Association française des marchés financiers
FINANCIAL MARKET PROFESSIONALS

AMAFI / 15-17
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CONSULTATION PAPER OF ESMA on MiFID II / MiFIR

AMAFI's response

1. Introduction

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 120 members operating for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

The Association has been following closely the preparation of the Markets in Financial Instruments Directive and Regulation (MiFID / MiFIR). Following its answer to the consultation documents published in May 2014, AMAFI welcomes the opportunity to answer ESMA's consultation paper on Draft Technical Standards on MiFID / MiFIR published on 19 December (hereafter referred to as the CP).

In answering this CP, AMAFI focused on the questions it considered the most important and relevant to its members.

AMAFI has also liaised with other trade associations, at national and European levels, in order to prepare its answer. In particular, AMAFI endorses the comments of the International Swaps and Derivatives Association (ISDA) concerning liquid markets for derivatives (*questions 62 to 69*) and has drawn up its responses on Market Data Reporting (*part 8*) and Post Trading Issues (*part 9*) with the *Association Française des Professionnels du Titre* (AFTI).

While drawing up its answer on the **transparency regime for non-equity instruments**, one of the most critical issues of the CP, AMAFI faced a problem with regards to the lack of data. As a trade association, it does not have at its disposal the same set of data as ESMA. It is hence unable to verify the calculations and provide informed comments on ESMA's proposals.

This matter is crucial since, through the calibration of the new transparency regime, it is the future of the European market framework which is at stake. This led **AMAFI** and many of its sister associations (**AMF** from Spain, **ASSOSIM** from Italy, **bwf** from Germany, **DSDA** from Denmark and **SSDA** from Sweden) to send on 26 February a *joint letter* to alert the Commission and ESMA, as well as national authorities, about the importance of such an access to data, which would give the industry the possibility to double-check the propositions of ESMA.

We really believe that these data would be very helpful for the industry in order to provide ESMA at a later stage with further analyses on the non-equity calibration. We encourage ESMA to take this request into consideration, the main goal being to ensure that the new transparency regime for non-equity instruments is workable and does not impair market liquidity.

Finally, we would like to draw ESMA's attention on some proposals which may appear minor but the implementation of which would have **a very high cost for investment firms**. This is particularly the case of the RTS 7 (draft regulatory technical standards under Article 27 (10)(2) of MiFID II – best execution) and the RTS 34 (draft regulatory technical standards on obligation to maintain records of orders). AMAFI encourages ESMA to carry out an effective cost-benefit analysis on these subjects before setting the final rules.

2. Investor protection

AMAFI did not answer Q1 to Q29.

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

General comments on the best execution regime

AMAFI favours the effort to enhance the application of investor protection and welcomes the need for establishing requirements to validate and monitor the adequate implementation of best execution.

However, we are of the view that draft RTS 6 and RTS 7 give in many cases a very prescriptive interpretation of how investment firms should comply with establishing whether best execution was provided on their behalf**. These new requirements will trigger a data tsunami, many observers considering this data as not useful, not relevant and not meaningful.**

First and foremost, AMAFI wants to underline again that the inclusion under the concept of execution venues, which is not defined in the Level 1 text, of market makers and liquidity providers (which are not defined as well), is very problematic. Therefore the Article 2 paragraph 3 of the draft RTS 6 should be amended as follows: "*Execution venue means a regulated market, multilateral facility, organised trading facility and systematic internaliser, ~~and market maker or other liquidity provider~~*""

It is worth noting that the trades of the aforementioned entities generally occur on venues. Hence, the relevant information will be published by the respective venues.

Moreover, requiring systematic internalisers to provide the same amount of information as trading venues is disproportionate, considering the very different forms of execution models, SIs dealing on own account when executing clients' orders. We are of the view that the distinction between bilateral (SI) and multilateral venues should be sufficiently taken into account.

We are also of the opinion that a systematic internaliser's identity should not be disclosed on reports. Exposing the name of the SI in reports is likely to unveil to third parties the risk that the particular SI has taken in a particular instrument and consequently adversely affect the ability of the SI to manage and unwind that risk. This seems to go against ESMA's proposal in draft RTS 8, which does not require the identity of the systematic internaliser to be published as part of the post-trade regime, revealing that the risk that systematic internalisers are exposed to is acknowledged.

Generally speaking, we fear that the far too prescriptive interpretation of how investment firms should comply can be disproportionate in many instances. As a consequence, it is important that the provisions of the draft RTS 6 and 7 are lightened, keeping in mind that key transaction-level reporting will in any case be provided publicly via the MiFIR post-trade regime and to regulators via the MiFIR transaction reporting regime.

On the specifics of this question, AMAFI agrees with ESMA on having a diverse application of execution data between asset classes,

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?***

AMAFI did not answer Q31.

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

No additional data should be considered, since AMAFI is of the view that the metrics required are already cumbersome, and can be very problematic to collect for some venues using an RFQ system

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

AMAFI wonders whether some of the metrics and data required by ESMA might me duplicative of other existing and proposed information systems such as post-trade disclosure under the MiFID transparency regime and transaction reporting.

We believe that a consistent approach should be taken between the various reporting systems for purposes of ensuring the orderly and effective functioning of the markets for market participants

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

AMAFI considers that the aggregation level proposed on a daily basis is overly prescriptive.

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

AMAFI accepts the approach but questions some of its practical details. For instance, the taxonomy presented in draft RTS 7; Article 4, is not identical to the one used for liquidity definitions. We feel that it would facilitate the work of investment firms to use identical classifications as much as it is feasible.

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

No.

AMAFI considers that, the requirements to publish details set out in paragraph 35 seem to be going much further than Level 1 of MIFID.

Moreover, not all firms distinguish between different categories of clients and will therefore not make such distinction in their reporting.

3. Transparency

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

AMAFI accepts the definition of request for quote trading systems as provided in the table.

We understand that hybrid systems are only required to make the prices public without any obligation on volume while other trading systems are required to make public the price and volume of orders/quotes

With regards RFQ systems, we want to recall that the application of pre-trade transparency on those systems is bound to have detrimental effects for the functioning of these markets, ultimately damaging liquidity, which goes exactly against the objectives of the Commission.

By construction, in RFQ systems the liquidity is non-addressable, apart from its members. In such a situation, the introduction of pre-trade transparency, whatever form it takes, would only benefit arbitragers with predatory behaviours, without enhancing the price formation mechanism.

It appears that this special feature has been taken into account in the US with the “RFQ to Three” rule which is deemed sufficient for pre-trade transparency.

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.

AMAFI does not completely agree with this proposal.

For shares, there seems to be no problem. We agree with an annual revision and that calculation does not include transactions executed under some pre-trade waivers since these waivers (i.e. negotiated trade) are not order book trades.

However, for ETFs, the market with the highest turnover can be operated with RFQ system. By nature, RFQ systems are discontinuous, which would cause problems for the application of the reference price waiver. We then think that it should be clarified that **the most relevant market should be a continuous market,** provided the most liquid continuous market has a sufficient market share for the relevant instrument.

Hence, AMAFI proposes to amend the article 4.1 in the draft RTS 38 :

For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument is the trading venue **operating a continuous price formation process** with the highest turnover within the Union for that share, depositary receipt, ETF, certificate or other similar financial instrument, **provided this trading venue, through that continuous price formation process, represent at least 10% of turnover within the Union for the instrument.**

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.

No. AMAFI is strongly opposed to the list as it is proposed in the draft RTS. This answer should be read in conjunction with the *answer to Q48*.

Summary of our requests on the lists of Article 6 and Article 2 of draft RTS 8 Both lists should not be exhaustive, to take into account market evolutions More consistency needed. Not considering the type of instruments (equity instruments in Article 6 and shares in Article 2) the provisions of the list of Article 6 should be aligned with the more detailed provisions of Article 2 **provided that segregated is removed from point (f)** In any case, portfolio trade should be defined, as was the case in the DP, as "*a transaction in more than one financial instrument*

First, we consider the list of negotiated transactions not contributing to the price formation process **should not be exhaustive**, so as to take into account the potential market evolutions.

In case the list is deemed exhaustive, it must be subject to frequent reviews, because we do not share ESMA's view that the list is sufficiently flexible as it stands now. It is important that the list can be reviewed on a continuous basis as markets evolve.

Then, we think this list should be contemplated in relation **to the list of Article** 2 of the same draft RTS, which is very close whilst not being identical. A thorough observation of these lists reveal certain differences which do not seem justified considering the (quasi-)identical legal basis (not contributing to the price discovery process / not contributing to the price formation process), and which would pose undue operational problems for investment firms. These differences are all the more surprising that ESMA explicitly sets out that: "*a consistent and coherent approach to the empowerments in Article 4(6)(d) and Article 23(3) should be adopted*" (CP §36).

The main difference is that the list of Article 6 comprises a rather vague provision ("*the transaction is contingent on technical characteristics which are unrelated to the current market valuation of that financial instrument*") while the list of Article 2 is more precise. We think the list of Article 6 should be aligned on the list of Article 2 (with an adaptation of the scope, since Article 2 concerns only shares), provided that "segregated" is removed from point f (see on that point our *answer to Q53*).

Finally, we do not understand why portfolio trades, as mentioned in point b, only concern transactions with 10 or more shares. We think that a portfolio trade is a trade of two or more instruments. In the Discussion Paper published in May 2014, a portfolio trade was described as "*a transaction in more than one financial instrument*" (§75, vi., p.70).

The new version of the list should read as follows:

"For the purposes of Article 4(1)(b) of Regulation (EU) No 600/2014 a negotiated transaction in a share, depositary receipt, ETF, certificate or other similar financial instrument does not contribute to the price formation process where:

(a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price;

(b) the transaction is part of a portfolio trade that involves the execution of ***two 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;*
(c) the transaction is contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot;
(d) the transaction is executed in the context of an investment firm that provides portfolio management services and transfers the beneficial ownership of a share, depositary receipt, ETF, certificate or other financial instrument from one fund to another and where no other investment firm is involved;
(e) the transaction is a give-up or a give-in;
(f) the transaction is for the purpose of transferring financial instruments as collateral in bilateral transactions or in the context of a CCP margin and collateral requirements;
(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives; or
(h) the transaction is a securities financing transaction."

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.

Yes.

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.

No. AMAFI regrets that the proposals that we exposed in our answer to the Discussion Paper were not taken into account, since they would have made the transparency regime more suited to the reality of the market microstructure.

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.

No. AMAFI does not agree with ESMA proposal for the following reasons:

Calibrating the LIS threshold so as to achieve a specific objective of a percentage (10%) of the turnover remaining in dark is not in phase with the legislative aim to "protect large orders from adverse market impact and to avoid abrupt price movements".

ESMA has based its calibration on data coming from regulated markets which represent a small part of the actual market. This implies that, once the MiFID II / MiFIR regime is in place, a large proportion of ETFs will be classified in the last row of the table (i.e. ADT > 2,000,000) since the ADT will be calculated taking into account all transactions (on trading venues and OTC). Therefore it is more likely that for a large number of ETFs, the LIS threshold will be far higher than the one currently anticipated by ESMA.

For ETFs, the calibration of liquidity should not only rely on ADT but also on the creation/redemption mechanism. Even if we acknowledge that ESMA seems to take this consideration into account by setting the LIS threshold as multiples of the ADT, this is not sufficient to take into account the way creation/redemption mechanism actually works. Indeed, the creation/redemption of ETFs does not necessarily happen just after the closing of the market of the ETFs, especially when the underlying asset of the ETF is not localised in Europe, in Asia for instance. In this circumstance (when, the creation/redemption mechanism doesn't occur just after the closing auction of the ETF) the protection given by the process to risk takers is not the same at all.

Given those considerations, AMAFI considers that the following regime would be more effective and appropriate:

a single large in scale threshold of €2 million should apply to all ETFs for which the "creation / redemption" process occurs just after the closing auction for that ETF,

a single large in scale threshold of €0.5 million should apply to all ETFs for which the "creation / redemption" process occurs at least 3 hours after the closing auction for that ETF.

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

Ok.

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

Yes

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.

AMAFI agrees with the proposed conditions and standards that the publication arrangements used by systematic internalisers should comply with.

On the publication with each quote of the time when it has been entered or updated, we are of the view that this should be on a voluntary basis.

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

Yes. AMAFI agrees with the proposed definition of when a price reflects prevailing conditions

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

No. AMAFI completely disagrees with the proposal of ESMA in this matter. We think that the proposed changes do not take into account the evolution of the market structure, and that changes should have been brought in the other direction, with the introduction of greater granularity in the classes.

It is to be noticed that more than 95% of shares have an AVT inferior to €20,000. As a result, we think that the proposed categorisation is baseless and would induce unnecessary costs. In these conditions, it would be better to set the SMS at €10,000 for all shares, without maintaining a data base.

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.

AMAFI does not agree with this list.

Summary of our requests on the lists of Article 6 and Article 2 of draft RTS 8 - Both lists should not be exhaustive, to take into account market evolutions - More consistency needed. Not considering the type of instruments (equity instruments in Article 6 and shares in Article 2) the provisions of the list of Article 6 should be aligned with the more detailed provisions of Article 2 **provided that segregated is removed from point (f)** - In any case, portfolio trade should be defined, as was the case in the DP, as "*a transaction in more than one financial instrument*

We think an effort of consistency with the list of Article 6 of the same RTS should be conducted (*see our answer to Q38*).

Moreover, we find that the wording of point f is unacceptable. Indeed, it seems to exempt only transactions for the purpose of transferring financial instruments as **segregated** collateral in bilateral transactions or in the context of a CCP and not the same transactions transferred **as non segregated** collateral. It must be noted that both types do not, in any case, participate to the price formation process and therefore should be included in the list.

Besides that, EMIR authorises transfer of collateral on a non segregated basis. ESMA's proposal would de facto ban non-segregated arrangement and we consider that ESMA does not have the mandate to impact, through a Level 2 measure of MiFID II / MiFIR, a provision of the Level 1 of EMIR.

As for the list of Article 6, we are surprised by the wording concerning portfolio trades. As it is commonly accepted, we think a trade should be considered as a portfolio trade when **two or more** instruments are involved.

The revised list should read as follows:

"*For the purposes of Article 23 of Regulation (EU) No 600/2014 a transaction in shares admitted to trading or traded on a trading venue does not contribute to the price discovery process where:*

(a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price;

(b) the transaction is part of a portfolio trade that involves the execution of 2 or more shares from the same client and at the same time and the single components of the trade are meant to be executed only as a single lot;

(c) the transaction is contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot;

(d) the transaction is executed in the context of an investment firm that provides portfolio management services and transfers the beneficial ownership of a share from one fund to another and where no other investment firm is involved;

(e) the transaction is a give-up or a give-in;

(f) 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;*

(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives; or

(h) the transaction is a securities financing transaction. "

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.

Yes. AMAFI agrees with the proposed list of information.

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.

No. AMAFI does not think such information is necessary since there will be a flag for deferred publications. Including the date and time of publication among the fields would increase the cost of publication without any benefit for the market

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

Yes.

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.

No.

On the shortening of the delay, there should be at least some exemptions, for portfolio trades for instance.

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.

No. AMAFI has serious concerns about the list of instruments exempted from the reporting requirements.

In principle, we agree that securities financing transactions and other types of transactions subject to conditions other than the current market valuation of the financial instrument should be exempt from the reporting requirement under Article 20, especially since securities financing transactions should be dealt with in the SFT Regulation currently being discussed.

Nevertheless, as it is the case for the lists of Article 9 of draft RTS 9 and of Article 2 of draft RTS 8, we find that the wording of point f is unacceptable. Indeed, it seems to exempt only transactions for the purpose of transferring financial instruments as **segregated** collateral in bilateral transactions or in the context of a CCP and not the same transactions transferred **as non segregated** collateral. It must be noted that both types do not, in any case, participate to the price formation process and therefore should be included in the list.

Besides that, EMIR authorises transfer of collateral on a non segregated basis. ESMA's proposal would de facto ban non segregated arrangement and we consider that ESMA does not have the mandate to impact, through a Level 2 measure of MiFID II / MiFIR, a provision of the Level 1 of EMIR.

Hence we consider that the adjective "segregated" should be deleted so that point f reads as follows: *transfers of financial instruments such as collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.*"

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

No. AMAFI does not agree with the proposed approach.

We welcome the recognition by ESMA of the need to ensure a more appropriately calibrated regime of deferred publication for SME shares. However, we are of the opinion that ESMA's proposal will not achieve this objective.

A smaller absolute minimum qualifying size (MQS) in the lowest average daily turnover (ADT) band is not relevant for the purpose of ensuring proportionate thresholds for the lower level of liquidity of these shares compared to those in the higher bands. In our view, the relevant measure is the relation of the size of the MQS to the ADT and to normal traded sizes which must be taken into account when setting MQS thresholds, in particular for SME shares. Our proposals to address this are in green and italics in the table below.

Moreover, AMAFI is concerned about the impact of the proposed delays on large trades, also in liquid stocks. Especially, we are of the view that there is an unaddressed problem, common to all levels of liquidity, which is linked to the more occasional trades which could be described as super large. That is why we propose for each ADT band a fourth MQS level. The size for these trades represents the normal total market activity of many days. These changes are show in red and bold in the table below.

In order to illustrate these problems 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			AMAFI Proposal			ESMA		AMAFI Proposal	
Average daily turnover (ADT) in EUR	**Minimun qualifying size of transaction for permitter delay**	**Time of publication**	**Average daily turnover (ADT) in EUR**	**Minimun qualifying size of transaction for permitter delay**	**Time 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	> 100m	10,000,000	60 minutes	*10%*		*10%*	
	20,000,000	120 minutes		20,000,000	120 minutes	*20%*		*20%*	
	35,000,000	EOD		35,000,000	EOD	*35%*		*35%*	
				350,000,000	**EOD + 1**			*350%*	
50m - 100m	7,000,000	60 minutes	50m - 100m	7,000,000	60 minutes	*14%*	*7%*	*14%*	*7%*
	15,000,000	120 minutes		15,000,000	120 minutes	*30%*	*20%*	*30%*	*15%*
	25,000,000	EOD		25,000,000	EOD	*50%*	*25%*	*50%*	*24%*
				250,000,000	**EOD + 1**			*500%*	*250%*
25m - 50m	5,000,000	60 minutes	25m - 50m	5,000,000	60 minutes	*20%*	*10%*	*20%*	*10%*
	10,000,000	120 minutes		10,000,000	120 minutes	*40%*	*20%*	*40%*	*20%*
	12,000,000	EOD		12,000,000	EOD	*48%*	*24%*	*48%*	*24%*
				150,000,000	**EOD + 1**			*600%*	*300%*
5m - 25m	2,500,000	60 minutes	5m - 25m	2,500,000	60 minutes	*45%*	*9%*	*45%*	*9%*
	4,000,000	120 minutes		4,000,000	120 minutes	*75%*	*15%*	*150%*	*30%*
	5,000,000	EOD		*6,000,000*	EOD	*100%*	*20%*	*500%*	*100%*
				100,000,000	**EOD + 1**			*5000%*	*1000%*
1m - 5m	450,000,000	60 minutes	1m - 5m	450,000,000	*120 minutes*	*15%*	*8%*	*20%*	*10%*
	750,000	120 minutes		*1,500,000*	*EOD*	*30%*	*15%*	*100%*	*50%*
	1,000,000	EOD		*5,000,000*	*EOD + 1*	*45%*	*23%*	*1000%*	*500%*
				50,000,000	**EOD + 2**			*8000%*	*4000%*
500,000m - 1m	75,000	60 minutes	500,000m - 1m	*100,000*	*120 minutes*	*15%*	*8%*	*20%*	*10%*
	150,000	120 minutes		*500,000*	*EOD*	*30%*	*15%*	*100%*	*50%*
	225,000	EOD		*5,000,000*	*EOD + 1*	*45%*	*23%*	*1000%*	*500%*
				40,000,000	**EOD + 2**			*8000%*	*4000%*
100,000m - 500,000m	30,000	60 minutes	100,000m - 500,000m	*100,000*	*120 minutes*	*30%*	*6%*	*100%*	*20%*
	80,000	120 minutes		*250,000*	*EOD*	*80%*	*16%*	*250%*	*50%*
	120,000	EOD		*1,000,000*	*EOD + 1*	*120%*	*24%*	*1000%*	*200%*
				25,000,000	**EOD + 3**			*2500%*	*5000%*
< 100 k	15,000	60 minutes	< 100 k	*100,000*	*EOD*		*15%*		*100%*
	30,000	120 minutes		*250,000*	*EOD + 3*		*30%*		*250%*
	50,000	EOD		*1,000,000*	*EOD + 4*		*50%*		*1000%*
				10,000,000	**EOD + 5**				*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.

Hence we propose to 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.

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

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

No.

For ETFs, AMAFI considers that the deferral regime should take into account the reality of the "creation/redemption" mechanism (see our <u>*answer to Q42*</u> above).

We therefore propose the following regime:

	Minimum qualifying size of transaction for permitted delay	Timing of publication
The "creation / redemption" process for the ETF occurs less than 3 hours after the closing auction for the ETF	5 000 000	End of the day
The "creation / redemption" process for the ETF occurs more than 3 hours after the closing auction for the ETF	2 000 000	End of the day of the "creation / redemption" process

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

AMAFI did not answer Q56.

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.

No.

AMAFI strongly rejects ESMA's proposal for the definition of a liquid market for bonds and SFPs. We consider that the proposed determination of a liquid market for these instruments is not adequate, considering the high rate of "false liquid" instruments the current calibration induces.

Preliminary remarks on the need for an appropriate determination and the need for data access

Beforehand, we would like to underline that we are aware that the transparency regime should be considered in all its dimensions, i.e. considering the exemptions provided beyond certain levels. Nevertheless, we consider that this should not mitigate the need for a proper determination of the liquidity status of the instruments, and cannot justify the defects of a system.
We indeed consider that getting a good determination of liquid markets is a crucial element to designing a workable regime that would ensure transparency on markets without impairing liquidity.

In this respect, as with any other wrong calibration in the transparency regime, an inappropriate determination would result in significant unintended consequences for the real economy, contrary to the European Commission's growth and Capital Markets Union objective to build an efficient and un-fragmented EU market, with capital markets playing an increasing role in the provision of financing. An inappropriate calibration would indeed make it more difficult for liquidity providers to commit capital to facilitate trades, resulting in less depth of liquidity and wider spreads. Ultimately, (i) end-investors (such as pension funds and insurance policy holders) will be impacted since investment firms will find it more difficult and expensive to manage their portfolios; and (ii) issuers will be discouraged from issuing bonds since investors require higher yields.

With regards to this question, AMAFI and some sister associations sent a joint letter to alert the Commission and ESMA, as well as national authorities, on the need for an access to data, with of course all the due anonymity insurances. In the case of bonds, this relates to data coming from **regulatory reporting obligations.** This would give the industry the possibility to double-check the propositions of ESMA.

AMAFI notes that a COFIA approach was finally chosen for bonds and SFPs, after an intense debate. We understand that this method offers great advantages from a practical point of view, which explains why we supported it in our answers to the DP.

That being said, we are very worried by the current determination of a liquid market thanks to this method, as this will be exposed below. We are convinced that the high proportion of instruments that are wrongly (as for ESMA's own first liquidity tests) classified as liquid is not acceptable. As a result, we ask for a recalibration of the level of the chosen proxy, namely the issuance size, or the choice of another proxy so as to better delineate between liquid and illiquid classes, so as to minimise the number of "false liquid" instruments.

Otherwise, the use of IBIA would seem justified.

Having said that, we see two possible options to amend the liquidity calibration so as it is fit for purpose:

- Either the issuance size is kept as the sole criterion to determine the liquidity classes, and it appears necessary to increase the issuance size levels so as to determine truly liquid classes. We consider that the issuance sizes should be set so as to meet a strict threshold of 10% or 20% on the ratio of "false positive", e.g. on the percentage of instruments wrongly classified as liquid;

- Or, if such approach were to be deemed unsatisfactory, there would be a need to use other qualitative criteria or to use IBIA. In any case, the rate of "false positive" should be closely monitored, and never exceed 10% to 20% for any of the relevant class.

More specifically, on the three listed points of the question:

1) Concerning the use of the issuance size as a qualitative criterion for the establishment of the liquidity status, we consider that this could indeed constitute a good proxy for the definition of a liquid market.

Nevertheless, it is evident from the data provided by ESMA that the levels that were chosen are not appropriate, since they give a high share of false liquid instruments according to ESMA's table, 40% to 74% of bonds will be deemed false liquid.

Hence, the presentation of the data results in the Consultation Paper is misleading to say the least. Whilst what matters most is the percentage of illiquid instruments wrongly labelled liquid, owing to the very detrimental effects this would bring for the trading of these instruments, ESMA considers that its calibration is acceptable because when taking all instruments (liquid and illiquid), the proportion of wrongly classified instruments is rather low. We do not accept this distorted presentation, and we think it is not possible to have such a high level of false liquid instruments.

Having said that, it appears necessary to increase the issuance size levels so as to determine truly liquid classes, that is to say with at most 10% to 20% of wrongly classified instruments. We estimate that a doubling of the levels would be the minimum needed.

There is a risk that the increase of the issuance size would not be sufficient to give truly liquid asset classes: in this case, there would be a need to use other qualitative criteria or to use IBIA.

2) With regards to the parameters used by ESMA for the liquidity tests (200 days of quotes a year, 400 trades a year and trades of more than EUR 100,000), AMAFI is of the view that they seem proportionate and can be retained.

3) As a result of our preceding points, AMAFI considers that all the classes which are currently labelled liquid should be treated as illiquid, in case they are not redesigned so as to get more homogeneous liquid classes, because of the high rate of false liquid.

That is why we support a new calibration aiming at designing classes with a limited proportion of errors (false liquid). The lack of exhaustive and comparable data prevents us from developing a robust counterproposal during the consultation timeframe.

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.

AMAFI agrees with the definitions of the bond classes provided in ESMA's proposal, since they seem to correspond to market practice classifications.

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.

No. AMAFI considers that the liquidity parameters proposed by ESMA for securitised derivatives are inappropriate.

Considering that having one market maker is sufficient to qualify as liquid is not sufficient for a sub-class of securitised derivatives to be deemed liquid.

We consider that this is a violation of the Level 1 text, which provides in Article 2(1)(17) MiFIR that a market is liquid where "*there are ready and willing buyers and sellers* ", the plural clearly indicating that there should be at least two market makers.

Moreover, ESMA itself has noted in paragraph 62 of page 112 of the Consultation paper, whilst 98% of securitised derivatives analysed by ESMA had a dedicated market maker, these instruments only make up 29% of total trades and 39% of total volume traded. Hence, the presence of a market maker does not equate to liquidity. Therefore, additional factors must be taken into account to determine which sub-classes of securitised derivatives are liquid.

As for us, other liquidity parameters must be used by ESMA to conduct a more precise liquidity analysis of each of the sub-classes identified by ESMA in paragraph 60 on page 112 of the Consultation Paper (i.e. investment certificates, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange traded commodities, exchange traded notes, negotiable rights, structured medium-term notes and other warrants).

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.

AMAFI considers that there is a need for clarification. We understand that securitised derivatives are defined in relation to structured finance products. The delineation between those two categories is not clear enough.

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.

No. AMAFI does not completely agree with the proposed definition of a liquid market by ESMA.

(1) On the definition of the sub-classes, we want to make the following remarks:

- Concerning inflation single currency swaps, a greater granularity should be provided, so as to differentiate the inflation index by country. The proposed classification provides that inflation single currency swaps with a tenor inferior to 6 years are all liquid, which can be called into question.

- For swaptions, the classes proposed do not correspond to the ones used by professionals. We think that more granular approach is needed. Table 30 p.149 could be completed with the tenor of the option and of the underlying.

(2) On the question raised with regards to the application of the tenor criteria, AMAFI prefers option 2.

(3) On the classification of classes as liquid / illiquid, we want to underline again that AMAFI does not dispose of sufficient data to cross-check ESMA's analyses.

That being said, as mentioned in point (1) of this question, we are of the view that more granularity should be provided for inflation swaps so as to delineate more precisely between liquid and illiquid swaps. Some of the new sub-classes identified with our proposals in (1) would not be liquid while the larger class to which they pertain is now considered as liquid.

Apart from that, we would like to ask for an **appropriate treatment of package transactions,** which can allow clients to reduce their transaction costs and manage their execution risk. They are tailored to provide risk-return characteristics in the form of a single transaction in an efficient and cost-effective manner to clients.

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We are of the view that they need a specific and tailored treatment, whereas the December 2014 Consultation Paper does not address how these transactions might be treated under the new framework.

The proposal should be workable and flexible enough to apply for venue and SI transparency obligations and the derivatives trading obligation. We believe that Level 1 text is flexible enough to allow ESMA to specify how packaged transactions are treated in order to determine if such transactions are liquid or "traded on a trading venue".

In the absence of a special regime, there is a significant risk that such transactions may no longer be available to clients in the EU, due to the individual components being treated differently and inconsistently vs. each other when they are assessed against the relevant requirements which would negate the advantages of trading package transactions. This could result in increased transaction costs and increased execution risks.

We consider that an appropriate proposal should follow the following points:

- All components of a package have to be tradeable on a single venue in order that the package be considered "traded on a venue" for the purposes of transparency provisions of MiFIR (Articles 8.1, 10.1, 18.1 and 18.2).

- If each component of a package transaction is liquid, hence the package transaction should be considered liquid; and if any one component is above the relevant threshold (LIS or SSTI) then the package transaction is above the threshold.

- Conversely, if the package transaction contains liquid and illiquid components, the package transaction should be considered illiquid; and if any one component is above the relevant threshold (LIS or SSTI) then the package transaction is above the threshold.

- Finally, a package transaction that comprises 10 or more component legs should be considered illiquid.

We are aware that a precise definition of package transactions is needed so as to prevent some participants to create packages of instruments only for the purposes of avoiding the transparency regime or derivatives trading obligation.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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.

AMAFI has not conducted an analysis of this question on its own but fully endorses **ISDA's comments**.

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

No. AMAFI is of the opinion that the regime developed for transparency is not satisfactory in its present form.

As a matter of fact, it does not use to its full extent the provisions of the text of MiFIR, which provides in Article 8(2) that "*The transparency requirements* [...] *shall be calibrated for different types of trading systems*".

It is specially the case for RFQ systems, which would be made ineffective would pre-trade transparency requirements be applied. Making public price information on these systems of non-addressable liquidity would only bring risks and serve predators, without enhancing the price formation mechanism. To manage this risk, liquidity providers would be forced to widen their prices which would not be in the best interests of the market.

This is in sharp contrast to the solution adopted in the US, where the “RFQ to three” rule applies and protects this crucial segment. If ESMA does not envisage an alternative solution, this risks creating an unlevel playing field which would be extremely detrimental to European financial intermediaries.

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

AMAFI did not answer Q71.

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?

AMAFI prefers a methodology founded on actual quotes, and we would suggest publishing the less competitive of the quotes on both sides (without any quantity).

We approve of the need for these indicative pre-trade bid and offer prices to be calculated on a clear methodology that is made transparent beforehand by market operators being responsible for it.

According to us, European trading venues should be encouraged to compete in as many aspects of their business as possible and clear and comprehensive disclosure will allow market participants to compare different methodologies adopted by market operators.

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.

No. AMAFI considers that it is unnecessary to include the date and time of publication among the post-trade transparency fields.

We consider that the initially proposed fields are sufficient and that any additional field would be costly to populate and develop compared with the hypothetical informational value it can bring.

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.

Yes. AMAFI globally agrees with ESMA’s proposal on the applicable flags in the context of post-trade transparency.

Nevertheless, we identified several problems in the proposed list of flags in Table 2 of Annex II of the draft RTS 9, p.150 :

- There are two Gs (one for the non-price forming trades flag and one for the daily aggregated transaction flag), which seems problematic.

- The algorithmic trades flag (flag "H") incorrectly references Article 4(1)(49) of Directive (EU) 65/2014. This should be amended to refer to Article 4(1)(39) of Directive (EU) 65/2014.

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.*

AMAFI is very sceptical about ESMA's proposal.

On the one hand, we welcome that ESMA proposes a phase-in approach, and find the maximum delay of 15 minutes during this period acceptable, though we regret that the recital 3 of RTS 9 indicates that: "*The information should only be published close to the maximum time limit* [...] *in exceptional cases where the systems available do not allow for a publication in a shorter period of time*", since as a matter of fact the circumstances under which such a delay is necessary are not exceptional.

On the other hand, we contest the automatic and general transition to a 5-minute delay thereafter, considering that 5 minutes is not sufficient given that a significant proportion of non-equity transactions may still be carried OTC or through protocols which necessitate manual functionalities.

The delay could then be lowered to 5 minutes provided the trading method enables it, and taking into consideration the situation in other jurisdictions so as not to disfavour European markets too much. Today the delay is set at 15 minutes in most cases, particularly in the US.
After the three-year period, a review would be timely to reassess the feasibility of complying with a 5 minute delay.

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.

No. AMAFI has serious concerns about the list of instruments exempted from the reporting requirements.

In principle, 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, especially since securities financing transactions should be dealt with in the SFT Regulation currently being discussed.

Nevertheless, as it is the case for the lists of Article 2 and Article 13 of draft RTS 8, we find that the wording of point f is unacceptable. Indeed, it seems to exempt only **segregated** collateralisation, which would create practical difficulties for collateralisation operations as currently practised, outlawing a large number of operations, without any evident benefit.

Hence we consider that the adjective "segregated" should be deleted so that point f reads as follows: "*transfers of financial instruments such as collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.*"

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.

No. AMAFI does not agree with ESMA's proposal for bonds and SFPs. We notably regret that ESMA did not take into account several details put forward in our answers to the discussion paper.

More specifically, on the several points listed in the question:

(1) We consider that a deferral period of 48 hours is too short, especially for instruments not having a liquid market and in the case that no volume masking is authorised.
We do not agree with the drafted RTS wording which states that there can be a deferred publication "of no longer than 48 hours" (Article 8(1) p.138), which could lead to inconsistent practices across Europe, and we ask for a single time period.
Moreover, we are of the view that to ensure that the 48 hour deferral period is not cut short by transactions taking place close to a non-business day, the deferral date be referenced to business hours.

(2) Setting the SSTI at 50% of the LIS threshold is totally inappropriate for a variety of reasons:

- As per Level 1, SSTI and LIS pursue different objectives. This shows through the fact that Level 1 requires that LIS be set as large in scale compared with normal market size, while SSTI is to be set as the size at which it would cause undue risk to liquidity providers.

  While both thresholds should refer to the typology and size distribution of trades, there is no reason to believe that "undue risk" is linked to 50% of " large in scale compared with normal market size".

- Given the calibration proposed for the LIS, it would mean that SSTI would be 50% of the 90th percentile for the considered instrument. Taking into account (i) the distribution of trade sizes and (ii) the fact that LIS threshold is computed on a flawed basis (as it excludes trades below €100,000 and €1,000,000 for other illiquid bonds), it would mean that **SSTI would end up being set at a level between 80% and 90% percentile of ALL transactions for the considered instrument**. We do not accept that there is no undue risk to liquidity providers for trade sizes that relate to these proportions of the market.

- **Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre-trade transparency requirements:** Level 1 is set to ensure that, for trade at or below SSTI, SIs offer the same prices to multiple clients and execute on those prices. The proposed SSTI runs contrary to that objective, as two trades at the SSTI would bring the SI to consider it has taken an

excessive risk, and would lead it to stop trading until it has unwound its position, through a LIS hedging trade.

We hence consider that the SSTI should be set as a given percentile of the trade set for the relevant class of instrument.

If all trades are taken into account, then the SSTI could be set as the 50th percentile.

If the same biased dataset is used for SSTI and LIS calibration (e.g. the one excluding trades below €100,000 and €1,000,000 for other illiquid bonds), then the SSTI should be set as the 10th percentile.

(3) The approach which consists in capturing at least 90% of transactions or 70% of volumes is far too stringent, considering the other components of the proposed transparency regime.

Indeed, it is presented as a lighter form of the American method, where 90% are captured. We think this presentation is biased, and that models should be compared in their entirety. Whilst the American regime offers the RFQ to three rule on pre-trade transparency for RFQ systems and permits indefinite masking of the volumes in post-trade for block transactions, none of the above is provided by the proposed model. Even worse, the liquidity calibration for bond classes is especially worrying given the high proportion of illiquid bonds which should fall in the liquid category.

That being said, there is a need to revise the proposed calibration of the LIS.

It is all the more needed that the calculation is in our sense biased. AMAFI is indeed surprised by the apparently arbitrary exclusion from the calculation of trades inferior to €100,000 and €1,000,000 for other illiquid bonds (CP §43 p.228).

Such exclusion can explain the excessively high level of the thresholds compared to what would fit market functioning. It would be interesting to know the actual proportion of trade above the LIS when taking into account these smaller trades.

(4) On the setting of pre-trade and post-trade thresholds at the same size, we agree with ESMA since it does not pose problems and would bring some simplicity to the regime.

(5) As for the calculation of the thresholds, **AMAFI is very concerned by the system proposed** by ESMA. Even if we think recalculation can be useful to adapt the regime to the changes of the market microstructure, the proposed system is questionable since it does not permit a lowering of the thresholds even if the evolution of the market microstructure justifies it, by turning the current thresholds into floors (Article 11(2)(c) of the draft RTS 9). Such a ratchet effect is unacceptable.

In this situation, a solution without recalculation would be preferable, though far from ideal, while the best solution would be a true dynamic model. If option 1 (no recalculation) is finally endorsed, the fixed character of the thresholds should lead to a great attention in the determination of the thresholds, and we think that the current proposals, with regards to the economy of the whole transparency regime, are not acceptable, as exposed in point (3).

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)?

No. AMAFI is not satisfied by the regime proposed for these instruments.

More specifically, on the several points listed in the question:

(1) We consider that a deferral period of 48 hours is too short, especially for instruments not having a liquid market and in the case that no volume masking is authorised.
We do not agree with the drafted RTS wording which states that there can be a deferred publication "of no longer than 48 hours" (Article 8(1) p.138), which could lead to inconsistent practices across Europe, and we ask for a single time period.
Moreover, we are of the view that to ensure that the 48 hour deferral period is not cut short by transactions taking place close to a non-business day, the deferral date be referenced to business hours.

(2) Setting the SSTI at 50% of the LIS threshold is totally inappropriate for a variety of reasons:

- As per Level 1, SSTI and LIS pursue different objectives. This shows through the fact that Level 1 requires that LIS be set as large in scale compared with normal market size, while SSTI is to be set as the size at which it would cause undue risk to liquidity providers.

  While both thresholds should refer to the typology and size distribution of trades, there is no reason to believe that "undue risk" is linked to 50% of "large in scale compared with normal market size".

- Given the calibration proposed for the LIS, it would mean that SSTI would be 50% of the 90th percentile for the considered instrument. Taking into account (i) the distribution of trade sizes and

(ii) the fact that LIS threshold is computed on a flawed basis (as it excludes trades below €10,000,000), it would mean that **SSTI would end up being set at a level between 80% and 90% percentile of ALL transactions for the considered instrument**. We do not accept that there is no undue risk to liquidity providers for trade sizes that relate to these proportions of the market.

- **Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements:** Level 1 is set to ensure that, for trade at or below SSTI, SIs offer the same prices to multiple clients and execute on those prices. The proposed SSTI runs contrary to that objective, as two trades at the SSTI would bring the SI to consider it has taken an excessive risk, and would lead it to stop trading until it has unwound its position, through a LIS hedging trade.

We hence consider that the SSTI should be set as a given percentile of the trade set for the relevant class of instrument.

If all trades are taken into account, then the SSTI could be set as the 50th percentile.
If the same biased dataset is used for SSTI and LIS calibration (e.g. the one excluding trades below €10,000,000), then the SSTI should be set as the 10th percentile.

(3) The approach which consists in capturing at least 90% of transactions or 70% of volumes is **far too stringent**, considering the other components of the proposed transparency regime.

Indeed, it is presented as a lighter form of the American method, where 90% are captured. We think this presentation is biased, and that models should be compared in their entirety. Whilst the American regime offers the RFQ to three rule on pre-trade transparency for RFQ systems and permits indefinite masking of the volumes in post-trade for block transactions, none of the above is provided by the proposed model. Even worse, the liquidity calibration for bond classes is especially worrying given the high proportion of illiquid bonds which should fall in the liquid category.

That being said, there is a need to revise the proposed calibration of the LIS.

It is all the more needed that the calculation is in our sense biased. AMAFI is indeed surprised by the apparently arbitrary exclusion from the calculation of trades inferior to €10,000,000 (CP §43 p.228).

Such exclusion can explain the excessively high level of the thresholds compared to what would fit market functioning. It would be interesting to know the actual proportion of trade above the LIS when taking into account these smaller trades.

(4) AMAFI understands that for the sake of simplicity, it would be convenient to have identical sizes for LIS and SSTI in pre and post-trade transparency.

(5) As for the calculation of the thresholds, **AMAFI is very concerned by the system** proposed by ESMA. Even if we think recalculation can be useful to adapt the regime to the changes of the market microstructure, the proposed system is questionable since it does not permit a lowering of the thresholds even if the evolution of the market microstructure justifies it, by turning the current thresholds into floors (Article 11(2)(c) of the draft RTS 9). Such a ratchet effect is unacceptable.

In this situation, a solution without recalculation would be preferable, though far from ideal, while the best solution would be a true dynamic model. If option 1 (no recalculation) is finally endorsed, the fixed character of the thresholds should lead to a great attention in the determination of the thresholds, and we think that the current proposals, with regards to the economy of the whole transparency regime, are not acceptable, as exposed in point (3).

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.

No. AMAFI is not satisfied by the regime proposed for these instruments.

More specifically, on the several points listed in the question:

(1) We consider that a deferral period of 48 hours is too short, especially for instruments not having a liquid market and in the case that no volume masking is authorised.
We do not agree with the drafted RTS wording which states that there can be a deferred publication "of no longer than 48 hours" (Article 8(1) p.138), which could lead to inconsistent practices across Europe, and we ask for a single time period.
Moreover, we are of the view that to ensure that the 48 hour deferral period is not cut short by transactions taking place close to a non-business day, the deferral date be referenced to business hours.

(2) Setting the SSTI at 50% of the LIS threshold is totally inappropriate for a variety of reasons:

- As per Level 1, SSTI and LIS pursue different objectives. This shows through the fact that Level 1 requires that LIS be set as large in scale compared with normal market size, while SSTI is to be set as the size at which it would cause undue risk to liquidity providers.

  While both thresholds should refer to the typology and size distribution of trades, there is no reason to believe that "undue risk" is linked to 50% of " large in scale compared with normal market size".

- Given the calibration proposed for the LIS, it would mean that SSTI would be 50% of the 90th percentile for the considered instrument. Taking into account (i) the distribution of trade sizes and (ii) the fact that LIS threshold is computed on a flawed basis (as it excludes trades below €1,000,000), it would mean that **SSTI would end up being set at a level between 80% and 90% percentile of ALL transactions for the considered instrument**. We do not accept that there is no undue risk to liquidity providers for trade sizes that relate to these proportions of the market.

- **Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements:** Level 1 is set to ensure that, for trade at or below SSTI, SIs offer the same prices to multiple clients and execute on those prices. The proposed SSTI runs contrary to that objective, as two trades at the SSTI would bring the SI to consider it has taken an

excessive risk, and would lead it to stop trading until it has unwound its position, through a LIS hedging trade.

We hence consider that the SSTI should be set as a given percentile of the trade set for the relevant class of instrument.

If all trades are taken into account, then the SSTI could be set as the 50th percentile.

If the same biased dataset is used for SSTI and LIS calibration (e.g. the one excluding trades below €1,000,000), then the SSTI should be set as the 10th percentile.

(3) The approach which consists in capturing at least 90% of transactions or 70% of volumes is **far too stringent**, considering the other components of the proposed transparency regime.

Indeed, it is presented as a lighter form of the American method, where 90% are captured. We think this presentation is biased, and that models should be compared in their entirety. Whilst the American regime offers the RFQ to three rule on pre-trade transparency for RFQ systems and permits indefinite masking of the volumes in post-trade for block transactions, none of the above is provided by the proposed model. Even worse, the liquidity calibration for bond classes is especially worrying given the high proportion of illiquid bonds which should fall in the liquid category.

That being said, there is a need to revise the proposed calibration of the LIS.

It is all the more needed that the calculation is in our sense biased. AMAFI is indeed surprised by the apparently arbitrary exclusion from the calculation of trades inferior to €1,000,000 (CP §43 p.228).

Such exclusion can explain the excessively high level of the thresholds compared to what would fit market functioning. It would be interesting to know the actual proportion of trade above the LIS when taking into account these smaller trades.

(4) AMAFI understands that for the sake of simplicity, it would be convenient to have identical sizes for LIS and SSTI in pre and post-trade transparency.

(5) As for the calculation of the thresholds, **AMAFI is very concerned by the system** proposed by ESMA. Even if we think recalculation can be useful to adapt the regime to the changes of the market microstructure, the proposed system is questionable since it does not permit a lowering of the thresholds even if the evolution of the market microstructure justifies it, by turning the current thresholds into floors (Article 11(2)(c) of the draft RTS 9). Such a ratchet effect is unacceptable.

In this situation, a solution without recalculation would be preferable, though far from ideal, while the best solution would be a true dynamic model. If option 1 (no recalculation) is finally endorsed, the fixed character of the thresholds should lead to a great attention in the determination of the thresholds, and we think that the current proposals, with regards to the economy of the whole transparency regime, are not acceptable, as exposed in point (3).

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.

No. AMAFI is not satisfied by the regime proposed for these instruments.

More specifically, on the several points listed in the question:

(1) We consider that a deferral period of 48 hours is too short, especially for instruments not having a liquid market and in the case that no volume masking is authorised.

We do not agree with the drafted RTS wording which states that there can be a deferred publication "of no longer than 48 hours" (Article 8(1) p.138), which could lead to inconsistent practices across Europe, and we ask for a single time period.

Moreover, we are of the view that to ensure that the 48 hour deferral period is not cut short by transactions taking place close to a non-business day, the deferral date be referenced to business hours.

(2) Setting the SSTI at 50% of the LIS threshold is totally inappropriate for a variety of reasons:

- As per Level 1, SSTI and LIS pursue different objectives. This shows through the fact that Level 1 requires that LIS be set as large in scale compared with normal market size, while SSTI is to be set as the size at which it would cause undue risk to liquidity providers.

  While both thresholds should refer to the typology and size distribution of trades, there is no reason to believe that "undue risk" is linked to 50% of "large in scale compared with normal market size".

- Given the calibration proposed for the LIS, it would mean that SSTI would be 50% of the 90th percentile for the considered instrument. Taking into account (i) the distribution of trade sizes and (ii) the fact that LIS threshold is computed on a flawed basis (as it excludes trades below €500,000), it would mean that **SSTI would end up being set at a level between 80% and 90% percentile of ALL transactions for the considered instrument**. We do not accept that there is no undue risk to liquidity providers for trade sizes that relate to these proportions of the market.

- **Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements:** Level 1 is set to ensure that, for trade at or below SSTI, SIs offer the same prices to multiple clients and execute on those prices. The proposed SSTI runs contrary to that objective, as two trades at the SSTI would bring the SI to consider it has taken an excessive risk, and would lead it to stop trading until it has unwound its position, through a LIS hedging trade.

We hence consider that the SSTI should be set as a given percentile of the trade set for the relevant class of instrument.

If all trades are taken into account, then the SSTI could be set as the 50th percentile.
If the same biased dataset is used for SSTI and LIS calibration (e.g. the one excluding trades below €500,000), then the SSTI should be set as the 10th percentile.

(3) The approach which consists in capturing at least 90% of transactions or 70% of volumes is **far too stringent**, considering the other components of the proposed transparency regime.

Indeed, it is presented as a lighter form of the American method, where 90% are captured. We think this presentation is biased, and that models should be compared in their entirety. Whilst the American regime offers the RFQ to three rule on pre-trade transparency for RFQ systems and permits indefinite masking of the volumes in post-trade for block transactions, none of the above is provided by the proposed model. Even worse, the liquidity calibration for bond classes is especially worrying given the high proportion of illiquid bonds which should fall in the liquid category.

That being said, there is a need to revise the proposed calibration of the LIS.

It is all the more needed that the calculation is in our sense biased. AMAFI is indeed surprised by the apparently arbitrary exclusion from the calculation of trades inferior to €500,000 (CP §43 p.228).

Such exclusion can explain the excessively high level of the thresholds compared to what would fit market functioning. It would be interesting to know the actual proportion of trade above the LIS when taking into account these smaller trades.

(4) AMAFI understands that for the sake of simplicity, it would be convenient to have identical sizes for LIS and SSTI in pre and post-trade transparency.

(5) As for the calculation of the thresholds, **AMAFI is very concerned by the system** proposed by ESMA. Even if we think recalculation can be useful to adapt the regime to the changes of the market microstructure, the proposed system is questionable since it does not permit a lowering of the thresholds even if the evolution of the market microstructure justifies it, by turning the current thresholds into floors (Article 11(2)(c) of the draft RTS 9). Such a ratchet effect is unacceptable.

In this situation, a solution without recalculation would be preferable, though far from ideal, while the best solution would be a true dynamic model. If option 1 (no recalculation) is finally endorsed, the fixed character of the thresholds should lead to a great attention in the determination of the thresholds, and we think that the current proposals, with regards to the economy of the whole transparency regime, are not acceptable, as exposed in point (3).

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.

No. AMAFI is not satisfied by the regime proposed for these instruments.

More specifically, on the several points listed in the question:

(1) We consider that a deferral period of 48 hours is too short, especially for instruments not having a liquid market and in the case that no volume masking is authorised.

We do not agree with the drafted RTS wording which states that there can be a deferred publication "of no longer than 48 hours" (Article 8(1) p.138), which could lead to inconsistent practices across Europe, and we ask for a single time period.

Moreover, we are of the view that to ensure that the 48 hour deferral period is not cut short by transactions taking place close to a non-business day, the deferral date be referenced to business hours.

(2) Setting the SSTI at 50% of the LIS threshold is totally inappropriate for a variety of reasons:

- As per Level 1, SSTI and LIS pursue different objectives. This shows through the fact that Level 1 requires that LIS be set as large in scale compared with normal market size, while SSTI is to be set as the size at which it would cause undue risk to liquidity providers.

  While both thresholds should refer to the typology and size distribution of trades, there is no reason to believe that "undue risk" is linked to 50% of "large in scale compared with normal market size".

- Given the calibration proposed for the LIS, it would mean that SSTI would be 50% of the 90th percentile for the considered instrument. Taking into account (i) the distribution of trade sizes and (ii) the fact that LIS threshold is computed on a flawed basis (as it excludes trades below €100,000), it would mean that **SSTI would end up being set at a level between 80% and 90% percentile of ALL transactions for the considered instrument**. We do not accept that there is no undue risk to liquidity providers for trade sizes that relate to these proportions of the market.

- **Setting the SSTI to 50% LIS means that SIs will be unable to fulfil their pre trade transparency requirements:** Level 1 is set to ensure that, for trade at or below SSTI, SIs offer the same prices to multiple clients and execute on those prices. The proposed SSTI runs contrary to that objective, as two trades at the SSTI would bring the SI to consider it has taken an

excessive risk, and would lead it to stop trading until it has unwound its position, through a LIS hedging trade.

We hence consider that the SSTI should be set as a given percentile of the trade set for the relevant class of instrument.

If all trades are taken into account, then the SSTI could be set as the 50th percentile.

If the same biased dataset is used for SSTI and LIS calibration (e.g. the one excluding trades below €100,000), then the SSTI should be set as the 10th percentile.

(3) The approach which consists in capturing at least 90% of transactions or 70% of volumes is **far too stringent**, considering the other components of the proposed transparency regime.

Indeed, it is presented as a lighter form of the American method, where 90% are captured. We think this presentation is biased, and that models should be compared in their entirety. Whilst the American regime offers the RFQ to three rule on pre-trade transparency for RFQ systems and permits indefinite masking of the volumes in post-trade for block transactions, none of the above is provided by the proposed model. Even worse, the liquidity calibration for bond classes is especially worrying given the high proportion of illiquid bonds which should fall in the liquid category.

That being said, there is a need to revise the proposed calibration of the LIS.

It is all the more needed that the calculation is in our sense biased. AMAFI is indeed surprised by the apparently arbitrary exclusion from the calculation of trades inferior to €100,000 (CP §43 p.228).

Such exclusion can explain the excessively high level of the thresholds compared to what would fit market functioning. It would be interesting to know the actual proportion of trade above the LIS when taking into account these smaller trades.

(4) AMAFI understands that for the sake of simplicity, it would be convenient to have identical sizes for LIS and SSTI in pre and post-trade transparency.

(5) As for the calculation of the thresholds, **AMAFI is very concerned by the system** proposed by ESMA. Even if we think recalculation can be useful to adapt the regime to the changes of the market microstructure, the proposed system is questionable since it does not permit a lowering of the thresholds even if the evolution of the market microstructure justifies it, by turning the current thresholds into floors (Article 11(2)(c) of the draft RTS 9). Such a ratchet effect is unacceptable.

In this situation, a solution without recalculation would be preferable, though far from ideal, while the best solution would be a true dynamic model. If option 1 (no recalculation) is finally endorsed, the fixed character of the thresholds should lead to a great attention in the determination of the thresholds, and we think that the current proposals, with regards to the economy of the whole transparency regime, are not acceptable, as exposed in point (3).

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.

AMAFI did not answer Q82.

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

AMAFI globally agrees with ESMA's proposal on the supplementary deferral regime, which is consistent with Level 1, notwithstanding our general criticisms on the post-trade transparency regime expressed above.

Nonetheless, we remain very concerned about what an inconsistent application this could cause. This can result in a more fragmented environment and an unlevel playing field across Europe, which would go at a time when the Commission is pushing for greater convergence through the CMU.

Hence we would urge ESMA to work with NCAs to encourage a widespread and harmonised take-up.

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.

AMAFI is of the view that NCAs should be in a position to temporarily suspend transparency requirements with a speed that keeps pace with changing market conditions, especially in stressed market conditions.

As a result, we would support the following changes so as to ensure that the proposed threshold tests are effective:

- The thresholds should be formulated to reflect a stress scenario.
- More granular instrument categories should be used. A single category for derivatives is too large and does not sufficiently differentiate between derivative instruments.
- The thresholds (if based on data gathered in the last 30 days) should be set at a lower level than 40%.

Moreover, we consider that there should be scope to include qualitative data in any assessment.

AMAFI did not answer Q85 to Q88.

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

As a general comment, AMAFI wants to reiterate its support for a globally harmonised solution on these instruments.

Up to now, evidence exists to support the position that market bifurcations have occurred due to trading mandates not being aligned with the US and the rest of the world.

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?

AMAFI did not answer Q90.

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

Yes. AMAFI considers that such an extension would have beneficial effects for the level playing field.

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

AMAFI did not answer Q92.

3. Microstructural issues

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

AMAFI agrees with the list of disorderly trading conditions set in Article 1(4) provided the wording is slightly amended regarding:

- point (c) : the disorderly trading is not necessarily caused by the existence of "*multiple erroneous orders and/or transactions*", as although more than one erroneous order/transaction can be experienced, their impact can be low so that no disorderly trading is caused. Conversely, a single erroneous transaction can cause disorderly trading. AMAFI therefore suggests amending point (c) to read: "*<u>significant</u> erroneous orders and/or transactions are experienced*".
- point (d) : the need to increase the capacity of a trading venue can stem from legitimate business reasons with no relation to disorderly trading. Disorderly trading is not caused by the need to increase capacity but rather by the fact that capacity is no longer sufficient for the trading

occurring. AMAFI therefore suggests amending point (d) to read: "*capacity of trading venues is no longer sufficient*".

As regards the draft RTS 13, a business continuity requirement set in Article 20(2)(i) is to have "*arrangements for the investment firm to trade all existing orders manually*". This requirement is disproportionate, especially as regards algorithmic trading. Trading of existing orders can be effected by other means (such as automated means or the transmission to another investment firm) even in a business continuity situation or existing orders can be cancelled/amended rather than traded. AMAFI therefore suggests amending this point as follows: "*arrangements for the investment firm to manage its existing orders in an orderly fashion*".

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?

AMAFI considers that the Initial Testing which is described in Article 10 of the draft RTS should be applied based on the proportionality principle.

Specifically, testing requirements should be limited to instances where the firm has introduced functioning, substantial or structural changes to the algorithm or strategy and not to minor changes such as recalibration or adjustments in parameters, as it can be the case with the current version of the text.

We hence believe that Article 10 in RTS 13 should be modified as follows: "*An investment firm shall, prior to the initial deployment or update* ***involving functioning, substantial or structural changes*** *of a trading system, algorithm or strategy, make use of clearly delineated development and testing methodologies. These methodologies should address process design and execution, division of responsibilities, allocation of sufficient resources, escalation procedures, and sign-off by a responsible party within the investment firm*."

Finally, it should be permitted to rely on the testing carried out by the provider or outsourcee when used according to the conditions set in Article 7 (which, for the provider, includes assessment by the investment firm of its testing procedures). AMAFI therefore suggests adding a paragraph 4 in Article 10 stating that "*An investment firm which outsources or uses a procured trading system, algorithm or strategy in accordance with Article 7 can rely on the testing carried out by the third party*".

Finally, Article 22(5) stated that testing against cyber attacks should be carried out at least every six months. This frequency is disproportionate, especially for smaller firms. As for other control frequencies set in this RTS, it should be set to at least annual.

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

Article 16(1) requires real-time monitoring of the trading activity by staff that understand the activity and have the right experience and training. It also provides that such staff should "*have the authority to take remedial action when necessary*".

AMAFI disagrees that monitoring staff should necessarily have the authority to take remedial action, as this would usually bypass the escalation process that should then take place and which would result in remedial action being decided by the person with the proper level of seniority and authority to do so.

AMAFI therefore suggests the following amendment: "... and troubleshoot and respond to operational and regulatory issues in a timely manner. Investment firms should ensure action is taken to remedy issues identified by these staff members, who shall be accessible to the firm's competent authority, and to the trading venues on which the firm is active....".

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

Requiring a pre-trade control on the market impact assessment of the orders submitted is in AMAFI's view disproportionate and not useful considering the other pre-trade controls that should be implemented and the exhaustive testing that should be carried out before implementing an algorithm.

Disproportionate because such control would require the use of an algorithm for each order submitted, as it would need to be dynamic, taking into account the liquidity of the instrument at the time of the order.

Not useful because other controls already include out-of range orders on multiple aspects and this additional control would eventually create risks of disrupting the order book and not complying with the best execution obligation.

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

AMAFI agrees that market abuse monitoring should also apply to the specific case of algorithmic trading. However, this matter is already dealt with by the Market Abuse directive and the newly published Market Abuse Regulation, which impose a very strict regime already covering algorithmic trading.

AMAFI therefore sees no value in introducing specific requirements related to market abuse monitoring at Level 2 of MiFID II. Such overlap is detrimental to regulatory clarity and is more likely to create confusion.

AMAFI thus suggests removing the references to market abuse monitoring in articles 6 and 18, and, if need be, introducing any additional requirements in the Level 2 provisions of MAR currently being worked on.

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

The know-your-client and anti-money laundering requirements applicable to any clients, including DEA clients, are already set by the Anti-Money Laundering Directive, being currently revised. Adding specific requirements in this respect at Level 2 of MiFID II (as done by Article 24 (a) and Article 25) will cause confusion, create an overlap, be detrimental to regulatory clarity and introduce inconsistencies.

As an example, a major discrepancy would be created by the requirement in Article 25 to annually review the due diligence process for DEA clients, including therefore point (a) of Article 24 related to KYC and AML. Such review is mandated by the Anti-Money laundering directive but its frequency is based on the risk assessment carried out by the firm on each of its clients. The importance of risk assessment based monitoring is further reinforced by the incoming 4th Anti-Money Laundering Directive. Not all DEA users will have the same AML risk profile, such that mandating an annual review of their KYC is contrary to the AML Directive. It is also disproportionate, as some firms whose clients are all DEA users would actually have to review the KYC of all their clients every year.

AMAFI therefore strongly advises removing any requirement pertaining to KYC and anti-money laundering in Article 24 (in effect, deleting point (a)). If a reminder is needed that such requirements apply to DEA clients (which in AMAFI's view is unnecessary), then the first paragraph of Article 24 could be

amended to read: "*… the nature of connectivity to the relevant trading venues. Without prejudice to Directive 2005/60/EC, at a minimum, the process shall cover such matters as:*
(a) the governance and ownership structure;..."

It should be noted that the mandate provided for by the Level 1 text does not include KYC and AML matters, but only suitability, so that there is no ground for developing additional requirements pertaining to KYC and AML in these draft RTS.

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

AMAFI understands that algorithmic trading, as defined by ESMA, covers orders and quotes, which are initiated and have limited or no human interaction. It follows that requests for quote, as they are a response to a request, as well as voice trading, as it is based on human interaction, are out of scope of algorithmic trading.

Other issues with RTS 13:

- Recitals need to be proof-read because their meaning is not always clear (examples: recitals (3), (6), (7) – last sentence, (13) – first sentence, (14) – last sentence).

- Recital (1)

This statement is too wide – it should be put back within the context of algorithmic trading.

- Recital (9)

The trustiness of one's clients is highly subjective – this should be removed.
Firms may not have access to all information about the disciplinary history of their clients with trading venues, as this information is not always public. "*When available*" should therefore be added.

- Article 3:

Replace 'single algorithm" by "an algorithm".

- Article 5

Controlling access to the firm's system is not linked to training and is already dealt with by Article 22. It should be removed from Article 5.

- Article 26(3)

The last sentence should be amended to make sure that there is no confusion possible between the pre- and post-trade controls of the DEA provider and the ones of its clients mentioned in the previous sentence. I.e. it should be made clear that the DEA provider shall monitor the performance of *its* pre- and post-trade controls, not the ones of the third party used by its clients.

AMAFI did not answer Q100 to Q103.

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

No. AMAFI believes that there are several points which need clarifications and amendments for the RTS to be workable.

As an introductory remark, we are especially concerned by the following points, developed in the subsequent answers and related to the delineation of what is a market making strategy:

- The 30% presence during one trading day is not satisfactory, considering notably the life-cycle (variation of liquidity) of certain instruments.

- The timeframe of when the contract should be signed must be clarified. We consider that a delay of one month, as the one for SI, would be acceptable, so as to sign a market making agreement after the conditions are met.

- The situation of venues working with a RFQ systems must be clarified, since the regime as proposed does not seem to function with such trading systems

Apart from those different points detailed in the following questions, AMAFI questions the title of the RTS. In our view, it does not deal with market making as a general notion and as it is defined in Article 4 of MiFID, so it should only refer to market making strategies and schemes. This creates an ambiguity, which we fear is present at the Level 1 text.

Moreover, we have questions on the notion of "competitive prices", which are defined as "*quotes posted within the average bid-ask spread*". This does not seem consistent with Article 3(2) of draft RTS 15. We consider that competitive prices should not be based on Best Bid Offer (i.e. best limits independent from the size), which can easily be manipulated. On the contrary, it should be established with the spread weighed on the size. Apart from that, in case an instrument is traded on several venues, it should be clarified whether aggregated prices or prices of the most liquid platform should be taken into account.

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.

AMAFI thinks that the concept of daily trading hours of the draft needs clarification, because it is as such impractical.

First, we are very sceptical about the consideration that one day is sufficient to give the status of market marker; which is supposed to be lasting and constraining.

Apart from that, we are of the view that these rules could create practical problems for certain protocols of trading, such as RFQ systems, which do not quote continuously.

Moreover, this rule does not seem appropriate for some non-equity instruments which can have peaks of liquidity followed by long periods of low liquidity in a short timeframe.

Finally, we consider that such a generic rule is not satisfactory considering the differences across Europe on the trading practises, which could lead to inconsistent applications.

As a concluding remark, we think it is important, as mentioned our answer to Q104, to give details on the timeframe for the signature of the market making agreement.

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.

AMAFI is sceptical about the passage from 30% to 50%.

We would like to get precisions on what the breach of this obligation to quote would entail.

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

AMAFI does not agree with the draft on that subject for two reasons.

First, the text gives the trading venue the capacity to determine when there is an exceptional circumstance. We think that the investment firms are better placed to decide when an exceptional circumstances arises (keeping in mind that these are circumstances not limited to "exceptional market conditions" which means that they can be endogenous to the investment firm). Article 8(2) should be modified in this respect as follows: "*Market making schemes 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~~ **investment firm** determines ~~the state of its market to be~~ **it is** under exceptional circumstances as defined in this Regulation.*"

Second, we are also very concerned by the publicity to be made of the occurrence of exceptional circumstances (Article 5(5) of the draft RTS), since this could trigger undesirable consequences in the orderly functioning of markets and performance of other participants. Disclosure should be reserved to market events particular to a market, and should be publicised to other market members only. In this respect, Article 5(5) of the RTS could be modified as follows: "***Investment firms should be informed of the occurrence of*** *~~The~~ exceptional circumstances* ***affecting*** *~~shall be made public by~~ the trading venue as soon as technically possible ~~except in the case of circumstances that impede the investment firm's ability to maintain prudent risk management practice as described above~~.*"

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

AMAFI thinks that the changes brought in that field go in the right direction but remain insufficient. Though welcoming the fact 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 give an investment firm party to a market making agreement the ability to suspend its participation within such an agreement based on its own analysis and ability to continue with its market making strategy.

Moreover, we are of the opinion that the definition of 'stressed market conditions' should be broadened to include market events.

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

No.

Recital 7 of RTS 16 provides that "*trading venues may establish derogatory arrangements for firms engaged in market making agreements*", which is not explicitly stated in the draft RTS.

As a consequence, we are of the view that Article 1 the RTS should be complemented with the following third point: "*(3) Trading venues may establish derogatory arrangements for investment firms engaged in* *market making agreements and fulfilling the obligations set under article XXX (refer to current article 4 of draft RTS 15).*"

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.

AMAFI did not answer Q110.

Q111. Do you agree with the proposed regulatory technical standards?

AMAFI welcomes the new tick size regime as set out in draft RTS 18.

We are of the view that it should have positive consequences, though a close monitoring remains necessary.

That being said, there are two clarifications that we find necessary to obtain, perhaps at a later stage (Q&A):

- The new regime does not explicitly apply to systematic internalisers, which are not mentioned in draft RTS 18 where the regime is said to concern trading venues. In our opinion, it is important to make sure that SIs are in the scope of this regime so as to limit the risks of an unlevel playing field which would only shift the problem.

- AMAFI thinks that an uncertainty can arise from the use of the reference price waiver permitted by Article 4 of MiFIR, since the reference price should be established by obtaining "*the midpoint within the current bid and offer prices of the trading venue*". By construction, the midpoint would not correspond to a tick in half of all cases. We would like to be certain that the new tick size regime would not prevent the use of that waiver in such cases.

AMAFI did not answer Q112 to Q131.

Q132. Which would be an adequate threshold in terms of turnover for the purposes of considering a market as "material in terms of liquidity"?

AMAFI welcomes the new tick size regime as set out in draft RTS 18.

We are of the view that it should have positive consequences, though a close monitoring remains necessary.

That being said, there are two clarifications that we find necessary to obtain, perhaps at a later stage (Q&A):

The new regime does not explicitly apply to systematic internalisers, which are not mentioned in draft RTS 18 where the regime is said to concern trading venues. In our opinion, it is important to make sure that SIs are in the scope of this regime so as to limit the risks of an unlevel playing field which would only shift the problem.

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AMAFI did not answer Q133.

5. Data publication and access

AMAFI did not answer Q134 to Q159.

6. Requirements applying on and to trading venues

AMAFI did not answer Q160 to Q167.

7. Commodity derivatives

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

Yes, we agree on ESMA proposal. We think that ESMA's new approach, and in particular the proposed thresholds, is more appropriate with regard to the reality of the business in this area.

However, AMAFI would recommend that the timeframe for implementing the new regulatory frame be more realistic. In particular, in the current drafting of the RTS, market participants would have to apply the capital test and the market share test to evaluate whether they will be covered by MiFID II or are able to apply for an exemption, on the basis of average data for 2016 which will only be available once 2016 has come to an end, i.e. on 2 January 2017. This calendar is not workable for markets participants.

AMAFI did not answer Q169 to Q172.

Q173. Do you agree 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.

Yes, we do agree. The threshold is more appropriate with regard to the reality of the business in this area.

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

The accounting capital measure is not appropriate for entities such as unions of cooperatives which do not have capital, from an accounting perspective. Rather, we suggest adopting an economic approach which would encompass guarantees. This approach would all the more make sense that this is, as we understand, the approach retained in the US Dodd Frank Act.

AMAFI did not answer Q175 to Q182.

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

As general comment, we note that it is very difficult, if not impossible, for our members to make projections on how the position limits will concretely apply. Relevant market data are not available and the terms of the methodology are not yet sufficiently defined and calibrated.

AMAFI would also like to stress the importance for NCAs to have sufficient flexibility to first, adjust progressively the limits and secondly, to ensure that the proposed framework for calculating position limits remains at each moment consistent with any new characteristic of the relevant commodity markets. From this perspective the term ‘periodically’ is not sufficiently precise. In order to provide NCAs with sufficient flexibility, AMAFI would recommend that NCAs be required to review the methodology as soon as needed. Thus, RTS 29, Recital (15) should be modified so that the word ‘periodically’ is replaced by ‘as soon as needed’.

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?

AMAFI supports ESMA’s proposed 25% of deliverable supply baseline. It also fully supports the ability for NCAs to apply a percentage of variation. However, in absence of relevant statistics and data, it not possible for AMAFI members to assess if a variation of +/- 15% is completely relevant.

However, we have two comments:

Firstly, to ensure consistency across the Union, it is important that, for calculating such a deliverable supply, all NCAs use the same reference of data and that the methodology be as simple as possible.

NCAs can rely on figures provided by:

- all relevant warehouses for metals,
- all relevant public silos as well as the significant private points for agricultural products,
- the hub operator(s) for energy products.

In this regard, Level 2 technical standards will have to indicate what will be the frequency according to which the above-mentioned figures will have to be transmitted by these warehouses, silos and hub operators. Therefore, we would recommend that this frequency should be “as soon as practicable”.

Secondly, we do think that the proposed methodology based on the deliverable supply is only relevant for physically settled spot-month contracts. For non-spot month limits, we recommend using the open interest baseline.

See also answer to Q188

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?

AMAFI members are not able to answer this question. Such answer directly depends on the methodology which will be used (deliverable supply versus spot month), its criteria and the frequency of its possible modifications. In addition, we do not have the appropriate statistics and data allowing us to determine whether such a 40% position limit is suitable for all commodity derivatives. (See Q184).

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?

Same response as under question 185.

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

As expressed earlier in our answer to the Discussion Paper, we believe that volatility is not a relevant factor to be taken into account when determining the size of position limit. However, since this factor is enumerated in Level 1, it has to be taken account. In order to mitigate its potential detrimental impact, we recommend that its weighting be reduced compared to the others factors.

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?

Yes. Deliverable supply is the appropriate metric for physically settled spot month contracts. However, for setting the non spot limits, we don't believe that deliverable supply is the right one. Open interest should instead be considered. In fact, open interest would make more sense because these contracts are not entered into for the purpose of the delivery of the underlying commodity.

In addition, since the delivery constraints are different for the spot month or the others month limit, assessment of deliverable supply should be differentiated accordingly.

See also Q184

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?

It is important that ESMA pays due attention to the fact that the commodity markets are characterised by a number of contracts which are illiquid, especially (but not limited to) new contracts. For these contracts, it is a common situation that a limited number of market participants represent the vast majority of volumes, at least as long as these contracts remain immature. If positions limits were to be imposed according to the same methodology and criteria as the ones for more liquid contracts, it could hurt the liquidity and create barriers to the development of new commodity derivatives.

For this reason, AMAFI supports the use of a transitional period during which position limits would not be applicable. For example, it could be considered that during the first 6 months after the creation of a new commodity contracts positions limits would not apply or, if ESMA considers that it would not be compliant with the Level 1, the quantitative thresholds (25%, 40%, +/- 15%) could be adapted accordingly.

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

Factors directly related to the physical market such as the capacity constraints could also be taken into account.

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

Same response as under Q190

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

Same response as under Q184 and Q189

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

Same response as under Q 189 (illiquid and new contracts).

In addition, competent authorities should take into account the number and composition of market participants in a specific commodity market or even better for each contract. If it appears that the number of participants is too low or that market participants are essentially composed of buyers, positions limits should be calibrated to avoid hurting both the market and its participants.

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?

We suggest that competent authorities enter into formal agreements with warehouses, public silos, private storage points and hub operators to be provided with data on the storage capacities.

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

The NCAs should have discretion on a case-by-case basis.

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

We do not think that the “age” of the commodity derivative is a relevant indicator that should be taken into account.

The ongoing liquidity of a contract can be relevant to qualify contracts as illiquid and therefore to allow NCAs to impose a more flexible position limits regime applying to these contracts.

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?

AMAFI did not answer Q197.

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

We agree with ESMA’s proposal and fully agree with the need for NCAs to have sufficient flexibility to take into account the specificities of the different markets.

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 ?

AMAFI did not answer Q199.

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

The absence of hedging exemption for financial firms may be detrimental to the markets if the baseline limits and the netting are inappropriately defined.

In this respect, we strongly believe that if open interest is seen as the metric for non-spot month limits and netting is broad enough, then the absence of hedging exemption is less problematic because the framework will operate in such a way as to reflect risk position in the relevant commodity resulting in limits being set at workable levels. Without broad netting, gross exposures in certain commodity derivatives will arise which will not accurately reflect the risk position.

AMAFI did not answer Q201 to Q203.

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

AMAFI globally agree with the proposed draft RTS.

However, we cannot agree with the procedure that market participants should follow for their derivatives to be recognised as economically equivalent OTC contracts (EEOTC).

Recital (10) states that where a person considers an OTC commodity derivative as EEOTC it should "*notify the relevant competent authority for the trading venue on which the commodity derivative trades*". Following this notification, the competent authority will determine whether OTC commodity derivative is EEOTC and both, this authority and ESMA, will publish the relevant list. In our opinion, this procedure appears to be not suitable with the clients' needs. Indeed, this ex ante requirement does not allow market participants to know at the moment they enter into a transaction with a client whether their trade is recognised as EEOTC and therefore whether they will comply with the position limits.

Moreover, this procedure should not be provided for in a Recital but should be duly addressed in the core RTS

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

We agree with the proposed draft RTS.

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

We agree with the proposed draft RTS.

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

We agree with the proposed draft RTS.

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

Same response as under question 204.

To avoid creating situations where clients are unable to find easily counterparties, we strongly recommend replacing the proposed ex ante procedure by an ex post approval under which market participants notify the competent authority after the trades have been entered into.

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

We agree with the proposed draft RTS.

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

We agree.

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

We agree.

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

Article 2 of the proposed ITS 31 states that "*investments firms shall produce and send a daily position report on their positions […] as well as of those of their clients and the clients of those clients until the end client is reached […]*".

We understand that this requirement is consistent with Article 58(2) of MiFID II (Level 1) which expressly refers to the fact that this reporting should be performed in accordance with Article 26 of MiFIR.

First of all, we underline that Article 26.3 of MiFIR does not require such a reporting "*for the clients of clients until the end client is reached*". Indeed, Article 26.3 only refers to "*a designation to identify the clients on whose behalf the investment firm has executed that transaction*".

Secondly, we stress the fact that investment firms will be practically and legally unable to provide the reporting until the end client is reached. From a practical viewpoint, investment firms will absolutely have no guarantee given from their clients that the reporting such investment firms have requested will be provided until the end client is reached. In other words, investment firms will not be able to make the appropriate due diligence to determine whether they have complied with the reporting obligation. From a legal point of view, for confidentiality and banking secrecy reasons, it is not obvious that the clients of the investment firms would legally be allowed to provide any detail on their clients.

Thirdly, such a mandatory reporting would lead to a high number of situations where commercially and legally sensitive information are transferred to undue persons which obviously may impair the integrity and safety of the whole commodity market.

Fourthly, we are wondering if such a reporting obligation will not encourage some clients to use the services provided by intermediaries which are located outside of the EU and therefore not submitted to the MiFID position reporting requirements.

In this specific context, and taking into account the Level 1, we urge ESMA to modify the drafting of Article 2 of the proposed ITS 31 as such:

Article 2
Position Report
*1. Investment Firms shall produce and send a daily position report on their positions taken in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue and in economically equivalent OTC contracts, as well as, **on a best effort basis**, of those of their clients and the clients of those clients until the end client is reached to the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded or the central competent authority where the commodity derivatives or emission allowances or derivatives thereof are traded in significant volumes on trading venues in more than one jurisdiction, in the format specified in Table 2 of the Annex.*
[…]

As an alternative, we suggest ESMA to consider a process close to the one used in the US under the form 40 under the CFTC rules: 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.

8. Market data reporting

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

AMAFI is of the view that TREM is the format which would pose the most substantial implementation challenge since it is a custom XML format defined by ESMA.

Indeed, it can be much more complicated for firms to implement customised XML formats, instead of standardised formats widely used by the industry like FpML.

That being said, all formats specified in paragraph 2 would pose substantial implementation challenges. Indeed, the less cumbersome format is flat files.

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

As a preliminary remark, AMAFI would like to stress the necessity for reporting formats across regulations to be consistent in order to be able to report the same data (the same field) in the same way.

AMAFI anticipates the following difficulties regarding the proposed definition for transaction and execution:

<u>Transaction</u>

Issuance, allotment or subscription, placements

Reportable static data such as ISIN, AII, etc. may be missing at the time the transaction has to be reported. Thus reporting firms would have to flag the reported transactions with missing static data and then submit them again when that data is available.

To avoid reporting firms having to re-submit a large number of transactions executed on the primary or on the grey markets, ESMA should consider (i) enabling firms to replace the missing static data with their internal data, (ii) accepting these reports and letting NCAs liaise directly with firms should they have questions on specific transactions or (iii) allowing firms to report late in these circumstances.

Exclusion of Securities Financing Transactions

We welcome this clarification but want to make sure that all securities financing transactions (SFTs) reporting requirements will arise solely from the SFT **Regulation and that investment firms will not be requested to report any SFT even in an interim period. Indeed:**

- One of the main objectives of the SFTR is to extend reporting requirements on all forms of SFTs. Furthermore, the regulation should enable to integrate in its scope any future form of SFT;

- It would thus be hard to understand that, should the SFTR not enter into force before MiFIR, investment firms are requested to report SFTs under MiFIR. This would lead to inconsistencies between MiFIR and SFTR reportings and would incur unnecessary additional costs and burdens to investment firms and NCAs alike, with no proven added value. One would thus strongly question the cost/benefit of a temporary MiFIR reporting of SFTs.

Reporting of transactions between a firm acting as Systematic Internaliser (SI) and the same firm acting on a riskless principal basis

Whilst there is no ambiguity on the necessity to report transactions between a SI and the same firm acting on an **agency basis**, we would like clarity on whether transactions between a SI and the same firm acting on a **riskless principal basis** are required to be reported.

Intra-group activity:

Our understanding is that the requirement is aligned with EMIR: transactions between entities that have the same LEI (branches) are not reportable, while transactions between different legal entities (different LEI) belonging to the same group are reportable. It is impossible to distinguish the "purely internal movements" from the "movements where there is a change in position".

Reporting of lifecycle events

We reiterate the concept of price-forming post-trade events being reportable, while non price-forming events should not be reportable

We understand the requirement to report increase/decrease of the notional as a delta but regret this is not in line with the way we currently report these events under EMIR

Exclusion of activities such as dividend re-investment plans, employee share incentive plans, etc.

As regards the activity referred to in § 26, even if we highly welcome ESMA's intention to exclude such activity from the reporting requirement, we do not believe that the designed criteria will capture adequately these activities.

Actually the proposed definition seems to be very restrictive and (condition iv) to address exclusively employee stock purchase plans in the UK market (Save As You Earn and SIP) where the employee saves a small amount of money every month from his salary and can buy securities or receive cash after a blocking period of three years with fiscal advantages. In an Employee Stock Purchase Plan (ESPP) in France or in other countries, the employee can invest more than 500 € (the cap proposed by ESMA) one shot to participate to the offer.

Conditions (ii) and (iii) are not clear so that depending on the understanding we have, they may fit or not.

(ii) The investment decision taken by the investor amounts to an election by the investor to enter into the transaction with no ability to vary the terms of the transaction:

- Yes if this is about the global feature defined by the company;
- No, since the employee remains able to decide which part of what he receives should be reinvested and where within a set of financial instruments proposed by the company.

(iii) There is a time delay of at least 10 business days between the election and the time of execution:

- Yes if we refer to the period during which the assets are blocked;
- No as soon as the assets are available.

Moreover we would like to recall ESMA that Employee Stock Plans mean all type of incentives dedicated to employees, not only ESPP: free share plans, stock option plans… We are not convinced that the proposed definition can apply to most free share plans and stock options plans in continental Europe.

Currently there is no harmonised rule across the EU for the time being so that it might be difficult to catch all the related activity with a set of common criteria. Therefore we urge ESMA to take into consideration the fact that each market in Europe defines its own rules for ESPP, stock options, free shares …

Finally we believe that is not clear yet whether what happens in case of corporate actions applies to Employee Stock Plans or note. We thus request ESMA to clearly state that the Employee Stock Plans exemption apply to all transactions related to this activity.

Reporting of options exercise

We would like to stress that the reporting of exercises of OTC options and more precisely of EMSA's request to flag exercises may prove very complex to implement. We thus suggest that firms should have the ability to report options exercises independently from the options they relate to.

Execution

We find that ESMA approach to the definition of execution confuses two different criteria. The first of these criteria is the action that leads to an acquisition/disposal/change, which can be assimilated to action that results to a change in position, as defined in Art. 3(1) of the draft RTS. This criterion is reflected in Art. 4(a) and Art. 4(c) of the draft RTS.

However, according to Art. 4(b) a second criterion is established according to which a firm would be providing execution when it receives for transmission from its client an order incomplete of the statutorily required data. In this situation a firm is supposed to report an execution of a transaction despite no actual acquisition or disposal or modification would be taking place.

This approach would have several consequences, particularly for firm engaging in transmission of orders:

- firms would report execution of transactions where there was no actual execution at all

- where firms are forced to report transactions only because they are not in a position to pass on the required data, the presumed "counterparty" would also have to ensure that is reports a transaction

- it creates confusion between transaction data that is mandatory and optional to provide to the counterparty (or in the report, as the case may be), both when the firm is genuinely executing orders and when it is merely transmitting orders, and when firms are reporting execution of orders and when they are reporting the transmission of orders.

In order to avoid the confusion about whether a firm transmitting orders is actually executing and reporting execution as such, or it is transmitting an order and reporting a transmission as such. ESMA should also provide more clarity on the data required to be provided in both circumstances, and distinguish clearly in the template which fields must be completed when a firm is reporting execution and when it is reporting transmission.

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

Yes. AMAFI thinks that the definition of financial instruments eligible for Transaction Reporting should be restricted to those whose principal listing is on an EEA Trading Venue.

Indeed, following the proposed definition, a transaction is reportable as long as it is executed on or has an underlying being a financial instrument tradable on an EEA Trading Venue.
Thus all transactions on non-EEA financial instruments (US or Asian stocks, etc.) which have a dual listing on an EEA Trading Venue must be reported, even if those transactions have no EEA nexus (e.g. transactions on US stocks executed on a US Exchange by the US Branch of an EEA investment firm using its membership). Such transactions are already reportable under MiFID, yielding to large numbers of reported transactions with no European nexus. We would question what interest NCAs have in receiving these reports.

With the extension of the perimeter of eligible financial instruments to all EEA Trading Venues (and in particular to MTFs and OTFs), this unintended consequence of the definition of eligible transactions is likely to result in very large numbers of reported transactions of little use for NCAs.

We thus strongly recommend that ESMA restricts the definition of eligible financial instruments to those whose principal listing is on an EEA Trading Venue. If the purpose of transaction reporting is to enable NCAs to investigate market abuses, one can argue that NCAs should be primarily concerned in those securities where the primary listing is within their jurisdiction.

Moreover, Art. 3(3)(e) of the RTS 7 should provide an exclusion for the creation and redemption of shares in ALL funds, not just in ETFs. ETFs (as well as MMFs) are the only types of funds for which a secondary market exists and that could be susceptible to market abuse. By virtue of Art. 26(2)(c) MiFIR, unless exempted transactions in all funds – i.e. creation/redemption of fund shares which result in acquiring/disposing of a position in a reportable instrument – would have to be reported, despite no secondary market activity whatsoever exists for these instruments. We believe this is not the intention of the Level 1 text.

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

Yes.

There are several impacts that will result in costs and complications for firms, whether transmitting or executing orders:

- necessity to define exactly in which case an order received is a transmitted order >< direct order
- necessity to re-paper prior to entering into the transaction (transaction agreements) while there is no legal context for this type of agreements yet
- issue with timing - especially when the required details are not available yet at the time of reporting (as we cannot complete/amend the reporting)
- we would also appreciate more clarity how the transmitting firms should interpret who they consider a “client” and an “ultimate client”.

Since the same template should serve in multiple different situations, ESMA should distinguish more clearly in the template which fields are obligatory to be completed when a firm is reporting execution and when it is reporting transmission. It should also clarify how the executing firm subsequently reporting the transaction should report, knowing that the transmitting firm has reported a transmission with some data, likely the client data or final allocations data, missing.

We understand that in situations where transmitting firms would opt to always report transmission for example due to difficulty to obtain the necessary data about clients or disaggregations, the executing firm would have to base its own transaction report on incomplete information, or report the transmitting firm as a counterparty. Would that mean that the executing firm would always have to report two transactions, one facing the transmitting firm and one facing the market? This would also pose difficulties in the population of fields such as decision-maker etc for both the firm reporting transmission and the firm reporting execution of the transaction.

We wish to obtain more clarity on the functioning of the transmission agreements, and whether they should be required for every client and for each of the executing firms serving THAT client (e.g. a client uses four broker, need to have four agreements in place for the client and four agreements in place with the broker for THAT particular client)? There are multiple possible permutations for the transmission agreements to be put in place, which would result in different degree of complexity and administrative burden.

We wish to obtain more clarity who would be responsible for transaction reporting when a transmitting firm transfers order to a third country firm operating in the EU in accordance with Title VIII of MiFIR (i.e. without physical presence) and the order is executed OTC. We invite ESMA to clarify the obligations for transaction reporting for third country firms operating in the EU without establishing physical presence, particularly when they execute transactions on an OTC basis and the provisions of Art. 26(5) don't apply.

Besides that, for the detection of obvious errors when receiving information from the transmitting firm, receiving firms should be left with a margin of interpretation on what constitutes an obvious error and which controls should be implemented.

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

Derivatives:

Despite improvements since the ESMA Discussion Paper, the new proposal based upon the identification of the buyer/seller on a transaction. We would note that the proposed approach is not a "one size fits all" and does not consider the characteristics of many derivatives, for which the determination of buyer and seller is not really relevant –leading to inconsistencies in reporting between firms. For example, in some transaction (FX – float/float swaps (basis swaps rates / common swaps) it is not always clear which counterparty should be assigned buyer or seller of the risk.

In order to ensure the determination of buyer and seller is done as consistently and accurately as possible, firms would urge ESMA to work with the industry to develop and endorse best practices and make sure global standards are followed across jurisdictions. 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. ESMA may consider, in collaboration with the industry, to issue detailed guidance (examples) on the assignments of these roles.

We also encourage ESMA to provide guidance on the population of these fields when a transaction consists of two legs but only one of these legs is MiFID-reportable. For instance, an equity leg of an equity swap and the interest rate leg of the equity swap.

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.

As a preliminary remark, AMAFI wants to underline that the number of fields provided to report complex derivatives is sufficient. As this is a complex issue, ESMA should provide very precise guidelines on how the many kinds of complex derivatives should be reported, bearing in mind that in view of the variety, the complexity of those derivatives and the fact that the reporting will probably never entail the necessary level of details to exhaustively report the characteristics of any kind of complex derivative, ESMA will have to opt for sometimes imperfect reporting of at least transactions main characteristics.

The industry would welcome a close dialogue with ESMA when elaborating on those detailed standards, so that those transactions are reported consistently to all involved NCAs, even if in some instances imperfectly. This is all the more necessary as it is likely to entail significant development costs at investment firm level.

We would suggest ESMA clearly identifies where fields are mandatory, optional (and can be left blank) or non-applicable (and can be left blank) in the draft RTS 32.

ESMA should distinguish more clearly in the template which fields are obligatory to be completed when a firm is reporting execution and when a firm is reporting transmission. It should also clarify how the executing firm reporting the transaction after the transmitting firm reported transmission should report, knowing that the transmitting firm has reported a transmission with (or due to) some data likely to be missing.

We also need to know which fields can be repeatable blocks (example the transmission fields).

On specific fields, we want to stress the following points:

Fields 5, 6, 13, 14, 20, 21, 28, 29, 36 to 39, 68, 69, 71 and 72: Natural Persons Identification:

We would like to underline the following:

For countries choosing to identify natural persons in priority via National Passport Number or the National Identity Card, this will incur a lot of complexity for investment firms having retail banking activities in those countries as typically such ID numbers are kept manually in clients' files and not stored in banks IT systems. The obligation to convey these client IDs in orders will incur sizeable and complex IT and organisational investments, as many systems will have to be amended to accommodate this data and convey it across the whole order transmittal and execution chain. This will be further compounded by the fact that these ID numbers change over time.

For these reasons, we propose that the implementation of this requirement should be phased in over time: at inception (in January 2017), client identification would be requested for all new clients being nationals/residents of the country of incorporation of the investment firm; one year later this obligation would be extended to all existing nationals/residents of that country; in January 2019, it would be extended to all nationals/residents of EEA countries.

The problem of banking secrecy pertaining to trades executed for the account of non-EEA clients, with non-EEA counterparties or outside of the EU remains unresolved i.e. we generally need to get client's or counterparty's prior approval for reporting their id on such transactions.

Field 77: Short Selling Indicator

We strongly challenge the reference made to Regulation (EU) 236/2012 as the purpose of the Short Selling Indicator in relation to Transaction Reporting is totally different. Indeed, Regulation (EU) 236/2012 requires the reporting of short selling positions, as well as aiming to prevent short selling under certain circumstances, at investment firm level, while MiFIR Short Selling Indicator aims at reporting short sell orders at client level. We are fully aware that this consideration pertains to the level 1 but we strongly believe that ESMA should challenge this point with the European bodies and advocate a removal of any reference to Regulation (EU) 236/2012.

Focusing on the Transaction Reporting, while we agree with the principles put forward by ESMA for the population of the Short Selling Indicator for clients' orders, we firmly believe that for investment firms' orders, in order for NCAs to get meaningful information, the assessment of the short selling should be made at trader's level, not at legal entity level. Indeed, as the Transaction Reporting is viewed by regulators as a privileged tool to enable them to detect possible market abuse, short sell information relating to the trader's book seems much more relevant for that purpose than information relating to the whole firm position. Conversely, demanding firms to compute the Short Selling Indicator at legal entity level is likely to increase dramatically development costs for firms with no guarantee over results accuracy.

Field 80: Transaction Reference Number

We respectfully ask ESMA to reconsider the introduction of a Report Matching Number, which would be completed only for transactions executed on a trading venue (i.e. market facing transactions).

This would enable firms to systematically populate the Transaction Reference Number with their own reference, and in turn facilitate the communication between NCAs and the investment firms they supervise in case of enquiries by NCAs on specific transactions.

Otherwise, it will be much more difficult than today for investment firms and NCAs alike to correctly identify market transactions subject to NCAs' enquiries.

Fields 35, 52: Transmission

We would like more clarification on which fields in the template as a whole are supposed to be completed when the firm is reporting a transmission, bearing in mind that one of the reasons why firm would have to report an order transmission is lack of complete data.

We would also like to understand the function of marking field 35 as "NO".

We would like to obtain more clarity how the buyer and seller transmitting order fields are to be populated when the transmitting firms aggregates the order and reports the transmission, and how these fields are to be subsequently populated when the executing firm reports the transaction execution of the aggregated order.

Fields 40, 52 and 59, 67: trade related information

It is not clear whether the fields 40-52 are meant to be populated when a firm is reporting transmission of a transaction

We would like to emphasise that – for derivatives - ESMA should align definitions / formats / content with the requirements in EMIR. Some of the fields / definitions do not allow a meaningful representation of some derivatives types. We invite ESMA to source from the EMIR consultation for reporting to obtain a better alignment.

Field 42: trading capacity

We need to have a better understanding of the M “matched principal” and how it would apply– we understand it is meant to capture transactions we would enter into as “riskless” principal but the definitions are not similar. In particular, a riskless principal transaction implies that the firm executes two simultaneous off-setting trades – does it mean it has to transaction report both transactions?

Field 50: consideration

We do not see what this means and how to populate this field for all asset classes– if this field is a mere calculation it should not be reportable.

Fields 53, 58: instrument identification

CFI as taxonomy / ISIN or AII as identifiers are not appropriate identifiers for derivatives: some products (like contracts for difference) fit in multiple CFI codes – and overall the granularity of the CFI taxonomy will not allow to correctly recognise the product. We support the ISDA taxonomy for derivatives, and support ISDA effort to introduce the global UPI that could identify derivatives. We therefore suggest that any derivative product/contract identification or classification approaches be focused on the endorsement of a globally consistent UPI. We would like to voice our concern over the removal of the interim UPI in the absence of an endorsed one. If there is not an available UPI nor CFI code as mandated in ESMA’s proposals, industry is at a loss as to how such a product should be reported.

Field 54: instrument identification code

If AII, then ESMA suggests to populate this field with a concatenation of venue and code – we think only AII should be used as the information on the venue is already specified in Field 51

Field 58: ultimate underlying instrument code

This metric needs further consideration and for ESMA to work with industry to come to globally consistent standards. We think indices could – ultimately - be identified at the level of the index by an ISIN (combination of trade date and ISIN would define the exact composition at that stage) – while the reporting of baskets is far more challenging (due to the number of baskets and the diversity of the components) .

We also want to ensure that changes in compositions of baskets are also not reportable after a transaction has occurred (this would lead to massive overreporting).

Fields 63-81: other relevant information

We wish to obtain more clarification generally on which of these fields are to be populated and how when a firm is reporting an order transmission.

Field 63: result of the exercise

While of course the transaction as such would be reported, we want to draw attention to the fact that it is not always possible to track these transactions as being “result of an option”: some exercises are automatic and not the result of any investment decision. Building this “link” would be a technical challenge, while the added value of tracking this is not clear.

Fields 65,66: up-front payment

It is not clear for which activity this would be applicable.

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

No. AMAFI does not agree.

ESMA proposes to introduce the “M – Matched principal” trading capacity, which will incur a significant complexity for firms.

Under the existing set-up, investment firms have the ability to report riskless principal trading as two separate principal transactions, a “market leg” and an OTC “client leg” without linking them. The Matched principal trading capacity will oblige them to link the 2 “legs”, which will be complex and costly.

Clarification is required on the “maintenance by trading venues” of the trading capacity flags. Does it mean that trading venues will have to convey the trading capacity flag to be input by investment firms on orders they send to the market down to the execution feedback?

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

No, as long as trading venues convey them.

The pre-trade transparency waivers being defined by MiFIR, we understand that the eventual waiver applicable to a given transaction must be reported solely for transactions executed on EEA trading venues. Indeed:

- There is no evidence that trading venues outside the EEA propose the same pre-trade transparency waivers. It would thus not make sense for a non-EEA trading venue to convey a waiver either not defined by MiFIR or not applicable on that venue;

- Furthermore, European Authorities cannot impose trading venues outside their remit to convey the eventual applicable waiver.

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

Yes, we agree.

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

Yes. AMAFI agrees.

However, for indices for which no ISIN is available, as the official name of an index may not be normalised information, discrepancies may inevitably arise between investment firms’ source systems feeding their transaction reportings and other available referentials.

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?

No. AMAFI does not expect significant issues.

Though, we question the relevance of selecting the branch that has the closest relationship to the client rather than the branch where the salesperson is located, as the latter information may appear more pertinent for NCAs.

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

Yes.

European regulators should restrict the LEI obligation to legal persons domiciled in countries where the LEIs are compulsory.

Indeed, European Authorities should avert creating uneven competition situations detrimental to EEA firms like the following: a branch of an EEA investment firm that is located in a non-EEA country could not accept a client's order because the client does not have an LEI - LEIs not being compulsory in that country -, while a local investment firm can accept and execute that order.

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

Yes.

Not having a reference data base of financial instruments admitted to trading on an EEA trading venue maintained by ESMA would result in further increasing the existing uncertainty regarding whether an instrument is reportable or not. Indeed, there currently does not exist any sufficiently reliable "golden source" of reportable instruments maintained by a third party and this problem is likely to worsen with the significant enlargement of eligible financial instruments, in particular with the creation of OTFs. Furthermore, the benefit incurred by the absence of a golden source maintained by ESMA weighs little in view of the incurred instability of the Transaction Reporting and difficulties for NCAs to exploit its results and the related costs for the industry.

In that context, ESMA's request to prevent over-reporting seems contradictory with the above. Indeed, it appears that major NCAs do not have an issue with over-reporting (whether today or in future).

In view of all the trading venues being supervised by ESMA, we propose that, in addition to ESMA's maintenance of a golden source, that were investment firms to detect omissions in the golden source, they would report their transactions on the missing instruments, or where the missing instruments were the underlying, and they would concurrently report the discrepancy to ESMA.

Indeed, ESMA appear best placed to demand diligent and continual reports from the trading venues on all new financial instruments in order to maintain an accurate golden source. This in turn seems to be the most reliable and most cost-efficient way to ensure an efficient and consistent Transaction Reporting regime in line with regulatory expectations.

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.

Yes, in some European countries asset managers routinely allocate the execution of their orders among the funds under their management after execution has taken place. Thus, in all these instances, client IDs are not transferred to the trading venues.

But above all, the inclusion of client IDs in all remaining orders is likely to be an extremely sensitive process as investment firms will have to modify upstream all their market connectors to include these data at the formats specified by ESMA. Indeed, to minimise the risk of failure, investment firms typically schedule the evolution of their connectors with the technical releases of the various concerned EEA trading venues. **Thus the incurred complexity and costs for the corresponding IT projects for investment firms are very significant**.

AMAFI encourages ESMA to reconsider the inclusion of client ID without any effective cost/benefit analysis. Another way to achieve the regulatory objective could be that the client ID would be provided on request to the National Competent Authority.

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

AMAFI did not answer Q227.

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?

Yes.

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

AMAFI did not answer Q229.

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

Yes but the following elements should be kept in mind:

- On some servers, achieving a time stamping more accurate than a microsecond is technically possible but the relevance of last digits is difficult to guarantee. However, this problematic is system-dependant and some operating systems do not allow such precision. Basically, on third party vendor gateways, investment firms would be dependent on their implementation and technology.

- The need to have such precision in the timestamp is highly reduced by the time synchronisation constraint:

- A precision beyond a microsecond would only be useful for orders that are going through the same server, and usually due to the internal mechanics of the server one does not need to go below a few microsecond precision to distinguish orders;

- To compare timestamps between servers and deduct a chronological order among them, the synchronisation error prevents us to use a better precision than the error itself (please refer to answer to Q233).

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.

No.

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

Yes.

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

No. AMAFI does not agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation for the following reason:

- Investment firms typically synchronise their gateways with each corresponding trading venue i.e. ensure that the time difference with each venue does not exceed the accuracy of that venue.

- But the difficulty stems from the fact that all markets are not synchronised. Thus, for the time being, as investment firms have to synchronise their gateways with each venue, they cannot synchronise their clock with UTC with a better accuracy than a few milliseconds.

  To enable investment firms to eventually synchronise their clock with UTC with an accuracy of one millisecond, all trading venues should first synchronise their clocks with accuracy beyond one millisecond. This would probably incur very significant investments.

- On another hand, one has to keep in mind that the global standard for time synchronisation between servers, Network Time Protocol (NTP), only guarantees a millisecond synchronisation.

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.

Yes because as recalled above, NTP only guarantees a millisecond synchronisation. Thus, if trading venues achieve accuracies below one millisecond, all investment firms would have to implement more precise time protocols, which would incur huge investments.

AMAFI did not answer Q235 to Q238.

9. Post-trading issues

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

First of all, AMAFI would like to recall that there are two different views on what an OTC contract is depending on the regulation (MiFID II or EMIR). According to EMIR a contract is OTC as soon as it has not been concluded on a regulated market whereas in a MiFID II context an OTC contract means a contract that has not been concluded on a trading venue, should the latter be a regulated market, an MTF or an OTF. ESMA should clarify its approach to what it considers bilateral transaction and transaction on a trading venue. MiFIR's understanding of a transaction "on a trading venue" brings into the same category derivative instruments capable of anonymous multilateral trading, where the counterparty risk profile is not a relevant factor for the value of the transaction (like classic options, futures and indices, traded largely on RMs) and instruments where the counterparty risk profile is a relevant factor for the price of the transaction (swaps), and the trading, even if conducted on a formal trading venue, still largely resembles a bilateral negotiation (RFQ).

AMAFI understands ESMA's objective to ensure the highest possible certainty of clearing, both for ETDs and OTC derivatives (OTCDs as qualified by EMIR) that are concluded on a trading venue. However, the trade pre-check could not be processed in the same manner for these two environments.

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

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

  The quality and speed of the pre-trade check would depend on the segregation model applicable to the client at the clearing level. Credit check at the level of the final client would be more time consuming for client who are using the omnibus model, which is the prevailing model nowadays. Finally, in the prospective of open access between trading venues and CCPs, clients may use different clearers and different CCPs.

- We are sceptical whether the proposed limits of 60 seconds/10 minutes would be practicable. We urge ESMA to provide a more substantiated explanation on the proposed deadlines for the pre-trade checks. We understand that the proposals are made solely on the basis of the current US standards. If these standards should be made applicable to the EU, we urge ESMA to provide more clarity on the origin of those standards and how they would be appropriate in the context of the prevailing EU infrastructures for listed derivatives clearing.

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

- In the OTC environment in the meaning of EMIR (contracts concluded on a trading venue which is not a regulated market), the checks could have a definitive outcome and be binding at the clearing level. The clearing member should have at all times a good visibility of the credit limit status of its client. In this vein, the admission/rejection of transactions for clearing is also easier to automate.

  As an alternative for the clearing members to submit the credit limits to the trading venue, the trading venue could ping the clearing member for pre-trade check. This would also render a more precise result in terms of eliminating trades that are likely to be rejected at the clearing level.

  In terms of the timing proposed, at this time we cannot ascertain whether the proposed deadlines of 60 seconds and of 10 minutes are practicable and that they take sufficient account of the different structure of the ETD and OTC environment. We urge ESMA to provide more clarity on which basis these standards are proposed and how they should be appropriate for the EU trading environment.

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

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

For ETDs, we re-iterate, in line with our comments to Q239, that the pre-trade checks and the trading venue-CCP confirmations should not preclude the clearing member to reject the transaction at the subsequent stage. Also, we wish to obtain ESMA clarification on the treatment of block trades. Acceptance of the entire block for clearing before the breakdown shifts a higher amount of risk onto the clearing member with virtually no legal comeback. Breaking down the block before accepting for clearing would increase clearing certainty and keep the costs of clearing lower, but it would require more flexibility in terms of timing. At the minimum, clearing members should not be under any legal obligation to accept block trades for clearing.

Finally we would like to highlight that there is already an internationally recognised market standard related to the timing for bilaterally executed transactions to be submitted to a CCP which is 150 minutes. Therefore we highly encourage ESMA to adopt the same value. In addition it may be worth to recall that there is no requirement by US regulators on this specific topic.

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?

AMAFI cannot comment on the feasibility of the CCP to transmit trades for the acceptance of the clearing member within 60s; however we agree that this should take place as soon as technologically possible. We invite ESMA to provide some substantiation of the proposed deadline of 60 s.

We notice that the clearing members are equally required to confirm to the CCP the clearing of the transaction within 60s. We agree with the objective to establish a global STP that would guarantee clearing certainty "as soon as technologically possible", including for bilaterally executed transactions. However, the proposed timeframe of 60s for the clearing member to reconfirm seems extremely short in the light of the confirmation being final and the risks passing entirely on the clearing member, and could result in unintended assumption of risks by the clearing member or, contrary to the intention, result in less clearing certainty.

Trade acceptance by the clearing member requires performing "pre-clearing" controls of client limits to ensure that the transaction, once cleared, would not put the client in breach with its limits. To be risk-efficient, such controls shall be based on in-depth risk calculations performed on an ad hoc basis, and shall rely on additional information available within in-house applications (for example the client's available assets which may be used as collateral, in the case the clearing member is also the depositary of the client). From an operational and technical point of view, performing these controls within 60 seconds is extremely problematic.

The risk is that to ensure that clearing acceptance is done within 60 seconds of trade reception, clearing members may decide to simplify their pre-clearing controls by using some basic trade by trade risk calculation methods or by simply not performing any pre-clearing controls. This would potentially lead to additional credit and operational risks for the clearing member.

We recommend a much longer timeframe for clearing member acceptance. 30 minutes seems a more appropriate timeframe to allow clearing members to systematically perform in-depth client limit controls before accepting the client trade
We also wish to obtain ESMA's clarification as to why it does not wish to make any between trades subject to the trading obligation and those cleared voluntarily.

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

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

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

AMAFI cannot comment on the feasibility for the CCP accept or reject a derivative transaction submitted for clearing within 10 seconds from submission or from receipt of the clearing member's acceptance.

However, under current CFTC rules, the CCP has to accept or reject a transaction within 10 seconds when such transaction is executed on a SEF. Any other transaction must be accepted or rejected within 60 seconds. The proposed STP under RTS 37 imposes the CCP to accept or reject within 10 seconds without consideration of whether the trade was executed on trade venue or bilaterally. **AMAFI is of the opinion the EU and US regulation should be harmonised**.

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

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

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

However, we also agree that it is important to preserve the flexibility offered by Article 7(3) of the draft RTS in the OTC context, i.e. in respect of OTC cleared transactions that are rejected by the CCP. This may, amongst other things, allow resubmission of a rejected trade for clearing or submission for clearing through a different clearing member, as may be appropriate to the particular client's circumstances. This is in line with the protocols already developed by many CCPs and enshrined in their rulebooks on the treatment of OTC cleared trades

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.

AMAFI finds that the proposed RTS 38 is a positive development in respect of the criteria for indirect clearing structures. Still, we are cautious about the differences in functioning of the exchange-traded derivatives (ETD) structures and the related structures for the clearing of OTC derivatives.

We point out that indirect clearing is an established practice in the ETD sphere, while in the OTC sphere it is not. In the same vein, the practices applicable to the OTC environment should not necessarily inform the standards for the ETDs. We caution against adopting solutions that would render the functioning ETD indirect clearing structures inadequate or would eliminate the incentives to provide indirect clearing.

We find that the proposed RTS require further fine-tuning and we have serious concerns as to the feasibility of the indirect clearing regime becoming operational in January 2017. We strongly encourage ESMA to propose a more adequate implementation calendar.

We find that the RTS should be more precise as to the geographical scope. The application of the RTS should be limited to EU-incorporated indirect clients obtaining indirect clearing services towards EU-incorporated clearing members and EU-authorised CCPs. This is to eliminate the conflicts of law at the basic level and also to allow that indirect clearing arrangements can continue to be provided at non-EU CCPs recognised under EMIR.

We welcome the proposal to limit the scope of the RTS to the client of the client of the clearing member in order to reduce complexity of a potentially multi-layered environment. However, we find that this approach is not reflected in the wording of Art. 2 (2) of the drat RTS. We would appreciate a more precise wording in this respect.

Concerning the obligations for clearing members to offer indirect clearing arrangements, we wish to recall as a general point that MiFIR and EMIR objectives in respect of indirect clearing are different. While EMIR establishes that indirect clearing must be offered under EMIR is in relation to those end-users who are looking to satisfy an EMIR clearing obligation that applies to them, MiFIR establishes that indirect clearing is possible ("permissible") but not mandatory. Regardless of the fact that indirect clearing already exists in the ETD space and without prejudice to the EMIR provisions, it is paramount that there should be no obligation for clearing members to offer indirect clearing arrangements, neither in the ETD space not in the OTC space.

We recognise the obligations created under Art. 30(1) MiFIR and under Art. 39 and Art. 48 of EMIR. They result in far-reaching consequences for clearing members. We equally appreciate that the duty to ensure portability of for the indirect client has been removed. However, the proposed draft RTS imposes on the clearing members to provide structures and protections similar to those offered by a CCP without the benefit of any of the legal tools protections available to a CCP in the case of a default or insolvency.

Clearing members' obligations should be interpreted in the context of the laws applicable to the indirect clearing arrangements, and the RTS should recognise that in some cases the clearing members should undertake best efforts to ensure restitution instead of providing an outright guarantee of restitution: it may be impossible, in a number of situations, for the clearing member to ensure the return of the proceeds directly to the indirect client. This is notwithstanding the mirroring arrangements for clients facilitating indirect clearing as in Art. 5(4) and 5(6):

- When the indirect client is accommodated in a net omnibus account
- When the applicable insolvency laws override the relevant contractual arrangements.

In respect of Art. 4(4) and Art. 5(4) of the draft RTS, we find that the current wording does not take sufficiently into account the differences between the NOSA and the GOSA model (Art. 4(2)(a) and Art. 4(2)(b) of the draft RTS, respectively). The obligation for the clearing member to bring the entire collateral value received from the indirect clearing member to the CCP should be applicable for the GOSA structure (Art. 4(2)(b) of the draft RTS). This aspect should be mirrored in the respective provisions applicable to the client in Art. 5(4) of the draft RTS.

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

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?

AMAFI welcomes the development of ESMA's position since the Discussion Paper concerning operational requirements for indirect clearing users, particularly the introduction of the gross omnibus account for indirect clients at the CCP level alongside the net omnibus account foreseen in EMIR RTS. This is very positive in the light of the differences between the ETD and the OTC environments (segregation required all along the chain or not), and of the different objectives in respect of indirect clearing under MiFIR and under EMIR (mandatory vs. permissible).

However, the operational requirements for clearing members and direct clients facilitating indirect clients still require further fine tuning so as to ensure the right balance between the commercial viability of indirect clearing, the need for proper risk mitigation by the clearing member as well as the client and the indirect client, and the need to ensure the required statutory protections for the indirect users. Against this background, we have serious concerns as to the feasibility of the indirect clearing regime becoming operational in January 2017. We strongly encourage ESMA to propose a more adequate implementation calendar while continuing to work with the industry on optimal solutions.

In particular we stress the need for more balance between the risk-related concerns and organisational requirements of the clearing members, whose services and obligations in the context of indirect clearing should not be assimilated to those of a CCP. This is due to the fact that clearing members are not market infrastructures themselves and don't benefit from any legal protections available to CCPs.

Detailed comments:

We appreciate that the duty to ensure portability of for the indirect client has been removed; however we have the following concerns as to the requirements for the clearing members under Art. 4(7) of the draft RTS:

- We take note of the obligation for the client in Art. 5(6) to provide in the indirect clearing agreement for contractual arrangements to return any liquidation proceeds to the indirect client. Despite any such contractual arrangements between the client and the indirect client, the clearing member may be beyond its powers to honour the obligations of Art. 4(7). The actual ability of the clearing member to return the assets to the indirect client in case of the client's default could depend on :

    - whether the indirect client is accommodated in a net or in a gross omnibus account
    - the local law applicable to the client and to the contract between the client and the indirect client.
    - the local law, or other provisions applicable to the clearing member that prevent him from making direct payments to the indirect client (sanctions, embargos etc);

- Clearing members should undertake best effort to return the assets directly to the indirect clients, in accordance with the applicable contractual terms. Where the applicable law prevents or overrides such contractual arrangements, the clearing member should be allowed to return the assets to the liquidation practitioner of the client.

- Should the return of any proceeds to the indirect client be impossible, the clearing member should attribute appropriate flags to the payments and transfers made to the client for the account of the indirect client, so as to distinguish them from payments and transfers made for the account if the client.