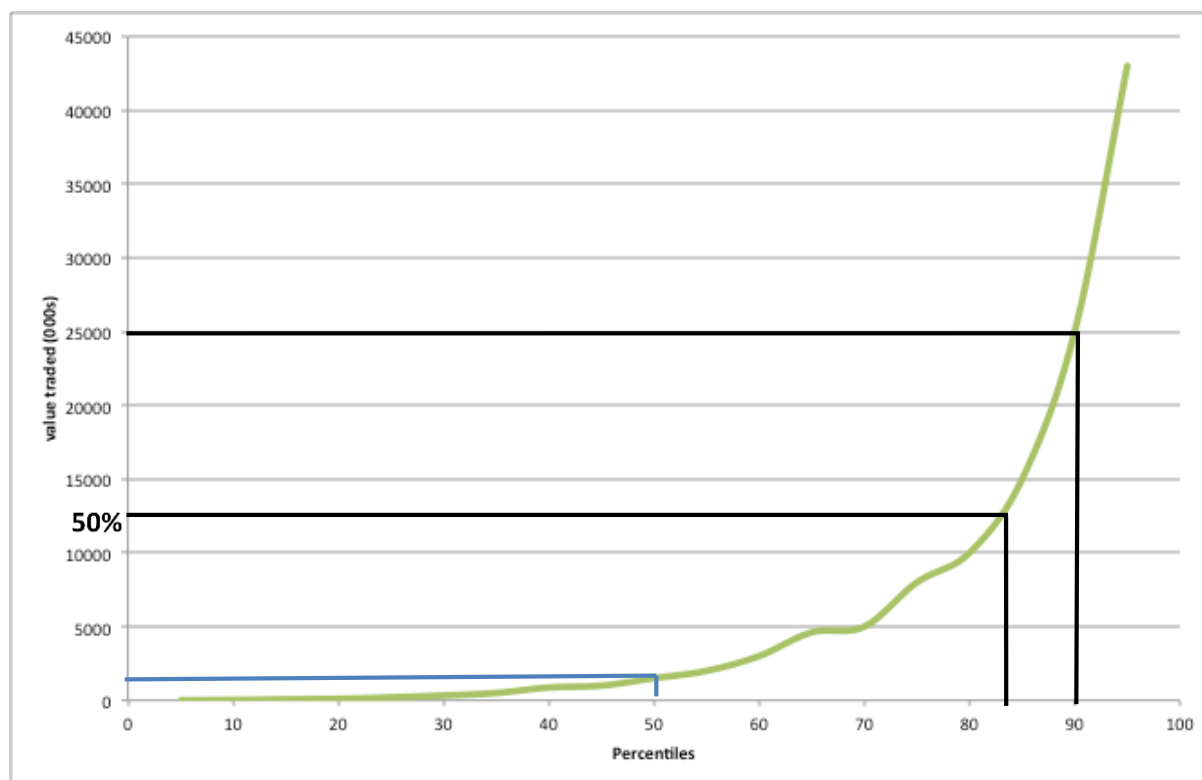


Table 23: EU sovereign bonds trade size percentiles (including and excluding trades below EUR 100k)

All EU Sovereign bonds

Percentile	Value traded (€)
0%	0
5%	10,000
10%	30,000
15%	67,500
20%	110,000
25%	200,000
30%	330,000
35%	500,000
40%	870,000
45%	1,000,000
50%	1,500,000
55%	2,000,000
60%	3,000,000
65%	4,610,970
70%	5,000,000
75%	8,000,000
80%	10,000,000

85%	15,000,000
90%	25,000,000
95%	43,000,000
100%	5,817,999,932

EU sovereign bond excluding EUR 100k

Percentile	Value traded (€)
0%	100,001
5%	178,168
10%	250,000
15%	400,000
20%	512,800
25%	828,000
30%	1,000,000
35%	1,200,000
40%	1,880,095
45%	2,200,000
50%	3,000,000
55%	4,000,000
60%	5,000,000
65%	6,000,000
70%	8,724,964
75%	10,000,000
80%	14,000,000
85%	20,000,000
90%	28,955,000
95%	50,000,000
100%	5,817,999,932

Graph 18: non-EU sovereign bonds: trade size percentiles (including all trades)

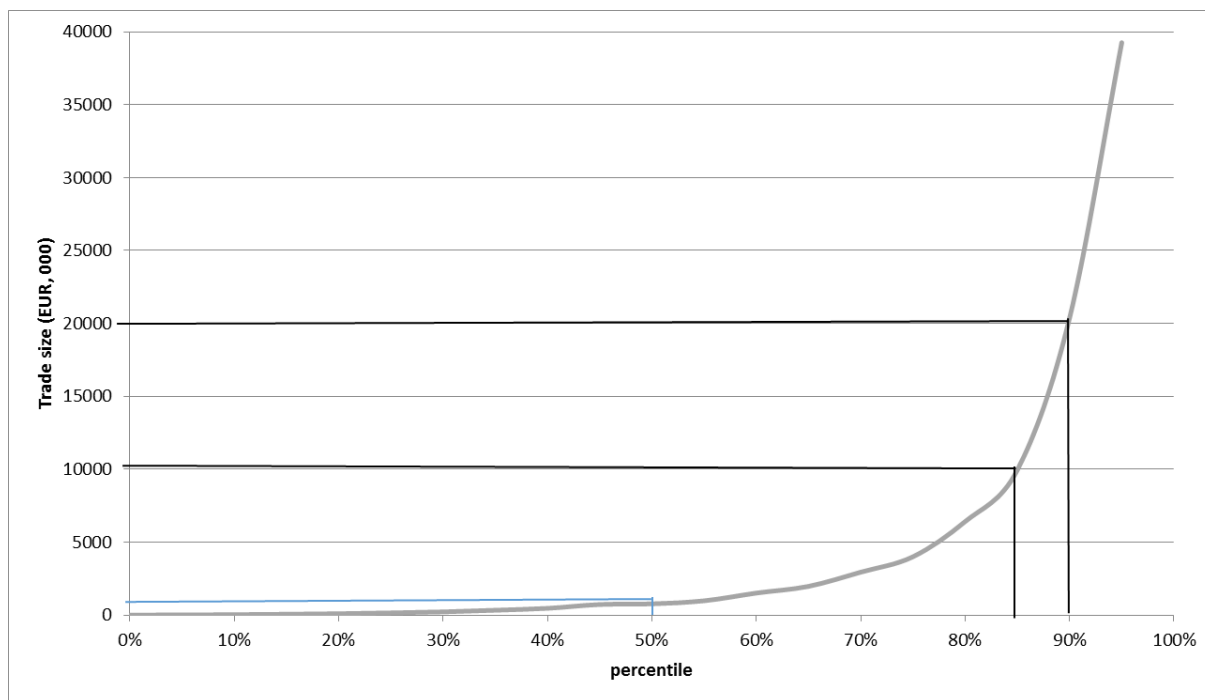


Table 24: non-EU sovereign bonds trade size percentiles (including and excluding trades below EUR 100k)

All non-EU sovereign bond trades

Percentile	Value traded (€)
0%	0
5%	10,095
10%	28,625
15%	56,921
20%	93,096
25%	151,216
30%	218,882
35%	332,101
40%	465,841
45%	723,854
50%	769,425
55%	980,443
60%	1,510,380
65%	1,971,554
70%	2,945,542
75%	4,000,582
80%	6,414,565
85%	9,948,340

90%	20,374,411
95%	39,257,389
100%	10,248,486,633

Non-EU sovereign bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,000
5%	150,539
10%	196,344
15%	275,900
20%	377,090
25%	493,052
30%	704,575
35%	762,047
40%	802,597
45%	1,148,376
50%	1,520,689
55%	1,872,527
60%	2,414,434
65%	3,563,120
70%	4,547,052
75%	6,652,658
80%	9,462,805
85%	15,938,070
90%	33,529,761
95%	41,561,571
100%	10,248,486,633

Graph 19: Other EU public bonds: trade size percentiles (including all trades)

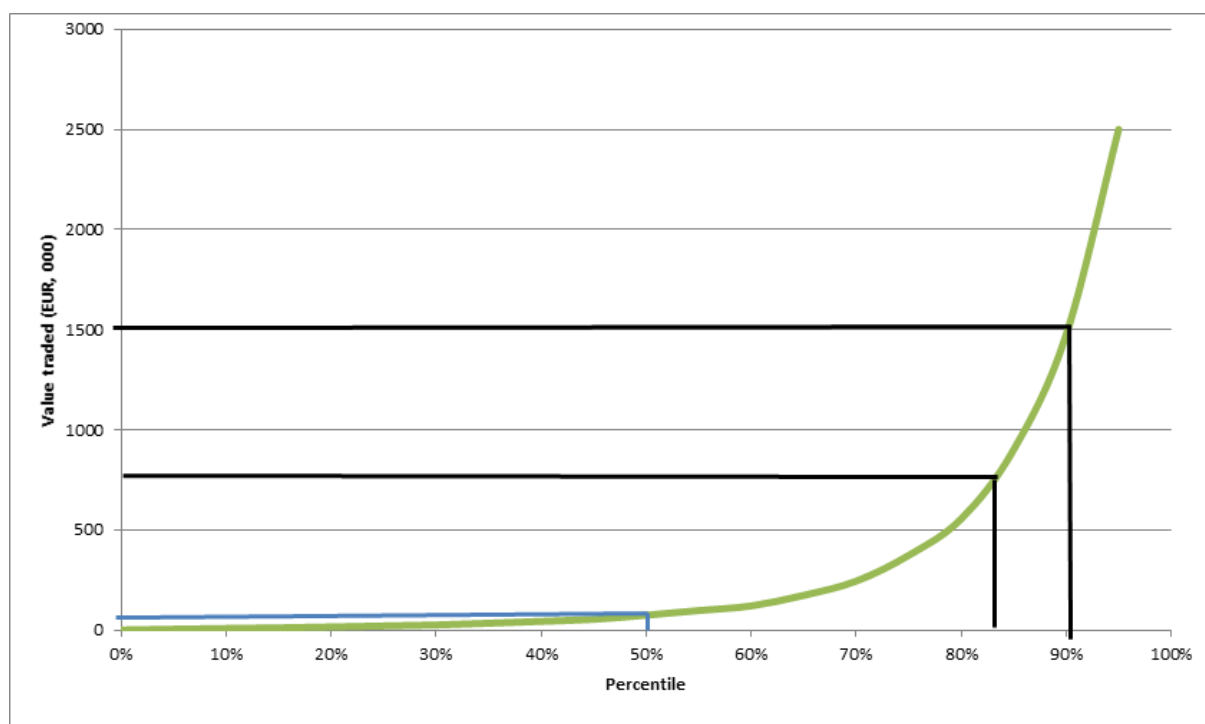


Table 25: Other EU public bonds trade size percentiles (including and excluding trades below EUR 100k)

All other EU public bond trades

Percentile	Value traded (€)
0%	0
5%	4,000
10%	7,525
15%	10,387
20%	15,000
25%	20,000
30%	25,000
35%	33,548
40%	42,955
45%	52,978
50%	73,614
55%	97,158
60%	120,000
65%	172,605
70%	243,971
75%	372,389

80%	554,526
85%	900,000
90%	1,474,000
95%	2,500,000
100%	5,000,000

Other EU public bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,005
5%	118,000
10%	138,477
15%	156,000
20%	189,162
25%	205,317
30%	249,830
35%	300,000
40%	353,000
45%	406,110
50%	500,000
55%	600,100
60%	755,136
65%	915,000
70%	1,020,033
75%	1,336,524
80%	1,653,014
85%	2,119,729
90%	2,910,278
95%	3,800,341
100%	5,000,000

Graph 20: Senior financial corporate bonds: trade size percentiles (including all trades)

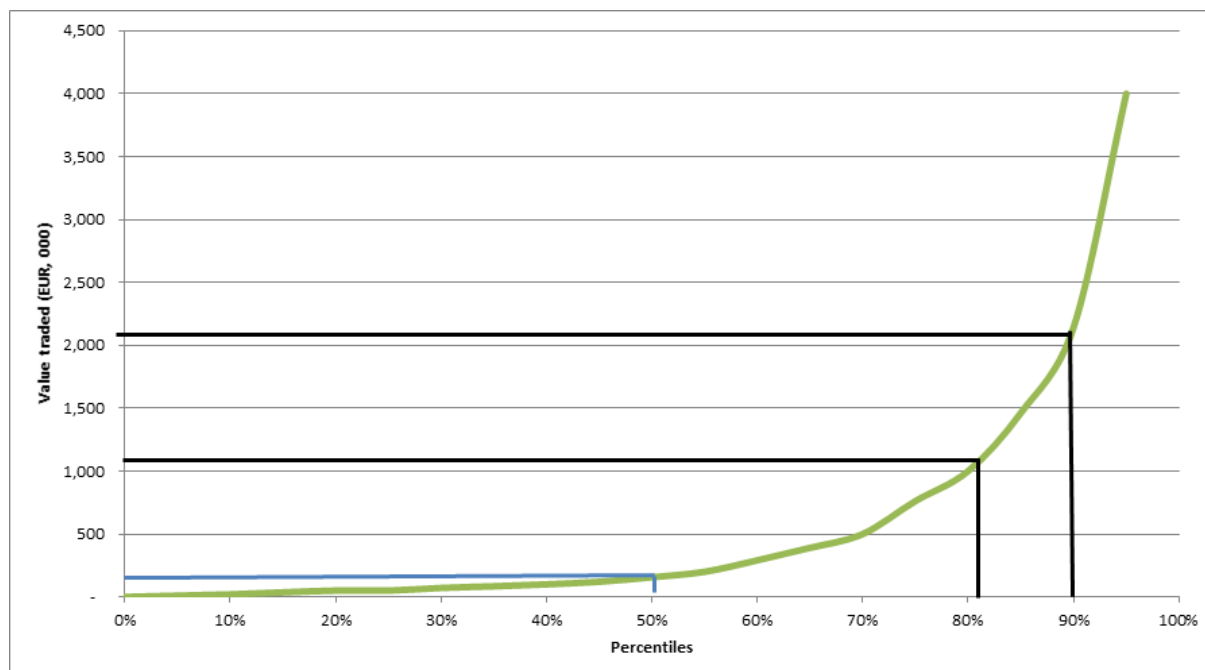


Table 26: Senior financial corporate bond trade size percentiles (including and excluding trades below EUR 100k)

All senior corporate bond trades

Percentile	Value traded (€)
0%	154
5%	10,000
10%	20,000
15%	36,057
20%	50,000
25%	50,000
30%	71,963
35%	84,276
40%	100,000
45%	120,909
50%	156,561
55%	200,000
60%	291,041
65%	390,153
70%	500,000
75%	762,047

80%	1,000,000
85%	1,462,305
90%	2,143,128
95%	4,000,000
100%	1,070,000,000

Senior corporate bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,002.00
5%	125,000.00
10%	150,000.00
15%	175,000.00
20%	200,000.00
25%	231,471.80
30%	284,825.00
35%	331,000.00
40%	400,000.00
45%	500,000.00
50%	564,339.93
55%	738,382.05
60%	890,000.00
65%	1,000,000.00
70%	1,148,799.99
75%	1,500,000.00
80%	2,000,000.00
85%	2,500,000.00
90%	3,775,950.60
95%	5,479,346.32
100%	1,070,000,000.00

Graph 21: Senior non-financial corporate bonds: trade size percentiles (including all trades)

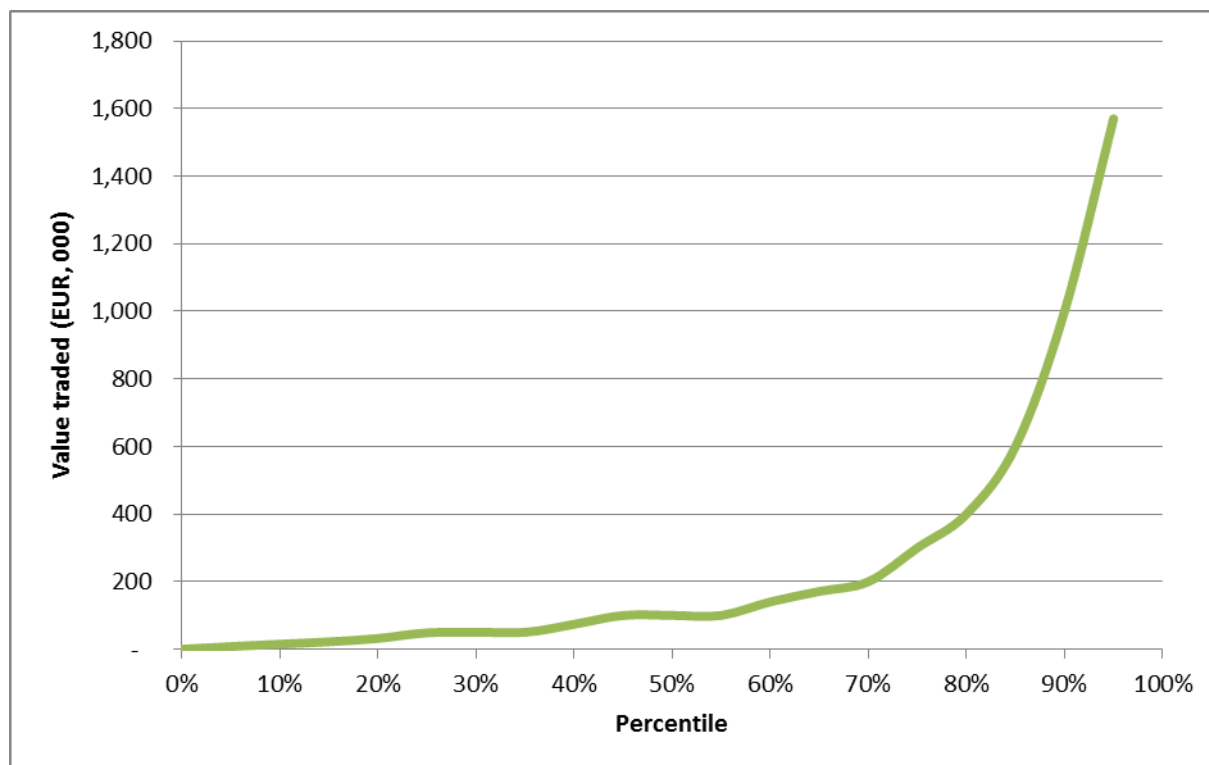


Table 27: Senior non-financial corporate bond trade size percentiles (including and excluding trades below EUR 100k)

All senior corporate bond trades

Percentile	Value traded (€)
0%	0
5%	8,000
10%	15,000
15%	21,798
20%	31,840
25%	48,555
30%	50,000
35%	50,000
40%	73,704
45%	100,000
50%	100,000
55%	100,000
60%	140,185

65%	171,000
70%	200,000
75%	300,000
80%	400,000
85%	600,000
90%	1,000,000
95%	1,570,296
100%	317,819,632

Senior corporate bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,018
5%	125,080
10%	150,000
15%	154,084
20%	187,970
25%	200,000
30%	200,000
35%	250,000
40%	298,885
45%	306,662
50%	383,328
55%	450,000
60%	500,000
65%	600,000
70%	761,592
75%	974,793
80%	1,000,000
85%	1,300,000
90%	1,850,000
95%	2,736,350
100%	317,819,632

Graph 22: Subordinated financial corporate bonds: trade size percentiles (including all trades)

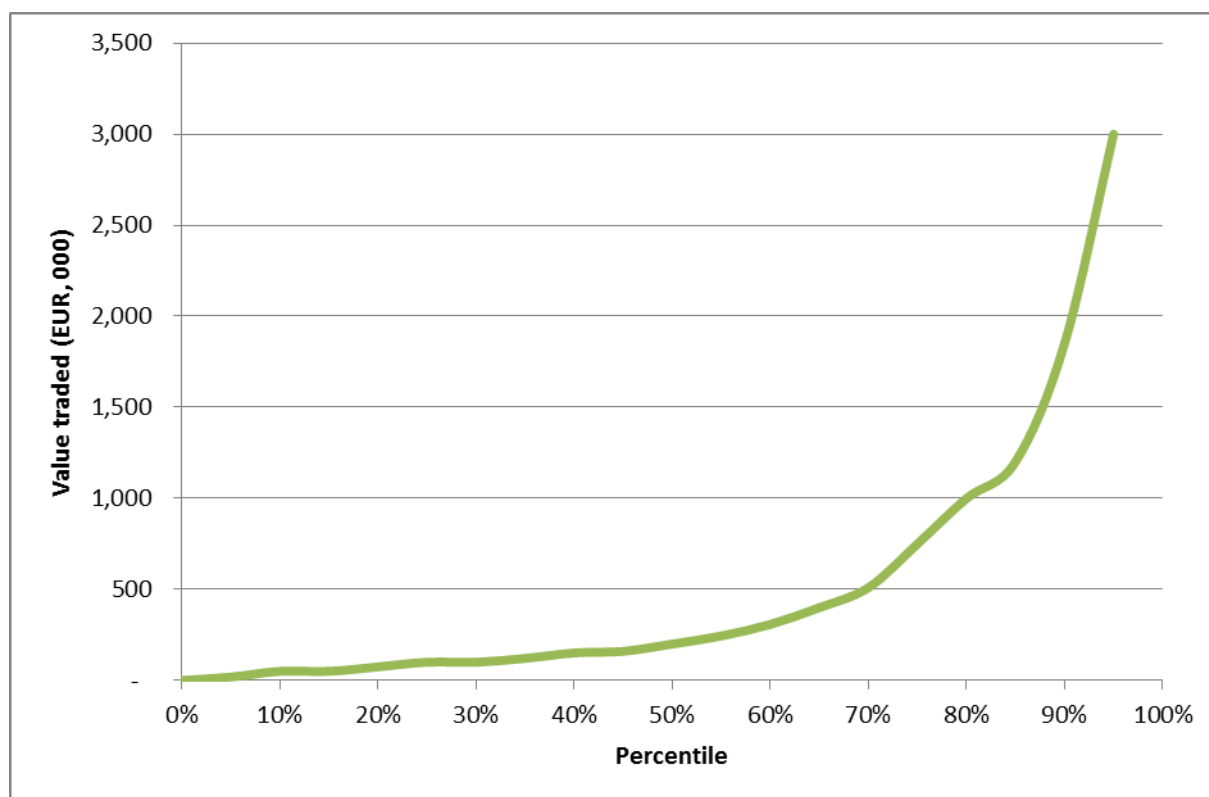


Table 28: Subordinated financial corporate bond trade size percentiles (including and excluding trades below EUR 100k)

All subordinated corporate bond trades

Percentile	Value traded (€)
0%	583
5%	19,067
10%	50,000
15%	50,000
20%	74,682
25%	100,000
30%	100,000
35%	121,077
40%	151,000
45%	160,000
50%	200,000
55%	244,620
60%	307,935
65%	400,000

70%	509,556
75%	750,000
80%	1,000,000
85%	1,200,736
90%	1,850,000
95%	3,000,000
100%	100,000,000

Subordinated bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,187
5%	125,500
10%	150,000
15%	154,183
20%	163,064
25%	200,000
30%	215,000
35%	250,000
40%	300,500
45%	375,533
50%	416,301
55%	500,000
60%	635,964
65%	772,542
70%	991,611
75%	1,043,797
80%	1,378,454
85%	1,800,000
90%	2,388,022
95%	3,804,695
100%	100,000,000

Graph 23: Subordinated non-financial corporate bonds: trade size percentiles (including all trades)

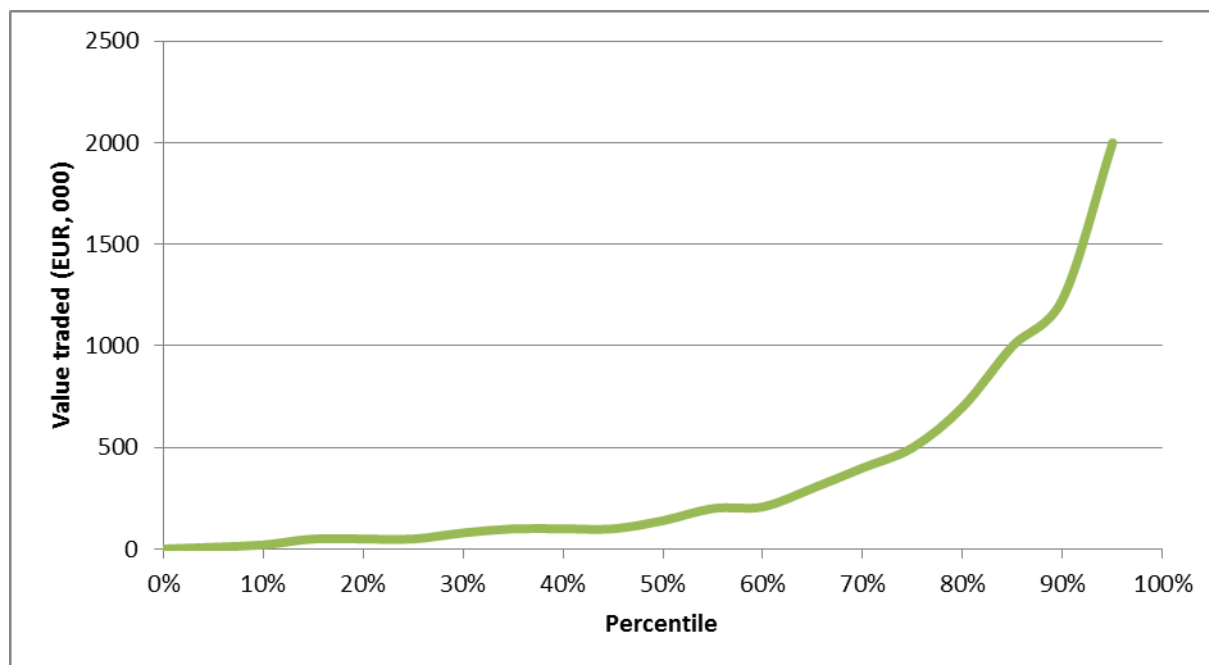


Table 30: Subordinated non-financial corporate bond trade size percentiles (including and excluding trades below EUR 100k)

All subordinated corporate bond trades

Percentile	Value traded (€)
0%	1,000.00
5%	10,000.00
10%	21,000.00
15%	50,000.00
20%	50,000.00
25%	50,000.00
30%	80,000.00
35%	100,000.00
40%	100,000.00
45%	100,000.00
50%	140,000.00
55%	200,000.00
60%	208,183.15
65%	300,000.00

70%	400,000.00
75%	500,000.00
80%	700,000.00
85%	1,000,000.00
90%	1,230,980.00
95%	2,000,000.00
100%	41,698,867.94

Subordinated bond trades excluding EUR 100k

Percentile	Value traded (€)
0%	100,164
5%	125,000
10%	150,000
15%	180,000
20%	200,000
25%	201,000
30%	250,000
35%	300,000
40%	320,000
45%	400,000
50%	500,000
55%	500,000
60%	600,000
65%	785,385
70%	1,000,000
75%	1,000,000
80%	1,148,800
85%	1,500,000
90%	2,000,000
95%	3,000,000
100%	41,698,868

Graph 24: EU sovereign bonds histogram of trade sizes frequency (including trades less than EUR 100k)

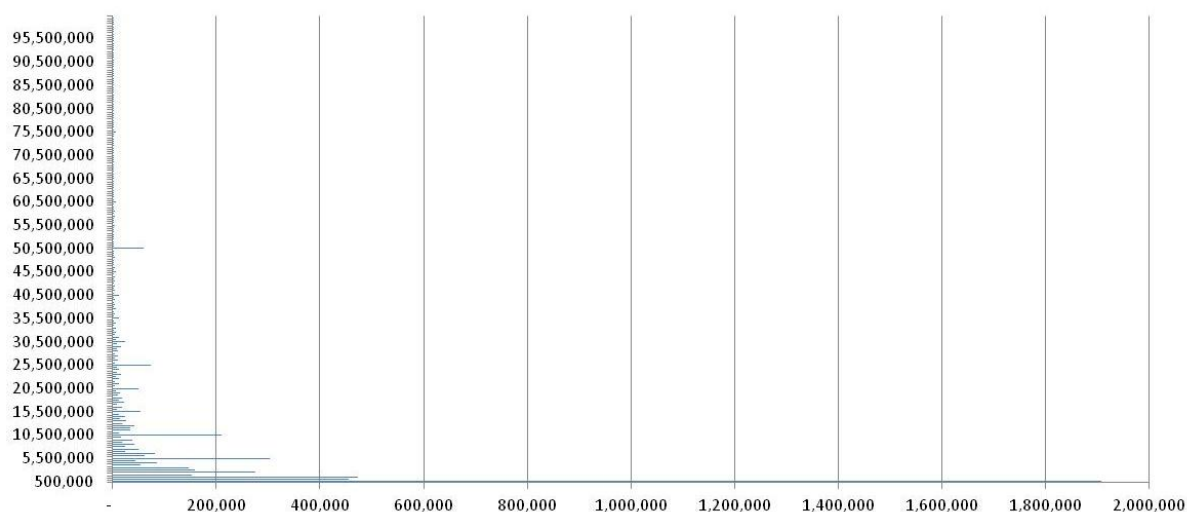


Table 30: EU sovereign bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 27,000,000 trade sizes

Minimum trading size	Maximum trading size	Number of trades
-	500,000	1,906,602
500,000	1,000,000	455,742
1,000,000	1,500,000	472,972
1,500,000	2,000,000	152,096
2,000,000	2,500,000	274,779
2,500,000	3,000,000	158,264
3,000,000	3,500,000	146,667
3,500,000	4,000,000	54,805
4,000,000	4,500,000	85,155
4,500,000	5,000,000	44,153
5,000,000	5,500,000	303,347
5,500,000	6,000,000	61,323
6,000,000	6,500,000	81,312
6,500,000	7,000,000	23,795
7,000,000	7,500,000	48,989
7,500,000	8,000,000	24,096
8,000,000	8,500,000	42,759
8,500,000	9,000,000	18,228
9,000,000	9,500,000	37,176
9,500,000	10,000,000	16,354
10,000,000	10,500,000	209,278

10,500,000	11,000,000	13,257
11,000,000	11,500,000	34,610
11,500,000	12,000,000	33,799
12,000,000	12,500,000	41,177
12,500,000	13,000,000	18,406
13,000,000	13,500,000	26,304
13,500,000	14,000,000	13,513
14,000,000	14,500,000	23,531
14,500,000	15,000,000	11,965
15,000,000	15,500,000	54,883
15,500,000	16,000,000	8,024
16,000,000	16,500,000	18,111
16,500,000	17,000,000	7,700
17,000,000	17,500,000	21,429
17,500,000	18,000,000	12,813
18,000,000	18,500,000	19,029
18,500,000	19,000,000	10,462
19,000,000	19,500,000	15,121
19,500,000	20,000,000	6,225
20,000,000	20,500,000	49,408
20,500,000	21,000,000	5,341
21,000,000	21,500,000	12,357
21,500,000	22,000,000	5,032
22,000,000	22,500,000	12,604
22,500,000	23,000,000	6,858
23,000,000	23,500,000	15,699
23,500,000	24,000,000	8,041
24,000,000	24,500,000	12,876
24,500,000	25,000,000	7,525
25,000,000	25,500,000	73,006
25,500,000	26,000,000	4,678
26,000,000	26,500,000	11,049
26,500,000	27,000,000	4,356
27,000,000	27,500,000	9,994

Graph 25: non-EU sovereign bonds histogram of trade sizes frequency (including trades less than EUR 100k)

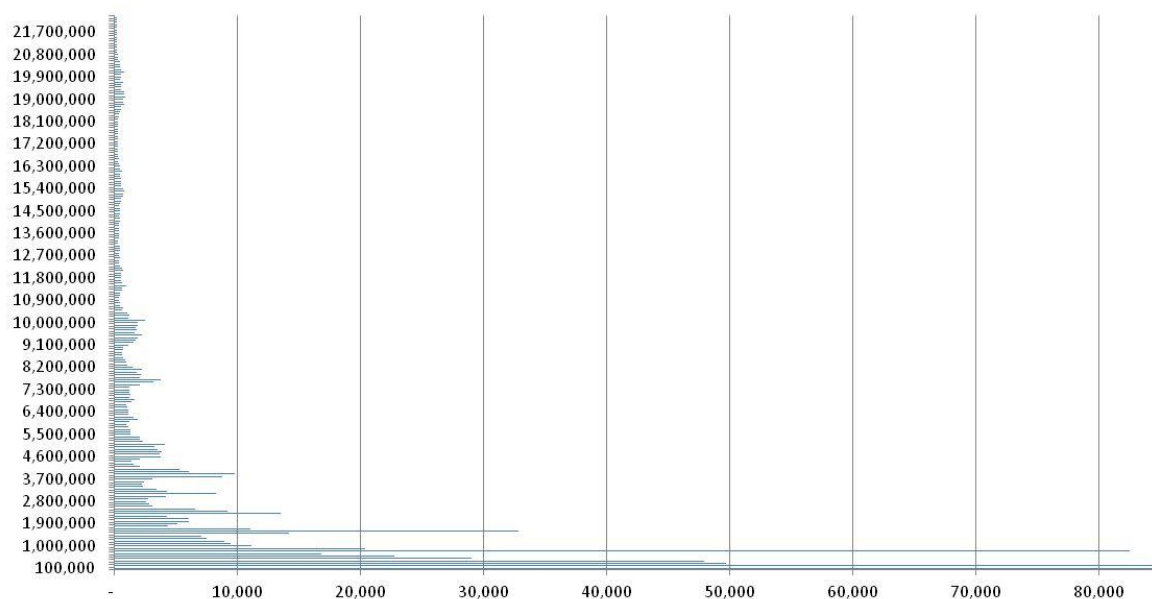


Table 31: non-EU sovereign bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 8,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	222,060
100,000	200,000	88,672
200,000	300,000	49,718
300,000	400,000	47,895
400,000	500,000	28,982
500,000	600,000	22,691
600,000	700,000	16,833
700,000	800,000	82,458
800,000	900,000	20,325
900,000	1,000,000	11,091
1,000,000	1,100,000	9,454
1,100,000	1,200,000	8,941
1,200,000	1,300,000	7,476
1,300,000	1,400,000	7,095
1,400,000	1,500,000	14,174
1,500,000	1,600,000	32,801
1,600,000	1,700,000	11,024
1,700,000	1,800,000	4,364
1,800,000	1,900,000	5,079
1,900,000	2,000,000	6,014
2,000,000	2,100,000	6,002
2,100,000	2,200,000	4,282
2,200,000	2,300,000	13,489
2,300,000	2,400,000	9,208
2,400,000	2,500,000	6,552
2,500,000	2,600,000	3,055
2,600,000	2,700,000	2,777
2,700,000	2,800,000	2,573
2,800,000	2,900,000	2,750
2,900,000	3,000,000	4,212
3,000,000	3,100,000	8,240
3,100,000	3,200,000	4,290

3,200,000	3,300,000	3,371
3,300,000	3,400,000	2,325
3,400,000	3,500,000	2,230
3,500,000	3,600,000	2,435
3,600,000	3,700,000	3,052
3,700,000	3,800,000	8,719
3,800,000	3,900,000	9,738
3,900,000	4,000,000	6,028
4,000,000	4,100,000	5,284
4,100,000	4,200,000	2,081
4,200,000	4,300,000	1,569
4,300,000	4,400,000	1,337
4,400,000	4,500,000	2,027
4,500,000	4,600,000	3,775
4,600,000	4,700,000	3,674
4,700,000	4,800,000	3,864
4,800,000	4,900,000	3,531
4,900,000	5,000,000	3,273
5,000,000	5,100,000	4,080
5,100,000	5,200,000	2,318
5,200,000	5,300,000	2,038
5,300,000	5,400,000	2,086
5,400,000	5,500,000	1,327
5,500,000	5,600,000	1,272
5,600,000	5,700,000	1,275
5,700,000	5,800,000	1,094
5,800,000	5,900,000	919
5,900,000	6,000,000	1,192
6,000,000	6,100,000	1,844
6,100,000	6,200,000	1,524
6,200,000	6,300,000	1,114
6,300,000	6,400,000	1,111
6,400,000	6,500,000	1,106
6,500,000	6,600,000	1,003
6,600,000	6,700,000	976
6,700,000	6,800,000	1,413
6,800,000	6,900,000	1,626
6,900,000	7,000,000	1,205
7,000,000	7,100,000	1,335
7,100,000	7,200,000	1,191
7,200,000	7,300,000	1,192
7,300,000	7,400,000	1,211
7,400,000	7,500,000	2,083
7,500,000	7,600,000	3,150
7,600,000	7,700,000	3,719
7,700,000	7,800,000	2,083
7,800,000	7,900,000	2,130
7,900,000	8,000,000	1,835
8,000,000	8,100,000	2,266

Graph 26: Other EU public bonds histogram of trade sizes frequency (including trades less than EUR 100k)

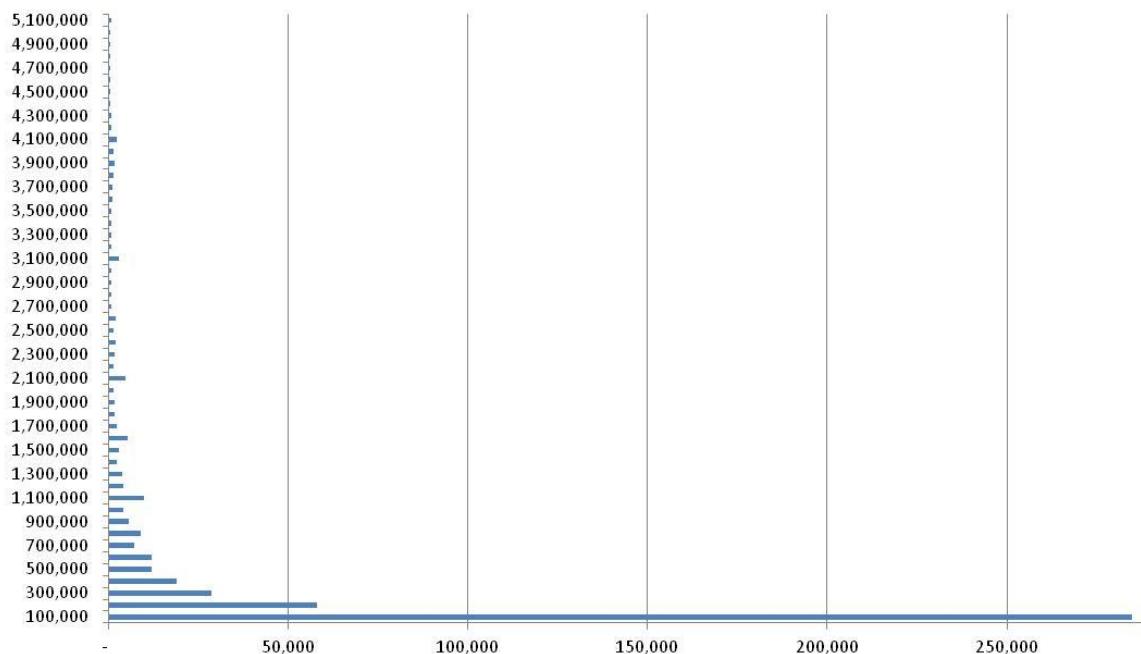


Table 32: other EU public bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 5,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	284,740
100,000	200,000	58,170
200,000	300,000	28,647
300,000	400,000	18,872
400,000	500,000	12,003
500,000	600,000	11,991
600,000	700,000	7,136
700,000	800,000	9,126
800,000	900,000	5,741
900,000	1,000,000	4,166
1,000,000	1,100,000	9,895
1,100,000	1,200,000	4,244
1,200,000	1,300,000	3,707
1,300,000	1,400,000	2,216
1,400,000	1,500,000	2,854
1,500,000	1,600,000	5,313
1,600,000	1,700,000	2,309
1,700,000	1,800,000	1,757
1,800,000	1,900,000	1,726
1,900,000	2,000,000	1,573
2,000,000	2,100,000	4,757
2,100,000	2,200,000	1,298
2,200,000	2,300,000	1,648
2,300,000	2,400,000	1,954
2,400,000	2,500,000	1,550
2,500,000	2,600,000	2,047
2,600,000	2,700,000	934
2,700,000	2,800,000	874

2,800,000	2,900,000	880
2,900,000	3,000,000	905
3,000,000	3,100,000	2,960
3,100,000	3,200,000	851
3,200,000	3,300,000	828
3,300,000	3,400,000	751
3,400,000	3,500,000	956
3,500,000	3,600,000	1,237
3,600,000	3,700,000	1,007
3,700,000	3,800,000	1,512
3,800,000	3,900,000	1,674
3,900,000	4,000,000	1,343
4,000,000	4,100,000	2,446
4,100,000	4,200,000	725
4,200,000	4,300,000	680
4,300,000	4,400,000	487
4,400,000	4,500,000	412
4,500,000	4,600,000	587
4,600,000	4,700,000	532
4,700,000	4,800,000	503
4,800,000	4,900,000	511
4,900,000	5,000,000	386
5,000,000	5,100,000	743

Graph 27: Senior financial corporates histogram of trade sizes frequency (including trades less than EUR 100k)

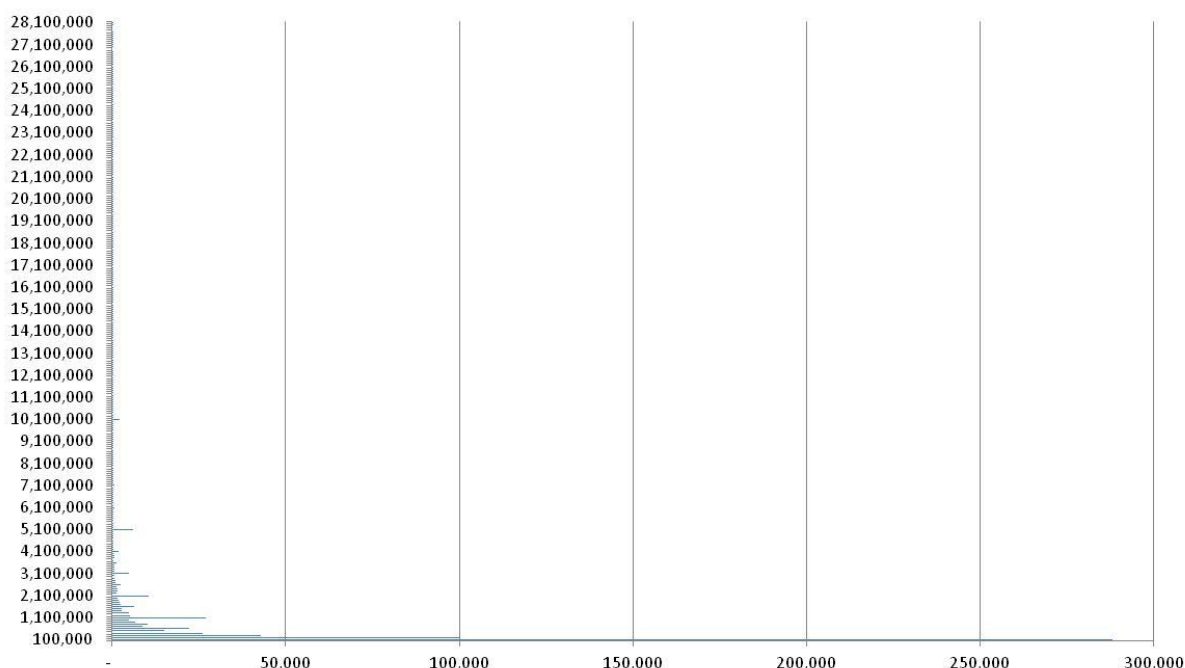


Table 33: Senior corporate financials histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 6,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	287,966
100,000	200,000	100,153
200,000	300,000	42,842
300,000	400,000	26,125
400,000	500,000	15,114
500,000	600,000	22,350
600,000	700,000	8,729
700,000	800,000	10,194
800,000	900,000	6,557
900,000	1,000,000	4,943
1,000,000	1,100,000	27,016
1,100,000	1,200,000	5,034
1,200,000	1,300,000	4,858
1,300,000	1,400,000	2,804
1,400,000	1,500,000	2,871
1,500,000	1,600,000	6,223
1,600,000	1,700,000	2,414
1,700,000	1,800,000	2,098
1,800,000	1,900,000	1,946
1,900,000	2,000,000	1,586
2,000,000	2,100,000	10,612
2,100,000	2,200,000	1,295
2,200,000	2,300,000	1,540
2,300,000	2,400,000	1,668
2,400,000	2,500,000	1,373
2,500,000	2,600,000	2,524
2,600,000	2,700,000	915
2,700,000	2,800,000	878
2,800,000	2,900,000	750

2,900,000	3,000,000	760
3,000,000	3,100,000	4,982
3,100,000	3,200,000	660
3,200,000	3,300,000	726
3,300,000	3,400,000	543
3,400,000	3,500,000	583
3,500,000	3,600,000	1,152
3,600,000	3,700,000	496
3,700,000	3,800,000	677
3,800,000	3,900,000	629
3,900,000	4,000,000	437
4,000,000	4,100,000	1,968
4,100,000	4,200,000	354
4,200,000	4,300,000	330
4,300,000	4,400,000	289
4,400,000	4,500,000	250
4,500,000	4,600,000	473
4,600,000	4,700,000	328
4,700,000	4,800,000	300
4,800,000	4,900,000	255
4,900,000	5,000,000	297
5,000,000	5,100,000	6,081
5,100,000	5,200,000	214
5,200,000	5,300,000	242
5,300,000	5,400,000	202
5,400,000	5,500,000	159
5,500,000	5,600,000	258
5,600,000	5,700,000	150
5,700,000	5,800,000	209
5,800,000	5,900,000	279
5,900,000	6,000,000	216
6,000,000	6,100,000	704

Graph 28: Senior non-financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k)

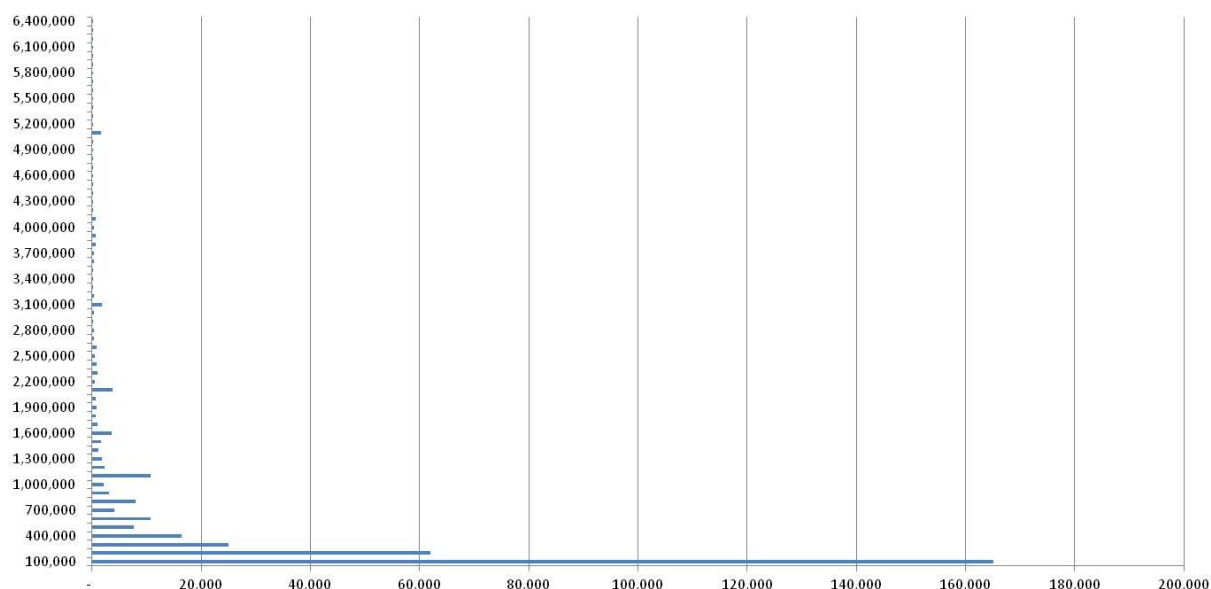


Table 34: Senior non-financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 8,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	165,072
100,000	200,000	61,982
200,000	300,000	25,055
300,000	400,000	16,385
400,000	500,000	7,689
500,000	600,000	10,698
600,000	700,000	4,148
700,000	800,000	7,901
800,000	900,000	3,081
900,000	1,000,000	2,164
1,000,000	1,100,000	10,673
1,100,000	1,200,000	2,309
1,200,000	1,300,000	1,800
1,300,000	1,400,000	1,239
1,400,000	1,500,000	1,579
1,500,000	1,600,000	3,573
1,600,000	1,700,000	1,001
1,700,000	1,800,000	733
1,800,000	1,900,000	896
1,900,000	2,000,000	710
2,000,000	2,100,000	3,778
2,100,000	2,200,000	539
2,200,000	2,300,000	936
2,300,000	2,400,000	753
2,400,000	2,500,000	516
2,500,000	2,600,000	831
2,600,000	2,700,000	367
2,700,000	2,800,000	310
2,800,000	2,900,000	263
2,900,000	3,000,000	311
3,000,000	3,100,000	1,739
3,100,000	3,200,000	276
3,200,000	3,300,000	223
3,300,000	3,400,000	220

3,400,000	3,500,000	207
3,500,000	3,600,000	372
3,600,000	3,700,000	357
3,700,000	3,800,000	746
3,800,000	3,900,000	721
3,900,000	4,000,000	396
4,000,000	4,100,000	694
4,100,000	4,200,000	141
4,200,000	4,300,000	107
4,300,000	4,400,000	88
4,400,000	4,500,000	126
4,500,000	4,600,000	212
4,600,000	4,700,000	124
4,700,000	4,800,000	94
4,800,000	4,900,000	87
4,900,000	5,000,000	78
5,000,000	5,100,000	1,594
5,100,000	5,200,000	90
5,200,000	5,300,000	86
5,300,000	5,400,000	93
5,400,000	5,500,000	64
5,500,000	5,600,000	86
5,600,000	5,700,000	79
5,700,000	5,800,000	78
5,800,000	5,900,000	106
5,900,000	6,000,000	52
6,000,000	6,100,000	221
6,100,000	6,200,000	78
6,200,000	6,300,000	62
6,300,000	6,400,000	40
6,400,000	6,500,000	40
6,500,000	6,600,000	71
6,600,000	6,700,000	31
6,700,000	6,800,000	38
6,800,000	6,900,000	42
6,900,000	7,000,000	43
7,000,000	7,100,000	135
7,100,000	7,200,000	48
7,200,000	7,300,000	57
7,300,000	7,400,000	69
7,400,000	7,500,000	117
7,500,000	7,600,000	218
7,600,000	7,700,000	130
7,700,000	7,800,000	118
7,800,000	7,900,000	64
7,900,000	8,000,000	51
8,000,000	8,100,000	124

Graph 29: Subordinate financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k)

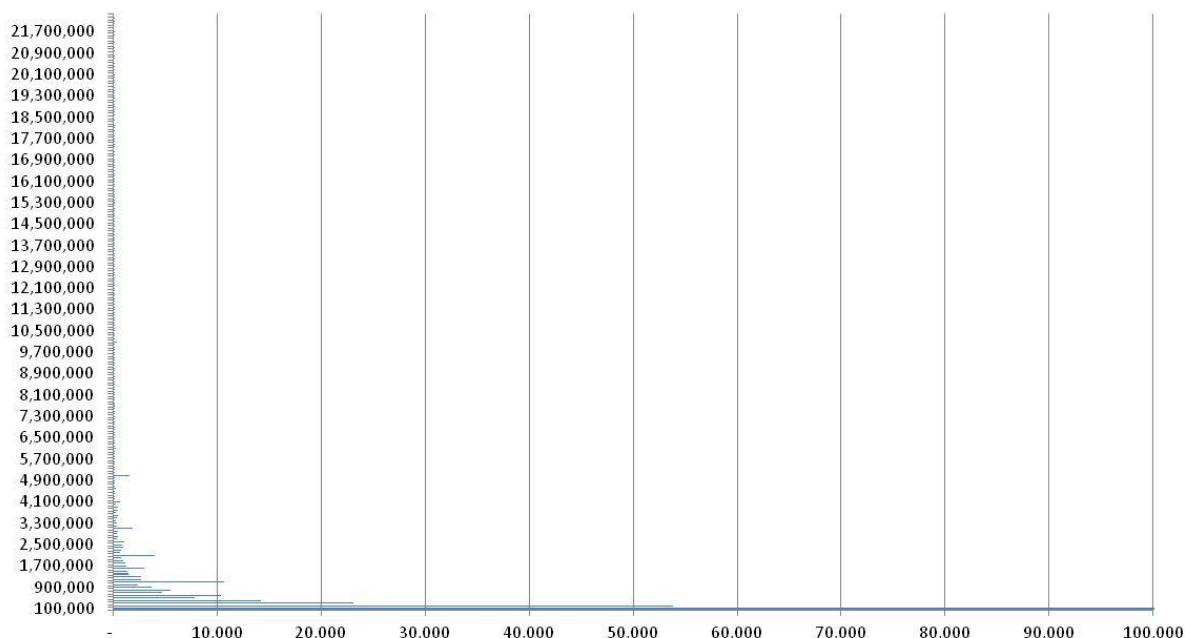


Table 35: Subordinate financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 8,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	102,736
100,000	200,000	53,809
200,000	300,000	23,115
300,000	400,000	14,225
400,000	500,000	7,854
500,000	600,000	10,380
600,000	700,000	4,647
700,000	800,000	5,514
800,000	900,000	3,649
900,000	1,000,000	2,400
1,000,000	1,100,000	10,675
1,100,000	1,200,000	2,619
1,200,000	1,300,000	2,630
1,300,000	1,400,000	1,452
1,400,000	1,500,000	1,383
1,500,000	1,600,000	2,971
1,600,000	1,700,000	1,251
1,700,000	1,800,000	1,098
1,800,000	1,900,000	978
1,900,000	2,000,000	770
2,000,000	2,100,000	3,958
2,100,000	2,200,000	604
2,200,000	2,300,000	774
2,300,000	2,400,000	905
2,400,000	2,500,000	800
2,500,000	2,600,000	1,016
2,600,000	2,700,000	377
2,700,000	2,800,000	380

2,800,000	2,900,000	379
2,900,000	3,000,000	394
3,000,000	3,100,000	1,806
3,100,000	3,200,000	309
3,200,000	3,300,000	308
3,300,000	3,400,000	203
3,400,000	3,500,000	318
3,500,000	3,600,000	426
3,600,000	3,700,000	277
3,700,000	3,800,000	413
3,800,000	3,900,000	426
3,900,000	4,000,000	243
4,000,000	4,100,000	662
4,100,000	4,200,000	156
4,200,000	4,300,000	135
4,300,000	4,400,000	120
4,400,000	4,500,000	100
4,500,000	4,600,000	213
4,600,000	4,700,000	119
4,700,000	4,800,000	130
4,800,000	4,900,000	96
4,900,000	5,000,000	116
5,000,000	5,100,000	1,521
5,100,000	5,200,000	79
5,200,000	5,300,000	71
5,300,000	5,400,000	66
5,400,000	5,500,000	69
5,500,000	5,600,000	97
5,600,000	5,700,000	58
5,700,000	5,800,000	95
5,800,000	5,900,000	135
5,900,000	6,000,000	107
6,000,000	6,100,000	229
6,100,000	6,200,000	86
6,200,000	6,300,000	64
6,300,000	6,400,000	47
6,400,000	6,500,000	48
6,500,000	6,600,000	62
6,600,000	6,700,000	35
6,700,000	6,800,000	36
6,800,000	6,900,000	34
6,900,000	7,000,000	46
7,000,000	7,100,000	132
7,100,000	7,200,000	24
7,200,000	7,300,000	23
7,300,000	7,400,000	35
7,400,000	7,500,000	55
7,500,000	7,600,000	101
7,600,000	7,700,000	83
7,700,000	7,800,000	52
7,800,000	7,900,000	42
7,900,000	8,000,000	29
8,000,000	8,100,000	115

Graph 30: Subordinate non-financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k)

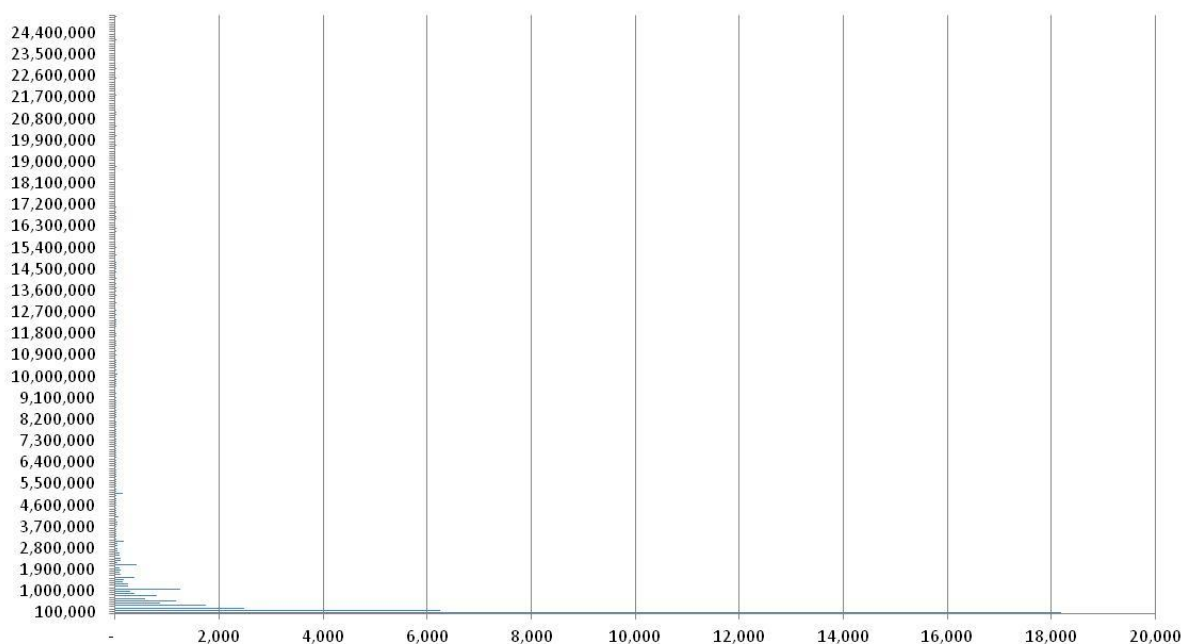


Table 36: Subordinate non-financial corporate bonds histogram of trade sizes frequency (including trades less than EUR 100k) – up to EUR 7,000,000 trade sizes

Minimum trading size	Max (excluding)	Number
-	100,000	18,185
100,000	200,000	6,241
200,000	300,000	2,488
300,000	400,000	1,743
400,000	500,000	867
500,000	600,000	1,170
600,000	700,000	574
700,000	800,000	805
800,000	900,000	382
900,000	1,000,000	300
1,000,000	1,100,000	1,246
1,100,000	1,200,000	250
1,200,000	1,300,000	251
1,300,000	1,400,000	145
1,400,000	1,500,000	176
1,500,000	1,600,000	382
1,600,000	1,700,000	106
1,700,000	1,800,000	85
1,800,000	1,900,000	107
1,900,000	2,000,000	97
2,000,000	2,100,000	420
2,100,000	2,200,000	46
2,200,000	2,300,000	99
2,300,000	2,400,000	99
2,400,000	2,500,000	80
2,500,000	2,600,000	95

2,600,000	2,700,000	37
2,700,000	2,800,000	50
2,800,000	2,900,000	38
2,900,000	3,000,000	37
3,000,000	3,100,000	176
3,100,000	3,200,000	18
3,200,000	3,300,000	20
3,300,000	3,400,000	16
3,400,000	3,500,000	23
3,500,000	3,600,000	30
3,600,000	3,700,000	19
3,700,000	3,800,000	45
3,800,000	3,900,000	40
3,900,000	4,000,000	17
4,000,000	4,100,000	64
4,100,000	4,200,000	15
4,200,000	4,300,000	10
4,300,000	4,400,000	9
4,400,000	4,500,000	11
4,500,000	4,600,000	13
4,600,000	4,700,000	13
4,700,000	4,800,000	7
4,800,000	4,900,000	13
4,900,000	5,000,000	8
5,000,000	5,100,000	156
5,100,000	5,200,000	3
5,200,000	5,300,000	7
5,300,000	5,400,000	7
5,400,000	5,500,000	3
5,500,000	5,600,000	11
5,600,000	5,700,000	2
5,700,000	5,800,000	8
5,800,000	5,900,000	11
5,900,000	6,000,000	12
6,000,000	6,100,000	22
6,100,000	6,200,000	9
6,200,000	6,300,000	12
6,300,000	6,400,000	7
6,400,000	6,500,000	3
6,500,000	6,600,000	5
6,600,000	6,700,000	8
6,700,000	6,800,000	3
6,800,000	6,900,000	1
6,900,000	7,000,000	1
7,000,000	7,100,000	10

<ESMA_QUESTION_CP_MIFID_77>

Q78. Do you agree with ESMA's proposal for interest rate derivatives? Please specify, for each sub-class (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to- Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate

futures) if you agree on the following points providing reasons for your answer and, if you disagree, providing ESMA with your alternative proposal:

- (1) deferral period set to 48 hours
- (2) size specific to the instrument threshold set as 50% of the large in scale threshold
- (3) volume measure used to set the large in scale and size specific to the instrument threshold as specified in Annex II, Table 3 of draft RTS 9
- (4) pre-trade and post-trade thresholds set at the same size
- (5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1), provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2), provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed (c) irrespective of your preference for option 1 or 2 and, with particular reference to OTC traded interest rates derivatives, provide feedback on the granularity of the tenor buckets defined. In other words, would you use a different level of granularity for maturities shorter than 1 year with respect to those set which are: 1 day- 1.5 months, 1.5-3 months, 3-6 months, 6 months – 1 year? Would you group maturities longer than 1 year into buckets (e.g. 1-2 years, 2-5 years, 5-10 years, 10-30 years and above 30 years)?

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

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

AFME Response

Deferral period

We believe that the transparency calibration is critical for ensuring that the Level 1 objective of increased market transparency is achieved without compromising liquidity.

Whilst we support ESMA's extension of the deferral period for LIS trades from end-of-day (as proposed in ESMA's May 2014 Discussion Paper) to 48 hours, the price deferral period remains too short, particularly for truly illiquid markets involving large trade sizes. To ensure a continuation of liquidity by market participants and to reduce the potential negative effects of the post trade transparency regime, in line with the suggestion in the Fixed Income context, we would suggest for large trades in illiquid commodity derivatives a price deferral of at least 28 days.

Setting the thresholds

As noted in our responses to Q66-69, we are extremely concerned that the current proposals for commodity derivatives are based on a dataset which is too narrow and therefore the assessments do not provide an accurate representation of liquidity in the relevant commodity markets. Therefore, we have serious concerns that these proposals are not workable and could have significant adverse consequences if implemented.

In order to establish appropriate thresholds for the SSTI and LIS, we strongly believe that it is necessary for ESMA to conduct an appropriate market assessment of the liquidity of the contracts that will be subject to the MiFID2 transparency regime based on complete data available from the major commodities trading venues (including the major non-EU venues), for on venue contracts, and the data from trade repositories for the contracts which are currently traded OTC. We do not believe that the SSTI should be linked to the LIS and remark the need to conduct an analysis in order to consider the potential impact on the market. On the basis of an initial analysis that we have done in the available timeframe and by mere way of example, we would consider the following values as a more workable LIS and SSTI thresholds for an ICE Brent Future contract: LIS (200 lots, 12 USD million) and SSTI (50 lots; 3 USD million).

In terms of our preference for the system to set the thresholds, we strongly believe that an annual recalculation of the thresholds would be more appropriate.

We offer our assistance to continue the discussion for a more appropriate framework with ESMA after the end of this consultation period.

<ESMA_QUESTION_CP_MIFID_79>

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

following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

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

<ESMA_QUESTION_CP_MIFID_80>

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<ESMA_QUESTION_CP_MIFID_80>

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

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

<ESMA_QUESTION_CP_MIFID_81>

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<ESMA_QUESTION_CP_MIFID_81>

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

- (1) deferral period set to 48 hours
- (2) size specific to the instrument threshold set as 50% of the large in scale threshold

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

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

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

<ESMA_QUESTION_CP_MIFID_82>

AFME Response

We believe that the transparency calibration is critical for ensuring that the Level 1 objective of increased market transparency is achieved without compromising liquidity. Therefore, we strongly believe that it is necessary for ESMA to conduct an appropriate market assessment in order to set these parameters.

<ESMA_QUESTION_CP_MIFID_82>

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

FIXED INCOME

No. AFME does not agree.

(i) It is critical that there is a harmonised EU-wide framework for transparency

AFME appreciates the limitations of the Level 1 framework and thus the challenge that ESMA is faced with. We nonetheless wish to express our concerns that the MiFID II proposals could result in each Member State implementing a different deferral framework, which would result in a highly fragmented MiFID II regime across Europe.

A lack of harmonisation is inconsistent with the European Commission's CMU objective and would result in significant unintended consequences. First, it would create an unlevel playing field between Member States and a distorted market because trading in certain instruments would be more favourable in some Member States over others. Second, it would introduce cross-border issues, whereby two counterparties in different jurisdictions would be subject to different regimes. This would not only create a distorted market but would also introduce compliance problems. For example, if the RTS requires firms to apply a waterfall to ensure that only one counterparty reports (i.e. to ensure that the post trade tape doesn't contain duplicative trade reports) and each counterparty is subject to a different deferral regime, it is unclear how the firm be expected to comply with the requirements.

We urge ESMA to actively coordinate the national implementation of the supplementary deferral regime to ensure that there is a harmonised deferral regime, to the greatest extent possible.

(ii) An extended deferral of four weeks is insufficient for large trades, especially for illiquid instruments. We propose an extended deferral regime of 12 weeks at minimum.

Whilst AFME supports the extension of the deferral regime from 48 hours as proposed in ESMA's May 2014 Discussion Paper, the time period for volume omission remains too short. Therefore, we propose extending this to the degree necessary to ensure that market makers have sufficient time to hedge their positions and protect themselves from the risks they take by providing liquidity to the market. We propose that for transactions above large in scale, for an extended deferral to apply, which would at least 12 weeks.

it is vital that the size of transactions in illiquid instruments and liquid instruments when traded above the LIS threshold are masked for an extended period of time. Whilst we appreciate that ESMA does not have the power to permit an indefinite masking of size (as per the US CFTC regime) we would urge ESMA to exercise its powers pursuant to Article 11(4)(d) of MiFIR to provide for the masking of trade size for a sufficiently long period of time to ensure that liquidity providers can de-risk effectively. In many illiquid markets it can take several months for liquidity providers to hedge/unwind their exposures and, in liquid markets, large trades are often only proxy-hedged initially, then warehoused by liquidity providers for significant periods of time. It can take weeks or months to fully exit such positions. The

inability to de-risk before the size of a LIS or illiquid trade is made public will act as a significant deterrent to the provision of liquidity.

For price formation purposes there is little value to general market participants in knowing the exact size of a trade, particularly compared to the adverse consequences to liquidity providers of excessive transparency of trade size. It should be sufficient for the market to know that a large or illiquid trade has taken place and this can be achieved by including an appropriate "flag" when the other details of the trade are published after the initial, shorter, deferral period.

In addition to ensuring that market-makers and other liquidity providers have sufficient time to hedge their exposures, there are other reasons why an extended time period of deferral is needed in respect of volume. There are circumstances in which the publication of trade size may contribute to market instability. A planned cross jurisdictional, cross currency acquisition is a practical example of this. Such transactions have significant exchange rate risk and it is common for the take-over to be preceded by large foreign exchange forward transactions (sometimes conditional on completion of the transaction) some days or weeks in advance of expected finalisation of the take-over. In the absence of extended volume omission, a very large foreign exchange transaction would be published, which would give rise to rumour and speculation, could result in distortion of other market prices, and could even imply a leakage of material non-public information. The period of volume omission needs to extend at least beyond the typical tenors of these transactions. Similarly, pre-hedging of new bond issues can give rise to activity in interest rate swaps, and large trades being published post-trade without volume omission would give rise to rumour, speculation and ultimately market instability.

FOREIGN EXCHANGE

In addition to the above, for FX the GFXD welcomes the inclusion of supplementary deferrals but would like to recommend the consistent application of such deferrals across each regulatory jurisdiction. If deferrals are not consistently applied then market positions will be published in one market before another. Regulatory differences could result in market participants making commercial decisions on where they conduct business as well as who they trade with, otherwise there is a risk that one participant could be non-compliant. The expected impact on the end-user being that the range of financial products available could be reduced, or that the costs of doing business could increase, both of which will impact the ability of the end-user to effectively use profits to re-invest in their businesses and to be exposed to unwanted financial (i.e. hedging) risks.

We would like to suggest that an extended deferral period of 4 weeks is not sufficient to encompass all types of transactions and should be calibrated accordingly and we suggest 12 weeks would be more appropriate. For instance, in the Mergers and Acquisitions (M&A) world, information relating to deal-contingent trades could be made public before they are executed. These transactions are usually large in size and would inform the markets of the potential or conclusion of an M&A trade, allowing the market to trade ahead of the conclusion of the deal.

<ESMA_QUESTION_CP_MIFID_83>

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

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

FIXED INCOME

No. AFME does not agree.

AFME believes that the temporary suspension framework proposed by ESMA is not appropriate and could have significant unintended consequences.

Our understanding of the Level 1 intention with regards to the temporary suspension regime was to provide national authorities with a legislative mechanism to safeguard liquidity and market stability when sudden a market event occurs. We are very concerned that ESMA has devised the framework in such a manner that it would render the temporary suspension regime completely ineffective. We believe that proposing a calibration that results in a redundant temporary suspension regime is inconsistent with ESMA's Level 1 mandate.

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

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

As explained in AFME's response to ESMA's May 2014 Discussion Paper, we recommend that the simplest way to detect sudden drops in liquidity is to identify significant market events. We recommend for the RTS to list these market events but to remain non-exhaustive such that ESMA can make a determination on additional market events in the future. We would be concerned that an exhaustive list cannot be future-proof and would result in the financial instability if an extreme event occurred that did not happen to be on the list. We urge ESMA to reconsider such an approach.

We agree with ESMA that a quantitative means to detect sudden drops in liquidity would be useful. AFME would be happy to work with ESMA to identify a workable regime.

FOREIGN EXCHANGE

In addition to the above, for FX the GFXD believes that the approach proposed in the Discussion Paper was more appropriate in determining the temporary suspension of transparency requirements. The use of the Average Daily Turnover (ADT) more accurately captures overnight events, such as geopolitical or central bank interventions, that typically

impact the FX market. For instance, the recent decision by the Central Bank of Switzerland to remove the CHF/EUR peg had significant impacts on the liquidity of multiple currencies. This event would not have been accurately reflected in a liquidity assessment process which uses monthly data in its calculation and would have increased the stress seen in the markets due to the transparency obligations.

Specifically, we note:

- i) We request further information on the proposed 40%/20% thresholds and suggest that it would be unlikely that these levels would ever be reached in practice
- ii) We believe that the 3 month timeframe to calculate such deferrals is not practicable in a dynamic trading environment and that procedures should be implemented to protect market participants should liquidity significantly change in what would be expected to be times of stress
- iii) We expect that there will be practicable challenges in the communication processes between ESMA and the relevant NCA, which imply that a suspension event would not be timely in fast moving markets where liquidity can change in a very short period
- iv) We respectfully suggest that any calculations should allow the 'normal liquidity levels' to be compared to the 'not-normal liquidity levels', rather than including these levels in any calculations. We believe that this would allow a benchmark to be established to which dynamic market conditions could be referenced against
- v) In response to the 3 questions posed by ESMA:
 - a. We agree with measure of volume for FX in Annex 2, table 3
 - b. We support the ADT approach in determining a drop in liquidity

We recommend that trade data is assessed in order to determine what the % changes should be to trigger a suspension event.

<ESMA_QUESTION_CP_MIFID_84>

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

<ESMA_QUESTION_CP_MIFID_85>

AFME has no comments

<ESMA_QUESTION_CP_MIFID_85>

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

<ESMA_QUESTION_CP_MIFID_86>

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<ESMA_QUESTION_CP_MIFID_86>

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

<ESMA_QUESTION_CP_MIFID_87>

AFME agrees with the proposed RTS

<ESMA_QUESTION_CP_MIFID_87>

Q88. Are there any other criteria that ESMA should take into account when assessing whether there are sufficient third-party buying and selling interest in the class of

derivatives or subset so that such a class of derivatives is considered sufficiently liquid to trade only on venues?

<ESMA_QUESTION_CP_MIFID_88>

AFME Response

For FX, the GFXD strongly believes that for a global, cross border market such as FX, there needs to be a globally harmonized view of the financial instruments which are eligible for trading obligations. We strongly believe that any trading obligation needs to be consistently applied by all NCAs within Europe.

Specifically, we note:

- i) Paragraph 31, page 341 and paragraphs 7& 8, page 95 of the Consultation Paper. As per our response to the Discussion Paper, the GFXD believes that AVT (Average Value of Transactions) defined as the total turnover over a period divided by the number of transactions in that period, provides a more accurate method for defining the average size of transactions in the FX markets. Given that FX forms the global payments system, trades are typically high in number and low in notional and we recommend that this is considered, as suggested by ESMA, in the broad drafting of the RTS
- ii) Paragraph 33, page 341 of the Consultation Paper. We believe that the number of active participants should be based on actual trade flows over a period of time, rather than the 2 criteria presented. Given that we understand that trading venues are able to list the products that are available to be traded on their platforms, we are uncomfortable that venue-specific commercial decisions could determine regulatory changes for the markets. As we discussed in our response to Q171 of the Discussion Paper, we expect that an impartial assessment should be performed by the relevant NCA (or ESMA) as to the suitability of a trading venue offering a specific financial instrument
- iii) Paragraph 34, page 342 of the Consultation Paper. We believe that with respect to the average size of spreads, there needs to be consistency between the calculation of the transparency obligations and the trading obligations. We note that in paragraph 15 on page 97 of the Consultation Paper that ESMA notes that collection of data to calculate average spreads was incredibly difficult and is not available for OTC transactions. The GFXD therefore suggests that the average size of spreads is not included in the calculation of the trading obligation
- iv) Paragraph 36, page 342 of the Consultation Paper. The GFXD suggests that the LIS thresholds should be the same for the transparency and trading obligations. We support the position that transactions in 'liquid' financial instruments with notionals above the LIS thresholds are 'illiquid' in nature

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

AFME Response

For FX, the GFXD would like to re-iterate our support for the global harmonization of trading obligations, specifically considering the timing of clearing and trading mandates within Europe and the US. The US Treasury exempted FX Forwards and FX Swaps from the definition of a 'swap', (thus exempting them from trading and clearing obligations within the US <http://www.treasury.gov/press-center/press-releases/Documents/11-16->

2012%20FX%20Swaps%20Determination%20pdf.pdf) and the GFXD strongly supports the position that these instruments should also be exempt from trading and clearing obligations within Europe – failure to do so is likely to result in bifurcation of the global FX market.

Evidence exists to support the position that market bifurcations have occurred due to trading mandates not being aligned within the US and the rest of the world (See Footnote 88 and Market Fragmentation: An ISDA Survey (December 2013); and Made-Available-to-Trade (MAT): Evidence of Further Market Fragmentation (April 2004); available at <http://www2.isda.org/functional-areas/research/research-notes/>). In this example, the introduction of a trading mandate for US persons trading permitted products (e.g., FX NDF) on a multi-multi basis caused those market makers who were not required to trade products on US SEFs, to move business away from the US to other jurisdictions impacting US regulatory oversight and limiting the liquidity available to US persons.

<ESMA_QUESTION_CP_MIFID_89>

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

<ESMA_QUESTION_CP_MIFID_90>

AFME Response

For FX, the GFXD would like to recommend that the consideration of other derivatives with similar characteristics is not relevant when assessing liquidity or third party buying and selling interest. We therefore do not support the inclusion of paragraph 8, page 197 of RTS 11.

The GFXD also suggests that the criteria used to assess the trading obligation as defined in RTS 11 Articles 2, 3 and 4, are the same as those used to determine liquidity and that as mentioned by ESMA, the average size of spreads should not be included.

As a reminder, our view for FX is:

- Average frequency of trades: the number of transactions over a consecutive time period
- Average size of trades: the total turnover over a period divided by the number of transactions
- Number of market participants: the number of participants authorized to a RFQ/voice request on a venue

<ESMA_QUESTION_CP_MIFID_90>

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

<ESMA_QUESTION_CP_MIFID_91>

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<ESMA_QUESTION_CP_MIFID_91>

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

<ESMA_QUESTION_CP_MIFID_92>

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<ESMA_QUESTION_CP_MIFID_92>

(viii) Microstructural issues

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

AFME believes that the list of disruptive scenarios should be reduced. The question refers to a list of disruptive scenarios, but AFME is not entirely clear as to what list ESMA refers. Where ESMA may be referring to the list under RTS 13, Article 20(2)(b) then AFME makes the following comment:

- “*system failures, communication disruptions and loss of key staff whether due to technical or operational problems*” would benefit a drafting amendment such as **“system failures and communication disruptions whether due to technical or operational problems, loss of key staff...”**
- “*human error*” is nebulous and difficult to define or plan for as a ‘scenario’ in business continuity arrangements; this is reasonably covered by general operational risk considerations mentioned in RTS 13, Article 2(a)

AFME previously raised the point of the definition of ‘disorderly/disruptive scenarios/markets’ in the August response to the ESMA consultation paper. It was noted that it appears there are two views on this:

- From an investment firm perspective: disorderly markets will refer to a particular market event. It is not clear as to the definition of ‘disorderly’ and how this would be quantified, evaluated and how long a market must be ‘disorderly’ to be determined to be a ‘disorderly trading condition’. There may be fluctuations in market activity such as monthly ECB announcements which could lead to slight fluctuations in the market however this should not be seen as a ‘disorderly trading condition’. It is difficult to ‘test’ a disorderly trading condition and by way of its current definition it is not clear what would constitute a ‘disorderly’ market condition.
- From a trading venue’s perspective: The emphasis seems to be on IT and operational issues rather than ‘real market conditions’.

The difference between the above would need to be clarified in order to ascertain how market participants are to understand what their responsibility in terms of business continuity should be reflected upon and how they should decide as whether something will/will not be ‘disruptive to the markets/be a disruptive scenario’.

Where ESMA may be referring to the “business continuity arrangements” (BCP’s) listed under RTS 13, Article 20(2) in entirety, and in any case, AFME makes the following comments:

AFME members propose the deletion of points (d) and (e) for the following reasons:

In relation to point (d) in which ESMA stipulates that arrangements should cover the ‘*duplication of hardware components to permit continuous operation in case of a failover*’, AFME members wish to note that such contingency processes and hardware components are already in place to the extent necessary in the context of overall BCP arrangements.

In relation to (e) in which ESMA stipulates robust requirements which investment firms should also have in place including specific back up plans. AFME members feel that their current BCPs cover contingencies and that additional back up facilities are (as proposed by ESMA) more suited to the framework of trading venues. Setting such a minimum requirement for business continuity (in addition to requiring that each of these be tailored to every venue the firm may have access to) is felt to put smaller firms in a disadvantageous position.

Under the organisational requirements for investment firms and their respective BCP's, ESMA proposes in point (g) that a firm should have in place '*business continuity arrangement that are bespoke to each of the venues that it accesses*'. AFME believes that this requirement is unduly burdensome particularly when considering the current business continuity plans (BCPs) already in place and stipulated by NCAs. AFME members support the enhancement of plans to ensure the orderly functioning of the markets for all market participants, however we feel that having BCPs which are bespoke to each venue an investment firm may have access to would disadvantage smaller firms who may not have sufficient funds to build out further BCPs in relation to additional trading venues as well as in addition to the BCPs those firms already have in place for their existing trading venues they access.

In relation to Art 20 (2)(i) '*arrangements for the investment firm to trade all existing orders manually*' should be amended (proposed wording below). This is not always practicable, possible or in the best interest of the clients.

Investment firms should be allowed the flexibility to act in their clients' best interests and as far as is possible in a disruptive scenario within the obligation of best execution.

AFME proposes that the following amendment should be made to RTS 13 Article 20 (2) (i):

"Arrangements for the investment firm to manage existing orders in line with the clients' best interests"

By way of explanation for the above we would additionally note that an investment firm may manage existing orders by way of, for example, re-routing the client's orders or processing these manually. We wish to point out that there are several ways in which to manage existing orders in line with the clients' best interest should such a scenario occur.

ESMA should take into account its own principal of proportionality between firms when establishing business continuity arrangements. The proposed arrangements are more relevant for large firms where their systemic market impact is significantly superior to that of small firms. There are instances where a firm itself creates a vast disruption due to its participation in one or several markets, where proportionality due to size or participation in a market should be deemed relevant for their application.

<ESMA_QUESTION_CP_MIFID_93>

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

Restricted Deployment:

AFME supports the controlled rollout of algorithms with the following drafting qualification at RTS 13, Article 12 (2): *“Limits shall be placed **as appropriate** on the number of financial instruments being traded, the price, value and number of orders, the strategy positions and the number of markets to which orders are sent.”*

However we seek clarification on the notion of ‘restricted’ for example whether this is in reference to using a certain amount of liquidity. We are still concerned in relation to market makers who would not be able to fully restrict the deployment of a change to an algorithm and still satisfy their obligation to quote on a continuous basis. ESMA notes these concerns in its Consultation Paper but does not elaborate on how these issues are reconciled.

AFME wishes to make the following comments in relation to testing:

AFME continues to support testing being carried out to ensure the efficient and orderly functioning of the markets (and investment firms already have in place rigorous testing of algorithms and trading systems as part of their IT development processes).

AFME would again like to point out that the testing requirements should be in line with the ‘proportionality principle’. As an example this is the case for non-equities, in the case of small changes in algorithms which are expected to trade at very low levels, such as once per week. The intensity therefore of having all three stage testing procedures applied to each change in algorithms would not always be practicable or appropriate to the nature of the trading activity in respect of the relevant financial instrument.

Members express their strong disagreement with ESMA’s requirement to test minor non-structural changes to algorithms. Firms regularly introduce immaterial changes such as recalibration or adjustments in parameters that should not necessarily be tested for purposes of compliance with the provisions. Testing requirements should be limited to instances where the firm has introduced material changes (e.g. functioning, substantial or structural changes to the algorithm). Excessive testing provisions and monitoring may prevent market makers from providing liquidity as every algorithm adjustment to market circumstances would require the deployment of onerous testing deployment.

Furthermore, AFME proposes that it should be left for investment firms to deem if the algorithm change is material and thus if it is necessary to conduct initial testing as required by Article 10 in RTS13. In addition, AFME notes that firms monitor the performance of their algorithms on a continuous basis after changes have been deployed, which seek to ensure suitability in their performance once changes have occurred.

Conformance testing (RTS 13):

Regarding conformance testing, we note that the current wording of RTS 13 Article 9 paragraph 1 requires that investment firms who are members or participants of a trading

venue perform conformance testing with a trading venue, but that DEA clients of a DEA provider (either using a sponsored access service on a trading venue or DMA) are not required to do so. We believe that they should be covered by the equivalent requirements. We note also that this would bring Article 9 (conformance testing) in line with Article 11 (algorithm testing) which we feel is appropriate.

We also note that the wording of the same article states in paragraph 1 that an investment firm using a DEA service should perform conformance testing with the DEA provider and (in paragraph 2) that 'this should take place when there is a change in the trading venue's DEA functionality'. This implies that all DEA providers' DMA clients would need to recertify with the DEA provider whenever there's a system upgrade at the trading venue which, given the DEA client isn't directly connected to the trading venue, we don't believe to be appropriate.

Hence we suggest alternative wording of Article 9 as follows:

1. An investment firm shall pass conformance testing:
 - a. with the trading venue where it is a direct member or participant, or where it is directly connected using a sponsored access arrangement;
 - b. with its DEA provider where the investment firm accesses the trading venue using the DEA provider's DMA access;
2. Such conformance testing shall take place when:
 - a. where the investment firm is a direct member or participant, or where it is directly connected using a sponsored access arrangement, whenever there is a change in the trading venue's infrastructure such that the trading venue considers re-testing to be necessary;
 - b. where the investment firm is using its DEA provider's DMA access, whenever there is a change in the DEA provider's infrastructure such that the DEA provider considers re-testing to be necessary;
 - c. in both of the above cases, whenever the investment firm itself determines that they need to re-certify due to a change within their system or substantial hardware changes.
3. A DEA provider providing sponsored access to clients that are not investment firms, shall require that those clients pass conformance testing with the trading venue under the circumstances set out in paragraph 2a.
4. An investment firm providing DMA to clients that are not investment firms, shall require that those clients pass conformance testing with the it under the circumstances set out in paragraph 2b.

Non-live testing of algorithms (RTS 13/14):

The following response applies equally to Q94 (investment firm algorithmic trading) and Q102 (trading venues) and is repeated for each question.

AFME members believe that the proposals regarding non-live testing of investment firms' algorithms are counterproductive, inefficient and unrealistic in their current form

AFME understand that one of the primary influences for the non-live testing measures is the incident involving Knight Capital Americas LLC in July 2013. Having reviewed the SEC's assessment* of the incident, AFME members would like to highlight that the non-live testing

measures proposed would have been unlikely to prevent this incident had they been in place. In contrast, AFME believes that many of the other measures proposed in RTS 13 would indeed have reduced risk in this respect. The *current* non-live testing proposals however will provide marginal benefit at great cost. Moreover they do not appear to have been dealt with adequately within ESMA's cost-benefit analysis.

AFME would like to present a counter proposal based on its members' understanding of the risks which ESMA seeks to mitigate in particular with respect to the potential for creating disorderly trading conditions. These can be categorised in the following way:

- 1) **Compatibility Risk:** The risk that a firm's algorithms and infrastructure are insufficiently tested against a trading venue's infrastructure leading to the creation of disorderly trading conditions.
- 2) **Market Dynamic Risk:** The risk that a firm's algorithms and infrastructure create disorderly trading conditions due to their interaction with other market participants, or that they fail to respond appropriately in an environment where disorderly trading conditions already exist.

AFME members believe that an efficient and additive solution requires these risks to be mitigated separately. Specifically, the former requires access to an environment that mimics the trading venue's production system. The latter requires an environment which represents or models market behaviour, in which multiple participants are simultaneously present and includes facilities capable of artificially imposing disorderly trading conditions (e.g. by imposing capacity constraints on the infrastructure, slowing the system down or introducing simulated erroneous orders).

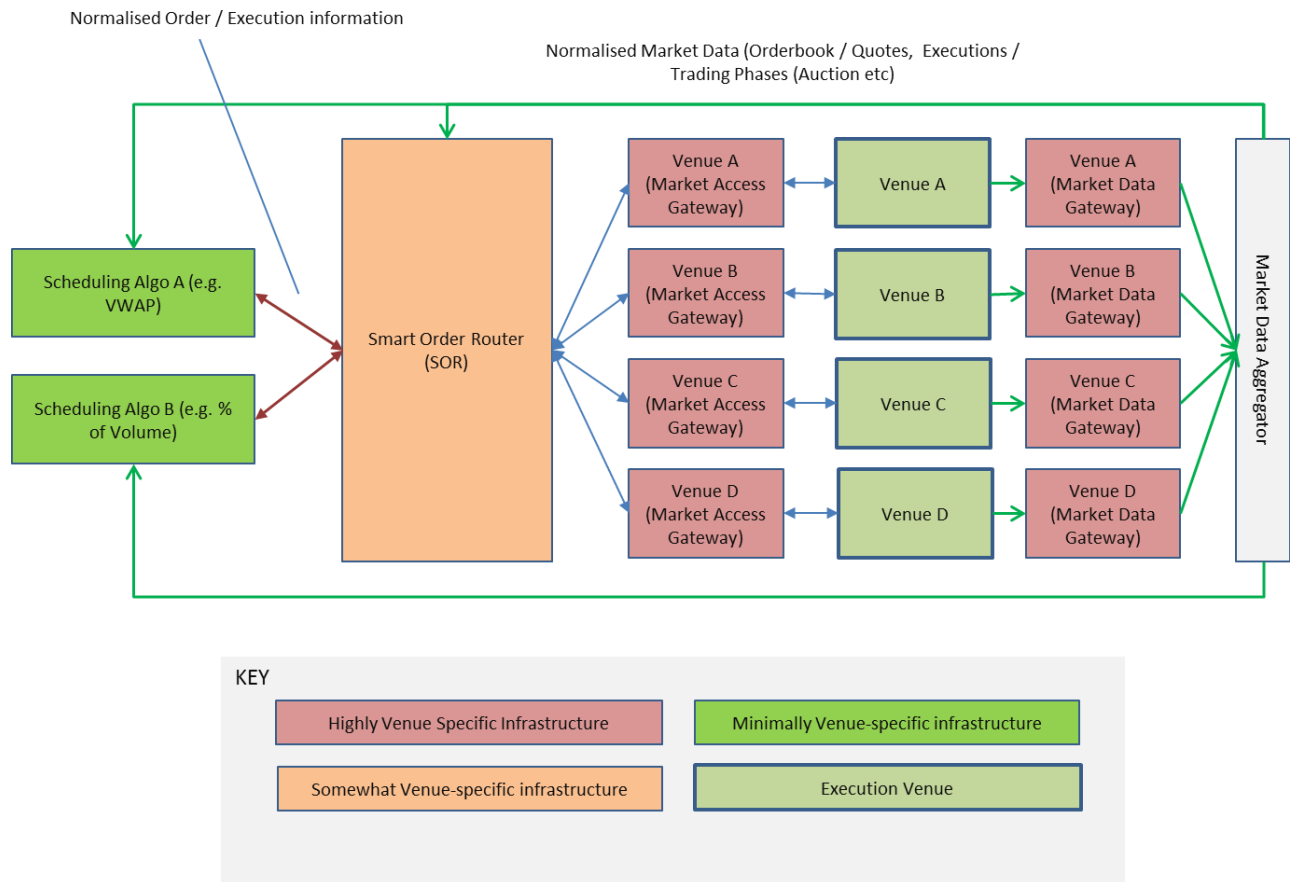
We note that this does not lead to a perfect solution but does lead to a better solution.

Compatibility Risk

In its recent consultation paper, ESMA asserts that "*market microstructure differs greatly from venue to venue*". Though we agree with this statement in totality (i.e. across all asset classes and types of market), if we consider classes of market categorised by market mechanism and asset class, then the microstructure is very similar (differences mainly being confined to variations in trading hours, timing of auctions, minimum/maximum trade size rules, all of which lend themselves to being expressed through venue-specific *parameterisation* of logic rather than venue-specific logic). This is not to argue that these differences are immaterial or should not be addressed, simply that they should be accounted for in an efficient manner.

It is important to note that investment firms will arrange their algorithmic trading infrastructure differently depending on the nature of their business. The attached diagram below illustrates how an investment firm providing order execution algorithms (e.g. for executing client orders) will typically organise itself to execute across multiple EU venues in cash equities. Efficiency is gained for the firm and its clients by modularising the infrastructure so that similar venues can be treated similarly.

(The Table below refers to Cash Equities)



Such an investment firm's infrastructure is typically organised into three categories for order driven markets:

Gateways: This infrastructure is highly tailored to the specific venue that it deals with:

- **Market access gateways** translate orders and executions between the investment firm's internal messaging format to that used by each individual trading venue.
- **Market Data gateways** translate the individual market data protocols into a common protocol which the firm can use to understand market data from individual venues on equal terms (this allows for data to be aggregated and prices compared where an instrument is listed across multiple venues at once). Market data gateways will normalise the way in which order book information and executions are received and translate "trading phase" information into normalised form (e.g. opening auction, closing auction, volatility auction, regulatory halt).

Smart Order Routers (SORs): SORs are somewhat tailored to the venues that they interact with although they will typically send and receive messages in much the same form to each venue that they interact with. For instance an SOR will need to know which is the “primary (listing market)” for each jurisdiction and will typically defer to that market for multi-listed instruments if the primary market enters a volatility auction.

Scheduling Algorithms: These typically have very little venue-specific logic embedded in them. This is possible because, the majority of the burden of dealing with individual venues is handled by the SOR and Gateways. Scheduling Algorithms are predominantly concerned with generic market dynamics (and therefore also present the majority of the risk in this area).

Investment firms that operate proprietary trading algorithms generally have simpler infrastructures (e.g. for latency reasons) and as such will often either connect the algorithm to market access and market data gateways, or even have the algorithm connect to the trading venue directly.

Proposal

Infrastructure that deals with venue-specifics should be tested most intensively against the venue’s own test platform. In the cash equities example given, this means the SOR and the Gateways. Venue-specific logic in an individual algorithm should also be tested where it exists.

In a non-modular example where an algorithm deals more or less directly with the trading venue’s infrastructure, we would agree that that algorithm should also be tested intensively on every trading venue on which it is used.

In summary, we believe that an algorithm should **not** be required to be subjected to testing within a non-live environment if it fulfils all of the following criteria:

- The algorithm uses an intermediary algorithm to connect to the trading venue.
- The algorithm contains minimal venue-specific logic and is purposely designed to operate across multiple markets.
- The algorithm has been tested in a non-live environment on at least one market it has been designed to operate on.

Market Dynamic Risk

In our example, the components of an investment firm’s infrastructure that pose the most risk when exposed to “live market conditions” are those with the least venue-specific logic. In our example, the scheduling algorithms and SOR pose the greatest risk of causing disruption (in this context) as these are the components which analyse market behaviour and make execution decisions. We also note that algorithms such as SORs are designed to operate across multiple markets at a time and a comprehensive test therefore could not take place within a *single* trading venue’s test facility.

Such “real market” conditions are impossible to re-create perfectly however and even imperfect solutions are extremely expensive to implement:

- One solution is to “replay” previous order information into a venue. This is expensive to perform however and does not duplicate the potential for participants to interact negatively with each other.
- A requirement to execute disorderly trading tests across every venue in which they participate (some 15-20 venues for cash equities) is extremely costly and time-consuming to perform. Moreover, it is likely to incentivise to a “box checking” approach by nature of its excessive time consumption
- The incremental benefit of performing these tests across multiple similar venues is also minimal as the components of infrastructure which present the most risk are concerned largely with generic market dynamics and less so with the specifics of the individual trading venue.
- To cater for multi-market algorithms (e.g. SORs) using trading venue facilities, there would need to be a way of connecting those facilities together which we believe to be expensive and most likely unworkable in practice.

Proposal

The risks that algorithms misbehave when they encounter market-like conditions are usually generic because infrastructure is often built to deal with the market generically. Those risks can therefore be reduced much more effectively and efficiently by allowing for them to be tested for centrally.

We believe that higher quality centralised testing is a better way of mitigating of the risks of disorderly trading than performing what are likely to be many individual tests of much lower quality against individual trading venues.

Venues should be able to delegate testing for disorderly trading conditions to a centralised provider where appropriate. The provider’s role should be to create an environment which many different participants can come together to exercise their infrastructure in an environment which concentrates their activity so as to re-produce a market-like dynamic. Because the environment would bring real participants and their infrastructure together in a single place, it would provide the most useful advance warning possible of any potential problems.

Requested changes to the RTS

Based on the above we suggest the following changes to RTS 14 Article 11:

Testing the members’ algorithms to avoid disorderly trading conditions

1. Trading venues shall require their members, participants and users of sponsored access services to undertake testing of trading algorithms to avoid creating or contributing to disorderly trading conditions. Trading venues shall not grant access to

use an algorithm that has not been tested and shall require algorithms to be tested or re-tested whenever:

- a. a new algorithm is written;
 - b. an existing algorithm undergoes a material change (where the user of the algorithm will be required, on the request of the trading venue, to evidence which changes have been deemed 'material');
 - c. the trading venue itself undergoes a change where it deems it necessary to retest some or all algorithms.
2. Trading venues shall provide access to test facilities which are capable of supporting the following:
- a. testing algorithms for compatibility with the trading venue's infrastructure, i.e. facilities that functionally replicate the trading venue's production environment and provide;
 - i. a representation of a typical normal trading day (for example through the use of replayed historical data or through a simulation);
 - ii. a simulation of disorderly trading conditions (for example by forcing temporary capacity limits on the test system, slowing the system down or introducing simulated erroneous orders);
 - b. testing of algorithms for compatibility with multiple trading participants in a realistic production-like environment.
3. Where an algorithm has been tested against one trading venue but does not access the venue directly (i.e. instead using an intermediary system such as a smart order router) and contains no trading logic specific to individual trading venues, then that algorithm can be considered to have been tested across all trading venues that trade the same class of financial instruments and operate a similar market mechanism and hence does not need to be separately tested for each such trading venue.

Real time monitoring:

The ESMA proposed requirement for an independent internal risk control function is deemed cumbersome. Impact of monitoring on a real-time basis of the firms' order book is unnecessary when the firm is acting on a principal capacity to the client.

We request further clarity as to what is considered "independent" by ESMA. AFME members understand it is independent from the trading desk but not independent from the firm itself.

Additionally AFME wishes to propose the following amendment for the sake of clarity in RTS 13 Art 16 (3):

Investment firms shall maintain real-time, complete, accurate and consistent trade and account information. This shall include all orders and executions generated by themselves (where running their own algorithms) or their clients (where acting as a DEA provider) regardless of whether the orders go through their own infrastructure. Where orders do not go through the investment firm's infrastructure, this may involve the use of drop-copy feeds of orders and executions from trading venues, CCPs, the DEA provider, their clearing broker or other relevant business partners as appropriate in order to ensure they have a complete picture of trading activity.

We make further comments on Real-time monitoring at the response to Q98 below.

Kill functionality:

AFME welcomes that ESMA has recognised that kill switches are to be considered a last resort and are not the panacea of risk management. AFME therefore welcomes the clarification in RTS 13, Article 17(1) that kill switches are to be used as an emergency measure, i.e. only when absolutely necessary.

For the purpose of clarity RTS 13, Article 17 (2) should be amended as follows:

ESMA notes that *'firms shall have the capability to cancel **their** outstanding orders at individual trading venues, or originating from **their** individual traders, trading desks, or, where applicable, **their** own clients. This implies that firms shall be in the position to know which algorithm corresponds to the **relevant firm's** traders and, if applicable to the **relevant firm's** clients'*.

<ESMA_QUESTION_CP_MIFID_94>

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

Clarity of Proposals / Background

AFME members have found the proposals ambiguous in some areas. In particular the context in which RTS 13 is drafted has created some confusion. RTS 13 is drafted in the context of “firms engaged in algorithmic trading” but appears to be a continuation of ESMA’s “*guidelines for Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities*” which had a broader remit.

This, in combination with some of the language used, has left AFME members unclear as to how to interpret the proposals accurately with a view to future implementation. More specifically, the pre-trade proposals can be interpreted in two ways:

- As controls to be applied specifically to the activity of trading algorithms to ensure that they do not create or contribute to disorderly markets
- As controls to be applied broadly to all orders submitted by an investment firm to the market for the same purpose

For the purposes of this response, we will assume the latter interpretation as it allows us to highlight potential areas of concern if this is indeed the intended outcome. Some of the concerns we will highlight do not apply if the former interpretation is applied.

Article 21: General Interpretation of Language Used

In Article 21, paragraph 1 ESMA uses the term “order entry”. AFME members typically associate this term with the actions of a human entering an order into a system (which may then generate orders which are submitted to a trading venue). In further drafting of this article, AFME suggests defining and using two separate terms to provide delineation between different processes:

Order Entry: the actions of a human entering an order into a system which then may result in a submission of an order to a trading venue

Algorithmic Order Submission: the act of a firm submitting an order to a trading venue where the order is initiated without human intervention

Article 21 Specific Concerns

Paragraph 2: states that “*Investment firms’ order management systems should prevent orders from being sent to trading venues...*”. Order management systems are usually used specifically in the context of *order entry* as defined above. They are, therefore, not appropriate places to put broader pre-trade controls. We recommend revising this drafting as follows:

“*Investment firms’ trading systems should prevent orders from being sent to trading venues...*”

Paragraph 4

Clause a) The reference to control against price parameters *over a specified period of time* is unworkable based on our understanding of the requirement: We understand this provision to be aimed at controlling situations in which individual orders do not in themselves constitute a major price move but in which multiple orders over a period of time do constitute a major price move. The introduction of such controls by *investment firms* (as opposed to trading venues) will create a number of problems:

- Investment firms cannot calibrate such checks in a way which will reliably distinguish between illegitimate activity and what is simply a “fast market”. That is to say, the control will trigger regardless of whether the firm itself is moving the market or the market is simply moving
- These controls should be operated only by trading venues which can then allow legitimate activity to proceed in a controlled manner with the appropriate mechanisms (such as volatility auctions).
- If an investment firm seeks to pre-empt the volatility controls in place on trading venues, it will simply constrain the market artificially during periods of genuine volatility and prevent venues from forming the correct price in a stressed environment.

Clause c) The requirement that “*Limits shall be set in shares or lots*” is unworkable. Appropriate limits for some asset classes but (particularly equities) vary substantially by instrument: Ten shares may be a very large order in one instrument but a very small order in another. It is not practical to maintain individual limits across thousands of instruments. The practical solution to the problem adopted by many firms is to set limits according to a fixed percentage of a metric associated with the specific security which allows the natural identification of an unusually large order. Average daily market volume (ADV) or average trade size (ATS) are alternatives. AFME proposes the following drafting:

*“Maximum order volume which prevent orders with an uncommonly large order size from entering the order books. Limits shall be set in shares, lots **or as a percentage of either:***

- ***average-trade-size or average-daily-volume in that security traded on a given venue(s) or an equivalent measure of liquidity; or***
- ***For order driven markets: prevailing volume available at the time of order submission, within the price constraints referred to in part a) on the relevant trading venues; or***
- ***prevailing volume indicated to uncross during any relevant auction period”***

Clause d) We do not see the workability of this in relation to clients of an investment firm operating their own algorithms

Clause e) We do not understand this as a pre-trade control as drafted. We believe this requirement is in fact covered by the real time monitoring obligations in Article 16

Clause f) We understand this as requiring a throttling of the messages of the way to the trading venues, we would welcome such throttle to be considered as appropriate if only applicable to new orders and order modifications. We believe cancels should be left outside of such throttle whether on the investment firms or the exchange side. By removing the cancels message from a throttling feature, we do not put at risk the exchange systems as it would only change the level of calibration of such metrics. It would allow and guarantee the investment firms can be confident it can exit the market in an orderly fashion in case of issues, ensure kill switch operates correctly. Although trading venue can provide with cancel on disconnect functionality, it can only be used when the connection between the trading server and the matching engine of the venue is severed and not when one of the desks or firms using the trading server has to call on a kill switch.

If however the trading venue had any concerns in the number of cancels coming through the connection, a proper throttling feature should be able to slow down the cancels on the way to the matching engine and not reject, as the investment firm may not be able to actually processed those rejects and re send the cancel. Hence we would suggest amending the RTS wording by replacing the word “messages” by “new orders and order modifications”.

Paragraphs 6, 7 and 8

These procedures must distinguish for nuances that arise when considering both the source of the order and the type of pre-trade control. As paragraph 8 is currently drafted, the necessity for risk management staff to approve the override of any breach is likely to threaten the orderly conduct of legitimate business. We cite the following scenario as an example:

- A client that wishes us to place a large order manually into a closing auction for them on a day in which there is an unusually large amount of activity in the auction itself.
- A pre-trade control blocks the order because it is unusual (although legitimate at this time)
- Approval must be sought from “risk management” even though the relevant trader is adequately qualified (and has access to the most up to date information) to judge that the order is legitimate in the prevailing market conditions.
- By the time approval is received, the auction (which typically lasts 5 minutes) has ended and the client has not been able to execute their trade exposing them to considerable risk

To allow for orderly conduct of business we would propose drafting along the following principles:

- **The following controls can only be overridden with the active approval of risk management**
 - Any breach in respect of article 3 [Credit and Risk Checks]
 - Any breach as a result of an order submitted by an algorithm

- **The following controls may be overridden by authorized trading personnel.**
Compliance and risk functions shall have sight of any overrides operated in this regard for subsequent review and challenge
 - Any breach as a result of an order entered by authorized trading personnel in respect of paragraph 4 parts a, b or c [these are market disruption controls and best assessed for validity in real time by trading personnel]

<ESMA_QUESTION_CP_MIFID_95>

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

<ESMA_QUESTION_CP_MIFID_96>

AFME Response

We do not support the introduction of a separate control but do support the introduction of the flexibility to operate such real-time controls within the proposed framework for “volume” as per our drafting suggestion in response to Q95 above in respect of Article 21 (4)(c) repeated here:

*“Maximum order volume which prevent orders with an uncommonly large order size from entering the order books. Limits shall be set in shares, lots **or as a percentage of either:***

- ***average-trade-size or average-daily-volume in that security traded on a given venue(s) or an equivalent measure of liquidity;or***
- ***For order driven markets: prevailing volume available at the time of order submission, within the price constraints referred to in part a) on the relevant trading venues; or***
- ***prevailing volume indicated to uncross during any relevant auction period***

<ESMA_QUESTION_CP_MIFID_96>

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

<ESMA_QUESTION_CP_MIFID_97>

AFME Response

The Market Abuse Regulation (MAR) already submits our members to appropriate and sufficient controls, which already account for algorithmic trading. Therefore we do not see any need for a specific RTS on monitoring for market abuse to be included in MIFID/R as this is already covered under MAR. In any case, this requirement should not be too prescriptive in this regard and should be aligned with the level 2 text of MAR.

AFME recognises ESMA’s intent when looking to apply market abuse monitoring on a cross-market, cross-asset, cross-product basis, however, we note that this is not practicable in the case of most clients. It is extremely challenging for firms to create monitoring systems that can cover all OTC activities and cross these with all on-exchange activities etc. In addition, firms cannot have a complete picture of the client’s activity across all markets. Only where firms undertake cross market strategies specified by clients will firms be in a position to assess the risk of market abuse. Where a firm executes a transaction which is one leg of a

strategy where other agents are involved without being apprised of the strategy, a firm is not in a position to identify any specific risk of cross market manipulation.

Furthermore, requiring investment firms to conduct such cross market tests which are not easily applied in all circumstances, will create significant extra cost at little additional benefit. Such monitoring is the appropriate responsibility of NCAs and is covered effectively through the MiFID transaction reporting regime.

AFME recognises the elements of Annex I A EU regulation No. 596204 as potential indicators of market abuse.

<ESMA_QUESTION_CP_MIFID_97>

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

<ESMA_QUESTION_CP_MIFID_98>

AFME Response

General comments

AFME members would welcome some clarification from ESMA as to the scope of RTS 13. Article 1 defines investment firm as “an investment firm engaged in algorithmic trading” (which definition seemingly applies for the entire RTS). This would mean that the same definition would apply to Chapter IV (on Direct Electronic Access) and Chapter V (Firms acting as general clearing members) notwithstanding the fact that DEA or GCM services may be offered by firms that do not engage in algorithmic trading.

Additionally, with respect to Chapter II (organisational requirements for investment firms) and Chapter III (resilience of trading systems of investment firms) that generally more relevant to firms engaged algorithmic trading, we would welcome clarification as to whether the intention is for these chapters to apply **when** an investment firm engages in algorithmic trading or **if** an investment firm engages in algorithmic trading.

To the extent that ESMA’s intention is for the broader definition (whereby an investment firm is required to comply with the Chapter II and Chapter III even when the trading it is engaging in is not algorithmic trading), then AFME members would call on ESMA to clarify at what point the pre-trade controls set out in Article 21 are to apply. Article 21(1) suggests that they should apply “on order entry” whereas Article 21(2) states that they should “prevent orders from being sent to trading venues”. AFME members would not be able to implement certain of these pre-trade controls if the intention is for them to apply “on order entry” as, for example, in the context of a high touch order, it would not be possible to implement “automated execution throttles”.

With regards Article 16 of RTS 13 “Real time monitoring”, paragraph 3, we proposed a redrafting of the RTS as per below and would like to provide additional information as to why we think it is important.

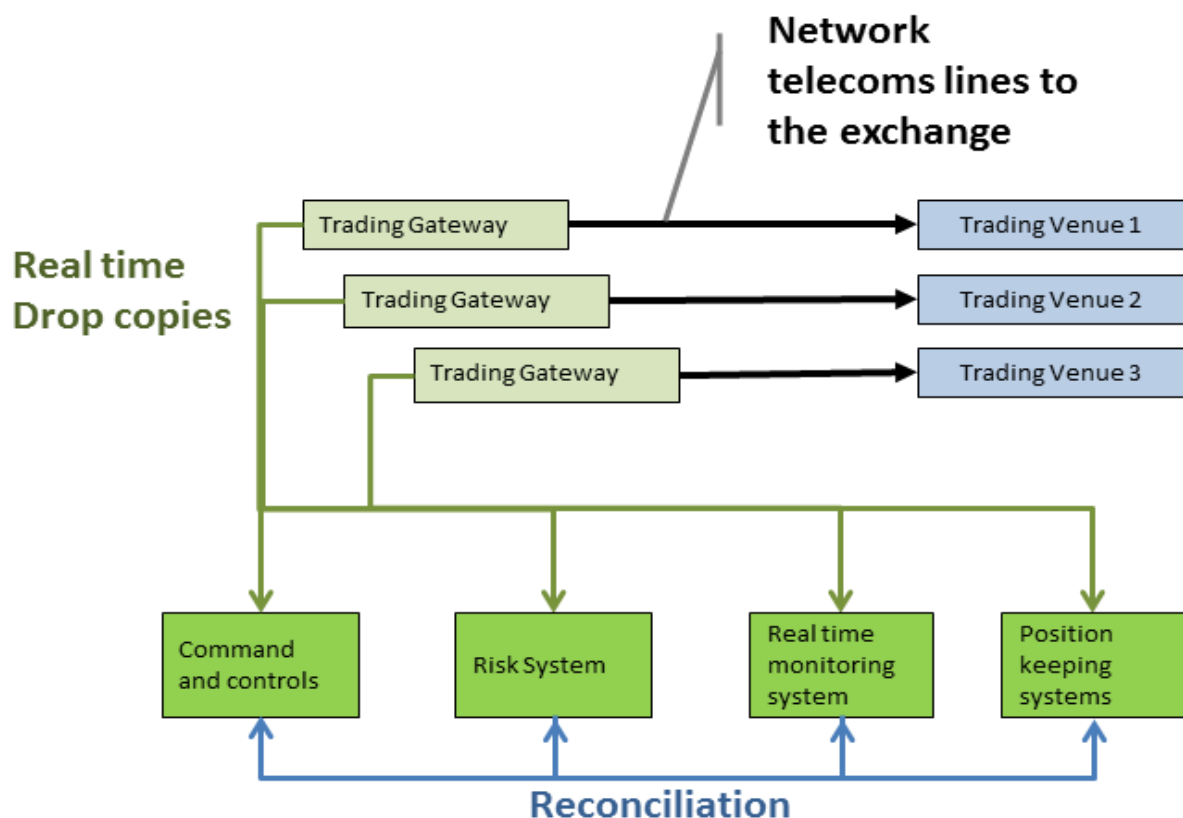
Investment firms shall maintain real-time, complete, accurate and consistent trade and account information. This shall include all orders and executions generated by themselves (where running their own algorithms) or their clients (where acting as a DEA provider) regardless of whether the orders go through their own infrastructure. Where orders do not go through the investment firm's infrastructure, this may involve the use of drop-copy feeds of orders and executions from trading venues, CCPs, the DEA provider, their clearing broker or other relevant business partners as appropriate in order to ensure they have a complete picture of trading activity.

We strongly support the need for investment firm to ensure their trading and account information is accurate and consistent, however we do not believe drop copies from third party would be the only technical mean to achieve this outcome.

As suggested in the draft RTS, we strongly agree firms should be able to compute in real time a number of risk metrics relevant to the business they conduct. Such computation is usually achieved by acquiring multiple data source from different trading systems and aggregating it into another or several systems in charge of monitoring and alerting of issues, as summarised in the figure below. Please note although the below is a simplified to show a classic Direct Electronic Access to the market, it is an accurate description of how a trading system feeds risk and position keeping systems. A similar architecture is and can be built for more complex order flow (including manual trading, algorithmic trading, etc...)

Although simplified, the same principles can and are applied to more complex order flow.

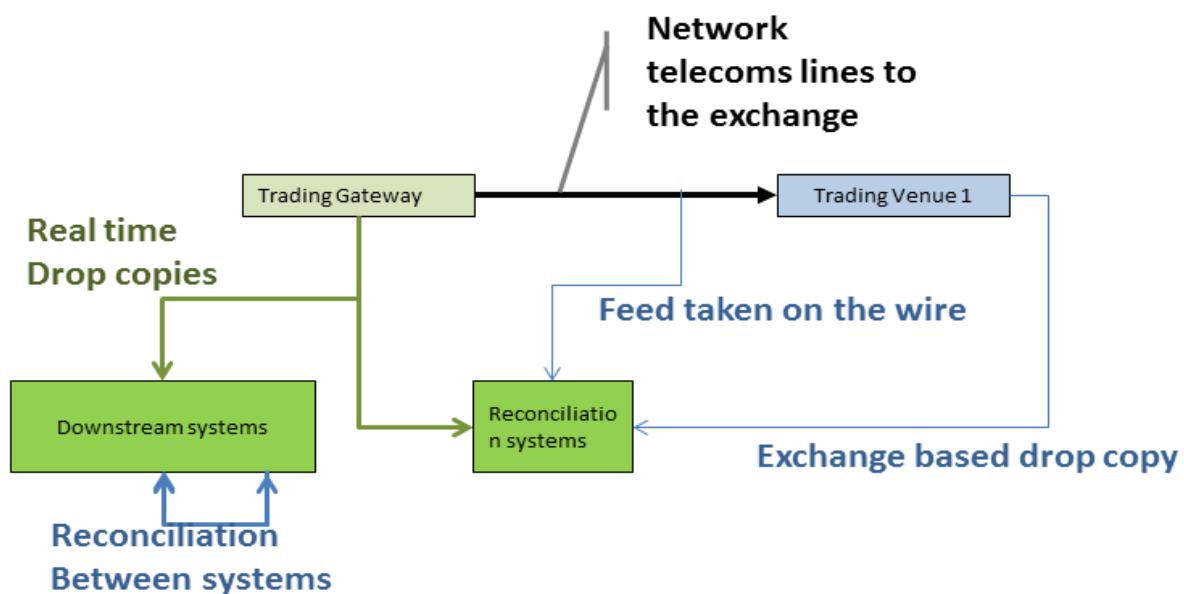
The trading gateway servers are the piece of technology interpreting the messages back from the exchange and sending orders, cancellations, amendments, etc... messages to the exchange. Connectivity to an exchange can either be FIX protocol based or more often use the native protocol of the exchange (OUCH, MIT, ETS, UTP etc...). Trading gateway are usually the data source of many others systems within the investments firm. Systems such as risk management, position keeping or monitoring tools are fed real time by the trading gateways and will run a number of reconciliation process, real time most of the time, ensuring a discrepancy between the trading system (= the trading gateway) and any other systems does not exist.



Although we agree such reconciliation processes in addition to the real time monitoring of key risk metrics are essential to the sound management of an investment firms investment

access to the market, we are not sure there is much added benefit to add an additional drop copy from the exchange to help the reconciliation process. Several facts actually argue against the efficiency of it when it comes to achieve a “*real-time, complete, accurate and consistent trade and account information*”. Assuming there is a real risk of the trading gateway not populating the correct data to the downstream systems, adding a real time drop copy from the exchange would not bring much additional benefit: the exchange will need to manipulate the data of the matching engine as to manage to populate the data on another stream, which could lead to incorrect or partial information being sent. In addition, drop copies should not be used as the primary source for any real time monitoring systems, they often includes only part of the information needed for such systems, and would require the investment firm to enrich the data. Very much likely FIX would be used for exchange based drop copies as to facilitate integration in many downstream systems. If not, the investment firm will also have to manipulate the data, which is likely to be done in the same fashion than for actually trading on the market.

Shall ESMA believe it is still necessary to process a drop copy from the exchange, we believe that their use should complement the existing implementation as to run reconciliation checks between the exchange data and the data processed by the gateway, but should not be the source of information for critical risk and monitoring systems. In addition, we believe discretion should be left to the investment firm as to how this should be implemented. We understand the objective of ESMA is to make sure the information on which the investment firms rely is accurate, we believe such requirement would be covered by getting an independent source of information than the one known and processed by the trading gateway. As such, getting a drop copy from the exchange is not the only way of getting an independent source of information. Many network equipments are now able to duplicate exactly the feed received from the exchange without altering it, as per the schematic below.



Instead of a drop copy, a feed can be “tapped” or “spanned” directly from the telecom lines, which then can be processed and compared to the information help into the trading gateway. This would achieve the same result than a drop copy provided by the exchange.

Hence we would welcome the amendment of the RTS as to consider drop copies as a possibility to ensure trade and account information are accurate.

With regard to clearing we make the following comments:

- We agree with the proposed list of minimum criteria that clearing firms should assess their clients against on an initial and ongoing basis. Should not require the clearing firm to disclose the levels required of these criteria in a binding written agreement.
- Any additional internal criteria should not be disclosed, made public or detailed in a binding written agreement.
- We support a formal annual review of a client's performance, supplementary to ongoing client risk and performance management. Must be flexible to market conditions, current internal risk appetite and subject to commercial consideration.
- With regards to Annex B, Chapter V, Article 29 Position Limits and Margining; AFME believes that trading limits should be uncommitted but need to be advised to enable the trading firm to ensure that they adhere to them. In practice many GCM's have contractual limits in place with trading firms today that are bilaterally agreed although the GCM may have the unilateral right to amend.
- Real-time view of client positions is desirable but should not be mandatory. More appropriate for a minimum requirement for intra-day risk management which may increase in accordance with market, volume and risk demands where required. If real time risk management is included in level 2 it needs to be acknowledged that clearing members are only able to comply if they are supplied with real time data by the CCP. A General Clearing Member may not have a relationship with the trading venue and therefore its golden source for information relating to cleared transactions is the CCP. If a real time risk management obligation for clearing members is included it needs to be supported by an obligation for CCP's to provide real time risk management data to its members. Beneficial if CCPs applied limits to clients of clearing firms in order to automatically limit the exposure of clearing firms to their clients. Procedures and oversight should be in accordance with Article 37 of EMIR.
- Annex B, Chapter V, Article 30 should be wholly in accordance with EMIR Articles 38 & 39.

<ESMA_QUESTION_CP_MIFID_98>

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

<ESMA_QUESTION_CP_MIFID_99>

AFME Response

- AFME requests ESMA to consider the following requirements:
 - i. for CCPs to apply limits to clients and clearing firms in order to automatically limit exposures of the clients to the clearing firms,
 - ii. the practicality of CCPs applying limits to parties that they do not have relationships with E.G Trading Member Firms. Need to consider and protect against the unintended consequences of limit application in order to prevent any competitive advantage of one CCP over another. We believe it is feasible to have limits at the clearing level that can be applied to control trading level activity.
- The requirement to notify the CA of a breach to electronic security – seems sensible, but should this apply more broadly to any major incident affecting trading critical systems
- The requirement with regard to penetration testing does not allow enough flexibility with regards to frequency. They should be able to be conducting with a frequency of less than one year

<ESMA_QUESTION_CP_MIFID_99>

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

<ESMA_QUESTION_CP_MIFID_100>

AFME Response

AFME, in the main, defers to the Trading Venues to comment in this section. However, referring to RTS 14, Article 12 (2) AFME notes that trading venues should know the latency that their own systems can tolerate. They should, therefore, maintain discretion to state what latency they will tolerate, potentially set at a minimum standard of latency relating to usual performance, deviating only up to a factor of 'X'.

<ESMA_QUESTION_CP_MIFID_100>

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

<ESMA_QUESTION_CP_MIFID_101>

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

Non-live testing of algorithms (RTS 13/14):

The following response applies equally to Q94 (investment firm algorithmic trading) and Q102 (trading venues) and is repeated for each question.

AFME members believe that the proposals regarding non-live testing of investment firms' algorithms are counterproductive, inefficient and unrealistic in their current form

AFME understand that one of the primary influences for the non-live testing measures is the incident involving Knight Capital Americas LLC in July 2013. Having reviewed the SEC's assessment* of the incident, AFME members would like to highlight that the non-live testing measures proposed would have been unlikely to prevent this incident had they been in place. In contrast, AFME believes that many of the other measures proposed in RTS 13 would indeed have reduced risk in this respect. The *current* non-live testing proposals however will provide marginal benefit at great cost. Moreover they do not appear to have been dealt with adequately within ESMA's cost-benefit analysis.

AFME would like to present a counter proposal based on its members' understanding of the risks which ESMA seeks to mitigate in particular with respect to the potential for creating disorderly trading conditions. These can be categorised in the following way:

- 1. Compatibility Risk:** The risk that a firm's algorithms and infrastructure are insufficiently tested against a trading venue's infrastructure leading to the creation of disorderly trading conditions.
- 2. Market Dynamic Risk:** The risk that a firm's algorithms and infrastructure create disorderly trading conditions due to their interaction with other market participants, or that they fail to respond appropriately in an environment where disorderly trading conditions already exist.

AFME members believe that an efficient and additive solution requires these risks to be mitigated separately. Specifically, the former requires access to an environment that mimics the trading venue's production system. The latter requires an environment which represents or models market behaviour, in which multiple participants are simultaneously present and includes facilities capable of artificially imposing disorderly trading conditions (e.g. by imposing capacity constraints on the infrastructure, slowing the system down or introducing simulated erroneous orders).

We note that this does not lead to a perfect solution but does lead to a better solution.

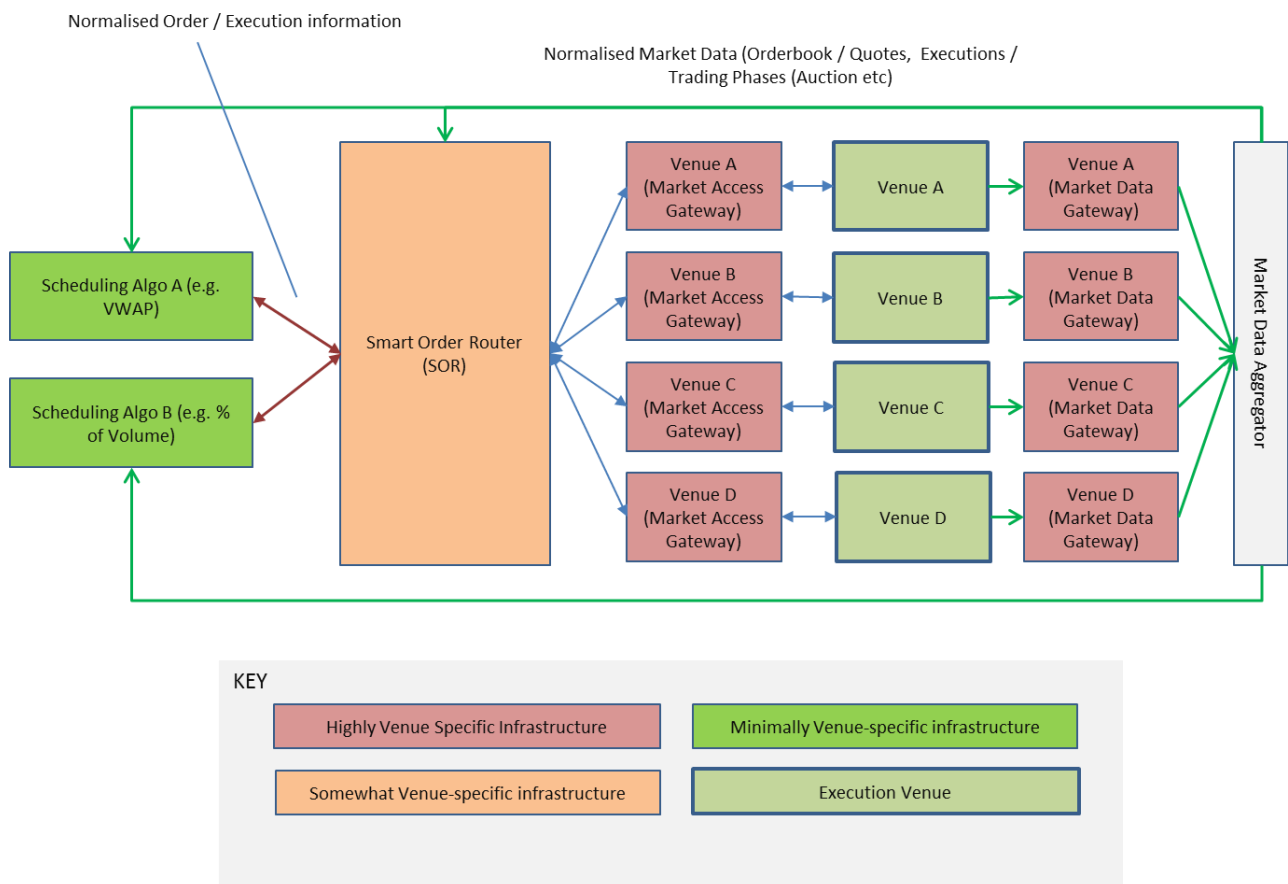
Compatibility Risk

In its recent consultation paper, ESMA asserts that "*market microstructure differs greatly from venue to venue*". Though we agree with this statement in totality (i.e. across all asset classes and types of market), if we consider classes of market categorised by market

mechanism and asset class, then the microstructure is very similar (differences mainly being confined to variations in trading hours, timing of auctions, minimum/maximum trade size rules, all of which lend themselves to being expressed through venue-specific *parameterisation* of logic rather than venue-specific logic). This is not to argue that these differences are immaterial or should not be addressed, simply that they should be accounted for in an efficient manner.

It is important to note that investment firms will arrange their algorithmic trading infrastructure differently depending on the nature of their business. The attached diagram below illustrates how an investment firm providing order execution algorithms (e.g. for executing client orders) will typically organise itself to execute across multiple EU venues in cash equities. Efficiency is gained for the firm and its clients by modularising the infrastructure so that similar venues can be treated similarly.

(The Table below refers to Cash Equities)



Such an investment firm's infrastructure is typically organised into three categories for order driven markets:

Gateways: This infrastructure is highly tailored to the specific venue that it deals with:

- **Market access gateways** translate orders and executions between the investment firm's internal messaging format to that used by each individual trading venue.
- **Market Data gateways** translate the individual market data protocols into a common protocol which the firm can use to understand market data from individual venues on equal terms (this allows for data to be aggregated and prices compared where an instrument is listed across multiple venues at once). Market data gateways will normalise the way in which order book information and executions are received and translate "trading phase" information into normalised form (e.g. opening auction, closing auction, volatility auction, regulatory halt).

Smart Order Routers (SORs): SORs are somewhat tailored to the venues that they interact with although they will typically send and receive messages in much the same form to each venue that they interact with. For instance an SOR will need to know which is the "primary (listing market)" for each jurisdiction and will typically defer to that market for multi-listed instruments if the primary market enters a volatility auction.

Scheduling Algorithms: These typically have very little venue-specific logic embedded in them. This is possible because, the majority of the burden of dealing with individual venues is handled by the SOR and Gateways. Scheduling Algorithms are predominantly concerned with generic market dynamics (and therefore also present the majority of the risk in this area).

Investment firms that operate proprietary trading algorithms generally have simpler infrastructures (e.g. for latency reasons) and as such will often either connect the algorithm to market access and market data gateways, or even have the algorithm connect to the trading venue directly.

Proposal

Infrastructure that deals with venue-specifics should be tested most intensively against the venue's own test platform. In the cash equities example given, this means the SOR and the Gateways. Venue-specific logic in an individual algorithm should also be tested where it exists.

In a non-modular example where an algorithm deals more or less directly with the trading venue's infrastructure, we would agree that that algorithm should also be tested intensively on every trading venue on which it is used.

In summary, we believe that an algorithm should **not** be required to be subjected to testing within a non-live environment if it fulfils all of the following criteria:

- The algorithm uses an intermediary algorithm to connect to the trading venue.

- The algorithm contains minimal venue-specific logic and is purposely designed to operate across multiple markets.
- The algorithm has been tested in a non-live environment on at least one market it has been designed to operate on.

Market Dynamic Risk

In our example, the components of an investment firm's infrastructure that pose the most risk when exposed to "live market conditions" are those with the least venue-specific logic. In our example, the scheduling algorithms and SOR pose the greatest risk of causing disruption (in this context) as these are the components which analyse market behaviour and make execution decisions. We also note that algorithms such as SORs are designed to operate across multiple markets at a time and a comprehensive test therefore could not take place within a *single* trading venue's test facility.

Such "real market" conditions are impossible to re-create perfectly however and even imperfect solutions are extremely expensive to implement:

- One solution is to "replay" previous order information into a venue. This is expensive to perform however and does not duplicate the potential for participants to interact negatively with each other.
- A requirement to execute disorderly trading tests across every venue in which they participate (some 15-20 venues for cash equities) is extremely costly and time-consuming to perform. Moreover, it is likely to incentivise to a "box checking" approach by nature of its excessive time consumption
- The incremental benefit of performing these tests across multiple similar venues is also minimal as the components of infrastructure which present the most risk are concerned largely with generic market dynamics and less so with the specifics of the individual trading venue.
- To cater for multi-market algorithms (e.g. SORs) using trading venue facilities, there would need to be a way of connecting those facilities together which we believe to be expensive and most likely unworkable in practice.

Proposal

The risks that algorithms misbehave when they encounter market-like conditions are usually generic because infrastructure is often built to deal with the market generically. Those risks can therefore be reduced much more effectively and efficiently by allowing for them to be tested for centrally.

We believe that higher quality centralised testing is a better way of mitigating of the risks of disorderly trading than performing what are likely to be many individual tests of much lower quality against individual trading venues.

Venues should be able to delegate testing for disorderly trading conditions to a centralised provider where appropriate. The provider's role should be to create an environment which many different participants can come together to exercise their infrastructure in an

environment which concentrates their activity so as to re-produce a market-like dynamic. Because the environment would bring real participants and their infrastructure together in a single place, it would provide the most useful advance warning possible of any potential problems.

Requested changes to the RTS

Based on the above we suggest the following changes to RTS 14 Article 11:

Testing the members' algorithms to avoid disorderly trading conditions

1. Trading venues shall require their members, participants and users of sponsored access services to undertake testing of trading algorithms to avoid creating or contributing to disorderly trading conditions. Trading venues shall not grant access to use an algorithm that has not been tested and shall require algorithms to be tested or re-tested whenever:
 - a. a new algorithm is written;
 - b. an existing algorithm undergoes a material change (where the user of the algorithm will be required, on the request of the trading venue, to evidence which changes have been deemed 'material')
 - c. the trading venue itself undergoes a change where it deems it necessary to retest some or all algorithms.
2. Trading venues shall provide access to test facilities which are capable of supporting the following:
 - a. testing algorithms for compatibility with the trading venue's infrastructure, i.e. facilities that functionally replicate the trading venue's production environment and provide;
 - i. a representation of a typical normal trading day (for example through the use of replayed historical data or through a simulation);
 - ii. a simulation of disorderly trading conditions (for example by forcing temporary capacity limits on the test system, slowing the system down or introducing simulated erroneous orders);
 - b. testing of algorithms for compatibility with multiple trading participants in a realistic production-like environment.
3. Where an algorithm has been tested against one trading venue but does not access the venue directly (i.e. instead using an intermediary system such as a smart order router) and contains no trading logic specific to individual trading venues, then that algorithm can be considered to have been tested across all trading venues that trade the same class of financial instruments and operate a similar market mechanism and hence does not need to be separately tested for each such trading venue.

Test Instruments

We completely agree that systems should be tested adequately in dedicated test environments and that a live production environment is not to be used for such a purpose, while also recognising that there are certain types of tests that really can only be performed on the production system.

We therefore recommend that trading venues be required to provide 'test' instruments in their production systems. Such test instruments should be made available on all venues across all asset classes and, where a trading venue operates sub-markets or trades multiple asset classes, that multiple test instruments exist for that venue in order to ensure adequate coverage of the technical and functional scope of that venue.

Test instruments should have complete reference data (including public instrument identifiers) and should be handled in trading venues' and investment firms' trading systems as 'normal' instruments. They must, however, be blocked from feeding any post trade settlements infrastructure.

<ESMA_QUESTION_CP_MIFID_102>

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

<ESMA_QUESTION_CP_MIFID_103>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_103>

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

<ESMA_QUESTION_CP_MIFID_104>

AFME Response

No, AFME does not agree with the proposal.

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

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

In order to be identified as a market maker, we also believe that only proprietary order flow should be considered in the calculations. We therefore strongly believe that the ESMA Technical Advice on Section 5.1 (Algorithmic Trading and HFT) relating to page 339 point 5 (as per below) should be taken into account when looking at the market making obligations and therefore propose that this be included in the RTS for Section 4.3 (Market Making):

For the identification of high frequency trading, ESMA is of the view that only proprietary order flow should be considered. Regardless of the approach followed by the Commission to identify high frequency trading, it is proposed that if an investment firm is classified as HFT, the firm may challenge this classification if they believe this is a direct result of their non-proprietary messaging flow. To that end, investment firms should analyse the records under Article 25 of MiFIR to determine the level of messaging activity which is attributable to the proprietary activities of the investment firm, and the level which is attributable to the clients of the investment firm and provide this summary to the relevant competent authority who would determine whether the firm has been incorrectly identified as exhibiting a “high intra-day message rate”.

The above relates to an important point relating to only proprietary order flow being in scope for consideration and we believe that the same consideration should be stated when stipulating a firm entering a market making agreement. The participant who is running the algo should be responsible for that algo regardless of whether they are a ‘member of the exchange’.

AFME members seek further linguistic clarification in relation to whether a market making agreement would be necessary per comparable instrument or whether such an agreement would be based on asset class. Requiring to have in place a market making agreement per individual instrument would make the application of the parameters as stipulated by ESMA (for example trading for 30% of market hours per day) impractical, particularly for non-equity instruments where there can be instances of high liquidity and subsequently low liquidity within short timeframes.

The text does not specify any detail around the process / timeline to be followed for signing a market making agreement, nor how an agreement can be exited should a firm decide it wishes to cease pursuing this type of strategy. Under the process for becoming a Systematic Internaliser, investment firms have one month to do so after they have identified that they exceed the quantitative thresholds. We would suggest that a similar approach could be followed here.

It is felt that in relation to quoting requirements, an investment firm should be able, at its own discretion, to determine whether it wishes to pursue a market making strategy during certain instances of ‘exceptional market conditions’. In such an instance it should be the investment firm who is able to exit a market making agreement without the final decision being at the discretion of the trading venue. In its proposal (RTS 15 Article 4 (3)) ESMA notes:

‘The agreement shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading

venue, if the trading venue determines the state of its market to be under exceptional circumstances as defined by this Regulation’.

AFME members feel that the specific notion that it should be up to a trading venue to determine whether ‘exceptional circumstances’ are occurring and whether therefore a market maker is able to pursue a market making strategy seems unduly justified and AFME members feel that this should not be within the remit of a trading venue. AFME members believe that an investment firm is best placed to determine whether they are able to continue pursuing a market making strategy in ‘exceptional circumstances’ and would in such instances inform the trading venue and be able to immediately suspend its market making agreement.

Furthermore, AFME members believe that the definition/parameters of ‘exceptional circumstances’ as per RTS 15 Article 5 (2) should be listed under the definitions.

AFME members seek clarification that by using the terms ‘market hours, trading hours, normal trading hours, daily trading hours’ ESMA is referring to European market hours. Furthermore AFME suggests that this should be made clear throughout ESMA’s proposals in aid of consistency.

Should ESMA’s intention not have been to specify the trading hours it references then AFME members would like to note that such clarification is necessary. Some trading venues operate a 24 continuous venue and therefore there would be a considerable difference between imposing a quoting obligation of 30% compared to a quoting obligation of 50% during the hours of 8.30 and 16.30. AFME members strongly suggest that consideration be given to the differing trading venues’ trading hours and that a standard timeframe should be noted to avoid confusion.

<ESMA_QUESTION_CP_MIFID_104>

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

<ESMA_QUESTION_CP_MIFID_105>

AFME Response

No, this is not appropriate.

It is not appropriate to determine whether a firm is pursuing a market maker activity based on a single day trading. Averages for a broader period need to be considered. It is entirely feasible that a firm holding a position they are trying to liquidate provides quotes for more than 30% of a single trading day in at least that instrument; this alone should not then trigger a deeper, longer commercial obligation. As a result of this we believe that market making obligations should be assessed over a 4 week period thus being more consistent with the SI regime.

AFME members would like to seek further clarity on what ESMA considers ‘market hours, trading hours, normal trading hours, daily trading hours’. AFME suggests that ESMA should

refer to European hours in the RTS to avoid any confusion. As an example in a 24 hrs continuous trading venue, a trading presence of 30% is above an investment firms' market practice. Consideration should be given to the differences between such venues and those which operate based on standard European hours. <ESMA_QUESTION_CP_MIFID_105>

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

<ESMA_QUESTION_CP_MIFID_106>

AFME Response

AFME members believe that the 50% obligation is workable from a non-equity perspective. It should be noted that this investment firm should not be tied to a narrow obligation due to this agreement between venue and firm. Venues should take into account that market makers will perform their duties on multiple platforms.

As an example of the complexities for certain instrument classes, in the case of primary dealer agreements we question whether these would be deemed as market making agreements per se and primary dealers must therefore apply to a venue and commit to provide liquidity all day every day which is not practicable. The continuous liquidity provision to numerous venues places much more responsibility on investment firms.

AFME members note that it is unclear what the legal consequences of falling below the 50% quoting obligation may be as this is not referenced in the ESMA proposal currently.

Particularly for non-equities, AFME members wish to propose that a rule of 50% of on-going quoting over a period of 4 weeks should be considered when determining the amount of quoting an investment firm is required to provide during 'market hours' (once more AFME would like to clarify that ESMA wishes to refer to European trading hours for all references to 'market hours').

<ESMA_QUESTION_CP_MIFID_106>

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

<ESMA_QUESTION_CP_MIFID_107>

AFME Response

It is recommended that the indication of what ESMA has deemed to be an 'exceptional circumstance' be included in the definitions under RTS 15 Art 1.

AFME understands that it will be the responsibility of the trading venues to determine an event of 'exceptional circumstances'. However we would like to note that it should not be solely down to one trading venue to determine whether an investment firm is in a situation of an 'exceptional circumstance'. Investment firms do currently have in place several clear measures and procedures in order to determine whether their organisation is under any form of unusual or exceptional circumstances and it appears unreasonable and impracticable to expect a trading venue to have access to an investment firm's operational status. Accordingly, as noted in AFME's response to question 104, AFME members feel that a

market making firm (rather than a trading venue) is best placed to make the determination as to whether exceptional circumstances exist which will prevent the firm from providing quotes and relieve the firm of its obligations under the market making agreement.

AFME strongly disagrees with making public the occurrence of exceptional circumstances, as by doing so this may produce undesirable consequences in the orderly functioning of markets and performance of other market participants.

It would be operationally onerous to monitor the occurrence of exceptional circumstances (e.g. conditions of “extreme volatility” or a significantly stressed market conditions).

There may be instances when IT disruptions may prevent an investment firm from being able to provide a quote and thus comply with the stringent quoting obligations set within the market making agreement. AFME would like to propose that in order to capture such instances, ESMA include a mention to such exceptional circumstances (caused by internal IT disruptions) which may prevent a market maker from continuously providing liquidity under its market making agreement. In the event of an IT disruption on the side of the venue, members would like to note that it is important any orders submitted before such a disruption will still be good following the resolve of any issues.

Additionally it is important that any data releases are also considered in the context of ‘exceptional circumstances’. Such ‘pre-planned information events’ (ESMA RTS 15 Art 5 (3)) may have an effect on the fair value of a financial instrument and should be considered when determining whether a firm is able to comply with its market making obligations under the market making agreement.

AFME seeks further clarification as to the parameters of the ESMA proposed fine setting mechanism (“negative incentives as per Art 10 of RTS 15). We do not feel that the trading venue should be able to set a fine without the correct ESMA guidelines.

<ESMA_QUESTION_CP_MIFID_107>

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

<ESMA_QUESTION_CP_MIFID_108>

AFME Response

Although AFME welcomes the new addition that ‘the agreement shall specify that an investment firm engaged in a market making agreement may suspend its market making activity without incurring any penalties from the trading venue, if the trading venue determines the state of its market to be under exceptional circumstances as defined in this Regulation’, we would like to note that we feel this is sufficient and in line with ESMA’s intentions.

However, AFME would like to note that an investment firm party to a market making agreement should also be able to suspend its participation within such an agreement based on its own analysis and ability to continue with its market making strategy, subject to an appropriate notice period (e.g. one month).

AFME welcomes the recognition of requirements for trading venues with respect to market making agreements during ‘stressed market conditions’ however AFME believes that the definition of ‘stressed market conditions’ should be broadened to include market events (in line with ‘disorderly markets suggestions as above’) as well as expanded to furthermore detail and clarify the parameters upon which a TV should determine whether the market is in a ‘stressed condition’.

<ESMA_QUESTION_CP_MIFID_108>

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

<ESMA_QUESTION_CP_MIFID_109>

AFME Response

We agree with the general approach of the RTS and are supportive of the fact that introducing Order to Trade Ratios (OTR) will help limit the in flow of messages to a trading venue’s system and help prevent disorderly markets as it will encourage firms to better control their OTR. We support the introduction of 2 ratios to limit the gaming opportunities. We welcome the annex provided with the order types to take into consideration as they make interpretation easier and more certain. However we do see potential issues with the RTS.

The RTS should define the ratio for the purpose of MiFID II, Article 48(6), which refers to controls as to “*ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions*”. It seems that the way the ratios and their associated limits are defined is to be read more as article 48(9) where possible fines could be associated to a breach of the OTR as per “*Member States may allow a regulated market[...] to impose a higher fee on participants placing a high ratio of cancelled orders to executed orders [...] in order to reflect the additional burden on system capacity*”. We would welcome clarification as to how the OTR should be used as a mechanism to prevent the creation of orderly market conditions.

If the OTR ratio is meant for preventing creating disorderly markets, we believe it should be tailored to each market participant and should not be a one size fits all. This would be in line

with the way in which throttling mechanisms are currently calibrated: A small firm may only need 5 or 10 messages/second capacity while a larger firms concentrating large client order flow for instance, could need ten or more times the capacity. The same is true of the OTR. For firms executing client orders, OTR is not something which can be fully controlled, even so it can be monitored. In addition, we question the validity of considering a high order to trade ratio as a threat to market stability in itself. A firm sending only aggressive flow (low OTR) but millions of messages to a trading venue would be much more of a threat to an exchange system's stability than would a participant with a small volumes of messages but with a very high order to trade ratio.

Finally although we welcome the set up of a yearly limit, we disagree with the methodology to compute the actual limit of the ratio (threshold that would constitute a breach) as we believe it will lead to a situation where it would be extremely difficult for a market participant not to breach and for new Trading Venues to grow.

Consequently we believe a few modifications and clarification should be made with regards the current proposals:

- The ratio should be used to assess a breach and associated fine, as per level 1 text, Article 48(9).
- The ratio should not include cancels and IOC/Amends should be considered as one message, please refer to question 111 for more information.
- The limits for the ratio should include a floor and be calibrated at a reasonable level to allow the diversity of market participants to operate normally and for new trading venues to grow. Please see our further comments under question 113 below.

<ESMA_QUESTION_CP_MIFID_109>

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

<ESMA_QUESTION_CP_MIFID_110>

AFME Response

We agree with the counting methodology in general and welcome the approach ESMA has taken. We understand the list of order type is to be seen as guidelines as to accommodate for future markets innovation. Therefore we think that the logic leading to the number of messages to consider should be clear enough to allow for easy interpretation for order types to come.

<ESMA_QUESTION_CP_MIFID_110>

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

<ESMA_QUESTION_CP_MIFID_111>

AFME Response

We believe the definition of orders is sufficiently precise and will accommodate for future order types. We understand "all input messages" as relating to messages sent in reference to a financial instrument but to exclude any technical messages sent to the trading venue. Similarly we would consider cancellation following the uncrossing of auction as not falling into the scope of "submission, modification, cancellation sent to a trading venue" for the purpose

of the OTR computation. Finally we would welcome clarification as to the treatment of cancellations due to the use of kill switches or following IT issues (also known as cancel on disconnect), which is a feature many markets provide and many firms have implemented when their clients disconnect. We believe trading venues should have the ability to allow for such exclusions.

However, excluding part of the cancellation messages may prove difficult for trading venues and investment firms to monitor. We would therefore suggest an alternative method to define order, leading to a slightly different computation for both ratio.

We feel that the counting methodology should only be considering messages that have the potential to create executions not messages that are removing this potential. The purpose of the OTR is to ensure that algorithmic trading systems cannot create or contribute to a disorderly trading condition on the market. This would happen when there is an excessive number of messages that are creating or changing orders. This method would remove any question around partial fills, cancellation at the end of the auctions, cancellation following kill switch, etc...

Hence we would suggest amending the RTS 16 definition of orders as per below:

*“order” means all input messages, including submission **of a new order** or a modification **of an existing order, cancellation**, sent to a trading venue’s trading system; this shall include market orders and limit orders such as Immediate-or-Cancel orders or pegged orders as well as any type of quotes including any indications of interest irrespectively of whether or not they are actionable”*

Such change would not alter the purpose of the OTR as it can achieve the same result by way of calibration. An OTR including cancels will be higher than an OTR not including cancels, but so would be the limit. Hence we believe it still achieves the RTS objective while removing source of misinterpretation. It would also put new orders and modification on the same level, by considering both as 1 message and will allow an easy interpretation of the volumes and number of orders to take into consideration.

<ESMA_QUESTION_CP_MIFID_111>

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

<ESMA_QUESTION_CP_MIFID_112>

AFME Response

The calculation seems clear enough as it is, provided the necessary clarifications are made with regards to the exact messages and number of shares to be taken into account. Especially in the case of IOC where the order has partial fills, we would interpret the current RTS as requiring to only consider the quantity cancelled when computing the ratio on volumes of shares, but as non executed for the ratio on number of orders

However, should ESMA consider our proposal at question 111, such clarification would not be necessary as the ratio in volume would be de facto taking into account all shares sent vs all shares executed, reducing the divergent interpretation.

<ESMA_QUESTION_CP_MIFID_112>

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

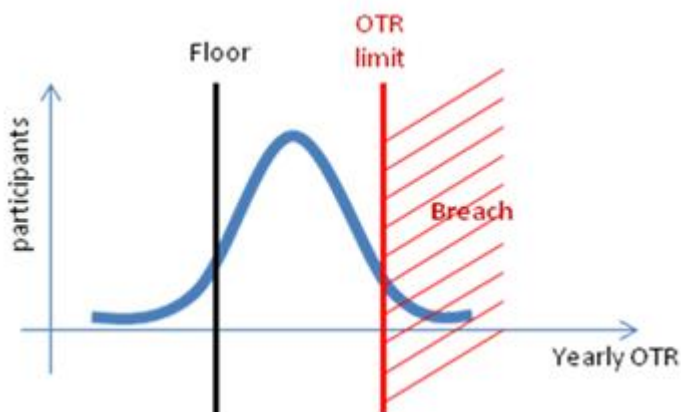
We agree computing the ratio to be conducted once a year. We however see some issues with the method to actually set the threshold for determining a breach

By setting the limit at the maximum observed OTR across all participants, by design, it will every year put a number of participants above the threshold. This would incentivise market participants to reduce their OTR in order to not breach the limit and mechanically bring the limit to levels where it would be difficult to operate without breaching. In addition, firms executing client orders would not be able to control their overall order to trade ratio and may face breaches as a consequence of their activity. The normalisation of the OTR around an average value would lead to such a situation.

The graph below illustrates this risk. Assuming 20 participants with OTR ranging from 0.5 to 200 and assume the maximum OTR across participants is 50 on Year 1. Most participants lower their OTR to avoid breaching the threshold, the next year, participants' OTR range from 0.5 to 60, and the maximum OTR across participants is now 30 for year 2. New OTR limit for year 3 is now 30, which will push market participants to lower even more their ratio, if possible or face consequences for breaching the OTR if they cannot fulfil their service without doing so. This could lead some market participants and mainly those trading passively to not be able to pursue their activities as they would be in a situation where managing risk, price would lead to breach the OTR ratio.

In addition, the make up of the threshold makes it impossible for it to increase from one year to another. This could prevent venues growing market share, and could even hamper the development of trading venues in non equities markets. Competitive markets tend to have more active order books than less liquid ones, as there is a direct relationship between the "order messages" activity and the efficiency of the order book, its spread and its depth. The more participants, the more likely orders will have to be cancelled or modified.

We would suggest amending the RTS in order to recognise a diverse market is made of liquidity takers (ratio close to 1), passive traders and market makers. Passive traders, without being market makers, would tend to have a much higher ratio, and should not be penalised by a design taking an average value as the actual limit. We would therefore suggest considering setting the limit by looking at the distribution of market participant yearly OTR and set the limit at 80%, computed over a defined a period, for instance yearly. As illustrated below:



We would also recommend introducing for each relevant group of instrument a floor under which the OTR would not change. Those recommendation combined would prevent an artificial normalisation of the order to trade ratio and allow for venues to grow market and gain participants. Such floor could be set by the venues with approval of the home state regulator.

Therefore we suggest amending the RTS 16 as per below (Article 3.5 and article 3.6):

5. A trading venue shall calculate the maximum ratio of unexecuted orders to transactions in both volume and number terms at least once a year **for each participant**. For that purpose, trading venues shall take into account all the orders submitted by ~~all~~**each** members and participants across all phases of the trading sessions, including the auctions, during the preceding twelve months' trading. **The venue will then determine for both ratio the value for which 80% of members or participants are below the said value. The venue will also determine a floor for both ratio, taking into account the capacity of their systems and will notify their competent authority for review.**

6. The ratio of unexecuted orders to transactions calculated by the trading venue in accordance with this Article shall be considered as exceeded by a member or participant of the trading venue on a trading session where the trading activity of this member or participant in one specific instrument, taking into account all phases of the trading session including the auctions, exceeds any of the two ratios specified under paragraph 4, **unless the computed ratios are below the set floors.**

<ESMA_QUESTION_CP_MIFID_113>

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

<ESMA_QUESTION_CP_MIFID_114>

AFME Response

We believe clarification is needed with regard to orders cancelled at end of auctions and any cancels following kill switches being invoked. We believe such orders should not be

considered in the OTR to compute. Please refer to question 111 for the treatment of cancels in the ratio computation.

<ESMA_QUESTION_CP_MIFID_114>

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

<ESMA_QUESTION_CP_MIFID_115>

AFME Response

We think the technical annex is helpful and could be complemented by concrete examples so as to make interpretation even clearer. We do not believe order types are missing currently and the RTS provide with a framework which can accommodate future order types.

<ESMA_QUESTION_CP_MIFID_115>

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

<ESMA_QUESTION_CP_MIFID_116>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_116>

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

<ESMA_QUESTION_CP_MIFID_117>

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<ESMA_QUESTION_CP_MIFID_117>

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

<ESMA_QUESTION_CP_MIFID_118>

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

<ESMA_QUESTION_CP_MIFID_119>

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

<ESMA_QUESTION_CP_MIFID_120>

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<ESMA_QUESTION_CP_MIFID_120>

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

<ESMA_QUESTION_CP_MIFID_121>

AFME Response

[No comments at this stage.]

<ESMA_QUESTION_CP_MIFID_121>

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

<ESMA_QUESTION_CP_MIFID_122>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_122>

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

<ESMA_QUESTION_CP_MIFID_123>

AFME Response

General Comment

AFME members feel that ESMA's proposal on Tick Sizes is constructive and well thought out, and we are supportive therefore of ESMA's proposal in this area. We offer though some comments in responses to the questions following in this section specifically as regards aspects of its workability.

Specifically on Q123

We believe that the number of trades across all trading venues for any single financial instrument should be considered. Limiting this only to the most relevant market, would result in an undercount in the number of daily trades which could ultimately lead to the instrument being assigned an incorrect liquidity band and hence the wrong tick size. We would therefore recommend a change to RTS 18 article 1 paragraph 3 to allow for the consolidation of trade counts across trading venues trading the same instrument:

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

We note that under article 2 paragraph 2, this change would then require the most relevant market to collect this information from other trading venues before presenting it to its competent authority and given that the required data is public we do not envisage any issues in doing this.

<ESMA_QUESTION_CP_MIFID_123>

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

<ESMA_QUESTION_CP_MIFID_124>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_124>

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

<ESMA_QUESTION_CP_MIFID_125>

AFME Response

Yes we do, but we would also like to add wording to RTS 18 Article 3, at the end of paragraph 2:

The identity of the liquidity band to be used for a new instrument will be made available no later than the business day preceding the first day of trading.

<ESMA_QUESTION_CP_MIFID_125>

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

<ESMA_QUESTION_CP_MIFID_126>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_126>

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

<ESMA_QUESTION_CP_MIFID_127>

AFME Response

Yes, and we would like to point out that RTS 18, article 4 limits the list of possible scenarios which could require a re-evaluation of an instrument's liquidity band. We propose that the wording is modified to allow for greater discretion from trading venues and competent authorities. Other particular circumstances which could impact the liquidity band of an instrument would be the inclusion or exclusion of an instrument in an index, the timing of which will not necessarily coincide with the annual cycle described under RTS 18 Article 2 paragraph 3

Suggested wording to Article 4:

Corporate actions and other changes to an instrument's liquidity profile

If a trading venue reasonably considers that a financial instrument has already undergone or will undergo a change in the average number of trades per day (for example due to a corporate action, index rebalance or similar long-term change) where this could result in a change in the liquidity band for that instrument, then the trading venue will treat that financial instrument as if it were admitted to trading or traded for the first time.

We would also like to suggest that in Article 3 paragraph 3, the sentence "...its tick size shall be calculated..." be changed to "...its tick size shall be recalibrated..." as the current wording implies that the tick size has not been calculated at all initially.

We also note that the preamble (RTS 18 under paragraph 9) states that trading venues should be in a position to apply a change in tick size to outstanding orders and recommend that the manner in which they do this be included in the RTS to ensure a harmonised approach across the Union. To this end, we suggest an additional paragraph under article 2 as follows:

If the liquidity band for an instrument does change (i.e. due to changes in trading patterns) any orders outstanding during that change (for example, GTD orders) will have any prices (e.g. limit price, stop price) adjusted, where necessary, to the new nearest tick size in a passive direction (i.e. down for buy orders, up for sell orders).

<ESMA_QUESTION_CP_MIFID_127>

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

<ESMA_QUESTION_CP_MIFID_128>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_128>

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

<ESMA_QUESTION_CP_MIFID_129>

AFME Response

We have no issue with annual rebalancing, provided that sufficient lead time is offered to investment firms to calibrate their algorithms/systems prior to the annual liquidity band changes. Please see response to Q130 for more details.

<ESMA_QUESTION_CP_MIFID_129>

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

<ESMA_QUESTION_CP_MIFID_130>

AFME Response

Yes, members' algorithms/trading systems will need to be adjusted to operate accurately based on the new tick sizes proposed. Adjustments will need to be made on an annual basis when tick sizes are determined every March; and in many cases Algorithms will need to be adjusted each time a share, depositary receipts, ETF or certificate moves between different tick size categories during the year (i.e. due to a price range change). It is important to note that IT code changes will be required for these calibrations in certain cases, therefore an appropriate lead time should be provided to investment firms to deliver these adjustments.

We would therefore like to propose that a period of 48 hours is provided between the announcement of a tick size determination/change by a Trading Venue and the implementation/go-live day of the new tick size. This period should allow enough time for investment firms to calibrate their algorithms/systems correctly.

<ESMA_QUESTION_CP_MIFID_130>

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

<ESMA_QUESTION_CP_MIFID_131>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_131>

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



<ESMA_QUESTION_CP_MIFID_132>

AFME Response

No. AFME does not agree.

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

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

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

<ESMA_QUESTION_CP_MIFID_132>

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

<ESMA_QUESTION_CP_MIFID_133>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_133>

- **Data publication and access**

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

<ESMA_QUESTION_CP_MIFID_134>

AFME Response

Yes. AFME agrees with ESMA's proposal.

<ESMA_QUESTION_CP_MIFID_134>

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

<ESMA_QUESTION_CP_MIFID_135>

AFME Response

No. AFME does not agree.

AFME supports ESMA's proposed recovery provisions. However, ESMA needs to clarify what happens to the reporting obligations of firms during the six hours for APAs and CTPs and T+1 for ARMs. It is of vital importance that there is consistency between the DRSP continuity provisions and the obligations on firms to publish. In the most part, the purpose of the DRSPs is to provide services to firms such that they can meet their transparency obligations. For example, an investment firm must publish post trade prints through an APA. Therefore, the DRSP regime needs to be framed with the purpose of these services in the context of MiFID II in mind. In this regard, if the critical services of an APA is down for six hours and this is permissible, investment firms need to be recognised as having met their regulatory obligations during the time period if they submitted their trade reports to the APAs. We do not believe that the MiFID II regime should be asymmetric such that on one hand RTS 20 permits DRSPs not to function and on the other hand, firms remain liable with regards to their transparency obligations under RTS 9.

<ESMA_QUESTION_CP_MIFID_135>

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

<ESMA_QUESTION_CP_MIFID_136>

AFME Response

No. AFME does not agree.

As explained in response to Question 135, DRSP obligations need to be aligned with the MiFID II obligations on investment firms. If investment firms are required to report all trades irrespective of day/time and that those trades need to be reported through an APA, the regulations should ensure that there is an APA regime that can support these obligations. If APAs are left to determine their opening hours on a commercial basis, there may be no APAs that offer services which enable firms to comply with all their requirements.

MiFID II does not prescribe how investment firms should meet their requirements in the event that there is no APA available. As such, RTS 20 should ensure that only APAs that are fit for the purpose of enabling investment firms to meet their requirements as set out under MiFID II are authorised.

Therefore, recommend that APAs should be open 24 hours a day/7 days a week to ensure that there would always be an APA to publish the trade.

<ESMA_QUESTION_CP_MIFID_136>

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

<ESMA_QUESTION_CP_MIFID_137>

AFME Response

No. AFME does not agree.

We reiterate that RTS 20 should be designed to ensure that only DRSPs that are fit for purpose should be authorised. Specifically, the RTS should ensure that DRSPs have all the features they need which permit them to perform the functions set out in MiFID II. We do not believe that the provisions in the RTS are sufficient.

(i) RTS omits certain important features that APAs and ARMs should have in order to permit investment firms to fulfil their MiFID II reporting/publication obligations

- ***For APAs and ARMS, the requirements should ensure that they are capable of receiving the trade reports submitted by investment firms.*** At a minimum, APAs and ARMs should be capable of receiving the all data fields and flags set out in RTS 9 Annex II Table 1 and 2 and RTS 32. Also, for APAs to be functional, it should not be difficult for investment firms to switch from one APA/ARM to another as a result of technological barriers. As such, APA s should be able to receive the data in standard formats. Investment firms should not need to make significant changes to their infrastructure to change from one APA to another. The fact that there can be multiple APAs suggests that they need to be competitive. Further, given that MiFID does not require investment firms to use APAs located in their local jurisdictions, APA/ARMS need to have cross-border

arrangements in place. Otherwise, investment firms may not have competing (encouraging monopolistic behaviour) or any APAs.

- **APAs should be able to apply reportability logic.** Given that investment firms must publish through an APA and that there will be waterfall logic that identifies the investment firm responsible for making public the trade (Article 20(3)(c) and 21(5)(c) MiFIR), it is essential that APAs are capable of applying reportability logic.
- **It is important that APAs and ARMs have management information and accessibility capabilities.** This functionality ensures that firms can monitor and access the data they submit, which are essential features for enabling firms to publish their trades through a service provider. Specifically, the RTS should provide details on the following:
 - For each trade, firms should be able to access and monitor the ID of the trade, the receipt time, the publication time, updates, statuses and error messages.
 - The information provided back to the investment firm should be machine-readable
 - APAs/ARMs need to provide firms with the ability to track the statuses of the trades submitted, including confirmation receipt of the trade, time of receipt of the trade, whether the trade has been published, time of publication, whether the trade is being held for deferral, whether there is an error and publication cannot take place and the reason for rejection and if there has been a cancellation or amendment to the trade or a fix.
 - APAs should be capable of providing live and historical information of submissions (at least 2 months of information for trades that have been published and trades that have not been fully reported should be available)
 - Information relating to submitted trades should be freely available to the submitter

(ii) **AFME proposes the following changes RTS 20:**

- **Article 1:** AFME does not agree that the definition of “client” should include “any natural or legal person receiving the information published or distributed by an APA or CTP”. Such a provision introduces on APAs/CTPs to the public – this is a highly disproportionate requirement. For example, Article 9 requires APAs/CTPs to manage conflicts with clients – managing conflicts with the public at large is excessively burdensome. We suggest that if ESMA intends for certain provisions to apply to APAs/CTPs in relation to the public or any person purchasing data, it should state so expressly.
- **Articles 2, 3, 4, 5, 6, 7 and 8:** AFME agrees with ESMA’s proposed text.
- **Article 9:** As stated above, APAs/CTPs should not be subject to conflicts of interest obligations that require them to consider conflicts with the general public.
- **Article 10:** Article 10 introduces requirements with regards to shared resources, thereby implying that DRSPs may use shared resources. In the event that a DRSP uses share resources, there should be appropriate security arrangements such as data protection systems. We recommend that ESMA include security provisions in Article 10.
- **Article 11:** AFME refers to its response to Question 135.
- **Article 12:** AFME agrees with ESMA’s proposed text.

- **Article 13:**

- Para 3(c): DRSPs should also have arrangements to identify and manage risks relating to unauthorised data interferences that modifies computer data, in addition to deletions etc. Therefore, we suggest the following amendment:

(c) any unauthorised data interference that deletes, **modifies**, damages, causes to deteriorate, alters or suppresses computers data on the information system, or renders such data inaccessible

- Para 5 requires DRSPs to promptly inform competent authorities and clients of serious breaches and provide an incident report to the competent authority. Given the sensitive nature of the data, it is of great importance that DRSPs are also require to provide the incident report to clients as well. AFME suggest the following amendments:

5. A data reporting services provider shall promptly inform the competent authority of its home Member State and the clients of any breaches in the physical and electronic security measures undertaken. An incident report shall be provided to the competent authority **and the clients**, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents happening in the future.

- Para 6: As with paragraph 5, given the sensitive nature of the data and the importance of investment firms having timely access to information that impacts their ability to comply with the requirements, clients should also have access to the ARM incident reports. AFME suggests the following amendments:

6. An ARM shall promptly notify and send an incident report to the competent authority of its home Member State, **and any other competent authority to which the ARM submits transaction reports and the clients.**

- **Articles 14 and 15:** AFME agrees with ESMA's proposed text.
- **Article 16:** Whilst AFME does not oppose DRSPs being able to outsource their functionalities, it is important that they remain compliant with the provisions under Article 20. In paragraph 3, ESMA has provided that a DRSP shall remain responsible for any outsourced activity. However, we ask ESMA to explicitly clarify that the provisions within the RTS continue to apply in the event that functionalities are outsourced.
- **Article 17:** AFME recommends that there is no reason to limit the connectivity provisions to ARMS; it should also be applied to APAs and CTPs.
- **Articles 18:** AFME agrees with ESMA's proposed text.

<ESMA_QUESTION_CP_MIFID_137>

Q138. Do you agree with ESMA's proposal?

<ESMA_QUESTION_CP_MIFID_138>

AFME Response

Yes, AFME agrees. Although we believe the onus should also be on the new trading venues to ensure that they make the market data easily available. Also, to note, the obligation for a CTP to include every trading venue in the Union may create an operational/ logistical/ cost burden resulting in there being no CTPs at all.

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

<ESMA_QUESTION_CP_MIFID_138>

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

<ESMA_QUESTION_CP_MIFID_139>

AFME Response

Our opinion is that a time period of 3 months is more appropriate to allow sufficient time for communication, development and adequate testing of such changes, and indeed reflects current industry best practices. Regarding the 'free open source software' we think the requirement should actually read 'free, non-proprietary and open standards', which we feel closer represents what ESMA are looking to achieve (in terms of avoiding vendor lock-ins) without mandating the presence of a free open-source software to fulfil the regulatory requirement. We also believe that the mandate to use open standards is required in order to facilitate consolidation of data, i.e. simply having machine-readable data is not by itself a sufficient requirement.

<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

AFME Response

We would seek further clarification on the rationale behind allowing investment firms to report to more than one APA. In our view, this entails having to adapt operationally, as the system would have to be programmed to make distinctions between the "main" APA and the "duplicate" APA(s).

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

<ESMA_QUESTION_CP_MIFID_140>

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

<ESMA_QUESTION_CP_MIFID_141>

AFME Response

Our view is that only APAs should assign trade IDs to avoid a scenario where different CTPs are carrying the same trade with different IDs. This is not to say that individual CTPs cannot add supplementary IDs for their own technical or functional reasons, but the 'official' trade ID would always be that provided by the APA. We also recommend that the format of trade IDs be defined such that trades from a single APA can be unambiguously sequenced regardless of the level of granularity of timestamp used by the APA (e.g. by embedding a sequence number or similar) or that a distinct sequence number field be provided.

<ESMA_QUESTION_CP_MIFID_141>

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

<ESMA_QUESTION_CP_MIFID_142>

AFME Response

We believe that the APA publication and actual execution times are sufficient. Any delays arising from the CTP itself should be detectable without further timestamps as the receiving firm/system can add its own timestamp at that point if required.

<ESMA_QUESTION_CP_MIFID_142>

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

<ESMA_QUESTION_CP_MIFID_143>

AFME Response

We note that there are requirements under section 8.3 of the CP to record details to microsecond accuracy or even lower based on the capabilities of the originating trading system or service, and so we recommend a similar approach here. We also note that, regardless of the level of granularity chosen, (and as ESMA outlines at para 45, p612 of the CP the need for a sequence number to disambiguate the order priority in an order book) it would still in theory be possible to have two trades occurring so close to each other as to have the same timestamp, and recommend that either the trade identifier format be defined such that it achieves this, or that trades carry a sequence number to allow trades with the same timestamp to be unambiguously sequenced (i.e. takes the requirement from RTS 34 Article 5 paragraph 2 and applies this also to APAs).

Further in relation to the timestamp accuracy required by APAs, we believe that ESMA should decouple the accuracy from the precision/granularity:

- 1) For the reasons set out in our response to Q233 and Q234 on Clock Sync, we think this should be to microsecond level (6dps) at most.
- 2) In relation to the accuracy of the population of that field this should be determined by the respective upstream obligations, or otherwise separately specify that the accuracy should be in line with the Clock Sync RTS as we propose.

<ESMA_QUESTION_CP_MIFID_143>

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

<ESMA_QUESTION_CP_MIFID_144>

AFME Response

Each CTP trade report should both contain the identifier of the trading venue (or OTC etc. as appropriate) and the APA (where distinct from the trading venue). It is recommended that the venue identifiers be as defined elsewhere in the requirements on trade reporting (e.g. MICs) and that APAs be assigned identifiers with a centralised list published by ESMA.<ESMA_QUESTION_CP_MIFID_144>

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

<ESMA_QUESTION_CP_MIFID_145>

AFME Response

AFME is uncomfortable that venues are allowed to decide not to disaggregate by the criteria laid out in Article 2(1). However, if this persists then a mechanism for challenge must be explicit and effective in this RTS. AFME believes there is overwhelming evidence of demand for separation of auction data from continuous trading of equities and this should be mandatory and not subject to the exchange's assessment of demand.<ESMA_QUESTION_CP_MIFID_145>

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

AFME Response

EQUITIES

As noted in our response to Q49 above, AFME sees a possible inconsistency of approach in the proposed identifier of “XOFF” *“where an investment firm does not know it is trading with another investment firm acting as SI”* to the proposed approach at CP Section 5.4 p. 450-452, and in particular para 12.

CP Section 5.4 and the related RTS 23 proposes the following hierarchy:

- Seller always reports UNLESS
- One firm is an SI, then it reports.

AFME understands that ESMA is trying to ensure that where an investment firm trades with a client in the capacity of an SI that it is clear to both the broker and the client that the investment firm acting as an SI will report the trade “SI” which is achieved if the SI always reports. However certain other issues arise. Firstly, this reverses the current practice that the broker investment firm when not acting as an SI still reports, even for a client seller. This reversal which potentially will require the client seller to report will be at considerable and unnecessary cost to the industry and likely disruption to market data quality without an outweighing meaningful benefit. Secondly, RTS 8, Article 12 conveys post trade transparency obligations on investment firms, not an SI, and an investment firm is an SI on an instrument by instrument basis not as a firm. In relation to broker to broker transactions and following ESMA’s logic, to report “SI” requires an investment firm to know always whether or not the investment firm with which it trades is acting in the capacity of an SI. As this is unlikely to be the case then ESMA risks that all investment firms will report “XOFF” in this circumstance leading to few trades identified “SI” and will lead to double reporting and to the low quality of transaction data which ESMA seeks to avoid in section 5.4 of the CP.

In order to fulfil the need for clarification with regard to publication and address issues of low quality transaction data, AFME instead proposes:

1. Executing (or order-handling) firm reports. The executing firm is:
 - a. The firm that receives an order and fills it on. [This would include any SI receiving an order]
 - b. The firm that receives a request-for-quote and subsequently executes a transaction based on that quote.
2. If the executing firm cannot be determined, then the seller reports
3. Reporting firm would report their status with respect to the instrument [SI or XOFF]

FIXED INCOME

No. AFME does not agree.

AFME believes that it is of critical importance that RTS 5.4 results in publication of non-duplicative and high quality data. MiFIR Article 21(2) and (5)(c) clarify that there should be no duplication of publication. Whilst we support ESMA’s efforts to achieve this result, we do not agree with ESMA’s specific proposals because they are: not effective too complex and

difficult to implement. We suggest that a far more simple and implementable regime is possible (illustrated below).

First, ESMA needs to address on-venue trades. When a trade takes place on a European trading venue, the venue and the investment firms trading on the platform would publish the same trade (the same trade could, in theory, be published three times – by the venue and by both counterparties to the trade), resulting in a high level of duplication. We assume that MiFIR/MiFID did not intend to result in duplicate reporting of trades executed on venue, which would be confusing to the market and national authorities alike. We propose that ESMA should clarify that when a trade takes place on venue, investment firms should not publish the trade.

Second, there are a number of significant challenges with ESMA's concept of seller reports: (i) some investment firms will not have the infrastructure to comply with the reporting obligation and would expect the larger firm to meet the requirements; (ii) the seller may not be located within the EU or may not be an investment firm; (iii) for trades between two SIs, the seller may not be aware that their counterparty is an SI; and (iv) EMIR involved two-sided reporting involving delegation of reporting, which resulted in many problems. We urge ESMA to ensure that new regulation incorporates lessons-learned from previous regulations, such as EMIR.

Given the aforementioned problems, we propose that if there is only one self-reporting investment firm, that investment firm should publish (whether or not it is a buyer or a seller). A non-self-reporting entity would be a counterparty that is not an investment firm, is not located in the EU or delegates its publication obligations (similar to Article 9 EMIR) (such as clients). In the event that a firm (such as a client) delegates its publication obligations to its counterparty, the firm becomes non-self-reporting and the trade should be published once not twice.

If both entities are self-reporting (they may be two SIs or two investment firms), a simple rule of seller publishes can apply.

AFME suggests the following amended language for RTS 23:

RTS 23 Article 1

(1) Where a transaction is concluded on a European trading venue, investment firms party to that transaction should not publish the trade.

(2) Where a transaction between an investment firm and a non-self-reporting counterparty is concluded outside the rules of a trading venue, the investment firm shall be responsible for making the transaction public through an APA. The investment firm must ensure that the transaction is only made public once.

(3) An investment firm subject to obligations under Article 21(1) of Regulation (EU) No 600/2014 may delegate its publication obligations

(4) A non-self-reporting counterparty to a transaction is:

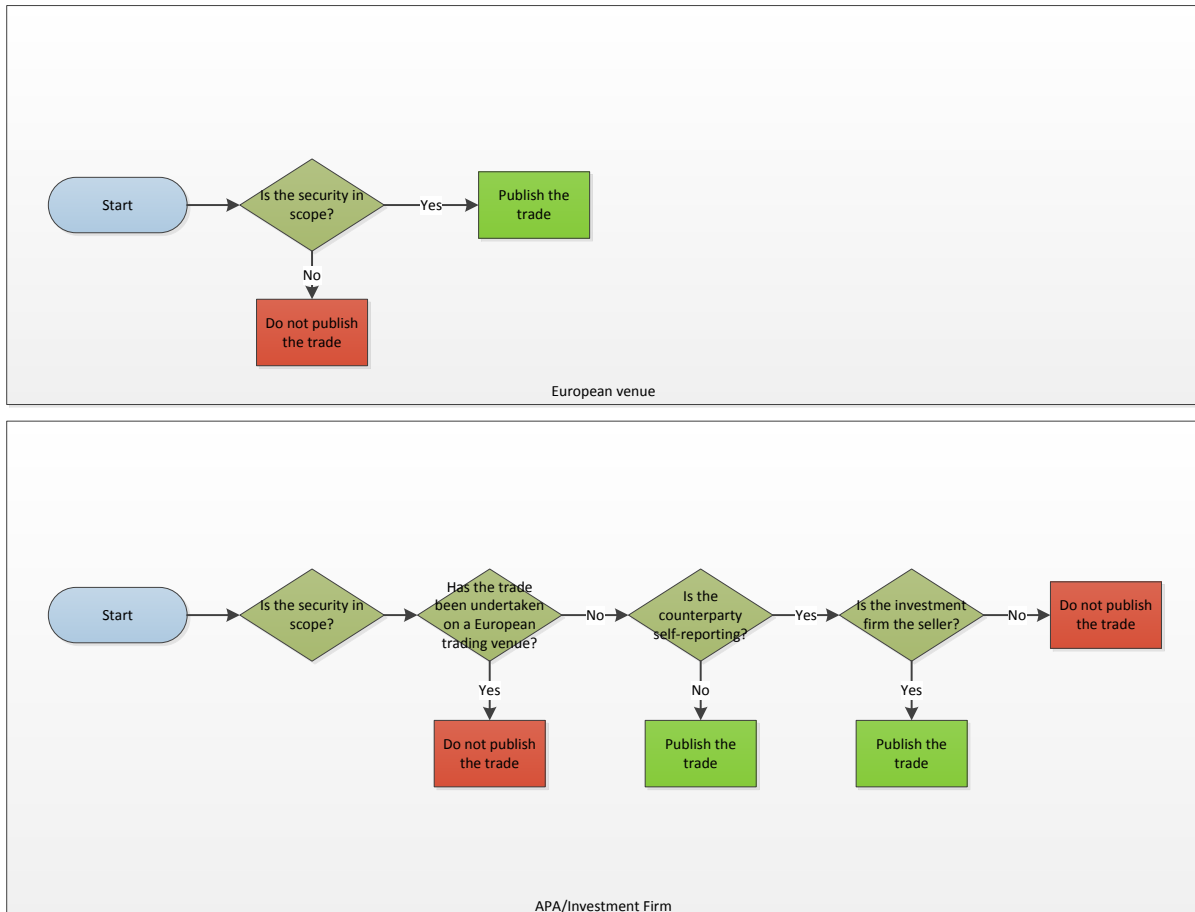
(a) An counterparty that is not a European investment firm; or

(b) An investment firm subject to the obligations in Article 21(1) of Regulation (EU) No 600/2014 that delegates its publication obligations to its counterparty the transaction, which is also an investment firm subject to the same obligations

(4) Where a transaction between two investment firms, neither of which is a non-self-reporting counterparty, is concluded outside the rules of a trading venue, the

investment firm that sells the financial instrument shall be responsible for making the transaction public through the APA.

(5) Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.



FOREIGN EXCHANGE

For FX, the GFXD does not agree with the draft RTS. The GFXD believes that there should be additional clarity to define who is the seller of a FX Forward or a FX Swap.

<ESMA_QUESTION_CP_MIFID_146>

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

EQUITIES

As noted in our response to Q49 above, AFME sees a possible inconsistency of approach in the proposed identifier of “XOFF” *“where an investment firm does not know it is trading with another investment firm acting as SI”* to the proposed approach at CP Section 5.4 p. 450-452, and in particular para 12.

CP Section 5.4 and the related RTS 23 proposes the following hierarchy:

- Seller always reports UNLESS
- One firm is an SI, then it reports.

AFME understands that ESMA is trying to ensure that where an investment firm trades with a client in the capacity of an SI that it is clear to both the broker and the client that the investment firm acting as an SI will report the trade “SI” which is achieved if the SI always reports. However certain other issues arise. Firstly, this reverses the current practice that the broker investment firm when not acting as an SI still reports, even for a client seller. This reversal which potentially will require the client seller to report will be at considerable and unnecessary cost to the industry and likely disruption to market data quality without an outweighing meaningful benefit. Secondly, RTS 8, Article 12 conveys post trade transparency obligations on investment firms, not an SI, and an investment firm is an SI on an instrument by instrument basis not as a firm. In relation to broker to broker transactions and following ESMA’s logic, to report “SI” requires an investment firm to know always whether or not the investment firm with which it trades is acting in the capacity of an SI. As this is unlikely to be the case then ESMA risks that all investment firms will report “XOFF” in this circumstance leading to few trades identified “SI” and will lead to double reporting and to the low quality of transaction data which ESMA seeks to avoid in section 5.4 of the CP.

In order to fulfil the need for clarification with regard to publication and address issues of low quality transaction data, AFME instead proposes:

4. Executing (or order-handling) firm reports. The executing firm is:
 - a. The firm that receives an order and fills it on. [This would include any SI receiving an order]
 - b. The firm that receives a request-for-quote and subsequently executes a transaction based on that quote.
5. If the executing firm cannot be determined, then the seller reports
6. Reporting firm would report their status with respect to the instrument [SI or XOFF]

FIXED INCOME

AFME refers to its response to **Question 146**.

<ESMA_QUESTION_CP_MIFID_147>

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

<ESMA_QUESTION_CP_MIFID_148>

AFME Response

We support access between trading venues and CCPs and vice versa. The prerequisite should be competition without an increase of unnecessary operational complexity and risk, and a choice for investors where to execute trades.

CCPs are able to handle fluctuations in their existing business, and we believe they can cope with the incremental volumes created by a new trading venue. AFME does not believe that this should be an argument to avoid competition.

Re 27.i) 'incompatibility of trading venue and IT systems...' is not an issue for operational risk/ complexity. Trading venues that are operating under MiFID and CCPs authorised under EMIR are technologically sophisticated entities that should be able to develop their connectivity protocols within a reasonable timeframe to facilitate access. In addition, IT solutions are vendor based, scalable and flexible in their compatibility. However, in order to assess incompatibility metrics and thresholds should be identified. Adequate staff with the appropriate level of competence is required for a CCP (27ii).

We agree that conflicts of law (points 34-36) is a reason to deny access (in case the laws are incompatible), also if investor protection in the event of default / insolvency cannot be ensured. Clarity is required which insolvency law / default procedure prevails (CCP or the Trading Venue) in case of different jurisdictions. We note that such challenges have been overcome in previous situations where European CCPs based in different countries have entered into inter-operable clearing arrangements with certain Equity trading platforms. We believe, that there should be a narrower definition of the range of legal risks for which CCPs may decide to deny an access request and consider it to be in line with the intention of the level 1 text (set out in recital 38) to remove commercial barriers that can be used to present competition in the clearing of financial instruments.

<ESMA_QUESTION_CP_MIFID_148>

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

<ESMA_QUESTION_CP_MIFID_149>

AFME RESPONSE

The below pertains to Equity & Equity-like products unless noted.

AFME is fully supportive of ESMA's view that the anticipated volume of transactions and the number of users does not impact a trading venue on reasonable risk grounds. AFME members have worked with Trading Venues and CCPs in an interoperable environment, where access has been granted by venues, and the platforms have not been adversely

affected by either of the above conditions

AFME does not consider that incompatibility of IT systems is likely to be an issue in practice, therefore we would welcome greater definition of IT incompatibility, and other risks identified by the venue, and to understand which authority decides if access should be granted or not. We believe that a venue should be able to identify why it is able to provide one CCP with a trade feed but not another. A comparison should be provided to ESMA of both the CCP and the venue. Entities claiming IT incompatibility should be required to evidence their claims.

Article 6 states that denial of access may be appropriate where a trading venue incurs costs when providing access that threatens the viability of the venue or its ability to meet minimum capital requirements. We would urge ESMA to include the following text: “Clear and transparent details of the costs should be discussed between the CCP and venue to try to reduce the expense. If this cannot be resolved, the NCAs of both parties must be provided with the reasons and costs.”

With regards to the clearing of products outside a CCP’s current EMIR authorization category, we do not believe that CCPs should be required to clear these products.

In terms of the timing for migration, our experience of a member exchange venue migrating from one CCP to another is that 3 to 6 months has proved a workable timeframe to set up the relevant access arrangements. However, this pertains to cash products and it is possible that the timing is different for other instruments.

<ESMA_QUESTION_CP_MIFID_149>

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

<ESMA_QUESTION_CP_MIFID_150>

AFME Response

General comment: the below pertains to Equity & Equity-like products unless noted

We recognise that CCPs are critical to risk mitigation and reducing systemic risk. The receipt of multiple access requests being sent to CCPs would require prioritisation. Guidance for the infrastructures in this respect would be appreciated, e.g. requests to be treated in the order they are received. Provided a CCP is not obliged to process multiple requests at once, the human resources element may diminish. CCPs pride themselves on their ability to be scalable. The product is likely to be the defining factor. Cash equities should not overly burden a CCP whilst an OTC derivative may require additional resources. A suitable differentiation in the text would be welcome and a definition is required of what exactly constitutes ‘inability to acquire the necessary human resources...’ and how any such inability is to be qualified.

<ESMA_QUESTION_CP_MIFID_150>

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

<ESMA_QUESTION_CP_MIFID_151>

AFME Response

General comment: the below pertains to Equity & Equity-like products unless noted
AFME broadly agrees with the three elements of not meeting legal obligations, undue risk and a lack of remedial action to satisfy its legal obligations. We would urge ESMA to ask the NCAs to inform the trading venue, CCP and other NCA where applicable so that the process is as transparent as possible. Also, it not clear how the phrase “have a wider negative impact on the market” in Article 7(b) can be quantified and therefore defined, implemented and measured fairly, therefore high level guidelines on what could constitute wider impact on the market would be appreciated.

<ESMA_QUESTION_CP_MIFID_151>

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

<ESMA_QUESTION_CP_MIFID_152>

AFME Response

Whilst AFME agrees with many of the proposals, we do question 8.1.f (iv) namely the termination, if risks increase in a way that would have justified denial in the first place. This requires an infrastructure to retrospectively determine what criteria would have caused denial in the first instance. It would be better to be proactive and require the infrastructure to determine the risks at the outset and include them in the agreement with the other party. There should be some flexibility to prevent the termination of a contract if the relevant parties agree that circumstances have changed to the extent that the agreement requires revision.

- We agree in principle. Cyber-security breaches to be included (proposed under Art 8(1) (f) (v)).
- Further clarifications on “transfer orders” in Art 8(1) (c), Art 8(1) (e) to be extended to cover market practices.
- Extend art 8(1)(f)(ii) that access agreement is clear on the impact of termination thereon on trades already cleared by the CCP (to ensure systematic integrity and market stability).
- Art 8(1) (f) (iii) should refer to the “defaulting party” rather than the “relevant party”.

<ESMA_QUESTION_CP_MIFID_152>

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

<ESMA_QUESTION_CP_MIFID_153>

AFME Response

AFME agrees. We would ask that ESMA clarifies whether it is the schedule of fees or the fees themselves that must be the same. AFME believes that CCP fees should be trading-venue neutral. We support the required granularity of the CP. We note that where access arrangements have been added to date, the costs of implementation have typically been

borne by the CCPs and Trading Venues in question. We are concerned that implementation costs may be opaque and subjective, and it is important to avoid barriers to entry being sustained via unduly elevated pricing for new access arrangements.

<ESMA_QUESTION_CP_MIFID_153>

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

<ESMA_QUESTION_CP_MIFID_154>

AFME Response

This question makes reference to RTS 24 (articles 11-13), pertaining to the collateral and margining requirements of economically equivalent contracts.

- **As regards to the definition of economically equivalent contracts**, we understand the concerns that the present drafting of article 11 appears to require a CCP to treat as 'economically equivalent' i) contracts to which it has granted access and ii) which fall within the scope of the CCP's EMIR authorization. We share the concern that using the scope of a CCP's authorization as a basis for assessing economic equivalence is therefore very broad and, to that end, suggest that the price correlation between financial instruments is used to establish this. We consider that a price correlation established at 90% would be sufficient.
- Once a contract is established as being economically equivalent, we agree with ESMA's proposals that CCPs should apply the same margining and collateral methodologies, irrespective of where contracts are executed, as proposed in Article 11 (2).
- **With respect to ESMA's proposals for netting set out in Article 12**, we agree that CCPs should use the same netting processes irrespective of where a contract is executed as set out in Article 12(1). However, we do not consider that a CCP should exclude from netting economically equivalent contracts traded on different trading venues as a result of basis risk (which is defined as "less than perfectly correlated movements") and consequently propose deletion of the definition of basis risk in Article 12(4) and to delete reference to it in Article 12(2).
- **In relation to cross-margining of correlated contracts**, we agree with ESMA's proposal as drafted in article 13

Costs and Benefits: The ability to net economically equivalent contracts and cross margin correlated contracts is an essential part of removing the commercial barriers that prevent competition in the clearing of financial instruments, as called for in Recital 38 of MiFIR. Without the benefits of netting and cross-margining, it is hard or impossible for new entrants to compete on the "all in" cost of trading (in which the cost of clearing is a key determinant) and would mean that the stated policy aim of the access arrangements in Article 35 and 36 of MiFIR would not be achieved. We believe that the costs to obtain legal opinions on the enforceability of netting would be far outweighed by the benefits that open access will introduce.

<ESMA_QUESTION_CP_MIFID_154>

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

<ESMA_QUESTION_CP_MIFID_155>

AFME Response

We agree with provisions in Article 15 of the RTS. Details need to be explicitly agreed on the time the NCA has to approve a transitional arrangement.

<ESMA_QUESTION_CP_MIFID_155>

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

<ESMA_QUESTION_CP_MIFID_156>

AFME Response

A date is required by which an assessment period must end. Otherwise this could cause market uncertainty due to the open-ended nature.

<ESMA_QUESTION_CP_MIFID_156>

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

<ESMA_QUESTION_CP_MIFID_157>

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<ESMA_QUESTION_CP_MIFID_157>

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

<ESMA_QUESTION_CP_MIFID_158>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_158>

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

<ESMA_QUESTION_CP_MIFID_159>

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<ESMA_QUESTION_CP_MIFID_159>

(ix) Requirements applying on and to trading venues

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

<ESMA_QUESTION_CP_MIFID_160>

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<ESMA_QUESTION_CP_MIFID_160>

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

<ESMA_QUESTION_CP_MIFID_161>

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<ESMA_QUESTION_CP_MIFID_161>

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

<ESMA_QUESTION_CP_MIFID_162>

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<ESMA_QUESTION_CP_MIFID_162>

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

<ESMA_QUESTION_CP_MIFID_163>

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<ESMA_QUESTION_CP_MIFID_163>

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

<ESMA_QUESTION_CP_MIFID_164>

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<ESMA_QUESTION_CP_MIFID_164>

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

<ESMA_QUESTION_CP_MIFID_165>

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<ESMA_QUESTION_CP_MIFID_165>

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

<ESMA_QUESTION_CP_MIFID_166>

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<ESMA_QUESTION_CP_MIFID_166>

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

<ESMA_QUESTION_CP_MIFID_167>

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<ESMA_QUESTION_CP_MIFID_167>

(x) Commodity derivatives

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

<ESMA_QUESTION_CP_MIFID_168>

AFME Response

We believe that all entities engaged in similar or analogous activities should be regulated in a consistent manner and therefore welcome the overall direction of ESMA's proposals to restrict the availability of the ancillary activities exemption in the case of firms who are active traders in the commodities derivatives markets, subject to the comments below regarding market impact.

Accordingly, we have no objection in principle to the proposed thresholds. However, as many corporates rely on an adequate level of market activity (in terms of liquidity and provision of hedging instruments) to hedge the commodity risks inherent in their businesses, the impact of ESMA's proposals needs to be balanced with any potential market disruption affecting the ability of such organisations to effectively manage such risks. We are concerned that ESMA has not adequately assessed the impact on market liquidity of the proposed thresholds and would encourage ESMA to conduct further assessments in this regard as part of its recently announced cost/benefit assessment.

<ESMA_QUESTION_CP_MIFID_168>

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

<ESMA_QUESTION_CP_MIFID_169>

AFME Response

We are supportive of this approach.

<ESMA_QUESTION_CP_MIFID_169>

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

<ESMA_QUESTION_CP_MIFID_170>

AFME Response

We do not oppose the deduction of privileged transactions from the calculation of capital employed for the first test and from the trading activity for the second test in light of the reduced thresholds.

However, we note that the RTS 28 does not contain a definition of "capital employed" and that it will be difficult to attribute capital to specific activities on the basis of balance sheets and financial statements.

<ESMA_QUESTION_CP_MIFID_170>

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

<ESMA_QUESTION_CP_MIFID_171>

AFME Response

We do not object to this approach in light of the reduced thresholds.

<ESMA_QUESTION_CP_MIFID_171>

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

<ESMA_QUESTION_CP_MIFID_172>

AFME Response

We do not object to this approach in light of the reduced thresholds.

<ESMA_QUESTION_CP_MIFID_172>

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

<ESMA_QUESTION_CP_MIFID_173>

AFME Response

We believe that all entities engaged in similar or analogous activities should be regulated in a consistent manner and therefore welcome the overall direction of ESMA's proposals to restrict the availability of the ancillary activities exemption in the case of firms who are active traders in the commodities derivatives markets, subject to the comments below regarding market impact.

Accordingly, we have no objection in principle to the proposed thresholds. However, as many corporates rely on an adequate level of market activity (in terms of liquidity and provision of hedging instruments) to hedge the commodity risks inherent in their businesses, the impact of ESMA's proposals needs to be balanced with any potential market disruption affecting the ability of such organisations to effectively manage such risks. We are concerned that ESMA has not adequately assessed the impact on market liquidity of the proposed thresholds and would encourage ESMA to conduct further assessments in this regard as part of its recently announced cost/benefit assessment.

<ESMA_QUESTION_CP_MIFID_173>

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

<ESMA_QUESTION_CP_MIFID_174>

AFME Response

We do not object to this approach in light of the reduced thresholds.

<ESMA_QUESTION_CP_MIFID_174>

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

<ESMA_QUESTION_CP_MIFID_175>

AFME Response

We recognise that in the absence of further guidance there may be practical difficulties in attributing capital to specific activities on the basis of balance sheets and financial

statements. However, we do not object to the deduction of the capital of privileged transactions from the calculation of capital employed, in the context of the current proposals.

<ESMA_QUESTION_CP_MIFID_175>

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

<ESMA_QUESTION_CP_MIFID_176>

AFME Response

We agree with this approach, provided that the gross notional value is used both as nominator and denominator. However, our members point out that whilst the notional amount is a reportable field under EMIR, the gross notional value is not. Accordingly, we would request that ESMA clarifies how it will ensure that this data is available.

<ESMA_QUESTION_CP_MIFID_176>

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

<ESMA_QUESTION_CP_MIFID_177>

AFME Response

We do not object to this approach in light of the reduced thresholds.

<ESMA_QUESTION_CP_MIFID_177>

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

<ESMA_QUESTION_CP_MIFID_178>

AFME Response

We do not object to this approach in light of the reduced thresholds.

<ESMA_QUESTION_CP_MIFID_178>

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

<ESMA_QUESTION_CP_MIFID_179>

AFME Response

We believe that all entities engaged in similar or analogous activities should be regulated in a consistent manner and therefore welcome the overall direction of ESMA's proposals to restrict the availability of the ancillary activities exemption in the case of firms who are active traders in the commodities derivatives markets, subject to the comments below regarding market impact. Accordingly, we have no objection in principle to the proposed thresholds. However, as many corporates rely on an adequate level of market activity (in terms of liquidity and provision of hedging instruments) to hedge the commodity risks inherent in their businesses, the impact of ESMA's proposals needs to be balanced with any potential market disruption affecting the ability of such organisations to effectively manage such risks. We are concerned that ESMA has not adequately assessed the impact on market liquidity of the proposed thresholds and would encourage ESMA to conduct further assessments in this regard as part of its recently announced cost/benefit assessment.

Furthermore, we note with concern that the 0.5% test is based on a denominator which ESMA suggests "should be undertaken on the basis of TR data". It is possible that a

substantial portion of the activity in each of the commodity classes identified by Article 2(b) of the draft RTS is not reportable under EMIR Article 9, and therefore that firms whose trading activity is less than 0.5% of the total market may be above 0.5% of trading activity reported to the TR. Accordingly, we would reiterate the point we made in response to the Discussion Paper that the position reports under Article 58(1) of MiFID II may be a more appropriate source of data for the size of trading in the relevant asset class in the EU.

<ESMA_QUESTION_CP_MIFID_179>

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

<ESMA_QUESTION_CP_MIFID_180>

AFME Response

It is difficult to assess the usefulness of such test (including the appropriate threshold) without available data in terms of the size of the market.

<ESMA_QUESTION_CP_MIFID_180>

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

<ESMA_QUESTION_CP_MIFID_181>

AFME Response

In principle, we are supportive of the inclusion of all derivatives in the definition of hedging transactions.

We also support the development to take into account only business activity in the EU when calculating privileged transactions.

<ESMA_QUESTION_CP_MIFID_181>

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

<ESMA_QUESTION_CP_MIFID_182>

AFME Response

We understand the basis on which ESMA has sought to use average data for 2016 for assessing whether an entity falls within the scope of the exemption upon the entry into force of MiFID II/MiFIR.

Nevertheless, we recognise that market participants who are currently unauthorised will need to apply for authorisation prior to the entry into force of MiFID II/MiFIR to ensure that they are authorised prior to 3 January 2017 and that average data for 2016 will only become available as at 31 December 2016 (at the earliest). Given applications for authorisation can take up to 6 months, it is highly unlikely that market participants who are unsure as to whether they will fall within the scope of the exemption will be able to wait until the end of the assessment period to make a decision as to whether to apply for authorisation. Accordingly, we are doubtful that the average data for 2016 is the optimal data set for determining whether an entity falls within the MiFID II regime upon its entry into force and would encourage ESMA to reconsider its proposal in this regard.

<ESMA_QUESTION_CP_MIFID_182>

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

<ESMA_QUESTION_CP_MIFID_183>

AFME Response

We would like to make the following high level comments in respect of the proposed framework:

Deliverable Supply

As the EU framework is to establish baseline limits for both spot and other months by reference to deliverable supply as defined in RTS 29 (i.e. deliverable supply means that which is used either as settlement for, or a pricing reference to, that commodity derivative), before market participants are able to opine on the appropriateness of the baseline figure of 25% we require clarity regarding how the concept of deliverable supply will be applied by ESMA. At a minimum, we require ESMA to:

- i. publish the methodology for calculating deliverable supply. We believe the proposed deliverable supply definition in Recital (5) and Article 1(2) of the RTS could be interpreted to mean overall trading interest in the commodity derivative whether for pricing purposes (i.e. cash settled commodity derivatives or physical settlement). Alternatively, the definition of deliverable supply (if based on the Article 3 deliverable supply adjustment factor) may be interpreted as the total physical supply of a commodity that meets the delivery specifications of a futures contract. Taking the ICE Brent contract for the spot month and other months as an example, on the first interpretation, deliverable supply could be very low whereas if based on the standard market definition it would be much higher.

Furthermore, in our view, limits should be established for the (i) spot month based on deliverable supply and (ii) other months (i.e. aggregate limit) based on an estimate of open interest, subject to a de minimis threshold. Please see our response to question 184 for further details.

In the event that deliverable supply means the quantity of the underlying physical commodity then we propose that deliverable supply should only be used to establish the spot month limit and that other months limits should be established based on open interest, which we believe to be a more suitable metric. Also given the broad scope of commodity derivatives for which position limits will need to be established, it is critical that open interest is defined as overall outstanding trading interest in the commodity derivative instead of the traditional exchange based definition of open interest. Article 4 appears to capture the concept that open interest should reflect overall outstanding trading interest in other financial instruments (e.g. OTC contracts) however we need to ensure that “other financial instruments with the same underlying commodity markets” includes underlyers which are correlated to the exchange traded contract e.g. crude oil and refined petroleum products; and

- ii. publish estimates of deliverable supply for (at minimum) the key commodity contracts. Without estimates of deliverable supply, the industry will be unable to determine with any certainty whether the baseline figure is overly restrictive / appropriate. It is clear for some commodities it will be very challenging to source data to determine deliverable supply. For example, physically settled gold (some of which may be in scope of the regime e.g. physically settled forwards and options traded on-venue) is predominantly traded OTC (i.e. there is no exchange traded contract and only a small portion of OTC is cleared on exchange). Therefore deliverable supply estimates on which limits are to be based will need to be sourced from OTC data which is not publicly available. Another example is

- refined petroleum products which can be sourced anywhere in the world which may make it very difficult to obtain access to the relevant data in order to achieve a credible estimate of deliverable supply. Also if a broader definition of deliverable supply applies, the overall outstanding market interest derived from OTC swaps etc. may be difficult to source; and
- iii. provide clarity as to how the adjustment mechanism will work in relation to the factors proposed, in particular, deliverable supply and open interest. For example paragraph 28 of the Consultation Paper provides that the greater the volume of open interest the greater the position limit. However if the baseline figure is low due to no available deliverable supply data, the regulator is only able to increase the limit by a maximum of 15%. Accordingly it is critical that ESMA identify the markets for which it would be difficult to obtain deliverable supply and to provide for further flexibility in the event open interest is the only reliable / available metric.

Risk of real economy impact

In designing the framework for the calculation of position limits, consideration must be given to the impact on those organizations which utilise commodity derivatives to hedge the various business/commodity risks associated with their day to day business (e.g. manufacturers, end users and corporate treasurers). In our view, the position limit regime should be calibrated to ensure that it avoids disruption to the market/real economy. In this regard, we highlight that commodity derivatives markets are global by nature. Market participants need to hedge their risk across multiple contracts (both OTC and on-venue) and regional areas. The EU position limits regime should therefore allow netting on a broad basis in order to accurately reflect:

- a. the global position given it is common for EU risk to be hedged with contracts traded on third country venues, i.e. the real risk exposure. Notwithstanding, we agree that the EU position limits should not apply to third-country venue contracts because this could lead to conflicting rules and requirements applying to the same position;
- b. the reality that end users (e.g. manufacturers, airlines, refiners) require financial institutions to provide hedging instruments to manage price risk for their physical commodity consumption and/or production. Refiners and airlines, for example, depend on financial institutions to assume basis risk in order to hedge their specific grade of fuel oil (e.g. 0.1 Gasoil Rotterdam) used for their commercial activities because these institutions commonly offset this exposure with more liquid exchange traded contracts (e.g. gas oil futures). In addition this dynamic allows financial institutions to aggregate bespoke interests in a diverse client base resulting in an aggregated central pool of liquidity which is highly correlated. The liquidity pool is created by aggregating a highly correlated set of bespoke interests in a commodity type. For example, an airline buys an OTC swap from a financial institution referencing Jet Rotterdam which the financial institution immediately hedges with gasoil futures. The next day a refiner sells a swap to a financial institution referencing Gasoil 0.1 FOB Med which is not exactly the same as Jet Rotterdam but it is highly correlated and therefore that second trade provides a hedge for the first at which point the financial institution can terminate the gas oil futures which provide a temporary hedge until the various OTC flows can be matched;
- c. that these end user entities rely upon the flexibility of financial entities acting as liquidity providers for hedging intermediation to allow them to manage their exact price risk. In order to ensure the availability of hedging instruments and to prevent liquidity pools from shrinking or dissipating, it is critical (in the absence of a pass through hedge exemption)

that any positions which the financial institution executes to reduce the risk of that end user hedge can be netted. As demonstrated above, it is vital that hedges that may be non-MiFID instruments or which are highly correlated to an on-venue contract can be taken into account in determining a person's net exposure or, at the very least, that the limits are established at appropriate levels in recognition of the fact that financial institutions will not benefit from a pass through exemption in respect of end user risk reducing transactions; and

- d. the fact that fabricators / manufacturers look to financial institutions / trading houses for supply of physical commodities (e.g. metal fabricators) and that these financial institutions / trading houses will hedge these physically settled forwards (e.g. non-MiFID financial instruments) with on venue commodity derivatives. To the extent that physical positions remain ineligible for netting, the risk position will not be accurately reflected and the limit will be reached quicker than if netting of OTC physical positions was permitted. In addition if physical positions cannot be netted this may lead to hedges for such physical OTC transactions migrating off venue.

Contracts where there is no "deliverable supply" for the relevant underlying

The definition of "commodity derivatives" includes contracts which relate to underlyings referred to in Section C(10) Annex 1 MiFID2. ESMA's technical advice to the Commission (page 422) indicates that those underlyings will include factors which are not deliverable e.g. environmental variables such as weather factors and indices and other measures of prices or values. ESMA's proposals for setting position limits do not address how position limits should be set where there is no deliverable underlying. In our view, this should be addressed in a supplemental consultation. In addition, this highlights the need for ESMA to provide the methodology for the calculation of deliverable supply to determine the baseline where there is no deliverable supply for the relevant underlying.

Commodity derivatives in the form of listed warrants or similar instruments

The definition of "commodity derivatives" includes transferable securities covered by Article 4(1)(44)(c) MiFID2, such as cash-settled warrants relating to commodities or underlyings covered by section C(10). It is not clear how ESMA envisages that the methodology for setting position limits will be adapted in cases where the commodity derivative takes the form of a warrant listed or traded on a securities trading venue. For example, it is unlikely that trading venues for such warrants will calculate the deliverable supply as contemplated by the recitals to draft RTS 29. It may also be more difficult to determine the "spot month" when a range of similar warrants trade on a particular venue.

ESMA should also make clear that the definition of "commodity derivative" does not include:

- warrants that are physically settled by delivery of the underlying commodity or other deliverable since Article 4(1)(44)(c) MiFID2 only covers instruments "giving rise to a cash settlement" (or instruments exercisable into transferable securities); or
- shares or bonds or other forms of securitised debt, even if they embed derivatives relating to commodities or other underlyings specified in Section C(10) Annex I MiFID2, because Article 4(1)(44)(c) MiFID2 is a residual category covering "other securities" i.e. securities not already covered in Article 4(1)(44)(a) or (b).

Scope of the position limits regime

It is not clear from the consultation paper what ESMA's views are on the scope of the position limits under Article 57. It will be important that Member States take a common approach to the scope of application of these requirements. Accordingly, ESMA should indicate how Member States should apply the requirements.

Equivalence and Flexibility

In our view, given the global nature of the commodity markets, it is imperative that the regime is consistent as possible with other existing regimes, (i.e. the US). In this regard, we note, that the US use open-interest as the metric for other months.

In addition given the issues highlighted above, we believe it is necessary for the regime to be sufficiently flexible in terms of both the expression of limits and measure of the market size to adapt to market changes. We believe the mechanism proposed in which the NCA or central CA can adjust the baseline figure according to the factors proposed in Articles 2-8 of RTS 29 (e.g. the maturity of the commodity derivatives contracts, deliverable supply in the underlying commodity, the overall open interest, number and size of market participants and characteristics of the underlying commodity) is an expression of the type of flexibility the market will require given dynamic nature of the commodity markets. That said, it is critical that participants understand the methodology for calculating deliverable supply in order to determine if the adjustment mechanism proposed builds in an appropriate level of flexibility including a possible de-minimis threshold below which the established position is not applied.

Cash and Physically settled spot

We note with concern that there is no distinction between the baseline for cash settled spot and physically settled spot. In our view it is important that the cash settled spot limit is established at a higher level than the physically settled spot limit. This is because high levels of trading activity in cash settled spot month contracts do not pose the same risk of price distortion in the underlying commodity as physically settled spot.

<ESMA_QUESTION_CP_MIFID_183>

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

AFME Response**Deliverable supply**

We take the view that ESMA's proposed 25% of deliverable supply baseline limit for spot-month contracts may be appropriate and also support the flexibility granted to national regulators to adjust it by +/- 15%. However in order to come to a conclusive view, market participants (corporates, financial firms) need ESMA to (i) confirm its interpretation of the "deliverable supply" definition, including the methodology for calculating deliverable supply and (ii) provide estimates of deliverable supply (based on the relevant interpretation of the deliverable supply definition) for key contracts to assess whether the 25% is appropriate for all commodities and the adjustment mechanism will provide sufficient flexibility for national regulators.

Furthermore, in our view, limits should be established for the (i) spot month based on deliverable supply and (ii) other months (i.e. aggregate limit) based on an estimate of open interest, subject to a de minimis threshold.

We underline that it will be challenging to obtain estimates of deliverable supply for other month limits and that open interest is the more relevant metric. We note ESMA's concerns that the use of open interest for other months limits may constrain legitimate business in other month contracts along the curve. However this could be addressed by introducing a de minimis threshold, below which limits could not be set, thereby avoiding any constraints on contract growth. In this regard, we believe that a de minimis threshold could be set per contract and calibrated (following a public consultation) to ensure that the position limits are only established for contracts once the total Dollar/Euro notional amount outstanding in such contract exceeds the de minimis threshold set for such contract. In this way the position limit regime would only capture positions above a size which could potentially impact the orderly pricing and settlement conditions of that market or which may lead to market distortions.

In addition, as highlighted in response to Q.183, end user participants rely upon centralised pool of liquidity for correlated underlyers (e.g. refined petroleum products) as a key component of efficient end user hedging intermediation which allows such entities to manage their exact price risk related to the specific grade of fuel oil which they use in their commercial activities. Financial institutions aggregate bespoke interests in a diverse client base resulting in an aggregated central pool of liquidity which is highly correlated. This liquidity pool is created by aggregating a highly correlated set of bespoke interests in a commodity type, for example, an airline buys an OTC swap from a financial institution referencing Jet Rotterdam which the financial institution immediately hedges with gasoil futures which for the financial institution hedge the majority of the OTC risk. The next day a refiner sells a swap to financial institution referencing Gasoil 0.1 FOB Med which is not exactly the same as Jet Rotterdam but it is highly correlated and therefore that second trade provides a hedge for the first at which point the financial institution can terminate the gas oil futures which provide a temporary hedge until the various OTC flows can be matched.

The availability of this centralised pool of liquidity among correlated underlyers is a key component of efficient end user hedging intermediation. If ESMA's vision of the population of underlyers which are eligible for offsets is too narrow then there is a risk that these correlations will be broken, impacting the provision of liquidity for end users (i.e. if financial

institutions are restricted from netting the futures with this pool of instruments which reference these correlated underlyers then financial institutions will be restricted in making that pool of liquidity available to end users). It is critical that these correlated underlyers are eligible for netting because the degree of correlation is even tighter in the outer months.

Furthermore reference to deliverable supply raises the following points:

- How ESMA/ national regulators will measure the deliverable supply, including production and storage is very unclear, and notably how they can access data from physical facilities not subject to financial supervision (e.g. oil refineries). Whereas it seems workable for some commodities (e.g. metals), it will present a significant challenge for other commodities, in particular when markets are global (e.g. oil, agriculture).
- What period will be considered as relevant for the measure of deliverable supply compared to the maturity of other month contracts is also unclear as well as how ESMA/ national regulators will distinguish between storable/ non storable commodities, seasonal/ non seasonal commodities.
- What geographical spectrum is to be considered for the measure of the deliverable supply, i.e. European – Global, is also unclear. Whereas some markets remain mostly national (e.g. natural gas and power), some others are global by nature (oil, agriculture).

In the light of the operational challenges that the use of deliverable supply for other months present for market participants and regulators, we generally consider open interest as a better metric for other months contracts as the open interest reflects all relevant market factors relating to the trading of the relevant contract (e.g. maturity, volatility, number and size of market participants) thereby ensuring limit flexibility to prevailing market conditions for the relevant underlying commodity.

<ESMA_QUESTION_CP_MIFID_184>

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

<ESMA_QUESTION_CP_MIFID_185>

AFME Response

In the absence of clarity regarding the definition of “deliverable supply” and estimates for deliverable supply we are unable to comment on whether a maximum position limit of 40% is appropriate.

As stated in response to question 184 above, we would advocate the introduction of a de minimis threshold, below which limits could not be set, thereby avoiding any constraints on contract growth. In this regard, we believe that a de minimis threshold could be set per contract and calibrated (following a public consultation) to ensure that the position limits are only established for contracts once the total Dollar/Euro notional amount outstanding in such contract exceeds the de minimis threshold set for such contract. In this way the position limit regime would only capture positions above a size which could potentially impact the orderly pricing and settlement conditions of that market or which may lead to market distortions.

In our view consideration also needs to be given to non-linear position changes which may occur as a result of option expirations for any contract i.e. options on futures expiring ahead of the corresponding future contract expiration. It can be difficult to manage limits during the option expiration window and participants could find themselves over the limit and may not

know what the delta will be until the future has expired. Under the CFTC regime, there is a 1 day grace period after option expiration to come into compliance with the limit and we believe that the same flexibility should be provided under the EU regime.

<ESMA_QUESTION_CP_MIFID_185>

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

<ESMA_QUESTION_CP_MIFID_186>

AFME Response

Without the methodology for calculating deliverable supply, market participants cannot accurately assess whether the +/- 15% adjustment is suitable. It may be more appropriate to allow regulators some flexibility due to factors specific to the commodity asset class (such as open interest, number of market participants) in the event that a higher or lower adjustment is required. Giving recognition to the fact that unique circumstances may exist across the wide range of underlyers which come within the scope of the position limit framework could be a useful concept although it is likely that this could be picked up through open interest if used as the metric for other months.

<ESMA_QUESTION_CP_MIFID_186>

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

<ESMA_QUESTION_CP_MIFID_187>

AFME Response

ESMA is required to consider volatility and we recognise that volatility may have a residual value in terms of reflecting illiquidity issues.

We highlight that if open interest is used to determine other month limits, the other factors become incidental. This is because open interest numbers would already factor in such matters as maturity of contracts, volatility, number and size of participants and characteristics of underlying commodity markets.

<ESMA_QUESTION_CP_MIFID_187>

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

<ESMA_QUESTION_CP_MIFID_188>

AFME Response

Yes, we do believe the methodology for setting other months position limits should differ from the methodology for setting the spot month position.

Subject to the concerns we raised in response to questions 183 and 184 above, we believe deliverable supply is the correct metric for spot month contracts. However, it is important that the cash settled spot limit is established at a higher level than the physically settled spot limit (e.g. a multiple of deliverable supply for the physically settled spot month). This is because cash settled spot contracts are not structured for delivery and are therefore not constrained by available supply of physical inventory. In addition, we acknowledge the logic in ESMA's conclusion (at paragraph 21) that the limit for the spot month should generally be lower than the other month limit given that other months limit will apply to multiple expiries.

However we would point out that for certain commodity contracts the limit for the spot month may be higher than the other months as the bulk of trading activity occurs in the spot month. We believe further analysis should be undertaken to test this assumption and no conclusions should be reached until the calculation methodology for deliverable supply is made available. As stated in response to question 184 above, we would advocate the introduction of a de minimis threshold, below which limits could not be set, thereby avoiding any constraints on contract growth. In this regard, we believe that a de minimis threshold could be set per contract and calibrated (following a public consultation) to ensure that the position limits are only established for contracts once the total Dollar/Euro notional amount outstanding in such contract exceeds the de minimis threshold set for such contract. In this way the position limit regime would only capture positions above a size which could potentially impact the orderly pricing and settlement conditions of that market or which may lead to market distortions.

In relation to the use of open interest for other month limits, as the MiFID II regime applies to a broader range of commodity derivatives than just futures derivatives and will include economically equivalent OTC contracts, it will be necessary for open interest to reflect the notional volumes of OTC contracts relating to the relevant on-venue contracts. It is also the case that certain commodities may not have a related futures contract and competent authorities will need to estimate the deliverable supply, open interest based on notional amounts of swaps and other relevant OTC contracts (e.g. options and forwards). Open interest/deliverable supply data should be available via trade repositories as a result of EMIR reporting.

We also note, the difference between commodities means that some are durable and can be stored indefinitely and some cannot; this means that for some commodities, as well as production, deliverable supply should also include stock levels (i.e. surplus production stored from a prior period). As a general matter, estimated deliverable supply should include the amount of deliverable supply, including volume in storage, that is available to fulfil obligations from current trading of the relevant spot month contract.

We also think that ESMA and/ or national regulators should include an obligation on RMs/MTFs and OTFs to provide data to ESMA/ regulators in order to ensure sufficient data is available to set position limits. This would address ESMA's concern that they may not receive relevant data from OTF's on open interest.

<ESMA_QUESTION_CP_MIFID_188>

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

<ESMA_QUESTION_CP_MIFID_189>

AFME Response

We think that ESMA should consider mechanisms to ensure that the limits do not hamper developing liquidity in the new contracts.

Low liquidity is not only a characteristic of new contracts, but also of many more regional or specialised commodity products. Where very few market participants exist with respect to a contract, liquidity will naturally be limited. Any consideration and/or methodology adopted for new contracts should therefore be extended to existing illiquid contracts.

We believe that the best approach would be to take each new or illiquid contract separately and consider a reasonable multiple of the current transaction size after a defined period of trading.

New contracts often are illiquid/ immature initially and may be used by a small number of market participants. In order to accommodate the demand of hedges and develop a robust, established market, it may be necessary to permit a small number of market participants to represent a relatively large share of the (small) market. Concerns regarding market abuse can be adequately addressed through enhanced reporting and surveillance, as necessary.

As stated in response to question 184 above, we would advocate the introduction of a de minimis threshold, below which limits could not be set, thereby avoiding any constraints on contract growth. In this regard, we believe that a de minimis threshold could be set per contract and calibrated (following a public consultation) to ensure that the position limits are only established for contracts once the total Dollar/Euro notional amount outstanding in such contract exceeds the de minimis threshold set for such contract. In this way the position limit regime would only capture positions above a size which could potentially impact the orderly pricing and settlement conditions of that market or which may lead to market distortions.

If liquidity in a contract is not present, then it is a clear indicator that trading activity in the contract is either irrelevant or not sufficiently significant to need to limit it. In such case, the threat of distortion should therefore be considered as irrelevant.

<ESMA_QUESTION_CP_MIFID_189>

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

<ESMA_QUESTION_CP_MIFID_190>

AFME Response

We believe that the seasonal supply outages in the physical market, the perishability of deliverable materials and the capacity constraints (with regard to transportation and delivery) should be taken into account under the “characteristics of the underlying” factor.

We reiterate that the absence of accurate data on production and storage of some commodities should be reflected in the consideration related to the characteristics of the underlying commodity market.

Whilst, subject to our comments at questions 183 and 184 above, we agree that estimated deliverable supply is the appropriate baseline for setting spot month limits, we believe that open interest is the appropriate metric for all other months, and that this metric would take into account all relevant factors particular to the relevant commodity contract: it would then

not be necessary to provide for an adjustment mechanism driven by an exhaustive list of factors.

It is also critical that deliverable supply or open interest calculations for other months limits allow for the inclusion of correlated underlyers (e.g. refined petroleum products such as jet ARA, jet Rotterdam, gasoil FOB 0.1). As these correlated underlyers use the commodity derivative as a hedge, it would be inaccurate not to recognise these underlyers for the purposes of calculating deliverable supply and / or open interest.

<ESMA_QUESTION_CP_MIFID_190>

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

<ESMA_QUESTION_CP_MIFID_191>

AFME Response

Please see our response to question 190 above.

<ESMA_QUESTION_CP_MIFID_191>

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

<ESMA_QUESTION_CP_MIFID_192>

AFME Response

Please see our response to questions 184 and 189 above.

We also point out that the test for liquidity should be 'high hurdle' because commodity derivative markets are globally dispersed, seasonal and often fragmented between venues.

<ESMA_QUESTION_CP_MIFID_192>

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

<ESMA_QUESTION_CP_MIFID_193>

AFME Response

We believe that where a product is traded by a small number of participants, ESMA should seek to understand the composition of market participants before determining the position limit. For example, a market with ten active participants may have two sellers and eight buyers, or just one risk management provider amongst nine participants seeking risk management services. In such markets, a single position limit may have a disproportionate impact on some of the participants.

Appropriate recognition of legitimate offsets is a key component of efficient end user hedging intermediation for liquidity providers. In addition risk monitoring entities within financial institutions have aligned their monitoring and reporting architecture to this dynamic (i.e. offsetting correlated underlyers with exchange based contracts as the instruments are seen as broadly fungible) and this same architecture should serve as a model / broad framework for regulators when trying to accomplish / identify these correlations for the purpose of establishing netting rules for the position limits regime.

As stated in response to question 184 above, we would advocate the introduction of a de minimis threshold, below which limits could not be set, thereby avoiding any constraints on contract growth. In this regard, we believe that a de minimis threshold could be set per contract and calibrated (following a public consultation) to ensure that the position limits are only established for contracts once the total Dollar/Euro notional amount outstanding in such

contract exceeds the de minimis threshold set for such contract. In this way the position limit regime would only capture positions above a size which could potentially impact the orderly pricing and settlement conditions of that market or which may lead to market distortions.

We particularly question ESMA's assertion that overall position limits should move inversely against the number of market participants: We would suggest that the greater the number of participants in a given market segment, the lower the chances of a single actor having a dominant or otherwise inappropriate position. Thus, the logic proposed by ESMA for new or illiquid markets should apply equally to established markets.

<ESMA_QUESTION_CP_MIFID_193>

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

<ESMA_QUESTION_CP_MIFID_194>

AFME Response

We broadly agree with the principles proposed by ESMA to enable the competent authority to adjust the limits. However we believe that ESMA's assumption that position limits should move up in direct proportion to the flexibility of the relevant commodity market is incorrect. Actually, the reverse is likely to be true, in the sense that the more restricted a market (in terms of few points of delivery, geographic specificity, and seasonality etc.) the greater the tolerance for inadvertent large positions needs to be built into the calibration.

We also believe that ESMA's assumption that position limits should be adjusted downwards in volatile market conditions is incorrect. In volatile markets there is an increase in demand for price risk management services from financial institutions and other liquidity providers. Restricting the ability of price risk management providers to offer these services in volatile markets will have an adverse impact on end users.

As we stress above, we also believe that open interest would factor in the relevant characteristics / specific factors relating to a particular commodity market.

<ESMA_QUESTION_CP_MIFID_194>

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

<ESMA_QUESTION_CP_MIFID_195>

AFME Response

We think that NCAs should have discretion on a case-by-case basis to take a view on the relative maturity of a contract after its commencement.

For further information, please see our response to questions 184 above and 198 below.

<ESMA_QUESTION_CP_MIFID_195>

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

<ESMA_QUESTION_CP_MIFID_196>

AFME Response

No. We underline that the age is irrelevant as a contract may never reach trading levels which are sufficiently high to result in the need for a position limit to be applied. In this regard, we feel that the case by case approach is more suitable.

For further information, please see our response to questions 184 and 189 above.

<ESMA_QUESTION_CP_MIFID_196>

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

<ESMA_QUESTION_CP_MIFID_197>

AFME Response

We ask that ESMA clarify how it interprets its definition of deliverable supply (ie. clarifies that it is meant to be broader than just the amount of physical commodity, for example the amount stored in a warehouse) and provides current data to test the proposed baseline / adjustment percentages against.

Furthermore, we would highlight that the frequency and timing of limit revisions is critical for monitoring a well-functioning market. From a practical perspective, position limits should not be changed more frequently than annually with a minimum 6 month compliance window.

<ESMA_QUESTION_CP_MIFID_197>

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

<ESMA_QUESTION_CP_MIFID_198>

AFME Response

Yes. We agree with ESMA that the methodology should provide competent authorities with sufficient scope to take into account the specificities of the different markets without incorporating asset-class specific elements in the methodology.

Also, it is critical that open interest is used as the metric for other month limits as open interest will factor in asset specific elements relevant to the particular commodity in question.

<ESMA_QUESTION_CP_MIFID_198>

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

<ESMA_QUESTION_CP_MIFID_199>

AFME Response

We highlight that the seven factors listed under Article 57(3)(a) to (g) are all relevant but suggest that open interest for other months limits is the universal metric which is collectively reflective of all of them. In addition, differentiation between asset classes would be reflected through open interest and it is, in our view, the more appropriate metric for other months.

<ESMA_QUESTION_CP_MIFID_199>

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

<ESMA_QUESTION_CP_MIFID_200>

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<ESMA_QUESTION_CP_MIFID_200>

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

<ESMA_QUESTION_CP_MIFID_201>

AFME Response

We agree that the term "non-financial entity" should be understood to cover persons that are not either:

- persons who are regulated under the various EU directives or regulations regulating financial entities; or
- persons who would be regulated under those directives or regulations if they were established in the EU.

<ESMA_QUESTION_CP_MIFID_201>

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

AFME Response**Disaggregation**

MiFID II (article 57.1) states that the limits apply to “the net position which a person can hold at all times” and clarifies that the limits “shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level”.

Whilst, we understand that the level 1 text does not allow disaggregation of positions within the same legal entity, we are of the view that the definition of what qualifies as a position held on behalf of this legal entity does allow disaggregation based on independence of decision. Accordingly, we strongly believe that the basis for disaggregation proposed by ESMA in RTS 30 (Art. 2(2)) in respect of positions held by an intermediary on behalf of a client, is unduly restrictive. ESMA should allow disaggregation of independently managed business to which legal mandatory information barriers already apply (e.g. asset management businesses). These businesses are separated from principal trading businesses by firewalls (which may make it impossible to aggregate due to lack of access to the relevant data)/information barriers designed to ensure no exchange of information can occur between these businesses or no control can be asserted by one business over the other. It is critical that Article 2(2) is expanded to provide for disaggregation on this basis. In our view, any other interpretation would conflict with the independence requirements set out in European legislation (for example UCITS, AIFMD) and ignore the reality of such businesses. Furthermore, we do not believe that positions should be aggregated with other entities within the group where such entities are not included in the same fully consolidated accounting group. This is consistent with Article 3(1) of EMIR. Accordingly, we would propose that Article 5(3) is amended as follows:

"The positions of a person in a commodity derivative... shall be aggregated with the net positions in that commodity derivative held by other persons within the same group which are included in the same consolidation on a full basis as such person..."

Furthermore, whilst we welcome Article 2(2) of the draft RTS 30 which provides that positions that are held by an intermediary on behalf of a client shall not count towards that intermediary's own position limits regardless of whether, for reasons of market practice, operational structure or legal framework, the positions are held by the intermediary as principal. However, we note that in Europe the principal-to-principal model is used for exchange traded derivatives which means that, as a matter of market practice, positions that are held by an intermediary on behalf of a client will be held as principal. We therefore request that the reference to “regardless of whether” in Article 2(2) is amended to provide further clarity that for exchange traded derivatives such arrangements should not be construed narrowly as an exception, but are in fact market practice in Europe.

Pro rata consolidation

We note that a 100% consolidation, rather than a pro rata consolidation, is likely to lead to double counting positions. We do not think it is appropriate to attribute control twice for the same position. We also urge ESMA to consider that a 100% consolidation provides an opportunity for participants in a 50-50 joint venture to each receive 100% netting benefit from a contra position held in the joint venture.

Parent company holds no positions in commodity derivatives traded on a trading venue

We believe the effect of ESMA's proposals is that where a parent or ultimate holding company itself holds no positions in commodity derivatives traded on a trading venue or economically equivalent OTC contracts, that entity will not be subject to aggregation rules notwithstanding positions may be held by one or more subsidiary undertakings of that entity.

At paragraph 19 of Section 7.3 of the Consultation Paper ESMA states that the aggregation will comprise of the positions of a person together with those of any wholly or partly owned subsidiaries of that entity but 'aggregation with the positions of fellow subsidiaries of a mutual parent or ultimate holding company' is not required. It follows therefore that the parent or ultimate holding company should not have to aggregate its positions with those of its subsidiaries where it holds no positions in commodity derivatives traded on a trading venue or economically equivalent OTC contracts itself as otherwise this could result in the position limits applying on an aggregated basis between the positions of fellow subsidiaries of that mutual parent or ultimate holding company which would be inconsistent with the position as set out in Section 7.3, paragraph 19.

Accordingly, we would welcome further clarification in the RTS that the position limit regime is only applicable where the relevant person holds positions in commodity derivatives and accordingly a parent or ultimate holding company that holds no positions in commodity derivatives is not required to aggregate the positions of its subsidiaries.

<ESMA_QUESTION_CP_MIFID_202>

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

<ESMA_QUESTION_CP_MIFID_203>

AFME Response

It does not make sense to aggregate the positions taken by funds managed by an asset management company with the position taken by its mother company on the basis that the mother company owns more than 50% of the capital of the asset management company. It would in any event conflict with the regulation put in place by the EU to ensure independence of decision making and information in the asset management space.

Please see our response to question 202 above for further information.

<ESMA_QUESTION_CP_MIFID_203>

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

<ESMA_QUESTION_CP_MIFID_204>

AFME Response

No. The functioning of commodity derivatives markets makes it critical that the definition of Economically Equivalent OTC contracts (EEOTC) recognises the global nature of markets.

As we make clear in our response to question 207 below, narrow netting rules will restrict capacity for financial institutions (and other liquidity providers) to provide liquidity to real economy customers (e.g. commodity producers, suppliers and manufacturers) to execute their price risk management strategies and do not accurately reflect the net risk exposure of a counterparty.

In addition, we point out that although recital 10 of Draft RTS 30 suggests that there would be a conclusive list of EEOTC contracts maintained by the competent authorities/ ESMA, we believe producing such a list may be operationally unworkable given the large number of commodity derivative contracts and the dynamic nature of the market. We therefore believe that market participants should assess for themselves what constitutes a EEOTC contract and note that this approach has worked effectively in the context of EMIR trade reporting.

<ESMA_QUESTION_CP_MIFID_204>

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

<ESMA_QUESTION_CP_MIFID_205>

AFME Response

Yes, we agree that it is a subset of economically equivalent and that a contract is “the same” if it is at least economically equivalent and in addition has other equivalent properties. However we think that the definition of ‘same contract’ should allow netting between long and short positions transacted on different broker platforms/ exchanges in effectively the same product.

<ESMA_QUESTION_CP_MIFID_205>

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

<ESMA_QUESTION_CP_MIFID_206>

AFME Response

We do not think that the ‘3 lot’ rule is appropriate as it is not material enough to be disturbed on a daily basis by relatively minor market activity.

<ESMA_QUESTION_CP_MIFID_206>

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

AFME Response

No. In our view, the inability to net non-MiFID instruments with MiFID instruments will make the calculation of positions inaccurate as the resulting net position will not reflect the real risk exposure of market participants. In this regard, we note that the term “economically equivalent OTC contracts” is not defined by the Level 1 text and so in our view there is scope for ESMA to interpret this term broadly.

We also question that the level 1 text does not allow netting between contracts traded on EU venues and contract traded on third country venues. The recognition of third-country venues is a critical feature of the European financial legislation (EMIR as well as MiFID) and it seems arbitrary to state that for the purpose of netting article 57 is bounded at European level.

As noted in response to question 183, consideration must be given to the netting treatment of OTC contracts to ensure that in calculating the net position of an entity that entity is able to net OTC instruments which are closely correlated to on-venue contracts. We view this as critical to financial institutions to continue to provide efficient end user hedging intermediation.

Specifically, non-financial entities require financial institutions to provide hedging instruments to manage price risk in respect of their physical commodity consumption and/or production. Refiners and airlines, for example, depend on financial institutions to offer OTC derivative contracts to hedge their specific grade of fuel oil (e.g. Jet Rotterdam) as the alternative would be to hedge with on-venue contracts (e.g. gas oil futures) which would involve assuming unwanted basis risk. These financial institutions commonly offset the OTC derivative exposure with exchange traded contracts (e.g. gas oil futures) as the OTC derivatives are closely correlated to the futures. In addition, this dynamic allows financial institutions to aggregate bespoke interests in a diverse client base resulting in a highly correlated centralised pool of liquidity which provides an efficient source of hedging intermediation for non-financial entities. However to ensure financial entities can continue to offer this, it is critical (in the absence of a pass through hedge exemption) that that these correlated OTC instruments continue to operate as legitimate offsets to the futures exposure assumed by financial institutions to deliver this source of liquidity to non-financial entities. Accordingly, we would ask ESMA to clarify that exposures to such OTC swaps can be taken into account in determining the net position.

Furthermore, it is critical that market participants can consider REMIT products and physical positions (which do not constitute MiFID instruments) and commodity index swaps as reducing the net position held in an on-venue commodity derivative. As discussed above, these products are often used to hedge the risk of commodity derivatives. An inability to include them in calculating the net position will restrict the capacity for financial institutions to execute their price management strategies. By way of example, commodity index swaps are hedged through futures positions. An inability to offset cash settled commodity index swaps with the futures positions will limit ability of financial institutions to write swaps for pension funds / asset managers etc. seeking to use such instruments to achieve diversification objectives. Accordingly, it is imperative that commodity index swaps and non-MiFID instruments will receive appropriate recognition as legitimate offsets under the position limits

regime and we therefore believe it is necessary for ESMA to clarify that exposures to these non-MiFID instruments and commodity index swaps can be taken into account in determining a person's net position.

<ESMA_QUESTION_CP_MIFID_207>

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

<ESMA_QUESTION_CP_MIFID_208>

AFME Response

We would support an ex-post approval procedure, e.g. the firm notifies the competent authority but trades immediately without waiting for approval. This is of fundamental importance if entities are to be able to effectively hedge positions – market participants cannot wait 30 days to do so.

<ESMA_QUESTION_CP_MIFID_208>

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

<ESMA_QUESTION_CP_MIFID_209>

AFME Response

It appears that this question is a repeat of question 207. We assume therefore that this question is instead meant to refer to pages 550 and 551 of the CP. If that's the case, we think the approach that ESMA proposes is sensible. However, this is only likely to be relevant within a workable and wider definition of what constitutes the 'same' commodity derivative, which we would favour.

<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_210>

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

<ESMA_QUESTION_CP_MIFID_211>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_211>

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

AFME Response**International consistency**

We would strongly encourage ESMA to consider a process for end client reporting close to the form 40 approach used in the US under the CFTC rules pursuant to which the end-client can directly send the relevant information to the CFTC without passing through the chain of intermediaries, which protects client confidentiality vis à vis the intermediaries.

We also point out that the end client reporting provisions, if implemented in a manner that forces clients' information to pass through the whole chain of intermediaries, would conflict with national privacy laws in some jurisdictions.

Scope of obligations of investment firms

An investment firm subject to position reporting under Article 58(2) may have relationships with clients that do not involve commodity derivatives or economically equivalent OTC contracts. The investment firm should only be required to obtain daily information for inclusion in a report required under Articles 58(2) or (3), from a client with whom the investment firm has executed contracts within the scope of Article 58(2) or (3) or for whom the investment firm currently holds positions in products within the scope of Articles 58(2) or (3) for the client (e.g. where the investment firm holds derivative warrants in custody for the client).

General comments

We reiterate that our key concern in relation to the position reporting regime is the significant practical challenges involved in implementing end client reporting. There are significant obstacles in determining the identity and positions of our clients' clients, as well as real confidentiality and commercial interest issues in obtaining and passing client identity details through the account relationship chain. We would therefore ask ESMA to support and work with the industry in the development of a workable solution which fulfils the policy objectives of the Level 1 text. Furthermore, we would like to raise the following specific points:

- Annex I and Annex II: It is possible that an OTC contract may be economically equivalent to contracts traded on two or more venues (perhaps with different competent authorities). It is not clear whether it is expected that a position in those contracts should be reported separately to each relevant competent authority.
- Annex II – field 4: The unique product identifier for warrants may be an ISIN rather than an Alternative Instrument Identifier. Accordingly, field 4 should reference an ISIN or, where the ISIN is not the industry method of identification, the Alternative Instrument Identifier.
- Annex II – field 6: It should be made clear that the spot month is determined in the same way as for position limits. However, the methodology for determining spot months will need to be adapted to take account of the structure of OTC derivatives, warrants and emission allowances.
- Annex II - field 7: For OTC derivatives, derivative warrants and emission allowances, the "number of contracts" may not be a meaningful measure (or possible to calculate). The notional amount, number of warrants, units of allowances, etc. may be more meaningful.
- Annex II – field 9: It is not clear how to report if some but not all of the contracts being reported are risk reducing. The flag to indicate if a position is "risk reducing" is linked to

the flag on the client, as per EMIR. This assumes that a single client cannot have one position which is risk reducing and one which is not.

<ESMA_QUESTION_CP_MIFID_212>

(xi) Market data reporting

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

<ESMA_QUESTION_CP_MIFID_213>

AFME Response

Under the current UK FCA MiFID 1 regime firms with an obligation to report do so using the services of an Approved Reporting Mechanism (ARM). It is expected that the ARMs will continue to take transaction data from their client firms using the messaging standards currently in place albeit extended to cater for the additional data elements that are required under MiFIR (EU) 600/2014.

Firms submitting data through an ARM should be allowed to retain flexibility in terms of the format they send to their ARM. Any requirements in MiFID II should not directly cover the process by which firms submit to an ARM but rather the format through which ARMs report to regulators.

Where new messaging requirements arise under MiFIR then firms would prefer to use standardised formats such as FpML and not proprietary or customised formats allowing them to leverage existing technical capabilities and infrastructure.

Hence, firms envisage that implementing non-XML based formats such as FIX would take the most effort to implement. Similarly TREM which is customized XML format and is not an industry standard may also prove more challenging for some firms to implement.

<ESMA_QUESTION_CP_MIFID_213>

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

<ESMA_QUESTION_CP_MIFID_214>

AFME Response

Firms welcome ESMA's efforts to define what constitutes a 'transaction' and 'execution' for the purposes of transaction reporting. We also welcome clarity on the activities that are not included in the definition.

<ESMA_QUESTION_CP_MIFID_214>

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

<ESMA_QUESTION_CP_MIFID_215>

AFME Response

We suggest ESMA considers the following:

1. Securities Financing Transactions (SFT)

Firms welcome ESMA's decision to exclude SFTs from the scope of transaction reporting. However, firms would welcome more clarity on Article 3 (3) (a) of the draft RTS 32 as there is likely to be a difference in the timing of the implementation of MiFIR (EU) 600/2014 and the Securities Financing Transaction Regulation 2014/0017 (COD) – (**SFTR**), as well as potential exemptions from reporting under the SFTR which will not be carried through to the MiFIR reporting framework under the current draft RTS 32.

Firms should not be required to report SFTs under MiFIR for the period between MiFIR implementation and SFTR, nor should they need to transaction report SFTs if they are exempt from reporting under SFTR. To avoid any confusion, RTS Article 3 (3) (a) should be redrafted to read as follows: "Securities financing transactions", and the same definition of "securities financing transaction" as is used in RTS 8 could be provided – namely "securities financing transactions means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell or sell-buy back transaction"..

2. Primary Market Activity:

Firms would appreciate clarification on the inclusion/ exclusion of activities described as "issuance, allotment, subscriptions and placements" which appears to describe primary market activities which are typically publically announced. These activities would appear to meet the criteria specified under paragraph 26 of the consultation paper for exclusion as dates are generally known in advance; investors elect to participate in book building in advance of the primary issue and prices are standard across all investors.

3. Novations & Assignments

Firms would welcome further clarification on the exclusion of activities described in the consultation paper with regards to Novations & Assignments of Derivatives. Our current understanding is that the remaining party of a novation has no transaction reporting responsibility as it is part of a novation and there is no change in notional for them. Can ESMA confirm both stepping-in and stepping-out parties in a novation have an obligation to transaction report, as a new trade and as a termination respectively, as in both cases, there is a decrease and an increase in notional of the trade before expiry.

4. Exercise and Assignment

Firms would appreciate clarification on the specifics of reporting exercises & assignments of options that result in the delivery of the underlying instrument. Our current understanding is that the exercise & assignment of the option position itself is not reportable, even though it results in a decrease in option position, although we believe this may be revisited soon by ESMA.

Firms agree the underlying deliverable itself is reportable as a new transaction. However there is some confusion over whether this applies to early exercises only and not from expiry exercises. There is wording in the exclusions around 'Pre-determined contractual or mandatory events where no investment decision is taken' and 'Creation, expiration and redemption of derivatives'. Therefore, we do not believe transactions resulting from option expiry on contractual termination should be reportable.

5. Reporting by non-EEA branches of EEA firms

With regards to ESMA's clarification as to what constitutes 'execution', ESMA states in the consultation paper (paragraph 8) that direct action by the investment firm clearly constitutes

execution and this includes where it acts through its branches regardless of whether these are located inside or outside the EEA. ESMA also states that unlike subsidiaries, branches have the same legal entity as the investment firm itself and therefore **activity by them is reportable**.

In order to avoid any misunderstanding firms would like ESMA to confirm in the draft RTS that non-EEA branches of EEA firms will not be required to report to EU regulators

We would like clarification that the statement means that non-EEA branches of EEA firms might be required to separately report to EU regulators. We would welcome confirmation that it is not ESMA's intention to require non-EEA branches of EEA firms to separately transaction report to EU regulators, as opposed to MIFID investment firms flagging whether part of the activity was carried out by one of their branches (whether based inside or outside the EEA).

In order to avoid any misunderstanding firms would like ESMA to clarify in the draft RTS that non-EEA branches of EEA firms will not be required to report to EU regulators.

6. Baskets and Sectors

We assume that the Exclusion in RTS 32 Article 3 (3) (h) was intended to include changes in compositions of baskets and sectors which are also not reportable after a transaction has occurred. For clarity the proposed should be amended to read:

"A change in the composition of an index, basket or sector after a transaction occurred"

<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

AFME Response

As ESMA acknowledged there is little scope within the Level one text to simplify the approach but our members thought it worth highlighting some of the complexities at ESMA's request, with the proposal. Whilst we appreciate that the provision of transmission of order arrangements are optional we envisage that commercial client pressure may require firms executing client business to provide an infrastructure to support the additional data required to be transmitted with orders

Clients might require all firms with whom they execute / clear business to offer a transmission or order arrangement to ensure that they have a complete reporting solution.

Where such conditions are not met by all of the clients' service providers the client will be required to build a reporting infrastructure where the transmission criteria are not met (e.g. where the client is unable to provide all required transmission data on a timely basis).

Notwithstanding the comments above, it is our members' understanding that the transmission of an order mechanism is intended to apply irrespective of whether the non-transmitting investment firm is acting in a principal capacity or an agency / quasi-agency capacity, and irrespective of the way in which the relevant transaction between the two investment firms arises. For example, a firm which is acting on a discretionary basis and which transacts with a dealer (which is an investment firm) on the basis of a Request for Quote should consider itself to have "transmitted an order" (and therefore should not itself transaction report the relevant transaction) provided that the conditions in Article 4(1) of RTS 32 have been satisfied. We should be grateful for confirmation of this understanding.

Finally, Article 4(4) of RTS 32 requires receiving firms to validate data received from a transmitting firm for "obvious errors" and omissions prior to submission to the regulators. From a systems-build perspective, this will be a significant, costly and onerous exercise. Furthermore, it could also lead to a fragmented service offering as not all industry participants will have the sufficient scale, technical and financial capability and may result in increased costs to end users. It is also unclear what is meant by "obvious errors" – receiving firms should be able to rely on the information provided to them by the transmitting firm, and so we suggest this reference is deleted (or at least clarified as to its meaning).

<ESMA_QUESTION_CP_MIFID_216>

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

<ESMA_QUESTION_CP_MIFID_217>

AFME Response

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

For example the industry already uses conventions that assign roles to counterparties to a trade e.g. in the case of a fixed / float interest rate swap, the payer of the fixed rate may be assigned the role of BUYER and the payer of the floating rate may be assigned the role of the SELLER.

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

Firms would also raise concerns with the new approach for reporting laid out in scenario 4. Most notably, that ESMA appears to be confusing the trading capacity of Agent with receipt and transmission of an order which is incorrect. In this scenario, John Smith is reflected as a buyer; however Firm X is acting as agent, and should therefore be reported as the buyer.

Furthermore, Firm Y would view Firm X as its counterparty and not John Smith/retail client. This would be of particular concern where firms have private banks acting in an agency capacity on behalf of retail clients trading with their investment banks. The investment bank cannot and will not have access to the retail client information, and as such cannot report this.

ESMA must not confuse trading in Agency capacity with receipt and transmission of orders.

Lastly, firms would remind ESMA that in the current reporting regime, the ability to report a transaction in a single model identifying buyer and seller as a "principal cross" or "agency cross" enables firms to minimise the number of reports it sends to NCAs via its ARM and reduces the cost of Transaction Reporting charged by ARMs. In the current scenarios ESMA has only specified a single report for Agency transactions. Firms would ask that this scenario be expanded to include Matched Principal. Additionally firms have outlined in response to question 219 that ESMA consider a new trading capacity: Facilitation to help ESMA identify where firms are facilitating clients. Should ESMA agree with the recommendation to include Facilitation in the scope of trading capacity, firms would ask ESMA to also include this in the scenario of sending a single transaction report to an ARM.

<ESMA_QUESTION_CP_MIFID_217>

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

General Comments

Where a product is identified using an ISIN in field 54, then subsequent instrument fields should not need populating. This approach will minimise the risk of inaccuracies across the industry and make it more likely regulators receive the correct standard of data. We accept that in certain instances such as OTC and to a lesser extent Aii this approach does not provide the detail that regulators require but with ISINs it is possible to rely on the associated reference data.

In general, firms believe that, in order to achieve clarity as to the population of each transaction reporting field, this will require detailed scenarios at an asset class level, to be analysed and an explanation on how fields are expected to be populated for each of the scenarios. We therefore encourage ESMA to work with the industry to put in place a transaction reporting guide (Level 3 Guidelines), which will assist firms in achieving consistent and accurate reporting. In the absence of such a guide, investment firms might interpret the population of each field differently. In addition firms suggest that ESMA clearly identifies where fields are mandatory, optional or non-applicable in the draft RTS 32 or in Level 3 Guidelines.

In light of ESMA's experience with EMIR reporting may we suggest that ESMA specifies as part of the Technical standards the validation required for each field so that firms with reporting obligations are able to implement this at the outset rather than retrospectively as with EMIR.

AFME members would propose that ESMA work with the industry to agree asset class scenarios, golden instrument identifiers & product taxonomies. This should also be aligned with other MiFID reporting requirements where appropriate.

Field Specific comments

Further the above, we would like to make the following comments and suggested amendments on the ESMA's proposed fields:

Natural person information: Fields 8 – 19 & 23-34 Firms would like to reiterate their concern with amount of personal data that ESMA is suggesting be included in each transaction report. We believe that ESMA's proposals to have natural persons identified by a national ID number robustly and uniquely identifies each natural person and should therefore be enough for transaction reporting purposes. We do not agree that additional information such as the name, the surname, the date of birth, the country of residence and the post code is required in order for competent authorities to monitor for market abuse. The proposed additional information might on the contrary overcomplicate the report with unnecessary. For example, we question how including the date of birth of an individual in the reports is considered as an essential piece of information for market abuse purposes when that person is already uniquely identified by its national ID number. Also two natural persons will not have the same national ID number so we do not see how adding its date of birth to the report will provide any additional useful information to the regulators. In addition, ESMA also requires the post code of natural persons to be identified in the reports. As ESMA is aware individuals

can change addresses and/or could have multiple addresses. For all these reasons, we think that requiring firms to include this additional information in the transaction reports is not properly justified, and is unreasonable and disproportionate. We would urge ESMA to review the amount of personal data that it proposes to include in transaction reports and to reduce it to a minimum.

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

Execution Time – Field 41

Firms would ask ESMA to set a fixed format (UTC) for reporting of execution timestamp to enable firms to implement more efficiently and enable their control frameworks to operate with a standard field length.

Information on prices: Fields 45 - 50 –

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

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

The simplest example of which being where a client requests settlement in a different currency to the currency in which the trade was executed. The requirement for the information reported in fields 45-48 to match information provided in field 50 would result in firms being required to convert values for the purpose of transaction reporting inconsistent with what NCAs observe in market and firm records. Furthermore, it is anticipated that the consideration value sought (excluding commission and accrued interest) is already provided in other required fields, as this value does not typically align with the 'settlement value' this would not be consistent with what NCAs observe in market and firm records.

Instrument Identification Code: Field 54 – Firms note the details required when providing an All (or Aii) would not accommodate the information that is provided to the regulator today. Firms suggest that field 54 should only be populated with the Exchange Product code. The information on the venue is already specified in Field 51 so there is no need to include this information twice.

ESMA has not allowed an alternative identifier where neither an ISIN nor All exist. We suggest that an option is included to cater for such occurrences otherwise firms will be unable to make the necessary transaction reports.

An OTHER category would allow a report to be made and ESMA should encourage firms to minimise use of the OTHER categorisation.

Instrument classification: Fields 55 / 56 – the CFI code is not available for OTC derivatives as it currently only exists for listed instruments with an ISIN. Firms suggest that

where the CFI code is unavailable for classes of derivatives that are traded on a platform under MiFIR that firms derive their own internal CFI in the interim until international standards are agreed for UPI.

Field 58 – Ultimate underlying instrument code:–

Firms would ask ESMA to revise the guidance in RTS32 so that derivatives where there is for example no underlying ISIN, Aii, ISO or LEI can be reported as 'OTHER'. Examples would include FX derivatives, CDS, and commodities such as gold.

Baskets Field 58

This field poses problems in terms of the potential large number of underlying ISINs that firms might have to populate in this field.

For example an Equity Swap on a bespoke basket of the FTSE250 index with the banking stocks removed – would result in a repeating group population in excess of 200 lines. The 25 alphanumerical characters allowed will not be sufficient to accommodate these types of baskets.

Firms suggest that where an ISIN or a name (if the name is official) is available to identify baskets, sectors or indices then these should be allowed to be used as opposed to free form text which is likely to be widely different amongst firms and therefore less helpful to regulators in detecting market abuse.

Firms would ask that Article 3 (3) (h) is amended to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred:

“A change in the composition of an index **or basket** after a transaction occurred”

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

Result of the exercise Field 63: – the value N might be considered redundant. Furthermore, firms agree the underlying deliverable itself is reportable as a new transaction but do not feel that its linkage is necessary and would be technically complex for firms whereby derivative products and underlying products (ie Equities) are booked and persisted through separate systems and flows.

Up-front payment Fields 65-66: – could ESMA clarify that these fields are only populated in the case of CDS transactions.

Trader identification code: Field 68-69

- Field 68 should be amended as follows in order to remove an inconsistency between the title and its accompanying text “trader identification code type (execution)

-Firms would like to reiterate their concern with ESMA's proposal to have traders identified by National ID numbers. AFME members would suggest that there are other more suitable items of identification that could be used and are already used within firms to identify individuals, for example the National Competent Authorities registration number. While we understand the need for a unique national ID number to be used for natural persons when they are clients, we do not think this is justified in the case of a trader working within a firm

and already identified by the NCA via the registration number. A trader ID need not be identified more broadly. Moreover, a registration number is better than a personal ID, as it does not inherit the problem of people with dual nationalities

Short selling indicator: Field 77: –

Given that some clients who are also MiFID investment firms have an obligation to report to ESMA, it would be duplicative for firms to also report that these clients are short selling. For those clients who are NOT MiFID investment firms, there should be no obligation for the reporting firm to capture this information.

Mindful of the above, we would recommend the removal of article 10 (2) and certainly would object to suggestions applying a “best efforts” approach to this as there is no requirement for the client to provide this information. To the extent ESMA determines that it cannot delete Article 10(2), it should at least be amended to read: “Where an investment firm’s client is the seller in the transaction, the investment firm shall be obliged to identify the sale as a short sale if its client has identified the sale as a short sale to the investment firm”. Investment firms should only be expected to pass on information actually provided to them by their clients in this respect.

Furthermore, ESMA is proposing for our member firms to identify whether the sale was short at the time of execution and at legal entity level. Having this information identified at the time of execution would be extremely challenging /close to impossible for firms to achieve. If ESMA wants this information to be identified at entity level then we would suggest the short selling flag requirement under transaction reporting to be as aligned as far as possible with the firms’ obligations under the Short Selling Regulation (SSR). In this case, reporting firms would identify whether they are gross short in applicable securities at the end of the day, without taking into account short sales undertaken in a market making capacity. This solution would allow firms to provide more meaningful information to the regulators whom would be more able to rely upon this data. Also, this approach would allow all firms to use their existing mechanism put in place under SSR and avoid major undertakings with implementation. This is the preferred approach by AFME members.

Alternatively, if the above solution is not satisfactory for ESMA, we would like ESMA to consider the short selling flag to be applied at desk/book level at the time of execution. Again, it is extremely challenging to capture short selling information at legal entity level, and at the time of execution. Indeed, firms may be taking many orders across different trading desks/ locations that are over-riding each other with regards to short selling at an entity level. Especially when using a systemic approach such as a VWAP model. Therefore the most appropriate way for firms to flag the information at the time of execution would be to flag it at desk/book level. This is an approach which is currently being used in the USA

Field 80b

In addition for reconciliation and control purposes firms would suggest an additional field that represents an identifier – unique to the firm to identify the transaction report. Field 80 could be used for this purpose but not where the Field is used for venues unique ID. Hence, we suggest an additional alternative field be provided.

Report Status – Field 81

Members are concerned that only N(new) and C(cancel) is applicable, and there is no mention of A(amend).

This will create an unnecessary additional volume of reports. We would – welcome the possibility to amend reports instead of cancelling and then reporting new trades.

<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>

AFME Response

ESMA may find it beneficial to remove the field name - Trading Capacity and replace it with the field name 'Reporting Capacity'.

Firms recognise that one of the objectives of a transaction report is to identify market abuse through changes in the position within firms. Through the use of Trading Capacities, NCAs can detect changes in beneficial ownership for example through the use of "Principal", "Agent" or when they are fulfilling client orders simultaneously – "Matched Principal". However, "Matched Principal" capacity only identifies some of the scenarios where a firm interposes itself between buyer and seller, without taking a position.

To provide a more complete view of where firms are acting as facilitator between buyer and seller having already identified the other side to a position, firms would suggest that ESMA considers broadening (i.e. create an additional trading capacity category in addition to the three above) the scope of the permissible scenarios for Trading Capacity to include "Facilitation". Firms would for example use this trading capacity where they are facilitating a client order across multiple venues or executions but where the facilitator makes no profit or loss other than previously disclosed fee or commission. This is a recognised behaviour within firms where their internal systems and controls mean that they have credit risk against market side and client side counterparties but no position risk and would enable NCAs to clearly identify this activity as part of their surveillance. The reason why trades that firms facilitate in this way cannot fall under the existing definition of Matched Principal is because the trading is not always simultaneously.

The definition of 'facilitation' should be specific to Transaction Reporting and should be used by firms in their transaction reports when their role in the transaction is unambiguous. i.e. client orders that are filled both from the firm inventory and the venue would continue to be classified as Principal for example. Positions taken by the investment firm on the back of a client derivative trade would therefore be classified as Principal.

Firms believe that by including this additional capacity NCAs will be better able to identify firms who have taken Principal positions and differentiate this from instances where they take positions momentarily to facilitate a client trade.

A typical example of a facilitation trade would be where a firm receives a client order that is routed straight to the market. The firm will receive filled orders from different venues across the trading day and then once the entire order is completed / or once the market closes the firm will then book the transaction(s) back to the client. The market fills are held on the firm's account until the trade is booked out to the client. Hence the transaction is not simultaneous and can therefore not be identified as matched principal.

<ESMA_QUESTION_CP_MIFID_219>

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

<ESMA_QUESTION_CP_MIFID_220>

AFME Response

Yes.

Firms would highlight that they will be dependent on the trading venues to provide waiver specific information. If the information is provided accurately and timely to the investment firms then there should be no problem in populating this field

It is likely that some non-EEA venues will not populate this field and indeed this problem exists today.

<ESMA_QUESTION_CP_MIFID_220>

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

<ESMA_QUESTION_CP_MIFID_221>

AFME Response

Firms agree with the approach stated in Article 11. However, we would ask that Article 3 (3) (h) is amended to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred:

"A change in the composition of an index or basket or sector after a transaction occurred"

<ESMA_QUESTION_CP_MIFID_221>

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

<ESMA_QUESTION_CP_MIFID_222>

AFME Response

Firms are concerned about ESMA's proposals to have baskets identified by the underlying components **which are reportable financial instruments**. Once a basket has been identified as reportable (i.e. at least one component of the basket is a financial instrument admitted to trading or traded) we would suggest all the component of the basket to be identified in the report. As ESMA is aware the components of baskets can change continuously and this would require firms to perform filters on a continuous basis which would be technically very complex and disproportionate.

As per our response to question 218 Field 58 poses problems in terms of the potential large number of underlying ISINs that it might be needed to populate in this field.

For example, an Equity Swap on a bespoke basket of the FTSE250 index with the banking stocks removed – would result in a repeating group population of in excess of 200 lines.

Firms suggest that where ISINs or official names are available to identify baskets, sectors and indices then these should be used as opposed to free form text which is likely to be widely different amongst firms and therefore less helpful to regulators in detecting market abuse.

In addition, AFME members would be willing to work with ESMA to establish a consistent product taxonomy, including a golden source of reportable instruments.

<ESMA_QUESTION_CP_MIFID_222>

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

<ESMA_QUESTION_CP_MIFID_223>

AFME Response

In order to achieve clarity as to the population of the fields relating to the branches involved in the transaction – firms consider that it would be useful to define more precisely the scenarios and to set out the relationships between branches to ensure that this field is populated consistently. We would suggest this be reflected in level 3 guidelines.

In addition, although we support ESMA's proposal for investment firm to report all their transactions to their home component authority, ESMA has not considered the case of **EEA branches of non-EEA firms**, where the competent authority of the home office will be based outside the EU. In this case, firms would suggest for EEA branches of non-EEA firm to report to the competent authority of their location (i.e. the host competent authority). We would therefore suggest the draft RTS 32 Article 13 (5) to include the following:

'All transaction reports for transactions executed in whole or in part by the investment firm, including through its branches, shall be sent to the home competent authority of the investment firm. ***Where the transaction is executed by an a EEA branch of a non-EEA investment firm, reports must be sent to the host competent authority of the investment firm based in the Union.***'

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

AFME Response

Whilst we accept the point that LEI will be more widely accepted / widespread by 2017 ESMA should be aware that firms may still transact with firms who don't have an LEI if only to close out existing positions / reduce exposure to a counterparty. Indeed, ESMA's proposal might be significantly challenging for existing clients who have already entered into positions. Whilst both the buyer and seller will strive to get this completed ahead of the compliance date, it is a concern that if some clients with positions are unable to get the LEI approved by the compliance date then this may result in the firms being penalized for events outside their controls. For this reason and for transactions with those clients then it would be useful for ESMA to permit reporting using BIC codes. Firms would also appreciate consistency across NCA's in their implementation of trade ability criteria for clients without LEIs

In addition Members have concerns that by the Jan 2017 deadline LEI might not yet be fully rolled out and this could firms in a difficult situation when facing a non EEA counterparty in a jurisdiction where LEI is not yet mandatory: Practically firms would need their client to acquire LEI in order to allow us to make the transaction while another non-MiFID Firm would not impose this. Therefore members would welcome a phase-in period where alternative identifiers (like BIC) would be allowed still during the first year (2017).

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

Firms anticipate that it is not ESMA's intention to curtail investment activity to EEA domiciled clients and counterparties, there is however concern that the mandatory usage of LEIs could unintentionally result in this restriction emerging, should the expected progress in LEI global adoption not be fully realised prior to 2017.

<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

AFME Response

Over reporting:

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

Firms would like to reiterate that in the absence of a golden source of reportable products, firms will report on a best endeavours basis and err on the side of caution and report transactions where there is an element of doubt.

Calculation of positions:

Firms welcome ESMA's efforts to define 'transaction' and 'execution of a transaction' for transaction reporting purposes. As stated in the draft RTS 32 Article 3, not all actions and

transactions are included in the transaction reporting scope. As not all actions/transactions are reportable it would be impossible for competent authorities to use transaction reports to calculate firms' exact positions. However, the draft RTS 32 Article 14(5) (a), seem to require investment firms to 'have adequate arrangements in place to ensure that the transaction reports submitted by the firm accurately reflect the changes in position of the firm'. Firms are concerned that compliance with Article 14 (5) (a) as currently written will not be possible. I.e. some of the excluded transactions although occurring for example solely as a result of external events do in themselves have an impact on the positions of the firm and/or its clients. ESMA further clarifies its rationale in excluding these transactions in Paragraphs 10 – 14 of the Consultation Paper.

Firms therefore suggest for Article 14 (5)(a) to be redrafted in order to take into consideration the limitation of Article 3: ' the transaction reports submitted by the firm when viewed cumulatively accurately reflect the changes in position of the firm and/or its clients in the financial instrument at the time the changes in position took **place and taking into consideration the limitations imposed by Article 3(3) of RTS 32.**'

With regard to the timestamp accuracy, we believe that ESMA should decouple the accuracy from the precision/granularity:

(1) For the reasons set out in our response to Q233 and Q234 on Clock Sync, we think this should be to microsecond level (6dps) at most.

(2) In relation to the accuracy of the population of that field this should be determined by the respective upstream obligations, or otherwise separately specify that the accuracy should be in line with the Clock Sync RTS as we propose.

<ESMA_QUESTION_CP_MIFID_225>

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

<ESMA_QUESTION_CP_MIFID_226>

AFME Response

Yes. We would like to reiterate our response to question 218 in Sec. 8.2 (Transaction Reporting) where we expressed our concern on the amount of personal information required to identify a client.

Firms would like to reiterate their concern with amount of personal data that ESMA is suggesting to include in each transaction report. We believe that ESMA's proposals to have natural persons identified by a national ID number robustly and uniquely identifies each natural person and should therefore be enough for transaction reporting purposes. We do not agree that additional information such as the name, the surname, the date of birth, the country of residence and the post code is required in order for competent authorities to monitor for market abuse. The proposed additional information might on the contrary overcomplicate the report with unnecessary attributes in the reports as it leaves more room for errors. For example, we question how including the date of birth of an individual in the reports is considered as an essential piece of information for market abuse purposes when that person is already uniquely identified by its national ID number. Also two natural persons will not have the same national ID number so we do not see how adding its date of birth to the report will provide any additional useful information to the regulators. In addition, ESMA also requires the post code of natural persons to be identified in the reports. As ESMA is

aware individuals can change addresses and/or could have multiple addresses. For all these reasons, we think that requiring firms to include this additional information in the transaction reports is not properly justified, and is unreasonable and disproportionate. We would urge ESMA to review the amount of personal data that it is proposing to include in transaction reports and to reduce it to a minimum.

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

In relation to the identification of legal entities, we wish to reiterate our response to question 224 on the use and validation of LEIs. Whilst we accept the point that LEI will be more widely accepted / widespread by 2017 ESMA should be aware that firms may still transact with firms who don't have an LEI if only to close out existing positions / reduce exposure to a counterparty. Indeed, ESMA's proposal might be significantly challenging for existing clients who have already entered into positions. Whilst both the buyer and seller will strive to get this completed ahead of the compliance date, it is a concern that if some clients with positions are unable to get the LEI approved by the compliance date then this may result in the firms being penalized for events outside their controls. For this reason and for transactions with those clients then it would be useful for ESMA to permit reporting using BIC codes. Firms would also appreciate consistency across NCA's in their implementation of trade ability criteria for clients without LEIs

In addition Members have concerns that by the Jan 2017 deadline LEI might not yet be fully rolled out and this could firms in a difficult situation when facing a non EEA counterparty in a jurisdiction where LEI is not yet mandatory: Practically firms would need their client to acquire LEI in order to allow us to make the transaction while another non-MiFID Firm would not impose this. Therefore members would welcome a phase-in period where alternative identifiers (like BIC) would be allowed still during the first year (2017).

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

Firms anticipate that it is not ESMA's intention to curtail investment activity to EEA domiciled clients and counterparties, there is however concern that the mandatory usage of LEIs could unintentionally result in this restriction emerging, should the expected progress in LEI global adoption not be fully realised prior to 2017.

<ESMA_QUESTION_CP_MIFID_226>

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

<ESMA_QUESTION_CP_MIFID_227>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_227>

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

<ESMA_QUESTION_CP_MIFID_228>

AFME Response

Yes.

We believe that in relation to the timestamp accuracy ESMA should decouple the accuracy from the precision/granularity:

(1) For the reasons set out in our response to Q233 and Q234 on Clock Sync, we think this should be to microsecond level (6dps) at most.

(2) In relation to the accuracy of the population of that field this should be determined by the respective upstream obligations, or otherwise separately specify that the accuracy should be in line with the Clock Sync RTS as we propose.

<ESMA_QUESTION_CP_MIFID_228>

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

<ESMA_QUESTION_CP_MIFID_229>

AFME Response

No. We wish to reiterate our response to question 218 on Sec. 8.2 (Transaction Reporting) in relation to Instrument Identification Codes and current industry practices.

Firms note the details required when providing an All (or Aii) would not accommodate the information that is provided to the regulator today. Firms suggest that instrument identification field should only be populated with the Exchange Product code. In the context of records of orders, the information on the venue is already specified under the segment MIC code (denomination of the trading venue) so there is no need to include this information twice.

ESMA has not allowed an alternative identifier where neither an ISIN nor All exists. We respectfully suggest that an option is included to cater for such occurrences otherwise firms will be unable to make the necessary transaction reports.

An OTHER category would allow a report to be made and ESMA should encourage firms to minimise use of the OTHER categorisation.

<ESMA_QUESTION_CP_MIFID_229>

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

<ESMA_QUESTION_CP_MIFID_230>

AFME Response

No. Given the similarity of the proposed fields with the approach taken under RTS 32 (Transaction Reporting), AFME wishes to reiterate its response to Sec. 8.2 and the difficulties that may arise with populating fields such as Client identification (natural persons and provision of LEIs), trader ID, instrument classification, ultimate underlying instrument code, and short selling flags in the context of orders.

In relation to the timestamp accuracy, we believe that ESMA should decouple the accuracy from the precision/granularity:

(1) For the reasons set out in our response to Q233 and Q234 on Clock Sync, we think this should be to microsecond level (6dps) at most.

(2) with regard to the accuracy of the population of that field this should be determined by the respective upstream obligations, or otherwise separately specify that the accuracy should be in line with the Clock Sync RTS as we propose.

<ESMA_QUESTION_CP_MIFID_230>

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

<ESMA_QUESTION_CP_MIFID_231>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_231>

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

<ESMA_QUESTION_CP_MIFID_232>

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<ESMA_QUESTION_CP_MIFID_232>

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

<ESMA_QUESTION_CP_MIFID_233>

AFME Response

In the absence of other relevant time precision benchmarks enabling comparability across trading venues, we agree that calibration based on gateway-to-gateway latency makes sense as a starting point to create a framework against which appropriate levels of clock precision and accuracy as required under MiFID 2 can be specified by ESMA, as applicable to trading venues. However, we do not agree with the details of the framework as proposed in the draft RTS, in particular to the extent to which they would extend to investment firms. We note that ESMA has acknowledged industry concerns with the proposals outlined in the original DP, and in particular that the level of accuracy should be calibrated to take account of different types of market participant and trading venues, as well as different trading models. We do not believe that the proposals in the RTS currently achieve the intended outcome of an appropriately calibrated model.

The current CP and draft RTS define parameters for time recording and synchronisation which, while ostensibly giving dispensation to slower electronic and voice traded markets, nonetheless would likely mean that in all practical terms any market participant who trades on a major equity venue will be required to provide time stamps to a precision (granularity) of one microsecond. The proposals would mean that timestamps must be accurate to a tolerance of +/- 1 microsecond from the UTC reference feed and, depending on the specific system setup of the participant, may need to be provided across all of the participant's trading platforms regardless of the asset class or trading model. We do not agree with ESMA's proposals to link clock synchronisation requirements for investment firms broadly and directly to the trading venues on which they trade

We also do not believe that the proposals adequately distinguish between a level of accuracy that would be relevant and meaningful for high frequency trading activity executed on venues

on the one hand (for which more granular and accurate timekeeping is appropriate) and non-HFT and even non-electronic activity or reportable events that were not transacted through a venue on the other. As a result, the proposals would introduce significant and disproportionate costs for firms to upgrade their systems.

MiFID II Art 50 requires ESMA to develop RTS to specify the level of accuracy to which clocks are to be synchronised, but does not require that the same levels of accuracy must apply to trading venues and their members or participants. We would hence recommend that ESMA distinguish between requirements applicable to trading venues, and requirements applicable to investment firms.

We have set out in more detail in the response to question 234 below a number of concerns with the proposed level of accuracy required in the draft RTS, with some recommended changes that we believe would retain the broad shape of ESMA's proposed calibration model for trading venues, while also introducing obligations for investment firms that are more practical to apply, avoiding a disproportionately expensive implementation cost to the industry, and enabling the differentiated outcome intended.

<ESMA_QUESTION_CP_MIFID_233>

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

<ESMA_QUESTION_CP_MIFID_234>

AFME Response

There are significant technical impediments to achieving the requirements currently set out in the draft RTS. For the purpose of this document the following definitions are used:

Accuracy – How close to a specific time an entity is expected to be. This can be considered the tolerance for error. E.g. When considering a trade event, entities must store the time to a precision of (for instance) microseconds and in doing so must be certain that that timestamp is synchronised to within a one microsecond tolerance of the reference clock (UTC)

Precision – The granularity of a time stamp. This can be equated to the number of decimal places to which an event's time must be stored. E.g. For microseconds (μs) this is 1×10^{-6} seconds.

Accuracy

Given current technological capability it is considered extremely difficult to comply with the expected level of accuracy and the expected consistency of that accuracy. The current RTS expects that the required accuracy will be met 100% of the time. Such high technical demands will be a significant technological and financial barrier to entry into European trading markets.

The levels of accuracy proposed in the current RTS do not adequately take account of the different layers of software and networks involved in financial market infrastructure. Many common platforms simply do not support microsecond levels of accuracy, meaning firms would need to customise off-the-shelf software, or that core industry platforms will need to be extensively upgraded.

Operating systems:

Red Hat (Linux): Red Hat can retrieve timestamps to microsecond precision but the accuracy is not clearly defined as it would be dependent on the hardware it is running on. This time function does have overheads and it is unclear how much CPU is required and the amount of time it would take for the timestamp call to actually execute.

Windows is not a real time operating system and therefore could incur delays waiting for processing of the timestamp function, within a CPU queuing mechanism.

In both cases multi CPU servers can add complications to time retrieval, namely the CPUs may not have the same time between them or processing could switch between CPUs and incur a time cost.

CPU clocks also suffer from clock drift. This is where the clock is not keeping its time correctly and falling behind $\pm 20\text{ms}$ is not uncommon and further drift is very possible. This is monitored and rectified by an NTPD process, which will check by default every 64 seconds but can take up to 2 minutes to rectify any clock drift on the CPU.

Software:

Java is a commonly used industry standard for developing trading platforms. Java has a function that will return nanosecond timestamps but clearly stipulates within its documentation:

“ no guarantees are made except that the resolution is at least as good as that of `currentTimeMillis()`.”

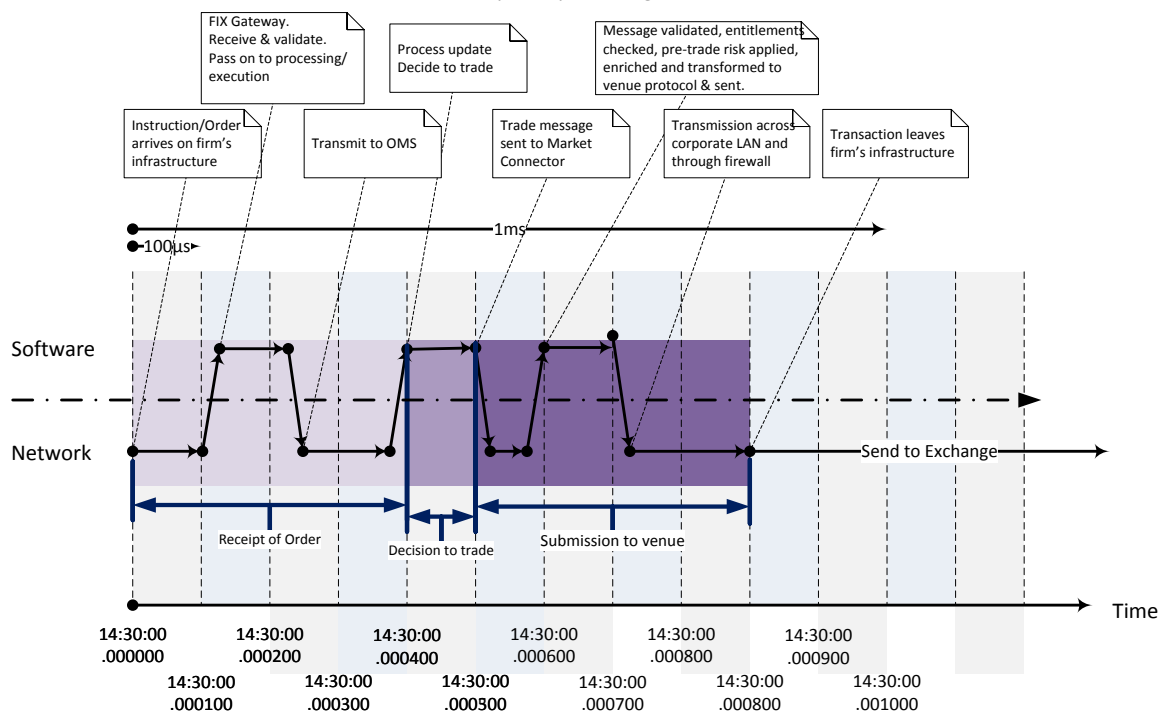
This means that any trading platform using Java to determine timestamps will be unable to determine the current time with an accuracy below a millisecond.

To provide a practical example of some problems with the proposed accuracy relative to the reportable events, there is no current definition of the exact point at which an event should be recorded. The CP does outline a number of events, notably, receipt of an order/instruction, a decision to trade and the dispatch of an order to an execution venue which are expected to be logged. These events are not, however, defined to a level of precision in terms of their location that matches that expected of the event times. As a result the realistic precision can only be considered as a time range depending on where in the technology path the timestamp for that event was captured.

The diagram below highlights this.

An example non-high frequency trading timeline

Please note that the below times are not taken from a specific system but represent typical values we might expect from a “standard” trading solution receiving a client instruction, deciding to execute (immediately) and publishing an order as a result.



The windowed areas seek to highlight plausible interpretations of the point at which the 3 events could arbitrarily be deemed to be occurring.

For the “receipt of an order” timing point, it is legitimate to conclude that a firm would know about the receipt of a message from the moment it appears on its network (the first black dot) but equally it could be stated that the firm would not know the nature of that message until it had received it, or processed and validated it in a gateway (for example the FIX gateway - the 3rd and 4th black dots) or even until the firm had accepted it into its Order Management System (the 7th black dot). In the example above this routing spans almost 400µs, and even in a niche application of an extreme (ultra) low latency DMA system this would be likely to span multiple microseconds.

For there to be value in the recorded events at the precision defined, those events have to be defined with a corresponding precision relating to their place in the execution process.

Time synchronisation to 1 microsecond is theoretically achievable on a network given a suitably high investment in network infrastructure, it is however far from easy, and is subject to many external influences that mean that ensuring that the proscribed accuracy is maintained in all circumstances is extremely hard.

Applying that same level of accuracy to the operating system and application software however is not even possible in the vast majority of cases today as noted above, and would require dedicated hardware solutions to solve the operating system limitations and specialist software engineering to ensure compliance in the application software stack. The cost and complexity of this implementation would be extremely high, and would likely act as a prohibitive deterrent to many market participants.

The Cost Benefit Analysis (CBA) that has been published by ESMA (CBA section 8.5, pages 435-445), asserts that the timestamping rules provide significant valuable information to the authorities including cross-venue aggregation of events amounting to an audit trail, and acknowledges the high implementation cost that will be borne by the trading venues and investment firms.

However, given the above mentioned variance of the capture points of the prescribed events it is questionable as to whether these specific benefits could ever be realised to the level of accuracy expected and as such the level of accuracy required for implementation could and should be significantly reduced, which would achieve the same benefits in terms of meaningful capture of information, but at a lower implementation cost.

The CBA provides no monetary assessment of the costs. A recent survey in the US, conducted by the Financial Information Forum (FIF) consulted the industry regarding the proposed time synchronisation and logging mandated by Combined Audit Trail (CAT). It concluded that less than half the respondents were currently able to meet an accuracy of better than 50ms today, and that most respondents felt that the cost to meet better than 1ms would require an investment of at least 2.5 million USD for any member of a reasonable scale.

Going even further, as the draft RTS contemplate, and anticipating the requirement of nanosecond accuracy is extremely problematic and likely to remain technically impossible for the foreseeable future, requiring significant upgrades to the entire technology stack,

network, compute platforms, operating systems and trading software before it could become a reality. As nanosecond accuracy is not currently technologically possible, even with the most advanced atomic clocks maintained by public sector bodies, we contend that it is inappropriate to introduce requirements referencing nanosecond level accuracy and precision through RTS, as it is impossible to assess the likely costs of implementing such technology in future, and hence to provide an adequate cost benefit analysis to justify the requirement.

ESMA has also acknowledged industry concerns about prescription of the specific technology that must be used for clock synchronisation, and stated a desire to avoid a monopoly. However, if a microsecond level accuracy is mandated, this outcome may be likely. There is currently only one time synchronisation technology that supports microsecond accuracy to the tolerance levels expected and that is PTP/PPS. PTP is not currently a widely used protocol and while capable of greater accuracy also has dependency on ideal network conditions and potentially costly network reconfiguration. NTP is currently the only widely available cross-platform protocol for synchronisation. As noted above, even if every participant were to standardise on PTP/PPS for their networks they would still face significant challenges in maintaining this accuracy within their trading system software and hardware. Reducing the precision demands would allow both IRIG-B and NTP to be used (although NTP would be operating at its known limits even at 100 microseconds).

Precision

Precision is a technically simple problem to solve in which all timestamp fields have to be able to carry up to 9 decimal places (for nano) or 6 decimal places (for micro). Technical simplicity however does not make it easy to achieve and this change will have a significant cost implication as every software component that carries a time stamp will have to be modified, a time and resource intensive process that will have large ramifications across the trading connectivity arena as each venue moves to update their protocols to accommodate the changes.

Accordingly it is vital that the rules are calibrated to require such an upgrade only for reportable events which are occurring rapidly enough to require the granularity (e.g. high volume electronic automated executions). For reportable events that originate from manual processes (e.g. voice execution) or on a scheduled date (e.g. lifecycle events) or are generated further back in the trade processing flow, detailed microsecond granularity will be of no value as the accuracy will have been eclipsed entirely by the latency associated with the manual/human processes, inherent batch orientation of the process, or queuing as part of asynchronous transaction processing flow. Even where required (e.g. high volume electronic automated executions) the fact that it can take multiples of microseconds to read the clock means that the microsecond timestamp would still be subject to inaccuracy.

Recommendation

Requirements for Trading Venues

In light of the above technical concerns, AFME would suggest that an accuracy of 100 microseconds be adopted as the maximum allowable divergence from UTC, but that levels of precision required could remain at the microsecond level. As such, Table 1 in Annex 1 could be amended as follows:

	Gateway-to-gateway latency time of the trading venue	Time divergence allowed from UTC	Level of granularity required for timestamps
1	1 millisecond or greater (equivalent to 1.0×10^{-3} seconds or higher)	1 millisecond divergence from UTC	All timestamps for reportable events shall be to the nearest millisecond
2	999 microseconds or less	100 microsecond divergence from UTC	All timestamps for reportable events shall be to the nearest microsecond.

Requirements for members and participants of trading venues

At present the accuracy demands apply to all events to the highest precision and accuracy of any venue that a participant is using. This includes a broad range of reportable events, including manual trade reports based on the definition in the RTS and in part also derives from an imprecise definition of a trading “system”. While it makes sense to prescribe low latency timekeeping and microsecond accuracy for events transacted on venues at high speed, many reportable events, and in particular lifecycle events, will not be executed through venues or at high speed. In many cases, these events may be executed in different parts of a firm’s system infrastructure downstream of systems used for order management or initial execution or connectivity to the venue itself. AFME suggests that the time divergence set out in table 1 should only apply to reportable events *meeting the definition of high frequency algorithmic trading techniques*. All other reportable events should be treated as being in either the voice or coarsest level of accuracy (milliseconds) so as to limit the number of technical platforms a participant needs to synchronise to the higher precision to those that are occurring in near real-time with market events.

	Time divergence allowed from UTC	Level of granularity required for timestamps
Voice transactions	1 second divergence from UTC	All timestamps for reportable events shall be to the nearest second
Base electronic requirement	1 millisecond divergence from UTC	All timestamps for reportable events shall be to the nearest millisecond

Order flows meeting the definition of high frequency algorithmic trading technique	100 microsecond divergence from UTC	All timestamps for reportable events shall be to the nearest microsecond.

<ESMA_QUESTION_CP_MIFID_234>

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

<ESMA_QUESTION_CP_MIFID_235>

AFME Response

No. AFME does not agree.

We provide our comments on specific fields below. However, our key concerns are:

- We strongly recommend that there needs to be a central public list identifying instruments in scope of the transaction reporting requirements and the transparency requirements and the respective treatment of these instruments under the MiFID regime (e.g. liquidity category – whether or not an IBIA or COFIA approach is adopted). Without a centralised approach, it will be operationally unfeasible for industry to comply with the requirements. Whilst we understand that ESMA does not have a legal mandate to produce a list that firms can seek rely on for the purposes of compliance, a central list would be invaluable in practice. This is particularly the case in the bonds markets, where instruments dynamically fall in (e.g. instruments are issued or become listed) and out of scope (e.g. instruments mature or may become delisted). We are concerned that if a centralised infrastructure is not introduced, bottlenecks will be created, there will be high levels of inconsistency with regards to the application of the MiFID framework and issuance and trading will be impacted.
- If venues/SIs are required to use their discretion in populating certain fields such as grouping or labelling each instrument according to a particular categorisation, rather than simply be required to populate raw data, would involve a significant amount of interpretation, creating a huge margin for error and inconsistency. Therefore, to minimise these adverse impacts, we suggest that ESMA require venues/SIs to populate raw data and for national authorities/ESMA to derive the remaining data using the data and clear methodologies set out by ESMA.
- ESMA needs to indicate whether each of the fields is conditional (i.e. data fields that only need to be populated if certain conditions are met) or mandatory. Currently, it is unclear how a firm is expected to populate fields that are irrelevant for particular instruments.
- If ESMA proposes a COFIA approach in the RTS, it is essential that the reference data fields contain the COFIA elements.
- We believe that it is critical for there to be as few lists as possible for industry and regulators to process (to ensure that the infrastructure is not unnecessarily bulky).

Therefore, we urge data fields for different reporting requirements to be consistent where possible.

- We recommend that the grey market should not be included within the post trade transparency regime. Grey market activity takes place prior to admission to trading on venues. If the grey market is included, the instruments will most often not have an ISIN code, meaning it is highly likely that the instrument may get published under a number of different reference identifiers. We believe that this would undermine the value of the information.
- ESMA needs to clarify the scope of instruments in scope of the requirements. Whilst ESMA has provided clarity on when an instrument is first caught by the requirements, it has not provided any detail on when a venue/SI should stop providing information on an instrument in the daily list. For example, if a bond matures or is delisted from a venue, it is unclear whether the venue/SI should remove the instrument from the list. We strongly suggest that in either of these events that the venues/SIs should remove them from their daily files. Otherwise, the lists will continue to expand over time, making the processing of the data inefficient, slow and unmanageable. In fact, the data sets would grow so large, that the data would not be useful to the regulators.

Annex 1

Field	Details to be reported	Format	Mandatory or conditional [if field implemented]	AFME comments
Instrument classification	Taxonomy used to classify the financial instrument	ISO 10962 CFI Code	Conditional – as to whether there is a CFI code	AFME does not agree that venues should be responsible for categorising instruments – categorisation should be centralised. As discussed in our response to Question 238, We suggest that ESMA propose a clear taxonomy so that instruments can be automatically and reliably centrally categorised through logic. ESMA could then have the discretion to recategorise an instrument. We highlight that prospectuses are not machine readable – meaning that the population of the element of the taxonomy will be critical, especially if ESMA uses adopts a COFIA approach for liquidity calibration.
Instrument identifier code	Code used to identify the financial instrument	Where instrument identification code type is I, ISO 6166 ISIN Where	Conditional – as to whether there is a CFI code	As above for CFI code

		instrument identification code type is A, All venue + Exchange Produce Code (16 alphanumeric characters)		
Type of identifier of the instrument	Code type used to identify the financial instrument	I = ISIN A = All	Mandatory	AFME agrees with this field. We note that there will not be an ISIN for the grey market (i.e. instruments for which there is an application for admission to trading but an ISIN has not been issued). It is critical that ESMA has a mechanism in place to ensure that an instrument doesn't get reported under multiple identifiers (i.e. grey market identifiers plus the ISIN later on). Our preferred solution is that the grey be excluded from the transparency regime. Grey market activity takes place prior to admission to trading on trading venues and before being allocated an ISIN code. If the grey market is included, the instrument will most often not have an ISIN code, meaning it is highly likely that the instrument will get published under a number of reference identifiers, undermining the quality of the information.
Instrument full name	Fully name or description of the financial instrument	Up to 15 alphanumeric characteristics	Mandatory	AFME proposes that this field be removed. Since the ISIN code will be provided, it is unclear what additional value this field would provide. Further, this field is likely to be populated inconsistently given that there is no clear standard.
Issuer identifier	Legal entity identifier code (LEI)	ISO 17442 LEI Code	To be populated for debt instruments only	AFME agrees with this field
Ultimate issuer	Legal entity	ISO 17442 LEI	To be populated for	AFME agrees with this field

	identifier (LEI)	Code	debt instruments only	
Total number of issued financial instruments	Total number of shares issued by the company. It does not represent the free float or the number of share which were distributed through a public offer	Up to 15 digits	[To be populated for debt instruments only]	It is unclear whether this field is only intended to apply to equities or all products. Further, given that venues will be providing the national regulators with the LEI, this field is not necessary.
Trading venue/SI	Segment MIC for the trading venue or systematic internaliser	ISO 10383 MIC Code (4 characters)	Mandatory	AFME agrees with the MIC code for venues. Since SIs are not trading venues, this should be clarified in the heading of the field.
Date of admittance	Date of admittance on the trading venue or the first date the instrument was traded or an order was received on the systematic internaliser or trading venue	ISO 8601 date format YYYY-MM-DD	Mandatory	AFME agrees with this field
Termination date	It should correspond to the date when the equity instrument is delisted from the relevant trading venue when applicable	ISO 8601 date format	[Mandatory]	AFME does not agree with this field. If ESMA is proposing to require full daily lists from trading venues, those lists should exclude instruments that have been delisted. We ask ESMA to clarify its intentions with regards to what universe of instruments should venues report – i.e. all instruments listed and delisted or only active instruments?

Issuer sub type	Type of issuer. Financial or non-financial	N = nonfinancial F = financial	Conditional - should only apply to corporate bonds	AFME agrees with this field, as long as it only applies to corporate bonds (consistent with the COFIA approach).
Bond type	Bond type	Bond type according to Article xx of TTF	[To be populated for debt instruments only]	AFME's recommends that this categorisation should be performed centrally and not be each and every venue individually. If ESMA adopts the COFIA approach, if is of vital importance that instruments are categorised consistently and this categorisation is available to the entire market to utilise for the purposes of compliance with the transparency provisions. Such an approach would likely result in inconsistencies.
Total issued nominal amount	Total issued nominal amount To be populated for debt instruments only	Up to 19 digits with a decimal operator	To be populated for debt instruments only	AFME agrees with this field
Nominal value per unit/minimum traded value	Nominal value of each instrument. If not available, the minimum traded value should be populated. To be populated for debt instruments only	Up to 19 digits	To be populated for debt instruments only	We ask ESMA to provide further clarity as to the data that it expects to receive in this field.
Currency of nominal value	Currency of the nominal value for debt instruments and currency code 1 for	Up to 19 digits with a decimal separator	Mandatory	AFME agrees with this field

	swaps			
Maturity date	Original date of expiry of the instrument	ISO 8601 date format YYYY-MM-DD	Conditional for those instruments with a maturity date	We note that not all instruments have maturity dates.
Fixed rate	The fixed rate percentage To be populated for fixed rate debt instruments only	Up to 19 digits with a decimal separator	To be populated for fixed rate debt instruments only	ESMA needs to clarify how venues/SIs should populate zero coupon bonds. For example, if a venue/firm leaves the field blank, will ESMA consider this because the data was not available or because the bond coupon is zero rate.
Identifier of an index/benchmark	Where an identifier exists. Where no identifier exists, standardised names will be necessary (e.g. EURIBOR6M + XX bp LIBOR3M-XX-bp) etc To be populated for debt instruments only	Up to 25 alphanumeric characters	To be populated for debt instruments only	AFME agrees with ESMA's proposals
Seniority of a bond	The database should identify the type of bonds, senior debt, mezzanine, subordinate, junior	P = senior debt M – mezzanine S = subordinated debt J = junior debt	To be populated for corporate bond only	AFME agrees with the inclusion of P and S, since this is consistent with ESMA's COFIA approach. However, we do not see a purpose for M and J – they instead introduce confusion
Issuance price	Issuance price	Up to 19 digits with decimals	To be populated for debt instruments only	AFME agrees with this field
Issuance price notation	Currency of the issuance price	ISO 4217 currency code three alphabetic	To be populated for debt	AFME agrees with this field

		characterises	instruments only	
Currency of reimbursement	Currency of the reimbursement	ISO 4217 currency code, 3 alphanumeric characters		
Issuance date	Date of issuance	ISO 8601 date format YYYY-MM-DD	To be populated for debt instruments only	This is of vital important for the COFIA approach if adopted
COFIA category				If ESMA adopts the COFIA category, these categories

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

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AFME Response

Yes. AFME agrees.

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

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AFME Response

Yes. AFME agrees.

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



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AFME Response

No. AFME does not agree.

AFME agrees that it is useful to have an instrument code type. However, CFI is not consistently applied by the market – in fact, currently, the reliable element is whether the instrument is a bond or derivative. We ask ESMA to provide clarity on what they are seeking to achieve with the instrument code type. AFME would be happy to provide further work or data to assist ESMA in identifying/developing appropriate codes for necessary fields.

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(xii) Post-trading issues

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

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

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

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

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

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

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



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