



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II / MiFIR



19 December 2014

Responding to this paper

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

Instructions

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

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

Responses are most helpful:

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

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

Naming protocol:

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

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

Deadline

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

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

Publication of responses



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

Data protection

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

General information about respondent

Name of the company / organisation	Deutsche Börse Group
Confidential ¹	<input type="checkbox"/>
Activity:	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_CP_MIFID_1 >

Deutsche Börse Group (DBG) welcomes the opportunity to contribute to the recent consultation and to support ESMA in its efforts to develop implementing measures for the revised Markets in Financial Instruments Directive (MiFID) as well as the encompassing Regulation (MiFIR). DBG is strongly committed to the political aims of the decisions taken by the European legislators to increase transparency; to enhance stability, integrity and efficiency of financial markets and to increase the share of trading on regulated markets in all classes of financial instruments. We kindly ask ESMA to provide for an adequate and consistent set of implementing measures, thereby taking into account the implications for the functioning of financial markets in Europe, in particular with regards to the following aspects:

(I) Transparency issues

Transparency regime and trading obligation for derivatives (Q 61-65; Q 70; Q 73; Q 78; Q 80; Q 88-89)

At the heart of the G20 aims is to increase transparency for OTC derivatives and to incentivise the usage of regulated market infrastructure. While DBG fully supports the Level 1 intentions to increase transparency, the proposals under Level 2 will fail to achieve this aim: Instead they would lead to a mid- to long-term reduction of transparency for exchange traded derivatives (already provided by exchanges today) and limit the potential for OTC derivatives to be traded on transparent multilateral trading platforms, which contradicts the G20 goals and the trading obligation as foreseen by MiFIR.

With regard to the liquid market definition, it is recommended to clearly differentiate between the determination of the trading obligation for OTC derivatives and the development of criteria for transparency for exchange-traded derivatives (ETD). ETDs can be declared liquid for the purposes of multilateral trading and clearing, but are not always liquid for transparency purposes. Thus, the setting of pre- and post-trade transparency thresholds needs to be more sophisticated to accommodate ETD specifics. OTC derivatives are in focus of the trading obligation, however, it needs to be clarified that all ETD need to fall naturally under a trading obligation.

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

Transparency for equity and equity like financial instruments (Q 37-56)

The MiFID Review will only achieve its aim to close existing loopholes for equities-trading – currently allowing up to 40% unregulated OTC trading - if the transparency regime is seen in context of a tightly defined Systematic Internaliser (SI) regime. Therefore there should be no ambiguity around that fact that SIs cannot deploy riskless principle trading and that the definition of prices reflecting prevailing market conditions should be extended by specifying that only prices executed at price levels in compliance with the applicable tick size of that financial instrument should be allowed.

ESMA should remain neutral as regards promoting formats and protocols for real-time transparency for trading venues, as there is no Level 1 mandate to define it, and it would threaten as well ESMA's neutrality. Real-time data feeds have to be seen distinct from t+1 data reports, and no mixture of both should be concluded by ESMA, as the requirements are not the same.

(II) Market data and access

Market Data (Q 145; Q 235; Q 225)

While it is important to improve transparency in non-transparent markets, data quality, reliability and legal certainty should not be compromised. DBG supports ESMA's proposal on the disaggregation of data with regard to the separation of pre- and post-trade data as well as to the four asset classes; however, we oppose the proposal on additional disaggregation as this would make data offering more complex, prone to error and more expensive. As regards the obligation to supply financial instrument reference data, we are concerned about legal risks for trading venues in Germany as they do not hold intellectual property (IP) rights in the reference data; in order to mitigate these risks, we propose to align the scope of reference data fields to a necessary standard set of data which can be made available free of charge on ESMA's web-site and – in case of a substantiated need for additional data by the regulator – to establish separate license agreements for additional data. Furthermore, as regards Transaction Reporting a trading venue might not be able to fulfil its reporting requirements for firms not subject to this regulation, especially if those firms are due to data protection issues. There is a risk that some information will not be made available to trading venues from Third Country participants due to legal restrictions. Therefore, there ought to be a clear definition that some data fields might be filled with a place holder for those cases instead.

Access to CCP, trading venues and benchmarks (Q 148-159)

As regards open access to CCPs, trading venues and benchmarks the main regulatory objective of MIFIR Level 1 is a more competitive market. As a determining condition the Level 1 provisions state that access should only be granted where it “would not threaten the smooth and orderly functioning of markets, in particular due to liquidity fragmentation or would not adversely affect systemic risk.” Accordingly, the Level 1 text mandates ESMA to thoroughly define objective and applicable conditions for denying and accepting access requests and for the non-discriminatory treatment of the respective instruments. In some points the draft RTS 24 does not adequately meet the Level 1 mandate, objectives and conditions. For example, Deutsche Boerse Group is of the view that the ability to deny access by the respective National Competent Authority is disproportionately and

unreasonably limited. As a more general point Deutsche Boerse Group is of the view that the RTS suggests that a CCP is supposed to accept exposure to risks, except where this risk is undue and significant. This runs contrary to EMIR and the CPMI-IOSCO principles, which require CCPs to ensure that they are not exposed to unmitigated risk at all.

(III) Microstructural issues

Market Making (Q 104-108)

Market makers are essential for price guidance and liquidity, in particular in illiquid and new products, and thus ensure market quality and integrity. The current proposal has the potential for a reduction of liquidity provision, for a breach of regulatory requirements by trading venues as well as for a systematic misclassification of trading firms' activities.

Tick Sizes (Q 123-131)

The proposed tick size regime for shares will lead to an increase for 91% of the instruments trading at Frankfurt Stock Exchange. While we understand the political goal of larger tick sizes we believe the suggested regime is out of proportion considering that some shares will have an increase of up to 3 or 4 price increments. We suggest adjusting the calculation methodology of number of trades by taking all trading venues, SIs and OTC platforms into account as well as changing the liquidity bands in order to account for the aspect of proportionality.

With regards to ETFs we vote for a more flexible approach by allowing for an exemption process for some of the products as the tick size for those is still too large. As the tick size regime is not applicable to systematic internalisers there is the danger that trading would move away from public markets, especially for ETFs as there is no trading obligation in place. To take account for this we also suggest that the definition of prices reflecting prevailing market conditions should be extended by specifying that only prices executed at price levels in compliance with the applicable tick size of that financial instrument should be allowed and that SIs can in justified cases only execute one tick better than the quoted price for which the one tick better must comply with the instrument's minimum tick size.

Ratio of unexecuted orders to transactions (Q 109-115)

The recent proposal bases the calculation on the most extreme outliers of an observation period and does not grant sufficient flexibility for a trading venue to adapt the order to trade ratio (OTR) computation to its specific situation. We suggest limiting the OTR requirement only to firm orders and quotes, and not to indications. Current best practice from German OTR provisions exclude a Trading Venue's indicative orders and quotes, as these only represent an 'invitatio ad offerendum' and are not firm as such.

(IV) Post-trading issues

Straight Through Processing (Q 239-243)

While we generally support ESMA's goal to provide market participants as fast as possible with pre-trade clearing certainty, mandatory pre-trade limit checks for exchange traded derivatives could prove detrimental to the functioning of derivatives markets.



Indirect Clearing (Q 244-245)

While the obligation for CCPs to provide segregation layers to indirect clients for overall business is expanded, the draft RTS is considered to fail to provide an adequate solution to exchange traded derivatives indirect clearing.

< ESMA_COMMENT_CP_MIFID_1 >

ii) Investor protection

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

<ESMA_QUESTION_CP_MIFID_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_1>

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

<ESMA_QUESTION_CP_MIFID_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_2>

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

<ESMA_QUESTION_CP_MIFID_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_3>

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

<ESMA_QUESTION_CP_MIFID_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_4>

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

<ESMA_QUESTION_CP_MIFID_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_5>

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

<ESMA_QUESTION_CP_MIFID_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_6>

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



<ESMA_QUESTION_CP_MIFID_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_7>

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

<ESMA_QUESTION_CP_MIFID_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_8>

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

<ESMA_QUESTION_CP_MIFID_9>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_9>

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

<ESMA_QUESTION_CP_MIFID_10>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_10>

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

<ESMA_QUESTION_CP_MIFID_11>

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<ESMA_QUESTION_CP_MIFID_11>

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

<ESMA_QUESTION_CP_MIFID_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_12>

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

<ESMA_QUESTION_CP_MIFID_13>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_13>

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



<ESMA_QUESTION_CP_MIFID_14>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_14>

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

<ESMA_QUESTION_CP_MIFID_15>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_15>

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

<ESMA_QUESTION_CP_MIFID_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_16>

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

<ESMA_QUESTION_CP_MIFID_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_17>

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

<ESMA_QUESTION_CP_MIFID_18>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_18>

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

<ESMA_QUESTION_CP_MIFID_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_19>

Q20. Do you agree with proposed means of transmission?

<ESMA_QUESTION_CP_MIFID_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_20>

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



<ESMA_QUESTION_CP_MIFID_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_21>

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

<ESMA_QUESTION_CP_MIFID_22>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_22>

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

<ESMA_QUESTION_CP_MIFID_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_23>

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

<ESMA_QUESTION_CP_MIFID_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_24>

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

<ESMA_QUESTION_CP_MIFID_25>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_25>

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

<ESMA_QUESTION_CP_MIFID_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_26>

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

<ESMA_QUESTION_CP_MIFID_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_27>

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

<ESMA_QUESTION_CP_MIFID_28>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_28>

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

<ESMA_QUESTION_CP_MIFID_29>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_29>

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

<ESMA_QUESTION_CP_MIFID_30>

Deutsche Börse Group's opinion is that the daily calculation of measures to assess execution quality is cumbersome from a calculation perspective, and will be subject to systematic shifts and price moves especially due to liquidity developments prior to the end of a derivatives contract's lifetime. However, daily calculation is best suited to capture market driven changes in pricing dynamics, and we agree with the approach and period for measurement.

Regarding the frequency of information to be published: In order to ensure effective processes as well as clear, sufficient and consistent information, the frequency of the information required under RTS 6 and 7 should be harmonised and thereby related processes synchronized. Ideally the frequency of information to be published according to RTS 7 is shortened to each quarters end (RTS 6).

<ESMA_QUESTION_CP_MIFID_30>

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

<ESMA_QUESTION_CP_MIFID_31>

Yes, Deutsche Börse Group agrees. The characteristics of specific financial instruments should be considered by finessing trade ranges to better reflect liquidity.

<ESMA_QUESTION_CP_MIFID_31>

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

<ESMA_QUESTION_CP_MIFID_32>

Under No. 17 of the CP (p.41) Deutsche Börse Group agrees that data on transaction volumes provides the basis to quantify market share. However, the suggested calculation approach for the "likelihood of execution" will not yield the desired result, as order statistics alone regarding received, cancelled and executed orders give no indication of the price sensitivity of an order. Trailing stop orders for example are a trading strategy that requires high order volume for comparable low execution volumes. Likewise, market making and quoting will provide price guidance in an instrument, but say little without volume and the behaviour of electronic eyes of liquidity providers acting on incoming, mid-market order flow from agents, if the prices are within the market makers' limits of interest. Most importantly, the "likelihood of execution" is a factor of the price of an order and the price slippage an order initiator is prepared to accept. A market participant may use market orders to trade at average price levels given by market depth upon order entry. Alternatively, a market participant may hit the bid or lift the offer available at the inside market. In addition, buyers

(sellers) may join the bid (offer) to reduce implicit transaction cost, but at the expense of decreasing their chance for execution by not immediately trading on the best available prices and subjecting themselves to the risk that prices develop in the direction opposite to their order. Finally, average price ratios (VWAP) can be targeted by slicing the desired final order sizes in an iceberg order entry fashion. The latter adds the greatest level of variance to the likelihood of execution, as trading venues are not in position to without doubt link multiple orders entered sequentially to a single initiator, so that metrics based on this data will misrepresent liquidity. We therefore suggest to determine the likelihood of execution with measures of immediately available liquidity such as the size and width of the inside market.

Deutsche Börse Group also agrees, that executions venues publish the costs which are incurred on behalf of the client. Execution venues shall publish a description of each component of the costs imposed, but in case of any rebates, discounts or other payments and the existence of any non-monetary benefit received in connection with each order **on an aggregated / net basis end of month**. The number of mistrades could also be taken into account.

<ESMA_QUESTION_CP_MIFID_32>

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

<ESMA_QUESTION_CP_MIFID_33>

Deutsche Börse Group does not support the creation of metrics based on mean and median times elapsed for RFQs as outlined under No. 18 of the CP (p.41). The time span between receiving an RFQ and quotes being entered is meaningless as these are not latency sensitive requests and the quote response times are given by the trading venue's obligations for market makers to provide answers to quote requests, for example within one minute.

The metrics under No. 19 of the CP (p.42) are appropriate.

<ESMA_QUESTION_CP_MIFID_33>

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

<ESMA_QUESTION_CP_MIFID_34>

Deutsche Börse Group does not agree with the reasoning in No. 16 of the CP (p. 41) regarding the requirements for execution venues to publish the incurred transaction costs with trade executions. While an execution venue's pricing is published and publically accessible, the actual cost of an execution depends on a range of incentives that are assessed not per trade, but on a daily or monthly level such as market making rebates, trade size rebates or volume rebates granted at month's end. It is therefore only possible to publish the headline pricing as cost factor at the time of trade, which adds no value over the already available public information in price lists.

The requirement to publish the cost factor from an execution venue should be covered by its general price lists and not per trade.

In case an execution venue does not offer specific services e.g. clearing or settlement services, investment firms should integrate incurred costs of taken third party services or

estimated/opportunity costs (e.g. counterparty risk when trading without CCP) into account for the establishment of the execution policy.

<ESMA_QUESTION_CP_MIFID_34>

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

<ESMA_QUESTION_CP_MIFID_35>

Deutsche Börse Group disagrees. As outlined in Q32 of Deutsche Börse Group's response, the information value is negligible for order metrics such as the number and volume of orders to be reported by investment firms. We suggest not including these as a requirement.

In case an execution venue does not offer specific services e.g. clearing or settlement services, investment firms should integrate incurred costs of taken third party services or estimated/opportunity costs (e.g. counterparty risk when trading without CCP) into account for the establishment of the execution policy.

<ESMA_QUESTION_CP_MIFID_35>

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

<ESMA_QUESTION_CP_MIFID_36>

Deutsche Börse Group's opinion is that in case an execution venue does not offer specific services e.g. clearing or settlement services, investment firms should integrate incurred costs of taken third party services or estimated/opportunity costs (e.g. counterparty risk when trading without CCP) into account for the establishment of the execution policy.

Additionally, the number of mistrades should be taken into account. Mistrades could even be classified by their respective reasonings.

<ESMA_QUESTION_CP_MIFID_36>

iii) Transparency

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

<ESMA_QUESTION_CP_MIFID_37>

Yes, Deutsche Börse Group agrees with the proposal to add a definition of request for quote (RFQ) trading systems to the current table and to establish precise pre-trade transparency requirements. As stated by ESMA in its analysis following feedback from stakeholders, RFQ systems represent a significant share of trading in particular for equity-like instruments such as ETFs. Hence, it is of high importance that RFQ systems are adequately captured by the regulation and that precise pre-trade transparency requirements are established. However, we would recommend restricting RFQ to equity-like instruments only. We believe that for shares these systems could create a loophole in terms of pre-trade transparency and 'multi-lateralness' of exchanges by enabling semi-lit pools of liquidity, enabling only certain market participants to interact against each other to be recognised as lit and multilateral venues, whilst there is no need for these types of venues for equity instruments, which are order driven.

<ESMA_QUESTION_CP_MIFID_37>

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

<ESMA_QUESTION_CP_MIFID_38>

Yes, Deutsche Börse Group agrees 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. With the exception of transactions executed under the order management facility waiver, we also support the proposal to exclude transactions executed under pre-trade transparency waivers when calculating the turnover of a trading venue. The reason for including transactions executed under the order management facility waiver in the turnover calculation is that the visible peak of reserve orders actually contributes to the information content to be used as a reference price. Consequently, such transactions should be included when determining the most relevant market in terms of liquidity, while transactions executed under any of the other pre-trade transparency waivers should be excluded. Although ESMA notes that excluding such transactions adds some complexity to the calculation, we believe this added complexity to be relatively minor considering that transactions executed under any pre-trade transparency waiver are easily identifiable and readily available to the relevant market. We furthermore note that ESMA follows our line of argument in Article 4(4) of Draft RTS 8 by limiting the exclusion to all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014, and by not extending the exclusion to orders held in an order management facility of the trading venue (Article 4(1)(d) of Regulation (EU) No 600/2014).

Finally, we would like to clarify that transactions on RFQ systems and transactions executed under RFQ protocols should be excluded when determining the most relevant market in terms of liquidity. The reason for excluding RFQ transactions is that only the requesting member or participant of such a quote request is in the position to conclude transactions by accepting the quote or quotes exclusively provided to it on request, but not all members or participants of such system as is the case in open order book and auction trading on regulated markets and MTFs.

Proposed amendment of Article 4(4) of Draft RTS 8:

“Article 4

Most relevant market in terms of liquidity

4. The calculation of the turnover shall exclude all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014 **and all transactions executed on RFQ systems or under RFQ protocols.**”

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_38>

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

<ESMA_QUESTION_CP_MIFID_39>

Yes, Deutsche Börse Group agrees. Our general view is that the more types of transactions are transparent to the market, the better. This opinion is very strong whenever the information about a transaction is relevant for the public market in order to find the right price for the subject traded.

Having said this we would support any shortening of the mentioned list.

In case of the exception for transactions with different / non-standard settlement cycles we see no reason for any exception as the trading takes place under regular circumstances and should therefore regularly be transparent. Such transactions contribute to the price formation and are of public interest. A different type of settlement can easily be negotiated just in order to prevent transparency. We do not have any changes with regards to this aspect in RTS 8.

<ESMA_QUESTION_CP_MIFID_39>

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

<ESMA_QUESTION_CP_MIFID_40>

Yes, Deutsche Börse Group agrees with the key characteristics of orders held in an order management facility (OMF). Our understanding of Art. 7 (1) (b) of RTS 8 is the one of current industry practice: We assume that a stop order does not need to be displayed upon triggering (if, for example, it is transferred into a market order and executable against limit orders from the order book).

We also assume that an iceberg order does not need to be displayed prior to execution, except for its peak size. For example: An iceberg order (peak 10 units, total size 100 units) resides in the book. An incoming market order (30 units) arrives and executes against the iceberg order. Technically, the market order is executed against the first peak of the sell side. In this case the peak is reloaded with another 10 units and matched and then another time reloaded and matched until the market order of 30 units is fully executed. In this case the second and third peaks are not per se disclosed to the order book as they are matched immediately. If the iceberg and stop order are disclosed to the market in immediate executable situations, they would be made visible to the market, which is not the intention of the orders in an order management facility.

Deutsche Börse Group agrees with the minimum size

- i) being the minimum tradable quantity of the venue for stop orders
- ii) being €10,000 for iceberg orders, i.e. reserve orders.

We do not have any changes with regards to this aspect in RTS 8.

<ESMA_QUESTION_CP_MIFID_40>

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

<ESMA_QUESTION_CP_MIFID_41>

Yes, Deutsche Börse Group agrees with ESMA's proposal. The suggested classes and thresholds as presented in Annex II Table 2 will on the one hand facilitate supporting liquidity and transparency for SMEs and on the other hand also support and improve the quality of the price discovery process when the order book becomes more liquid, i.e. reduce implicit transaction costs that are beneficial for all trading participants. We also agree that the calculation should be done on an annual basis. Art. 8 of RTS 8 is therefore from our point of view fine.

<ESMA_QUESTION_CP_MIFID_41>

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

<ESMA_QUESTION_CP_MIFID_42>

No, Deutsche Börse Group does not agree with the proposal to establish large in scale thresholds for ETFs on the basis of the ADT. We are however supportive of an alternative approach based on a single large in scale threshold. As discussed in our response to the Discussion Paper we believe that ADT is an inappropriate proxy for the liquidity of an ETF as it fails to capture the liquidity of the underlying market available to market makers in the ETF. Consequently, two ETFs tracking the same underlying market can often show similar levels of liquidity in terms of bid-offer spreads and order book depth despite potentially significant differences in their ADT. We therefore strongly support ESMA's alternative proposal to establish a single large in scale threshold of € 1 million for ETFs, which we consider to be more closely aligned with the actual liquidity of ETFs.

Proposed amendment to Article 8(1) of Draft RTS 8:

“Article 8

Size of orders which are large in scale

1. For the purpose of Article 4(1)(c) of Regulation (EU) No 600/2014 an order **for a share, depositary receipt, certificate and other similar financial instrument** shall be considered to be large in scale compared with normal market size if, at the point of order entry or following any amendment, it is equal to or larger than the minimum size of orders specified in Annex II, Tables 2 to 3 as applicable. **For each ETF an order shall be considered to be large in scale compared with normal market size if, at the point of order entry or following any amendment, it is equal to or larger than EUR 1 million.”**

This new sentence replaces the ETF table (Table 3) in Annex II of Draft RTS 8. Table 3 in Annex II should be deleted accordingly. Furthermore, all subsequent references to ETFs in Article 8 should be deleted.

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_42>

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

<ESMA_QUESTION_CP_MIFID_43>

Yes, Deutsche Börse Group agrees. However, for certificates quoted in percent the threshold should be defined in nominal value and for certificates quoted in units the thresholds should be defined in value.

<ESMA_QUESTION_CP_MIFID_43>

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

<ESMA_QUESTION_CP_MIFID_44>

No, Deutsche Börse Group does not agree with ESMA's proposal. We believe that the transparency regime should apply to the stub once its size drops below the large in scale threshold also when following partial execution. In our opinion all stubs should be displayed because displaying stub orders positively contributes to the price discovery process. Ultimately more displayed liquidity will reduce implicit transaction cost (i.e. spreads will narrow) and thereby benefiting investors. Besides if stub orders remain protected this could be a way to misuse the large-in-scale waiver by adding volume to an order in order to reach the large-in-scale threshold.

Proposed amendment to Article 1 (9) of Draft RTS 8:

“Article 1
Definitions

(9) ‘stub’ means the remainder of a resting order (i.e. a limit order that is not immediately executed under prevailing market conditions) that is large in scale at the time the order is submitted to a trading venue.”

Proposed amendment to Article 8 (6) of Draft RTS 8:

“Article 8
Size of orders which are large in scale

(6) Unless the price or other relevant conditions for the execution of an order for a share, depositary receipt, certificate and other similar financial instrument are amended, the waiver from the obligation referred to in Article 3(1) of Regulation (EU) No 600/2014 shall not continue to apply in respect of orders that are large in scale compared with normal market size when entered into an order book ~~but that~~ if they fall below the relevant thresholds following partial execution.”

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_44>

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

<ESMA_QUESTION_CP_MIFID_45>

Yes, Deutsche Börse Group agrees with ESMA's proposal that a Systematic Internaliser should be required to publish with each quote a timestamp. Without a timestamp a dispute may arise if the quote is changed close to the point in time when a client order is entered but may then not match the new quote of the Systematic Internaliser because of the change. Due to the fact that Systematic Internalisers may use a website (according to Art. 17.3 (a) MiFIR) to publish their quotes this might become a serious issue, as depending on the website the publication of quotes may not be accurate as the website may slow down. Besides the timestamp is from our point of view key information for a client to analyse ex-post the quality of prices quoted by the Systematic Internalisers. As a result we also suggest including this into Art. 9 of RTS 8 and adding a new table 4 in Annex of draft RTS 8 that includes all the information to be made public in accordance with Article 14 MiFIR.

Proposed amendment to Article 9 (aa) Draft RTS 8:

“Article 9

Arrangements for the publication of a firm quote

(aa) it must publish with each quote a timestamp;”

Please see all our changes with regards to Draft RTS 8 in the appendix.

Further, we believe standards for SIs should be the same as for venues. For example Deutsche Börse Group thinks that post-trade flags should be developed and harmonised to identify 'lit' SIs transactions and other transactions (price improvement, above SMS) with harmonised time stamps.

<ESMA_QUESTION_CP_MIFID_45>

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

<ESMA_QUESTION_CP_MIFID_46>

While Deutsche Börse Group agrees with ESMA's proposal that a price reflects prevailing market conditions if it is close to comparable quotes for the same financial instrument on other trading venues, we strongly urge ESMA to consider extending this definition by specifying that only prices executed at price levels in compliance with the applicable tick size of that financial instrument should be deemed to reflect prevailing market conditions. The reason for this proposed amendment is that the new harmonized tick size regime in Europe will unfortunately not be applicable to SIs. As a consequence SIs will be able to execute orders at prices that are not in compliance with the harmonized tick size of the respective financial instrument. Furthermore, SIs will be able to offer price improvement over bid and offer prices posted on regulated markets and MTFs at virtually no cost since their quotes are not bound to meet the respective tick size requirements.

As an example, consider an equity or equity-like financial instrument with a price of 105 EUR and a corresponding tick size of 0.02 EUR (applies only if share is in highest liquidity band, otherwise tick size will be larger). Consider further that on a regulated market the instrument is currently quoted with a bid offer spread of 104 EUR to 106 EUR. In such a scenario, any trading participant of the regulated market would have to improve the current bid or offer

price by at least 0.02 EUR to become top of book, while, on the other hand, any SI would be able to improve the price of the regulated market at a fraction of that cost, for example by posting quotes at price increments of 0.005 EUR or 0.001 EUR (or even smaller).

The very likely outcome of such regulation is that trading volumes will move away from lit markets and onto SIs due to regulatory tick size arbitrage. We believe that such an outcome does not reflect the spirit of this regulation and should therefore be prevented if possible. We are aware that the preferable option of applying a harmonized tick size regime to SIs is formally no longer possible as this has not been regulated in Level 1. However, we believe that extending the definition as proposed above presents a valid alternative to ensure a level playing field is established between trading venues and SIs.

Obviously, we recommend that the same logic is applied when permitting SIs to execute orders at a better price than those quoted at the time of reception of the order, i.e. any price improvement over the price quoted at the time of reception of the order should only be possible at price levels in compliance with the instrument's tick size.

See also our response to question 123 on this matter.

Proposed amendment to Article 10 of Draft RTS 8:

“Article 10 Prices reflecting prevailing market conditions

For the purposes of Article 14(3) of Regulation (EU) No 600/2014 the prices published by a systematic internaliser reflect prevailing market conditions where they **are in compliance with the instrument's tick size and are** close in price to comparable quotes for the same share, depositary receipt, ETF, certificate or other similar financial instrument on trading venues.”

<ESMA_QUESTION_CP_MIFID_46>

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

<ESMA_QUESTION_CP_MIFID_47>

Yes, Deutsche Börse Group agrees. Art. 11 of RTS 8 is therefore from our point of view fine.

<ESMA_QUESTION_CP_MIFID_47>

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

<ESMA_QUESTION_CP_MIFID_48>

Yes, Deutsche Börse Group agrees with the proposed list. We also agree that the list should be exhaustive. To be sure we would like to emphasise that the following in nature non-technical trades such as cross trades, agency trades, riskless principal or matched principal trades where the intermediary matches a client order against its proprietary capital should fall under the Trading Obligation. However, Deutsche Börse Group is of the opinion that a stricter definition of benchmark, portfolio and delta neutral trades for the purpose of this regulation should be considered in order to avoid potential loopholes. We think that these

trades, benchmark, portfolio and delta neutral, should only be allowed to be executed OTC with regards to the overall operation, but not based on their individual components. These should be required to be executed on lit markets unless there is a legitimate reason that is to say for example in terms of order size they may be executed in the dark. The reason for this is that otherwise more than half of total EU trading volumes are risked to remain dark (without being part of the volume caps – 4 % and 8 %) because most executed trades in Europe correspond either to a VWAP operation or portfolio operation.

Proposed amendment to Article 2 (b) and (c) of Draft RTS 8:

“Article 2

Transactions not contributing to the price discovery process

(b) the transaction is part of a portfolio trade that involves the execution of 10 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; “

As a result we suggest deleting the verb ‘meant to be’ in the definition of these types of trades, as the use of such ‘unclear’ definitional criteria would enable many trades to fall under these definition, which go against the spirit of MiFID 2.

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_48>

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

<ESMA_QUESTION_CP_MIFID_49>

Yes, Deutsche Börse Group agrees and recommends adding one more to the list: code of Systematic Internaliser. In addition, we would like to suggest including a “Trade identification ID/Trade Identifiers” requirement in this section, as we believe that this adds to transparency and would be beneficial for market participants. In particular, we consider these identifiers to:

- be a standard information provided on each trade report made available to the public by most trading venues; and,
- to guarantee the uniqueness of trade reports and to avoid any duplicative processing of the same transaction, and
- to enable the tracking of trade cancellations with the corresponding original trade.

The requirement to include these identifiers were explicitly stated by the regulator in the CESR Technical Advice document CESR/10-882: *“Cancellations ...should be published with a “C”... together with the unique transaction identifier of the original transaction...”*. We consider that the combination of the “proprietary trade ID generated by trading venues with a MIC code is a cost efficient way of consolidating the information while guaranteeing the uniqueness of trade reports and the consistent automation of trade cancellations. The

assignment of the MIC code can under circumstances be processed at CTP/vendor level provided the data source is properly identified.

With regard to Q141 on content of information published by the equity CTP and the APA, ESMA requires the CTP to assign a trade ID that is unique at least for a given day. In cases where trading venues do not deliver their own unique trade ID to the CTP, it is technically impossible for the CTP to assign a consistent/reliable unique trade ID and furthermore technically impossible to chain trade cancellations with the original trade.

Deutsche Börse Group therefore recommends that ESMA adds the identifier “*Trade ID*”. This would support the uniqueness of the trade identification at least within the same venue. The Trade ID supports the machine-readable cross reference of trade cancellation with the corresponding original trade. Combining venues specific Trade ID and MIC codes would enable CTP and data vendors to guarantee uniqueness in an unambiguous manner. Data vendors participating to MMT TC work strongly insisted on the value-added of getting Trade ID in each trade message they capture and process.

The amendment with regard to the field identifier “venue of execution” should be added in Table 1 of Annex I of RTS 8 as follows:

Proposed amendment to Table 1 of Annex I of Draft RTS 8:

“Table 1
List of fields for the purpose of post-trade transparency

Field identifier	Description	Format to be populated by MDRWG
Venue of execution, or where the transaction was executed via a systematic internaliser the code of the systematic internaliser	Identification of the venue or systematic internaliser by a unique code.	

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_49>

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

<ESMA_QUESTION_CP_MIFID_50>

ESMA has a mandate to define the content of the real-time post-trade transparency for trading venues as well as IFs, but it has not the mandate to define the format or protocol to be used for real-time transparency purposes by trading venues. A mixture of transaction reporting requirements with real-time transparency requirements should strictly be avoided.

Therefore, while Deutsche Börse Group generally agrees with ESMA on the content/field identifier of Table 1, Annex 1 of Draft RTS 8 once the “Trade ID” is being added, we strongly disagree with the inclusion of the third column titled “Format to be populated by MDRWG”

(maybe as well still a working title?) and strongly suggest a deletion of this column in the light of ESMA's mandate or at least a strict clarification and adaptation of wording. We like to point out that while Table 1 Annex refers to real-time trade publication, the MDRWG focuses mainly on the t+1 transaction reporting requirements to regulators.

The current proposed wording in Annex I – most likely without intent – threatens ESMA's neutrality as regards taking position in favor of one versus several other real-time data feed protocols. While the displayed column 3 “Format to be populated by MDRWG” seems to implicitly support the use of one protocol only (which however, requires significantly more bandwidth for transmission) as it seems to imply that the machine readable data stream contains the data in a 1:1 format. Thus it excludes a broad majority of protocols currently applied by major EU exchange venues, while those protocols are in the same position to support the display of ISO or other standards suggested by the MDRWG on user displays. However, for competition reasons most trading venues data feeds are optimized in terms of efficiency and latency and therefore, as well as regards the protocol used, which can be ITCH, OUCH, FPL FIX or further proprietary protocols. Again, we need to reiterate that real-time data feeds have to be seen distinct from t+1 data reports, and no mixture of both should be concluded by ESMA, as the requirements are not the same.

The current wording in column 3 in the worst case could result in disproportionate burden and disruption of a well functioning EU infrastructure, resulting in a Big Bang early 2017. For the avoidance of doubt, please note that in comparison with what is being suggested in Table 1, Annex 1, the suggestions in Table 2 Annex 1 - the Flags derived from the Market Model Typology - are “protocol agnostic” meaning they can be applied in any protocol currently being used within the market. So unless column 3 “Format to be populated by MDRWG” is completely being deleted, or exclusively being used in the context of Transaction Reporting according to Art 26, MiFIR, we strongly advise ESMA to at least adapt the wording used in Table 1.

Proposed amendments to RTS 8 Table 1 Annex 1

- (V) **Headline of column 3** delete “Format to be populated by MDRWG” and adapt to “**Supportive of following standards**” – this is a necessary adaptation due to the reasons lined out above.
- (VI) Field Identifier “**Trading Day**”: while we agree on the Field ID as well as the description we would like to point out that as regards strongly standardized real-time data feeds from trading venues most of redundant data fields – amongst them the trading day – are submitted as static data of the day before trading resumes. This saves bandwidth and is more efficient.
 - Therefore, description should read: “Date when the transaction was executed. Date should be made available either per trade or where including in a trading venues stream once per day before trading resumes”.
- Field Identifier “**Trading Time**”: the description of the “Trading Time for OTC” seems to create a significant loophole to override the reduced reporting time for OTC trades. In line with our comments to this table, many of the referred data fields belong to standard reference data contained in every trading infrastructure. Once parties agree to a trade in a particular instrument, the reference data are implicitly agreed on

already. A trade should de facto be considered as being concluded once the parties agree on the instrument, the volume and the price including currencies.

- Therefore, the explicit OTC reference in the description should be completely deleted.
- Field Identifier “**Instrument Identification code type**”: this is an explanatory **reference data field** and therefore, usually not included in trade messages within real-time feeds.
 - Therefore, either delete or description should read: “Information should be made available either per trade or where included in a trading venue’s data stream once per day before start of trading”
- Field Identifier “**Instrument Identification**”: for code type A (II) only the exchange product code is necessary, as the venue is already displayed in “Venue of execution”.
 - Therefore, deletion of “venue +” in the text in Third Column.
- Field Identifier “**Unit Price**”:
 - Delete everything in third column, apart from “Where price reported in monetary terms, it shall be provided in the major currency unit”.
- Field Identifier “**Currency**”: this is an explanatory **reference data field** and therefore, usually not included in trade messages within real-time feeds.
 - Therefore, either delete or description should read: “Information should be made available either per trade or where included in a trading venue’s data stream once per day before start of trading”
- Field Identifier “**Quantity**”:
 - Therefore, description should read: “**The quantity traded in the instrument**”

Again, please note that there should be no doubt about ESMA’s neutrality as regards the application of specific real-time protocols for the use by trading venues as this would be both disproportionate as well as against Level 1.

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_50>

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

<ESMA_QUESTION_CP_MIFID_51>

Deutsche Börse Group does not fully agree with ESMA regarding the Flags in Table 2, Annex I. We like to point out, however, that this refers only to some flags and that we generally are very supportive of the flagging applied by ESMA. Most important, any flags derived from the Market Model Typology – an industry standard - are absolutely “protocol agnostic” meaning they can be applied in any protocol currently being used within the market. Furthermore, are they based on the work and recommendations of the CESR Consultative Working Group.

Reference to Table 2, Annex I, RTS 8

Below, please find our comments regarding those flags from the table which we deem problematic for various reasons:

1. Deutsche Börse Group does not agree with ESMA on the introduction of a new flag ‘G’ for RMs and MTFs.

2. We do not agree on the application of flag 'S' and 'A' to Trading Venues (RMs or MTFs)
3. Deutsche Börse Group does not agree with ESMA on a combination of a trade flag with reference data like in the case of 'N' and 'O'
4. Deutsche Börse Group does not agree with ESMA on the introduction of the flag 'H'

ad 1. 'G' - Deutsche Börse Group recommends to delete 'G' due to various reason, the most important one would be the lack of transparency for the execution of the volume cap mechanism

For various reasons the **introduction of 'G' is unnecessary, or even problematic:**

- We need to generally note that from a systematical modelling point of view, "price forming" is no attribute of a single trade itself but largely depends on the environment and / or the circumstances. Price formation is often of contextual nature. This is one of the reasons why we cannot support the newly suggested flag by ESMA.
- Furthermore, there is no need to introduce a new flag 'G' as Trade flags 'T' and 'G' have the same definition, the execution venue being the only distinction. On top, 'G' code is already use in MMT for Give-up/in trades as inspired by CESR 10-882, extends original scope of the flag. 'T' had been introduced by the CESR Consultative Working Group mainly on demand by IFs who indicated that those trades often occurred OTC. However, in case non price forming OTC trades would be exempt from post trade transparency obligation, we don't see in which case the trade flag 'T' might be used at all. At trading venues there are usually no technical trades per definitionem.
- Although Art 20 3 (b) MiFIR allows ESMA some flexibility to define the transparency obligation for OTC trades based on other than current market conditions, we need to point out the negative consequences implied by this extensive list provided by ESMA in combination of a complete transparency waiver for such trades as the underlying volume of such trades will not be taken into account for the calculation of the volume cap mechanism.

Therefore, Deutsche Börse Group strongly rejects the redundant introduction of a new flag 'G' for non-price forming as well as the full exclusion of OTC post trade transparency for Technical Trades.

ad 2 – Deutsche Börse Group rejects the application of flag 'S' and 'A' to Trading Venues

- 'S' should generally be replaced by 'E' in order to align with MMT which is already applied by some market participants. Furthermore, 'S' refers to ex or cum dividend trades. Due to strong standardization of trading on those venues, trades are executed ex immediately after the corporate action event. Therefore, this flag should not be applicable to RMs or MTFs as it would unnecessarily increase the message load and therewith cost and competitiveness.
- Please note that 'A' should not be referring to RMs or MTFs as those venues will not submit any amendments.

ad 3 – Deutsche Börse Group needs to point out that a combination of a trade flag with reference data like in the case of ‘N’ and ‘O’ is not sensible and needs to be avoided

- The categorization of a financial instrument as liquid or illiquid instrument is a security reference data and not a transactional attribute determined by the current level of pre-trade transparency; by analogy see liquidity flag concept for bonds on p. 149. A trade flag is not the appropriate attribute for this purpose.
- There is as well risk of overlap and confusion between ‘P’ and ‘N’ and ‘O’. Using the appropriate security categorization attribute would solve the problem.
- We recommend to keep existing “N” code as it is based on its original definition as stated in CESR/10-882. The trades identified under ‘N’ can then be mapped with the ESMA database as regards the liquidity status of a flag. Considering ESMA’s current policy, the list of liquid shares is only updated once a year on the MiFID database operated by ESMA. It looks over-engineered to force this particular information to populate each trade message, i.e. duplicating this information millions of times every day, considering the information content remains stable for 12 months. Offline securities reference data mapping looks more appropriate without hampering the overall price finding transparency.

ad 4 – mistake from Level 1 cannot be healed on Level 2 as regards the Algo trade flag

- While on Level 1 late in the process an indicator has been included to be consolidated by a CTP, it needs to be pointed out that this most likely happened on mistake looking at the fact at hand. Trying to correct this mistake at Level 2 is not recommended.
- Again, we need to make the distinction as regards real-time transparency as well as t+1 transparency to the regulator. While real-time transparency requires only 1 side of the trade and does not contain all detailed personal information as the public is being addressed the t+1 reporting according to Art 12 MiFIR would contain an Algo Flag indeed. This is the case due to the fact that the Algorithmic Trading flag has to be applied for market surveillance purposes only but only to submitted orders and not for public display. In matched orders a flag is not available.
- De facto, either one or the two sides of an executed trade can originate from an algorithmic order. Assigning the algorithmic flag to the real-time trade report will automatically lead to an inconsistent inflated number of the trading activity attributable to algorithmic order generation. Corresponding trade/volume/turnover aggregates will in turn display an inconsistent size of the phenomenon.
- It is therefore, that the mistake – the inclusion of an Algo Flag for the purpose of consolidation by a CTP – cannot and should not be healed, as it would lead to false conclusions at least.
- Deutsche Börse Group therefore strongly suggest to remove the algorithmic trade flag ‘H’ from the list of information to be made public. The algorithmic flag serves regulatory surveillance purposes and must not be published on public market data but stored and made available as transaction report details.

<ESMA_QUESTION_CP_MIFID_51>

Q52. Do you agree with the proposed definitions of normal trading hours for market operators and for OTC? Do you agree with shortening the maximum possible delay to

one minute? Do you think some types of transactions, such as portfolio trades should benefit from longer delays? Please provide reasons for your answers.

<ESMA_QUESTION_CP_MIFID_52>

No, Deutsche Börse Group believes for OTC, normal trading hours should be considered as the hours applicable to the market where the concerned instrument is primarily admitted to. We suggest applying the primary market rather than the most relevant market in terms of liquidity as the first one is overall more consistent and causes less uncertainty while the latter one might change over time. Besides in general the primary market is the most liquid market for a financial instrument.

Proposed amendment to Article 1 (5) of Draft RTS 8:

“Article 1
Definitions

“(5) ‘normal trading hours’ for a trading venue or an investment firm means those hours **applicable to the market where the concerned instrument is primarily admitted to; which these need to be made public by the trading venue or investment firm on their websites;** ~~establishes in advance and makes public as the trading hours;”~~

Overall, Deutsche Börse Group agrees to a reduction of delay time. But as we responded in summer in the Discussion Paper we suggest to not determining a defined timespan. This will most likely be exploited by brokers setting the reporting’s to exact that time. We have seen these developments with MiFID I, where the ‘3-minutes-delay’ was intentionally exploited by brokers by setting artificial, internal delays into their IT infrastructure. The original intention of the delay was, however, to give brokers sufficient time to manually enter the tickets into their internal processing systems. Therefore, we suggest replacing the ‘1 minute’ with the term ‘as soon as technically possible’, which would outlaw the intentional implementation of delays into the broker’s IT systems. We have noticed that this has already been changed in Art. 17 (1) of RTS 8 (“[...] information relating to transactions shall be made available as close to real-time as is technically possible and in any case within one minute of the relevant transaction.”) and therefore agree with it.

No, Deutsche Börse Group does not agree that longer delays should be provided for specific transactions such as portfolio trades as an increase in delay would not be consistent with MiFID II transparency objectives. As stated above we believe replacing the “1 minute” by the term “as soon as technically possible” is appropriate and will solve this issue as well.

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_52>

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



<ESMA_QUESTION_CP_MIFID_53>

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<ESMA_QUESTION_CP_MIFID_53>

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

<ESMA_QUESTION_CP_MIFID_54>

Yes, Deutsche Börse Group agrees with the table in Annex II Table 5.

<ESMA_QUESTION_CP_MIFID_54>

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

<ESMA_QUESTION_CP_MIFID_55>

For the same reasons as stated in our answer to question 42, Deutsche Börse Group does not agree with the proposed classes and thresholds for large in scale transactions. Instead we would prefer a less complex model similar to ESMA's proposed Option 2. However, while Option 2 certainly provides for a simple and easy-to-implement solution to achieve post-trade transparency, we believe that the specific characteristics of the ETF market such as the additional layer of liquidity available to market makers through the creation/redemption process allow for higher thresholds than the single € 5 million threshold proposed by ESMA in Option 2. As an alternative to the single threshold model of Option 2, we would therefore like ESMA to consider a multiple threshold model based on the size of the transaction. Such a model would enable ESMA to define separate thresholds for imminent, delayed and end-of-day reporting of ETF transactions and hence increase transparency over the single threshold model proposed in Option 2. Specifically, we would recommend requiring imminent publication of all transactions with a size below € 10 million, permit a 60 minutes delay for transactions with a size between € 10 million and € 50 million and permit an EOD publication for transactions with a size of € 50 million and above. From our perspective, these thresholds would provide for a well-balanced reporting regime that is well in line with ESMA's objective to provide meaningful post-trade transparency for ETFs.

Proposed amendment to Article 15 (2) of Draft RTS 8:

“Article 15

Deferred publication of large transactions

2. In order to determine the relevant minimum qualifying size for the purposes of point (b) of paragraph 1, all shares, depositary receipts, ~~ETFs~~, certificates and other similar financial instruments shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 8.”

Proposed amendment to Table 6 in Annex II of Draft RTS 8:

“Table 6
Deferred publication thresholds and delays
ETFs

The table below shows, for each permitted delay for publication, the minimum qualifying size of transaction that will qualify for that delay in respect of an ETF of that type.

Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication
10,000,000	60 minutes
50,000,000	End of the trading day

Please see all our changes with regards to Draft RTS 8 in the appendix.

<ESMA_QUESTION_CP_MIFID_55>

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

<ESMA_QUESTION_CP_MIFID_56>

Yes, Deutsche Börse Group does agree.

<ESMA_QUESTION_CP_MIFID_56>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_57>

(1) Yes, Deutsche Börse Group welcomes ESMA's proposal to use the COFIA approach to classify bonds as liquid or not. As there is a clear relationship between liquidity and issuing size we agree to include issuance size as criteria to classify bonds. We also agree with the classification in bond type, debt seniority and issuer sub-type. However, if ESMA considers to include further qualitative criteria to define subclasses we recommend considering the bond's life cycle. The most recently issued bond for a certain maturity is by far the more liquid bond. Generally, an inverse relationship between bond age and liquidity exists. The newer ones, 'on-the-run', are more liquid and the older ones, 'off-the-run', are much less liquid.

(2) Deutsche Börse Group generally agrees with ESMA's definition of a liquid market. We agree to consider the parameters number of days per year the instrument is traded, the number of trades per year and the nominal traded amount per day.

(3) The trading behaviour of market participants in the OTC market on electronic trading platforms changed strongly in the last few years. The current market circumstances lead to less liquidity in special bond classes. We observe a strong decrease in trading of covered bonds. While covered bonds are mostly bought and hold by market participants, nearly no volume remains in the secondary market. This includes covered bonds with issuance size greater or equal to € 750,000,000.

ESMA's proposal for the definition of a liquid market should include a regulation, which defines the classification of the instruments. We recommend assigning the task to a central instance or to the issuer of the bond, to assure a uniform assignment of bonds to the respective liquidity classes.

<ESMA_QUESTION_CP_MIFID_57>

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

<ESMA_QUESTION_CP_MIFID_58>

Yes, Deutsche Börse Group generally agrees with ESMA's proposal of bond classes provided in Annex III of RTS 9. Differing from ESMA's proposal we recommend increasing the LIS threshold for government bonds and increasing the issuance size threshold for non-financial corporate bonds.

As most volumes traded OTC in the inter-bank market, the minimum tradable units in open order books are at least € 1,000,000 per instrument. Average traded volumes in sovereign bonds are often higher than € 10,000,000. It is usual for National Debt Management Offices to require secondary market quoting activities from their primary dealers of minimum € 10,000,000 on both sides (bid and ask). Nominal volumes of € 10,000,000 are common size and not large in scale.

Additionally we believe that the threshold for the issuance size for senior corporate bonds of non-financial issuers is too high. The current trend for non-financial corporate bonds issuers is to issue at a lower size. We would therefore suggest lowering the threshold for corporate bonds to € 300,000,000. This would also allow capturing more of those liquid bonds which

would wrongly fall into the illiquid category, as nearly 8% of bonds wrongly allocated to the illiquid category with the current methodology seems to be too high (in particular in respect to the other classes).

Also we would like to ask ESMA for further clarity with regard to foreign currencies, i.e. which conversion rate should be used and how often.

<ESMA_QUESTION_CP_MIFID_58>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_59>

Deutsche Börse Group would like to answer this question only with regard to Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs):

Yes, with regards to Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs) Deutsche Börse Group agrees with ESMA's proposal for the definition of a liquid market for securitised derivatives.

<ESMA_QUESTION_CP_MIFID_59>

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

<ESMA_QUESTION_CP_MIFID_60>

Deutsche Börse Group would like to answer this question only with regard to Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs):

Yes, Deutsche Börse Group agrees with ESMA's proposal for the definition of securitised derivatives, but would like to emphasise that Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs) have characteristics that are largely similar to those of Exchange Traded Funds (ETFs). Consequently, we recommend considering ETCs and ETNs as similar financial instruments to ETFs within this regulation and applying the same set of rules whenever possible.

<ESMA_QUESTION_CP_MIFID_60>

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

Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) addressing the following points:

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

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

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

<ESMA_QUESTION_CP_MIFID_61>

Deutsche Börse Group is concerned about the approach pursued by ESMA. While in OTC derivatives every step towards transparency is welcomed, the attempts in specifying liquidity and resulting thresholds for exchange traded derivatives (ETDs) are viewed more critical.

ETDs are already characterized by high pre- and post-trade transparency, by providing price, size and depth towards the market, and trade reporting close to real time, or with sufficient delay to capture market needs, but never later than after the end-of-day batch run of 't', i.e. the same day. Batch produced reports already contain information subject to non-disclosure limits. While the legislative goal is fully supported, the conversion steps proposed by ESMA are of concern, when focusing on ETDs specifically. It needs to be acknowledged that liquidity formation in ETDs is different and exchanges have put frameworks, rules and processes in place, in order to create and support a public order book. The very first step hereby is to introduce 'mature' products to a central clearing environment. The dynamic procedure established under the discretion of exchanges ensures that product specific steps are taken, when attracting formerly bilaterally traded products into a multilateral clearing and trading environment.

Accordingly, exchanges (and clearinghouses) adjust pre- and post-trade transparency parameters like block sizes and deferred publication sizes along the product lifecycle with the ultimate goal to concentrate liquidity formation in the public central limit order book. Therefore, in the early stage of the product lifecycle block sizes are kept on low levels to compete with OTC traded markets. In more mature stages of the product lifecycle block sizes are increased, when the market has moved to central clearing and liquidity providers support the transparent public central limit order book.

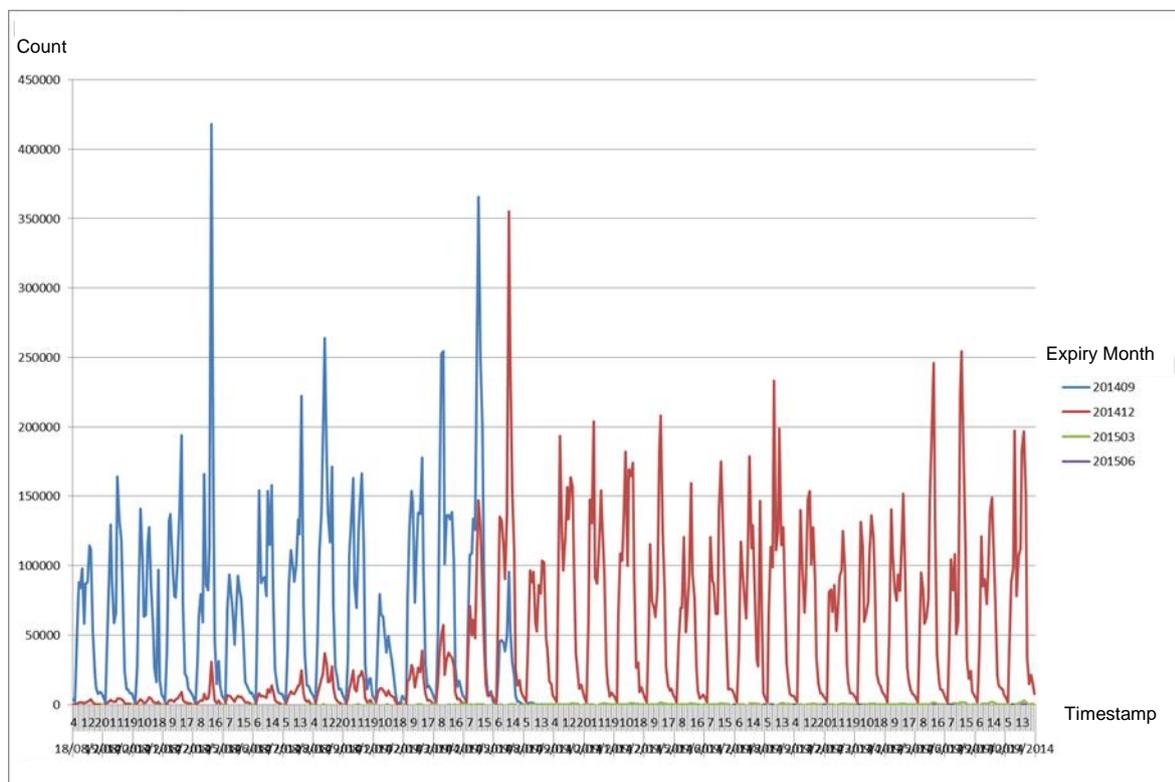
Exchange discretion in achieving the steps described above should not be limited by a too generic and static transparency regime. This raises severe concerns, as certain approaches described in the discussion paper will negatively impact ETDs; clearly, this has not been intended under Level 1. Subsequently, issues are exemplified for exchange traded interest rate derivatives.

Deutsche Börse Group cannot agree with ESMA’s proposal for the definition of a liquid market, specifically for interest rate derivatives. The initial approach to define liquid market with criteria like i) average trades per day and ii) average notional amount is applicable but the thresholds have to be changed for Bond Futures.

Regarding the sub-question 61 (1) the sub-class “time to maturity” in bond futures makes sense. Bond futures are only liquid (please see in this context thresholds in answer 61 (2)) in one of the three listed contract months i.e. in the front-month of the futures product. The first back month is starting to trade approximately two weeks before expiration of the front-month. Six days before expiration of the front month the back month contract is traded actively and can be perceived as liquid. Two days before expiration of the front-month contract the liquidity is transferred to the back-month which will be the upcoming front-month. The second back-month is only traded occasionally and far away from being liquid. Indeed, the table 10 (page 116 in the consultation paper) takes these aspects into consideration but only for selected bond futures. But differentiation into bond futures with “time to maturity” up to 3 months and bond futures with “time to maturity” greater than 3 months is required for each bond futures product listed in table 10 and not only for a few, as undertaken by ESMA.

To summarize, in most bond futures the front-month futures contract is liquid but not the two back-month futures contracts. The sub-classes should consider this important aspect consistently.

Please see subsequently also exemplified the liquidity profile of a Bund future along its differing maturities to depict the argument.



Furthermore below, you find an example for two bond futures products. Both front-month contracts could be perceived as liquid although one can see the large differences. In the back month, both cannot be considered as liquid in the sense of transparency, but of course the effect is more pronounced for the less liquid product.

03/06 - 06/06	BUND ADV	BUXL ADV
Front Month June 2014	652.861	20.408
1. Back Month Sep 2014	58,705	2.697
without roll period (six days before expiry of front month)	4,688	91
Back Month Dec 2014	1	0

Regarding sub-question 61(2) as mentioned at the beginning of our answer the defined parameters/ criteria are appropriate, but the thresholds are not applicable for listed exchange traded bond futures. As Bond futures are highly standardized products designed to concentrate volume into one product, thresholds of one trade per day and 5mn notional amount on average are too low. Exchange traded bond futures with 1 trade per day and 50 contracts traded on average (5mn= 50*100,000EUR contract value) can only be perceived as illiquid in the light of transparency.

Market perception is that a liquid ETD in the sense of transparency must have at least 2.000 trades per day and reach a daily notional amount of EUR 1bn. Please find below a table with the identification of liquid instruments according to the market practice and perception in regards to instruments offered by Eurex. A similar approach shall be undertaken by ESMA.

FI Products	AVG trades per day	AVG Volume per day
CONF - CONF Futures	139	457
FBTM - Mid term Euro-BTP-Futures	0	0
FBTP - Euro-BTP Futures	15577	68604
FBTS - Short Term Euro-BTP-Futures	2315	14651
FGBL - Euro-Bund Futures	78559	708051
FGBM - Euro-Bobl Futures	30379	448831
FGBS - Euro-Schatz Futures	8097	282122
FGBX - Euro-Buxl® Futures	8262	25408
FOAM - Mid-Term Euro-OAT-Futures	128	548
FOAT - Euro-OAT-Futures	14177	68666
OGBL - Options on Euro-Bund Futures	1646	133121
OGBM - Options on Euro-Bobl Futures	162	32581
OGBS - Options on Euro-Schatz Futures	38	35774
OOAT - Options on Euro-OAT Futures	1	106

Liquid defined as: > 2000 trades per day and > 10,000 contracts per day

 Considered illiquid under methodology

 Considered liquid under methodology

Regarding sub-question 61 (3) table 10 only marks those products as “illiquid” which have no trading volume at all (= 0 contracts per day). According to ESMA’s threshold definitions a product is automatically deemed liquid if only small volumes are traded. This very generic and rough approach chosen by ESMA does not take into account the large differences in the level of liquidity within bond futures.

According to analyses based on public information, the following classes declared as liquid in table 10 should be declared as illiquid, otherwise the thresholds might harm those markets:

Long Spanish government bond futures

Long Swiss confederation bond futures

Medium Gilt

Medium OAT bond futures

Medium Spanish government bond futures

Medium Swiss confederation bond futures (are delisted!)

Short Gilt Futures

Short Spanish government bond futures

Ultra Long gilt futures

For all bond futures products listed in table 10 the general measure could be taken into account:

Greater than 3 months would result in illiquid instruments until six days before expiration of the front-month futures contract.

<ESMA_QUESTION_CP_MIFID_61>

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

<ESMA_QUESTION_CP_MIFID_62>

As mentioned in Deutsche Börse Group’s answer Q61 above a differentiation between bond futures with “time to maturity” equal or up to 3 months and bond futures with “time to maturity” greater than 3 months is required for each bond futures product listed in table 5.

A new differentiation shall be made available, based on the logic provided above and shall be amended in the currently proposed table.

In light of the background provided in the answer to Q61 several bond futures listed in table 5 are categorized as ‘liquid classes’ and would have to be transferred into the class “Bond Futures – Classes not having a liquid market” based on the evaluations and classification methodology provided:

- Long Spanish government bond futures
- Long Swiss conf bond futures
- Medium Gilt futures
- Medium OAT futures
- Short Gilt futures
- Ultra long Gilt futures
- All Euro Swapnote futures

Moreover, due to the high level of standardization in these products, liquidity thresholds have to be set higher according to the market-practice based methodology proposed above. Respectively, the higher thresholds will change the allocation of the existing bond futures into liquid and illiquid classes.

Other points of recommendation for ESMA would be to reconsider Swapnote Futures as these cannot be perceived as bond futures as the underlying swap rate correlates but by no means coincides with bond yields. As more futures based on swaps are soon to be listed, defining a bespoke class for these products is advised. In addition, it is recommended to change the terminology ‘Interest Rate futures’ used in table 7 into ‘short term interest rate futures’ or so-called ‘Money Market Futures’.

We therefore propose to amend the Table 5 and 6 of Annex III of Section 4 on interest rate derivatives as follows:

Proposed amendment to Table 5 and 6 of Annex III of Draft RTS 9:

Table 5
Bond futures – liquid classes

BOND FUTURES - LIQUID CLASSES					
UNDERLYING TYPE	UNDERLYING	TIME TO MATURITY		LIS (€)	SSTI (€)
Bond	Ultra long bund (buxl)	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Long bund	equal or longer than	3 months	100,000,000 50,000,000	95% of LIS 25,000,000
Bond	Long gilt	up to	3 months	10,000,000	95% of LIS 5,000,000
Bond	Long gilt	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Long spanish government bond	up to	3 months	10,000,000	5,000,000
Bond	Long spanish government bond	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long swiss confederation bond	equal or longer than	3 months	10,000,000	5,000,000
Bond	Long btp	up to and equal to	3 months	25,000,000 10,000,000	95% of LIS 5,000,000
Bond	Long btp	equal or longer than	3 months	10,000,000 5,000,000	95% of LIS 7,500,000
Bond	Medium bund (bobl)	equal or longer than	3 months	200,000,000 50,000,000	95% of LIS 25,000,000
Bond	Medium gilt	equal or longer than	3 months	10,000,000	5,000,000
Bond	Medium oat	equal or longer than	3 months	1510,000,000	7,500,000
Bond	Short btp	equal or longer than	3 months	10,000,000 12,500,000	95% of LIS 6,250,000
Bond	Short bund (schatz)	equal or longer than	3 months	400,000,000 75,000,000	95% of LIS 37,500,000
Bond	OAT 10year			25,000,000	95% of LIS
Bond	Short gilt	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Ultra long gilt	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Swapnote	10yr euro swapnote	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Swapnote	2yr euro swapnote	up to	3 months	10,000,000	95% of LIS 5,000,000
Swapnote	2yr euro swapnote	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Swapnote	5yr euro swapnote	up to	3 months	10,000,000	95% of LIS 5,000,000
Swapnote	5yr euro swapnote	equal or longer than	3 months	10,000,000	5,000,000

Table 6
Bond futures – classes not having a liquid market

BOND FUTURES - CLASSES NOT HAVING A LIQUID MARKET				LIS (€)	SSTI (€)
Bond	Long spanish government bond	up to	3 months	10,000,000	95% of LIS 5,000,000
Bond	Long spanish government bond	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Long swiss confederation bond	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Medium gilt	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
Bond	Medium oat	equal or longer than	3 months	1510,000,000	95% of LIS 7,500,000

Swapnote	All	equal or longer than	3 months	10,000,000	95% of LIS 5,000,000
OTHERS				10,000,000	95% of LIS 5,000,000

- (1) ‘**Short term Interest rate or Money Market futures liquid class**’ means an interest rate futures characterised by a specific combination of underlying type, underlying and time to maturity as specified in each row of Table 7 Interest rate futures – liquid classes.
- (2) ‘**Short term Interest rate or Money Market futures class not having a liquid market**’ means any interest rate futures which is not an interest rate futures liquid class.

Please see all our changes with regards to Draft RTS 9 in the appendix.

<ESMA_QUESTION_CP_MIFID_62>

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

<ESMA_QUESTION_CP_MIFID_63>

Deutsche Börse Group is concerned about the approach pursued by ESMA. While in OTC derivatives every step towards transparency is welcomed, the attempts in specifying liquidity and resulting thresholds for exchange traded derivatives (ETDs) are viewed more critical.

ETDs are already characterized by high pre- and post-trade transparency, by providing price, size and depth towards the market, and trade reporting close to real time, or with sufficient delay to capture market needs, but never later than after the end-of-day batch run of ‘t’, i.e. the same day. Batch produced reports already contain information subject to non-disclosure limits. While the legislative goal is fully supported, the conversion steps proposed by ESMA are of concern, when focusing on ETDs specifically. It needs to be acknowledged that liquidity formation in ETDs is different and exchanges have put frameworks, rules and processes in place, in order to create and support a public order book. The very first step hereby is to introduce ‘mature’ products to a central clearing environment. The dynamic procedure established under the discretion of exchanges ensures that product specific steps are taken, when attracting formerly bilaterally traded products into a multilateral clearing and trading environment.

Accordingly, exchanges (and clearinghouses) adjust pre- and post-trade transparency parameters like block sizes and deferred publication sizes along the product lifecycle with the ultimate goal to concentrate liquidity formation in the public central limit order book. Therefore, in the early stage of the product lifecycle block sizes are kept on low levels to compete with OTC traded markets. In more mature stages of the product lifecycle block sizes are increased, when the market has moved to central clearing and liquidity providers support the transparent public central limit order book.

Exchange discretion in achieving the steps described above should not be limited by a too generic and static transparency regime. This raises severe concerns, as certain approaches described in the discussion paper will negatively impact ETDs; clearly, this has not been

intended under Level 1. Subsequently, issues are exemplified for exchange traded equity derivatives.

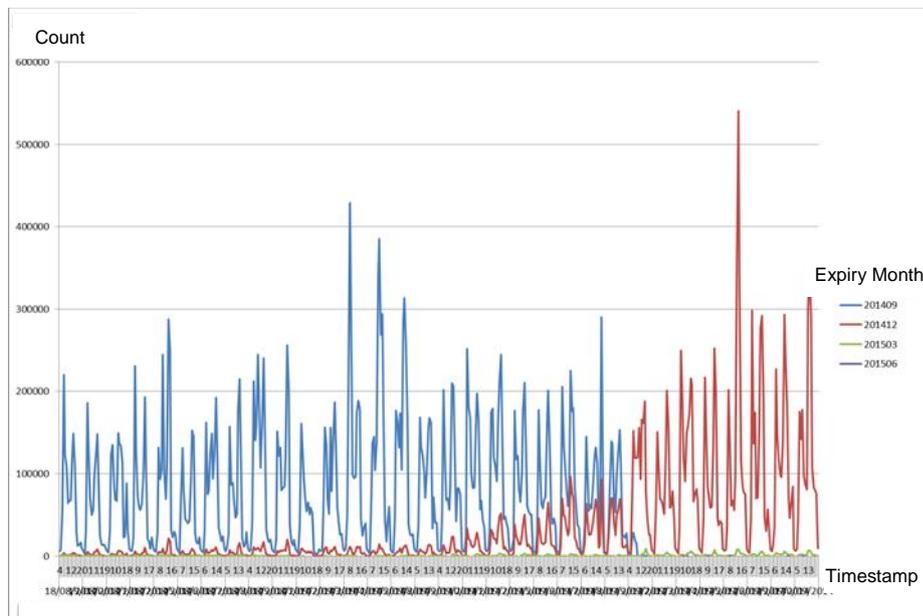
Deutsche Börse Group agrees that the current levels of transparency should be kept, if not even enhanced. Therefore, option 2 is preferred over option 1.

Clearly, a distinction just between different maturities of a product adds complexity. Deutsche Börse Group has minimum block trade sizes defined per product only, and not per maturity. To reduce complexity at the moment LIS could focus on trade size per product at the moment, however, in the longer run it might be possible to distinguish also per maturity.

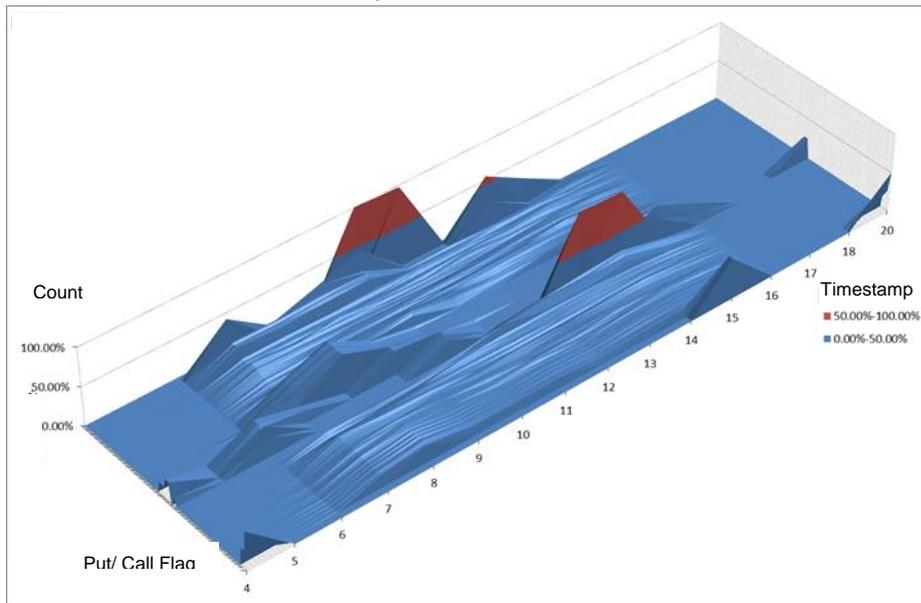
Most other trading venues follow this approach. However, it needs to be taken into account, that liquidity in derivatives is normally limited to the front contract (Futures) or a number of maturities (Options).

Please find below depictions of liquidity profiles of the EURO STOXX 50® Index Futures in contrast to the liquidity profile of the respective options that demonstrate the fundamental difference between futures and options. In the futures, a front-month driven nature is visible similar to that of interest rate derivatives futures, but in options a clear difference is visible that reflects the relative illiquidity of the broad range of options. The graphs show how liquidity is not easily bundled in all strikes during the entire trading day in the options, and that the instrument as such has long periods of no or low activity in all of the strike prices available.

EURO STOXX 50® Index Futures



EURO STOXX 50® Index Options



<ESMA_QUESTION_CP_MIFID_63>

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

- (1) your alternative proposal**
- (2) which qualitative criteria would you use to define the sub-classes**
- (3) which parameters and related threshold values would you use in order to define a sub-class as liquid.**

<ESMA_QUESTION_CP_MIFID_64>

Deutsche Börse Group has strong reservations against the proposals made for equity derivatives and fears that current transparency will be impaired and markets damaged. Even though it might have some advantages to classify all equity derivatives as liquid, it does not fully reflect the existing trading patterns, as depicted in the graphs provided in Q 63 above.

There are certain classes of equity derivatives, in which almost all trades are done pre-negotiated, either because of absence of Market Makers (certain index options or less-liquid equity options) or because the standard trade size is larger than Market Makers are able/willing to quote on a permanent basis (e.g. Single Stock and Dividend Futures). In those cases, as well as for newly listed products, trading venues should have the ability to put the large-in-scale levels even lower than suggested by ESMA.

However, since this discretion does not seem appropriate, Deutsche Börse Group urges ESMA to take into account a more granular COFIA approach, similar to the more granular approach under the analysis of interest rate derivatives.

To provide a more meaningful granularity of liquidity for equity derivatives, following bands could be envisaged instead of the proposed ESMA thresholds. The proposed changes could be made in tables of Annex III:

Single Stock Futures	Liquid	> 250 trades annually
	Liquid	> 2.5bn notional
	Liquid	> 1mn TC annually
	Illiquid	neither of above
Equity options	Liquid	> 10,000 trades annually
	Liquid	> 1bn notional annually
	Liquid	> 500,000 TC annually
	Illiquid	neither of above
Index Futures	Liquid	> 1,000 trades annually
	Liquid	> 1bn notional annually
	Liquid	> 25,000 TC annually
	Illiquid	neither of above
Index Options	Liquid	> 5,000 trades annually
	Liquid	> 2.5bn notional annually
	Liquid	> 500,000 TC annually
	Illiquid	neither of above

TC = traded contracts

<ESMA_QUESTION_CP_MIFID_64>

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

<ESMA_QUESTION_CP_MIFID_65>

Deutsche Börse Group disagrees. The breakdown into different subclasses of equity derivatives is not very meaningful, if all of them are classified as liquid and only small differences in the size of large-in-scale are set. However, the figures suggested are much lower than today for a number of liquid products. This bears the risk that liquidity will move outside the order-book. On the other hand, the proposed levels are too high for some illiquid products. Especially not all newly listed products have Market Makers right from the beginning. Therefore, also very small trades are done pre-negotiated and entered via block trades. It is suggested to allow the trading venue to adhere to levels that are more adequate for such illiquid products and thus maintain a lower threshold at least for a certain period after launch.

As a counterproposal, Deutsche Börse Group tried to design bands that could address the determination of LIS in a more appropriate way. The thresholds are built around data from Eurex, but could also hold for other exchange traded equity derivatives. It was the intention to keep the bands around the ESMA proposal as a benchmark. Also, the counter proposal is

based on notional amounts, as prescribed by ESMA, even though in exchange traded derivatives, volume is usually referred to in traded contracts/ lots:

Index Futures	
Eurex ADV	Proposed LIS
> 1bn notional	10,000,000
> 100mn notional	2,000,000
< 100mn notional	500,000
ESMA	LIS
all	2,000,000

Index Options	
Eurex ADV	Proposed LIS
> 1bn notional	5,000,000
> 100mn notional	1,000,000
< 100mn notional	250,000
ESMA	LIS
all	1,500,000

Single Stock Futures	
Eurex ADV	Proposed LIS
> 100mn notional	1,000,000
< 100mn notional	250,000
ESMA	LIS
all	800,000

Equity Options	
Eurex ADV	Proposed LIS
> 25 mn notional	1,000,000
< 25mn notional	250,000
ESMA	LIS
all	900,000

Further precision can be added to the design regarding single name equity options, if ESMA also considers the free float market capitalization of the underlying, given the wide variety of the potential equity/ share underlyings, the levels would become more adequate. Particularly, equity options with a free float market capitalization below 5bn EUR should be seen as illiquid.

However, the measure is not as useful for single stock futures due to the predominantly pre-arranged nature of trading in these products, and we recommend omitting this aspect for the purpose of LIS determination in single stock futures.

Deutsche Börse Group strongly recommends to ESMA to adopt the suggestion into the tables 32 and 33 for equity derivatives in the **Annex III of** RTS 9.

Proposed amendment to Table 32 and 33 of Annex III of Draft RTS 9:

**Table 32
Equity derivatives – liquid classes**

EQUITY DERIVATIVES - LIQUID CLASSES	LIS (€)		SSTI (€)
Contract type	Clusters based on ADV	LIS Threshold	
Index options		1,500,000	750,000
Liquid > 5,000 trades annually	> 1bn notional	5,000,000	95% of LIS
Liquid > 2.5bn notional annually	> 100mn notional	1,000,000	95% of LIS
Liquid > 500,000 TC annually	< 100mn notional	250,000	95% of LIS
Index futures		2,000,000	1,000,000
Liquid > 1,000 trades annually	> 1bn notional	10,000,000	95% of LIS
Liquid > 1bn notional annually	> 100mn notional	2,000,000	95% of LIS
Liquid > 25,000 TC annually	< 100mn notional	500,000	95% of LIS
Stock options		900,000	450,000
Liquid > 10,000 trades annually	> 25 mn notional	1,000,000	95% of LIS
Liquid > 1bn notional annually	< 25mn notional	250,000	95% of LIS
Liquid > 500,000 TC annually			
Stock futures		800,000	400,000
Liquid > 250 trades annually	> 100mn notional	1,000,000	95% of LIS
Liquid > 2.5bn notional	< 100mn notional	250,000	95% of LIS
Liquid > 1mn TC annually			
Dividend index options		500,000	250,000 95% of LIS
Dividend index futures		500,000	250,000 95% of LIS
Stock dividend options		500,000	250,000 95% of LIS
Stock dividend futures		500,000	250,000 95% of LIS
Options on a basket or portfolio of shares		750,000	375,000 95% of LIS
Liquid > 10,000 trades annually	> 25 mn notional	1,000,000	
Liquid > 1bn notional annually	< 25mn notional	250,000	95% of LIS
Liquid > 500,000 TC annually			
Futures on a basket or portfolio of shares			500,000 95% of LIS
Liquid > 250 trades annually	> 100mn notional	1,000,000	
Liquid > 2.5bn notional	< 100mn notional	250,000	
Liquid > 1mn TC annually			
Options on other underlying values		750,000	375,000 95% of LIS
Futures on other underlying values		1,000,000	500,000 95% of LIS

**Table 33
Equity derivatives – classes not having a liquid market**

EQUITY DERIVATIVES - CLASSES NOT HAVING A LIQUID MARKET	LIS (€)	SSTI (€)
Index options Neither of the criteria listed in table 32 are met	250,000	95% of LIS
Index futures Neither of the criteria listed in table 32 are met	500,000	95% of LIS
Stock options Neither of the criteria listed in table 32 are met	250,000	95% of LIS

Stock futures Neither of the criteria listed in table 32 are met	250,000	95% of LIS
OTHERS	250,000-500,000	95% of LIS 250,000

Please see all our changes with regards to Draft RTS 9 in the appendix.

<ESMA_QUESTION_CP_MIFID_65>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_66>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_66>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_67>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_67>

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

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

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

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



<ESMA_QUESTION_CP_MIFID_68>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_68>

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

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

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

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

<ESMA_QUESTION_CP_MIFID_69>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_69>

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

<ESMA_QUESTION_CP_MIFID_70>

Yes, Deutsche Börse Group agrees. The current bid offer prices and depth of trading interests at prices which are advertised through the trading systems must be made public. We agree with the definition of a request for quote system as it covers a broad range of trading systems including bulletin boards or chat systems. We also agree with ESMA's proposal to adapt the pre-trade requirements for shares for bond instruments.

<ESMA_QUESTION_CP_MIFID_70>

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

<ESMA_QUESTION_CP_MIFID_71>

Yes, Deutsche Börse Group agrees with ESMA's proposal for an order management facilities waiver. We think that iceberg orders and stop orders should be considered as orders held in an order management facility. We agree that the minimum size held in an order management facility should be defined as minimum tradable unit. We also agree on the minimum size for iceberg orders of nominal € 10,000.

<ESMA_QUESTION_CP_MIFID_71>

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

<ESMA_QUESTION_CP_MIFID_72>

Regarding the methodology to make public indicative prices, Deutsche Börse Group recommends that trading venues shall publish the best indicative bid and offers for a bond (if quotes including volume: only quotes above the SSTI should be considered). We think ESMA should define the rule for the publication of the indicative pre-trade bid and offer prices which are close to the trading interest. Leaving this to the discretion of the trading venues would lead to heterogeneous rules. Hence the pre-trade information of different venues would not be comparable and cannot be used for price determination reasons.

We also assume that ESMA's proposal increases the costs for market data vendors as they will have to aggregate pre-trade information based on (potentially) many various publication regimes for the same bond. If too many models are chosen, some vendors may choose not to amend their systems.

<ESMA_QUESTION_CP_MIFID_72>

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

<ESMA_QUESTION_CP_MIFID_73>

Deutsche Börse Group wants to clarify that the information required, has to be delivered only if the relevant aspect is applicable at the trading venue. In addition, data needs only to be incorporated in cases where the reference data of products does not contain already the same information.

However, we have various comments to the data fields displayed in Annex II, Table 1 of RTS 9. While we fully agree with ESMA that the information content of data generated in trading should be comparable with the information content in Transaction Reporting we would like to strictly point out again, that the requirements for a real-time dissemination are based on latency as well as competition and that the feeds used for this are strictly optimized for this purpose. To the contrary Transaction Reporting t+1 has no need to being latency optimized. We therefore deem it indispensable to point out that the third column "Format" in relation to trading venues seem to go beyond ESMA's tasks from Level 1, as it implicitly requires the use of one protocol only, while depending of those being applied as of today, like ITCH and OUCH would be absolutely disproportionate.

In case ESMA persists of keeping this field at least some necessary adaptations will be required:

- **Headline of column 3** delete "Format" and adapt to "**Supportive of following standards**" – this is a necessary adaptation due to the reasons lined out above.
- Field Identifier "**Trading Day**": while we agree on the Field ID as well as the description we would like to point out that as regards strongly standardized real-time data feeds from trading venues most of redundant data fields – amongst them the trading day – are submitted as static data of the day before trading resumes. This saves bandwidth and is more efficient.
 - Therefore, description should read: "Date when the transaction was executed. Date should be made available either per trade or where including in a trading venues stream once per day before trading resumes".

- Field Identifier “**Trading Time**”: the description of the “Trading Time for OTC” seems very strange. In line with our comments to this table, many of the referred data fields belong to standard reference data contained in every trading infrastructure. Once parties agree to a trade in a particular instrument, the reference data are implicitly agreed on already. A trade should de facto be considered as being concluded once the parties agree on the instrument, the volume and the price including currencies.
 - Therefore, the explicit OTC reference in the description should be deleted.
- Field Identifier “**Instrument Identification code type**”: this is an explanatory **reference data field** and therefore, usually not included in trade messages within real-time feeds.
 - Therefore, either delete or description should read: “Information should be made available either per trade or where included in a trading venue’s data stream once per day before start of trading”
- Field Identifier “**Instrument Identification**”: for code type A (II) only the exchange product code is necessary, as the venue is already displayed in “Venue of execution”.
 - Therefore, deletion of “venue+” in the text in Third Column.
- Field Identifier “**Unit Price**”:
 - Delete everything in third column, apart from “Where price reported in monetary terms, it shall be provided in the major currency unit”.
- Field Identifier “**Currency**”: this is an explanatory **reference data field** and therefore, usually not included in trade messages within real-time feeds.
 - Therefore, either delete or description should read: “Information should be made available either per trade or where included in a trading venue’s data stream once per day before start of trading”
- Field Identifier “**Quantity**”:
 - Therefore, description should read: “**The quantity traded in the instrument**”

Again, please note that there should be no doubt about ESMA’s neutrality as regards the application of specific real-time protocols for the use by trading venues as this would be both disproportionate as well as against Level 1.



ANSWER FOR BONDS:

Regarding the detail 'Price at which the transaction was concluded' we recommend in case of yield spread bets to consider the publication of the spread as well as the associated leg prices.

We also think, as stated in our response to the Discussion Paper, that the SI should be identified in the post-trade transparency data. We see no reason to differentiate between SIs and exchange venue transactions in reporting. We agree that an SI is not a trading venue, however, the SI is an execution venue and it is in public interest to know which volume is executed on which execution venue. The information where the trade was executed is significant to the market, regardless of a trade nature as internalized or not. The risk of the SI should be addressed by the post-trade regime for delayed publication of trades.

<ESMA_QUESTION_CP_MIFID_73>

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

<ESMA_QUESTION_CP_MIFID_74>

ANSWER FOR DERIVATIVES:

Deutsche Börse Group wants to clarify that the flags required, have to be delivered only if the relevant aspect is applicable at the trading venue. In addition, data needs only to be incorporated in cases where the reference data of products does not contain already the same information.

Deutsche Börse Group cannot agree with ESMA on the proposed set of flags for non-equity post-trade transparency and would like to suggest that ESMA liaises with the Market Model Typology (MMT) Group on this issue.

We appreciate that ESMA sees value in the work of the MMT Group for the standardization of trade flags. While this has been a very successful Industry Initiative with many market participants already having implemented those standard flags already in their data feeds, we need to point out that the suggestion by ESMA might not be compatible with the MMT model for some asset classes. We deem that there currently might be an MMT coverage gap for different market models in the fixed-income and derivatives area. But this would need to be evaluated and analysed, which would require slightly more time.

The MMT trade flag model and logic originates from the plain vanilla equity area. MMT solution is by extension easily applicable to equity-like instruments. The type of market model is in fact much more relevant than the incorporation of individual financial instrument into one or the other asset class. In this respect we have to reiterate our comments already made in our answer to Q 51 of this CP. Some major market operators have by the way already implemented the MMT tagging logic for trades on Fixed-income or structured product securities. As MMT cover their existing market model across multiple asset classes, there was no logical gap in the MMT coverage. All trade messages could therefore transport the appropriate MMT trade flag irrespective of the type of asset class categorisation.

However, for some non-equity asset classes we would need to conduct further analysis in order to ensure suitability. For the sake of EU harmonized standards we therefore strongly

recommend to stick to the MMT model, and to liaise with the MMT Group as regards this issue.

Until then, we like to point at least to some obvious shortcomings of the current proposal:

'G' is being used two times in the table, once for "Non-price forming flag" – which we deem as superfluous anyway as 'T' was the flag suggested by the CESR - as well as for "daily aggregated transaction flag". Therefore, for "Non-price forming flag" should be deleted.

Deutsche Börse Group needs to point out that a combination of a trade flag with reference data like in the case of 'N' and 'O' is not sensible and needs to be avoided

- The categorization of a financial instrument as liquid or illiquid instrument is a security reference data and not a transactional attribute determined by the current level of pre-trade transparency; by analogy see liquidity flag concept for bonds on p. 149. A trade flag is not the appropriate attribute for this purpose.
- There is as well risk of overlap and confusion between 'P' and 'N' and 'O'. Using the appropriate security categorization attribute would solve the problem.
- We recommend to keep existing "N" code as it is based on its original definition as stated in CESR/10-882. The trades identified under 'N' can then be mapped with the ESMA database as regards the liquidity status of a flag. Considering ESMA's current policy, the list of liquid shares is only updated once a year on the MiFID database operated by ESMA. It looks over-engineered to force this particular information to populate each trade message, i.e. duplicating this information millions of times every day, considering the information content remains stable for 12 months. Offline securities reference data mapping looks more appropriate without hampering the overall price finding transparency.

Mistake from Level 1 cannot be healed on Level 2 as regards the ominous Algo trade flag

- While on Level 1 late in the process an indicator has been included to be consolidated by a CTP, it needs to be pointed out that this most likely happened on mistake looking at the fact at hand. Trying to correct this mistake at Level 2 is not recommended.
- Again, we need to make the distinction as regards real-time transparency as well as t+1 transparency to the regulator. While real-time transparency requires only 1 side of the trade and does not contain all detailed personal information as the public is being addressed the t+1 reporting according to Art 12 MiFIR would contain an Algo Flag indeed. This is the case due to the fact that the Algorithmic Trading flag has to be applied for market surveillance purposes only but only to submitted orders and not for public display. In matched orders a flag is not available.
- De facto, either one or the two sides of an executed trade can originate from an algorithmic order. Assigning the algorithmic flag to the real-time trade report will automatically lead to an inconsistent inflated number of the trading activity attributable to algorithmic order generation. Corresponding trade/volume/turnover aggregates will in turn display an inconsistent size of the phenomenon.

- It is therefore, that the mistake – the inclusion of an Algo Flag for the purpose of consolidation by a CTP – cannot and should not be healed, as it would lead to false conclusions at least.
- Deutsche Börse Group therefore strongly suggest to remove the algorithmic trade flag 'H' from the list of information to be made public. The algorithmic flag serves regulatory surveillance purposes and must not be published on public market data but stored and made available as transaction report details.

ANSWER FOR BONDS:

Yes, Deutsche Börse Group agrees with ESMA's proposal on the applicable flags.

<ESMA_QUESTION_CP_MIFID_74>

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

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

<ESMA_QUESTION_CP_MIFID_75>

ANSWER FOR DERIVATIVES:

While Deutsche Börse Group in principle would set more ambitious targets, it is believed that the proposals made by ESMA are appropriate times that can be widely applicable and form a harmonized basis for all instruments in the EEA.

ANSWER FOR BONDS:

(1) Yes, Deutsche Börse Group agrees with a 3-year initial implementation period.

(2) Deutsche Börse Group thinks a publication delay of 15 minutes during the initial period is appropriate and should be feasible for market participants.

(3) A decrease of the maximum delay to 5 minutes after the initial period is technically feasible but leads to the question if 5 minutes delay meets the requirements of real time publications. We believe that the timing should be the same as for the equity regime as electronically executed transactions can technically be published in real time. In addition, when it comes to voice-trading or other types of trades that require manual interaction, there is no difference between the time required for equity trades and non-equity trades. Hence, if the deadline is shortened to 1 minute for equities, it should be the same for non-equities.

<ESMA_QUESTION_CP_MIFID_75>

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



<ESMA_QUESTION_CP_MIFID_76>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_76>

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

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

<ESMA_QUESTION_CP_MIFID_77>

(1) For large in scale transactions, for illiquid instrument transactions and for transactions above SSTI, Deutsche Börse Group thinks that a deferral period until end of day, beginning of next day for trades after 15:00h or maximum 24 hours are sufficient. Within this time frame market participants should be able to hedge their positions without increased risk.

(2) Deutsche Börse Group recommends setting the SSTI on nearly the same size (e.g. 80%) – if not to the same size - as the large in scale threshold to establish a level playing field for SI's, RM's, MTF's and OTF's. A threshold of 50% of the LIS threshold leads to an uncommon regulatory basis between the different trading models and provides incentives to trade on OTC markets. When defining the percentage for SSTI the following arguments should be considered: a) The pre-trade transparency waiver only applies to liquid bonds where hedging a transaction is straight forward as the traded bond is liquid and derivatives provide for additional hedging possibilities. b) We think that liquidity providers publishing IOIs in RFQ and voice trading models are already protected by the trading model itself as they can adapt their published quote when requested for a quote or they can even not provide a quote if requested for a quote. Market makers providing liquidity in a central limit order book or in an auction model with firm quotes are not protected by this waiver. This is a serious disadvantage for the latter trading models. c) RFQ and voice trading models dominate the trading in bonds (McKinsey-Greenwich Associates 2013 survey of institutional investors and Celent 2013 European Fixed Income Market Sizing). Hence the pre-trade and post-trade transparency waiver for RFQ and voice trading model has a major impact on transparency. A too low threshold would water down the aimed increase in pre-trade transparency.

(3) Deutsche Börse Group agrees to use total nominal value of the bonds traded to measure LIS thresholds.

(4) Deutsche Börse Group agrees to set pre-trade and post-trade thresholds at the same size.

(5) To reflect market circumstances Deutsche Börse Group recommends an annual recalculation of the thresholds (option 2). However, we think that the LIS and SSTI thresholds should be higher. In our opinion ESMA should also consider OTC trades as well as order book trades when calculating the thresholds as this approach would reflect the market situation more accurate and would lead to higher thresholds.

Regarding LIS for Government Bond markets: The minimum tradable unit in open order books in dealer-to-dealer government bonds markets is at least € 1,000,000 per instrument. Average traded volumes in sovereign bonds are often higher than € 10,000,000. It is usual for National Depth Management Offices to require secondary market quoting activities from their primary dealers of minimum € 10,000,000 on both sides (bid and ask). Therefore we think that nominal volumes of € 10,000,000 are common size and not large in scale for government bonds markets.

<ESMA_QUESTION_CP_MIFID_77>

Q78. Do you agree with ESMA's proposal for interest rate derivatives? Please specify, for each sub-class (FRA, Swaptions, Fixed-to-Fixed single currency swaps, Fixed-to-Float single currency swaps, Float -to- Float single currency swaps, OIS single

currency swaps, Inflation single currency swaps, Fixed-to-Fixed multi-currency swaps, Fixed-to-Float multi-currency swaps, Float -to- Float multi-currency swaps, OIS multi-currency swaps, bond options, bond futures, interest rate options, interest rate futures) if you agree on the following points providing reasons for your answer and, if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

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

(3) volume measure used to set the large in scale and size specific to the instrument threshold as specified in Annex II, Table 3 of draft RTS 9

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

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1), provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2), provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed (c) irrespective of your preference for option 1 or 2 and, with particular reference to OTC traded interest rates derivatives, provide feedback on the granularity of the tenor buckets defined. In other words, would you use a different level of granularity for maturities shorter than 1 year with respect to those set which are: 1 day- 1.5 months, 1.5-3 months, 3-6 months, 6 months – 1 year? Would you group maturities longer than 1 year into buckets (e.g. 1-2 years, 2-5 years, 5-10 years, 10-30 years and above 30 years)?

<ESMA_QUESTION_CP_MIFID_78>

Deutsche Börse Group has strong reservations against the ESMA proposal. Although the general direction can be partially agreed with, the framework lacks the required substance applicable with market practice. Especially the approach chosen by exchanges and exchange traded derivatives ensures the highest level of transparency and this seems to be severely impaired by the ESMA proposals put forward. In particular, the notion ESMA follows that the pre-trade LIS can be equal to the post trade LIS cannot be supported. Especially not in light of the proposed much lower SSTI levels that are computed for the pre-trade waivers.

Clearly this differentiation between pre-trade levels and post trade levels must be made.

In regards to pre-trade LIS determination following is crucial to take into consideration and equally applies also to equity derivatives.

While previously made recommendations to apply higher thresholds for the definition of liquidity classes better reflect current liquidity and transparency levels, the classification according to COFIA is not granular enough for the determination of LIS or SSTI. The differences in the ADT of the various bond futures summarized within the classes liquid/illiquid are still too big or in other words, the class is not homogenous enough in terms of ADT. As a consequence the thresholds of LIS and SSTI have to be different. For example, whereas 10-year Bund futures trade 700,000 contracts on a daily average and 10-year BTP futures are trading 80,000 contracts on a daily average. The different level of liquidity is

reflected in a different level of existing exchange block trade levels (similar to the envisaged LIS). Depending on the liquidity of the order book, the market impact a large order could have is very different. Another example of existing levels:

Bund futures - 2000 contracts (equals a notional of EUR 200mn) and
OAT futures - 250 contracts (equals a notional of EUR 25mn.)

In addition, by defining LIS and SSTI for bond futures the maturity and duration of the derivatives and their underlying government bonds is decisive. 2-year bond futures are trading in higher clip sizes than 5-year or 10-year bond futures. Consequently, LIS and SSTI have to consider this aspect and set the levels accordingly.

So, either the liquidity approach used in option 2 must be revised to define liquidity on a more granular level and take the different maturity/ trade sizes into account or option 1 should be used (ADT) and IBIA should be applied for determining LIS and SSTI.

Liquidity is formed differently for futures and for options, and certainly for the OTC derivatives captured in this chapter. The goal should be to implement Level 1 in a prudent way that does not diminish the high transparency levels already achieved by exchanges in ETDs. The all-encompassing objective of exchanges is to develop instruments and create readiness for liquidity formation in a public order-book. Thresholds for transparency levels are dynamically addressed, taking into account the nature of the products. In order to ensure the overall goal, it is recommended to consider the approach of exchanges and to also consider existing liquidity levels in the order-books.

Regarding the liquidity in instrument types, futures are mostly front-month traded instruments, with the exception of money market, dividend and volatility derivatives. Futures predominantly trade in electronic order-books. Options trading interest is spread out in the dimensions call/put, strike and expiration. In addition, in index options, most options volume trades as multi-leg options strategy. Fragmented liquidity and trading bespoke option and option volatility strategies leads to a higher level of voice negotiation. This can result in qualitative adjustments to block trade sizes to remain attractive over OTC alternatives of bilaterally trading exchange listed look-alikes.

Before the legislator determined that ESMA shall specify large-in-scale, exchanges have facilitated various markets in reaching the next step towards more transparency.

The following outlines to ESMA some of the statistical measures taken into account by an exchange when defining minimum block trade size, hence the **pre-trade approaches**:

- **As a first indicator, the share of block volume is considered in a product to determine thresholds.**
- **Then, the trade size distribution for screen and block trades are considered separately. Size buckets are set and evaluated for the number of trades at a given size, as well as the cumulative volume and share of overall volume traded at such a size. Both trade frequency and the share of large trade sizes for the instrument overall are considered in the approach.**

- **While the determination of average trade sizes allows further gauging of common and larger trade sizes, the initial order size must also be considered. In electronic markets, and particularly in options, price guidance is given by quotes. Trade initiators rarely trade at these quoted prices (5-20% of options screen volume), and mostly enter limit orders mid-market. The difference between order and trade sizes is twofold. Firstly, a trade initiator may slice an order into suborders to minimize market impact by trading 500 futures or options via 5 orders at 100 contracts. Trade records provide evidence for this practice as the trade executions feature the same counterparty on the trade at identical prices with subsequent, virtually identical timestamps. Secondly, other market participants respond to incoming orders from trade initiators in a competitive fashion with immediate-or-cancel (IOC) orders. The initial order of 500 contracts placed a tick under the best quoted offer may be traded by, for example, 3 market makers sending IOCs in 100, 100 and 300 contracts.**

For example, while a liquid and mature instrument like the Bund future on Eurex has a block size of 2000 contracts (lots) as described in more detailed above, this can be considered as a large-in-scale threshold. However, the majority of illiquid instruments (i.e. illiquid under the notion of transparency calibration) have low block sizes to attract order flow in such instruments to central infrastructures (CCPs & trading venues). For example, equity options have a block size of 250 or even 1 contract (lot), because the characteristic of options and the various degrees of liquidity formation demand a dynamic approach to achieve the goal to attract products to the public central order book. Thus higher transparency thresholds often cannot be justified, because these would contradict the overarching goal to bring instruments onto a multilateral environment and damage transparency, because the order book cannot absorb such sizes and market participants will not be able to support such sizes.

In essence, ESMA ultimately needs to analyze what the market impact would mean for the order book and define a size. It is strongly recommended for ESMA to take into account pre-trade information available in order-books. In principle, market impact begins after the best bid and best offer. ESMA shall retrieve the information of the aggregated volume in the order-books after the best bid and best offer. Exchange traded derivatives volume is usually referred to in traded contracts (see description above), which is visible in the order-books. However, a computation into notional volumes is straightforward and will render thresholds for market impact and LIS in a product that reflects available liquidity. Even if an inside market approach to order book liquidity is not pursued by ESMA to define LIS, we suggest this approach to be taken as a benchmark to verify the thresholds resulting from the less granular approach currently proposed by ESMA. This double check is especially recommended for illiquid products, as in options markets, where the sizes have often been estimated too high by ESMA, in order for the order-books to be able to absorb the sizes in practice when this legislation takes effect. Otherwise, the damage to highly transparent exchange-traded derivatives could be substantial.

Furthermore, this basis needs to be taken to further determine the post-trade levels for a post-trade LIS and SSTI, which has to be multiples of the pre-trade levels.

In order to give specific feedback on the questions raised:

Regarding point (1) a deferral period of 48 hours will not be acceptable for bond futures products as market participants are accustomed to a high degree of transparency. In bond futures for example there are no non-disclosure (=LIS for post-trade transparency) trades allowed as the majority of market participants were completely against it. If deferrals are allowed, then 24 hours would be an appropriate level for ETDs.

To provide a more appropriate example, Eurex allows a form of deferred publication, also known as non-disclosure, mostly for equity options. In this case, non-disclosure is limited to a set of instruments. Furthermore, the intention at Eurex is to only allow deferred publication in multiples of the block size. In addition, only a small fraction of the trading in block sizes is deferred under non-disclosure till after end-of-day, with reporting after the end-of-day batch run on 't', i.e. the same day.

Regarding point (2) the relation is not applicable for bond futures. As the bond futures market is a highly standardized market with a high degree of transparency the large in scale threshold for post trade transparency measures must be significantly higher than the pre-trade levels of the size specific to the instrument or pre-trade LIS. Our suggestion would be at least a multiple of 5, e.g. Bund futures pre-trade LIS: 25mn should be at least 100/125mnEUR for post trade LIS. In regards to SSTI, the same proportionality shall be applicable, whereas SSTI levels shall be 95% of the LIS, and not as proposed by ESMA 50% of the pre-trade LIS, and most certainly not for the post-trade LIS, but should also be multiples.

In respect to point (3) using the volume measure in general to determine the thresholds of LIS and SSTI is appropriate. In addition, for bond futures it is important to take the different durations into account (see also below feedback on point (5)).

According to article 11 of the RTS 9 Deutsche Börse Group recommends determining LIS as the size greater than 95% of all the transactions executed for this class instead of the 90%.

Concerning point (4): pre trade LIS and post trade LIS should not be set at the same size, but should be multiples of the pre trade LIS or SSTI. Whereas the SSTI should be defined as 95% but at least 75% of the pre-trade LIS, but definitely not 50%.

In regards to point (5) the levels for LIS and SSTI set out are too low in table 5 to a significant degree. These kinds of levels would endanger a liquid order book trading which in turn guarantees the high transparency of liquid ETDs.

As mentioned before, pre trade LIS thresholds have to take the average trade size of the product into account. In bond futures the average trade size tends to be higher the smaller the duration of the respective bond futures contract is, i.e. 2-year Schatz futures have a bigger trade sizes than 5-year Bobl futures. Bobl futures have a bigger trade size than 10-year Bund futures etc. The trade size is proportional to the duration, i.e. ceteris paribus 2-year Schatz futures have a 4 times higher trade size than 10-year Bund futures. This rule of thumb has to be corrected by the factor of overall liquidity.

As ADT can change from year to year an annual recalculation/check is preferable. As mentioned before, levels should be set with an instrument by instrument approach mainly based on the ADT of the product and the level should be set at the trade size larger than 95% of the order book trades.

In order to equip ESMA with an approach pursued by exchanges when determining potential deferrals, hence, post trade levels, some important aspects and principles are listed as follows:

- When thinking of deferrals, a similar approach is undertaken by exchanges today, called the non-disclosure levels. Non-disclosure thresholds are set as multiples of block trade thresholds. This is currently available for equity futures, equity options and select index products resulting in delayed reporting after the end-of-day batch run. These levels are critical from a trading and risk management perspective and must balance the interests of those involved and not involved in such trades. Such, deferred publication allows a market participant involved in very large trades to hedge and risk manage these, and to provide this service as such. The size of such trades however can impact price levels for the given instrument; hence the non-involved parties are interested in immediate publication to minimize their risk of mispricing.
- In the past, a range of alternatives of objectives have been discussed with market participants:
 - 99.5 % of all trades should be disclosed
 - Only trades bigger than 5% of the average daily volume should be non-disclosed
 - Trades of sizes counting for less than 95% of all volumes should be disclosed
 - 10 times the Minimum Block Trade size should define non-disclosure
- In equity options, Eurex has set the non-disclosure limits so that, on an annual average, the top 5% of block trades are subject to deferred publication.

Proposed amendment to Art. 8 on deferred publication of transaction in Draft RTS 9:

1. The deferred publication of information in respect of transactions may be authorised by the competent authority in accordance with Article 11(1) of Regulation (EU) No 600/2014, for a period of no longer than 48 hours for bonds, structured finance products, ~~derivatives and~~ emission allowances, **and OTC derivatives and 24 hours in exchange traded derivatives** provided that one of the following criteria is satisfied:

- (a) The size of the transaction ~~is equal to or exceeds~~ **are multiples of** the relevant large in scale size
 - (i) as specified in Annex III until 30 April 2018;
 - (ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.
- (b) The instrument belongs to a class of bonds, structured finance products, derivatives or emission allowances for which there is not a liquid market as specified in Annex III.

- (c) The size of the transaction executed between an investment firm dealing on own account other than on a matched principal basis as per article 4(1)(38) of Directive 2014/65/EU and another counterparty is equal to or exceeds the relevant **multiples of the** size specific to the instrument:
- (i) as specified in Annex III until 30 April 2018;
 - (ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.

Proposed amendment to Art. 11 of Draft RTS 9:

1. In respect of each class of financial instruments for which there is a liquid market and each class of financial instruments for which there is not a liquid market as specified in Annex III, competent authorities shall ensure that the calculations to determine the following measures are made promptly after the end of each calendar year, **by determining the number of trades per day specific per instrument classified in Annex [NEW and to be added by ESMA], in order to result in:**
- (a) the large in scale size referred to in Articles 3(b) and 8(1)(a)(ii);
 - (b) the size specific to the financial instrument referred to in Articles 5(1)(b) and 8(1)(c)(ii).
2. The large in scale size referred to in paragraph 1(a) of this Article, shall be determined as the greater of:
- (a) the trade size corresponding to the trade below which lies **at least 95%** of all the transactions executed for this class of financial instruments; and
 - (b) the trade size corresponding to the trade below which lies **at least 70%** of the total volume of the transactions executed for this class of financial instruments; and
 - (c) the large in scale threshold floor as provided for in Table 47 of Section 11 of Annex III for the corresponding class, **or**.
 - (d) the market impact determined as the volume available after the best bid and offer levels, i.e. best execution levels, namely the aggregated traded contracts, translated into notional volume, at the prices after best bid and offer or**
 - (e) the alternative methodology based on the determination of average number of trades and volume according to the liquidity computation in Annex [NEW and to be added by ESMA]**
6. The size specific to the financial instrument referred to in paragraph 1(b), shall be calculated as ~~50~~ **95%** of the corresponding large in scale size as determined in accordance with paragraphs 2, 3, 4 and 5.

Please see all our changes with regards to Draft RTS 9 in the appendix.

<ESMA_QUESTION_CP_MIFID_78>

Q79. Do you agree with ESMA's proposal for commodity derivatives? Please specify, for each type of commodity derivatives, i.e. agricultural, metals and energy, if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

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

<ESMA_QUESTION_CP_MIFID_79>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_79>

Q80. Do you agree with ESMA's proposal for equity derivatives? Please specify, for each type of equity derivatives [stock options, stock futures, index options, index futures, dividend index options, dividend index futures, stock dividend options, stock dividend futures, options on a basket or portfolio of shares, futures on a basket or portfolio of shares, options on other underlying values (i.e. volatility index or ETFs), futures on other underlying values (i.e. volatility index or ETFs)], if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

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

<ESMA_QUESTION_CP_MIFID_80>

Deutsche Börse Group has strong reservations against the ESMA proposal. Although the general direction can be partially agreed with, the framework lacks the required substance applicable with market practice. Especially the approach chosen by exchanges and exchange traded derivatives ensures the highest level of transparency and this seems to be severely impaired by the ESMA proposals put forward. Also, the notion ESMA follows that the pre-trade LIS can be equal to the post trade LIS cannot be supported. Especially not in light of the proposed much lower SSTI levels that are computed for the pre-trade waivers.

Clearly this differentiation between pre-trade levels and post trade levels must be made.

In regards to pre-trade LIS determination following is crucial to take into consideration has been also described for interest rate derivatives in Q78 before.

The following outlines to ESMA some of the statistical measures taken into account by an exchange when defining minimum block trade size, hence the **pre-trade approaches**:

- **As a first indicator, the share of block volume is considered in a product to determine thresholds.**
- **Then, the trade size distribution for screen and block trades are considered separately. Size buckets are set and evaluated for the number of trades at a given size, as well as the cumulative volume and share of overall volume traded at such a size. Both trade frequency and the share of large trade sizes for the instrument overall are considered in the approach.**
- **While the determination of average trade sizes allows further gauging of common and larger trade sizes, the initial order size must also be considered. In electronic markets, and particularly in options, price guidance is given by quotes. Trade initiators rarely trade at these quoted prices (5-20% of options screen volume), and mostly enter limit orders mid-market. The difference between order and trade sizes is twofold. Firstly, a trade initiator may slice an order into suborders to minimize market impact by trading 500 futures or options via 5 orders at 100 contracts. Trade records provide evidence for this practice as the trade executions feature the same counterparty on the trade at identical prices with subsequent, virtually identical timestamps. Secondly, other market participants respond to incoming orders from trade initiators in a competitive fashion with immediate-or-cancel (IOC) orders. The initial order of 500 contracts placed a tick under the best quoted offer may be traded by, for example, 3 market makers sending IOCs in 100, 100 and 300 contracts.**

These elements have to be taken into account, before the post trade levels can be derived.

In regards to post-trade aspects: Definitely, t+2 is too long, t+1 would be preferred.

Currently, most of the exchange trades are shown immediately. Eurex only defers publication for very large trades for a smaller subset of products. To provide a more appropriate example, Eurex allows a form of deferred publication, also known as non-disclosure, mostly for equity options. In this case, non-disclosure is limited to a set of instruments. Furthermore, the intention at Eurex is to only allow deferred publication in multiples of the block size. In

addition, only a small fraction of the trading in block sizes is deferred under non-disclosure till after end-of-day, with reporting after the end-of-day batch run.

As a result, the proposed steps here would limit the post-trade transparency dramatically in exchange traded derivatives, rather than increase it. In addition, the trades that are not directly disclosed are normally much higher than the Min. Block trade size (i.e. Large-in-scale). In Equity options the non-publication levels are set in a way that approximately 99% of the traded volume is shown without deferral.

Concerning pre trade LIS and post trade LIS should not be set at the same size, but should be multiples of the pre trade LIS or SSTI. Whereas the SSTI should be defined as 95% but at least 75% of the pre-trade LIS, but definitely not 50%.

In order to equip ESMA with an approach pursued by exchanges when determining potential deferrals, hence, post-trade levels some important aspects and principles are enumerated below:

- When thinking of deferrals, some similar approach is undertaken by exchanges today, called the non-disclosure levels. Non-disclosure thresholds are set as multiples of block trade thresholds. This is currently available for equity futures, equity options and select index products resulting in delayed reporting after the end-of-day batch run. These levels are critical from a trading and risk management perspective and must balance the interests of those involved and not involved in such trades. Such, deferred publication allows a market participant involved in very large trades to hedge and risk manage these, and to provide this service as such. The size of such trades however can impact price levels for the given instrument; hence the non-involved parties are interested in immediate publication to minimize their risk of mispricing.
- In the past, a range of alternatives of objectives have been discussed with market participants:
 - 99.5 % of all trades should be disclosed
 - Only trades bigger than 5% of the average daily volume should be non-disclosed
 - Trades of sizes counting for less than 95% of all volumes should be disclosed
 - 10 times the Minimum Block Trade size should define non-disclosure
- In equity options, Eurex has set the non-disclosure limits so that on an annual average of the top 5% of block trades are subject to deferred publication.

Please see all our respective changes with regards to Draft RTS 9 in Q 78 and in the appendix.

<ESMA_QUESTION_CP_MIFID_80>

Q81. Do you agree with ESMA's proposal for securitised derivatives? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

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

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

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

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_81>

Deutsche Börse Group would like to answer this question only with regard to Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs):

As a general comment Deutsche Börse Group would like to emphasise that Exchange Traded Commodities (ETCs) and Exchange Traded Notes (ETNs) have characteristics that are largely similar to those of Exchange Traded Funds (ETFs). Consequently, we recommend considering ETCs and ETNs as similar financial instruments to ETFs within this regulation and applying the same set of rules whenever possible.

(1) Taking into consideration our comment above, we do not agree with ESMA's proposal to set the maximum deferral period to 48 hours for ETCs and ETNs, but to establish the same post-trade transparency regime as is applied to ETFs. Referring to Option 2 of the proposed ETF deferred publication regime as detailed in Section 3.4 on page 91 of the Consultation Paper, we propose to set the maximum deferral period to the end of the trading day.

(2) Given that there is no size specific to the instrument threshold for ETFs, we recommend setting this threshold to 100% of the large in scale threshold for both ETCs and ETNs.

(3) We agree with the proposed volume measure used to set the large in scale threshold.

(4) In order to maintain a level playing field between ETFs, ETCs and ETNs, we propose to apply the same pre-trade and post-trade thresholds for all three financial instrument types. Correspondingly, the single pre-trade transparency threshold should be set at a value of € 1 million for both ETCs and ETNs. With regard to the post-trade thresholds for ETCs and ETNs, we would recommend to establish separate thresholds for imminent, delayed and end-of-day reporting of transactions. Specifically, we would recommend requiring imminent publication of all transactions with a size below € 10 million, permit a 60 minutes delay for transactions with a size between € 10 million and € 50 million and permit an EOD publication for transactions with a size of € 50 million and above. From our perspective, these thresholds would provide for a well-balanced reporting regime that is well in line with ESMA's objective to provide meaningful post-trade transparency for both ETCs and ETNs.

(5) Following our argumentation above, we do not agree with the proposed € 100,000 threshold, but would prefer the same large in scale thresholds as we have proposed for ETFs, i.e. we would recommend ESMA to require imminent publication of all transactions with a size below € 10 million, permit a 60 minutes delay for transactions with a size between

€ 10 million and € 50 million and permit an EOD publication for transactions with a size of € 50 million and above.

Proposed amendment to Table 4 in Annex III of Draft RTS 9:

Table 4a
Pre-trade large in scale and size specific to instrument thresholds
Securitised derivatives – liquid classes

SECURITISED DERIVATIVES – LIQUID CLASSES	Pre-trade LIS (€)	SSTI (€)
Exchange Traded Commodities and Exchange Traded Notes	1,000,000	1,000,000
Other securitised derivatives	100,000	50,000

Table 4b
Deferred publication thresholds and delays
Securitised derivatives – liquid classes

SECURITISED DERIVATIVES – LIQUID CLASSES	Minimum qualifying size of transaction for permitted delay in EUR	Timing of publication
Exchange Traded Commodities and Exchange Traded Notes	10,000,000	60 minutes
Exchange Traded Commodities and Exchange Traded Notes	50,000,000	End of the day
Other securitised derivatives	100,000	48 hours

Proposed amendment to Table 47 in Annex III of Draft RTS 9:

Table 47
LIS threshold floors

CLASS OF FINANCIAL INSTRUMENT	LIS THRESHOLD FLOOR
...	...
SECURITISED DERIVATIVES	
Exchange Traded Commodities and Exchange Traded Notes (Pre-trade LIS threshold)	EUR 1,000,000
Exchange Traded Commodities and Exchange Traded Notes (Post-trade LIS threshold with 60 minutes maximum deferral period)	EUR 10,000,000

Exchange Traded Commodities and Exchange Traded Notes (Post-trade LIS threshold with EOD maximum deferral period)	EUR	50,000,000
Other securitised derivatives	EUR	100,000
...	...	

Please see all our changes with regards to Draft RTS 9 in the appendix.

<ESMA_QUESTION_CP_MIFID_81>

Q82. Do you agree with ESMA's proposal for emission allowances? Please specify if you agree on the following points providing reasons for your answer and if you disagree, providing ESMA with your alternative proposal:

(1) deferral period set to 48 hours

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

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

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

(5) large in scale thresholds: (a) state your preference for the system to set the thresholds (i.e. annual recalculation of the thresholds vs. no recalculation of the thresholds) (b) in the case of a preference for a system with no recalculation (i.e. option 1) provide feedback on the thresholds determined. In the case of a preference for a system with recalculation (i.e. option 2) provide feedback on the thresholds determined for 2017 and on the methodology to recalculate the thresholds from 2018 onwards including the level of granularity of the classes on which the recalculations will be performed.

<ESMA_QUESTION_CP_MIFID_82>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_82>

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

<ESMA_QUESTION_CP_MIFID_83>

ANSWER FOR DERIVATIVES:

Deutsche Börse Group does not agree with the approach for exchange traded derivatives in scope of these proposals. The transparency levels provided by exchanges are of the highest possible. Reporting is most meaningful in risk transfer markets close to real time. Today, exchanges only allow for end of day publication in very large trade sizes following the previously outlined calibration methodology and alignment.

Allowing for longer arrangements, as proposed by ESMA, would undermine current levels of transparency and thus, contradict the Level 1 mandate and the G20 goals. Deferrals shall be allowed in a meaningful way, but shall not be allowed to be substantially over 48 hours as proposed by ESMA. For exchange traded derivatives 24 hours are proposed. For sovereign debt, 1 week might be appropriate but for any other instrument it should not exceed 72 hours.

In addition, any information shall at least be reported end of day, until the extended period of deferral 24, 48, 72 hours or one week lapses.

Proposed amendment to Art. 10 of Draft RTS 9:

Article 10

1. If competent authorities exercise their rights in conjunction with an authorisation of deferred publication pursuant to Article 11(3) of Regulation (EU) No 600/2014 the following criteria shall apply:

(a) If exercising the right pursuant to Article 11(3)(a) of Regulation (EU) No 600/2014, competent authorities shall request during the **24 hour time period for exchange traded derivatives and 48 hour time period for other instruments** of deferral the publication of:

- (i) all the details of a transaction listed in Table 1 of Annex II except for those relating to volume, namely quantity and quantity notation; or
- (ii) the publication the next working day before 09.00 CET of transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same calendar day.

(b) If exercising the right pursuant to Article 11(3)(b) of Regulation (EU) No 600/2014 the publication of the volume of an individual transaction shall be omitted during an extended time period of deferral of **72 hours** ~~four weeks~~ following the transaction.

(c) Regarding non-equity instruments that are not sovereign debt, competent authorities shall request the aggregation of several transactions executed over **the course of each day end of day** ~~the course of one calendar week to be published on the following Tuesday before 09.00 CET~~, ahead of the extended period of deferral of the publication of all the details of the transactions on an individual basis of **72 hours** ~~four weeks~~ if exercising the right pursuant to Article 11(3)(c) of Regulation (EU) No 600/2014.

(d) Regarding sovereign debt instruments, competent authorities shall request the aggregation of several transactions executed over the course of one calendar week ~~to be published on the following Tuesday before 09.00 CET~~ if exercising the right pursuant to Article 11(3)(d) of Regulation (EU) No 600/2014.

2. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(b) lapses, the outstanding details of all the transactions shall be published on the next working day before 09.00 CET. For sovereign debt instruments the same shall apply if competent authorities decide not to use the options in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU)

No 600/2014.

In relation to sovereign debt instruments, if competent authorities apply the options in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, competent authorities shall request for several transactions to be aggregated **daily** ~~over the course of one calendar week~~ and for the total volume traded per sovereign debt instrument in that calendar week to be published on the ~~Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of the calendar week.~~

3. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(c) lapses, all the details of the transactions on an individual basis shall be published **72 hours** ~~four weeks~~ after the publication of the aggregated details in accordance with paragraph 1(c) before 09.00 CET.

4. The aggregated daily or weekly data referred to in paragraph 1 shall contain the following information for the bonds, structured finance products, derivatives and emission allowances in respect of each day ~~or week of the calendar period concerned: [...]~~

ANSWER FOR BONDS:

No, Deutsche Börse Group believes that an enhanced time period of deferral allowed by an NCA of four weeks is too long and we would rather suggest defining a shorter time frame, such as two weeks.

In addition, we would like to ask ESMA for further clarity with regards to the aggregation of 'at least 5 transactions executed on same calendar day' and what the procedure is when there are less than 5 transactions in a day.

<ESMA_QUESTION_CP_MIFID_83>

Q84. Do you agree with ESMA's proposal with regard to the temporary suspension of transparency requirements? Please provide feedback on the following points:

(1) the measure used to calculate the volume as specified in Annex II, Table 3

(2) the methodology as to assess a drop in liquidity

(3) the percentages determined for liquid and illiquid instruments to assess the drop in liquidity. Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_84>

ANSWER FOR DERIVATIVES:

From Deutsche Börse Group's perspective, it might be confusing to temporarily suspend instruments from transparency requirements or include them again and therefore would disagree. It is more adequate to determine liquidity in a more meaningful way, as proposed in alternative methodologies for interest rate and equity derivatives above. Furthermore, if instruments are characterized by extreme seasonality aspects, these cannot be considered liquid on a daily basis and should not be subject to LIS or SSTI sizes that are too high. While such instruments should fall under the trading obligation, these illiquid instruments shall

benefit from more adequate LIS or SSTI levels, according to their number of average trades or their available aggregated volume at the best bid and best offer prices in the order books.

Hence, Deutsche Börse Group recommends to ESMA to compute the adequate liquidity levels for instruments on a more granular COFIA approach, if IBIA is not preferred and to calibrate meaningful LIS thresholds to not run the risk of many temporary suspensions of transparency, because the levels cannot be adhered to.

Proposed amendment to Art. 14 (4) of Draft RTS 9:

Before the competent authorities exercise the power of suspending transparency, they shall ensure that the significant decline in liquidity across all venues is not the result of seasonal effects of the relevant class of financial instruments on liquidity **or otherwise shall be determined illiquid in Annex III, if such seasonal effects are substantially hampering liquidity.**

ANSWER FOR BONDS:

Yes, Deutsche Börse Group agrees with ESMA's proposal for a temporary suspension of the transparency requirements.

(1) Deutsche Börse Group agrees to use total nominal value for calculating the volumes as it is market convention.

(2) Deutsche Börse Group agrees with the concept that a drop in liquidity exists if the total traded amount in the class of instruments within the last 30 days is below 40%/20% of the average monthly volume traded within the last 12 month in this class of instruments.

(3) A drop in liquidity in a whole class of instruments of 40%/20% of the normal average volume can be considered as illiquid.

<ESMA_QUESTION_CP_MIFID_84>

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

<ESMA_QUESTION_CP_MIFID_85>

ANSWER FOR DERIVATIVES:

From Deutsche Börse Group's perspective, it needs to be made clear that electronic order books of regulated markets are already anonymous.

It is not necessary that a member of the ESCB announces anything to the market operator and should not flag anything. In transaction reporting, the counterparty is made transparent towards the competent authority, but counterparty information is not included in trade reporting towards the market, only instrument related information, like price and size.

Therefore, if trading venues are forced to omit information on trades and only report half trades, the market will derive that the counterparty must have been an ESCB member.

Thus, it is in the interest of the ESCB member, when using an anonymous public order book to not get flagged, so trade information like price and size is fully provided, otherwise the lack

of the other half trade will provide a traceable hint as to the identity of the ESCB member being the counterparty when half trades are reported.

Thus, the exemption is redundant for interaction in anonymous public order-books and not flagging the ESCB member is actually the desired goal and intention of the ESCB member.

We therefore propose to amend Recital 7,8,9,10 by adding the following sentence:

“In case ESCB members conclude transactions in a public order-book, this exemption is redundant, given that public order-books are anonymous and do not provide counterparty information to the public. Retaining the transaction data would on the contrary reveal the information about the ESCB member being the counterparty. “

Accordingly, Art. 12 and Art. 13 should be amended as follow:

Art. 12 of RTS 9: A transaction is considered to be entered into by a member of the ESCB in performance of monetary, foreign exchange and financial stability policy if it is **not concluded on a anonymous public order-book and:** [...]

Art. 13 of RTS 9: The exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply in respect of a transaction entered into with a member of the ESCB **outside an anonymous public order book**, where that member has entered into the transaction for the performance of an operation that is unconnected with that member's performance of one of the tasks referred to in Article 12, including a transaction entered into by that member of the ESCB: [...]

ANSWER FOR BONDS:

Yes, Deutsche Börse Group agrees with ESMA's proposal.

<ESMA_QUESTION_CP_MIFID_85>

Q86. Do you agree with the articles on the double volume cap mechanism in the proposed draft RTS 10? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_86>

No, Deutsche Börse Group does not fully agree with the content of RTS 10 with regard to the double volume cap mechanism. Trading venues already submit extensive data sets to NCAs encompassing necessary data for the calculation of the double volume cap. Therefore, we would suggest that NCAs rely on the data from the primary data sources instead of sourcing data as well from CTPs.

As regards Art 6 3. Of RTS 10 please note that the flag “negotiated transactions in liquid instruments” cannot be provided. The flag is a mix of trade execution flags with reference data. While a flag “negotiated transactions” can be delivered if applicable, the combination cannot. ESMA will have to filter the respective trades flagged as “negotiated transaction” and compare with its set of reference data including which instrument is liquid and which is not.

For further comments on RTS 10 please refer to our answer in Q 87 below.

<ESMA_QUESTION_CP_MIFID_86>

Q87. Do you agree with the proposed draft RTS in respect of implementing Article 22 MiFIR? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_87>

Deutsche Börse Group generally agrees with ESMA's proposal. However, we need to point out that in order to support ESMA in the best way possible ideally all data requests should be standardized so trading venues, APAs and CTPs would be able to implement hard-coded processes which would significantly reduce cost as well as speed up any data inquiry from Competent Authorities. It should be noted as well, that data deliveries within a rather short time frame, even if scheduled are otherwise difficult to achieve. Data deliveries in such tight time schedules as lined out in Art 6 (5) or even more Art 6 (8) can only be provided in case of standard process applications. Any manual work usually increases both cost and delivery times, as well as introduces potential errors into the process of data generation and submission, risking submission of unreliable data.

In order for trading venues, APAs and CTPs to be able to prepare in a timely fashion, ESMA should clarify the details of the requirements (including data fields and expected content) in due course taking into consideration planning and implementation times including necessary budget allocations. In this context we need to point out that we would appreciate as well a clarification of what exactly ESMA means with “type of market participant”. We would suggest differentiating between agency and prop firms. Furthermore, it must be absolutely clear, that requested data is allowed to be passed on to regulators.

As regards formats of data submission to competent authorities Deutsche Börse Group would suggest CSV format.

The following adaptations to RTS 10 are being suggested by Deutsche Börse Group.

Proposed amendment to Article 3 of Draft RTS 10:

“Article 3

Frequency of data requests and response times for trading venues, APAs and CTPs

1. A trading venue, APA and CTP shall submit **fully standardized** periodic reports to the competent authority at the times specified in the regulatory technical standards referred to in Articles 1 and as specified in Article 6 of this Regulation where those calculations occur at pre-set dates or in pre-defined frequencies.”

2. A trading venue, APA and CTP shall submit its response to ad hoc requests to the competent authority of its home Member State within four weeks of receipt of the initial request unless exceptional circumstances require a response within the shorter deadline specified in the request. **In case of non-standardized inquiries by the Competent Authority a trading venue, APA or CTP shall undertake all reasonable efforts to respond in the set time frame.”**

Proposed amendment to Article 4 of Draft RTS 10:

“Article 4
Format of the data request

A competent authority shall request **according to a sufficiently pre-defined schedule** data in **a formats** that is generally accepted and widely available in the market and, where appropriate, through the use of templates that facilitate an efficient and automated process of data delivery. **The data format shall be determined by ESMA and communicated to TV, CTPs and APAs at least 12 months in advance before the resumption of this regulation.”**

Proposed amendment to Article 6 of Draft RTS 10:

“Article 6
Reporting requirements for trading venues and CTPs for the purpose of the double volume cap mechanism

1. **(a) Data as defined in the paragraphs below shall be made available to Competent Authorities either through trading venues and APAS or through a CTP.**

(b) if applicable the volume of trading executed under each reference price and negotiated trade waiver facility under Article 4(1)(a) or Article 4(1)(b)(i) of MiFIR separately.”

Proposed amendment to Article 6 (8) of Draft RTS 10:

“Article 6
Reporting requirements for trading venues and CTPs for the purpose of the double volume cap mechanism

8. A trading venue ~~and a CTP~~ shall respond to any **standardized** ad hoc request on the volume of trading in relation to the calculation to be performed for monitoring the use of the reference price or negotiated trade waivers by close of business on the next working day following the request.”

Please see all our changes with regards to Draft RTS 10 in the appendix.

<ESMA_QUESTION_CP_MIFID_87>

Q88. Are there any other criteria that ESMA should take into account when assessing whether there are sufficient third-party buying and selling interest in the class of derivatives or subset so that such a class of derivatives is considered sufficiently liquid to trade only on venues?

<ESMA_QUESTION_CP_MIFID_88>

In Deutsche Börse Group’s view, the proposed RTS 11 Recital 1 correctly reflects the intention of the trading obligation. It is clarified that the criteria in this case are used for determining if sufficient third-party buying and selling interest are prevailing, i.e. if multilateral trading can be formed. The criteria used in this case are the ones reflected in the ‘liquid market’ definition in MiFIR Article 2(1)(17).

However, these criteria will be used for many aspects in the legislation and thus it needs to be clarified that the criteria described in RTS 11 are taken into account for determining if multilateral trading can be formed. Deutsche Börse Group would suggest clarifying this in all articles within RTS 11.

While the criteria can generally be supported, Deutsche Börse Group would suggest to not including a historical view of data in Article 1 of RTS 11 only, but would also include assessments regarding the potential prospective developments, if those instruments would be made available to a broader trading community. Any extrapolation of potential is based on historical data as well, but including the prospective element in RTS 11 Article 1 would further clarify the notion to look at the potential of an instrument, otherwise looking at historical data alone would suggest that of course no instrument is mature enough for multilateral trading.

Furthermore, it is Deutsche Börse Group’s understanding that for bilateral trading two participants are necessary. For multilateral trading, where third party buying and selling interests are arranged, it is assumed that more than just the ‘same’ two would act with each other, hence at least three, since the operator of the trading venue is assumed to be neutral since ESMA specifically is addressing third-party buying and selling interests. If it is meant that a trade can only occur when at least two parties find each other on a multilateral trading platform, then the specified number of two in RTS 11 Article 4 (a) is appropriate. Otherwise this point in RTS 11 Article 4 (a) needs to be clarified that ‘at least two participants’ are necessary on a platform that arranges third-party buying and selling interests.

Moreover, clarification is required in regards to spreads in RTS 11 Article 6. Deutsche Börse Group would suggest to further specify RTS 11 Article 6(1)(b) by adding the aspect that the ‘notional’ volume weighted spreads shall be considered, while we would agree with the majority of market participants to the discussion paper (DP) last summer that determining

meaningful spread information will be difficult and should only be considered where such meaningful information is available. Therefore we agree with the proposal in RTS 11 Article 6(2) that 'ESMA shall consider using a proxy for the assessment of this criterion'.

<ESMA_QUESTION_CP_MIFID_88>

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

<ESMA_QUESTION_CP_MIFID_89>

It is Deutsche Börse Group's understanding that the derivatives trading obligation applies to OTC derivatives meeting the clearing and trading tests in EMIR and MiFIR respectively. In order to ensure that exchange traded derivatives (ETDs) will not fall into a loophole, as has been already envisaged by ESMA with securitized instruments; Deutsche Börse Group envisages that all exchange traded derivatives (ETDs) would fall naturally within the trading obligation since these products already fulfill the G20 multilateral trading and clearing requirements.

While a clear cut process for OTC derivatives falling under the EMIR clearing obligation exists, it is not clear to Deutsche Börse Group how exchange traded derivatives are handled in this case, since many of the thresholds set under the transparency analysis seem to have been calibrated out of fear that exchange traded derivatives could be considered as illiquid. However, an exchange offers various ETDs. Some instruments have reached a certain level of maturity and are considered highly liquid, and other instruments are not yet at such maturity levels and are considered illiquid by market participants and exchanges.

It is important to clarify that given that ETDs are already traded on exchange, i.e. trading venues, ETDs are per se to be considered 'liquid' for the purpose of the trading obligation and that the criteria set forward in RTS 11 are already applicable. In clarifying this element any loophole can be preempted and ETDs will not be traded OTC. As a consequence, the liquidity aspects in the transparency requirements can be analyzed for ETDs focusing on adequate assessment of liquidity.

Deutsche Börse Group's concern is that the criteria used for the trading obligation stem from the definition of liquid market, which is used manifold. For the purpose of the trading obligation, the criteria can be assumed to suffice for the trading obligation test for all clearing eligible instruments stemming from EMIR, and certainly ETDs can fulfill these since ETDs are already traded and cleared in a multilateral fashion.

Since it is ensured by evidence of the fact that ETDs per se already fulfill the trading obligation, Deutsche Börse Group assumes that the trading obligation under MiFIR per se covers ETDs as well, since these also fall under a clearing obligation in MiFIR Article 29, and thus the proposal does not clarify the obvious that all ETDs certainly will pass the test for the purpose of the trading obligation. As such, ETDs will not be traded outside a regulated environment.

However, the criteria need adaptation for other purposes, as regards for example the transparency requirements for ETDs. While ETDs are certainly sufficiently liquid for the trading obligation, exchanges also offer instruments whose maturity is not as progressed as other instruments and thus do not show the highest level of liquidity of exchange traded

derivatives that are widely known. It is market practice to allow for block trades in an exchange environment, which the legislator acknowledged and thus allowed to waive instruments, in case these are large in scale, size specific to the instrument or illiquid. Not allowing exchanges to use such waivers adequately, because liquidity definition for the trading obligation and transparency are sometimes incompatible would not be positive for transparent markets. An example would be for example that packaged transactions available on exchanges, such as exchange-for-physicals or exchange-for-swaps do not need to fulfill the high LIS or SSTI levels in order to be waived, but could be declared illiquid for the purpose of pre-trade transparency, but would be subject to all other transparency requirements, because these instruments will fall per se under the trading obligation and will not be lost to the 'bilateral' space entirely.

Thus Deutsche Börse Group would recommend for ESMA to take a more differentiated approach in regards to defining liquidity for the transparency requirement. Declaring all ETDs subject to the trading obligation would close any loopholes and the liquidity assessment for the transparency levels might result into more adequate thresholds and handling of instruments. Otherwise the results for thresholds will be blurred, if very immature, seasonal or otherwise structurally characterized instruments on exchanges are aggregated with instruments which are more liquid (in the sense it is understood by the market operator today). Then the result will be that ETDs that are very liquid will suffer from future in-transparency and instrument that are less mature will suffer from too high liquidity levels they will never reach.

<ESMA_QUESTION_CP_MIFID_89>

Q90. Do you agree with the proposed draft RTS in relation to the criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU?

<ESMA_QUESTION_CP_MIFID_90>

Deutsche Börse Group agrees with the proposal. ESMA has acknowledged the feedback from market participants to the 2014 Discussion Paper, and is adhering to the mandate in Level 1, i.e. MiFIR, to ensure alignment with EMIR. It appears that RTS 12 is fully aligned with RTS 285/2014 and thus closes any potential loopholes.

<ESMA_QUESTION_CP_MIFID_90>

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

<ESMA_QUESTION_CP_MIFID_91>

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

<ESMA_QUESTION_CP_MIFID_92>

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<ESMA_QUESTION_CP_MIFID_92>

iv) Microstructural issues

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

<ESMA_QUESTION_CP_MIFID_93>

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<ESMA_QUESTION_CP_MIFID_93>

Q94. With respect to the section on Testing of algorithms and systems and change management, do you need clarification or have any suggestions on how testing scenarios can be improved?

<ESMA_QUESTION_CP_MIFID_94>

While the list of controls and limits is very detailed and precise, Deutsche Börse Group does not agree with ESMA on the necessity of such restrictive rules. A restricted deployment as described in the CP would e.g. ultimately increase the risk of firms as they might not be able to hedge their risk adequately as products might be restricted and not available within the new/changed algorithm. A testing of algorithms is effectively only possible if all the information used within the code is available in a live/non-live test environment. This would cause enormous cost and effort on firms' side, as for each delivery they would have to line up all subsystems and even vendors of data.

In others aspects like kill functionality we can support the view of ESMA.

<ESMA_QUESTION_CP_MIFID_94>

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

<ESMA_QUESTION_CP_MIFID_95>

While Deutsche Börse Group is an operator of venues, the list of controls and limits is quiet comprehensive and tends to be more than sufficient.

<ESMA_QUESTION_CP_MIFID_95>

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

<ESMA_QUESTION_CP_MIFID_96>

Deutsche Börse Group does not agree with the proposal. The implementation of such a market impact assessment would cause firms to intercept their orders, snap shot the order book situation and evaluate the impact. At the time when the decision on whether to send the order or not is taken, the snap is outdated and not of relevance anymore. The result would just lead to inappropriate delays in the order flow. Deutsche Börse Group is of the opinion that maximum order value and volume are sufficient to prevent “fat finger” errors.

<ESMA_QUESTION_CP_MIFID_96>

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

<ESMA_QUESTION_CP_MIFID_97>

While Deutsche Börse Group is an operator of venues, the list of controls and limits is quiet comprehensive and tends to be more than sufficient.

<ESMA_QUESTION_CP_MIFID_97>

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

<ESMA_QUESTION_CP_MIFID_98>

While Deutsche Börse Group is an operator of venues, the list of controls and limits is quiet comprehensive and tends to be more than sufficient.

<ESMA_QUESTION_CP_MIFID_98>

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

<ESMA_QUESTION_CP_MIFID_99>

No, Deutsche Börse Group does not have additional remarks.

<ESMA_QUESTION_CP_MIFID_99>

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

<ESMA_QUESTION_CP_MIFID_100>

Yes, Deutsche Börse Group's opinion is that there are elements that need further clarification.

RTS 14 Article 2 Definitions

The definition of disorderly trading conditions (RTS 14, Art. 2 (3)) contains a wording that indirectly establishes a minimum order lifetime. This is not in conformance with the documents from the Level 1 mandate and is in contradiction to the definition of orderly trading conditions within other RTS (RTS 13). As an order resting time would negatively impact market quality we urge ESMA to delete that passage completely. If needed Deutsche Börse Group can deliver data and material to demonstrate the negative impact on volume, spreads and markets as such. Please see also Deutsche Börse Group's answer to Q104, as the respective RTS 15 also contains this minimum order lifetime reference in contradiction to the Level 1 mandate.

RTS needs also to be adapted to cater for the above mentioned comments towards testing. Please see our according changes to Draft RTS 14 Art. 2 in the appendix.

RTS 14 Article 3 Organisational requirements for trading venues and the proportionality principle

Deutsche Börse Group agrees that the yearly self-assessment can provide NCA with a clear picture of the structure and activity on the venue. Anyhow, the relevant NCA should already be aware of the numbers incorporated in the assessment because of its ongoing tasks and relation to the venue.

Getting into the details, it strikes that e.g. the number and volume of HFTs should be mentioned, which directly requires a precise definition of HFT, which is not given in TA. It is

also unreproducible how the number of algorithms operating on the venue can lead to a deeper understanding of the market, the venue or its participants.

Same is valid for the share of algorithmic trading. As long as there is no unique precise definition, those figures are not meaningful and might even provide a wrong picture of the business of a venue.

Therefore the list of to be mentioned items should be determined by the relevant NCA and should only cover items that are not already covered in regularly reports.

To this end the 2012 Guidelines on Systems and Controls in a highly automated environment proved to be efficient already.

RTS 14 Article 4 Governance Article 5 Compliance function within the governance process Article 6 Staffing

Deutsche Börse Group agrees with the expressed views. In particular; Article 5 (1) (b) should distinguish between the business areas of the venue's operating company, which should develop and maintain the policies and procedures. The compliance function can advise and support in the establishment of effective policies and procedures, help ensure that the policies and procedures meet the legal and regulatory requirements and ensure ongoing implementation by the business area of these policies and procedures through monitoring and controls.

RTS 14 Article 7 Outsourcing

In connection with the outsourcing obligations especially the reporting of the intention to outsource operational functions as well as the authorization of the outsourcing of critical operational functions by the NCA will create significant administrative overhead for the authorities as well as trading venues. Therefore ESMA should rethink the intention to introduce such reporting obligations.

RTS 14 Article 8 Due diligence for members or participants of trading venues

It is Deutsche Börse Group's opinion, that the member/participant organizational setup (like staffing) is with the local regulation in the home country of the member/participant and in combination with functional rules of the venue ensures a solid base for due diligence.

Deutsche Börse Group requests therefore a readiness statement from its participants in which they confirm that all preparations have been conducted successfully and that they are fine with the go-live. The responsibility to be compliant with the environment is with the trading participant. In case this responsibility should be with the trading venue, this would result directly in a huge impact on operations/ costs of venues, but also with the members/participants.

It needs to be emphasized that due diligence of trading participants' internal processes is and stays in the responsibility of the respective member/participant, as a venue does not necessarily have the relevant information about internal processes of members/participants. Only the relation/processes between the venue and the members/participants can be monitored.

RTS 14 Article 9 Testing of the trading systems

Deutsche Börse Group agrees that the venue should always take all possible measures to ensure that trading systems do not contribute to disorderly trading conditions because of system updates.

RTS 14 Article 10 Testing the member's capacity to access trading systems

This would imply that there is a responsible department/section/unit that monitors the utilization of the simulation trading system by trading participants, which needs to be done in a manual way. The continuous manual efforts are required to supervise all participants' activities and result in enormous additional cost with no or at least very limited benefit for participants and the market quality.

From a system perspective, the requirement to offer a simulation environment that covers full product scope and production performance would drastically increase the costs without significant benefit for the market or members/participants. To an extreme each member would need to have its private simulation to be in a position to test scenarios without interference from other members /participants. Large venues would then have to provide more than 100, Eurex e.g. more than 400 identical simulation environments with the same specifics as production and would increase costs dramatically to a level where the business model of the venue is endangered.

However, Deutsche Börse Group is of the opinion that it is not necessary that the list of instruments available for testing is fully consistent with the ones available in the live environment. It is sufficient that a representative subset of the instruments available in the live environment is available for testing. The availability of all instruments would lead to a cost increase without an additional benefit. Please see our according changes to Draft RTS 14 Art.10 in the appendix.

RTS 14 Article 11 Testing the members' algorithms to avoid disorderly trading conditions

This is a very sensitive topic. All companies that build algorithms see them as intellectual property. Therefore, the code of the algorithms should not be disclosed to any third party and should only remain with the owner of the algorithm. Generally speaking Deutsche Börse Group is of the opinion that the trading environment already features security measures to protect itself from market abuse. There would be some personal effort for supervisory services but it is hard for DGB to estimate how much this might be.

From a system perspective, additional services would be required; Deutsche Börse Group would expect the requirement to offer a simulation environment that covers full product scope and production performance. This is currently not offered and would increase the costs for simulation environments significantly. On top a self-certifying frontend would need to be setup that can coop with the task to automatically track members testing behavior and certify according to specific rules. This will need a long list of possible test scenarios, where not all of them are valid for all clients and the majority of test scenarios depend on certain market conditions that cannot be guaranteed in an open simulation environment and therefore would



need private environments. Please refer to our comments on Article 10 and see our according changes to Draft RTS 14 Art. 11 in the appendix

RTS 14 Article 12 Trading venue's capacity

Deutsche Börse Group agrees with the expressed views of ESMA in this respect.

RTS 14 Article 13 General monitoring obligations

Deutsche Börse Group agrees with the expressed views of ESMA in this respect.

RTS 14 Article 14 On-going monitoring and periodic review of the performance and capacity of the trading systems

Deutsche Börse Group agrees with the expressed views of ESMA in this respect.

RTS 14 Article 15 Periodic review of the performance and capacity of the trading systems

Deutsche Börse Group agrees that a periodical review can add value, but not to the extent that all described scenarios have to be used within the review. Venues typically gather data about the key elements of their systems during live trading and therefore can focus on those statistics, when evaluating system performance and capacity. Stress testing without impact on members would also lead to the necessity of another independent environment and thereby again increasing the cost without benefit to the market or members. Please see our according changes to Draft RTS 14 Art.15 in the appendix.

RTS 14 Article 16: Business continuity arrangements; Article 17: Business continuity plan Article 18: On-going review of business continuity arrangements and information to competent authorities

In view of the different ESMA RTS which exist either in final or in draft for trading venues (MiFID), CCPs (EMIR) and CSDs (CSDR), Deutsche Börse Group think that it would be useful for the financial industry, if the MiFID RTS regarding business continuity could be aligned in terms of objectives and wording as much as possible and as appropriate considering the differences in business to the other ESMA RTS, in order to minimize complexity of and potentially divergence in compliance.

Article 16 (2) stipulates a Recovery Time Objective (RTO) of 2 hours and a Recovery Point Objective of "close to zero" is specified.

Regarding the RTO, typically clearing and settlement is viewed as more systemically critical than trading in certain regulations, ESMA should review the appropriateness of the 2h RTO for trading against the 2h RTO specified by ESMA for CCPs (EMIR RTS) and CSDs (draft CSDR RTS).

In comparison, the recent US SEC Reg SCI distinguishes in this way between critical SCI entities (e.g. clearing and settlement), to which 2h RTO applies and others to which only next day trading resumption applies.

As far as the RPO is concerned, a distinction should be made between critical data, to which a RPO of zero may have to be applied and non-critical data which allow a longer RPO or may even be lost because of their nature (e.g. non persistent orders, quotes).

In Article 17(2) (g) "business succession planning" should be limited to critical functions. Deutsche Börse Group suggests a wording that business continuity plans should address to risk/scenario of staff unavailability in critical functions.

For Article 17(2) (i) the "clock synchronization" context within the "backup of business critical data" should be more specific. Deutsche Börse Group understanding here is that the clock synchronization should be independently available also in the disaster recovery location.

The reference in Article 17(2) (j) to "a specific security operations team" should be elaborated into further details. The reaction to a system disruption by such a security systems operations team would presumably only be applicable in case of IT security incidents leading to such disruptions. Further, this point should be decoupled from the staff training referenced at the beginning of this paragraph, as these are two different things.

Regarding Article 17(3), as business continuity plans are typically setup focusing on the different types of unavailability of required resources, e.g. systems, staff, workspace and possibly external suppliers/dependencies, this paragraph should be adapted to reflect this.

Regarding Article 17(4), as a list of risks, as suggested by Article 17(3), will very likely never be complete it is difficult to say which risks are missing. However, if the risks are characterized according to their nature as we stipulated above (systems, staff, workspace etc.) the completeness could be ensured. The detailed underlying cause of the unavailability is then less relevant.

Article 17(5)(e) requires a staff member to be appointed by the Board of Directors or competent management body to be responsible for the business continuity plan and having no conflict of interest. It would be preferable to stipulate the necessity of an independent business continuity management function (rather than staff member), which would provide flexibility how to staff this function. Please see our according changes to Draft RTS 14 Art.17 in the appendix.

RTS 14 Article 19 Prevention of disorderly trading conditions

Deutsche Börse Group does not agree with paragraph 2. c) (iv) which states that a trading venue shall be able to cancel orders in cases of a request by the CCP. From a legal point of view, the CCP itself should not have the right to request cancellations. Rather the General Clearing member, who is liable for his clearing members, shall have the right to cancel orders. However, taking into account upcoming interoperability of CCP's, it should be avoided giving the right of cancellations to CCP's as this might be a threat to competition. Hence, Deutsche Börse Group would strongly recommend excluding this passage.

Deutsche Börse Group does not agree with paragraph 2. d), which states that the trading venue shall be able to correct transactions. The trading venue is not in the position to find the true value of an instrument; this is done by market dynamics and the price determination in

the order book. What the venue is able to do is, in case of mistrades, to revoke the trade. Deutsche Börse Group strongly recommends excluding “to correct transactions” from the passage.

Deutsche Börse Group does not agree with paragraph 3. e) (iii) which states the venue shall have specific procedures in place to effectively cancel a transaction with respect to price adjustments as a trading venue is not in the position to find the true value of an instrument, this is done by market dynamics and the price determination in the order book. Deutsche Börse Group strongly recommends excluding “price adjustments” from the passage.

Deutsche Börse Group does not agree with paragraph 3. e) (x) which states a trading venue shall have penalties in place in case inadequate behavior of members has led to throttling. As this provision shall ensure the market integrity and prevention of a critical system load it is not necessary to double regulate this with this provision as RTS 16 - OTR regime already covers both. Deutsche Börse Group strongly recommends excluding 3. e) (x).

Please see our according changes to Draft RTS 14 Art.19 in the appendix.

RTS 14 Article 20 Mechanisms to manage volatility

As same instrument is often traded on a lot of venues, a venue should not consider each significant price movement on all of these venues for their own volatility management, as reasons for such movements can be manifold and are not self-explanatory. Therefore the last sentence of Article 20(1) should be deleted.

From Deutsche Börse Group’s perspective it is completely sufficient for a trading venue to have appropriate mechanisms in place to constrain trading at their own venue. How these mechanisms work should be in the discretion of the trading venue, incorporating the specifics of the respective market model.

Please see our according changes to Draft RTS 14 Art.20 in the appendix.

RTS 14 Article 21: Pre-trade controls; Article 22 Kill functionality

To block or cancel orders that do not meet set price parameters shall be done on an order-by-order basis. The check over a specified time is not necessary as the check shall be performed on an order-by-order basis.

Deutsche Börse Group considers that there is no need to regulate the granularity on which the maximal order value will be checked. It shall be in the discretion of the exchange whether the values for the maximum order value are set for all products, per product or per trader. It is essential here that venues can demonstrate that they have measures in place to handle their market specifics correctly and efficient.

Assessment of available risk control services with respect to suggestions made by ESMA

Deutsche Börse Group, through its clearinghouse, provides a number of risk control services for its Clearing Members and Non-Clearing Members. **None of the risk control services is mandatory**, i.e. they are just a service to provide additional lines of defense. However

Deutsche Börse Group, through its clearinghouse has credit limits in place that are monitored and enforced on a Clearing layer.

Deutsche Börse Group, through its clearinghouse does not advise neither the Clearing Members nor the Non-Clearing Members how to set the limits, unless the advice concerns the operational set up and maintenance of the limits. Clearing Members can set risk limits for their associated Non-Clearing Members. The consequences of such a limit breach are legally defined in the Clearing Conditions, Chapter I, Section 1, 12.

There is no legal basis for Deutsche Börse Group, through its clearinghouse to set up own risk limits (other than the mentioned Credit Limits) and therefore no legal basis to halt exchange members in case of a breach of such a limit.

Deutsche Börse Group, through its clearinghouse offers the following risk control services:

- (VII) The Advance Risk Protection
 - Clearing Members can set risk limits for their Non-Clearing Members in terms of margin. These limits are effectively post trade as the action is triggered after the margin exceeded the threshold.
 - Non-Clearing Members can set risk limits in terms of margin for themselves.
 - If the Clearing Member has also set limits, the more restrictive limit applies.
- (VIII) The Stop-Button for Clearing Members (corresponds to 68. iv, but not used by exchange)
 - Clearing Members can stop their Non-Clearing Members.
- (IX) The Stop-Button for Non-Clearing Members
 - Non-Clearing Member can stop their individual traders.
- (X) The Maximum Wholesale Quantity (corresponds to 68. iii)
 - Clearing Member and Non-Clearing Member can limit the number of lots within one Block-Trade.

Assessment of member audits with respect to suggestions made by ESMA

Deutsche Börse Group, through its clearinghouse performs Clearing Member audits on a regular basis.

Since Deutsche Börse Group, through its clearinghouse does not have a direct legal relationship to Non-Clearing Members, these are not audited. Not every Clearing Member is audited every year. Risk functions are part of the audit as well but are not the focus of the audit. Deutsche Börse Group, through its clearinghouse does not challenge the qualification of risk staff on Clearing Member side (as indicated in 19. iv) The assessment of algorithms used for trading is out of scope for Clearing Member audits.

Please see our according changes to Draft RTS 14 Art. 21 in the appendix.

RTS 14 Article 23: Direct Electronic Access; Article 24: Systems and controls of DEA providers and trading venues permitting DEA through their systems

Deutsche Börse Group's connectivity offering differs from other trading venues due to local regulators' constraints (e.g. Deutsche Börse Group is not allowed to offer sponsored access).

RTS 14 Article 25 Security and limits to access

To this end the 2012 Guidelines on Systems and Controls in a highly automated environment proved to be efficient already. It is Deutsche Börse Group's view that this document already covers all relevant issues.

<ESMA_QUESTION_CP_MIFID_100>

Q101. Is there any element in particular that should be clarified with respect to the outsourcing obligations for trading venues?

<ESMA_QUESTION_CP_MIFID_101>

Deutsche Börse Group's opinion is that in connection with the outsourcing obligations especially the reporting of the intention to outsource operational functions as well as the authorization of the outsourcing of critical operational functions by the NCA will create significant administrative overhead for the authorities as well as trading venues. Therefore ESMA should rethink the intention to introduce such reporting obligations.

<ESMA_QUESTION_CP_MIFID_101>

Q102. Is there any additional element to be addressed with respect to the testing obligations?

<ESMA_QUESTION_CP_MIFID_102>

Deutsche Börse Group's opinion is that the setup of a conformance testing environment (simulation) should focus on the instrument groups and functionality. It should be sufficient to provide representative instruments out of each instrument class. The full, identical setup of simulations vs. production only increases complexity and cost without an additional benefit. This is even more valid in the light of capacity and latency characteristics; hence stress testing does not make any sense and does not reveal any usable information as stress under certain conditions is key, which could only be tested one-on-one, not in an open simulation environment.

Concerning the testing of algorithms, the only way to test effectively an algorithm is with the participant. Venues can only require their participants to test those in the respective instruments in simulation environment, but as the code and possible parameter settings are unknown to the venue, there can't be a positive or negative certification for those. The full responsibility stays with the participants and venues should ensure that they have procedures in place that they can stop individual participants/traders/algorithms from affecting their markets.

Especially Article 11(2) can hardly be fulfilled by a venue. As the environment will be open to all participants for testing, the reconstruction of disorderly trading behaviors (which needs to be defined) highly depends on participants reaction. Even with the highest effort a venue cannot ensure that it will be able to reproduce disorderly trading circumstance.

A potential solution could be an environment that "replays" production data but to the extent that market activity is simulated according to market specific behavior gathered from live production environments, as replaying real data would be unproductive because of a potentially different behavior of members compared to production environments.

<ESMA_QUESTION_CP_MIFID_102>

Q103. In particular, do you agree with the proposals regarding the conditions to provide DEA?

<ESMA_QUESTION_CP_MIFID_103>

Deutsche Börse Group disagrees with the proposal. While requiring DEA provider to establish appropriate controls, it does not add value to describe the systems and controls that need to be established and maintained to ensure compliance with the rules and regulations of a venue. Depending on the setup of a participant/member those systems and controls could vary a lot and a precise description cannot be universally be given. Participants/members should be required to have appropriate and relevant systems and controls in place to supervise their respective setup. As the Participant/member is ultimately responsible for the activity routed through the DEA by its users, the DEA provider should always be aware of the activity and should be in a position to stop the flow from certain DEA users or the whole flow as such. A venue should also be in a position to stop the usage of a certain trader ID associated to the corresponding DEA system of the on demand of the DEA provider or if detecting that the user adversely affects the market. It is also depending on the legal framework of the venues state of origin, if it is possible to sanction a member as a consequence of the DEA user's behavior. It will be sufficient to establish rules that ensure the behavior can be stopped immediately and that the venue in corporation with the member

can safeguard the market by suspending the user. Possible sanctions need to be imposed by the relevant authority.

As a matter of course systems and controls of the DEA provider shall permit the supervision of all orders of DEA users, but the respective RTS needs to be clear in the usage of concepts. Intermingling DEA and DMA in the systems and controls section is of no avail without precise differentiation.

<ESMA_QUESTION_CP_MIFID_103>

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

<ESMA_QUESTION_CP_MIFID_104>

First of all, Deutsche Börse Group would like to point out that we do appreciate that ESMA has for the purposes of practical implementation proposed that trading venues should not be required to identify market making strategies involving more than one venue but only should be required to identify those on a single venue. Further Deutsche Börse Group welcomes that trading venues are left with significant discretion and flexibility to set out the specific quoting parameters relevant to their markets (p. 387 of CP). This also applies to other aspects such as determining the specifics in commercial contracts (such as for example exit clauses, fines etc.) between the trading venue and the trading participant engaged in algorithmic trading pursuing a market making strategy and in the market making scheme, respectively.

However, draft legislation shows potential to negatively affect the function of liquidity providers who are essential for price guidance and liquidity, in particular in illiquid and new products, and thus ensure market quality and integrity. The scope of instruments has been extended to all instruments and should be revised and limited to liquid instruments only, as those engaged in algorithmic trading are mainly trading in these instruments. **The proposals pose the risk that especially new and illiquid products fail at market, and that liquidity is reduced in liquid instruments, which would contradict MiFID's goal to ensure liquid markets.**

RTS 15 Ch. I Article 8 1. (b)(iii) highlights a regulatory misperception of market making and incentives: "Incentives offered in stressed market conditions to compensate for the additional risks taken by investment firms engaged in a market making agreement."

The schematics of the market maker regime must be questioned as they are based on the notion that market maker incentives will ensure quote presence by market makers in times of market stress. The revenue a trading venue generates is given by the fees charged per traded unit such as notional amount (cash equities) or number of contracts (futures/options). These fees are a fraction of an instrument's minimum price movement and therefore much lower than the profit or loss potential of the smallest market price move in a given instrument. The trading venue's ability to set incentives depends highly on its cost base to ensure the viability of its business model of operating markets in listed financial instruments. **A trading venue's revenues from trading in an instrument will be exhausted and exceeded by potential market making incentives to ensure quotation in stressed market conditions,**

as soon as one market maker is negatively affected by an unfavorable development of its distribution of trading returns.

The market maker schematics must be simplified so that market making scheme and incentives are set for the entirety of continuous trading applying to both regular and stressed market conditions.

Proposed amendment to RTS 15 Ch. III Article 8 point 1.

”Article 8
Market making
scheme

1. Trading venues shall establish a market making scheme which **applies to the entire trading period and** describes:”

RTS 15 Ch. III Article 8 point 1. should be amended to so that market making schemes apply to the entire trading period.

Proposed amendment to RTS 15 Ch. III Article 8 point 1. (b) iii second bullet

~~” – Incentives offered in stressed market conditions to compensate for the additional risks taken by investment firms engaged in a market making agreement.“~~

Also, regulation that suggests compensation of market risks in stressed market conditions by means of setting incentives stands in contrast to trading venues’ neutrality to ensure fair and orderly price finding as they should not be exposed to market risks linked to trading strategies.

Proposed amendment to RTS 15 Ch. I Article 1 (7)

“competitive prices’ means quotes posted within the average bid-ask spread **given by the trading venues maximum quotes spread for market making.**

The definition of competitive prices should reflect the maximum bid-ask spreads set by a trading venue for market making in a given instrument. The average bid offer spread results both from market maker quotes and from limit order flows from agents and proprietary traders. The top of the book inside market at best bid and offer benefits from layered and non-aligned pricing from multiple counterparties, for example as follows:

	Bid Size	Bid	Ask	Ask Size	
Agent 1	25	18	19	200	MM 2
Prop 2	20	18	19	100	Prop 1
MM 1	100	17	20	100	MM 1
MM 2	200	17	20	10	Agent 2

This effect is most pronounced in highly liquid products, in which the average bid offer spread is close or virtually equal to the minimum price move of the instrument. No market maker will quote at this level under prudent risk management as the economic viability of the market maker strategy would otherwise be undermined by the lack of proportionality between the midpoint of bid and offer prices and the spread income required by market makers to facilitate two way liquidity in light of market risks and order flows.

This is also important in the context of the new tick size proposal. It is not possible for firms to provide competitive prices if the spread to tick ratio is set at 1.5 as this would mean that there are only 0.5 ticks in the spread. As the spread to tick ratio is merely an average, it means that the leeway can be zero. A data analysis for DAX® shares came to the result that **for 17% of the shares the leeway is zero, i.e. the spread-to-tick-ratio is 1, during half of the trading day.** In addition, our data analysis shows that for two thirds of our DAX® shares the spread to tick ratio is below 1.5, which means that there is less than 0.5 ticks in the spread or even zero. Therefore, we propose to change the definition for *competitive prices* and to also ask ESMA to ensure that there is sufficient leeway in the spread (please also see our response to question 123).

Proposed amendment to RTS 15 Ch. III Article 8 point 1. (b) iii first bullet

The ability to set incentives for best performing market makers should not be limited to normal trading conditions so that such incentives may be set for the entire trading period.

“(iii) - Incentives offered for performing a market making strategy during **the entire trading period** ~~normal trading hours~~. Trading venues may establish that only the best performers under the market making agreement will access those incentives.”

Erroneous orders and the possible subsequent deletion or price correction of erroneous trades are evaluated based on the traded price versus the reference price of the instrument only. The resting time is not a material factor that constitutes an erroneous order or multiple erroneous orders, and this reference should respectively be deleted in RTS 15 Art. 1 (9). **This also applies to RTS 14 Art. 2 (3) (b) and should equally be deleted. Please see our response to question Q 100.**

<ESMA_QUESTION_CP_MIFID_104>

Q105. Should an investment firm pursuing a market making strategy for 30% of the daily trading hours during one trading day be subject to the obligation to sign a market making agreement? Please give reasons for your answer.

<ESMA_QUESTION_CP_MIFID_105>

Deutsche Börse Group's opinion is that the requirement for trading venues to detect market making strategies in accordance with the nature, scale and complexity of their business in combination with the criteria under which an investment firm qualifies as a market maker will create additional costs for trading venues in monitoring and operating IT systems for market making with no means of cost recovery. A quantitative detection of market making strategies is prone to error in the dimensions observation period, quote sizes as well as the measuring of quote presence. The following changes to the draft legislation are therefore suggested:

It is suggested to make the **entrance presence and the ongoing presence requirement** symmetric with both at 50%. A trading strategy, or behavior, that makes up more than 50% of your time is a substantial activity rather than a 'side-line' or coincidental. It is important to capture only investment firms who intend to act as a market maker (a) to preserve commercial choice for participants and (b) to minimize the chance of risk incidents of imposing obligations on firms that may not be able or willing to take them on. Otherwise, the risk arises that firms will stop liquidity providing strategies to avoid unintended consequences, which will reduce rather than increase the amount of liquidity in European markets.

Proposed amendment to RTS 15 Ch. II Article 3 (1)

“Article 3
Circumstances in which an investment firm is deemed
to pursue a market making strategy

1. For the purposes of this Regulation, an investment firm shall be deemed to pursue a market making strategy if it is posting firm, simultaneous two-way quotes of **sufficient** ~~comparable~~ size and competitive prices in at least one financial instrument on a single trading venue for no less than ~~30~~ **50%** of the daily trading hours during one trading ~~day~~ **month.**”

An **observation period** for market makers of one day is too onerous and will lead to systematic misclassifications and is not feasible from an operational perspective. Such a low one day qualification threshold will discourage market participants from incrementally increasing their quoting presence to evolve from a market maker ‘interested’ in market making into a fully-fledged market maker. An observation period of 1 month is suggested, during which a market maker’s quote presence must on average lie higher than the threshold defined by ESMA. Deutsche Börse Group operates market making performance monitoring systems that can also be calibrated to allow only for a specified number of exception days within a given month. If for example the monthly average fulfillment is set with a quote coverage ratio of 50%, it can be ensured via this parameter that market makers do not merely quote the full trading day with 100% coverage for 10 days and then refrain from quoting on the remaining 10 trading days.

In the following month, a market maker must enter into a binding agreement with the trading venue, effective measurement starting upon registration, and sanctions effective in the month thereafter.

Proposed amendment to RTS 15 Ch. I Article 1 (6) and RTS 15 Ch. II Article 3 point 1

“Article 1
Definitions

(6) ‘~~comparable~~ size’ means that the size of the opposite quotes posted in the order book must **comply at minimum with the required quote sizes of the trading venue** ~~must not diverge more than 50% of each other.~~”

ESMA suggests that the **size of the opposite quotes** posted in the order book does not diverge more than 50% of each other; this adds to the risks of false measurement and misclassification of market participants' trading activity as a market making strategy. Unbalanced quote sizes are not a valid market maker quote as it reflects a market maker's bias for a certain market direction, in which he is willing to take on significantly more risk than in the other. Both sides of a quote should at minimum comply with minimum quote size set out in the trading venue's market making obligations.

“Article 3
Circumstances in which an investment firm is deemed
to pursue a market making strategy

“1. For the purposes of this Regulation, an investment firm shall be deemed to pursue a market making strategy if it is posting firm, simultaneous two-way quotes of **sufficient** ~~comparable~~ size and competitive prices in at least one financial instrument on a single trading venue for no less than 30 % of the daily trading hours during one trading day.”

Proposed amendment to RTS 15 Ch. I Article 1 (4) and (5)

“Article 1
Definitions

(4) ‘firm quote’ means ~~an order or~~ a quote that is executable and can be matched against an opposite order or quote under the rules of a trading venue; “

(5) “simultaneous two-way quote’ is a two-way quote where both sides are entered into the order book **and present at the same point in time** ~~within one second of one another;~~”

Two orders from one trading firm sent independent from one another (and in addition potentially by different traders) within one second cannot be considered as pursuing a market making strategy by virtue of their opposing market sides in sizes greater than the stipulated minimum quote size. The decisive factor for a market maker quote is not the time stamp at which the quote sides are sent, but more that both market sides are available **simultaneously** for matching at the same point in time. It should also be clarified that only the **technical order type “quotes”** should be considered for the assessment of MiFID II market making to avoid commingling of orders and misinterpretation of market activity.

Please see our according changes to Draft RTS 15 in the appendix.

<ESMA_QUESTION_CP_MIFID_105>

Q106. Should a market maker be obliged to remain present in the market for higher or lower than the proposed 50% of trading hours? Please specify in your response the type of instrument/s to which you refer.

<ESMA_QUESTION_CP_MIFID_106>

Deutsche Börse Group welcomes the suggested 50% minimum presence for market makers during “normal trading conditions”.

This level of quote presence will however not be attainable for market makers during periods of stressed market conditions as defined by the legislator. Relaxed market making requirements during stressed market conditions do not insulate market makers from severe trading losses as price action unfolds. Continuing to be *hit* on bids in a fast falling market produces immediate losses to market makers quoting, and hence, the majority of market makers opt to further widen quotes, quote one-sided prices, or to withdraw from the market entirely during periods of ‘stressed market conditions’. As outlined under Q104, trading venues cannot and should not compensate a market maker for trading risks in an instrument under stressed market conditions.

The market maker schematics must be simplified so that market making scheme and incentives are set for the entirety of continuous trading applying to both regular and stressed market conditions.

<ESMA_QUESTION_CP_MIFID_106>

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

<ESMA_QUESTION_CP_MIFID_107>

Deutsche Börse Group believes that the binary all-or-nothing treatment of stressed market conditions versus a trading halt is too restrictive. The proposal should acknowledge that not only exceptional circumstances resulting in market interruptions impede investment firms’ ability to maintain prudent risk management practices. Extreme volatility should not be limited to an interruption of trading.

Proposed amendments to RTS 15 Ch. II Article 5 point 2

RTS 15 Ch. II Article 5 point 2. should be extended to reflect further market circumstances:

“Article 5
Exceptional circumstances impeding providing liquidity
on a regular and predictable basis

- (a) Circumstances of extreme volatility, leading to **but not limited to** an interruption of trading with respect ~~to all~~ **to an instruments** traded on that venue;
- (b) Political and macroeconomic events such as acts of war, industrial actions and civil unrest or acts of cyber sabotage;”

Please see all our changes with regards to Draft RTS 15 in the appendix.

<ESMA_QUESTION_CP_MIFID_107>

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

<ESMA_QUESTION_CP_MIFID_108>

Deutsche Börse Group agrees that general caps should not limit the **number of market makers**. However, incentive caps are part of existing market maker incentive schemes, in the sense that market makers frequently demand trading venues to limit the number of market makers accessing the highest level of incentives.

Proposed amendment to RTS 15, Recital 13

“(13) This Regulation bans capping the number of members that may take part in a market making scheme. However, nothing prevents trading venues from establishing systems whereby only those firms providing a certain degree of quality in the liquidity provided, measured in terms of presence, size, **volume** and spread, can access the incentives.”

A three month pre-announcement is operationally inefficient and it will not be possible for trading venues to efficiently handle the high number of required market making schemes for its products.

Proposed amendment to RTS 15 Ch. III Article 9 (2)

“Article 9

Fair and non-discriminatory market making schemes

2. Any proposed changes to the terms of the market making scheme shall be communicated to the existing participants not less than **one month** ~~three months~~ ahead of the proposed effective date. **A one month preannouncement also applies to new market making schemes.”**

ESMA proposes that “**Trading venues not allowing for or enabling algorithmic trading** through their systems or a specific segment of their systems shall not be required to establish market making schemes...”. Such regulation puts trading venues with public, electronic order books at a competitive disadvantage over trading venues that do not make algorithmic trading available through their systems. However, in absence of their own publically transparent price finding, such matching systems or TCPs will utilize end of day settlement prices or centralized clearing from trading and clearing venues, without the necessity of operating and maintaining liquid markets with respective market making schemes and incentives.

Proposed amendment to RTS 15 Ch III Article 7

RTS 15 Ch III Article 7 should be amended to remove the exemptions for trading venues that opt not to offer algorithmic trading.

Adding volume to the dimensions of effective liquidity contribution would further ensure **proportionality of incentives** under RTS 15 Chapter III Article 9 point 5, as liquidity contributed by market maker quotes at best leads to trade executions that is reflected in traded volume. Restricting proportionality by scoring models bear the potential consequence that up to 2/3rds of market makers will not have access to these rebates and over time may reconsider operating liquidity providing strategies. This also raises barriers to entry such that only the market makers with the fastest systems and biggest balance sheet will remain active in the market.

Proposed amendment to RTS 15 Ch III Article 9 point 5

“Article 9

Fair and non-discriminatory market making schemes

5. The incentives offered under the market making scheme have to be proportionate to the effective contribution to the liquidity in the trading venue measured in terms of **volume**, presence, size and spread. In particular, those incentives shall promote the presence of members engaged in market making agreements in case of stressed market conditions.”

Please see all our changes with regards to Draft RTS 15 in the appendix.

<ESMA_QUESTION_CP_MIFID_108>

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

<ESMA_QUESTION_CP_MIFID_109>

Deutsche Börse Group agrees only partly with the draft RTS.

We do agree with the applicability of the ratio regime to all Regulated Markets, MTF's and OTF's. Furthermore, we agree with the monitoring period of one month, the calculation of one ratio per instrument and taking into account continuous trading plus auctions. In terms of the methodology, in general we agree with the non-exhaustive list of order types. Finally, we do agree with the counting methodology in terms of the “volume ratio” by counting shares for equities, the nominal value for bonds and lot sizes for derivatives. We do agree with derogatory handling of market makers.

Deutsche Börse Group strongly disagrees with

- i) a methodology involving no floor (as described below)
- ii) a methodology counting indicative orders and quotes
- iii) a methodology where the trading venue is not in control of setting the maximum permitted ratios of unexecuted orders to transactions

Furthermore, Deutsche Börse Group does not agree with the review of the max ratio if it is based on the absolute value of the previous year's trading activity only and without taking into account other parameters the venue shall define, the determination period of the max ratio and having one binding max ratio, the grouping of instruments for the max ratio calculation, the definition of the max ratio and ratio calculation formula. We do not agree with the proposed methodology for counting the number of unexecuted orders and the number of transactions in terms of the number based ratio. Finally, we do not agree with assessing the ratios on a daily basis.

Please find detailed explanation of the subjects below.



Applicability

Deutsche Börse Group agrees with the applicability to all European Trading venues (Regulated Markets, MTF's, and OTF's).

Monitoring

Deutsche Börse Group agrees with a monthly monitoring.

Assessment scope

ESMA suggests calculating a ratio per instrument in order to check them against permitted max ratios set at least per group taking into account auctions and continuous trading. Deutsche Börse Group agrees.

Non-exhaustive list of order types

Deutsche Börse Group agrees with the list of order types.

Counting methodology

- i) "Volume based ratio": Deutsche Börse Group agrees with counting shares for equities and the nominal value for bonds and lot sizes for derivatives.
- ii) "Number based ratio": Deutsche Börse Group does not agree with counting the number of unexecuted orders and the number of transactions, since we assume that the proposed methodology is focused on the **prevention of a critical system load**. In accordance with RTS 14 Article 2 paragraph 4 a two-sided quote and a batched order is classified as one message, since it is only using system capacity once (by sending one independent message). With respect to the prevention of a critical system load a trading system should not differentiate between the type of messages received. We suggest to count each add, modify and cancel as 1. See also our answer to Q110.

Market maker

Deutsche Börse Group agrees considering market makers with higher ratios, i.e. derogative requirements. In (7) of RTS 16 it reads: "trading venues may establish derogatory arrangements for firms engaged in market making agreements as long as those firms effectively provide liquidity on a regular and frequent basis to the overall market". We fully agree that firms engaged in market making should be allowed a separate treatment. Especially for market making in illiquid products it can not be guaranteed that quoting activity will always lead to transactions. For example a market maker active in illiquid products provides liquidity to the order book but will not know whether there is any interest from other participants which will lead to transactions. Hence his ratio of unexecuted orders to transactions will be typically above average. **Since market makers render a valuable service to the market, we strongly support that a trading venue shall be permitted to apply derogatory regimes to all participants that show reasonable quoting activity.**

Furthermore we want to draw attention to the following special case: Before signing a market making agreement a participant that has interest in acting as a market maker needs to adjust and fine tune his quoting behaviour. This testing typically will imply a relatively high ratio of unexecuted orders to transactions. Hence, for those members it is inevitable to allow for a special regime as well.

Review of the max ratio

- v) ESMA suggests taking the max ratio derived from the previous year's trading activity. Deutsche Börse Group does not agree as a downward-spiralling effect would occur in case if the max ratio is based on the absolute value of the previous year's trading activity only and without taking into account other parameters the venue shall define. For instance, introducing a max ratio by taking a value of the previous year " t_{-1} " would lead to the situation that all market participants would reduce their ratios in order to obey the max ratio in a current year " t ". Hence, the ratio for the upcoming year t_{+1} would be calculated by those lower ratios of " t " and the new max ratio t_{+1} would be lower than the ratio of the current year " t ". As a result the ratios would decrease yearly which would severely and seriously affect the well-functioning of markets.
- vi) Furthermore, this procedure might be prone to manipulation. Market participants might adapt their usual trading behaviour in order to increase the figures. However, historical participant behaviour will define the ratio going forward leaving out any performance and/or capacity considerations by the trading venue itself and leaves room for manipulation of the limits. To be more precise, with the formula proposed participants will be faced with moral hazard, since by violating the limit they can increase the observed max ratio and hence the permitted max ratios that will be allowed in future periods. We therefore strongly recommend that the trading venue shall be in control of setting the permitted max ratios based on its considerations regarding system capacity and market conditions.
- vii) If the permitted maximum ratio would be calculated by taking the maximum ratio of a participant of the previous year, this limit would often be set to a value that is very high and hence considered an outlier. Although the system was able to carry the load of that outlier, it may be critical to handle that load when several members show similar behaviour once the new limit is effective. As a consequence, the generated system load might be enormous. Hence, the determination of the permitted maximum should rather be calculated based across all members' activity and shall not be based on the most extreme outliers. In particular the venue knows best about the system capacity and hence about the headroom, which can be granted to participants.

Determination period of the max ratio

ESMA suggests the period of a year and the related trading activity in order to determine the max ratio. Deutsche Börse Group does not agree as taking a whole year does not sufficiently consider different market situations correctly, i.e. low volume times or high volatile market phases. In addition, neither future volatility nor capacity of the trading platform would be considered. Right after the introduction a more frequent review/adjustment of the parameters might be necessary in order to fine-tune the limits. Deutsche Börse Group suggests determining a max ratio annually but the determination shall be up to the venue.

Furthermore, Deutsche Börse Group suggests adding ad-hoc adaptations in order to grant the venues to act in high volatile market phases.

Grouping of instruments

ESMA suggests that each venue calculates the max ratio with respect to their experienced trading activity. With respect to equities, the max ratios are calculated by all members' activity in an instrument which can be grouped together per tick size band. Deutsche Börse Group does not agree with the grouping per tick size band for equities as this would link the ratio regime with the tick size regime. The tick size parameters price and average daily trades are then the drivers to changes to the ratio regime. As the goals of the ratio regime are market integrity and system stability, the price level has no influence on the goals of the ratio regime nor the parameters of it. Furthermore, the second tick size parameter is average daily trades, a link between the regimes would be redundant as the ratio regime considers trades in a volume perspective as well as in a number perspective. Those parameters, as additional influence to the parameters of the ratio regime, might lead to unnecessary noise. Furthermore, the linkage might lead to frequent and surprising changes in the max ratios as the tick size will change on a more frequent and surprising basis whenever the price of the instrument reaches another band.

Deutsche Börse Group suggests leaving the grouping up to the primary markets of the instruments. In addition, bonds shall be grouped per liquidity class rather than the class of financial instruments. With respect to derivatives we agree with the statement under (4) on page 276 that the trading venue may determine the maximum ratio per group of instruments. In particular we deem it justified to group derivatives by asset class as long as the system capacity for the individual instruments is similar (e.g. applying the same limit to all equity options).

Max ratio calculation

It is our understanding that ESMA suggests calculating the max ratio under consideration of "all members across all phases of the trading sessions". Deutsche Börse Group proposes to calculate the max ratio under consideration of all members and trading phases.

However, Deutsche Börse Group suggests adapting the determination of the max ratio by considering the methodology implemented by Deutsche Börse Group when implementing the German HFT act (currently best market practice), Deutsche Börse Group strictly considered the needs of the majority of trading participants rather than the highest participant's ratios as basis for the limit definition. Some participants showed behaviour beyond the defined limits. These participants were defined as "outliers" and had to adapt their trading behaviour. The limits were set below these outlier activities and these participants had to adjust their trading behaviour in order to comply with the new rule.

Deutsche Börse Group proposes to set the max ratio under consideration of all members and trading phases of a venue, and in addition by considering the venues trading system capacity and the dominant trading behaviour of participants. The ratio shall be calculated as a month to date value and assessed per month.

Monitoring/Assessment timeframe

ESMA suggests assessing the ratios on a daily basis. Deutsche Börse Group does not agree with this approach as no balancing out of different market phases is possible. Usually the trading activity of the market differs during the month. Especially in high volatile market phases the trading participants would not have the possibility to balance out stress reactions. Hence, a daily ratio would not be sufficient. Deutsche Börse Group strongly recommends to not assess the ratios on a daily basis and suggests a month-to-date ratio and hence a monthly assessment.

Floor

Deutsche Börse Group does not agree with ESMA's suggestion to the methodology without a floor element.

- i) A floor is necessary in order to account for illiquid instruments. For instance, a retail order in an illiquid instrument would enter an order book but no execution would take place. Hence, the max ratio would be violated although the participant's trading behaviour was not unreasonable. Deutsche Börse Group strongly recommends the introduction of a floor. Deutsche Börse Group proposes the floor determination shall be up to the venue and in accordance with the liquidity of the instruments traded.
- ii) **For two participants, a 'less active' participant with an unexecuted volume of 5.000 and transaction volume of 1 and an 'active' participant with unexecuted volume of 10.000.000 and transaction volume of 10.000 the ratio of unexecuted orders to transactions as the 'less active' participant is five times higher than the ratio of the 'active' participant.** While the less active participant is not critical with respect to system load and disorderly trading conditions the behaviour of the active participant could bear a risk. Especially if the permitted max ratio of unexecuted orders to transactions is set due to the behaviour of a 'less active' participant, a possibly critical behaviour of 'active' participants will be within the permitted limits. **We therefore believe that the limit should focus on the most active participants in order to prevent disorderly trading conditions.**

Therefore we suggest to **include a floor** in the calculation of the ratio of unexecuted orders to transactions:

$$\frac{\text{number of unexecuted orders}}{\text{number of filled or partially filled orders} + \text{floor}} \quad \text{and} \quad \frac{\text{volume of unexecuted orders}}{\text{executed volume} + \text{floor}}$$

Less active participants may send a certain amount of (unexecuted) orders and quotes without causing higher limits during the observation period and without having to fear a breach of the limit afterwards. A very active participant will be above the floor in both periods and is therefore subject to the intended limitations. As per Deutsche Börse Group's observations the ratio of unexecuted orders to transactions needs to distinguish between participants types, the value of this

floor shall depend on the participant type (e.g. market making or regular participant).

Additionally this would solve the problem that if the ratio is calculated as the ratio of unexecuted orders to transactions and if a participant is not able to generate any transactions, a division by 0 and hence an unbounded ratio would be observed.

Indicative Quotes, orders

Deutsche Börse Group does not agree with taking indicative orders/quotes into account. Deutsche Börse Group's floor Market Makers (Specialists) use them in order to facilitate the market with the indication of prices even when continuous price determination is not possible. This is a traditional way of order executions in Germany / regional exchanges. Those Market Makers use indicative quotes – which are not orders – as an “*invitatio ad offerendum*”. It indicates a price and then the market participant sends his order and just then the Market Maker sends a binding order. Hence, Market makers are necessary in order to offer the possibility to trade to the market. If indications would be considered in the ratios but no or fewer trades would take place, market makers would violate the max ratios per se and their business model as well as their function in the financial markets would be eliminated.

Please see all our accompanying changes with regards to Draft RTS 16 in the appendix.

<ESMA_QUESTION_CP_MIFID_109>

Q110. Do you agree with the counting methodology proposed in the Annex in relation to the various order types? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_110>

Deutsche Börse Group's interpretation of the two proposed counting methodologies for the ratio of unexecuted orders and transactions focus on two different aspects. The counting methodology of

- a) the ratio of the volume of unexecuted orders and the volume of executed orders is intended **to prevent disorderly trading conditions, i.e. market integrity** directly, whereas the methodology using
- b) the ratio of the number of unexecuted orders and the number of executed orders is focused on the **prevention of a critical system load**.

Whereas Deutsche Börse Group is fine with a) the counting of the volume ratio, we do not agree with b) the counting methodology of the number ratio. In terms of system load, a single- or two-sided quote generates equal system load. Furthermore, in accordance with RTS 14 4) a two-sided quote is classified as one message since it is only using system capacity once (by sending one message). Finally, the same holds for a batched order in the Deutsche Börse Group's trading systems, where several quotes are processed in one step (and are not independent with respect to RTS 14 (4)) and hence should count as one message. With respect to the prevention of a critical system load a trading system should not differentiate between the type of messages received. Hence in the calculation of b) we suggest an alternative counting methodology:

Type of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions		
	Add	Delete	Modify
Any kind of order, quote (single and two-sided) and batched order	1	1	1

With respect to a) in general we support the counting methodology proposed in the Annex. However it seems appropriate to distinguish between a single sided quote (which behaves like an order) and a two sided quote. A single sided quote that consists of either buy or sell side should be treated like a normal order, taking into account the real ordered volume. As proposed by ESMA the volume of individual quotes included in a batched order shall be counted separately.

<ESMA_QUESTION_CP_MIFID_110>

Q111. Is the definition of “orders” sufficiently precise or does it need to be further supplemented? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_111>

Deutsche Börse Group’s understanding is that in RTS 16 an order is defined as ‘all **input** messages, including submissions, modification, cancellation, sent to a trading venue’s trading system’. In RTS 14 the definition of ‘message’ says that batched orders shall be broken down into individual components. With respect to the ratio of unexecuted orders to transactions **focusing on the number of orders** we suggest an alternative approach as described in the answer to Q110 above.

<ESMA_QUESTION_CP_MIFID_111>

Q112. Is more clarification needed with respect to the calculation method in terms of volume?

<ESMA_QUESTION_CP_MIFID_112>

Deutsche Börse Group interprets the proposed calculation in terms of volume as summarized in the example below.

Transaction	Size	Volume in Order book	Aggregated Volume of Unexecuted Orders	Aggregated volume of Transactions
Order entry	100	100	100	0
Order delete	100	0	200	0
Order entry	100	100	300	0
Partial execution	50	50	300	50
Order modify	50	100	450 [50 (deleted) + 100 (added)]	50
Execution	100	0	450	150

If this interpretation coincides with the method proposed by ESMA, Deutsche Börse Group agrees with the proposal.

<ESMA_QUESTION_CP_MIFID_112>

Q113. Do you agree that the determination of the maximum OTR should be made at least once a year? Please specify the arguments for your view.

<ESMA_QUESTION_CP_MIFID_113>

In general Deutsche Börse Group agrees with an annual review cycle. Right after the introduction a more frequent review/adjustment of the parameters might be necessary in order to fine-tune the limits. Also if the system architecture of the trading venue or the market environment changes additional adjustments might be necessary. Under normal market conditions an annual review seems to be appropriate. In addition, in order to offer the ability to react on volatile market phases an ad-hoc adaption has to be considered. ESMA shall provide trading venues with the flexibility to determine ad-hoc adaptations.

<ESMA_QUESTION_CP_MIFID_113>

Q114. Should the monitoring of the ratio of unexecuted orders to transactions by the trading venue cover all trading phases of the trading session including auctions, or just the continuous phase? Should the monitoring take place on at least a monthly basis? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_114>

Deutsche Börse Group agrees to cover all trading phases as the complete activity of a member shall be included. If a trading phase would be exempt, manipulation might occur. Deutsche Börse Group agrees to monitor on a monthly basis.

<ESMA_QUESTION_CP_MIFID_114>

Q115. Do you agree with the proposal included in the Technical Annex regarding the different order types? Is there any other type of order that should be reflected? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_115>

Deutsche Börse Group agrees. But as pointed out in the answer to Q110 with respect to the volume ratio, for quotes a distinction between two sided quotes and single sided quotes would help to avoid inaccuracy.

<ESMA_QUESTION_CP_MIFID_115>

Q116. Do you agree with the proposed draft RTS with respect to co-location services? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_116>

Deutsche Börse Group in general agrees. Particular the non-discriminatory practice in relation to 3rd party service providers is an essential obligation within the regulation. After all, to ensure that those providers offer the same non-discriminatory access can only be ensured on a contractual basis, but can't be verified by the venues themselves. Therefore Deutsche Börse Group is of the opinion that the task can only be to ensure that 3rd party service providers get the same access and have to fulfill the same obligations as investment firms, who want to directly use colocation services of venues.

The monitoring of connectivity and latency should stay with the venue. Venues, having outsourced the colocation services shall ensure on a contractual basis that the provider of those services fulfills the requirements of this regulation.

While Deutsche Börse Group generally agrees with ESMA's suggestions regarding colocation services, we cannot agree with the definition of ancillary services as regards market data. According to economic literature, market data is a joint product with trading, and not an ancillary one. For the avoidance of doubt we therefore would like to see RTS adapted accordingly in RTS 17 as lined out below.

Proposed amendments to RTS 17

~~“(3) Trading venues may freely transfer the costs of trading to its members, participants or other types of users such as market data vendors or third party IT providers in accordance with their own commercial policy.”~~

Rationale: Deutsche Börse Group sees no reason for the inclusion of this recital. ESMA itself points out that regulatory interference with commercial policies should only be considered in case of misconduct by a trading venue. Clear reference to “cost” in the recital is not necessary in order to allow trading venues to recoup cost, but clearly could be seen as an initial attempt to interfere with trading venues commercial terms, which has been ruled out by ESMA in its CP. We therefore strongly suggest to delete this part. Furthermore, is it questionable, what exactly is being meant with “cost of trading”.

~~“(8) One of the key ancillary services that trading venues provide to participants engaged in electronic trading is the provision of market data. This area is also regulated by Articles 12 and 13 of Regulation 600/2014. This Regulation is without prejudice to those Articles.”~~

Rationale: Please note that in the context of Art 13 MiFIR it became clear that market data is no ‘ancillary’ service, but rather a joint product with trading. This is an essential difference when it comes to the definition of “reasonable commercial terms” which is being supported by economic theory (see Ruben Lee, Oxera). Defining market data as ‘ancillary services’ in this context now, should not question economic theory. Therefore, we strongly suggest to delete recital (8) **or alternatively at least change to the following wording:**

“(8) One of the key ~~ancillary~~ services that trading venues provide to **members or** participants engaged in electronic trading is the **technical** provision of market data.

This area is also regulated by Articles 12 and 13 of Regulation 600/2014. This Regulation is without prejudice to those Articles.”

“Article 1
Definitions

“(6) ‘users’ means members and participants of trading venues, ~~data vendors~~ and third party IT providers **which are contracted by the trading venue or by members and participants for the purpose of facilitating access to the trading venue.**”

Rationale: Please note that Third Parties facilitating technical access to trading venues are usually Multi Member Providers or Independent Software Providers (ISVs), however, not Market Data Vendors. Both, Multi Member Providers as well as ISVs can be contracting partners of trading venues and/or members or participants. The wording adaptations above reflect these scenarios.

“(2) ‘~~ancillary fee~~’ means fees charged by a trading venue directly related to the membership or participation in that trading venue, including a membership fee, ~~access to market data~~, use of terminals, connectivity or access through third party software providers;”

Rationale: Access through third party software providers is usually no “service” provided by a trading venue, but contracted by the member or participant itself and therefore, does not qualify for the summary of ancillary fees of a trading venue. Otherwise, in line with a decision on recital (8) we would suggest to at least introduce “technical access”.

“(6) ‘users’ means members and participants of trading venues, **as well as** data vendors and third party IT providers **contracted and used by members or participants for the purpose of access to the trading venue.**”

Rationale: Please note that Third Parties facilitating technical access to trading venues are usually Multi Member Providers or Independent Software Providers (ISVs), however, not Market Data Vendors. Both, Multi Member Providers as well as ISVs can be contracting partners of trading venues and/or members or participants. The wording adaptations above reflect these scenarios.

“Article 2
Fair and non-discriminatory co-location services

“6. Users of co-location services **offered by trading venues or trading venues direct outsourcing partners** shall be provided the possibility to subscribe only to those **selected** services they need **in line with the product and service offerings available by the trading venue.** ~~without being required to pay for other bundled services.~~”

Rationale: Please note that the previous definition was too wide, leaving a broad interpretation for the user, down to irrational break-downs of service components. While we

agree that bundling of services like clearing and trading should be offered separately, we would not agree that regarding market data users could request access of single instruments only.

“7. The pricing models of co-location services shall be designed and applied in a transparent, fair and non-discriminatory manner to all users **groups** of the services according to the next chapter.”

Rationale: It is sensible to have users grouped into different user groups as needs can be different across those groups. This has been acknowledged by ESMA as well in RTS 24 of this regulation.

Please see all our changes with regards to Draft RTS 17 in the appendix.

<ESMA_QUESTION_CP_MIFID_116>

Q117. Do you agree with the proposed draft RTS with respect to fee structures? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_117>

Article 4 concentrates on rebates, incentives and disincentives, where the definition of ‘rebate’ given in Article 1 (4) describes a rebate as a refund for market making activity. For clarification Deutsche Börse Group suggests to amend Article 4 as follows:

Proposed amendment to RTS 17, Article 4

“Article 4
Incentives and disincentives

Any rebate, incentive or disincentive **for market making activity** provided under a fee structure shall be pre-determined by publicly available document of the trading venue and based on non-discriminatory, measurable and objective parameters including volumes effectively traded, services effectively used and the provision of specific services, ~~such as provision of liquidity provided by a market maker.~~”

Furthermore, Deutsche Börse Group strongly and explicitly agrees with ESMA that **any direct interference with Trading Venues fee structures should not be considered unless there is clear evidence of misbehavior in this space.**

Proposed amendments to RTS 17 Article 3 and Article 6

“Article 3
Fair and non-discriminatory fee structures

4. A trading venue shall charge the same price and provide the same conditions to ~~the different types of users~~ who are in the same position in accordance with its published and objective criteria. **The trading venue may differentiate according to user group as long as these groups are being objectively defined and the respective information is being made publicly available.**”

Rationale: It is sensible to have users grouped into different user groups as needs can be different across those groups. This has been acknowledged by ESMA as well in RTS 24 of this regulation.

“6. A trading venue shall enable a user to subscribe only for those services needed, without being required to pay for other ~~bundled~~ **non-required** services.”

Rationale: For the avoidance of doubt here we agree that bundling of services should not apply, we would not agree that regarding market data users could request access of single instruments only,

“Article 6
Fee structures and testing obligations

A trading venue may charge current and prospective members and participants the costs incurred in developing and providing **basic** conformance testing and testing of algorithms against disorderly trading conditions.”

Rationale: In line with ESMA's position in the CP there should be a note clarifying that a full cost-based pricing only needs to be applied for the basic service of Testing of Algorithms. Any additional services offered around those testings should not be referred to a strict cost basis, though. This would be unproportionate.

Please see all our changes with regards to Draft RTS 17 in the appendix.
<ESMA_QUESTION_CP_MIFID_117>

Q118. At which point rebates would be high enough to encourage improper trading? Please elaborate.

<ESMA_QUESTION_CP_MIFID_118>

Deutsche Börse Group believes that rebate-levels shouldn't have impact on improper trading. Basic principles (e.g. transparency, discrimination, etc.) should be sufficient to encourage proper trading.

<ESMA_QUESTION_CP_MIFID_118>

Q119. Is there any other type of incentives that should be described in the draft RTS?

<ESMA_QUESTION_CP_MIFID_119>

Deutsche Börse Group's opinion is that in general it is recommended to not limit possible rebates, incentives and discounts to an enclosed list. Maker-taker rebates shall be restricted to proprietary trading. Otherwise, the decision to which trading venue a particular order is routed could be based on the rebate granted to the participant rather than on best execution for the client.

<ESMA_QUESTION_CP_MIFID_119>

Q120. Can you provide further evidence about fee structures supporting payments for an “early look”? In particular, do you agree with ESMA's preliminary view regarding the differentiation between that activity and the provision of data feeds at different latencies?

<ESMA_QUESTION_CP_MIFID_120>

Deutsche Börse Group is not aware of fee structures that somehow support payments for an “early look”

<ESMA_QUESTION_CP_MIFID_120>

Q121. Can you provide examples of fee structures that would support non-genuine orders, payments for uneven access to market data or any other type of abusive behaviour? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_121>

Deutsche Börse Group is not aware of examples for further fee structures that support abusive behaviours.

<ESMA_QUESTION_CP_MIFID_121>

Q122. Is the distinction between volume discounts and cliff edge type fee structures in this RTS sufficiently clear? Please elaborate

<ESMA_QUESTION_CP_MIFID_122>

Deutsche Börse Group’s opinion is that the general concepts for volume discounts and cliff edge types are clearly described in Article 1 (Definitions), but not precisely in Article 5 of chapter IV (“Fee structures that may create incentives for disorderly trading”).

Proposed amendment to RTS 17 Article 5

“Article 5
General

“A trading venue shall not use a fee structure where, upon reaching a certain threshold of total trading volume, **or the total number of trades, or any quantity priced by the respective venue while calculating trading fees generated by a member or participant of the trading venue, those trading fees** ~~or the cumulated trading fees generated by a trader~~ benefit from a discount **which had been calculated before the threshold was reached.** ~~including those trades already executed.~~

Please see all our changes with regards to Draft RTS 17 in the appendix

<ESMA_QUESTION_CP_MIFID_122>

Q123. Do you agree that the average number of trades per day should be considered on the most relevant market in terms of liquidity? Or should it be considered on another market such as the primary listing market (the trading venue where the financial instrument was originally listed)? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_123>

No, Deutsche Börse Group does not agree with this approach. But before Deutsche Börse Group answers this question and questions 124 to 131 we do have a few comments to start with:

We have noted that ESMA wants to go for a one-size fits all approach: If that is the case we would like to **ask for proportionality**. This means that if ESMA intends to increase tick sizes, **the increase will not go out of proportion**. Out of proportion means that an **instrument would have compared to today up to 3 or 4 tick size jumps** as well as the fact that the

spread to tick ratio after the change will be below the set floor of 1.5 (which is unfortunately the case and will be described further below).

We understand ESMA's concerns about too small tick sizes, as those would lead to thin liquidity at the top of the book. As a result, too small tick sizes deter large order traders and may push them away from lit venues which would be against the goal of MIFID II, i.e. to move liquidity to public markets.

However, the current proposal for shares will have a **severe negative impact on liquidity as tick sizes are now overly constrained**: Too large tick sizes will lead to too wide spreads, because volumes that are currently quoted at tight spreads will consolidate at new spreads, but those spreads will be wider. This **increases the cost for investors**, because liquidity takers will in the end pay more for the same liquidity which they currently get at better prices. Especially **retail investors will be worse off**, as they will subsidize other market participants (such as HFTs) by paying them higher spreads due to wider tick sizes.

Further, if absolute tick sizes increase, volume will consolidate at touch points of wider spreads which means that **queue priority will become very important** as the time between posting and execution will increase. As a result **speed in trading becomes more important** which is the **opposite of what was meant to be achieved**, i.e. to **slow down markets**.

Unfortunately, the **ESMA analysis in Annex 4.6.2 does not reveal any figures what impact the new regime will have** for shares, i.e. for how many it will mean an increase, decrease or if it has no impact at all. **A country specific overview would also have been helpful** for market participants. Especially because it seems that data sources such as Bloomberg do not provide the necessary data (i.e. number of trades) that market participants would have needed to make a proper assessment. Therefore we urge ESMA in future to reveal the results of the study it conducted in more detail so that the market can make a full assessment.

Our analysis comes to the result that for the German market we will **see an increase of tick sizes for 91% of shares** (for DAX® shares: 67%, MDAX® shares: 96%, SDAX® shares: 100% and TecDAX® shares: 93%). The **effect is most severe in less liquid instruments** (where HFT are in general not yet engaged). For example **90% of SDAX® shares will have an increase of at least 2 price increments (12% of SDAX® shares will have an increase of up to 4 price increments, 42% will have an increase of 3 price increments)**. Although we are aware of the political goal to have larger tick sizes, we believe that with such a **table where for a majority of shares more than 2 tick size jumps are envisaged the goal is overshot**. As already pointed out above this is unfortunately not reflected in ESMA's analysis as it does not provide any details on the effects of different markets or impact on liquid versus illiquid instruments. Market participants might have difficulties in making a proper judgment based on that.

That the goal is most likely overshot becomes also clear when looking at spread-to-tick-ratios. Unfortunately to us the percentiles provided by ESMA in the Annex 4.6.2 do not add much value when looking at our most liquid stocks as DAX® - if it is represented in the sample (which is unclear) - only represent 3.4% of the 873 shares in the liquidity class with *no of trades* between 2,000 and 15,000.

Our understanding is that **flickering at the top of the book should be avoided**. However as it is stated in RTS 18, Recital 5 the **goal is also that the “common tick size regime is [...] sufficiently granular”**. We **doubt whether this is the case if the floor of the spread-to-tick-ratio is set at a level of 1.5**. This means that there are only 0.5 ticks in the spread and that the **spread therefore is artificially restricted by its tick size**. This is especially the case as **1.5 is only an average**; at some time of the day the spread-to-tick-ratio will be 1, which means that **there is zero leeway**.

A data analysis for DAX® shares came to the result that **for 17% of the shares the leeway is zero, i.e. the spread-to-tick-ratio is 1, during half of the trading day**. This figure is obviously quite worrying especially with the **requirement** for those that need to sign a **market making** agreement and need to **provide competitive prices**, i.e. posting **quotes within the average bid-ask spread, at least 50 percent during a trading day** (see Art. 1 (7) of RTS 15 in conjunction with Art. 4 (2) (a) of RTS 15) this is impossible to achieve as the leeway is zero or extremely small.

But what concerns us most is the fact that the **spread-to-tick-ratios for two thirds of DAX® shares**, for 24% of MDAX® shares, for 20% of SDAX® shares and for 10% of TecDAX® shares **under the new regime are below the suggested floor of 1.5**, therefore we **doubt that the goal of “[...] sufficiently granular” tick sizes has been reached**. For example: Hochtief has a share price of 58.52 EUR, an average spread of 0.07 EUR and currently a tick size of 0.01 EUR. So the spread-to-tick-ratio would be 7. This is obviously in ESMA’s view too high. However with the suggested table the tick size increases to 0.05 EUR and therefore the spread-to-tick-ratio will go down to 1.3 which is below the suggested floor by ESMA. As this is the case for many stocks as pointed out above, we are highly concerned as the suggested floor of ESMA of 1.5 is not met. Even more worrying is the fact that for **63% of the shares the spread-to-tick-ratio is below 1.5 during half of the trading day!**

ESMA is saying that they want to avoid **flickering at the top of the book** which we can understand. This would certainly be the **case if there are multiple of ticks in the spread**, e.g. 10 or 20 or even more, but we don’t think that **flickering is caused if the spread-to-tick-ratio would be at a level of 4 (see our response to the Discussion Paper) which gives a leeway of 3 ticks**. We understand that **ESMA because they want to go for a one size fits all approach has to balance out all markets** and that a spread-to-tick-ratio for some markets might work but unfortunately not for all. As a **compromise we suggest a floor of at least 2.5** which we believe would at least ensure that the **risk to have a leeway of zero** (spread-to-tick-ratio of 1) for shares at 50% during the trading day **would be reduced**. Unfortunately, this has not been taken into account. However, we believe we do have **found a way to take this into account by adjusting the proposed table in place**. This is described further below.

But before coming to this considering that even **ESMA notes** in the Consultation Paper “[...] that **it is not possible to predict with certainty what the exact impact of a change in tick sizes will be to the spread-to-tick-ratio**” which is **worrying considering this shall be implemented in 2017** and **does not allow for any flexibility**, we suggest that it is important to **conduct a pilot program** similar to the one the SEC is conducting in the US in order to **better understand and study the effects of tick size changes prior to implementing**

new rules. Although we welcome that ESMA suggests giving particular attention to analyse effects on spread-to-tick-ratios, OTRs, queuing time and other indicators during an annual review it would have been good to have seen such an analysis at this stage for OTRs, queuing time and other factors as well. This is another reason why we believe introducing a pilot would be useful. **If for legal reasons it might not be possible to introduce a pilot we at least suggest doing a review of the regime that will allow changing the concept at its full scope.** Therefore we believe it should be as flexible as possible.

Last but not least we would like to **raise another major concern.** The introduction of a regime that is based on **too large tick sizes risks** not only that spreads will widen and that costs for investors will go up, but also that **we will not have a harmonized tick size regime in Europe as it will not be applicable to SIs** which means that they can execute all orders of a specific client at any price better than its publicly disclosed quotes. For the Hochtief example above: While trading venues will be able to execute Hochtief orders at either 58.55 EUR, 58.60 EUR or 58.65 EUR etc., SIs will in contrast be able to execute orders at 58.51 EUR, 58.52 EUR, 58.53 EUR or 58.54 EUR etc. Effectively that will mean that **liquidity might move away from public markets, again the opposite of what was meant to be achieved.** Therefore we suggest that the **tick size regime should be extended to SIs as well as to OTC venues in order to fulfil the goal of having a harmonized tick size regime in Europe and to create a level-playing field in Europe.** We are aware that this **has been missed in Level 1** but believe it **could be fixed at least to some degree in Level 2.** While ESMA suggests that SIs can execute at a price within the bid and offer quotes of their quotes, we suggest this should be changed that **SIs can only execute one tick better than the quoted price for which the one tick better must comply with the instrument's minimum tick size,** for example if the quote of an SI for a share (respectively also ETF) is at 31.05 EUR – 31.20 EUR, and that instrument has for example a tick size of 0.05 EUR, the SI will only be allowed to execute at 31.10 EUR, or at 31.15 EUR and not within the bid and offer quote of 31.05 EUR to 31.20 EUR at any price point. Please see also our response to question 46 on this matter.

We also **miss a dynamic component in the table.** There might be **years where the number of trades is massively lower or higher due to market circumstances.** For example in times of low interest rates (as it is currently the case) number of trades should be higher, while when the ECB decides to increase interest rates the opposite will be the case. This will obviously have an effect on tick sizes for the preceding year, i.e. tick sizes will either become too large or too small. So considering we will at some stage be in an **environment with increasing interest rates this table if it will stay like this have an even more damaging effect as tick sizes become far too large and risk that there won't be any leeway at all in the spread.**

ANSWER TO QUESTION 123:

No, Deutsche Börse Group does not agree. ESMA intends to harmonise tick sizes across Europe and therefore it would be incorrect to only take the number of trades from the venue that is considered the most relevant market in terms of liquidity. We **believe that the average number of trades per day on all European trading venues including SI and OTC venues should be considered** as this would be the only appropriate figure. Otherwise the tick size regime would be inconsistently applied for a market like Spain, where 80% of

trades take place on BME (the primary market) versus a market like the UK, where on average only 50% of trades take place on LSE (the primary market).²

And not to forget this is already current practice as of today. In 2009 CESR changed the methodology and takes all European venues including OTC into account for the calculation of daily transactions (see for reference CESR Guidebook on MiFID market transparency calculations). The suggested approach by ESMA risks that tick sizes might become too large due to the fact that the number of trades for the market that is considered the most relevant market goes down as a result of fragmentation.

Further **ESMA suggests deducting all trades from any pre-trade transparency waiver. We agree with this with the exception of transactions executed under the order management facility waiver.** The reason for including transactions executed under the order management facility waiver in the turnover calculation is that the visible peak of reserve orders actually contributes to the information content to be used as a reference price. Consequently, such transactions should be included when determining the most relevant market in terms of liquidity, while transactions executed under any of the other pre-trade transparency waivers should be excluded. We noted that ESMA follows our line of argument in Article 1 (3) of RTS 18 by limiting the exclusion to all transactions executed in accordance with one of the pre-trade transparency waivers specified in Article 4(1) paragraphs (a) to (c) of Regulation (EU) No 600/2014, and by not extending the exclusion to orders held in an order management facility of the trading venue (Article 4(1)(d) of Regulation (EU) No 600/2014).

Proposed amendment to Article 1 (1) (3) of Draft RTS 18:

“Article 1
Definitions

‘number of trades per day’ means the number of transactions carried out in a given **share on all trading venues, SIs and OTC platforms in Europe** ~~financial instrument on the most relevant market in terms of liquidity,~~ excluding transactions executed in accordance with one of the pre-trade transparency waivers provided under Article 4(1)(a) to (c) of Regulation (EU) No 600/2014;”

Proposed amendment to Article 1 (2) of Draft RTS 18:

“For the purposes of this Regulation, the use of a quantitative metric shall use the data relating to **all trading venues, SIs and OTC platforms in Europe** ~~the most relevant market in terms of liquidity”~~

Proposed amendment to Article 2 (2) of Draft RTS 18:

~~“Competent authorities of the most relevant market in terms of liquidity~~ **ESMA** shall ensure that the identification of the liquidity band applicable to each share, ~~depository receipt and certificate for which they are the relevant competent~~

² Please note that OTC is excluded here; otherwise obviously the figures would look differently.

authority is provided. To that end, **all trading venues, SIs and OTC platforms in Europe** the most relevant market in terms of liquidity for each share, ~~depository receipt and certificate~~ traded or admitted to trading **on their venue** on a European Union trading venue shall **deliver to ESMA in a format that will be provided by ESMA (and which needs to be specified by ESMA in guidelines)** ~~publish~~ the average number of trades per day in that ~~share financial instrument~~ calculated over the previous twelve months of trading or, where applicable, that part of the year during which that financial instrument was admitted or traded on a trading venue. ~~and was not suspended from trading.~~ **Based on these figures ESMA shall then calculate the average number of trades on all trading venues, SIs and OTC platforms in Europe for each share admitted to trading or traded on a European trading venue.**”

Proposed amendment to Article 3 (2) of Draft RTS 18:

“Before the admission to trading or the date in which the share, ~~depository receipt or certificate~~ actually starts trading, the competent authority for that instrument shall ensure that estimates of the average daily number of transactions **in Europe** are provided for the share. To this end, the listing trading venue shall consider the previous trading history of that share if such history exists, or the trading history of shares having similar characteristics such as the market capitalisation and free float, in case of an initial public offering, and determine on this basis the applicable liquidity band.”

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_123>

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

<ESMA_QUESTION_CP_MIFID_124>

No, Deutsche Börse Group does not agree with this approach. As pointed out in our answer to question 123 we believe the proposed tick sizes have not been adequately set. We believe that the **figure of 15,000** is in relation to what has been suggested under the definition of liquid market (i.e. a share is amongst other criteria considered to be liquid if it has more than 250 trades a day) **far too high and therefore needs to be adjusted.** We also suggest that **ESMA checks in its annual review if the five liquidity classes, i.e. the brackets are still valid** or not due to the reasons explained above. Our proposal would be to **delete the first column and change the brackets for the remaining four classes as follows:**

Price ranges		Number of trades per day								
		Class 1		Class 2		Class 3		Class 4		Class 5
		0	100	0	999	1,000	4,999	5,000	9,999	10,000
0	0.1	0.0002		0.0001		0.0001		0.0001		0.0001
0.1	0.2	0.0005		0.0002		0.0001		0.0001		0.0001
0.2	0.5	0.001		0.0005		0.0002		0.0001		0.0001
0.5	1	0.002		0.001		0.0005		0.0002		0.0001
1	2	0.005		0.002		0.001		0.0005		0.0002
2	5	0.01		0.005		0.002		0.001		0.0005
5	10	0.02		0.01		0.005		0.002		0.001
10	20	0.05		0.02		0.01		0.005		0.002
20	50	0.1		0.05		0.02		0.01		0.005
50	100	0.2		0.1		0.05		0.02		0.01
100	200	0.5		0.2		0.1		0.05		0.02
200	500	1		0.5		0.2		0.1		0.05
500	1,000	2		1		0.5		0.2		0.1
1,000	2,000	5		2		1		0.5		0.2
2,000	5,000	10		5		2		1		0.5
5,000	10,000	20		10		5		2		1
10,000	...	50		20		10		5		2

Please note that in the table as presented by ESMA it was unclear if 500 trades fall into either class 2 or class 3. We have taken care of this aspect in our proposal. Besides the **suggested classes also remain symmetric**, e.g, we used the classification of 1 and 5 as you can see above.

If this table will be applied in conjunction with the change in calculation methodology for number of trades as describe above our analysis comes to the following results: For **DAX® shares there will be an increase for one third of the shares** (compared to an increase of two thirds beforehand), for **MDAX®, SDAX® and TecDAX®** the increase will remain the same or even be higher, but the **number of tick sizes jumps will go down**, i.e. **there will no longer be up to four tick size jumps**. However for MDAX®, SDAX® and TecDAX® there will still be up to three tick size jumps. This shows again that the suggested table by ESMA would have a massive impact. At least the **spread-to-tick-ratios improve with this approach** as pointed out above. The **percentage for spread-to-tick-ratio that is below 1.5 drops from 66.7 percent to 23.3 percent for the DAX® shares** (which is still a high figure, but at least not as severe as this would be the case under the proposed regime).

Therefore we believe that because ESMA has decided to choose a one size fits all approach this is something that at a minimum needs to be taken into account. Obviously as the results show **we prefer to change the liquidity classes even more**, however we understand that it would be **important to find a way to balance it for those that are on FESE table 2**.

Proposed amendment to Annex I of DRAFT RTS 18:

Bands	Price ranges		Number of trades per day						
			Class 1	Class 2	Class 3	Class 4			
			0	999	1,000	4,999	5,000	9,999	>= 10,000
1	0	0.1	0.0001		0.0001		0.0001		0.0001
2	0.1	0.2	0.0002		0.0001		0.0001		0.0001
3	0.2	0.5	0.0005		0.0002		0.0001		0.0001
4	0.5	1	0.001		0.0005		0.0002		0.0001
5	1	2	0.002		0.001		0.0005		0.0002
6	2	5	0.005		0.002		0.001		0.0005
7	5	10	0.01		0.005		0.002		0.001
8	10	20	0.02		0.01		0.005		0.002
9	20	50	0.05		0.02		0.01		0.005
10	50	100	0.1		0.05		0.02		0.01
11	100	200	0.2		0.1		0.05		0.02
12	200	500	0.5		0.2		0.1		0.05
13	500	1,000	1		0.5		0.2		0.1
14	1,000	2,000	2		1		0.5		0.2
15	2,000	5,000	5		2		1		0.5
16	5,000	10,000	10		5		2		1
17	10,000 ...		20		10		5		2

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_124>

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

<ESMA_QUESTION_CP_MIFID_125>

With regard to the fixing segment Deutsche Börse Group believes that ESMA should **first of all define in Art. 1 of RTS 18 what a fixing segment is**. Our assumption is that with a fixing segment ESMA refers to the trading form “periodic auction trading only”. We believe that the suggested approach by ESMA might not work which the following example will show: A stock might be continuously traded at one exchange, but might be traded in a fixing segment at another venue. Under the proposed regime it would mean that the same stock would get a different tick size, assuming that the number of trades is larger than 100, as a result of where it is being traded. However this contradicts with the aim to introduce a harmonized tick size regime in Europe. Therefore we suggest that the **proposed approach should only be followed if the stock is only being traded in fixing segments but not continuously. If not there should be no exemption from the standard procedure.**

Proposed amendment to Art. 1 (1) (9) of DRAFT RTS 18:

“Article 1
Definitions

(9) ‘fixing segment’ means periodic auction trading only; and”

Proposed amendment to Art. 2 (6) of DRAFT RTS 18:

“Article 2

Tick size regime for shares, depositary receipts and certificates

6. Where ~~a shares, depositary receipts and certificates are~~ **is** traded on a fixing segment, the relevant trading venue shall use the lowest liquidity band in the tick size table in the Annex **unless the share is traded in a fixing segment on one trading venue and in continuous trading at another venue this Regulation shall not apply if the share is assigned to the first liquidity band in the Annex.**”

With regards to **shares newly admitted to trading we believe the suggested approach works well**. The only point we would like to clarify is with regards to the case when the share will newly be admitted to trading on any day in February. In this case Art. 2 (3) and (4) of RTS 18 shall not be applicable. In general we **would also prefer if the annual review would be made three trading days before the end of a quarter at the latest (for operational reasons)**. The changes should then become effective at the first business day of the next quarter. The reason for that is that **if shares would be adjusted to new liquidity classes on the first trading day in April** this would have **less impact for markets** because **most of the limit orders being entered are valid until the end of a quarter**, in this case end of March. As many instruments might require a switch this would lead to a **high number of deletions of limit orders** (because their limit price might not be compatible with the new tick size, whereas at the moment of order entry their limit price was compatible with the former tick size) and thereby **force trading members and investors to frequently re-enter limit orders due to possible upcoming tick size changes**. This would also **cause legal issues for Deutsche Börse Group** as we are **not allowed to delete orders** only if specifically requested by customers or due to corporate actions.

Proposed amendment to Art. 3 (4) of DRAFT RTS 18:

“Article 3

Tick size regime for shares, depositary receipts and certificates newly admitted to trading or traded for the first time

4. In case the share will newly be admitted to trading on a day in March, Art. 2 (3) and 2 (4) shall not apply.”

Proposed amendment to Art. 2 (3) of DRAFT RTS 18:

“Article 2

Tick size regime for shares, depositary receipts and certificates

~~3. Competent authorities~~ **ESMA** shall ensure the publication, not later than on the first trading day of ~~March~~ **April** of each year, of the liquidity band applicable for each share, ~~depositary receipt, and certificate~~ which is admitted to trading or traded on a trading venue. ~~and for which they are the relevant competent authority.~~

Proposed amendment to Art. 2 (4) of DRAFT RTS 18:

“Article 2
Tick size regime for shares, depositary receipts and certificates

“4. Following the publication of the liquidity band applicable to each share, ~~depositary receipt and certificate and before the start of the next trading day~~, each trading venue on which that instrument is traded or admitted to trading shall allocate the liquidity band in accordance with the table in the Annex. **This allocation shall be active three trading days after the publication.**

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_125>

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

<ESMA_QUESTION_CP_MIFID_126>

No, Deutsche Börse Group does not agree with the proposed approach. **We believe that a review within six weeks based on the first 4 weeks of trading does not make sense. For splits** we believe that the trading volume will remain the same, but obviously the number of trades will go up. We suggest that the **adjustment should take place immediately based on judgement of the most relevant market in terms of liquidity, i.e. in general the primary market.** We **don't think** that therefore an **adjustment after six weeks is necessary.** For all **other corporate actions such as spin offs and others** we believe the **tick size change should be done by the most relevant market in terms of liquidity, i.e. in general the primary market.** If the venue comes to the conclusion a tick size change is appropriate ESMA should be informed and adjust the instrument to a new liquidity class. If that change happens to be just before the annual review, again the proposed change should be applicable for the next year as obviously in a potential short timeframe the number of trades for the last year might not reflect the right liquidity class. To summarize, Deutsche Börse Group suggests that for any corporate action the most relevant market in terms of liquidity, i.e. in general the primary market should be in charge to decide if a tick size adjustment is necessary and what it should be.

Proposed amendment to Art. 4 of Draft RTS 18:

“Article 4
Corporate actions

If a ~~trading venue~~ **most relevant market in terms of liquidity for a financial instrument** reasonably considers that a corporate action will cause the average number of trades per day relating to a particular financial instrument to no longer provide an accurate metric for the liquidity profile of that financial instrument, ~~the trading venue~~ **that most relevant market in terms of liquidity** shall ~~treat that financial instrument as if it were admitted to trading or traded for the first time~~ **have the means to deviate from the existing tick size. ESMA shall specify in guidelines the concrete exemption process.”**

Further we would like to emphasise that the **most relevant market in terms of liquidity, in general the primary market, should be allowed to intervene and temporarily derogate from the tick size table in case of “degradation of market microstructure”** (e.g. financial crisis, market noise or announcements that might lead to an increase or decrease of trades). So if in that case the spread-to-tick-ratio falls below 1.5 for that stock, the most relevant market in terms of liquidity should be allowed to establish the tick size that will better reflect the new liquidity situation for that stock.

Proposed amendment to Art. 2 (4a) of Draft RTS 18:

“Article 2

Tick size regime for shares, depositary receipts and certificates

4a. ESMA shall conduct a review after six months after this Regulation shall become applicable. If a degradation of market microstructure has been detected, the most relevant market in terms of liquidity may suggest to deviate from the existing regime which shall then become applicable to all other regulated markets and multilateral trading facilities where the share is traded on until ESMA has the means to provide new terms of how to limit and enforce the minimum tick size.”

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_126>

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

<ESMA_QUESTION_CP_MIFID_127>

Yes, Deutsche Börse Group believes this would be the case for:

- 1) ETFs: We believe the **tick size approach** taken by ESMA to be **well-suited for the broad majority of ETFs**. However, for some ETFs the proposed tick size is by far too large, exceeding current average spreads by a factor of 4 or even higher. Among the ETFs impacted most are **money market ETFs and fixed income ETFs investing in government bonds with short maturities**. For example, most EONIA ETFs currently admitted to trading on Frankfurt Stock Exchange have a tick size of 0.001 EUR and average daily spreads of 0.005 EUR or below. According to the new ETF tick size regime proposed by ESMA, the tick size of these ETFs would have to increase to 0.02 EUR due to their price levels exceeding 100 EUR. Clearly, trading of these ETFs on a regulated market under the **proposed tick size regime would result in an increase of implicit transaction costs** by approximately 300% for investors and would likely **eliminate on-exchange trading of these instruments as volumes move onto RFQ and OTC venues**. However, there are also some highly liquid equity ETFs that would be negatively affected by the proposed tick size regime. A good example is Europe's most actively traded ETF tracking the DAX index which currently shows average daily spreads of 0.025 EUR. Given that the ETF is trading at a price level of approximately 100 EUR, the tick size under the proposed regime would be 0.02 EUR for prices exceeding 100 EUR, effectively resulting in a spread-to-tick size ratio of 1.25. From our

point of view, such low tick sizes would clearly restrict the price formation of an ETF in the order book and would very likely result in transaction volumes moving away from public markets. This effect is further **reinforced since the tick size regime does not apply to SIs, RFQ and OTC venues and the fact that the trading obligation does not apply for equity-like instruments.**

We therefore suggest that the **proposed tick size regime** should **include an exemption process for those ETFs where investors** would very likely have to **bear a significant increase in transactions costs** when compared to current spreads under the tick size regime of the most relevant market in terms of liquidity for that ETF. In order to provide for a quantitative framework for such exemptions, we propose that the **most relevant market in terms of liquidity may establish a lower tick size for any ETF with a spread-to-tick size ratio below 3 to better reflect the liquidity of that ETF.** This decision should furthermore (be taken only after consultation with the respective issuer of that ETF and should) apply to all trading venues to ensure that the objective of a harmonised tick size regime in Europe is reached.

Based on spread data taken from our trading venue, we would estimate the **number of ETFs qualifying for a tick size exemption** under the proposed criteria of a spread-to-tick size ratio lower than 3 to be approximately 30 ETFs, i.e. **less than 3% of all ETFs listed on Frankfurt Stock Exchange.** However, as stated in our response above, among those would be some of the most actively traded ETFs in Europe. **Providing this flexibility through an exemption process** is of uttermost importance for trading venues in order to maintain their competitiveness with alternative transaction platforms such as SIs as well as RFQ and OTC venues, all of which do not fall under the tick size regime proposed by ESMA.

In general, we would consider it **sufficient to review ETF spread data on an annual basis** to identify ETFs that qualify for a tick size exemption. However, for **newly admitted ETFs** we propose to establish a **review scheme similar to that for newly listed equities**, i.e. **no later than six weeks after the ETF has started trading**, the **listing trading venue shall determine if the ETF qualifies for a potential tick size exemption on the basis of spread data obtained from the first four weeks of trading.** In case the ETF qualifies for a tick size exemption, the listing trading venue shall consider the previous trading history of ETFs having similar characteristics and determine on this basis the applicable tick size after consultation with the respective issuer of that ETF.

Proposed amendment to Art 1 (1) (10) Draft RTS 18:

“Article 1
Definitions

“(10) ‘**Exchange Traded Funds (ETFs)**’ for the purpose of this Regulation includes also **Exchange Traded Commodities (ETCs)** and **Exchange Traded Notes (ETNs).**”

Proposed amendment to Art 5 (3) Draft RTS 18:

“Article 5
Tick size regime for ETFs

3. If the most relevant market in terms of liquidity reasonably considers that the tick size table corresponding to the most liquid liquidity band in the Annex does not accurately reflect the liquidity profile of a given ETF, it may apply a tick size lower than the tick size specified in the Annex. ESMA shall develop guidelines to specify the exemption process.”

Proposed amendment to Art 5 (4) Draft RTS 18:

“Article 5
Tick size regime for ETFs

4. A trading venue shall apply to ETFs admitted to trading or traded for the first time the tick size table corresponding to the most liquid liquidity band in the Annex. No later than six weeks after the ETF has started trading, the most relevant market in terms of liquidity shall determine if the ETF qualifies for a tick size exemption according to Art. 5 (3) of Draft RTS 18 on the basis of the first four weeks of trading.”

- 2) Certificates: With regards to certificates we believe the proposed table makes only sense for certificates quoted per unit but not for certificates quoted in percent. The tick size of a certificate in Germany quoted in percent depends on its maturity and therefore should be exempt. It should be left to the issuer to set the appropriate tick size as he will only be the appropriate one to do so. A one size fits all approach does not work for these types of instruments. Considering that no analysis has been done by ESMA on the impact of certificates (no matter if quoted in unit or in percent) we strongly recommend reconsidering this approach and to first do a proper analysis.

Proposed amendment to Draft RTS 18:

The term ‘certificates’ should be deleted from all relevant Articles in Draft RTS 18.

- 3) DRs: Again we first recommend doing a proper analysis for DRs before suggesting any regime where the impact is unclear or might be negative.

Proposed amendment to Draft RTS 18:

The term ‘depository receipts’ should be deleted from all relevant Articles in Draft RTS 18.

Besides we would like to point out that we **do not agree with the grouping per tick size bands for shares in Section 4.4 of the Consultation Paper** (ratio of unexecuted orders to transactions) as this might lead to frequent and surprising changes in the bands and therefore the max ratios. Deutsche Börse Group suggests leaving the grouping up to the primary markets of the instruments. There is no justified need for this, but rather makes it very complicated and might lead to unintended consequences. Please also see our response to question 109 on this matter.

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_127>

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

<ESMA_QUESTION_CP_MIFID_128>

No, Deutsche Börse Group believes no further instruments should be considered. We only suggest clarifying that the **ETF tick size regime applies to similar exchange traded products such as Exchange Traded Notes (ETNs) and Exchange Traded Commodities (ETCs)** to be consistent.

Proposed amendment to Art 1 (1) (10) Draft RTS 18:

“Article 1
Definitions

“(10) ‘Exchange Traded Funds (ETFs)’ for the purpose of this Regulation includes also Exchange Traded **Commodities (ETCs)** and Exchange Traded **Notes (ETNs)**.”

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_128>

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

<ESMA_QUESTION_CP_MIFID_129>

Deutsche Börse Group believes that the **number of trades for shares should indeed only be calculated on an annual basis**. However, we **suggest that a first review should take place after six months**, i.e. the **number of trades should be re-calculated and the effects on spread-to-tick-ratios, queuing time, OTRs etc.** In case the **results show** an increase in spreads, higher queuing times, higher transaction costs etc. we **urge ESMA to change this approach**. Also we would like to point out that if it will be implemented like proposed by ESMA in the Consultation Paper, liquidity might decrease dramatically. Again this is **why it is so important to at least change the calculation methodology** as suggested in our response to question 123 and to **adjust the liquidity classes** as described in our response to question 124.

Proposed amendment to Art. 2 (4a) of Draft RTS 18:

“Article 2
Tick size regime for shares, depositary receipts and certificates

4a. ESMA shall conduct a review after six months after this Regulation shall become applicable. If a degradation of market microstructure has been detected, the most relevant market in terms of liquidity may suggest to deviate from the existing regime which shall then become applicable to all other regulated markets and multilateral trading facilities where the share is traded

on until ESMA has the means to provide new terms of how to limit and enforce the minimum tick size.”

Proposed amendment to Art. 2 (5) of Draft RTS 18:

“Article 2

Tick size regime for shares, depositary receipts and certificates

5. The tick size of a ~~Over the next twelve months the tick size of that share shall in~~ **general over a period of twelve months** evolve continuously as price changes within the liquidity band so that the tick size shall increase by one increment if the price crosses above the upper price threshold for that liquidity band and shall decrease by one increment if the price crosses below its lower price threshold.”

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_129>

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

<ESMA_QUESTION_CP_MIFID_130>

Yes, **Deutsche Börse Group sees short-term impacts** that need technical adjustments. One is as explained above the deletion of orders and re-entering of those by market participants. Second requires changes that need to be made to our system and to those of market participants. From our perspective a **detailed description is missing how ESMA wants to communicate changes made to tick sizes due to corporate actions** and the **fact that a list needs to be produced that determines in which class which instruments is categorized into.**

<ESMA_QUESTION_CP_MIFID_130>

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

<ESMA_QUESTION_CP_MIFID_131>

No, Deutsche Börse Group does not agree. We believe that **dividends are missing and should be added.** Potentially it would make sense to have **a non-exhaustive list to ensure nothing might have been missed so far.** As explained in our response to question 125 we vote for a flexible approach, i.e. we believe the tick size change resulting from corporate actions should be done by the most relevant market in terms of liquidity, i.e. in general the primary market.

Proposed amendment to Art. 1 (1) (8) of Draft RTS 18:

“Article 1

Definitions

“corporate action” means **dividends**, splits (sub-division), reverse splits (consolidation), scrip issues (capitalisation or bonus issue), capital repayments, rights issues or entitlement offers, takeovers and mergers and stock conversions;”

Please see all our changes with regards to Draft RTS 18 in the appendix.

<ESMA_QUESTION_CP_MIFID_131>

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

<ESMA_QUESTION_CP_MIFID_132>

Deutsche Börse Group only partly agrees. We support ESMA's proposal that a material market in terms of liquidity in a financial instrument is 8 (i): 'the trading venue where the financial instrument was first admitted to trading, including all the venues where the instrument was simultaneously admitted to trading in case of multiple listing'. Therefore we recommend deleting Art. 1 (2) of RTS 19. We believe that in this context the primary market is the only correct one to choose as that market has the natural relationship with the issuer.

Proposed amendment to Art. 1 of Draft RTS 19:

“Article 1
Definition

“(1) the trading venue where the financial instrument was first admitted to trading, including all the venues where the instrument was simultaneously admitted to trading in case of multiple listing;~~or~~

~~(2) the most relevant market in terms of liquidity for shares, depositary receipts, ETFs, certificates or other similar financial instruments as specified in the Regulation [Draft RTS on transparency requirements for equity and equity-like financial instruments].”~~

Please see all our changes with regards to Draft RTS 19 in the appendix.

<ESMA_QUESTION_CP_MIFID_132>

Q133. Which would be an adequate threshold in terms of turnover for the purposes of considering a market as “material in terms of liquidity”?

<ESMA_QUESTION_CP_MIFID_133>

No, Deutsche Börse Group does not agree with Art. 1 (2) of RTS 19, see our response to question 132.

<ESMA_QUESTION_CP_MIFID_133>

iii) Data publication and access

Q134. Do you agree with ESMA's proposal to allow the competent authority to whom the ARM submitted the transaction report to request the ARM to undertake periodic reconciliations? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_134>

Deutsche Börse Group explicitly welcomes clarification as regards the requirements addressed to the CTP for error and omission correction. We fully agree that this can only refer to errors/omissions caused by the CTP itself, not however, to errors or omissions caused by reporting parties (IFs, TVs or APAs).

As regards reconciliation by ARMs we would like to ask ESMA for clarification what exactly the content of reconciliation should be? Deutsche Börse Group thinks that one way to reconcile could be to exchange – ideally on a daily basis and in a very standardized and automated setting – the number of successfully transmitted reports from the IF to the ARM as well as the number of rejected reports by the ARM with the reports received by the NCA. We like to point out that the more standardized those reconciliations are the more efficient they can be provided to the NCA.

In any case, ESMA should define upfront, what exactly should be reconciled. Due to the lack of this information we can currently not clearly comment on the question.

<ESMA_QUESTION_CP_MIFID_134>

Q135. Do you agree with ESMA's proposal to establish maximum recovery times for DRSPs? Do you agree with the time periods proposed by ESMA for APAs and CTPs (six hours) and ARMs (close of next working day)? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_135>

Deutsche Börse Group does not agree with ESMA's proposal to establish maximum recovery times for DRSPs as this will be too prescriptive for the various providers while not providing for a quicker resumption of a business. A Service Provider will always aim to provide the best service under competition. However, in severe cases 6 hours might not be achievable and a legal requirement will not change that. Instead of imposing legal requirements in fixed terms, ESMA should require that service level descriptions shall contain information about business continuity arrangements and be transparent to the customer.

<ESMA_QUESTION_CP_MIFID_135>

Q136. Do you agree with the proposal to permit DRSPs to be able to establish their own operational hours provided they pre-establish their hours and make their operational hours public? Please provide reasons. Alternatively, please suggest an alternative method for setting operating hours.

<ESMA_QUESTION_CP_MIFID_136>

Deutsche Börse Group strongly appreciates ESMA's approach towards freedom of choice regarding operating hours for DRSPs as operating hours are both costly, as well a means to compete with other service providers in this space. We furthermore agree with ESMA that any DRSPs shall make its operating hours public, for customers to choose amongst the various Service Providers.

The reason for this flexibility should be seen in the light of proportionality as well as efficiency. Potential customers for those services are diverse as regards their business models. The main operating hours are working days from 7-17:30 some might trade until 20 or even 22 pm CET. Only a rather small group is trading longer – usually proprietary traders of IFs - if at all. It would be absolutely uneconomical to request that all DSPs should operate around the clock. Many processes are batch-processes and they are being processed after service closure, which would make a 24/7 operating requirement a barrier for entry for more focused service providers, reducing customer choice.

In this context the general question of proportionality of a 24/7 real-time transparency requirement should be placed. A more proportionate solution would be backlogging data for its publication before market opening on the next official trading day, as currently applied by MiFID I. Although, as of today, 24/7 oriented service providers already exist this should not be required. Additionally, even with a 24/7 service there will be maintenance times to consider.

<ESMA_QUESTION_CP_MIFID_136>

Q137. Do you agree with the draft technical standards in relation to data reporting services providers? Please provide reasons.

<ESMA_QUESTION_CP_MIFID_137>

Proposed amendments on RTS 20

“(10) The data reporting services providers’ responsibilities generally include not only detecting **obvious detectable** errors or omissions caused by their clients but also ensuring that **they-the data reporting services providers** do not introduce errors or omissions into the trade reports, transaction reports or consolidated tape.”

Rationale: for clarification and avoidance of doubts

“(11) Where an ARM itself causes an error or omission, it should correct this information without **undue** delay as well as notify the competent authority of its home Member State and any competent authority to which the ARM submits reports of the error or omission.”

Rationale: for clarification and avoidance of doubts

~~“(12) An APA and CTP should be able to delete and amend the information which it received from the entity providing it with information to deal with situations where in exceptional circumstances the entity cannot delete or amend the information itself. However, APA or CTP should not otherwise be responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information.”~~

Rationale: IFs are commercial entities like APAs and CTPs and should have business continuity plans in place as well. While deleting and amending trade reports from IFs through a service provider can have legal consequences which not every provider wants to resume, we would strongly argue for the deletion of this requirement while leaving it up to competing service providers to offer this as an additional service.

(15) The systems used by a data reporting services provider should be well adapted to the activity which takes place through them and robust enough to ensure continuity and regularity in the performance of the services provided. This includes ensuring that the data reporting services provider's systems are able to handle fluctuations in the amount of data which it must handle. Such fluctuations, particularly unexpected increases in data flow, may adversely impact the effectiveness of the data reporting services provider's systems and as a result, its ability to publish or report complete and accurate information within the required timeframes. In order to handle this, data reporting services providers should ~~stress~~ **periodically** test their systems **regarding performance** to ensure that they are robust enough to handle changes in operating conditions and ensure that their systems are sufficiently scalable.

Rationale: Requirements for stress tests are not being supported at all. Data Service Provider have a significant interest to provide their services at all times and usually cater for sufficient headroom.

(16) The back-up facilities and arrangements established by a data reporting services provider should be sufficient to enable the data reporting services provider to carry out its critical services **after a reasonable time period**, even in the event of a disruptive incident.

Rationale: For clarification purposes we refer to ESMA's CP, p. 437, no 16. "ESMA interprets this would, for example, include having business continuity arrangements in place in order to resume critical services within a reasonable period of time following a disruptive incident." While we agree with this statement of ESMA we do not agree with the above interpretation in recital 16. Therefore, we would like to submit the amendment.

~~(20) Attacks against information systems are a growing concern in the Union and globally, and there is increasing concern about the potential for attacks against information systems. The identification and reporting of threats and risks posed by cyber-attacks and the related vulnerability of information systems as well as setting up effective measures against attacks are a pertinent element of effective prevention of, and response to, cyber-attacks and to improving the security of information systems.~~

Rationale: Deutsche Börse Group strongly recommends to abstain from mixing unclear requirements into MiFID regulatory requirements at this stage. While practical requirements are rather unclear at the current state of time, ESMA will not be in the position to provide a robust cost/benefit analysis on such a requirement at all.

~~(22) CTPs may provide other services that improve the efficiency of the market. It is therefore important to clearly set out what types of services are compatible with being a CTP.~~

Rationale: While we agree with ESMA that CTPs might provide additional services, it seems overly intrusive to define which services this might be. This would be both restrictive and exclusive in terms of excluding potential service providers seeking authorization from CAs.

We therefore strongly suggest the delete this recital as well as the corresponding paragraph as lined out below.

“Article 5
Corporate governance

2. (a) a description of the mechanisms to ensure adequate management of the entity, the segregation of duties and the prevention of conflicts of interest (~~including the remuneration policy of the management body~~) in accordance with Article 63(4) of Directive 2014/65/EU;”

Rationale: it is unclear why ESMA requires the submission of information on the remuneration of the management body. This seems unjustified and disproportionate and therefore should be dismissed.

“Article 8
Independence and avoidance of conflicts of interest

2. (c) ~~the determination of fees charged by the data reporting services provider and related third parties;~~

Rationale: In a competitive market it is questionable why a NCA should be involved in the determination of price setting. This is more than disproportionate and unjustified and should therefore be dismissed by all means.

“Article 9
Conflicts of interest with clients

1. **Where applicable** ~~A~~ a data reporting services provider shall maintain and operate effective administrative arrangements aimed at preventing conflicts of interest that may affect the interests of clients.
2. **Where applicable** ~~the~~ inventory of existing and potential conflicts of interest with clients shall at least consider whether the data reporting services provider:
3. **Where applicable** ~~A~~ a data reporting services provider shall set up and maintain administrative arrangements aimed at:

Rationale: In case those administrative arrangements are already in place they shall suffice and therefore, we recommend the wording adaption above. Furthermore, unlike in organizations which trade and hold own positions, similar to their reporting customers, we agree that there can be significant conflict of interests, which do not occur in case the service provider is a neutral provider, like an exchange.

5. (new) In case the data reporting services provider is already regulated as a trading venue the above requirements shall not be imposed on top.

Rationale: Regulated Markets are already regulated and supervised and have significant experience as regards data processing and publication. Imposing additional administrative

burdens would be disproportionate and against Level 1. Therefore, we recommend to include the new paragraph.

“Article 10
Shared resources

2. (new) in case the data reporting services provider is already regulated as a trading venue the above requirements shall not apply.”

Rationale: Regulated Markets are already regulated and supervised and have significant experience as regards data processing and publication. Imposing additional administrative burdens would be disproportionate and against Level 1. Therefore, we recommend to include the new paragraph.

“Article 11
Business continuity and back-up facilities

~~5. (g) the maximum acceptable recovery time for business processes and systems, having in mind the deadlines for reporting and disclosing the information. The maximum recovery time shall be no longer than six hours in the case of APAs and CTPs and until the close of the next working day in the case of ARMs;~~

Rationale: Deutsche Börse Group does not agree with ESMA's proposal to establish maximum recovery times for DRSPs as this will not provide for a quicker resumption of a business. A Service Provider will always aim to provide the best service under competition. However, in severe cases 6 hours might not be achievable and a legal requirement will not change that. Instead of imposing legal requirements in fixed terms, ESMA should require that service level descriptions shall contain information about business continuity arrangements and be transparent to the customer.

“Article 12
Testing and Capacity

~~5. As part of on-going testing programme, a data reporting services provider shall run stress tests periodically at least on an annual basis. A data reporting services provider shall include in the adverse scenarios of the stress test unexpected behaviour of critical constituent elements of its systems and communication lines. The on-going stress testing shall identify how hardware, software and communications respond to potential threats, specifying systems unable to cope with the adverse scenarios. A data reporting services provider shall take measures to address identified shortcomings in those systems.~~

Rationale: Deutsche Börse Group strongly recommends to abstain from mixing unclear requirements into MiFID regulatory requirements at this stage. While practical requirements are rather unclear at the current state of time, ESMA will not be in the position to provide a robust cost/benefit analysis on such a requirement at all.

7. An ARM shall report information without introducing any errors or omissions. An ARM shall perform periodic reconciliations at the request of the competent authority of its home Member State or the competent authority to which the ARM submits transaction reports between:

- (i) the information that the ARM receives from its client or generates on its client's behalf for transaction reporting purposes; and
- ~~(ii) data samples provided by the competent authority at the ARM's request of the information submitted on behalf of the client that was accepted by the competent authority;~~

Rationale: We need to question the idea behind the reconciliation as described and would ask ESMA to provide some more clarity on this.

~~“Article 14
Identification by APAs and CTPs of incomplete or
potentially erroneous information~~

~~5. An APA and CTP shall have and, when necessary, utilise a mechanism enabling it to delete and amend information received upon request by the entity providing the information when that entity cannot delete or amend its own information for technical reasons in exceptional circumstances.”~~

and consequently

~~6. An APA and CTP shall apply its information cancellation and amendment policy according to non-discretionary rules. The general framework for information cancellations and amendments shall pre-define and make public:
(a) the cases where cancellations and amendments will operate;”~~

Rationale: IFs are commercial entities like APAs and CTPs and should have business continuity plans in place as well. While deleting and amending trade reports from IFs through a service provider can have legal consequences which not every provider wants to resume, we would strongly argue for the deletion of this requirement while leaving it up to competing service providers to offer this as an additional service. However, in case this is not acceptable to ESMA the alternative could be that Art 5.6. refers to “APAs and CTPs may apply” instead of “shall apply” in combination with the retention of Art 14 6.

~~“Article 18
Other services provided by CTPs~~

- ~~1. A CTP may also perform the following services:~~
- ~~(a) provision of pre-trade transparency data;~~
 - ~~(b) provision of historical data;~~
 - ~~(c) provision of reference data;~~
 - ~~(d) provision of research;~~

~~(e) processing, distribution and marketing of data and statistics on financial instruments, trading venues, and other market-related data;~~

~~(f) design, management, maintenance and marketing of software, hardware and networks in relation to the transmission of data and information.~~

~~2. A CTP may perform services other than those specified under paragraph 1, provided that such services do not create a risk affecting the quality of the tape or the independence of the CTP that cannot be adequately prevented or mitigated.~~

Rationale: It is more than questionable why ESMA lines out additional services which may be provided by a CTP. We deem this an unjustified restriction especially as services offered by RMs are not explicitly included in the description, while at the same time research services are being explicitly mentioned? While we fully agree with ESMA that CTPs should be allowed to offer additional services, we do not support to include selected services in a positive list within the regulation. We therefore strongly advise to delete Art 18 in RTS 20.

<ESMA_QUESTION_CP_MIFID_137>

Q138. Do you agree with ESMA's proposal?

<ESMA_QUESTION_CP_MIFID_138>

Deutsche Börse Group explicitly wants to reiterate that as regards sensible and proportionate requirements a "form follows function" approach should be applied. In this context we cannot support the European Commission's services indication to ESMA that the consolidated tape for equities and equity-like instruments should encompass trade data with respect to all equities and equity-like instruments traded on a trading venue at all, i.e. 100% of trading in equities and equity-like instruments. While this could make sense in a so to speak consolidated Audit Trail in t+1 for the regulator, it does not really make sense as regards real-time data. We wonder about the use cases put forward by the EU COM in order to support this request, especially as it should be clear that inclusion of additional data sources usually increase cost of data while they may not add value for the customer.

In this context we explicitly welcome ESMA's considerate approach to at least apply a grace period for inclusion of new data sources into real-time data consolidation. While this will not heal the overall misperception that unlike in the US under RegNMS there is no need for a complete real-time tape in the EU but it may help to not add additional technical impossibilities for potential CTP provider at least. However, the proposed timelines by ESMA are not realistic and would need to be adjusted for additional time, taking into consideration a) technical implementation and b) ideally commercials as well.

As regards a) we deem a period of at least 9-12 months as being more appropriate taking into consideration that new sources need to be integrated within the roll out and testing plans of companies which usually have rather long implementation cycles as well for safety reasons (extensive testing with customers). As regards b) we would suggest ESMA to consider as well a quantitative approach which ties the time of inclusion into the CTP to a sufficient level of liquidity for the inclusion of a new trading venue. This would at least balance value of data vs cost incurred by the CTP and consequently its customers.

<ESMA_QUESTION_CP_MIFID_138>

Q139. Do you agree with this definition of machine-readable format, especially with respect to the requirement for data to be accessible using free open source software, and the 1-month notice prior to any change in the instructions?

<ESMA_QUESTION_CP_MIFID_139>

Deutsche Börse Group strongly appreciates ESMA's unbiased approach and neutrality. In this context, we cannot agree with ESMA neither on using free open source software nor on a 1 month only notice period.

We do not agree with the wording provided by ESMA as regards 14. (iii). As of today, several exchanges provide APA like services already via the infrastructure and data feeds they operate for on-exchange trading purposes providing cost-effective solutions to their customers. While some exchanges apply proprietary protocols, others have applied more standard solutions. Not always is the source code openly shared due to the fact that software contains certain assets as well as IP rights. Fact is, that all these protocols regardless if they are proprietary or not provide real-time data in push mode directly to the Consolidator, without them having to grab for it (pull the data). We therefore strongly suggest that ESMA in line with being neutral is not taking a bias as regards if a source code is open or not, but rather as regards data being delivered securely to the Consolidator. In any case, exchanges should not be required to apply different protocols than they use as of today as they already provide reliable data to Consolidators while posing significantly less risk on them as regards omission of data. As data protocols and feeds are a means to compete across venues, ESMA as a neutral entity should not support one protocol against multiple others. In this context we need to point out as well that the Table 1 Annex I as specified in RTS 8 in their current wording support one protocol against multiple other protocols, which should not be the case. We have made our comments in this respect in Q 50.

Furthermore, we disagree with the 1 month advance notice period suggested by ESMA and strongly suggest to increase it to a 3 month advance notice at least. This is market standard while consolidators usually appreciate even longer advance notices where possible.

As regards machine readability one of the short-comings if MiFID I was the publication of OTC trade data on web-sites which resulted in non-consolidation of this data due to the fact, that the effort to do so not only contains significant costs but as well significant risks for the Consolidator. Grabbing data from web-sites is both extremely costly and it significantly increases the risk for any CTP for omissions or errors. The complaints about a lack of a proper tape after MiFID I are well known to ESMA. The introduction of APAs was targeted at improving the quality of OTC data, both as regards the correctness of data but as well it's completeness. The only sensible use case for a post-trade tape is the ex post best execution verification for the buy side. This requires the inclusion of OTC post-trade data. Allowing web-based publication will be reiterating that same mistake of MiFID I again, which led to current complaints by market participants about the lack of a reliable tape. The current acceptance of web-only publication by ESMA risks both non-consolidation of this data, as well as a further discouragement for potential CTP providers to enter the market. In no way is such an acceptance of web-publication only effective or proportionate. We therefore strongly urge ESMA, to reconsider it's approach for the sake of sensible data consolidation. It

must be clear, that only real-time push data feeds applied by Trading Venues as well as APAs should have to be accepted by the CTP provider. There is no need to discuss milliseconds or even microseconds in case data would need to be consolidated from the web.

Furthermore, in its proposal referring to machine readability in 14 (2) ESMA refers to Article 12(7) of [draft RTS on the authorisation and organisational requirements for DRSPs] that enables automatic access, is robust and ensures adequate access in terms of speed. We cannot see any connection as this article refers to ARMs. Clarification seems necessary.
<ESMA_QUESTION_CP_MIFID_139>

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

<ESMA_QUESTION_CP_MIFID_140>

In line with Deutsche Börse Group's arguments made within the answer to Q 139 see our recommendations to RTS 21 below.

Proposed amendments on RTS 21

“(1) Promoting efficient dissemination of information by APAs and CTPs so that it is easily accessible and utilisable for market participants implies that the information is published in a machine readable format through robust channels allowing for automatic access to the data. ~~While websites may currently not always offer an architecture that is robust and scalable enough and that allows for easy automatic access to data, these technological constraints may be overcome in the future.~~ A particular technology **or protocol** should ~~therefore~~ not **be** prescribed, but criteria should be set out that need to be met by the technology which is used.

Rationale: in the light of the shortcomings of MiFID I it needs to be clear, that the publication of post-trade data via a web-page alone and without a real-time push feed will lead to the effect that this data will not be consolidated. The same mistakes made in MiFID I would be reiterated again, with the effect that there will be further complaints that a CT is not available.

(3) APAs should be required to adopt ~~efficient~~ **reasonable** mechanisms to ensure the publication of transactions reported by investment firms in a format that facilitates consolidation by including a “reprint” field indicating whether a report is a duplicate. One way to ensure duplication of reports relating to the same trade is for the APA to get information from the investment firm that all trades in a certain instrument (or classes thereof) are only sent to that particular APA. Another possible way is for the APA to ensure that the investment firm identifies each trade report as ~~original~~ or duplicate so that it is possible for the data providers and users to consolidate information.

Rationale: ESMA should make clear recommendations. Either IFs should flag their duplicates or their originals, but which one should be prescribed by ESMA for the sake of clarity. We would recommend that the duplicates should be flagged. It is our assumption that for the purpose of efficiency only very few IFs if at all will send double reports. Flagging originals with each trade will increase data traffic without creating a clear advantage.

“Article 1
Machine Readability

(2)

~~(d) it can be accessed, read, used and copied by freely and publicly available computer software, the source code of which is openly shared.”~~

Rationale: While ESMA assures that they neither promote nor exclude any commercial solutions by ESMA's recommendations, it needs to be pointed out that Art 1.2. (d) would be infringing ESMA's neutrality. As of today, there are already many service providers, amongst them many exchanges offering APA like services. Requesting any APA as well as CTP to exchange their existing feeds/protocols would a) introduce a Big Bang scenario in 2017 with considerable risks and negative consequences and b) would by no means be proportionate for existing service providers.

~~“(4) An APA or a CTP shall make instructions available to all parties explaining how those users can access and use the data easily and continuously. Introduction of or Changes to those instructions shall be made public available to stakeholders by an APA or a CTP at least one three months before coming into effect. The homepage of an APA or a CTP should contain a link to this information, if applicable.”~~

Rationale: We would like to stick to current market practices which have proven to be both efficient and effective. Changing instructions shall be made available at least 3 months in advance

“Article 2

Scope of the consolidated tape for shares, depositary receipts, ETFs, certificates and other similar financial instruments

(2) When a new APA or a new trading venue starts operating, a CTP shall include the data made public by that APA or trading venue in the data stream of its consolidated tape as soon as possible, and in any case no later than ~~three~~ **six** months after the start of the APA's or trading venue's operations.”

Rationale: we would recommend to leave sufficient time technically prepare for the adoption of the new source, or otherwise, include a comment that any new source must provide necessary instructions (Art 1 2 (4)) well in advance but at least three months in advance. This may be time critical already having technical release schedules in mind.

“Article 3

Identification of original and duplicative trade reports in shares, depositary receipts, ETFs, certificates and other similar financial instruments

3. (b) using an identification mechanism which flags ~~one report as the original one ('ZX'), and all other reports of the same transaction as~~ duplicates **with** ('Z').

Rationale: while we strongly support the suggestion by ESMA to identify duplicates, we would like to recommend to only flag the duplicates in order to remain within the MMT logic. Furthermore, we do not assume that there will be many duplicates to flag, keeping data feeds as lean as possible.

“Article 7
Information to be published by the CTP

~~1. The information on when the transaction was reported shall include the date and time it was first published by an APA or a trading venue. A CTP shall ensure that when disseminating information about a transaction received from a trading venue it includes the date and time when the transaction was published.”~~

Rationale: As pointed out before we do not deem it sensible to add additional information to the data set. It is important for the market to see the time of trade / execution and then the time of publication by the CTP as this is not transaction reporting to the regulator.

<ESMA_QUESTION_CP_MIFID_140>

Q141. Do you agree that CTPs should assign trade IDs and add them to trade reports? Do you consider necessary to introduce a similar requirement for APAs?

<ESMA_QUESTION_CP_MIFID_141>

Deutsche Börse Group considers ESMA's suggestion as one approach of at least two possible approaches. While ESMA refers to a CTP clearly identifying one set of information about a particular trade report, we agree that this could be quite helpful in order to refer to a particular trade report on one CTP provider's site. However, it should be clear that this would not refer to the actual UTI set by a trading venue or set by an APA.

Instead of creating a completely new ID which at the same time might be different across multiple CTPs, another solution could be to require TVs, and IFs to submit their UTI further down the reporting channel to the CTP which could display this in a separate data field. While this would allow to better refer to one and the same trade even across various CTPs, the applicability would result in the ability to provide a relevant UTI in a predefined data field. Regardless of what is being displayed by the CTP, ideally it should always be possible to trace back a certain trade report published by a CTP. This can be done, as well in case the CTP publishes his own ID while maintaining submitted data including the original UTI either from the trading venue or from the APA. We therefore agree that APAs shall provide UTIs as well.

<ESMA_QUESTION_CP_MIFID_141>

Q142. Do you agree with ESMA's proposal? In particular, do you consider it appropriate to require for trades taking place on a trading venue the publication time as assigned by the trading venue or would you recommend another timestamp (e.g. CTP timestamp), and if yes why?

<ESMA_QUESTION_CP_MIFID_142>

Deutsche Börse Group agrees with ESMA as regards “the time of publication” to the market to be defined as when the market data was released either by the trading venue, an IF or an APA”. We would therefore suggest that each data source – be it Trading Venue, IF, APA or CTP adds a time stamp “data publication” to it's outbound feed. This way would support a

complete audit trail of when data was disseminated by which party in the value chain. However, most of these data fields would rather be used for audit or reporting to the regulator reasons. Besides the publication of the time stamp, of course the trade execution time shall always be made available in order to clearly identify the original trade time. This is the most important data field and time stamp to which any reference should be made by any receiving party in the chain. Generally, even in case there would be no officially authorised CTP, data would still be provided by Market Data Vendors which would usually and sensibly add their time of data publication on the screen which in combination with the execution time, makes best sense.

Even in case there would be no officially authorised CTP, data would still be provided by Market Data Vendors.

<ESMA_QUESTION_CP_MIFID_142>

Q143. Do you agree with ESMA's suggestions on timestamp accuracy required of APAs? What alternative would you recommend for the timestamp accuracy of APAs?

<ESMA_QUESTION_CP_MIFID_143>

With regard to the timestamp accuracy of an APA Deutsche Börse Group would suggest that accuracy to the second is sufficient (regardless of the trade being executed on an electronic system or not). This is to avoid confusion to the market (some trade reports would have an accuracy to the second and others an accuracy to the millisecond) and also because an APA is only relaying the information received by other sources and, therefore, the latency introduced by sending the report from the original source to the APA and the latency the APA itself will introduce so as to comply with the requirements for the detection of errors would make the accuracy to the millisecond useless.

<ESMA_QUESTION_CP_MIFID_143>

Q144. Do you agree with ESMA's proposal? Do you think that the CTP should identify the original APA collecting the information form the investment firm or the last source reporting it to the CTP? Please explain your rationale.

<ESMA_QUESTION_CP_MIFID_144>

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<ESMA_QUESTION_CP_MIFID_144>

Q145. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_145>

Besides offering pre- and post-trade data separately from each other as already decided in Level 1, ESMA recommends that data should be made available per the following asset classes:

- I. equity,
- II. fixed income instruments
- III. emission allowances
- IV. derivatives

All the above classes shall adhere to disaggregation of pre- and post-trade data as well, and each venue shall disaggregate further to several criteria lined out in RTS 22, Art 2 unless there is sufficient demand for those packages.

While Deutsche Börse Group strongly appreciates ESMA's considerate approach as regards a mandatory requirement focusing on 4 asset classes instead of 8, we do not agree with further unbundling as we do not deem this to create the desired results, but to the contrary will add to unmanageable complexity and potentially higher costs to the end user instead of lower cost and thus be neither proportionate nor efficient. Respective arguments are provided below:

- Further disaggregation of data will make data offering more complex, prone to errors and thus generally more expensive to the detriment of what was supposed to be achieved by the regulation
- Besides additional cost to the user through higher administration additional costs would apply at trading venue level in form of additional programming costs, additional labor cost for maintaining frequently changing combinations e.g. within index packages (there are more than 10.000 to 20.000 indices available in EU alone, changing their constituents regularly) additional costs of licensing of selection criteria like sector classification data, just to mention a few. Categorizing a very large universe of securities in an unambiguous manner to hard scientific criteria is a burdensome task³. Specialized vendors and proprietary standard owners (ICB, GICS) charge substantial fees for this type of activity. These costs would have to be passed on from the trading venue to users.
- Using various providers with various classifications schemes across trading venues would lead to non harmonised classifications across trading venues adding to confusion in the market, while market participants cannot rely on receiving all necessary data anymore.

Taking into account that a professional data user as of today does not pay more than the equivalent of a Starbucks Coffee per day for access to real-time data for more than 35.000 cash market instruments provided by Deutsche Börse Group (still combining different asset classes in one package), it seems questionable what could still be achieved cost wise by introducing more complexity and more risk into the production and offering of disaggregated data packages.

On top, and most important, as trading venues are not the last mile, it would be necessary that Data Vendors (last mile to end user) would offer the same disaggregation as provided by trading venues. This seems to be more than questionable as the more disaggregated data offerings become the higher the administration costs will turn out along the value chain: the trading venue, the intermediary and the end-user. As the administration of market data already represents a burden for trading venues, market data vendors and end users, anything which adds to this burden is unhelpful and does not serve the purpose. Unless the regulator is in the position to control the way data vendors proceed with the data there is no point in imposing such an obligation on trading venues which might as well then be ignored by data vendors.

Therefore, while Deutsche Börse Group agrees on the disaggregation of asset classes into 4 groups as outlined above, we cannot agree on the additional requirements as lined out in

³ While classification of securities is more advanced for plain-vanilla equities, it is fragmented incomplete and not widely accepted for other asset classes.

RTS 22, Art 2 due to the above outlined reasons which make clear that additional unbundling with neither be proportionate nor efficient.

Cost Benefit Analysis

As regards the cost/benefit analysis we like to point out that unlike stated no trading venue in the EU currently provides a full unbundling/disaggregation of pre- and post-trade data. The complete disaggregation of pre- and post-trade data will be introduced by MiFID II initially. The potential effect on trading venue's revenues cannot be anticipated. The assumption made in the Cost Benefit Analysis that Market Data Vendors will offer at least the same level of disaggregation is not right and needs to be corrected, unless it was introduced as an hypothesis only. In the real world there is no guarantee that Market Data Vendors will offer whatever trading venues disaggregate as this would require higher administration costs for vendors as well.

As regards the expected impact on trading venues we would like to add that besides higher IT cost additional data license fees would apply for trading venues levied by special data providers, e.g. as regards sector classification data. Those cost can be significant as proper classification requires a lot of work. Additionally, besides higher management cost additional administration cost would need to be considered as well.

The cost benefit analysis mentions that some trading venues might benefit from further disaggregation. This encompasses those trading venues that operate based on imported prices from other trading venues. It needs to be pointed out that usually those venues operate on a cherry picking basis, trading only liquid shares while leaving smaller issuers, and especially SMEs without any service. Competition is already working well as of today, it needs to be questioned why there should be further potential subsidization of venues which do not contribute to the overall welfare.

Another impact not mentioned by the cost benefit analysis is a reduction of potential additional services provided by trading venues compared to today, in case revenues would significantly be impacted. This could affect as well special services provided for SMEs as of now or to be provided in the future.

The cost / benefit analysis refers to front end terminals for end users, and that end users would have to "pay" for them in order to "read" the data. It needs to be pointed out that this leaves a false impression. While it is a global standard since decades that trading venues do not offer their own displays to the market as this would be absolutely uneconomical, the data is displayed via various channels, be it the trading venue, the internet, the broker, and Market Data Vendors. While some providers add services – mainly in the professional market – they tend to add fees on top of data, other providers offer data at no extra cost for the end user (license fees are being paid by the provider).

Proposed amendments to RTS 22

“(1) Regulation (EU) No 600/2014 provides for pre-trade and post-trade transparency data to be made available to the public in an ‘~~unbundled~~’ **disaggregated** fashion in order to reduce costs for market participants when purchasing data. Therefore this Regulation should set out specific criteria by which venues should offer

disaggregated data. All venues should be required to disaggregate by asset class, and each venue should also disaggregate by a range of criteria wherever there is sufficient demand for such disaggregated data from their customers.”

Rationale: Art 12 MiFIR talks about “disaggregation” of data not “unbundling”. In order to remain clear we have adapted wording according to Level 1. Furthermore, we recommend to stick to the disaggregation of asset classes as further disaggregation will not result in overall cost savings for the industry but to the contrary increase cost at all levels of the value chain.

“Article 1
Disaggregation by asset class

(1) A market operator or investment firm operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering ~~pre-trade and post-trade data separately~~ for each of the following asset classes:

- (a) equity instruments referred to in Article 3 of Regulation (EU) No 600/2014;
- (b) fixed income instruments;
- (c) emission allowances;
- (d) derivatives.”

Rationale: Disaggregation will support the creation of CTPs per asset class and could therefore be reasonable.

“Article 2
Other disaggregation

~~“1. A market operator or investment firm operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre- and post-trade data separately in according with the following criteria:~~

- ~~(a) the country of issue of the instrument;~~
- ~~(b) the currency in which the instrument is denominated or traded;~~
- ~~(c) the industry sector of the issuer based on the EU Statistical Classification of Economic Activities in the European Community (NACE) or another appropriate classification;~~
- ~~(d) membership of a major index;~~
- ~~(e) auctions as opposed to continuous trading;~~
- ~~(f) different types of derivatives according to the underlying:~~
 - ~~(i) equity derivatives~~
 - ~~(ii) interest rate derivatives (including fixed income derivatives)~~
 - ~~(iii) credit derivatives~~
 - ~~(iv) foreign exchange derivatives~~
 - ~~(v) commodity derivatives.~~

and consequently as well

~~2. Where it is unclear whether an instrument or a type of data meets a particular criterion, the market operator or investment firm shall determine whether that criterion is met.”~~

Rationale: As pointed out above, further disaggregation above asset class is not to be supported as it would raise cost across the value chain. Visibility of SMEs would be significantly reduced as well.

<ESMA_QUESTION_CP_MIFID_145>

Q146. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_146>

Deutsche Börse Group does not fully agree with ESMA's approach. While Deutsche Börse Group appreciates further clarity as regards who is responsible for trade publication, which will hopefully lead to reduced errors as regards OTC trade publication, we need to point out that the RTS is missing a reference to a trade where the seller is an entity located outside the EU. We therefore strongly suggest to incorporate an additional paragraph into Art 1 of RTS 23, stating that in case the seller in a trade is located outside of the EU while the buyer is located within the EU, the buyer will have to ensure trade publication. We deem this to be indispensable in order to have the correct data base for the double volume cap calculations.

Proposed amendments to RTS 23

“Article 1

Investment firm responsible for reporting a transaction

(1) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, the investment firm that sells the financial instrument concerned shall be responsible for making the transaction public through an APA. **In case the seller in a trade is located outside of the EU while the buyer is located within the EU, the buyer will have to ensure trade publication through an APA.”**

Rationale: in order to have a clear picture of OTC trades executed in the EU and as well in order to have the correct data base for the double volume cap calculations the inclusion above is absolutely necessary.

<ESMA_QUESTION_CP_MIFID_146>

Q147. With the exception of transaction with SIs, do you agree that the obligation to publish the transaction should always fall on the seller? Are there circumstances under which the buyer should be allowed to publish the transaction?

<ESMA_QUESTION_CP_MIFID_147>

Deutsche Börse Group agrees that the seller should be responsible to report the trade, unless the counterparty is located outside the EU. In this case the buyer – who is located in the EU - would need to publish the trade. This is tantamount especially in the light of double-volume-cap calculation.

<ESMA_QUESTION_CP_MIFID_147>

Q148. Do you agree with the elements of the draft RTS that cover a CCP's ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_148>

For some elements, Deutsche Boerse Group agrees. However, there are some fundamental issues where Deutsche Boerse Group disagrees and would expect ESMA to consider changes to the draft. We have set out our proposed draft changes at the bottom of this section.

The main issues in the current draft are as follows (all references to Recitals and Articles are to Recitals and Articles in RTS 24, unless otherwise stated):

(1) RTS 24 Recital (7): Extension of CCP EMIR authorization

In Deutsche Boerse Group's view a CCP has a natural interest in pursuing new opportunities including the provision of clearing services for new asset classes, instrument types and markets in cooperation with trading venues. Based on our experience such cooperation requires a consensual approach to appreciate the fair sharing of required investments, commercial risks and revenue potential between the parties involved. The economic viability of a mutually agreed business case including the sustained support of clearing members and trading participants are central to such an undertaking. In most cases it will be unreasonable to assume that such an undertaking will be assessed, arranged and implemented within the timelines defined in MIFIR Level 1 Art. 35 (3) and Art. 36 (3).

Against this background and contrary to Recital (7), we do not consider it the intent of the MIFIR Level 1 text to require, via enforceable access provisions, that a CCP should be expected mandatorily to agree to clear absolutely any and all forms of financial instruments, nor do we see a policy justification for such an approach. In our view such enforceable provisions would set incentives for a large number of opportunistic access requests which fail to deliver economic viability and demonstrable market demands. Imposing such an obligation to contract on CCPs would make them becoming test labs for new business ideas at the expense of the industry.

Hence, imposing an obligation on a CCP to extend its authorization goes far beyond the primary objective of Level 1 to promote competition. Offering a Trading Venue the right to force a CCP into clearing services for instruments where a CCP decided for operational, economical and legal reasons not to offer such services is in our view not acceptable. Such kind of access request requires a shared entrepreneurial undertaking and should be left for consensual access arrangements rather than becoming enforceable by means of MIFIR Art. 35.

Consequently, Deutsche Boerse Group proposes that Recital (7) should be amended and a new sub-article Art. 1 (5) should be added to clarify that a CCP is not mandatorily expected to clear instruments outside the scope of its current EMIR

Authorization and that a CCP may therefore reject any access request falling outside of its current EMIR authorization. Given the broad range of instruments subsumed in EMIR authorization categories, a similar logic should apply to instruments which are considered within a CCP's authorization but where the CCP at the time of the access request does not offer clearing services because of fundamental differences in risk methodology and risk modelling. EMIR Art. 49 provides for objective criteria to assess under which circumstances such clearing service extensions manifest grounds for denying an access request for new instruments outside the scope of current clearing services. Accordingly, an additional sub-article Art. 4 (1) (a) should be added to cover this aspect.

(2) RTS 24 Art. 1: All reasonable efforts in due time

In line with the considerations above on the need for consensual access arrangements in cases where investment needs, required changes to the operating models and the immanent business risk associated with an access request go far beyond the primary objective and defined timelines of MIFIR Level 1, Deutsche Boerse Group is of the view that throughout the elements of the draft RTS that cover a CCP's and a Trading Venues' ability to deny access any denial in Art. 2-6 should be made subject to having undertaken all reasonable efforts to manage risks in due time according to the timelines defined in MIFIR Level 1 Art. 35 (3) and Art. 36 (3).

In addition, Deutsche Boerse Group is of the view that the obligations to undertake all reasonable efforts in due time should also be imposed on the party requesting access. Further, where there is an objectively justified alternative the efforts should in principle be undertaken by the requesting party. This would be in line with MIFIR Level 1 Art. 35 (1). Such amendments should also be considered in cases where a CCP requests access to a Trading Venue. Therefore, we propose amendments to Art. 1 and that a new article Art. 1 (2) should be added.

(3) RTS 24 Art. 3 (2) (a): Incompatibility of CCP and Trading Venue IT systems

Art. 35 (1) of MIFIR Level 1 provides for clear guidance on incompatibility issues. It states "A CCP may require that the Trading Venue comply with the operational and technical requirements established by the CCP including the risk management requirements." The unambiguous reading of that Level 1 provision is that a CCP can demand that, in order for the Trading Venue to gain access, it must be able to connect to and interact with the CCP's IT systems. If it does not, then the requesting Trading Venue fails the Level 1 requirement to comply with the CCP's operational and technical requirements. Therefore, the provisions regarding incompatibility of IT systems must not be diluted and should in round terms state that it is to the requesting party to establish connectivity.

Deutsche Boerse Group is of the view that it would be unreasonable and disproportionate to assume that incompatibilities have to be resolved by all means by the CCP. There is a likelihood that incompatibilities may not be resolvable with all reasonable efforts and in due time as they may arise from the technical, functional and legal integration of systems and operations like for example advanced risk protection mechanisms. As outlined above Deutsche Boerse Group is of the view that

where there is an objectively justified alternative the efforts should in principle be undertaken by the requesting party.

(4) RTS 24 Art. 4 (1) (b): Threaten economic viability and ability to meet capital requirements

It is disproportionate and should not be in the spirit of MIFID II / MIFIR that the only backstop for denying an access request which lacks economic viability and carries the anticipated risk of causing substantial losses to a CCP would be the CCP's overall economic viability and overall ability to meet its capital requirements. Deutsche Boerse Group would also like to point out that the lack of provisions to allow for a denial of economically inviable access requests on an individual basis leads to an unwanted incentive for opportunistic behavior. This is in conflict with the going concern of a CCP and sets incentives for opportunistic access requests which could force a CCP to the brink.

Without any further provisions and objective criteria for prioritization and pre-selection of access requests, CCPs will be forced to commit significant financial and human resources towards assessing and potentially implementing premature and economically inviable access requests. As the provisions in RTS 24 also lack elements considering the impact on clearing members and their readiness to support an access requests as grounds for denial, Deutsche Boerse Group is strongly concerned that the current provisions will cause opportunistic behavior of requestors at the expense of the industry and the clearing members in particular.

In conjunction with this issue ESMA states in paragraph 16 on page 456 of the Consultation Paper that it can not be catered for explicit provisions in the RTS 24 on the allocation of cost (and economic risk) between requesting party and the party receiving the request under Article 35 (6). In this context ESMA points to RTS 24 Art. 4 where such aspects are supposed to be covered under "other factors creating significant undue risk". But this does not sufficiently cater for the issue at hand. Deutsche Boerse Group is of the view that the term "economic viability" needs further refinement as to provide provisions allowing for a denial of economically inviable access requests on an individual basis by taking into account objective criteria to assess the investments, volume and revenue projections.

(5) RTS 24 Art. 4 (1) (c): Legal risk

Any legal risk that creates undue risk that cannot be managed by the CCP should be a ground to deny access. Deutsche Boerse Group is of the view that the current drafting of Art. 4 (1) (c) together with the finite list of only two specific legal risks in Art 4 (2) is not acceptable. The list must not be finite, i.e., Art. 4 (2) should be removed or become an illustrative rather than a finite list.

As a more general point the sub-articles in Art. 4 suggest that a CCP is supposed to accept exposure to risks, except where this risk is undue and significant. This runs contrary to EMIR and the CPMI-IOSCO principles, which require CCPs to ensure that they are not exposed to unmitigated risk at all.

(6) RTS 24 Art.4 (1) (d): Incompatibility of CCP and Trading Venue rules

Art. 35 (1) of MIFIR Level 1 provides for clear guidance on incompatibility issues. It states “A CCP may require that the Trading Venue comply with the operational and technical requirements established by the CCP including the risk management requirements.” The unambiguous reading of that Level 1 provision is that a CCP can demand that, in order for the Trading Venue to gain access, it must comply with the CCP’s rules and operating model. If it does not, then the requesting Trading Venue fails the Level 1 requirement to comply with the CCP’s operational and technical requirements. Therefore, the provisions regarding incompatibility of rules must not be diluted and should in round terms state that it is to the requesting party to establish full compliance to the satisfaction of the CCP.

Deutsche Boerse Group is of the view that it would be unreasonable and disproportionate to assume that incompatibilities have to be resolved by all means by the CCP. There is a likelihood that incompatibilities may not be resolvable with all reasonable efforts and in due time as they may arise from the technical, functional and legal integration of systems and operations like for example advanced risk protection mechanisms. As outlined above Deutsche Boerse Group is of the view that where there is an objectively justified alternative the efforts should in principle be undertaken by the requesting party.

Proposed amendments to RTS 24 Article 1 to 4

“Recital (7) When a trading venue requests access to a CCP concerning instruments currently not covered under the CCP’s authorisation, **cleared by the latter should CCP and the CCP does not deny the access request the latter should launch a clearing service for such instruments (unless one of the grounds set out herein permits the denial of access), including where necessary requesting request** an extension of its authorisation to the competent authority of the Member State where it is established, which should in turn immediately transmit all information received from the applicant CCP to the college of the CCP. The relevant competent authority should duly consider the opinion of the college on the extension of authorisation according to Regulation (EU) No. 648/2012.”

“Article 1

Common conditions on the denial of access by a CCP or a trading venue

- (1) **AUpon receipt of an access request pursuant to Article 35 or Article 36 of Regulation (EU) No 600/2014, A a CCP and or a trading venue, as applicable, shall assess whether granting access will create any of the risks specified in Articles 2 to 6 and all parties to the access request shall make arrangements to manage any risk identified.**
- (2) **In case there is an objectively justified alternative to mitigate the risks, the responsibility for the risk mitigation shall be with the requesting party.**
- (3) **Subject to Article 1(5), a A CCP and or a trading venue may deny such access only if, after all parties to the access request_ making all reasonable efforts to**

manage ~~their~~ risks in accordance with previous paragraph, there remain significant undue risks that cannot be managed **in due time**.

- (4) **Subject to Article 1(5)**, if a CCP or trading venue denies access, it shall identify which risks specified in Articles 2 to 6 would result from granting access and why those risks cannot be managed **in due time**.
- (5) **A CCP shall be entitled to deny an access request if the granting of such access would require an extension of the scope of contracts covered by the CCP's initial or subsequent authorization under Regulation (EU) No.648/2012.**"

Conditions under which a CCP may deny an access request

Article 2

Denial of access based on the anticipated volume of transactions

A CCP may deny an access request on grounds of the anticipated volume of transactions only when the reasonably anticipated volume of transactions arising from such access would create significant undue risks by:

- (a) exceeding the scalable design of the CCP to such an extent that the CCP cannot adapt its systems so as to deal with the anticipated volume **with reasonable efforts in due time**; or
- (b) exceeding the planned capacity of the CCP in a way that the CCP would not be able to acquire the required extra capacity **with reasonable efforts** in due time.

Article 3

Denial of access based on operational risk and complexity

1. A CCP may deny an access request on grounds of operational risk and complexity arising from such access only when it cannot **with reasonable efforts in due time** adopt arrangements to adequately manage those risks such that there would be significant undue risk remaining-
2. For the purposes of the previous paragraph, relevant types of risks are, among others:
 - (a) Incompatibility of CCP and trading venue IT systems such that the CCP and **the trading venue** cannot provide for connectivity **and technical integration** between the systems **in due time and with reasonable efforts**;
 - (b) **that** the CCP does not have, nor is it able to **procure** ~~get~~ in due time and **with reasonable efforts**, the necessary human resources with the necessary knowledge, skills and experience to perform its functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already cleared by the CCP.

Article 4

Denial of access based on other factors creating significant undue risks

1. In addition to the circumstances identified in Articles 2 and 3 of this Regulation, a CCP may deny an access request, only when it cannot adopt arrangements to adequately manage any of the following risks arising from granting access such that there would be significant undue risk remaining:

- (a) **the CCP does not currently offer clearing service for the financial instruments for which access is being requested and, despite reasonable efforts, would be unable to launch in due time a clearing service consistent with the requirements set out in Article 49 of Regulation (EU) No 648/2012.**
- (ba) the CCP does not have, nor is it able to get in due time, the necessary authorisations consistent with meeting the relevant requirements set out in Title IV of Regulation (EU) No 648/2012 regarding the financial instruments in question;
- (cb) granting access would threaten the economic viability of the CCP or its ability to meet minimum capital requirements under Article 16 of Regulation (EU) No 648/2012;
- (de) legal risks; or
- (ed) there is an incompatibility of CCP and trading venue rules that the CCP cannot remedy in cooperation with the trading venue **with reasonable efforts in due time.**

2. A CCP may refuse an access request based on legal risk as referred to in subparagraph (de) of the previous paragraph. **Such legal risks include, but are not limited to situations, where as a result of granting access the CCP, and having made reasonable efforts in conjunction with the trading venue:**

- (a) would not be able to enforce its rules relating to close out netting and default procedures; or
- (b) cannot manage the risks arising from the simultaneous use of different trade acceptance models.”

<ESMA_QUESTION_CP_MIFID_148>

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

<ESMA_QUESTION_CP_MIFID_149>

Deutsche Boerse Group does only partly agree. We want to underpin that the reasons for the denial of access for a Trading Venue towards a CCP and vice versa should in principle be balanced. We have set out our proposed draft changes at the bottom of this section.

The main issue in the current draft is as follows (all references to Recitals and Articles are to Recitals and Articles in RTS 24, unless otherwise stated):

RTS 24 Art. 6 (1): Legal Risk

As for CCPs a Trading Venue should also be able to deny access based on legal risk. On grounds of systemic integrity and market stability, it is not appropriate for Trading Venues to take on significant undue risk that cannot be mitigated. Legal risks should be added as a new sub-paragraph Art. 6 (1) (c). Accordingly, Deutsche Boerse Group proposes to add a non-definitive list of grounds by introducing a sub-paragraph Art. 6 (2) with reference to the most obvious areas of concern in this respect.

Please also note that the general point made above regarding Art. 4 also holds for Art. 5 and Art. 6, i.e., the current drafting of Art. 5 and 6. suggests that a Trading Venue is supposed to accept exposure to risks, except where this risk is undue and significant. In Deutsche Boerse

Group's view an access request should not expose a Trading Venue to unmitigated risk at all.

Proposed amendments on RTS 24 Article 6

“Conditions under which a Trading Venue may deny an access request

Article 6

Denial of access based on other factors creating significant undue risks

1. In addition to the circumstances identified in the previous article a trading venue may deny an access request only when it cannot **with reasonable efforts in due time** adopt arrangements to adequately manage any of the following risks arising from granting access such that there would be significant undue risk remaining:
 - (a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under Article 47(1)(f) of Directive 2014/65/EU; ~~and~~
 - (b) incompatibility of trading venue and CCP rules that the trading venue cannot remedy in cooperation with the CCP; ~~or~~
 - (c) legal risks.**
2. **For the purpose of paragraph 1(c), types of relevant risks are, among others, the CCP requesting access not having in place arrangements that enable the trading venue to meet its obligations with respect to applicable sanctions regime, anticorruption legislation to other regulatory requirements.”**

<ESMA_QUESTION_CP_MIFID_149>

Q150. In particular, do you agree with ESMA's assessment that the inability to acquire the necessary human resources in due time should not have the same relevance for trading venues as it has regarding CCPs?

<ESMA_QUESTION_CP_MIFID_150>

Deutsche Boerse Group does not agree. It is indeed important that Trading Venues just as well as CCPs must have sufficient human resources to fulfil their duties. There is no justification why this reason to deny access should not apply to Trading Venues. Arguably, such situation may occur less likely. However, if a Trading Venue is unable to acquire the necessary resources in due time, then such situation must also be a valid reason for denial.

Proposed amendments on RTS 24 Article 5

“Conditions under which a Trading Venue may deny an access request

Article 5

Denial of access based on operational risk and complexity

1. A trading venue may deny an access request on the grounds of operational risk and complexity arising from such access only when it, **with reasonable efforts in due time,** cannot adopt arrangements to adequately manage those risks such that there would be significant undue risk remaining.

2. For the purposes of paragraph 1, types of relevant risk are, among others, **especially**

- (a) the incompatibility of CCP and trading venue IT systems such that the trading venue **and the CCP** cannot provide for connectivity between the systems.
- (b) **the trading venue does not have, nor it is able to obtain in due time and with reasonable efforts, the necessary human resources with the necessary knowledge, skills and experience to perform its functions regarding the risk stemming from additional financial instruments where these differ from financial instruments already traded on that specific venue.**

<ESMA_QUESTION_CP_MIFID_150>

Q151. Do you agree with the elements of the draft RTS that cover an CA's ability to deny access? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_151>

Deutsche Boerse Group does not agree. The CAs of the CCPs and Trading Venues are the direct supervisory authorities and therefore are closest to the matter and based on continuous surveillance and inspections are best positioned and informed to assess the implications of access requests. Deutsche Boerse Group takes the view that the draft RTS 24 in Art. 7 disproportionately and unreasonably limits the ability for CAs to deny access. We have set out our proposed draft changes at the bottom of this section.

The main issues in the current draft is as follows (all references to Recitals and Articles are to Recitals and Articles in RTS 24, unless otherwise stated):

Art. 7 (a) and (b): Grounds for denial must not be cumulative

MiFIR Article 35 (4) (b) states that “The competent authority of a CCP or that of the Trading Venue shall grant a Trading Venue access to a CCP only where such access...would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.” In Deutsche Boerse Group’s view the list of grounds for denial of access by a CA should neither be cumulative nor definite.

Accordingly, Deutsche Boerse Group takes the view that it is not at ESMA’s discretion to specify that the conditions in Article 7 of RTS 24 be cumulative by requiring all grounds for denial to also result in “significant undue risks...that would have a wider negative impact on the market”. Consequently, ESMA should change the “and” – which is contrary to the wording of the Level 1 text – into an “or” between Art. (7) (a) and (b).

Art. 7 (b): Impact on clearing members, trading participants and clients thereof

In addition, Deutsche Boerse Group in the last consultation strongly advocated to include adverse impacts on and potential undue risks for clearing members, trading participants and clients thereof into the considerations for grounds for denying access requests. As outlined in the Consultation Paper, ESMA considers access arrangements as a purely bilateral matter between Trading Venues and CCPs and, thereby, ignores the fact that trading participants and clearing members need to update their IT systems, operational, legal and risk management processes within the same timeframes as the venues themselves.

If undue risks remain on any level of the value chain it is also critical for systemic risk and market stability reasons. Therefore, Deutsche Boerse Group advocates for the consideration of the impact on clearing members, trading participants and clients thereof as a reason for denial on the level of CAs. If a CA concludes that there is a significant undue risk relating to those who connect to or otherwise use the Trading Venue and CCP subject to an access arrangement, then that should be sufficient on its own for a CA to deny access. We have proposed some wording to complement Art. 7 (b).

Proposed amendments on RTS 24 Article 7

“Denial of access by a competent authority
Article 7

Conditions under which access will threaten the smooth and orderly functioning of markets or adversely affect systemic risk

Granting access will threaten the smooth and orderly functioning of the markets or adversely affect systemic risk, apart from the situations identified in Regulation (EU) No 600/2014, where, **for example**:

- (a) one of the parties to the agreement is not meeting its legal obligations, or would be unlikely to meet its legal obligations as a consequence of granting access; **or**
- (b) granting access would create significant undue risks for the CCP, ~~or the trading venue,~~ **their respective members and clients of such members** in a way that ~~would~~ **may** have a wider negative impact on the market; ~~and~~
- (c) **and, in any of the cases,** there is no remedial action that would allow the relevant party to meet its legal obligations with reasonable effort prior to the access arrangement being put in place according to Article 35(3) and 36(3) of Regulation (EU) No 600/2014.

<ESMA_QUESTION_CP_MIFID_151>

Q152. Do you agree with the elements of the draft RTS that cover the conditions under which access is granted? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_152>

Deutsche Boerse Group broadly agrees but would propose some minor drafting changes. As to Art. 8 (1) the detailed reasoning behind our drafting proposals are as follows:

- (1) Art 8 (1) (e) should be extended to cover market practices, as well as relevant laws and regulations – neither party should be expected to derogate from widely accepted market practices as a condition to the access arrangement.
- (2) Art 8 (1) (f) (ii) should be extended such that the access agreement is clear on the impact of termination thereon on trades already cleared by the CCP – this is clearly critical so as to ensure systematic integrity and market stability in the event of a termination of a key access arrangement.
- (3) Art 8 (1) (f) (iii) should refer to the “defaulting party” rather than the “relevant party”.

(4) A new Art 8 (1) (f) (v) should be added to ensure that the impact of sanctions, cyber-security breaches, changes in legislation and force majeure events should be catered for.

As to Art. 8 (2) the detailed reasoning behind our drafting proposals are as follows:

(1) The introductory provision in Article 8 (2) refers to “all CCPs” but only refers to “the Trading Venue”. It should cover all Trading Venues and all CCPs that are connected to one another.

(2) Art 8 (2) (b) should not only refer to the Trading Venues and CCPs that are to be party to the access arrangement, but also any other Trading Venues or CCPs that are already connected to the venues considering the access arrangement under consideration – given that the operation of position limits, especially commodity position limits, will require detailed coordination between all Trading Venues connected to the CCP (so that the Trading Venues can meet their obligations with respect to the monitoring of open interests – as noted in Art 8 (2) (f)), it is essential that all venues that are to be connected to one another via access arrangements understand and agree the impact of adding another venue to the existing network of connected entities. Entities that are already connected will justifiably want to be consulted (at least – it may even require formal agreement) on any issue that may have an impact on their existing access arrangement.

As to Art. 8 (3) the wording would benefit from further clarification and definition as set out in our proposed changes below:

Proposed amendments to RTS 24 Article 8

“Article 8

Conditions under which access must be permitted

1. The relevant parties to an access arrangement in accordance with Articles 35 and 36 Regulation (EU) No 600/2014 shall agree on their respective rights and obligations, including the applicable law governing their relationships. The terms of the access arrangement shall:
 - (a) be clearly defined, transparent, valid and enforceable in all relevant jurisdictions;
 - (b) where applicable, specify how two or more CCPs with access to the same trading venue interact with one another;
 - (c) contain clear rules concerning the moment of entry of transfer orders **(as such term is to be construed pursuant to EU Directive 98/26/EC, as amended by EU Directive 2009/44/EC)** into relevant systems and the moment of irrevocability;
 - (d) not contain any provision that restricts or creates obstacles for the establishment or future extension of the access arrangement to other entities, other than on duly justified risk grounds;
 - (e) not impact on the compliance by the entities participating in the arrangement with the requirements to which they are subject under **all relevant laws, regulations and market practices**;
 - (f) contain rules regarding the termination of the access arrangements **as a result of a breach of the terms thereof** by any of the involved parties **(unilateral**

termination upon notice not being permitted under any access arrangement), which should

- (i) be clear and transparent;
 - (ii) cater for termination in an orderly manner that does not unduly expose other entities that are part of the access arrangement to additional risks; **including clear and transparent arrangements for the management and orderly run-off contracts and positions made under the access arrangements that were open at the point of termination;**
 - (iii) ensure that termination is not triggered by minor breaches of the contract and that the ~~relevant~~-**defaulting** party is given a reasonable amount of time to remedy any breach that does not give rise to immediate termination;
 - (iv) allow the termination, if risks increase in a way that would have justified denial of access in the first instance;
 - (v) cater for the impact of sanctions, cyber-security breaches, changes in legislation and force majeure events**
 - (g) specify the contracts being subject to the access arrangement;
 - (h) specify the cover of the one-off and ongoing costs triggered by the access request; and
 - (i) cater appropriately for claims and liabilities stemming from the access arrangements.
2. The terms shall require that the ~~trading venue and all CCPs~~ **relevant parties** to the access arrangement put in place adequate policies, procedures and systems to ensure:
- (a) timely, reliable and secure communication between the relevant entities;
 - (b) consultation where any change to ~~either~~ **any such** entity's operations is likely to have a material impact on the access arrangement or the risks to which the other entity is exposed;
 - (c) timely notification to the relevant party before a change is implemented, where the impact of a change is unlikely to be significant;
 - (d) resolution of disputes;
 - (e) identification, monitoring and management of the potential risks arising from the access arrangement;
 - (f) reception by the trading venue of relevant information in order to be able to fulfil its obligations regarding the monitoring of open interest, as appropriate; and
 - (g) acceptance by the CCP of delivery of physically settled commodities, **if and** as appropriate.
3. The relevant parties to the access arrangement shall ensure that:
- (a) risk management standards are not being reduced by granting access; **in the judgment of the CCP's Risk Committee (and the applicable competent authorities pursuant to the procedures referred to in Article 49 of Regulation (EU) No 648/2012;**
 - (b) information provided in **connection with** the request for access, **regardless of whether such information was provided during the applicable or following the granting of access**, is kept up-to-date throughout the duration of the access arrangement, which includes an information about any material changes; and
 - (c) non-public and commercially sensitive information ~~including any information provided during the development phase of a financial instrument is~~

only to be used for the specific purpose for which it was conveyed and may only be acted upon for the specific purpose agreed by the entities **and, unless otherwise agreed between the parties, shall be kept confidential unless and until such information becomes public (other than by the reason of the publication of such non-public or commercially sensitive information by the recipient thereof under the access arrangement)."**

<ESMA_QUESTION_CP_MIFID_152>

Q153. Do you agree with the elements of the draft RTS that cover fees? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_153>

Deutsche Boerse Group does partly agree with the provisions.

Art. 9 (1) and (2) state that all clearing members (and in Article 9 (1), where applicable, their clients) must be charged the same schedule of fees. Art. 35 (6) (b) of MiFIR Level 1 states that it is the fees relating to access (i.e. the access by one Trading Venue to the CCP rather than another) that must be non-discriminatory. That is not the same as saying that all fees charged to all clearing members must be the same in all circumstances. Particularly, the same fees should be charged by the CCP for the same/economically equivalent products, regardless of where that product is traded, so long as all costs of granting and giving effect to the access request have been taken into account. We have set out our proposed draft changes at the bottom of this section of our response.

Proposed amendments on RTS 24 Article 9

"Article 9

Non-discriminatory and transparent clearing fees charged by CCPs

1. A CCP shall only charge fees for clearing transactions executed on a trading venue to which it has granted access on the basis of objective criteria, applicable to all clearing members and, where relevant, clients. Fee **schedules** shall not ~~depend~~ **be discriminatory in respect to** ~~on~~ the trading venue where the transaction takes place.
2. A CCP shall make all clearing members and, where relevant, clients subject to the same schedule of fees **relating to access** and rebates and not just a subset of them.
3. A CCP shall only charge fees to a trading venue in relation to access on the basis of objective criteria. The same fee and rebate **schedules** shall apply for all trading venues accessing the CCP with regard to the same or similar financial instruments, unless a different basis can be objectively justified.
4. A CCP shall ensure that the fee schedules referred to in paragraphs 1, 2 and 3 are easily accessible, adequately identified per service provided and sufficiently granular in order to ensure that fees charged are predictable.
5. For the purpose of this Article, relevant fees are fees charged to cover both one-off and ongoing costs.

Article 10

Non-discriminatory and transparent fees charged by trading venues

1. A trading venue shall only charge fees in relation to access on the basis of objective criteria. The same fees and rebates **schedules** shall apply **in a non-discriminatory manner** to all CCPs accessing the trading venue with regard to the same or similar financial instruments, unless a different basis can be objectively justified.”

<ESMA_QUESTION_CP_MIFID_153>

Q154. Do you agree with the proposed draft RTS? Please indicate which are the main costs and benefits that do you envisage in case of implementation of the proposal.

<ESMA_QUESTION_CP_MIFID_154>

Deutsche Boerse Group is surprised that Q154 differs from most other questions on access before by not providing the response with the opportunity to “explain why and, where possible, propose an alternative approach” in case of disagreement with the proposed drafting. Nevertheless, as there is fundamental disagreement with the proposed draft RTS in respect to the provisions set out in Art. 11 to 13 Deutsche Boerse Group would like to explain why and also outline an alternative drafting. We will conclude with an assessment of the cost and benefits of the ESMA proposal.

In taking the extremely broad determination of “economic equivalence” by reference to EMIR authorization categories ESMA fails to deliver on the Level 1 mandate to provide an objectively demonstrable and applicable definition of the term. The determination should be made on economic grounds, not by reference to regulatory constructs. We further note that the definition of “economically equivalent” in Article 11 of RTS 24 and the discussion in recital (11) to not match the statement made by ESMA in paragraph 4.3.72 of the Consultation Paper that it the CCPs should have discretion to determine economic equivalence.

In line with the proposals made by FIA Europe in the current response, Deutsche Boerse Group encourages ESMA to consider the determination of economic equivalence along the lines of the precedent already set EMIR through Article 27 (1) of Commission Delegated Regulation No. 153/2013 (which relates to cross-product margining at CCPs and is referred to in Article 13 of RTS 24), such that economic equivalence means that the two instruments being compared are “significantly and reliably correlated, or based on equivalent statistical parameters of dependence, with the price risk of one another”. This proposal would then tie-in Recital 11, Articles 11 and 12 of RTS 24 with Article 13 of RTS 24, which already refers to Article 27 of that Commission Delegated Regulation.

In addition, ESMA materially misinterpreted MIFIR Art. 35 (e). The RTS 24 repeatedly refers to the same collateral and margin requirements in Art. 11 (2), the same netting process in Art. 12 (1) and in respect to portfolio margining in Art. 13. According to MIFIR Art. 35 (e) it should be on a non-discriminatory basis rather than the same.

As to the envisaged cost and benefit of ESMA’s proposal Deutsche Boerse Group would like to point out that by (a) failing to deliver on the Level 1 mandate to provide an objectively demonstrable and applicable definition of the term economic equivalence as a basis for a straight forward determination of non-discriminatory treatment in respect to Art. 11 to 13 and

(b) materially expanding on the original scope and purpose of the respective EMIR provisions in virtually making any CCP decision subject to the Risk Committee and the EMIR Art. 49 procedure; being it the decision to include or not to include a certain instrument in the same margining and collateral methodology, netting process and portfolio margining approach. In combination, (a) and (b) lead to high uncertainty on the side of the CCP as well as the trading venue and leave significant room for interpretation and dispute. All in all, it will lead to resource demanding and lengthy – but many times pointless – quarrelling between the parties as well as in the Risk Committee and in the course of the review procedure according to Art. 49 of EMIR.

Proposed amendments to RTS 24 Recital 11 and Article 11

Recital (11): ‘Pursuant to Regulation (EU) No. 648/2012, a CCP wishing to extend its business to additional services or activities not covered by the initial authorisation should submit a request for an extension of authorisation. An extension of authorisation is needed where a CCP intends to offer clearing services on financial instruments with a different risk profile or that have material differences from the CCP’s existing product set. ~~When a contract traded on a trading venue to which a CCP has granted access is covered by the scope of the CCP’s current authorisation, such a~~ **A** contract is to be considered as economically equivalent to the contracts already cleared by the CCP, **if such contracts are significantly and reliably correlated or based on equivalent statistical parameter of dependence, with the price risk of other contracts cleared by such a CCP. This decision on equivalence should be validated through the CCP’s Risk Committee and be subject to the procedures referred to in Article 49 of Regulation (EU) No 648/2012.**’

Conditions for non discriminatory treatment of contracts

Article 11

Collateral and margining requirements of economically equivalent contracts

1. A CCP shall consider economically equivalent all contracts traded on the trading venue to which it has granted access, ~~which are covered by the CCPs’ initial authorisation referred to in Article 14 of Regulation (EU) No. 648/2012, or by any subsequent extension of authorisation referred to in Article 15 of Regulation (EU) No. 648/2012.~~ **648/2012.648/2012, if such contracts are significant and reliably correlated, or based on equivalent statistical parameter of dependence, with the price risk or other contracts cleared by such CCP. This decision on equivalence should be validated through the CCP’s Risk Committee and be subject to the procedures referred to in Article 49 of Regulation (EU) No 648/2012.**
2. The CCP shall apply to economically equivalent contracts referred to in paragraph 1 the ~~same~~ **non-discriminatory** margin and collateral methodologies, irrespective of where the contracts are executed. A CCP may introduce changes to models or parameters regarding the clearing of economically equivalent contracts referred to in paragraph 1, in order to mitigate the respective risk factors of that trading venue or the contracts traded thereon. These changes shall be considered as significant changes to models or parameters that shall be subject to a review by the Risk Committee of the

CCP and be subject to the review procedure referred to in Article 49 of Regulation (EU) No 648/2012.

Article 12

Netting of economically equivalent contracts

1. A CCP shall apply **non-discriminatory netting processes** to economically equivalent contracts referred to in paragraph 1 of Article 11 ~~the same netting processes~~, irrespective of where the contracts were executed. **A CCP shall not net two contracts (whether or not such contracts were economically equivalent) unless** provided that the applied netting process is valid, binding and enforceable in compliance with Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems and the relevant applicable insolvency law; **and is binding and enforceable for regulatory capital purposes and/or, where applicable, balance sheet netting purposes.**
2. Where the CCP considers that the legal risk or the basis risk related to ~~a the particular netting process~~ **processes** applied to an economically equivalent contract traded on different trading venues is not sufficiently mitigated, the CCP may exclude such contracts from **those particular** ~~that netting process~~ **processes**.
3. Where, in accordance with paragraph 2 above, a CCP excludes from netting economically equivalent contracts traded on different trading venues, this shall be considered as a significant change to its netting process that shall be subject to a review by the Risk Committee of the CCP and be subject to the review procedure referred to in Article 49 of Regulation (EU) No 648/2012.
4. For the purpose of this Article “basis risk” means the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.
5. **Nothing in this Article 12 shall prevent a CCP from applying one or more of the remaining netting processes (or collateral or margining requirements under Article 11) to an economically equivalent contract where the CCP has determined under Article 12(2) to exclude such contracts from one particular netting process.**

Article 13

Cross-margining of correlated contracts (Portfolio margining)

Where a CCP calculates margins with respect to portfolio margining of financial instruments in accordance with Article 41 of Regulation (EU) No 648/2012 and Article 27 of Regulation (EU) No 153/2013, the CCP shall **act in a non-discriminatory manner where applying** ~~apply~~ its portfolio margining approach to all relevant correlated contracts irrespective of where the contracts are executed.

<ESMA_QUESTION_CP_MIFID_154>

Q155. Do you agree with the elements of the draft RTS specified in Annex X that cover notification procedures? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_155>

Deutsche Börse Group agrees with the elements of the draft RTS.

<ESMA_QUESTION_CP_MIFID_155>

Q156. Do you agree with the elements of the draft RTS specified in [Annex X] that cover the calculation of notional amount? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_156>

Deutsche Börse Group agrees with the elements of the draft RTS.

<ESMA_QUESTION_CP_MIFID_156>

Q157. Do you agree with the elements of the draft RTS that cover relevant benchmark information? If not, please explain why and, where possible, propose an alternative approach. In particular, how could information requirements reflect the different nature and characteristics of benchmarks?

<ESMA_QUESTION_CP_MIFID_157>

Deutsche Börse Group explicitly welcomes ESMA's sensible proposal that a person with proprietary rights to a benchmark has to make available through licensing only those information it has IP rights on, and that where a person with proprietary rights to a benchmark does not have IP rights itself, it should submit the necessary information about the relevant data sources to the trading venue and/or CCP instead. We explicitly appreciate this acknowledgement by ESMA as this will avoid unproportionate and unnecessary burden of benchmark providers both as regards cost as well as superfluous administration. For reassurance we would like to point out that as of today all relevant information for benchmark users is made available to customers in the same setting as promoted by ESMA in its proposal.

Furthermore, Deutsche Börse Group welcomes ESMA's considerate approach as regards the publication of customer group classifications only. We agree that license terms should be made available on request to potential customers according to their classification and that a TV or CCP may request from the PB the information and shall explain how such information is required for trading or clearing purposes.

Deutsche Börse Group appreciates as well that ESMA is not providing an exhaustive list of use cases, as this would be rather difficult in a changing market environment. However, we agree that trading venues as well as CCPs shall explain why they need access to particular information, in order to avoid unjustified demands.

Deutsche Börse Group generally agrees with the wording of the RTS for Art 20 unless explicitly stated in our comments below:

Proposed amendments to RTS 24 Recitals 19 and 27 and Title 5

“(19) This Regulation, therefore, does not prescribe an exhaustive list of the types of information that should be provided by a person with proprietary rights to a benchmark to trading venues and CCPs, but allows CCPs and trading venues to request access to information **a person with proprietary rights to a benchmark owns**, provided it is required for trading or clearing purposes. For example for option benchmarks it may be necessary to know whether the option model is volatility or premium based ~~and for equity benchmarks it may be necessary to know relevant corporate action information.~~”

Rationale: for clarification purposes we suggest the adaptation above as regards the IP ownership as a pre-condition to request information.

“(27) The way in which it is assessed whether a benchmark can be deemed new will vary on a case by case basis and it is for the person with proprietary rights to a benchmark to demonstrate a benchmark's newness if invoked as reason for denying immediate access. ~~As an example, the values of two benchmarks may be highly correlated, particularly in the short run, but their compositions or methodology may be fundamentally different to one another. The long run correlation and similarities in the composition and the methodology of each of the benchmarks should be taken into account.~~ **The newness of e.g. of an index methodology can be assessed objectively by looking at the following features: a) universe of input data, for instance relating to previously not covered regions or sectors or types fundamentals; b) model to identify and approximate input data, for instance by new main component analysis or new model to estimate a covariance matrix; c) algorithm to filter, rank, select and weight components and to calculate the index; or, d) periodic review/rebalancing of the index composition, for instance by establishment of a new buffer rule and/or change in review/rebalancing frequency.** ~~The assessment will have to consider the ways in which the compositions of the two benchmarks are related, and where there are differences how significant they are. Furthermore, the assessment should consider whether the methodologies adopted by each of the benchmarks are related, and to what extent. It is possible for two benchmarks to calculate their benchmark value in the same way, but still be fundamentally different if the composition of each is significantly different. Each assessment of a benchmark's newness should therefore look at various factors to assess whether the benchmark meets the criteria specified in Regulation (EU) No 600/2014 or not. It will also be important to give an appropriate weighting to each of the various factors.”~~

Rationale: The new wording for recital 27 shall reflect the necessary adaptations in Art 23 of RTS 24. The adaptations are necessary in order to allow for a sensible and fact-based analysis when determining if an index is to be considered new or not. It is not adequate to say that a benchmark is not new if it is comparable to another benchmark in one isolated aspect. For example, an equity benchmark where the components are weighted based on their market capitalization can be correlated to a benchmark where the components are equally weighted. Nevertheless these are two very different methodologies. A comprehensive assessment of all features of the benchmark is necessary. However, special attention should be given to the methodology and to its main building blocks where innovation will typically be reflected.

“Title 5

Non-discriminatory access to and licensing of benchmarks

Article 20

[Article 37(4)(a) of Regulation 600/2014]

Principles guiding the information to be made available to CCPs and trading venues

- (2) A trading venue or CCP may request from the person with proprietary rights to a benchmark the information mentioned in Article 21 and shall also explain to that person **in sufficient detail** the reasons why such information is required for trading or clearing purposes.
- (3) A person with proprietary rights to a benchmark shall supply relevant information requested by a trading venue or CCP ~~promptly~~ **without undue delay after reviewing the access request**, either on a one-off basis, including amendments to previously supplied information, or on a continuous or periodic basis, depending on the type of information concerned.
- (4) A person with proprietary rights to a benchmark shall provide information to a trading venue on **substantially** the same basis as it provides to other trading venues, unless a different basis can be objectively justified.
- (5) A person with proprietary rights to a benchmark shall provide information to a CCP on **substantially** the same basis as it provides it to other CCPs, unless a different basis can be objectively justified.
- (6) A person with proprietary rights to a benchmark shall **apply reasonable efforts to make available** ~~provide~~ all relevant information to all trading venues and all CCPs on the same timescales.
- (7) Where a person with proprietary rights to a benchmark neither owns nor has otherwise access to relevant information mentioned in Article 21 or where it has access cannot pass such information on to a trading venue or CCP due to ~~non-discriminatory~~ restrictions included in the contract with the third party or parties who own that information or other legal obligations, the trading venue or CCP shall request such information directly from the third party or parties who own it.

Rationale: The benchmark provider may be dependent on a certain data source which does not apply to non-discrimination policies. The benchmark provider is not in the provision to change this. However, as the benchmark provider will be obliged to treat trading platforms as well as CCPs alike, there is no need to include this wording.

- ~~(8) If a person with proprietary rights to a benchmark can show that certain information is available publicly or through other commercial means to a trading venue or CCP, provided such information is reliable and timely, it does not need to supply that information through licensing to that trading venue or CCP. A person with proprietary rights to a benchmark does not need to supply information to that trading venue or CCP:~~
- (a) **if such person with proprietary rights can show that the relevant information is available publicly either free of charge or against payment from a third party to a trading venue or CCP, provided such information is reliable and timely; or**
- (b) **where information is protected by intellectual property rights and the use of such information by the trading venue or CCP could cause a threat or damage to such intellectual property or diminish its commercial value.**

Rationale: for clarification purposes “publicly available” should be used as a general terminology, indicating that data is available to the public. As regards commercials this can either be free of charge or against payments.

<ESMA_QUESTION_CP_MIFID_157>

Q158. Do you agree with the elements of the draft RTS that cover licensing conditions? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_158>

Deutsche Boerse Group generally agrees with the wording of the RTS 24 for Art 21 unless explicitly stated in our comments below.

Proposed amendments to RTS 24 Article 21:

“Article 21

The information through licensing to be made available to CCPs and trading venues

“1. (b) prompt notification of any inaccuracy in the calculation of a benchmark’s value and of the updated or corrected benchmark value **according to benchmark rule book;**

Rationale: In line with IOSCO principles the rulebook of an index contains rules as regards the correction of benchmarks. These rules should be adhered to in any case and this is being reflected in the adaptations above.

2. In respect of composition and methodology, the information provided shall allow the trading venue or CCP to understand ~~how each benchmark value is developed,~~ the actual methodology used ~~to make benchmark’s values and the rationale for adopting a particular methodology.~~ Subject to the provisions in Article 20 and unless such information is not needed for trading or clearing purposes, relevant information in respect of composition and methodology shall at least include:”

Rationale: The index user should be in the position to understand the index, not the development process at benchmark provider site. The adapted wording is reflecting this.

“2.

(b) all criteria and procedures used to ~~develop~~ **calculate** the benchmark, including input selection, ~~the mix of inputs used to derive the benchmark,~~ the procedures and practices used to determine the benchmark’s value. ~~—input selection, the mix of inputs used to derive the benchmark, the procedures and practices that control the exercise of discretion, priority given to certain data types, minimum data needed to determine a benchmark, any models or extrapolation methods, and the methodology used to determine the benchmark’s value;”~~

Rationale: The level of details as regards the index development procedure are in no way relevant for the use of indices in trading and clearing and should therefore not be requested here. The way how methodologies are being written today and made available to users of benchmarks are fully sufficient.

“(e) the procedures which govern the benchmarks rebalancing ~~methodology and the resulting weightings of the constituents of the benchmark;”~~

Rationale: The level of details as regards the index development procedure are in no way relevant for the use of indices in trading and clearing and should therefore not be requested here.

“(j) procedures for making changes to the composition and methodology and details of any change thereof **and procedures for notifying the trading venue or CCP in advance of such changes.**”

Rationale: We would suggest to add the additional requirement to clarify that the necessary information flow will be given.

“(k) **the name and contact details of the operator of the benchmark.**”

~~(3) Subject to the provisions in Article 20 and unless such information is not needed for trading or clearing purposes, relevant information in respect of pricing shall include the values, types and sources of inputs used to develop the benchmark’s values.~~

“Art. 22

Other conditions under which access must be granted

(2) Where a person with proprietary rights to a benchmark sets different conditions, including fees, and the conditions for paying them, for different categories of **CCPs or trading venues**, those differences shall be objectively justified according to parameters such as the quantity, scope or field of use and that person shall make freely available to a trading venue or CCP upon request the conditions for the category to which that trading venue or CCP belongs.”

Rationale: For the avoidance of doubt, the reference to trading venues as well as CCPs should be included. The reference is also for consistency reasons in terminology.

“(4) The conditions shall be granted on fair, reasonable and non-discriminatory terms. A person with proprietary rights to a benchmark shall set **substantially** the same rights and obligations for the licensees within the same category, including where the person with proprietary rights to a benchmark and a trading venue or CCP **belong to the same group of companies** ~~are connected by close links.~~”

Rationale: for clarification purposes

“(6) The person with proprietary rights to a benchmark shall make available to **all trading venues and CCPs** ~~licensees~~ within the same category any **substantial** additions or modifications to the conditions in paragraph 5 agreed with a licensee within that category.”

Rationale: for clarification purposes

“(7) The licensing agreement shall require that the person with proprietary rights to a benchmark and the trading venue or CCP put in place adequate policies, procedures and systems, including in relation to relevant conditions referred to in paragraph 5, to ensure

to the extent reasonably possible and relevant for the access arrangements pursuant to Art 21:

- (a) ~~an prompt~~ implementation of the service **without undue delay after** the receipt of a request ~~since its request~~ according to a prearranged schedule;
- (g) ~~notification to the relevant party within a reasonable notice period before any change to either entity's operations is implemented, where the impact of a change is unlikely to be significant;~~
- (h) the provision of up-to-date information to persons with proprietary rights to a benchmark regarding the ~~dissemination~~ **redistribution**, if redistribution is allowed, of information to clearing members of CCPs and **trading members** ~~participants~~ of trading venues;"

<ESMA_QUESTION_CP_MIFID_158>

Q159. Do you agree with the elements of the draft RTS that cover new benchmarks? If not, please explain why and, where possible, propose an alternative approach.

<ESMA_QUESTION_CP_MIFID_159>

Deutsche Boerse Group generally agrees with Art 23. However, as Art 23 seems unclear in various ways, and a new index would need to substantially differentiate itself from an existing index we would like to strongly suggest a clearer wording as lined out below:

Proposed amendments to RTS 24 Article 23

"Article 23

Standards guiding how a benchmark may be proven to be new

(2) **When considering if a benchmark is new the following factors may be cumulatively taken into account when comparing the respective benchmark with any pre-existing benchmarks:** ~~A benchmark is less likely to be new if any of the following factors apply:~~

- ~~(a) Contracts based on the newer benchmark are capable of being netted or substantially offset with contracts based on the relevant existing benchmark by a CCP.~~
- (ab) The regions and industry sectors covered by the relevant benchmarks are not the same, or **relatively materially** similar.
- (be) The values of the relevant benchmarks are **not** highly correlated.
- (cd) The composition of the relevant benchmarks, having regard to the number of constituents, the actual constituents, their values and their weightings, are not the same, or **relatively materially** similar and
- (de) The methodologies of each relevant benchmark are not the same, or **relatively materially** similar.

Methodologies are not materially similar if there is a difference in at least one of the following respects:

- (a) universe of input data
- (b) model to identify and approximate input data; ,
- (c) algorithm to filter, rank, select and weight components and to calculate the index; or,

(d) periodic review/rebalancing of the index composition

Rationale for adaption Art 23: Criteria need to be based on facts in order to allow for a clear decision base. Close correlations only do not constitute at all constitute a new benchmark, and can be exist by accident. It is not adequate to say that a benchmark is not new if it is comparable to another benchmark in one isolated aspect. The above wording will support a fair and fact based decision as regards potential questions of the newness of indices in the context of Art 37 MiFIR.

Finally, Deutsche Boerse Group wants to point out that the “interims-cost benefit analysis” contains unclear and contradictory wording compared to the RTS as well as the CP.

<ESMA_QUESTION_CP_MIFID_159>

viii) Requirements applying on and to trading venues

Q160. Do you agree with the attached draft technical standard on admission to trading?

<ESMA_QUESTION_CP_MIFID_160>

Yes, in general Deutsche Börse Group agrees with RTS 25, provided that no arrangements come into effect, which could be contradictory to the existing regulation dealing with the admission rules with respect to the admission process and the securities considered to be admitted to a regulated market. Deutsche Börse Group considers (i) the existing admission process, (ii) existing arrangements with regard to the aforementioned securities and (iii) existing regulations concerning information to be available about the securities / the underlying securities to be reasonable and sufficient. Accordingly, Deutsche Börse Group interprets RTS 25 only as a clarification to the existing regulations, which does not significantly change them. The comments in the cost benefit analysis (page 363) confirm this view. Also in regards to ETFs Deutsche Börse Group does not see the necessity to deviate from the current practice.

The aforementioned opinion basically reflects Technical Options mentioned in the cost benefit analysis on pages 365 f.

- a. In regards to Technical Option 1.a.: Transferable Securities, there will be no changes to the existing requirements.
- b. In regards to Technical Option 1.b.: Units in collective investment undertakings, alternative arrangements for investors – such as the continuous support of the ETF through a Designated Sponsor – have to be in place. As certain standards are already set in place, especially in the ETX – Segment of the Frankfurt Stock Exchange, Deutsche Börse Group does not expect additional requirements.
- c. In regards to Technical Option 1.c.: Derivatives, there will be no changes to the existing requirements.

<ESMA_QUESTION_CP_MIFID_160>

Q161. In particular, do you agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law?

<ESMA_QUESTION_CP_MIFID_161>

Because in Germany the monitoring of ongoing obligations of the regulated market is up to the Federal Financial Supervisory Authority (BaFin), the German regulated markets can neither be in charge of any arrangement for verifying compliance by issuers with obligations under Union law (Q160) nor of facilitating access to information published under Union law for members and participants of a regulated market (Q162), accordingly.

Nevertheless, Deutsche Börse Group agrees with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law for the following reasons:

1. No incremental significant costs relate to ESMA's specification of Article 51 (6) is expected, as this is expected to mirror existing regulatory standards.
2. In terms of verifying issuer's required disclosures Deutsche Börse Group has considered the following:
 - a. In regards to Technical Option 2: Arrangements to verify issuer's required disclosures, the policies objective strives to enhance the consistency of monitoring the obligations to provide disclosure (initial, ongoing and ad-hoc) by regulated markets. However, in Germany, we – the regulated market of the Frankfurt Stock Exchange – has established a prime segment (Prime Standard) which has additional requirements to issuers. These requirements are set above the existing regulations (Stock Exchange Act) and established under Section IV, Sub-section 2 of the Exchange Rules of the Frankfurter Wertpapierbörse (FWB). In order to ensure compliance with the requirements, in terms of disclosure, the regulated market of the Frankfurt Stock Exchange has appropriate arrangements/policies in place and can ensure that issuers are aware of their obligations upon admission to trading. As a result, Deutsche Börse Group concludes that no additional actions ought to be taken. However, the BaFin is responsible for issuer's disclosure and the compliance thereof. As such, Deutsche Börse Group is not aware that certain actions need to be taken to further ensure and/or enhance the consistency of monitoring the obligations to provide disclosure. Nonetheless, our responsibility is to make sure that the opportunity – under Section IV, Sub-section 2 – which enables the regulated market of the Frankfurter Wertpapierbörse won't be affected in any way, shape or form. Hence, it is important to separate the function of the regulated market (e.g. the Frankfurt Stock Exchange) and the Federal Financial Supervisory Authority.

<ESMA_QUESTION_CP_MIFID_161>

Q162. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA_QUESTION_CP_MIFID_162>

Because in Germany the monitoring of ongoing obligations of the regulated market is up to the Federal Financial Supervisory Authority (BaFin), the German regulated markets can neither be in charge of any arrangement for verifying compliance by issuers with obligations under Union law (Q160) nor of facilitating access to information published under Union law for members and participants of a regulated market (Q162), accordingly.

Nevertheless, Deutsche Börse Group generally agrees with the attempt to provide access to publicly available information on an as equal basis as possible through the arrangements proposed by ESMA, provided that in Germany access is granted by BaFin as the competent authority.

Furthermore, the IPO-Line (Being-/Going Public) found under the following link, gives a general overview about follow up obligations on the regulated market:

http://xetra.com/xetra/dispatch/de/kir/navigation/xetra/200_listing/100_your_listing/100_your_listing/90_bp_line

Considering depth and accessibility of the information provided by the Frankfurt Stock Exchange, we would conclude that no further actions in regard to the regulatory changes need to be taken by the Frankfurt Stock Exchange.

<ESMA_QUESTION_CP_MIFID_162>

Q163. Do you agree with the proposed RTS? What and how should it be changed?

<ESMA_QUESTION_CP_MIFID_163>

Deutsche Börse Group agrees with the proposed RTS.

<ESMA_QUESTION_CP_MIFID_163>

Q164. Do you agree with the approach of providing an exhaustive list of details that the MTF/OTF should fulfil?

<ESMA_QUESTION_CP_MIFID_164>

Yes, Deutsche Börse Group agrees with ESMA's proposal to providing an exhaustive list of detail a MTF/OTF has to fulfil.

<ESMA_QUESTION_CP_MIFID_164>

Q165. Do you agree with the proposed list? Are there any other factors that should be considered?

<ESMA_QUESTION_CP_MIFID_165>

Yes, Deutsche Börse Group agrees with the proposed list.

<ESMA_QUESTION_CP_MIFID_165>

Q166. Do you think that there should be one standard format to provide the information to the competent authority? Do you agree with the proposed format?



<ESMA_QUESTION_CP_MIFID_166>

Yes, Deutsche Börse Group would generally welcome standardised formatting to provide the information.

<ESMA_QUESTION_CP_MIFID_166>

Q167. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?

<ESMA_QUESTION_CP_MIFID_167>

Yes, Deutsche Börse Group welcomes a standardised format and agrees with the proposed format.

<ESMA_QUESTION_CP_MIFID_167>

ix) Commodity derivatives

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

<ESMA_QUESTION_CP_MIFID_168>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_168>

Q169. Do you agree with ESMA's approach to include non-EU activities with regard to the scope of the main business?

<ESMA_QUESTION_CP_MIFID_169>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_169>

Q170. Do you consider the revised method of calculation for the first test (i.e. capital employed for ancillary activity relative to capital employed for main business) as being appropriate? Please provide reasons if you do not agree with the revised approach.

<ESMA_QUESTION_CP_MIFID_170>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_170>

Q171. With regard to trading activity undertaken by a MiFID licensed subsidiary of the group, do you agree that this activity should be deducted from the ancillary activity (i.e. the numerator)?

<ESMA_QUESTION_CP_MIFID_171>

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<ESMA_QUESTION_CP_MIFID_171>

Q172. ESMA suggests that in relation to the ancillary activity (numerator) the calculation should be done on the basis of the group rather than on the basis of the person. What are the advantages or disadvantages in relation to this approach? Do you think that it would be preferable to do the calculation on the basis of the person? Please provide reasons. (Please note that altering the suggested approach may also have an impact on the threshold suggested further below).

<ESMA_QUESTION_CP_MIFID_172>

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<ESMA_QUESTION_CP_MIFID_172>

Q173. Do you consider that a threshold of 5% in relation to the first test is appropriate? Please provide reasons and alternative proposals if you do not agree.

<ESMA_QUESTION_CP_MIFID_173>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_173>

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



<ESMA_QUESTION_CP_MIFID_174>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_174>

Q175. Do you agree that the term capital should encompass equity, current debt and non-current debt? If you see a need for further clarification of the term capital, please provide concrete suggestions.

<ESMA_QUESTION_CP_MIFID_175>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_175>

Q176. Do you agree with the proposal to use the gross notional value of contracts? Please provide reasons if you do not agree.

<ESMA_QUESTION_CP_MIFID_176>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_176>

Q177. Do you agree that the calculation in relation to the size of the trading activity (numerator) should be done on the basis of the group rather than on the basis of the person? (Please note that that altering the suggested approach may also have an impact on the threshold suggested further below)

<ESMA_QUESTION_CP_MIFID_177>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_177>

Q178. Do you agree with the introduction of a separate asset class for commodities referred to in Section C 10 of Annex I and subsuming freight under this new asset class?

<ESMA_QUESTION_CP_MIFID_178>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_178>

Q179. Do you agree with the threshold of 0.5% proposed by ESMA for all asset classes? If you do not agree please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_179>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_179>

Q180. Do you think that the introduction of a de minimis threshold on the basis of a limited scope as described above is useful?

<ESMA_QUESTION_CP_MIFID_180>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_180>

Q181. Do you agree with the conclusions drawn by ESMA in relation to the privileged transactions?



<ESMA_QUESTION_CP_MIFID_181>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_181>

Q182. Do you agree with ESMA's conclusions in relation to the period for the calculation of the thresholds? Do you agree with the calculation approach in the initial period suggested by ESMA? If you do not agree, please provide reasons and alternative proposals.

<ESMA_QUESTION_CP_MIFID_182>

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<ESMA_QUESTION_CP_MIFID_182>

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

<ESMA_QUESTION_CP_MIFID_183>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_183>

Q184. Would a baseline of 25% of deliverable supply be suitable for all commodity derivatives to meet position limit objectives? For which commodity derivatives would 25% not be suitable and why? What baseline would be suitable and why?

<ESMA_QUESTION_CP_MIFID_184>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_184>

Q185. Would a maximum of 40% position limit be suitable for all commodity derivatives to meet position limit objectives. For which commodity derivatives would 40% not be suitable and why? What maximum position limit would be suitable and why?

<ESMA_QUESTION_CP_MIFID_185>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_185>

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

<ESMA_QUESTION_CP_MIFID_186>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_186>

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

<ESMA_QUESTION_CP_MIFID_187>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_187>

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



<ESMA_QUESTION_CP_MIFID_188>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_188>

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

<ESMA_QUESTION_CP_MIFID_189>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_189>

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

<ESMA_QUESTION_CP_MIFID_190>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_190>

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

<ESMA_QUESTION_CP_MIFID_191>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_191>

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

<ESMA_QUESTION_CP_MIFID_192>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_192>

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

<ESMA_QUESTION_CP_MIFID_193>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_193>

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

<ESMA_QUESTION_CP_MIFID_194>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_194>

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



<ESMA_QUESTION_CP_MIFID_195>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_195>

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

<ESMA_QUESTION_CP_MIFID_196>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_196>

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

<ESMA_QUESTION_CP_MIFID_197>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_197>

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

<ESMA_QUESTION_CP_MIFID_198>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_198>

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

<ESMA_QUESTION_CP_MIFID_199>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_199>

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

<ESMA_QUESTION_CP_MIFID_200>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_200>

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

<ESMA_QUESTION_CP_MIFID_201>

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<ESMA_QUESTION_CP_MIFID_201>

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

<ESMA_QUESTION_CP_MIFID_202>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_202>

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

<ESMA_QUESTION_CP_MIFID_203>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_203>

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

<ESMA_QUESTION_CP_MIFID_204>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_204>

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

<ESMA_QUESTION_CP_MIFID_205>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_205>

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

<ESMA_QUESTION_CP_MIFID_206>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_206>

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

<ESMA_QUESTION_CP_MIFID_207>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_207>

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

<ESMA_QUESTION_CP_MIFID_208>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_208>

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

<ESMA_QUESTION_CP_MIFID_209>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_209>

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

<ESMA_QUESTION_CP_MIFID_210>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_210>

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



<ESMA_QUESTION_CP_MIFID_211>

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<ESMA_QUESTION_CP_MIFID_211>

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

<ESMA_QUESTION_CP_MIFID_212>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_212>

x) Market data reporting

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

<ESMA_QUESTION_CP_MIFID_213>

Deutsche Börse Group is of the view that an extended FIXML format would present the best solution to be used for transaction reporting (for the avoidance of doubt not real-time data) as prescribed under MiFIR since FIX is widely used across various asset classes to communicate transaction information while FPML is predominantly focused on OTC derivatives. The remainder of the standards mentioned are not focused on trade communication and should therefore not be considered.

<ESMA_QUESTION_CP_MIFID_213>

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

<ESMA_QUESTION_CP_MIFID_214>

Deutsche Börse Group agrees with the definition of an execution. Regarding the definition of a transaction we consider the exclusion of post-trade assignments and novations (RTS 32 Article 3.3 (c)) and of portfolio compressions (RTS 32 Article 3.3 (d)) as contradictory to the objective to cumulatively reflect the changes in position (RTS 32 Article 14.5 (a)). E.g. post-trade give-ups/take-ups result in a change of position and would therefore not be reported. ESMA should therefore drop the requirement in RTS 32 Article 14.5 (a) accordingly.

Furthermore we would like ESMA to clarify that the initial clearing of transactions by a CCP has to be reported. To this end the exclusion of novations as per RTS 32 Article 3.3 (c) should be removed and the statement “Contracts arising solely for clearing purposes” as per RTS 32 Article 3.3 (b) should be clarified that it does not apply to the initial clearing of a bilateral transaction through novation or its initial existence in a cleared state in an open offer model.

The consultation paper chapter 8.2 paragraph 15 stipulates that “increases and decreases in notional are reported as new transactions”. In case of a change in notional either the original transaction is cancelled and replaced by a new one or the original transaction is modified. This ensures the link between a transaction report and the corresponding contract between counterparties. There will never just be a new transaction for a change in notional, since this would be a second new contract only for the difference in notional. ESMA has also in the sample table further down shown the field “Modification of the contract”. So a modification has to use the same trade reference number as the original trade and a new number can only be created if the original trade is cancelled. We therefore propose that ESMA does not include the text from the consultation paper into the RTS.

<ESMA_QUESTION_CP_MIFID_214>

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

<ESMA_QUESTION_CP_MIFID_215>

Deutsche Börse Group suggests having a comprehensive and predefined list of the types of transaction to be reported (e.g. give-ups/take-ups, exercise, average pricing, and trade separation/split). In the absence of such, reporting entities will be faced with a high risk of under or over report.

<ESMA_QUESTION_CP_MIFID_215>

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

<ESMA_QUESTION_CP_MIFID_216>

Deutsche Börse Group would like to point out that due to the amount of data being processed checking for obvious errors can only be performed based on procedures which can be easily automated. This should clearly be lined out in the regulation.

<ESMA_QUESTION_CP_MIFID_216>

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

<ESMA_QUESTION_CP_MIFID_217>

Deutsche Börse Group is in favour of including buyer/seller specific fields, as this approach allows for a clear distinction of the parties involved. Regarding the examples provided we would like to point out that a venue can never be counterparty. Instead of "Venue/CCP" the examples should therefore state "CCP/Other counterparty on venue".

<ESMA_QUESTION_CP_MIFID_217>

Q218. We invite your comments on the proposed fields and population of the fields. Please provide specific references to the fields which you are discussing in your response.



<ESMA_QUESTION_CP_MIFID_218>

In general Deutsche Börse Group assumes that fields regarding decision maker, trader, algorithm, short-selling do not apply to transactions to be reported by a CCP.

Deutsche Börse Group strongly suggests defining which data fields ESMA considers to be mandatory per asset class and business scenario (case). This would strongly support a standardized reporting which could minimize potential errors outright from the beginning.

With reference to RTS 32: Draft Regulatory Technical Standards on Reporting Obligations under Article 26 of MiFIR, Annex I, Table 1 Table of Fields, Deutsche Börse Group would like to attract ESMA'S attention to the following fields:

Field 46 Price notation:

ESMA should clearly define the difference between percentage and yield.

Field 47/48: Currency:

It should be possible to also populate these fields with non-ISO currency codes as per standard market practice, e.g. CNH.

Field 48 Currency 2:

Further guidance is required to determine how this field should be populated when the underlying is a basket or an Index

Field 51 Venue:

To avoid overlapping of the codes "XOFF" and "NEEA" with MIC segment codes, ESMA should propose a Venue identification type field (i.e. segment MIC or special codes)

Field 57 Ultimate Underlying Instrument Identification Code Type:

Deutsche Börse Group would highly appreciate clarifying how this field should be filed when the ultimate underlying is a federal bond (should C= Country be used?) or a corporate bond: (should L= LEI be used)

Field 67 Modification of the Contract:

It is current market practice that a modification to a contract is either reported by cancelling the existing contract and reporting a new one in conjunction or alternatively modifying the original contract.

The proposal to report a modification of a contract as a new transaction, whereby the increase/decrease of notional is only specified is not transparent and does not reflect the actual modification of a given contract, adding excessive and unnecessary efforts to implement.

In the light of the above, Deutsche Börse Group proposes that field 67 is excluded from the table of reportable fields.

Fields 74+75 Algorithm identification code, Investment Decision, Algorithm identification code, Execution:

Deutsche Börse Group assumes that any trade matching functionality which is used by trading venues to match orders is not considered to be an algorithm. DBG therefore expects that fields 74 (Algorithm identification code, Investment Decision) and 75 (Algorithm identification code, Execution) will not have to be reported from a trading venue's point of view.

Field 76 Waiver Indicator:

Deutsche Börse Group suggests that field 76 (Waiver Indicator) be reconsidered, as its value to detect market abuse is rather questionable.

Field 81 Report Status:

The field above only accounts for new and cancelled transaction reports, overlooking any changes and amendments for a given transaction report, hence it is suggested that like for EMIR reporting additional values for modifications, corrections and cancels due to error should be included.

<ESMA_QUESTION_CP_MIFID_218>

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

<ESMA_QUESTION_CP_MIFID_219>

Deutsche Börse Group kindly requests a detailed clarification of the “matched principal capacity” concept as its rationale remains unclear.

Furthermore we would like to point out that the term “dealing on own account” should not be used in the definition of ‘Matched Principle’ in RTS 32 Article 1 (b). According to Article 4 (1) (20) of Directive 2014/65/EU a Systematic Internaliser deals on own account and is, as opposed to OTFs as specified in Article 20 of Directive 2014/65/EU, not allowed to use matched principal trading. So the wording of RTS 32 Article 1 (b) should be corrected as follows: ‘Matched principal capacity’ means dealing on own account as defined in Article 4(1)(6) where the concerned entity enters into a transaction as defined in Article 4(1)(38) of Directive 2014/65/EU ...

<ESMA_QUESTION_CP_MIFID_219>

Q220. Do you foresee any problem with identifying the specific waiver(s) under which the trade took place in a transaction report? If so, please provide details

<ESMA_QUESTION_CP_MIFID_220>

Deutsche Börse Group suggests that field 76 (Waiver Indicator) be reconsidered, as its value to detect market abuse is questionable.

<ESMA_QUESTION_CP_MIFID_220>

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

<ESMA_QUESTION_CP_MIFID_221>

Deutsche Börse Group would like to attract ESMA's attention to the discrepancy it has identified while reviewing the provisions of RTS 32, recital 17 as opposed to Article 11 (a) and (b) of the same.

RTS Recital (17) states: “..... In particular, financial instruments based on a basket should be reportable as soon as **more than one component** of the basket is a reportable financial instrument.”

While on the other hand **Article 11: The relevant categories of financial instruments** states: “The categories of financial instruments identified in Article 26(2) (c) of Regulation (EU) 600/2014 include the following types of instruments:

- (a) Financial instruments where the underlying is an index and where **at least one component** of the index is a financial instrument which is admitted to trading or traded on a trading venue;
- (b) Financial instruments based on baskets where **at least one component** of the basket is a financial instrument which is admitted to trading or traded on a trading venue.

It is therefore advised that the text contained within recital 17 to be revised and corrected.

<ESMA_QUESTION_CP_MIFID_221>

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

<ESMA_QUESTION_CP_MIFID_222>

Yes, from a trading venue point of view (Regulated Market) it is ought to be feasible to provide the relevant information on baskets and indices.

Deutsche Börse Group agrees with the proposed standards for identifying financial instruments based on baskets or indices provided its trading venue regulated market stand point, it is hence feasible to provide the requested information.

<ESMA_QUESTION_CP_MIFID_222>

Q223. Do you foresee any difficulties applying the criteria to determine whether a branch is responsible for the specified activity? If so, do you have any alternative proposals?

<ESMA_QUESTION_CP_MIFID_223>

Deutsche Börse Group in its capacity as a trading venue is not directly affected by this particular requirement.

<ESMA_QUESTION_CP_MIFID_223>

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

<ESMA_QUESTION_CP_MIFID_224>

Deutsche Börse Group would like to emphasise that some trading members that do not fall under the scope of this regulation, (Non-EEA Members who will not be directly affected by MiFID II), might not have an LEI in place, consequently an alternative way to identify such counterparties will be required.

<ESMA_QUESTION_CP_MIFID_224>

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

<ESMA_QUESTION_CP_MIFID_225>

Article 26 (5) of MiFIR obliges the operator of a trading venue to “report the details of transactions in financial Instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3” (of the Article 26). In this respect, Deutsche Börse Group would like to stress the following issues:

First, a trading venue might not obtain all the requested information from its clients, provided data protection constraints, for example a firm might not disseminate client identification data to third parties. Thus a trading venue will not be able to fulfil its reporting duties when reporting on the behalf of firms that are not subject to this regulation.

Second, Deutsche Börse Group requests that a clear guidance as to how a trading venue can identify firms that are not subject to this regulation in order for it to report on its behalf, the lack of such provisions will ultimately result in over or under reporting.

Finally and In this respect to the above, it is crucial to point out that a trading venue is not and shall not be responsible to determining whether or not a given counterparty is subject to MiFIR or not.

<ESMA_QUESTION_CP_MIFID_225>

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

<ESMA_QUESTION_CP_MIFID_226>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_226>

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

<ESMA_QUESTION_CP_MIFID_227>

Deutsche Börse Group does not agree with the proposed approach to flag liquidity provision activity. Flagging liquidity provision with the proposed approach creates inappropriate effort for trading venues and members of trading venues. The benefit is very limited and the characteristics of an order already signal the intention either to provide liquidity or to take it. Flagging actively liquidity provision is not necessary.

<ESMA_QUESTION_CP_MIFID_227>

Q228. Do you foresee any difficulties with the proposed differentiation between electronic trading venues and voice trading venues for the purposes of time

stamping? Do you believe that other criteria should be considered as a basis for differentiating between trading venues?

<ESMA_QUESTION_CP_MIFID_228>

Deutsche Börse Group does not foresee any difficulties with the proposed differentiation. However if voice trading venues receive orders electronically the same time stamping requirements should apply for these transactions as for electronic trading venues.

<ESMA_QUESTION_CP_MIFID_228>

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

<ESMA_QUESTION_CP_MIFID_229>

Deutsche Börse Group disagrees with the proposal as it does not reflect standard market practice. Typically venues store data in the respective order books and are able to replay actual markets using the relevant order books. The matching engine principles/market models give advice on how to use and combine different order books and thereby reconstruct the actual order flow and information for the market participants. Evermore, market data dissemination procedures always cover the aspect of implied prices during live data dissemination.

Market participants are used to this procedure already as they do this on every single trading day. Listening and recording market data dissemination would give full picture of the order book situation at any given point in time.

For the purpose of passing information to an NCA this information can easily be reconstructed and provided. As order references are available in trade information as well as order book information the reconstruction can take place at any time. A double listing of orders in different order books would thereby only increase inappropriately the efforts (e.g. cost & storage) on venue's side without further benefit for participants or regulators.

Deutsche Börse Group strongly suggests not storing implied orders within single order books but stick to industry standards, keeping orders only in their origin instrument. Therefore Article 6 (3) should be deleted completely.

<ESMA_QUESTION_CP_MIFID_229>

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

<ESMA_QUESTION_CP_MIFID_230>

Deutsche Börse Group can neither agree nor disagree. As a venue Deutsche Börse Group does not have insight into the provided and stored information within investment firms data warehouse concerning client data and internal factors. From a theoretical perspective, due to the inability to separate different trading strategies into HFT and non-HFT business, the whole firm would be deemed to provide that information. Hence, large investment firms having different strategies implemented would always have to stick to HFT characteristic and thereby would have to e.g. timestamp in micro seconds even if the majority of their business is customer related, non-HFT business. That could lead to disadvantages for investment firms having a distributed business model. Firms purely engaged in HFT business strategies should typically have no problems fulfilling the respective requirements for all business areas they engage in.

<ESMA_QUESTION_CP_MIFID_230>

Q231. In your view, are there additional key pieces of information that an investment firm that engages in a high-frequency algorithmic trading technique has to maintain to comply with its record-keeping obligations under Article 17 of MiFID II? Please elaborate.

<ESMA_QUESTION_CP_MIFID_231>

No, Deutsche Börse Group does not have additional remarks.

<ESMA_QUESTION_CP_MIFID_231>

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

<ESMA_QUESTION_CP_MIFID_232>

Deutsche Börse Group agrees with the proposal. Typically the requirement to store data is already part of market risk and structural risk assessments of NCAs and thereby already incorporated into national regulation. In essence 5 years may be already shorter than national regulation foresees.

<ESMA_QUESTION_CP_MIFID_232>

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

<ESMA_QUESTION_CP_MIFID_233>

While Deutsche Börse Group in many aspects agrees with the proposed criteria, we do ultimately still believe that the usage of the industry standard NTP for network clock synchronization, which is able to synchronize clocks up to 1 millisecond, would be sufficient and should be the only level of accuracy available. It is in the own interest of investment firms to have the most accurate available timestamp within their systems as it is used to analyze their competitiveness. Using the 99th percentile covers pretty well the spectrum of order transactions and offers a reliable baseline.

If ESMA would follow the actual approach of having more than the one level of accuracy (milliseconds) the venue decreasing its latency below the next lower threshold would face economical pressure from investment firms, because trading at the venue would lead to additional costs for enhancing the internal systems to cater for the same bucket as the venue. This will lead to a change in the business distribution of investment firms if alternative, slower venues offer the same instrument. This could harm the principle of best execution and

the quality of markets as such could decrease, which is a contradiction to the purpose of this regulation.

Therefore we would strongly suggest requesting only timestamps of a granularity of 1 milliseconds and rely on the interest of the investment firm to have better precision on a voluntarily basis. As different exchanges will have different granularity, a possible consolidated tape, the aim of this RTS, would always have a maximum tolerance of twice the maximum granularity of the venue an investment firm trades on which is 2 milliseconds, independent of the fact how the investment firm or other venues timestamp their transactions.

If more classes of granularity and accuracy than the millisecond bucket will be used in the regulation, we strongly suggest keeping it a maximum of 2 classes. Class 1 would be 1 millisecond divergence from UTC and all timestamps for reportable events shall be to the nearest millisecond and class 2 should be 100 microsecond divergence from UTC and all timestamps for reportable events shall be to the nearest microsecond.

Additionally a review of the self-assessment needs to be stipulated with in the RTS. This should be done in Q1 using gateway-to-gateway latency data from the previous 3 month averages of the daily 99th percentile.

Please see all our changes regarding RTS 36 in the appendix.

<ESMA_QUESTION_CP_MIFID_233>

Q234. Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.

<ESMA_QUESTION_CP_MIFID_234>

Yes, Deutsche Börse Group foresees difficulties as investment firms do not always know about upgrades in hard- and software of venues, especially if those upgrades only have venue internal dependencies; they might face situations where the upgrade of internal systems leads to the new time synchronization bucket and could cause a complete overhaul of their systems even so they only trade a minor share of their flow with this venue.

An investment firm will always end up in a position where the economic benefit will be challenged by the cost to upgrade their systems and fosters the move of their liquidity to another venue that does not force them to upgrade. Unpredictable liquidity moves are a consequence which can increase the risk of investment firms bound to trade at a particular venue.

In a situation where a venue faces 99th percentile latency close to the borderline of the level of accuracy of a time synchronization bucket, it can be hard to predict which latency effect will be caused by the upgrade in a production environment. Hence, this leads to an inner resistance to upgrade to the technically possible best solution for the market as such.

Also with respect to timestamps, the obligation to record timestamps on investment firms' side engaging in HFT in a granularity of a microsecond conflicts with the obligation to timestamp order book transactions on venue's side according to the venue's self-assessment based on the 99th percentile of all transactions hitting the order books. HFT firms trading at venues in the millisecond bucket only would face an enormous internal cost providing information that does not help in the context of building a consolidated tape of actions of the respective HFT investment firm. As venues sync with a possible gap of up to 2 milliseconds vs. UTC (+/- 1 millisecond is acceptable according to RTS 36) the problem would be to sequentialize transactions as the sole usage of timestamps from venues would not allow for this. NCAs would heavily rely on the sequence provided by the investment firms, as such, hence there is no need to have the increased granularity as long as participants or members are obliged to store their own timestamps in sequence, also for transactions they receive from venues.

<ESMA_QUESTION_CP_MIFID_234>

Q235. Do you agree with the proposed list of instrument reference data fields and population of the fields? Please provide specific references to the fields which you are discussing in your response.

<ESMA_QUESTION_CP_MIFID_235>

Deutsche Börse Group cannot support ESMA's draft regulatory technical standard (RTS 33) on the obligation to supply financial instrument reference data (Article 27 MiFIR) as the scope of data to be supplied is too broad for the regulatory purpose both within MAR as well as MiFIR and needs to be reduced to a sensible set of data.

Looking at the facts, Art 27 1 MiFIR requires trading venues as well as SIs to "provide competent authorities with identifying reference data **for the purpose of transaction reporting under Art 26.**" Furthermore, Art 27 1 MiFIR states that "The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. **Those notifications are to be transmitted** by the competent

authorities without delay to **ESMA, wish shall publish them immediately on its website. ESMA shall give competent authorities access to those data.**”

In RTS 33 ESMA is developing technical standards both for MAR and MiFIR at the same time. While “notifications” in the context of Level 1 are clearly defined within MAR as encompassing four data fields only (ref Art 4 3. MAR), MiFIR clearly refers to reference data for the purpose of transaction reporting only. **In this context the scope of reference data ESMA has specified within Level 2 is a) significantly too broad and not required for NCAs in order to fulfil their obligations as regards Art 26 MiFIR, and b) substantially more than requested by MAR, c) thereby infringing IP rights of various stakeholders, not only those of some trading venues.**

The world of reference data is not harmonized, neither on a global scale nor on EU level. While reference data information is usually very costly to produce and maintain, different IP holders exist in this field, and in many cases trading venues are in fact not the ones holding the IP rights. While this fact has been generally neglected at Level 1 discussions already, it seems to be neglected at Level 2 again, creating difficult legal situations especially for German trading venues as well as IFs as in Germany as the National Numbering Agency WM Wertpapiermitteilungen holds the IP rights on the requested instrument data.

The problem we see with the large data scope suggested by ESMA is twofold. While we still cannot see the pressing needs for such a large set of data for the issue of transaction reporting, providing access to the regulator to a larger set of reference data is in no way the biggest problem. However, a publication of the extensive suggested data scope on the ESMA website would clearly infringe existing IP rights of reference data providers, by no means only trading venues. In order to achieve a proportionate solution and to support ESMA while paying attention to the business of Third Parties, there are **two potential ways to solve this dilemma:**

- a) Align scope of reference data fields for both public and regulator to a standard set of data which can be made available to a broad public free of charge. Data fields free of data license fees usually encompass the following data fields (e.g. as defined by Association of National Numbering Agencies ANNA):
 - Instrument Identifier Code
 - Type of Identifier of the financial instrument
 - Instrument Full Name
 - Issuer Identifier
 - Trading Venue
 - Date Of Admittance
 - Currency Of Nominal Value
 - Maturity Date
 - Fixed Rate

Any additional data field submission above those mentioned above would require a license agreement between the user of the data (in this case the NCA, ESMA and any other data user who accesses the ESMA website) and public display of that data (apart from the free of charge data) on the ESMA website would not be allowed.

- b) In case the NCA or ESMA would need additional data for NCA or ESMA internal use only, a contract with the respective NNA or a respective data vendor would usually be necessary (e.g. in Germany the commercial data vendor WM Wertpapiermitteilungen), though trading venues would be in the position to provide the technical delivery to the NCAs. Even in this case public display should be restricted to those data which are made available free of charge by NNA's already.

As pointed out above, DBG cannot support the very detailed reference data list containing forty data fields for the purpose of public disclosure but DBG stands ready to be part of a proportionate solution finding for Technical Standards to be defined for Art 27 MiFIR (taking into consideration as well Art 4 MAR).

Proposed amendments to RTS 33

“Article 4

Frequency of submissions of financial instruments reference data

Trading venues and systematic internalisers shall submit instrument reference data to the Home competent authority once per working day and no later than 21:00 **24:00** CET.”

Rationale: please note that some trading venues still operate at 21:00 CET and that the necessary batch processes for the submission of requested reference data will be initiated after close of trading only. Therefore, and in order to provide the most actual data to the NCA, we strongly recommend to adapt the time as lined out above.

“Article 8

Back-up facilities

4.(g) the maximum **reasonable** acceptable recovery time for business processes and systems, having in mind the deadlines for submitting the information.”

Rationale: We find it extremely difficult to adhere to such absolute – and in fact short timed – service levels enshrined within regulation. While we agree that reasonable efforts need to be applied to provide the service reliably on an ongoing basis, there might be exceptional circumstances which could lead to a slightly longer period for fixing technical problems.

<ESMA_QUESTION_CP_MIFID_235>

Q236. Do you agree with ESMA's proposal to submit a single instrument reference data full file once per day? Please explain.

<ESMA_QUESTION_CP_MIFID_236>

Deutsche Börse Group agrees with ESMA's suggestion to submit a single instrument reference data file once per day in order to minimize any potential mistakes. Using a Delta File would require the recipient of the file to always have and maintain the correct data universe. The full daily file delivery would ensure that no data is being missed out and the recipient has always the full data set available while being more efficient at the same time.

Currently intraday admission, cancellations or changes to existing exchange listings on our markets do not exist. As a result, the need for additional intraday data deliveries from our data vendors is quasi non-existing. Instrument data may change, instruments will be cancelled or changed during the course of the day but changes to listing data triggered by changes of instrument data do only become effective the next trading day.

In terms of timing Deutsche Börse Group suggests a single delivery within a reasonable timeframe for a delivery between market close and the next day's opening. Minority of derivative instruments and practically no cash market instruments are created intraday.

<ESMA_QUESTION_CP_MIFID_236>

Q237. Do you agree that, where a specified list as defined in Article 2 [RTS on reference data] is not available for a given trading venue, instrument reference data is submitted when the first quote/order is placed or the first trade occurs on that venue? Please explain.

<ESMA_QUESTION_CP_MIFID_237>

Deutsche Börse Group fully agrees with ESMA given the listing process applied reference data will be provided prior to trading so that ESMA will have access to that data at the first day of trading latest.

<ESMA_QUESTION_CP_MIFID_237>

Q238. Do you agree with ESMA proposed approach to the use of instrument code types? If not, please elaborate on the possible alternative solutions for identification of new financial instruments.

<ESMA_QUESTION_CP_MIFID_238>

Deutsche Börse Group fully agrees with ESMA on using ISIN and All.

<ESMA_QUESTION_CP_MIFID_238>

xi) Post-trading issues

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

<ESMA_QUESTION_CP_MIFID_239>

Deutsche Börse Group supports ESMA's goal to provide market participants as fast as possible with pre-trade clearing certainty for orders related to derivative transactions subject to the clearing obligation. While for OTC derivative transactions pre-trade checks are deemed to be essential to achieve this end, such checks are not required for exchange traded derivative (ETD) transactions and may even prove detrimental to the functioning of derivatives markets at large.

For ETD transactions, the CCP typically steps into two legally binding agreements with the counterparties immediately during order matching ("open offer"), providing straight-through processing and certainty of clearing through legal construct. With open offer, the CCP guarantees the clearing of any transaction that results from an order being matched at the exchange without the need of pre-trade limit checks. Therefore, Deutsche Börse Group is of the opinion that pre-checks by trading venues should be optional rather than mandatory for ETD transactions. Furthermore, it must be ensured that clearing members can still flexibly set execution limits for their clients. The Regulatory Technical Standards should thus remain with the wording "limit" and not be changed to the wording "credit limit" as used in the consultation paper.

The implementation of mandatory pre-trade limit checks for ETD transactions would likely have adverse effects beyond their intended consequences. With the application of pre-trade checks at the level of the trading venue, all trades would have to be allocated to the clearing broker before their execution, i.e. a post-trade allocation that provides clients with more flexibility to execute their trades would no longer be possible. This particularly affects give-up agreements between clients, executing brokers and clearing brokers which are common market practice. An allocation of trades to the clearing broker prior to their execution would incur substantial costs on the part of clearing brokers and, ultimately, their clients, while providing no additional benefit with respect to pre-trade clearing certainty. To avoid market disruptions, the Regulatory Technical Standards should thus not mandate pre-trade checks by trading venues for ETD transactions.

<ESMA_QUESTION_CP_MIFID_239>

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

<ESMA_QUESTION_CP_MIFID_240>

Deutsche Börse Group agrees with the categories of transactions proposed by ESMA. Deutsche Börse Group considers the proposed time frame for submitting executed transactions to the CCP as appropriate for transactions concluded on a trading venue electronically (10 seconds), and for bilateral transactions (30 minutes). For transactions concluded on a trading venue non-electronically, should this category include off-book

transactions like block trades, Deutsche Börse Group considers a time frame of 10 minutes for submission to the CCP as desirable since the short time frame increases market transparency and provides CCPs with the certainty that they receive an up-to-date record of the executed transactions and their risk. Practically, however, the proposed time frame of 10 minutes could prove to be challenging for trading participants. In case of non-electronic orders, trading and clearing members need to pass on transaction details to each other. In order to do so, a time frame of 10 minutes could be too short, especially in volatile market conditions and/or in case of longer chains.

<ESMA_QUESTION_CP_MIFID_240>

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

<ESMA_QUESTION_CP_MIFID_241>

Deutsche Börse Group supports the view that CCPs should provide Clearing Members with information related to bilateral transactions submitted for clearing. Deutsche Börse Group also agrees with the proposed time frame of 60 seconds to provide the information to Clearing Members.

<ESMA_QUESTION_CP_MIFID_241>

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

<ESMA_QUESTION_CP_MIFID_242>

Deutsche Börse Group supports ESMA's move for an international harmonization of regulatory standards. However, the definition of a common time frame for all categories of derivative transactions to accept or reject a transaction that was submitted for clearing should by no means force the CCP to assume greater risks. In particular for OTC derivative transactions like interest rate swaps that typically have larger margin requirements than ETD transactions, the time frame for clearing acceptance should still allow the CCP to perform a pre-novation risk check (i.e. a check whether the counterparty has sufficient collateral if the transaction were added to its portfolio of cleared transactions). Since Deutsche Börse Group believes that the integrity of the CCP and, by extension, the safety of the financial markets should be of higher priority than the speed of CCP acceptance, the time frame for acceptance of OTC derivative transactions needs to be aligned with the requirement of an adequate pre-novation risk management at the level of the CCP.

<ESMA_QUESTION_CP_MIFID_242>

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

<ESMA_QUESTION_CP_MIFID_243>

Deutsche Börse Group considers the proposed treatment of rejected transactions as appropriate.

<ESMA_QUESTION_CP_MIFID_243>

Q244. Do you agree with the proposed draft RTS? Do you believe it addresses the stakeholders concerns on the lack of indirect clearing services offering? If not, please provide detailed explanations on the reasons why a particular provision would limit such a development as well as possible alternatives.

<ESMA_QUESTION_CP_MIFID_244>

Indirect clearing is widely used in global ETD markets today and it is a standard model with extremely high straight through processing standards

The intermediation chain for ETD can be both long and complex, and often do not involve a choice on the part of the client or their primary broker

The intention of the proposed draft RTS to remove barriers of the development of indirect clearing is highly appreciated by Deutsche Börse Group, but the draft RTS is considered to fail to provide an adequate solution to ETD indirect clearing.

Application of binary and inflexible indirect clearing requirements to ETD is likely to restrict widely used arrangements creating a barrier to trading and clearing as well as reducing liquidity

Finally, the proposed gross omnibus segregation solution would provide a higher level of protection than the existing net omnibus arrangement, but Deutsche Börse Group does not believe it could be delivered at a cost acceptable to an indirect client. Indeed, if an indirect client wanted segregation and, possibly more importantly porting, then we believe indirect clients would attempt to become direct clients and benefit from the opportunity to port.

Further details are set out below:

1. Conflict of law

Even where all parties (CCP, clearing member, direct client, indirect client) of an indirect clearing arrangement are domiciled in the European Union (EU) and porting is not required anymore, conflict of law challenges on a pan-European basis may arise in an insolvency scenario. Deutsche Börse Group is concerned that adding a recital along the lines of Recital 64 of EMIR to indicate that an RTS regulation prevails over conflicting national insolvency laws will not prevent disputes in the event of an insolvency.

The challenges increase for the case of cross-border transactions outside the EU (i.e. one or several parties to the contract is located outside the EU). To circumvent such issues by regulating that clients outside the EU are only permitted to facilitate indirect clearing when the insolvency law of the indirect client is compatible with the exchange-traded derivatives (ETD) RTS overlooks that a large number of indirect clients would then be excluded from the global market to which they currently have access.

Thus Deutsche Börse Group recommends permitting indirect clearing arrangements even where respective requirements are not met provided appropriate risk disclosure has been made to the indirect client.

2. Processes

The paper does not appear to recognise that equivalence to the EMIR requirements in Arts 39 and 48 are not met because porting is not available to indirect clients. The argument that less choice is compensated by a mandated gross model is not convincing. Whilst Deutsche Börse Group is content with the approach set out (net or gross segregation but with no

porting), it should be recognised that the omnibus and individual segregation as direct clients offers, at least, the opportunity to port. Similarly, Eurex Clearing as part of Deutsche Börse Group (and other CCPs) have, where possible and without increasing counterparty risk, removed access requirements for clients such that more clients should be able to become direct clients with access to both segregation and porting.

Where indirect clearing is offered, the current draft requires offering a net omnibus segregation model and in addition a model which corresponds to the framework of a gross omnibus segregation to indirect clients. Taking into account the recent developments under EMIR, a gross omnibus segregation model is currently not a widespread standard. CCPs, clearing members and clients would need to establish new time-consuming and cost-intensive operational and contractual structures without significant improvements for indirect client protection. Deutsche Börse Group does not believe, that the proscriptive draft and form of the rules are appropriate. Rather, Deutsche Börse Group considers that alternative forms of gross omnibus models could provide the same level of investor protection at lower operational and legal cost and therefore suggest the detailed gross omnibus RTS are removed or amended to allow CCPs to promulgate the most appropriate model for its clearing members and clients.

In addition, direct clients will need to implement new documentation to evidence the new terms for the indirect clients. Additionally, it may be necessary for the clearing member to carry out know-your-customer (KYC) checks on the indirect clients whom they do not necessarily know today, in particular for certain segregation protection in the case of the default of a direct client. This would further reduce the commercial appetite of clearing members to offer indirect clearing.

Thus Deutsche Börse Group recommends amending the current obligation to offer a gross omnibus model to allow CCPs and CMs to develop and offer their own economical, efficient and effective models on either a net or a gross basis. The benefit of this approach is that indirect clients will still be able to have the choice between net and gross models, but the market may be able to develop services which will satisfy segregation requirements more economically and in a scalable fashion. For example, Eurex Clearing as Part of Deutsche Börse Group would consider developing gross omnibus or individual indirect clearing by amending derivative position accounts rather than being required to build the specific description set down in the draft RTS, which would provide equivalent or higher protection at lower build and maintenance costs. The final RTS should provide a two year transitional period to allow existing direct clients to implement the new arrangements.

3. Clarification

Further clarification in respect of the relation between the chosen model of the direct client and the indirect client in case of a CM default seems to be desirable.

In case of a clearing member default the client would rely on the type of segregation it chose under EMIR Articles 39 and 48 (i.e. omnibus or individual). Deutsche Börse Group understands that whilst an individually segregated direct client has the highest likelihood of porting, nothing in this draft RTS restricts the direct client's choice of protection. Requiring further segregation at the direct client level, for proprietary business and indirect client

business, will add additional complexity to the CCPs default management process governing a Clearing Member default. Given that CM default is likely to cause extreme but plausible market turbulence and occur more infrequently than a direct client default, this draft should provide for priority regulation in favour of the direct client, i.e. the chosen option of the client should apply for the indirect clients as well.

In addition the draft RTS should clarify that the requirement on the Clearing Member to have procedures in place to pay the indirect clients where relevant only applies to the gross omnibus indirect clearing model and not the net omnibus model. Where legal analysis confirms that payment can not be made to the indirect client, the RTS should reflect that payment to the Insolvency Practitioner appointed to the estate of the client is acceptable. The draft RTS should additionally be limited to accept that payment should not be made if it would force the Clearing Member to contravene legal or regulatory requirements.

Lastly, Deutsche Börse Group assumes, that it was not ESMA's intention to require a form of legally segregated operational comingled (LSOC) segregation to be established in the EU. LSOC removes fellow customer risk for clients, but the RTS would be insufficient to introduce this model. It would therefore be beneficial if ESMA confirmed that it did not intend to introduce LSOC, but rather a gross omnibus model in which fellow customer risk still exists.

<ESMA_QUESTION_CP_MIFID_244>

Q245. Do you believe that a gross omnibus account segregation, according to which the clearing member is required to record the collateral value of the assets, rather than the assets held for the benefit of indirect clients, achieves together with other requirements included in the draft RTS a protection of equivalent effect to the indirect clients as the one envisaged for clients under EMIR?

<ESMA_QUESTION_CP_MIFID_245>

Deutsche Börse Group disagrees. Please see answer to question 244.

<ESMA_QUESTION_CP_MIFID_245>